

TOWN OF FORT FRANCES

BY-LAW NO. 52/13

(Being a by-law to approve a funding agreement with Her Majesty the Queen in Right of Ontario as represented by the Minister of Agriculture, Food and Rural Affairs for Ontario, (the Ministry), the *Municipal Act, 2001*, S.O. 2001, c.25, Section 8.)

WHEREAS the Ministry, in early October 2013, announced that the Town of Fort Frances was successful in obtaining funding to finance a capital improvement project located on Mowat Avenue and Second Street under the Small Rural and Northern Municipal Infrastructure Fund – Top-Up Program;

AND WHEREAS the Ministry has presented an agreement for the Town to execute in order to receive funding to be provided under the Program;

AND WHEREAS on December 9th, 2013, Council approved a recommendation from the Operations and Facilities Executive Committee to enter into the funding agreement as presented by the Ministry.

NOW THEREFORE Council for the Corporation of the Town of Fort Frances
HEREBY ENACTS as follows:

1. That the funding Agreement with the Minister of Agriculture, Food and Rural Affairs for Ontario in the form attached hereto and forming part of this by-law as Schedule "A" be approved for the Mayor and Clerk to sign and affix the Corporate Seal thereto.

This by-law shall come into force and take effect on the final passing thereof.

READ THREE TIMES and finally passed in open Council this 9th day of December 2013.

R. Avis, Mayor

SMALL RURAL AND NORTHERN MUNICIPAL INFRASTRUCTURE FUND TOP UP

TRANSFER PAYMENT AGREEMENT

THE AGREEMENT effective as of the _____

BETWEEN:

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

("MRA")

- and -

The Corporation of the Town of Fort Frances

(the "Recipient")

WHEREAS the Government of Ontario is investing in infrastructure;

AND WHEREAS the Program will provide capital assistance to small, rural and northern municipalities and Local Service Boards to support critical road, bridge, water and wastewater projects;

AND WHEREAS the Recipient has applied to MRA for funds to assist the Recipient in carrying out the Project and MRA wishes to provide such funds;

NOW THEREFORE, 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 of the Agreement:

- 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 and recitals the following terms shall have the following meanings:

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

"Agreement" means this agreement entered into between MRA and the Recipient and includes all of the schedules listed in section 26.1.

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

"Budget" means in turn, as applicable, the preliminary Estimated Budget, Estimated Budget Revision After Capital Award and the final budget of Total Net Eligible Costs as finally reconciled and certified by the Recipient in the Final Report and as agreed to by MRA.

"Budget Revision After Capital Award Report" means the report as described as per Schedule "C".

"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.

"Construction Contract Award Date" means a date on or before March 15, 2014 when a capital construction contract(s) has been awarded by the Recipient and a council resolution, or equivalent, approving the award has been passed.

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

"End of Construction Date" means a date on or before December 31, 2015.

"End of Financial Assistance Dates" means the respective deadlines set out in Schedule "B".

"Estimated Budget" means the report as described as per Schedule "B".

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

"Expiry Date" means December 31, 2016.

"Force Majeure" has the meaning ascribed to it in Article 24.

"Funds" means the money provided by MRA to the Recipient pursuant to the terms and conditions of the Agreement, and **"Funding"** and **"Financial Assistance"** each have a corresponding meaning.

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

"Maximum Financial Assistance" means \$ 847,379.00.

"Milestone" means an event set out in Schedule "B".

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

"Parties" means MRA and the Recipient.

"**Party**" means either MRA or the Recipient.

"**Program**" means Ontario's Small Rural and Northern Municipal Infrastructure Fund – Top Up.

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

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

"**Total Net Eligible Costs**" means the costs more particularly described in Schedule "B".

"**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:
- 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;
 - it has, and shall continue to have for the term of the Agreement, the experience and expertise necessary to carry out the Project; and
 - any information the Recipient provided to MRA 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:
- it has the full power and authority to enter into the Agreement; and
 - It has taken all necessary actions to authorize the execution of the Agreement including, without limitation, the passage of a by-law or council resolution authorizing the Recipient to enter into the Agreement with MRA.
- 2.3. **Governance.** The Recipient represents, warrants and covenants that it has, and shall maintain, for the period during which the Agreement is in effect:
- procedures to ensure the ongoing effective functioning of the Recipient;
 - decision-making mechanisms;
 - procedures to provide for the prudent and effective management of the Funds;
 - procedures to enable the successful completion of the Project;
 - procedures to enable the timely identification of risks to the completion of the Project and strategies to address the identified risks;
 - procedures to enable the preparation and delivery of all Reports required pursuant to Article 7; and
 - 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 MRA 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 the Expiry Date, unless terminated earlier pursuant to Article 12, Article 13 or Article 14.

