



## CORPORATION OF THE TOWNSHIP OF AUGUSTA

### BY-LAW NUMBER 2792

**A BY-LAW TO AUTHORIZE THE REEVE AND CAO TO EXECUTE AN AGREEMENT WITH HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF ENERGY AND INFRASTRUCTURE AND THE MINISTER OF HEALTH PROMOTION RECREATIONAL INFRASTRUCTURE CANADA PROGRAM IN ONTARIO AND ONTARIO RECREATIONAL PROGRAM (RinC/Ontario REC)**

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**WHEREAS** the Municipal Act 2001, SO 2001, Chapter 25, Section 9 gives the municipality the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this Act;

**AND WHEREAS** the Municipal Act 2001, SO 2001, Chapter 25, Section 8(1) states that the powers of a municipality shall be interpreted broadly so as to confer broad authority on municipalities to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues;

**AND WHEREAS** the Municipal Act 2001, SO 2001, Chapter 25, Section 8(2) states that in the event of ambiguity, the ambiguity shall be resolved so as to include, rather than exclude, municipal powers that existed before the Municipal Act, 2001 came into force;

**AND WHEREAS** the Council of the Corporation of the Township of Augusta desires to enter into an agreement with Her Majesty the Queen in Right of Ontario as represented by the Minister of Energy and Infrastructure and the Minister of Health and Promotion for funding under the Recreational Infrastructure Canada Program in Ontario and Ontario Recreational Program (RinC/Ontario REC).

**NOW THEREFORE** the Council of The Corporation of the Township of Augusta enacts as follows:

1. The Reeve and CAO are hereby authorized to execute the agreement attached hereto as Schedule "A".
2. Schedule "A" attached hereto shall form part of this by-law.

**READ** a first and second time this 13<sup>th</sup> day of October, 2009.

**READ** a third time and passed this 13<sup>th</sup> day of October, 2009.

  
REEVE

  
CLERK

**RECREATIONAL INFRASTRUCTURE CANADA PROGRAM in ONTARIO**

**CONTRIBUTION AGREEMENT**

Ontario File Number: E1025

Project Number(s): R1294

**THIS AGREEMENT** made in quadruplicate as of the 13 day of October, 2009.

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

and the

Minister of Health Promotion (referred to collectively herein as the "**Ministry**")

**A N D:**                   **THE CORPORATION OF THE TOWNSHIP OF AUGUSTA**

(referred to herein as the "**Recipient**")

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

**AND WHEREAS** the purpose of the Recreational Infrastructure Canada Program in Ontario and Ontario Recreational Program (referred to collectively herein as "**RInC/Ontario REC**") is to rehabilitate and/or repair recreational facilities such as arenas, swimming pools and other recreational facilities;

**AND WHEREAS** RInC/Ontario REC is being administered by the Government of Ontario;

**AND WHEREAS** investments under RInC/Ontario REC focus on projects in communities to advance federal and provincial objectives of economic growth, and strong and prosperous communities;

**AND WHEREAS** RInC/Ontario REC supports projects that address local needs;

**AND WHEREAS** Recipients under RInC/Ontario REC may apply for funding for projects in the categories of arenas; gymnasias; swimming pools; sports fields; tennis, basketball, volleyball or other sport-specific courts; parks, fitness trails and bike paths; as well as other multi-purpose facilities that have physical recreation activity as the primary rationale (a "Project");

**AND WHEREAS** this Agreement defines the terms and conditions of a financial contribution from Canada and Ontario to assist with the Project under RInC/Ontario REC;

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

This Agreement, including:

- Schedule "A" - General Terms and Conditions
- Schedule "B" - Description of the Project(s)
- Schedule "C" - Eligible and Ineligible Costs
- Schedule "D" - Financial Assistance
- Schedule "E" - Federal Requirements
- Schedule "F" - Additional Provisions
- Schedule "G" - Communications Requirements
- Schedule "H" - Expenditure and Job Creation Report

- Schedule "I" - Budget
- Schedule "J" - Project Timeline
- Schedule "K" - Other Funding
- Schedule "L" - Aboriginal Consultation Protocol
- Schedule "M" - Form of Certificate
- Schedule "N" - Solemn Declaration of Substantial Completion

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

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

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

by:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name: The Honourable George Smitherman  
Title: Minister

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO** as represented by the Minister of Health Promotion

by:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Title:

**THE CORPORATION OF THE TOWNSHIP OF AUGUSTA**

by:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name: MEL CAMPBELL  
Title: REEVE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name: RICHARD BENNETT  
Title: CAO

I/we have authority to bind the Recipient

## SCHEDULE "A" GENERAL TERMS AND CONDITIONS

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### SECTION 1 DEFINITIONS AND INTERPRETATION

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

**"Adjust the Financial Assistance"** means adjust or terminate the Financial Assistance for the Project or any other provincial program(s) or initiative(s) (either current or future), and/or require repayment for some or all of the Financial Assistance for the Project in an amount to be determined by the Ministry and within the period specified by the Ministry.

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

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

**"Budget"** means the budget for a Project set out in Schedule "I".

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

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

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

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

**"Crown Agency"** means a crown agency as defined in the *Crown Agency Act*, R.S.O. 1990, c. C.48, as amended.

**"Eligible Costs"** has the meaning given to it in Section 3.1 of Schedule "A" and Schedule "C".

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

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

**"Environmental Laws"** means all applicable federal, provincial or municipal laws, regulations, by-laws, orders, rules, policies or guidelines respecting the protection of the natural

environment, public or occupational health or safety, and the manufacture, importation, handling, transportation, storage, disposal and treatment of Environmental Contaminants and include, without limitation, the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, as amended, the *Environmental Assessment Act*, R.S.O. 1990, c. E. 18, as amended, the *Ontario Water Resources Act*, R.S.O. 1990, c. O. 40, as amended the *Canadian Environmental Protection Act 1999*, S.C. 1999, c. 33, as amended, the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37, as amended, the *Fisheries Act*, R.S.C. 1985, c. F-14, as amended and the *Navigable Waters Protection Act*, R.S.C. 1985, c. N-22, as amended.

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

“**Expenditure and Job Creation Report**” is attached as Schedule “H”.

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

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

“**Federal Maximum Financial Assistance**” for each Project is shown in Schedule “D”.

“**Facility**” means publicly- or privately-owned fixed capital assets in Ontario for public use or benefit, constructed or improved through Financial Assistance which is provided pursuant to this Agreement and is the result of the Project.

“**Final Report**” is described in Section 6.3 of Schedule “A”.

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

“**Financial Assistance**” means the funds to be provided by the Ministry to the Recipient pursuant to this Agreement.

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

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

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

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

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

“**Licensed Marks**” has the meaning given to it in Section 13.1 of Schedule “A”.

“**Local Government**” means a “municipality” as defined in the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, and includes a local board of a municipality and a board, commission or other local authority exercising any power with respect to municipal affairs or purposes in an unorganized township.

“**Maximum Financial Assistance**” means Ontario Maximum Financial Assistance plus Federal

Maximum Financial Assistance for each Project as shown in Schedule "D".

"**Ministry**" has the meaning given to it on the cover page of this Agreement.

"**Ontario Maximum Financial Assistance**" for each Project is shown in Schedule "D".

"**Other Funds**" means funds provided to a Project by the Recipient, including cash or debt and/or third party contributions to a Project, including but not limited to donations, gifts or grants as the Recipient may from time to time receive, as shown for each Project in Schedule "K".

"**Payment Certifier**" means a payment certifier as defined in subsection 1(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended (Ontario).

"**Project**" means the project or projects as described in Schedule "B".

"**Project Construction Start Date**" for each Project is the date identified in Schedule "B".

"**Progress Report**" has the meaning given to it in Section 6.1 of Schedule "A".

"**Project Timeline**" for each Project is the timeline set out in Schedule "J".

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

"**RInC/Ontario REC**" has the meaning given to it on the cover page of this Agreement.

"**Solemn Declaration of Substantial Completion**" means the form set out in Schedule "N".

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

"**Total Eligible Costs**" means the anticipated amount of Eligible Costs that the Recipient may incur for a Project pursuant to this Agreement, as shown for each Project in Schedule "D".

"**Total Other Funds**" for each Project is shown in Schedule "K".

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

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

**1.4** *Statutes.* Any reference to a statute is to such statute and to the regulations made pursuant to such statute as such statute and regulations may at any time be amended or modified and in effect and to any statute or regulations that may be passed that have the effect of supplementing or superseding such statute or regulations.

**1.5** *Gender, singular, etc.* Words importing the masculine gender include the feminine or neuter gender and words in the singular include the plural, and vice versa.

**1.6** *Ministry Approvals.* Any reference to, or requirement for, the approval of the Ministry

in this Agreement or in any schedule hereto shall be deemed to require the prior and express written approval of the Ministry.

- 1.7 **Multiple Projects.** Any reference to “the Project” means each and any Project, where more than one Project is listed in Schedule “B”.

## SECTION 2 TERM OF AGREEMENT

- 2.1 **Term.** Subject to any extension or termination of this Agreement or the survival of any of the provisions of this Agreement pursuant to the provisions contained herein, this Agreement shall be in effect from the date set out on the first page of this Agreement, up to and including the Expiration Date (the “**Term**”).
- 2.2 **End of Financial Assistance Date.** Notwithstanding anything in this Agreement and regardless of the Project’s state of completion, the Ministry shall not be obligated to provide Financial Assistance under this Agreement after the End of Financial Assistance Date. The Recipient will be responsible for any financial obligations related to the Project or this Agreement that it incurs after the End of Financial Assistance Date.
- 2.3 **Project Completion Date.** The Recipient shall complete the Project by the End of Financial Assistance Date. The Government of Ontario shall not be obligated to provide Financial Assistance under this Agreement for any costs incurred after the End of Financial Assistance Date.

## SECTION 3 ELIGIBLE COSTS

- 3.1 **Eligible Costs.** For a cost to be eligible for Financial Assistance pursuant to this Agreement (an “**Eligible Cost**”), the cost must be included in Schedule “C”, Part C.1, except where otherwise expressly approved in writing by the Ministry. For greater certainty, where Schedule “B” identifies a portion of the Facility that is specifically excluded from the description of the Project under this Agreement, the costs associated with that portion of the Facility is not eligible for Financial Assistance.
- 3.2 **Eligible Costs, Parameters.** In addition to meeting the requirements of Section 3.1 of Schedule “A”, in order for a cost or expenditure to be an Eligible Cost, the cost or expenditure must:
- (a) be reasonable;
  - (b) be directly related to the Project;
  - (c) be specifically identified in the Budget as an Eligible Cost;
  - (d) be a cost or expenditure that would not otherwise have been incurred by the Recipient but for the Recipient carrying-out the Project;
  - (e) be an actual cash outlay by the Recipient to third parties acting at arm’s length that can be documented through paid invoices or receipts made pursuant to a Contract; and
  - (f) have been incurred on or after June 26, 2009 and on or before March 31, 2011.

The final determination of the eligibility of any costs claimed is at the sole and absolute discretion of the Ministry.