ARTICLE 4. FUNDS AND CARRYING OUT THE PROJECT

- 4.1. **Funds Provided.** MRA shall:

- a) provide funding for up to ninety percent (90%) of the Total Net Eligible Costs for the Project incurred as of the delivery of the Final Report or to the limit of the Maximum Financial Assistance, whichever is less;
- b) provide the Funds to the Recipient at or about the corresponding Milestone set out in the Payment Schedule attached to the Agreement as Schedule "D";
- c) deposit the Funds into an interest bearing account designated by the Recipient provided that the account:
 - i) is with a Canadian financial institution; and
 - ii) is in the name of the Recipient.

- 4.2. **Limitation on Payment of Funds.** Despite Section 4.1, MRA:

- a) is not obligated to provide Funds until it is satisfied with all of the information to be provided by the Recipient within the Reports in Schedule "C";
- b) may withhold any Milestone payment set out in Schedule "D" if the Recipient fails to meet a corresponding Project Milestone date set out in Schedule "B" and, if a payment is withheld pursuant to this section, shall have no further obligation to make this Milestone payment to the Recipient thereafter;
- c) may, in the event that the Recipient's estimates are determined to be greater than fifteen percent (15%) or less at Milestone 2, adjust the Budget or the Maximum Financial Assistance downwards on a *pro rata* basis and, on demand, the Recipient shall return any overpayment accumulated to date;
- d) if MRA does not receive the necessary appropriation from the Ontario Legislature for any payment MRA may otherwise be obligated to make under the Agreement, MRA is not obligated to make the payment and MRA may, pursuant to Section 13.1, terminate the Agreement or may reduce the Maximum Financial Assistance or, in consultation with the Recipient, change the Project.

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

- a) substantially complete the Project within the meaning of section 2 of the *Construction Lien Act*, R.S.O. 1990, c. C.30,
 - i) in accordance with the terms of the Agreement; and
 - ii) in compliance with all federal and provincial laws, municipal by-laws and any other material orders, rules or directions related to any aspect of the Project;
- b) use the Funds only for the purpose of carrying out and substantially completing the Project;

- c) spend the Funds only on Eligible Costs as set out in and in accordance with part B.3 of Schedule "B"; and
 - d) not spend the Funds on Ineligible Costs as set out in part B.4 of Schedule "B".
- 4.4. **No Changes.** The Recipient shall:
- a) not make any changes to the Project, the Milestones, the Budget or and other term or condition of the Agreement without the prior written consent of MRA; and
 - b) abide by the terms and conditions MRA may require pursuant to any consent.
- 4.5. **Overpayment and Interest.** In the event that:
- a) the Recipient overestimated its preliminary, estimated budget prior to the first Milestone as set out in Schedule "D"; or
 - b) the Recipient has at any time during the Project over-estimated their Budget and this resulted in the Maximum Financial Assistance being greater than ninety percent (90%) of the Total Net Eligible Costs incurred on the Project as certified in the Final Report,
- the Recipient will return the excess Funds to MRA, together with interest upon the same at the then current interest rate charged by the Province of Ontario on accounts receivable, forthwith upon demand by MRA.
- 4.6. **Maximum Financial Assistance.** Notwithstanding any other provision within this Agreement, the Recipient accepts that the Funds shall not exceed the Maximum Financial Assistance or ninety percent (90%) of its incurred Total Net Eligible Costs as set out in its Final Report, whichever is less.
- 4.7. **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.
- 4.8. **Recipient Shall Notify Ontario If Project Is Not Being Implemented As Per Approved Scope.** The Recipient shall immediately notify Ontario if it does not intend to carry out the Project in whole or in part as specified in part A.1 of Schedule "A" of this Agreement or if it wishes to alter the scope. Upon reviewing such notice proposal, Ontario may, in its absolute and sole discretion, may agree to such a scope change and will replace the Project Description in Schedule "A".
- 4.9. **Recipient Shall Obtain Ontario's Written Consent to Change Project.** The Recipient shall not make any material changes to the Project without the prior written consent of Ontario.

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

- 5.1 **Acquisition.** If the Recipient acquires supplies, equipment or services with the Funds, it shall do so through a transparent, competitive process that promotes the best value for the money.
- 5.2 **Notice.** The Recipient shall notify MRA in writing of any disposal of assets purchased by the Funds at least one hundred and eighty (180) Business Days in advance of the disposition. The Recipient shall not dispose of any assets purchased, constructed, rehabilitated or improved by the Funds without the prior written consent of Ontario.

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 MRA.** The Recipient shall:
- a) disclose to MRA 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 MRA 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 MRA at the address provided in Section 17.1, all Reports in accordance with the timelines and content requirements set out in Schedule "C", or in a form as specified by MRA from time to time;
 - b) submit to MRA at the address provided in Section 17.1, any other reports requested by MRA in accordance with timeline and content requirements specified by MRA;
 - c) ensure that all Reports and other reports are completed to the satisfaction of MRA; 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.** MRA, its authorized representatives or an independent auditor identified by MRA 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 MRA, its authorized representatives or an independent auditor identified by MRA, 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 MRA, its authorized representatives or an independent auditor identified by MRA, and shall do so in a form reasonably requested by MRA, its authorized representatives or an independent auditor identified by MRA, as the case may be.
- 7.5 **No Control Over Unrelated Information.** No provision of the Agreement shall be construed so as to give MRA 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, MRA's rights under this Article are in addition to any rights provided to the Auditor General pursuant to subsection 9 (1) of the *Auditor General Act* (Ontario).

ARTICLE 8. CREDIT

- 8.1 **Acknowledge Support.** Unless otherwise directed by MRA, the Recipient shall, in a form approved by MRA, acknowledge the support of MRA in any publication 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 MRA.

ARTICLE 9. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- 9.1 **FIPPA.** The Recipient acknowledges that MRA 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 MRA 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 MRA.

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 commercial general liability insurance on an

occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than five million dollars (\$5,000,000.00) per occurrence. The policy shall include the following:

- a) 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;
- b) a cross-liability clause;
- c) contractual liability coverage; and
- d) thirty (30) day written notice of cancellation, termination or material change.

11.2 ***Proof of Insurance only if Requested.*** If requested by MRA, the Recipient shall provide MRA with certificates of insurance, or such other proof as may be requested by MRA, that confirms the insurance coverage as provided for in Section 11.1. If requested by MRA, the Recipient shall also make available to MRA a copy of each insurance policy.

11.3 ***Ontario to Have Right of "First Call" On Any Proceeds of Insurance Policy.*** The Recipient accepts that the Indemnified Parties 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 required under Section 11.1 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.

ARTICLE 12. TERMINATION ON NOTICE

12.1 ***Termination on Notice.*** MRA may terminate the Agreement at any time upon giving at least thirty (30) days' Notice to the Recipient.

12.2 ***Consequences of Termination.*** If MRA terminates the Agreement pursuant to Section 12.1, MRA may:

- a) cancel all further instalments of the Funds;
- b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient;
- c) determine the Wind Down Costs;
- d) permit the Recipient to offset the Wind Down Costs against the amount the Recipient owes pursuant to Subsection 12.2(b); and
- e) subject to Section 4.6, 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, MRA does not receive the necessary appropriation from the Ontario Legislature for any payment

MRA is obligated to make under the Agreement, MRA may terminate the Agreement immediately by giving Notice to the Recipient.

- 13.2 **Consequences of Termination.** If MRA terminates the Agreement pursuant to Section 13.1, MRA may:
- a) cancel all further instalments of the Funds;
 - 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
 - d) 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, MRA 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 MRA, the Recipient has knowingly provided false or misleading information regarding its request for funds or in any other communication with MRA;
 - b) in the opinion of MRA 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 MRA 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 MRA may, at any time, take one or more of the following actions:
- a) initiate any action MRA considers necessary in order to facilitate the successful continuation or completion of the Project;
 - b) suspend the payment of Funds for such period as MRA 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 MRA;
- g) demand the repayment of an amount equal to any Funds MRA 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, MRA 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 MRA 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 MRA that the Recipient cannot completely remedy the Event of Default within the time specified in the Notice or such further period of time as MRA considers reasonable; or
- c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to MRA.