- 3.3 **Retention of Receipts.** The Recipient shall retain all records of payments related to

Eligible Costs including, without limitation, invoices and receipts, for audit purposes, for seven (7) years after the Substantial Completion of a Project, or for such period as the Ministry may, in writing, direct, and such documentation must be made available to the Ministry upon request.

- 3.4 **Ineligible Costs.** Notwithstanding anything else contained herein, the costs set out in Part C.2 of Schedule "C" ("**Ineligible Costs**") are not eligible for Financial Assistance pursuant to this Agreement.
- 3.5 **Deemed ineligible.** The Recipient acknowledges that the Ministry's Fiscal Year ends on March 31 in each year, and that should a cost not be submitted by the Recipient for payment of Financial Assistance before March 31 of the year following the Fiscal Year in which it was incurred, such cost shall be deemed ineligible for Financial Assistance.
- 3.6 **Clarification.** The Recipient expressly acknowledges that the inclusion of an item in the Budget does not necessarily mean that such item is an Eligible Cost.

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

- 4.1 **Use of Financial Assistance.** The Financial Assistance is intended for and shall be used by the Recipient only for Eligible Costs incurred by the Recipient related to a Project.
- 4.2 **Basis of Payout of Financial Assistance.** The Financial Assistance will be provided by the Ministry to the Recipient on the basis set out in Schedule "D".
- 4.3 **Reporting.** The Recipient is required to submit the Progress Report and Expenditure and Job Creation Report to the Ministry pursuant to Section 6 of Schedule "A" prior to the Ministry releasing any Financial Assistance, other than the Financial Assistance advanced as set out in Section 4.4.
- 4.4 **Financial Assistance Advanced.** The Ministry may provide to the Recipient 25% of the Financial Assistance expected to be paid to the Recipient in 2009-10 as set out in Schedule "D", prior to the Ministry receiving evidence that the Recipient has incurred the associated Eligible Costs (the "2009 advance payment(s)").

The Recipient is required to submit invoices demonstrating full use of the 2009 advanced payments with its Progress Reports to the Ministry. The Ministry will only make further payments of Financial Assistance in 2009-10 following the Recipient's submission of these invoices with its Progress Reports to the Ministry and showing the full use of the 2009 advance payment. If the Recipient is unable to provide invoices by March 31, 2010 demonstrating full use of the 2009 advanced payment, the Ministry may Adjust the Financial Assistance.

Provided that the Recipient has provided the invoices for the 2009 advance payment, if any, and is otherwise in compliance with this Agreement, the Ministry may provide to the Recipient 25% of the Financial Assistance expected to be paid to the Recipient in 2010-11 as set out in Schedule "D", prior to the Ministry receiving evidence that the Recipient has incurred the associated Eligible Costs (the "2010 advance payment(s)"). Subject to these requirements, the Ministry will pay the 2010 advance payment to the Recipient after the start of the 2010 Fiscal Year.



The Recipient is required to submit invoices demonstrating full use of the 2010 advanced payments in Progress Reports to the Ministry. The Ministry will only make further payments of Financial Assistance in 2010-11 following the Recipient's submission of invoices with its Progress Reports to the Ministry and showing the full use of the 2010 advance payment. If the Recipient is unable to provide invoices by March 31, 2011 demonstrating full use of the 2010 advance payment, the Ministry may Adjust the Financial Assistance.

- 4.5 *Deposit of Financial Assistance in Canadian Financial Institution and Interest on Financial Assistance Advanced.*** All Financial Assistance provided, including any advance payments or further advance payments as well as all interest earned thereon, shall be deemed to remain the property of the Government of Ontario and must be held by the Recipient for the Government of Ontario in an interest bearing account in the name of the Recipient at a Canadian financial institution, pending payment by the Recipient of Eligible Costs. The amount of interest earned (if any) shall be reported to the Ministry as part of a Progress Report. If the Recipient earns any interest on the advanced Financial Assistance the Ministry may:
- a) Deduct an amount equal to the interest from any other payment of Financial Assistance; or
  - b) Direct the Recipient to pay an amount equal to the interest to the Ministry.
- 4.6 *Maximum Financial Assistance.*** The total amount of Financial Assistance provided to the Recipient for a Project shall in any event be no greater than the Maximum Financial Assistance for that Project as set out in Schedule "D".
- 4.7 *Excess Financial Assistance.*** Where actual costs are lower or appear likely to be lower than the Total Eligible Costs, or where additional funding is secured from other government sources such that the funds available to the Recipient for the Project exceed the Maximum Financial Assistance, the Recipient shall immediately notify the Ministry and the Ministry may, in its sole discretion, Adjust the Financial Assistance.
- 4.8 *Stacking.*** Total funding from all provincial sources, including Provincial Maximum Financial Assistance and any tax credits available to the Recipient in respect of a Project, must not exceed the Total Eligible Costs for that Project.
- Total funding from all federal sources, including the Federal Maximum Financial Assistance and any tax credits available to the Recipient in respect of a Project, must not exceed fifty (50) percent of Total Eligible Costs for that Project.
- 4.9 *Interdependent Work.*** Where implementation of a Project is dependent on completion of work by others and the interdependent work is not completed by others in whole or in part, the Ministry may, in its sole discretion, Adjust the Financial Assistance for the Project.
- 4.10 *Recipient not carrying out Project.*** The Recipient shall immediately notify the Ministry if it does not intend to carry out a Project in whole or in part as specified in Schedule "B", in which case the Ministry may, in its sole discretion, Adjust the Financial Assistance.
- 4.11 *New Information.*** In the event of new information, errors, omissions or other circumstances affecting the determination of the amount of Financial Assistance under this Agreement, the Ministry may, in its sole discretion, Adjust the Financial Assistance.