MRA 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 UPON EXPIRY

15.1 **Funds Upon Expiry.** Without limiting any rights of MRA under Article 14, the Recipient shall, upon expiry of the Agreement, return to MRA any Funds remaining in its possession or under its control and any interest accrued on these Funds pursuant to Section 4.1.

ARTICLE 16. REPAYMENT

16.1 **Debt Due.** If MRA demands the payment of any monies, including any Funds from the Recipient or if the Recipient owes any monies, including any Funds, to MRA, whether or not their return or repayment has been demanded by MRA, such monies shall be deemed to be a debt due and owing to MRA by the Recipient, and the Recipient shall pay or return the amount to MRA immediately unless MRA directs otherwise.

- 16.2 **Interest Rate.** MRA may charge the Recipient interest on any monies owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.
- 16.3 **Cheque Payable To.** The Recipient shall pay any monies owing to MRA by cheque payable to the "Minister of Finance" and mailed to MRA at the address provided in Section 17.1.

ARTICLE 17. NOTICE

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

To MRA:	To the Recipient:
Ministry of Agriculture and Food and Ministry of Rural Affairs 1 Stone Road West 4 th Floor NW Guelph, ON N1G 4Y2	The Corporation of the Town of Fort Frances 320 Portage Avenue Fort Frances, ON P9A 3P9
Attention: Martin Bohl	Attention: Doug Brown
Email: martin.bohl@ontario.ca	Email: dbrown@fort-frances.com
Fax: 519-826-4336	Fax: (807) 274-8479

- 17.2 **Notice Given.** Notice shall be deemed to have been received:
- in the case of postage-prepaid mail, five (5) Business Days after such Notice is mailed;
 - in the case of personal delivery, immediately upon delivery of the Notice;
 - in the case of a facsimile transmission, one (1) Business Day after the transmission; or
 - in the case of email, immediately upon receipt of the email by the ministry.

ARTICLE 18. SEVERABILITY OF PROVISIONS

- 18.1 **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, as determined by a court of competent jurisdiction, shall be severed.

ARTICLE 19. WAIVER

- 19.1 **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 20. INDEPENDENT PARTIES

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

ARTICLE 21. ASSIGNMENT OF AGREEMENT OR FUNDS

- 21.1 ***No Assignment.*** The Recipient shall not assign any part of the Agreement or any Funds without the prior written consent of MRA which MRA may, in its sole discretion, provide or withhold.
- 21.2 ***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 22. GOVERNING LAW

- 22.1 ***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 23. FURTHER ASSURANCES

- 23.1 ***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 24. CIRCUMSTANCES BEYOND THE CONTROL OF EITHER PARTY

- 24.1 ***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.
- 24.2 ***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 24.1.

24.3 **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 take into account at the time of the execution of the Agreement; and
- d) avoid or overcome in the carrying out of its obligations under the Agreement.

24.4 **Failure to Fulfil Obligations.** Subject to Subsection 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 25. SURVIVAL

25.1 **Survival.** The provisions in Article 1; Sections 4.6, 7.1 (to the extent that the Recipient has not provided the subject Reports/reports), 7.2, 7.3, 7.4, 7.5, and 7.6; Articles 8 and 10; Sections 12.2, 13.2, 13.3, and 14.1; Subsections 14.2(c), (d), (e), (f) and (g); Section 14.4; Articles 15, 16, 17, 18, 22, 26, 27, 29 and 30; 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 Expiry Date or the date of termination of the Agreement.

ARTICLE 26. SCHEDULES

26.1 **Schedules.** The Agreement includes the following schedules:

- a) Schedule "A" - Project;
- b) Schedule "B" - Estimated Budget, Project Milestones, Eligible Costs & Ineligible Costs;
- c) Schedule "C" - Reports;
- d) Schedule "D" - Payment Schedule; and
- e) Schedule "E" - Consultation Requirements

ARTICLE 27. ENTIRE AGREEMENT

27.1 **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.

27.2 **Modification of Agreement.** The Agreement may only be amended by a written agreement duly executed by the Parties.

ARTICLE 28. COUNTERPARTS

- 28.1 **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 29. JOINT AND SEVERAL LIABILITY

- 29.1 **Joint and Several Liability.** Where there is more than one Recipient under the Agreement, each shall be jointly and severally liable to MRA for the fulfillment of the Recipient's obligations under the Agreement.

ARTICLE 30. RIGHTS AND REMEDIES CUMULATIVE

- 30.1 **Rights and Remedies Cumulative.** The rights and remedies of MRA 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 31. BPSAA

- 31.1 **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 32. FAILURE TO COMPLY WITH OTHER AGREEMENTS

- 32.1 **Other Agreements.** If the Recipient has failed to comply with any material term, condition or obligation under any other agreement with Her Majesty the Queen in Right of Ontario or a Crown agency, MRA may suspend the payment of any amount of Funds for such period as MRA determines appropriate.

ARTICLE 33. CONSENT

- 33.1 **Consent.** MRA may impose any terms and conditions upon any consent MRA may grant pursuant to the Agreement.

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 Rural Affairs

Name: Martin Bohl

Signature: _____

Title: Director

Date: _____

The Corporation of the Town of Fort Frances

Name: Roy Avis

Signature: _____

Title: Mayor

Date: _____

AFFIX CORPORATE
SEAL

Name: Glenn Treftlin

Signature: _____

Title: Clerk

Date: _____

I/We have authority to bind the Recipient.

SCHEDULE "A"

PROJECT

A.1 - Project Scope:

This project will rebuild the roadway at Second Street and Mowat Avenue. This will include the removal of the old asphalt surface, road base, curb and gutter, sidewalk, water main, sanitary sewer main and storm sewer mains. The water main will be replaced with new PVC water main, including isolation valves, and service lines to property line. The sanitary sewer main will be replaced with new PVC main including new manholes, new sewer services to property line and a closed circuit television (CCTV) inspection of the completed main to check for deficiencies. The old storm sewer main and catch basin leads will be replaced with new HDPE and PVC storm sewer including replacing manholes and catch basins. Finally the existing concrete curb and gutter, sidewalk, road base and asphalt surface will be replaced.

End of Financial Assistance:

1. Execution of the Agreement – by **March 15, 2014**. The Recipient will provide the fully signed agreement to the ministry on or before this date with a corresponding Council resolution authorizing the Recipient to enter in to the agreement.
2. Construction Contract Award Report – by March 15, 2014
3. Final Report by **March 15, 2016**.

SCHEDULE "B"

ESTIMATED BUDGET

B.1 Project's Estimated Total Net Eligible Costs:

PROJECT COSTS

A. Engineering/Design Costs	\$ 64,157.50
B. Environmental Assessment Costs	\$ \$-
C. Project Management	\$ 64,157.50
D. Construction	\$ 1,283,150.03
E. Other Eligible Costs (specify)	\$
Total	\$ 1,411,465.03
Less Rebateable Taxes	\$ 140,397.05
Budget*	\$ 1,271,067.98

***This Budget should not exceed the amount found in the Total Eligible Costs in your application. If the Estimated Budget changes, you must indicate this in your ensuing Reports (Schedule "C").**

"Total Net Eligible Costs" means all direct costs that are, in MRA's sole and absolute discretion, properly and reasonably incurred no earlier than April 1, 2013 and prior to the End of Construction Date by the Recipient under a contract for goods or services necessary for the implementation of the Project, as more particularly described in part B.3 – Eligible Costs of this Schedule "B", less any HST rebate or any other rebates the Recipient has received, will receive or is eligible to receive.

SCHEDULE "B" continued

B.2 Project Milestones

Project Milestone	Expected Completion Date	Respective End of Financial Assistance Dates
Agreement Execution	December 9, 2013	March 15, 2014
Construction Contract Award Report	February 19, 2013	March 15, 2014
End of Construction	September 20, 2013	December 31, 2015
Final Report	February 1, 2014	March 15, 2016

B.3 – Eligible Costs:

Subject to part B.4 below, "Eligible Costs" include:

- (a) The capital costs of constructing, rehabilitating or improving, in whole or in part, a tangible capital asset;
- (b) The costs of joint communication activities (press releases, press conferences, translation, etc.);
- (c) All planning costs, including plans and specifications, and assessment costs including the costs of environmental planning, surveying, engineering, architectural supervision, testing and management consulting services;
- (d) Third party project management costs, including architectural, supervisory, testing and consulting services;
- (e) 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;
- (f) The costs of health and safety signage relevant to the project;
- (g) The costs of building and other permits (non-Recipient issued);
- (h) The incremental costs of consulting with Aboriginal Groups on matters pertaining to the Project, including the translation of documents into languages spoken by the affected Aboriginal Groups as per Schedule "E";
- (i) If MRA exercises its rights under Article 7 of the Agreement, the audit and evaluation costs incurred by the Recipient in response to the application of those rights; and
- (j) Other costs that, in the sole opinion of MRA, are necessary for the successful implementation of the Project provided that they have been approved in writing prior to being incurred.