- 4.12 Alternatives to Project.** If the Recipient becomes aware of any means of completing either a Project's objective or a Project itself that are more cost effective, the Recipient shall immediately notify the Ministry, in which case the Ministry may, in its sole discretion, Adjust the Financial Assistance. Likewise, if the Ministry becomes aware of any alternative means of completing either a Project's objective or a Project that are more cost effective, the Ministry will notify the Recipient and the Ministry may, in its sole and absolute discretion, Adjust the Financial Assistance.
- 4.13 Transfer of Financial Assistance between Projects.** The Recipient shall not transfer Financial Assistance for one Project to any other Project listed in Schedule "B".
- 4.14 Goods and Services Tax.** The Financial Assistance is based on the net amount of Goods and Services Tax to be paid by the Recipient pursuant to the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended, net of any applicable rebates. If and when the Harmonized Sales Tax is phased in within the Province of Ontario, the Financial Assistance will be based on the net amount of the Harmonized Sales Tax to be paid by the Recipient, net of any applicable rebates.
- 4.15 Rebates, Credits and Refunds.** The Financial Assistance is based on the net amount to be paid by the Recipient for the Project, net of any applicable rebates, credits or refunds.
- 4.16 Withholding payment.** The Ministry may, in its sole discretion, withhold payment of Financial Assistance where the Recipient is in default in obtaining any necessary permits, approvals or licenses applicable to a Project or is in default of compliance with any provisions of this Agreement or any applicable federal, provincial or municipal laws, and all rules, regulations, by-laws, notices, orders, approvals directives, protocols, policies and guidelines, including Environmental Laws.
- 4.17 Repayment of Unused Financial Assistance upon Expiry of Agreement.** Without limiting any rights the Ministry has under this Agreement, at law or in equity, the Ministry shall have the right to be repaid, in whole or in part, for Financial Assistance provided by the Ministry and unspent by the Recipient for a Project that has not been completed by the End of Financial Assistance Date.
- 4.18 Limitation on Payment of Financial Assistance.** Notwithstanding Section 4.4 of Schedule "A", the Ministry may choose not to advance any Financial Assistance to the Recipient until the Recipient provides the insurance certificate or other documents required under Section 9 of Schedule "A".
- 4.19 Insufficient funds provided by the Legislature.** If the Legislative Assembly of Ontario does not provide sufficient funds to continue the Financial Assistance for any Fiscal Year during which this Agreement is in effect, the Government of Ontario may terminate this Agreement in accordance with the terms specified in Section 15.5 of Schedule "A".

## SECTION 5 PROJECT AWARD, MANAGEMENT AND COMPLETION

- 5.1 Recipient fully responsible.** The Recipient shall be fully responsible for the undertaking, implementation and completion of the Project and shall retain any and all Consultants reasonably required to undertake a project of the size, scope and complexity of the Project. Where implementation of the Project is dependent on work contributed by others, the Recipient shall be fully responsible for obtaining any

assurances that it may require from others in relation to the implementation of the Project by the Recipient.

- 5.2 Government of Ontario not responsible for implementation.** The Government of Ontario shall not be responsible in any way whatsoever for the undertaking, implementation and completion of a Project or any interdependent work of others.
- 5.3 Government of Ontario not responsible for costs, etc.** The Government of Ontario shall not be responsible for any costs associated with the operation, maintenance and repair of a Project nor for any claims, proceedings or judgments arising from any tender and bidding process.
- 5.4 Aboriginal Consultation.** The Ministry and the Recipient agree to be bound by the terms of the applicable Aboriginal Consultation Protocols set out in Schedules "L.1" and "L.2", as required for each Project as shown in Schedule "B".
- 5.5 Behaviour of Recipient.** The Recipient shall at all times carry out the Project in an economical and businesslike manner, in accordance with this Agreement and, in particular, but without limitation, in accordance with the Budget and the Project Timeline subject to any reasonable changes that the Ministry may agree to or require from time to time in writing.
- 5.6 Competitive process.** The Recipient shall acquire and manage all equipment, services and supplies, including construction, required for a Project through a transparent, competitive process that ensures the best value for the Financial Assistance received. Where the Recipient is a municipal entity, the Recipient shall follow its procurement policies as required by the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended or, for the City of Toronto, the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A, as amended. All other Recipients must ensure that for equipment, services and supplies, the estimated cost of which exceeds \$25,000.00, the Recipient shall obtain at least three written quotes unless the Ministry gives prior written approval. The requirement for a competitive process may be waived with prior written approval by the Ministry if:
- a) the equipment, services or supplies the Recipient is purchasing is specialized and is not readily available; or
  - b) the Recipient has recently researched the market for a similar purchase and knows prevailing market costs for the equipment, services or supplies purchased.
- 5.7 Trade Agreements.** If the Recipient is subject to any provincial or federal trade agreements to which Ontario is a party, the Recipient shall comply with the applicable requirements of such trade agreements. In particular, and without limitation, if the Recipient is subject to Annex 502.4 of the Agreement on Internal Trade, the Recipient shall comply with all of the applicable requirements of that Annex. In the event of any conflict between the requirements of Section 5.6 of Schedule "A" and the requirements of this Section 5.7, the requirements referenced in this Section 5.7 shall apply.
- 5.8 Final claims.** The Recipient shall submit its final claims for all costs incurred on or before the End of Financial Assistance Date with the required documentation, including the Final Report as per Section 6.3 of Schedule "A", for the Ministry's approval, cost review, audits (including any value for money audits that the Ministry may decide to undertake in its sole and absolute discretion) within ninety (90) days following the Substantial Completion of the Project and no later than the Final Report Date, whichever

date is earlier, or such later date as the Ministry may specify in writing. Upon completion of the cost review, audits and settlement, the Ministry shall not be obligated to consider any further claims in relation to the Project. The Recipient shall also submit, upon request by the Ministry, any documentation further required for approval, cost review and audits.

**5.9 Commencement of Project.** Unless otherwise approved by the Ministry, the Recipient shall begin a Project within 60 days of the Project Construction Start Date, failing which the Ministry may declare an Event of Default and terminate this Agreement in accordance with Section 15 of Schedule "A"

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

- a) are consistent and do not conflict with this Agreement;
- b) incorporate the relevant provisions of this Agreement to the fullest extent possible;
- c) be consistent with all policies and procedures the Government of Canada and/or the Government of Ontario may provide to the Recipient in relation to RInC/Ontario REC;
- d) are awarded and managed:
  - (i) in a way that is transparent, competitive and consistent with value for money principles; and
  - (ii) in accordance with all applicable policies and procedures the Government of Ontario may provide to the Recipient;
- e) require that the parties thereto comply with all applicable federal, provincial or municipal laws, and all rules, regulations, by-laws, notices, orders, approvals, directives, policies, protocols and guidelines; and
- g) authorize the Governments of Canada and Ontario to collect, use and distribute information and data gathered by parties, perform audits and monitor the Project as the Ministry sees fit.

## SECTION 6 REPORTING REQUIREMENTS

**6.1 Progress Report.** The Recipient shall submit progress reports (a "Progress Report") for each Project to the Ministry on a monthly basis, or as requested by the Ministry and the Recipient shall follow such administrative procedures as are specified from time to time by the Ministry. All Progress Reports shall be in a form satisfactory to the Ministry and shall include, if applicable:

- a) a detailed description of the progress of the Project to the date of the report;
- b) particulars of how the Communication Requirements have been implemented or applied, and copies of all communications and public information materials;
- c) a certificate by a Payment Certifier or the chief financial officer of the Recipient certifying the percentage of the Project completed;

- d) details of any variance from the Project, the Budget and/or the Project Timeline, including any changes to the projected/actual Project Construction Start Date and end date;
- e) an invoice summary in the form prescribed by the Ministry with all original invoices and receipts for the Project;
- f) a list of the vendors from which the invoices were received;
- g) a description of the type of work performed for each invoice;
- h) an estimated percentage of project completion;
- i) tender call dates and tender award dates;
- j) forecasted and actual construction start and end dates for a Project, together with the Project Construction Start Date;
- k) a certificate of the chief financial officer of the Recipient in the form set out in Schedule "M"; and
- m) any other information respecting the Project that may be requested by the Ministry.

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

**6.3 Final Report.** Within 90 days of Substantial Completion of a Project and no later than the Final Report Date or such later date as is specified in writing by the Ministry, the Recipient shall submit a final report (the "**Final Report**") for the Project to the Ministry and the Recipient shall follow such administrative procedures as are specified from time to time by the Ministry.

Upon the Ministry's acceptance of the Final Report and the processing of final claims, the Ministry shall not be obligated to consider any further claims for Financial Assistance in relation to the Project.

All Final Reports shall be in a form satisfactory to the Ministry and shall include:

- a) a detailed breakdown of projects costs, including:
  - i. engineering / design costs;
  - ii. environmental assessment costs;
  - iii. project management costs;
  - iv. construction costs;
  - v. miscellaneous costs; and
  - vi. applicable taxes.
- b) Project construction start and end dates; and

- c) a Solemn Declaration of Substantial Completion, in the form set out in Schedule N; and
- d) a final Progress Report.

## SECTION 7 RECORDS AND AUDIT

- 7.1 *Separate records.*** The Recipient shall maintain separate records and documentation for each Project and keep all records and documentation for seven (7) years after the final settlement of accounts referred to in Section 5.8 of Schedule "A". Upon request, the Recipient shall submit to the Ministry all records and documentation relating to the Project including, but not limited to, work authorizations, invoices, time sheets, payroll records, estimates and actual cost of the activities carried out pursuant to this Agreement, together with tenders and proposals, final measurements, payment certificates, change orders, correspondence, memoranda, contracts and amendments thereto which shall be maintained in accordance with Generally Accepted Accounting Principles.
- 7.2 *Provide records to the Ministry.*** The Recipient shall provide to the Ministry, upon request and at the Recipient's expense (including but not limited to photocopying, electronic media, transportation and postage, associated staff time, information retrieval and other office expenses), all records and documentation (including invoices and certified statement of final costs) of the Recipient and its auditors, contractors, project managers and Consultants relating to the Project or any other project(s) of the Recipient under RInC/Ontario REC, or any other provincial program(s), for the purposes of cost reviews, audits and settlement, as may be required by the Ministry, of the Project or any other project(s) of the Recipient under RInC/Ontario REC, or any other provincial program(s). Such material shall be provided in a form and manner satisfactory to the Ministry.
- 7.3 *External auditor.*** The Ministry may require the assistance of an external auditor to carry out an audit of the material referred to in Sections 7.1 and 7.2 of Schedule "A". If so, the Recipient shall, upon request, retain an external auditor acceptable to the Ministry at the Recipient's sole expense. The Recipient shall ensure that any auditor who conducts an audit pursuant to this section of the Agreement or otherwise, provides a copy of the audit report to the Ministry for its consideration at the same time that the audit report is given to the Recipient.
- 7.4 *Information.*** The Recipient shall supply to the Ministry, upon request, such information in respect of the Project and its results including without limitation all Contracts and agreements related to the Project and all plans and specifications related to the Project, as the Ministry may require. The Government of Canada and the Government of Ontario, their respective agents and employees, including the Auditor General's Office, shall be allowed access to the Recipient's premises and staff and to the Project site at all reasonable times to (i) inspect the progress and monitor the Project; (ii) perform cost reviews and audits on the Project; and (iii) complete any other auditing or monitoring that may be reasonably required in relation to the Project.
- 7.5 *Information condition precedent for payment.*** If, in the opinion of the Ministry, any of the information requirements of this Article are not met, the Ministry may, in its sole discretion, require the information as a condition precedent to any payment in relation to the Project or any other project(s) of the Recipient under RInC/Ontario REC, or any