B.4 – Ineligible Costs:

The following costs are “**Ineligible Costs**”:

- (a) Costs incurred prior to April 1, 2013
- (b) Costs incurred after the End of Construction Date;
- (c) Costs of land acquisition, leasing land, buildings, equipment and other facilities, real estate fees including any surveys and related costs;
- (d) Financing charges, legal fees (except for DTC related legal fees as considered reasonable by MRA) and loan interest payments;
- (e) The value of any goods and services which are received through donations or in kind;
- (f) Recipient 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; and
- (h) Harmonized Sales Tax for which the Recipient received, will receive or is eligible for a rebate, if any, and any other costs similarly rebatable.

Note: Travel and accommodation expenses of consultants may be reimbursed if these costs meet provincial guidelines.

SCHEDULE "C"

REPORTS

The following Reports are to be provided in full in the corresponding form provided hereafter and with such content as is satisfactory to MRA:

	Name of Reports and Details Required	Due Date
1.	Construction Contract Award Report – a report from council including a resolution or other municipal document recognizing the awarding of the Project tender(s)	Within 15 business days of a council resolution or by March 15, 2014, whichever is earlier
2.	Estimated Budget Revision After Capital Award Report must be based on competitive tenders awarded to complete the project.- format provided as part of Schedule "C"	Within 15 business days of a council resolution or by March 15, 2014, whichever is earlier
3.	Progress Report - format provided as part of Schedule "C"	Every September 15 th and January 31 st after the Construction Contract Award Report is submitted to MRA for the term of the Agreement until the 60 days after the End of Construction Date .
4.	Final Report - including statement of incurred eligible expenses validated by invoices and/or payment certificates - format provided as part of Schedule "C"	Within 60 days of the End of Construction Date and or no later than March 15, 2016.
5.	Other Reports or information as may be directed by MRA from time to time, if any	On or before a date directed by MRA.

SCHEDULE "C" continued

ESTIMATED BUDGET REVISION AFTER CAPITAL AWARD

This report will contain a revised budget for the entire Project based on Total Net Eligible Expenses after the construction has been tendered.

REVISED TOTAL PROJECT COSTS

	ESTIMATED BUDGET (Schedule B)	REVISED BUDGET	VARIANCE
A. Engineering/Design Costs	\$	\$	\$
B. Environmental Assessment Costs	\$	\$	\$
C. Project Management	\$	\$	\$
D. Construction	\$	\$	\$
E. Other (specify)	\$	\$	\$
Total	\$	\$	\$
Less Any Actual or Potential Tax Rebates	\$	\$	\$
REVISED TOTAL NET ELIGIBLE COSTS	\$	\$	\$

*Note: In cases where revised costs are greater than 15% than the original budget, please provide an explanation

PROJECT CERTIFICATION

As the payment certifier or chief financial officer for The Corporation of the Town of Fort Frances, I hereby certify that the revised Project Budget figures set out above are true to the best of my knowledge, information and belief and based on actual awards of a minimum of 70% of the Project costs.

Signature:	
Name:	
Title:	
Phone Number:	
Date:	



SCHEDULE "C" continued

PROGRESS REPORT
Municipal Infrastructure Investment Initiative –
Capital Program
(MIICP)

Name of Recipient _____

Name of Project _____ Project Number _____

Milestone Dates:

1. Construction Percentage Completed	_____	3. Actual Start Date of Construction	_____	5. Is the project being completed as approved? (Y/N)	_____ if no, please explain below
2. Date of Construction Tender Awarded	_____	4. Forecasted Date of Construction End	_____	6. Will the project be completed by Dec. 31, 2015 (Y/N)	_____ if no, please explain below

Funds (Net Eligible Costs used to date):

Estimated remaining Net Eligible Costs to incur:

Progress to date and Communications (e.g. Milestones achieved and if the project is being completed as noted in the Agreement, include project management and design if applicable, issues affecting the project and mitigation strategies, etc.,) Communications events, communications to community regarding the project, communications received (oral or written) from any Aboriginal groups, please include dates, where applicable or available
Variance from original approved project (if any) If answer is NO in Question 5 or 6 above, please explain the changes here.