other provincial program(s) (either current or future). In addition, the Ministry may, in its sole discretion, Adjust the Financial Assistance.

- 7.6 Auditor General of Canada.** The Auditor General of Canada, may, at the Auditor General of Canada's cost, conduct an audit with respect to the use of Financial Assistance under this Agreement. For the purposes of facilitating such inquiry, the Recipient shall release to the Ministry upon request and in a timely manner, for the purpose of releasing to the Auditor General of Canada: all records held by the Recipient, or by agents or contractors of the Recipient, relating to this Agreement and/or the Financial Assistance; and such further information and explanations as the Auditor General, or anyone acting on behalf of the Auditor General may request relating to any part of this Agreement to the use of Financial Assistance.
- 7.7 Auditor General of Ontario.** The Auditor General of Ontario, may, at the Auditor General of Ontario's cost, conduct an audit with respect to the use of Financial Assistance under this Agreement. For the purposes of facilitating such inquiry, the Recipient shall release to the Ministry upon request and in a timely manner, for the purpose of releasing to the Auditor General of Ontario: all records held by the Recipient, or by agents or Contractors of the Recipient, relating to this Agreement and/or the Financial Assistance; and such further information and explanations as the Auditor General, or anyone acting on behalf of the Auditor General may request relating to the Financial Assistance.

## **SECTION 8 OVERPAYMENT**

- 8.1 Allowable Financial Assistance.** Funds provided to the Recipient prior to the submission of a Final Report in accordance with Section 6.3 of Schedule "A" shall not be construed as a final determination of the amount of Financial Assistance applicable to the Project. Upon conducting a final cost review or audit of each Project, the Ministry will determine the final amount of Financial Assistance for each Project (the "**Allowable Financial Assistance**"). The Allowable Financial Assistance shall not exceed the Maximum Financial Assistance for each Project. The Recipient agrees to repay to the Ministry, upon receipt of a written demand and within the period specified by the Ministry, that amount of the total of the Financial Assistance provided to the Recipient that exceeds the Allowable Financial Assistance for a Project (an "**overpayment**"), as determined by the Ministry, as well as any Financial Assistance used for a purpose other than that stated in the terms of this Agreement, as determined by the Ministry.
- 8.2 Deduction of overpayment.** The Ministry may deduct any overpayment of Financial Assistance made to a Recipient for a Project, from Financial Assistance payable on any other Project of the Recipient under RInC/Ontario REC or any other Government of Ontario program(s) (either current or future). Any overpayment made on any other Project(s) of the Recipient under RInC/Ontario REC or any other provincial program(s) (either current or future) may in turn be deducted from Financial Assistance payable on the Project.
- 8.3 Interest on overpayment.** The Ministry reserves the right to demand interest on any overpayment of Financial Assistance owing by the Recipient under the terms of this Agreement at the then current interest rate charged by the Government of Ontario on accounts receivable. The Recipient shall pay the amount of interest owing upon receipt of a written demand and within the period specified by the Ministry.

- 8.4 Recovery of Financial Assistance.** Where Eligible Costs committed to a Project have not been incurred, the Ministry may withdraw any unspent Financial Assistance for that Project if it has not started construction on its Project Construction Start Date or if that Project has started construction but for which progress is not to the satisfaction of Ontario.

## SECTION 9 INSURANCE AND BONDING

- 9.1 Insurance.** The Recipient represents and warrants that it has, and shall maintain in full force and effect for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to the Project would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than five million dollars (\$5,000,000) 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) a 30 day written notice of cancellation, termination or material change.

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

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

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

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



**SECTION 10  
INDEMNITY**

**10.1 Recipient to Indemnify.** The Recipient agrees to indemnify and hold harmless the Indemnified Parties from and against all liability, losses, costs, damages, expenses, (including legal, expert and consultant fees), lawsuits, judgments, claims, demands, expenses, actions, causes of action and other proceedings, including any and all liability for damages to property and injury to persons (including death), which the Indemnified Parties may incur, sustain or suffer, otherwise than by reason of their own negligence or wilful misconduct, as a result or arising out of or in relation to: (a) this Agreement or any breach of the terms of this Agreement by the Recipient, its officers, servants, employees, agents and Consultants, or by a third party for whom the Recipient is responsible, and any of its officers, employees, servants or agents; (b) the ongoing operation, maintenance and repair of the Facility; or (c) any omission or other wilful or negligent act of the Recipient, a third party for whom the Recipient is responsible, their respective employees, officers, servants or agents; or (d) any claim for lien made pursuant to the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended.