Attestation:

I, (name of person who can bind the municipality), confirm that my municipality/Local Services Board is in compliance with the terms and conditions found in this Agreement for this project (Project Name and Project number).

Name: _____

Title: _____

Date: _____

Due January 31, and September 15 after awarding of Construction Tender



SCHEDULE "C" continued

Municipal Infrastructure Investment Initiative Capital Program (MIII-CP) FINAL REPORT

Attach Payment certificate(s) and other third party invoices incurred for the Project. Where applicable, indicate any portion of the costs on such invoices which are Ineligible Costs as per section B.4 of Schedule "B".

Part 1 – Project Information

Recipient		Construction Start Date	
Project Name		Construction Completion Date	
Project File			

Part 2 - Final Report Information (information is based on incurred costs and back up is provided by submission of invoices)

Environmental Assessment (If Applicable)	\$
Engineering	\$
Construction	\$
Project Management	\$
Materials	\$
Miscellaneous	\$
H.S.T.	\$
GROSS ELIGIBLE COST	\$
Less HST Rebate/	\$
TOTAL NET ELIGIBLE COST incurred	\$

Part 3 - Project Description

Is the following description of your Project as completed accurate?

Paste description from most recent agreement/amendment

☐ Yes ☐ No If No, please provide details on any variances below

Project Variances (if applicable)

In reading the description provided above, has your Project experienced any variances either in project scope, budget or schedule? Please identify any other information with respect to the Project that may have changed or may have been altered.

SCHEDULE "C" continued

Part 4 - Project Benefits

Provide a detailed description of the benefits arising from the project.

Part 5 - Aboriginal Duty to Consult

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

Please indicate:

Declaration required for all Projects:

Confirmation provided to the Province of Ontario indicating that there has been no communication from any Aboriginal Groups and that there were no items of cultural significance to aboriginal groups discovered with respect to this project. Yes ☐
No ☐

Declaration required by Projects with additional Duty to Consult requirements as identified by Ontario

Notice about this project, as well as a full project description, was provided to identified Aboriginal communities making them aware of the opportunity to express comments and concerns with respect to the following: Yes ☐
No ☐

- the project;
- adverse impacts on hunting, trapping, fishing and plant harvesting; and
- any burial grounds or archaeological sites of cultural significance.

A copy of this correspondence to identified Aboriginal communities was provided to the Province of Ontario. Yes ☐
No ☐

The Province of Ontario was made aware of any issue(s) identified by any Aboriginal communities. Yes ☐
No ☐

A copy of any correspondence/information between the recipient and any Aboriginal communities was forwarded to the Province of Ontario. Yes ☐
No ☐

Part 7 - Project Certification

As the payment certifier or chief financial officer for The Corporation of the Town of Fort Frances, I hereby certify that the above Project has been substantially performed, that all information provided herein is accurate and true, and that no funds have claimed that are ineligible as per Schedule "B" and all Requirements of Law as defined in the Agreement have been met.

Signature:	
Name:	
Title:	
Phone Number:	
Date:	

SCHEDULE "D"

PAYMENT SCHEDULE

PAYMENT DATE	AMOUNT	DOCUMENTATION
Subject to subsection 4.2, when:	-	-
Milestone 1: Execution of the Agreement by both Parties.	An amount up to 55% of the Maximum Financial Assistance	An executed Agreement and a Council resolution or by-law authorizing the Recipient's entry into the Agreement
Milestone 2: Upon receipt and acceptance by MRA of required reports and in any case no later than March 15, 2014	An amount up to 85% of the Maximum Financial Assistance or up to 90% of the Revised Budget (Revised Total Net Eligible Costs) as set out in the Estimated Budget Revision After Capital Award, whichever is smaller, less the amount paid upon execution of the Agreement by both Parties;	Construction Contract Award Report Budget Revision after Capital Award Report
Milestone 3: Upon receipt and acceptance by MRA of the Final Report and no later than March 15, 2016.	The balance, if any, to the limit of the Maximum Financial Assistance or 90% of Total Net Eligible Costs incurred as certified in the Final Report, whichever is smaller, less any Milestone payments made and any Milestone payments withheld under Section 4.2 of Schedule	Final Report

SCHEDULE "E"

CONSULTATION REQUIREMENTS

1.0 PURPOSE

This Schedule sets out the responsibilities of Ontario and the Recipient in relation to consultations with Aboriginal Groups about the Project, and delegates procedural aspects of consultations from Ontario to the Recipient.