**SECTION 11  
DISPOSITION AND OPERATION OF THE FACILITY**

**11.1 Facility Disposition.** The Recipient shall retain title to, and ownership of, the Facility, for which the Recipient has received Financial Assistance under this Agreement for a minimum of six (6) years after the expiry or termination of this Agreement, and shall not dispose of the same for a period of six (6) years after the expiry or early termination of this Agreement, without prior written authorization of the Government of Canada and the Ministry. As a condition of such consent, the Government of Canada and/or the Ministry may require the Recipient to repay the Government of Canada and the Ministry the whole or any part of the Financial Assistance paid to the Recipient.

Where Project asset is sold, leased, encumbered or disposed of:	Repayment of contribution (in current dollars)
Within 2 Years after Project completion	100%
Between 2 and 6 Years after Project completion	55%
6 Years after Project completion	0%

**11.2 Notice.** At any time during the six (6) years following the date of completion of the Project, the Recipient agrees to notify the Ministry in writing of any transaction triggering the above-mentioned repayment, at least one hundred eighty (180) days in advance.

**11.3 Deduction from Financial Assistance.** The Ministry may, in its sole and absolute discretion, deduct the amount of Financial Assistance to be repaid under Section 11.1 from Financial Assistance payable to the Recipient on any other project(s) of the Recipient under RInC/Ontario REC or any other provincial program(s) (either current or future) and provide that money to the Government of Canada and/or the Ministry.

**11.4 Deemed Overpayment.** The Recipient must identify to the Ministry when a Facility in any given Fiscal Year generates revenues that exceed its costs, including operating costs, alternative financing partnerships or public-private partnerships costs and provisions for future life cycle costs and where the intent of revenue generation was not identified in the application submitted for that Project under RInC/Ontario REC. Within the first five (5) complete Fiscal Years following the Substantial Completion of a Project,

the Ministry may, in its sole and absolute discretion, deem the amount of revenue from that Project that is equal to the proportion of Financial Assistance to the total cost of the Facility to be an overpayment of Financial Assistance (the "deemed overpayment"). The Recipient shall pay the Ministry, upon request, the deemed overpayment.

- 11.5 Facility Operation.** The Facility shall be used, maintained and operated by the Recipient for a period of at least one half of the expected useful life of the Facility as set out in Schedule "B", failing which the Government of Canada and/or the Ministry may require the Recipient to repay to the Government of Canada and the Ministry the whole or any part of the Financial Assistance paid to the Recipient for the Project.

## SECTION 12 CONFLICT OF INTEREST AND CONFIDENTIALITY

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

## SECTION 13 COMMUNICATION AND RECOGNITION

- 13.1 Licensed Marks.** The Recipient acknowledges that the Government of Ontario is, will be or may be the owner of certain distinguishing marks comprised of designs, trademarks and official marks which have come or will come to be associated with RInC/Ontario REC (all such current and future marks, being the "Licensed Marks").
- 13.2 Acknowledgement in advertising and publicity.** The Recipient agrees to acknowledge the Financial Assistance of the Governments of Canada and Ontario being provided for the Project pursuant to this Agreement in all advertising and publicity relating to the Project and in any construction signs and in any temporary or permanent tributes to Project donors by adhering to the Communications Requirements set out in Schedule "G".
- 13.3 Use of Licensed Marks.** In consideration of receiving the Financial Assistance, the

Recipient agrees to use the Licensed Marks as follows:

- a) the Recipient agrees to use the Licensed Marks only as set out in the Communications Requirements and not to use any other mark or trademark in combination with any of the Licensed Marks without the prior written approval of the Government of Canada and the Ministry. The Recipient agrees that it will not alter, modify, dilute or otherwise misuse the Licensed Marks;
- b) the Recipient agrees to submit to the Government of Canada and the Ministry, copies of any advertisements or promotional materials containing the Licensed Marks for approval prior to any use thereof and to remove therefrom either any reference to the Licensed Marks or any element that may from time to time and upon reasonable notice be required;
- c) the Recipient agrees that it will not state or imply, directly or indirectly, that the Recipient or the Recipient's activities, other than those permitted by this Agreement, are supported, endorsed, or sponsored by the Government of Canada and the Ministry and shall, upon notification, express disclaimers to that effect; and
- d) the Recipient agrees to promptly inform the Government of Canada and the Ministry of any suspected infringement of any Licensed Marks by a third party.

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

## SECTION 14 COVENANTS, REPRESENTATIONS AND WARRANTIES

**14.1 General.** The Recipient covenants, represents and warrants to the Ministry that:

- a) it is conducting and shall conduct its business in compliance with all applicable federal, provincial and municipal laws, and all rules, regulations, by-laws, notices, orders and approvals;
- b) it is conducting and shall conduct its business in compliance with all federal requirements as outlined in Schedule "E;"
- c) it has authority and any necessary approval to enter into this Agreement and to carry out its terms;
- d) it has or will apply for all permits, approvals, and licenses which are required in order to carry out the Project including, but not limited to, any approvals lawfully required under the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended, the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended, the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c. c. P. 50, as amended, the *Bridges Act*, R.S.O. 1990, c. B. 12, as amended and the Environmental Laws;
- e) it validly exists as a legal entity with full power to perform and observe all of the

terms and conditions of this Agreement;

- f) where applicable, it has passed by-laws required to undertake the Project;
- g) it is now and will continue to be compliant with all Environmental Laws;
- h) it owns or has a long-term lease (inclusive of any renewals) for the lands on which the Facility is or will be located that expires no earlier than six (6) years following Project completion;
- i) provided that the Recipient is not a Local Government or a Crown Agency,
  - A. it is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
  - B. is either a corporation, a partnership or a sole proprietorship validly in existence; and
  - C. is registered and qualified to do business wherever necessary to carry out the Project;
- j) it has the experience, financial health and ability to carry out this Project;
- k) if the Recipient is a Local Government or a Crown Agency, it has the requisite legislative authority to carry out the Project;
- l) it will provide or arrange for funds totalling at least as much as the Other Funds to be used for the Project;
- m) all information provided during the RInC/Ontario REC application process remains true, correct and complete in every respect except as set out to the contrary herein. Without limitation, Project, Budget, Project Timeline, Other Funds, and Total Other Funds are as set out herein and not as set out in the application material; and
- n) it will notify the Ministry of all Other Funds for each Project contained in Schedule "B" that may reduce the level of Financial Assistance the Recipient would be eligible to receive under this Agreement.