1.1 Definitions:

For the purposes of this Schedule:

"Section 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:

- a) Determining which (if any) Aboriginal Group should be consulted in relation to the Project and advising the Recipient of the same;
- b) The preliminary and ongoing assessment of the depth of consultation required with any Aboriginal Group;
- c) At its discretion, delegating procedural aspects of consultation to the Recipient pursuant to this Schedule "E" of the Agreement;
- d) 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 "E" of the Agreement; and
- e) 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:

- a) 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;
- b) Immediately notifying Ontario of contact by any Aboriginal Group regarding the Project and advising of the details of the same;
- c) 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;

SCHEDULE "E" continued

- d) Following up with any Aboriginal Group that has an issue, concern with or 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;
- e) Informing the Aboriginal Group of the regulatory and approval processes that apply to the Project of which the Recipient is aware after reasonable inquiry;
- f) 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;
- g) Making all reasonable efforts to build a positive relationship with any Aboriginal Group that has an interest in the Project;
- h) 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);
- i) 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;
- j) 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;
- k) 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;
- l) 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;
- m) Subject to subsection 3.1 (n), 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;
- n) Consulting regularly with Ontario during all discussions with any Aboriginal Group regarding accommodation measures, if applicable, and presenting to Ontario for the

SCHEDULE "E" continued

purposes of subsection 2.1 (e) hereof, the results of such discussions prior to implementing any applicable accommodation measures;

- o) Complying with Ontario's direction to take any actions, including without limitation, suspension of the Project, as Ontario may require; and
 - p) 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 (o).
- 3.2 The Recipient hereby acknowledges, Ontario or 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:
- a) Provide to Ontario, upon request, complete and accurate copies of all documents provided to any Aboriginal Group in relation to the Project;
 - b) Keep reasonable business records of all its activities in relation to consultation and provide Ontario with complete and accurate copies of such records upon request;
 - c) Provide Ontario with timely notice of any Recipient mailings to, or Recipient meetings with, the representatives of any Aboriginal Group in relation to the Project;
 - d) Immediately notify Ontario of any contact by any Aboriginal Group regarding the Project and provide copies to Ontario of any documentation received from Aboriginal Groups;
 - e) Immediately notify Ontario of any potential adverse impact of the Project on Aboriginal or treaty rights or asserted rights of which it becomes aware;
 - f) Immediately notify Ontario if any Aboriginal archaeological resources are discovered in the course of the Project;
 - g) Provide Ontario with summary reports or briefings on all of its activities in relation to consultation with any Aboriginal Group, as may be requested by Ontario;
 - h) If applicable, advise Ontario if the Recipient and an Aboriginal Group propose to enter into an agreement directed at mitigating or compensating for any impacts of the Project on Aboriginal or treaty rights or asserted rights (e.g. an impact-benefit agreement or other such similar agreement); and
 - i) 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.

SCHEDULE "E" continued

4.0 NO IMPLICIT ACKNOWLEDGEMENT

- 4.1 Nothing in this Schedule "E" shall be construed as an admission, acknowledgment, agreement or concession by Ontario or the Recipient, that a Section 35 Duty applies in relation to the Project, nor that any responsibility set out herein is, under the Constitution of Canada, necessarily a mandatory aspect or requirement of any Section 35 Duty, nor that a particular aspect of consultation referred to in section 3.1 of this Schedule "E" hereof is an aspect of the Section 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 Section 35 Duty that may be imposed by a ministry, board, agency or other regulatory decision-maker acting pursuant to laws and regulations. Such decision-makers may have additional obligations or requirements. Nonetheless, the intent of Ontario is to promote coordination among provincial ministries, boards and agencies with roles in consulting with Aboriginal Groups so that the responsibilities outlined in this Agreement may be fulfilled efficiently and in a manner that avoids, to the extent possible, duplication of effort by Aboriginal Groups, the Recipient, Ontario, and provincial ministries, boards, agencies and other regulatory decision-makers.

6.0 NOTICE AND CONTACT

- 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 itself 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 "E" of this Agreement.
- 6.2 All notices to Ontario pertaining to this Schedule "E" 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 Rural Affairs
1 Stone Road West, 4 NW
Guelph, Ontario
N1G 4Y2

Attention: Martin Bohl
Telephone: 519-826-3419
Fax: 519-826-4336
Email: martin.bohl@ontario.ca