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

- a) establish the expected code of conduct and ethical responsibilities at all levels of the Recipient's organization;
- b) establish procedures to ensure the ongoing effective functioning of the Recipient;
- c) establish decision-making mechanisms;
- d) provide for the prudent and effective management of the Financial Assistance;
- e) establish procedures to enable the successful completion of the Project;

- f) establish procedures to enable the timely identification of risks to the completion of the Project and strategies to address the identified risks;
- g) establish procedures to enable the preparation and delivery of all reports required under this Agreement.

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

## SECTION 15 DEFAULT, ENFORCEMENT AND TERMINATION

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

- a) if in the opinion of the Ministry, the Recipient fails to conform or comply with any term or covenant contained in this Agreement to be performed or complied with by the Recipient;
- b) if in the opinion of the Ministry, any representation or warranty made by the Recipient in this Agreement or any certificate delivered to the Ministry is materially untrue in any respect;
- c) if an order shall be made or an effective resolution passed for the winding up, or liquidation or dissolution of the Recipient or the Recipient is otherwise dissolved or ceases to carry on its operation;
- d) if the Recipient uses any of the Financial Assistance for a purpose not authorized by this Agreement without the prior written consent of the Ministry;
- e) if the Recipient admits in writing its inability to pay its debts generally as they become due, voluntarily suspends transactions of its usual business, becomes insolvent, bankrupt, makes an assignment for the benefit of its creditors, or a receiver or manager, court appointed or otherwise, is appointed for its assets or if the Recipient takes the benefit of any statute from time to time in force relating to bankrupts or insolvent debtors;
- f) if in the opinion of the Ministry a material adverse change occurs such that the viability of the Recipient as a going concern is threatened in the opinion of the Ministry, acting reasonably;
- g) if in the opinion of the Ministry the Recipient ceases to operate;
- h) if in the opinion of the Ministry the Recipient has failed to proceed diligently with the Project or abandons the Project in whole or in part;
- i) if the Recipient has submitted false or misleading information to the Ministry; or

- j) the Recipient and/or any of its Consultants and/or any of their respective advisors, partners, directors, officers, employees, agents and volunteers has breached the requirements of Section 12 of Schedule "A"; or
- k) if the Recipient fails to begin a Project within sixty (60) days of the Project Construction Start Date identified in Schedule B, or such period as the Ministry may allow; or
- l) in the opinion of the Ministry, the Recipient has failed to proceed diligently with a Project or abandons a Project in whole or in part, or the Recipient is otherwise in default in carrying out any of the terms, conditions or obligations of this Agreement, except where such failure is due to causes which, in the opinion of the Ministry are beyond the control of the Recipient.

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

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

- a) the Ministry shall have no further obligation to provide any Financial Assistance for the Project;
- b) the Ministry may, at its option, terminate this Agreement immediately, or the Ministry may, in its sole discretion, Adjust the Financial Assistance. The total amount of Financial Assistance shall be immediately due and payable by the Recipient and bear interest at the then-current interest rate charged by the Ministry on accounts receivable; and
  - a. the Ministry may avail itself of any of its legal remedies that it may deem appropriate.

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

**15.5 Termination without cause.** Notwithstanding anything else contained herein, the Ministry reserves the right to terminate this Agreement without cause upon such conditions as the Ministry may require, with a minimum of thirty (30) days written notice to the Recipient. If the Ministry terminates this Agreement prior to its expiration, the Ministry, subject to all of the Ministry's rights under this Agreement, including, without limitation, the Ministry's right to Adjust the Financial Assistance, shall only be

responsible for the payment of Financial Assistance on the portion of the Project completed and Eligible Costs already incurred and paid by the Recipient at the time of such termination provided that the Recipient provides a report to the Ministry that meets the requirements of a Progress Report. Such report must be received by the Ministry within ninety (90) days of receipt of notice of termination by the Recipient.

## SECTION 16 NOTICE

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

## SECTION 17 MISCELLANEOUS

- 17.1 Terms Binding.** The Recipient shall take all reasonable measures to ensure that its officers, directors, partners, employees, agents, sub-contractors, Consultants, and third parties shall be bound to observe all of the terms and conditions of this Agreement, including, but not limited to all covenants, representations and warranties set out herein. The Recipient shall include in all of its Contract(s) terms and conditions similar to and not less favourable to the Government of Ontario than the terms and conditions of this Agreement to the extent that they are applicable to the work subcontracted, including but not limited to the requirements of Section 7 of Schedule "A".
- 17.2 Time is of the essence.** In the performance and observance of the terms and conditions of this Agreement, time is of the essence and no extension or variation of this Agreement shall operate as a waiver of this provision. The Ministry shall not be liable for any liquidated damages as a result of working days extensions.
- 17.3 Successors and assigns.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.
- 17.4 Severability.** The validity or enforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions hereof and such invalid or

unenforceable provisions shall be deemed to be severable.

- 17.5 *No waiver.*** The failure by the Ministry to insist in one or more instances on performance by the Recipient of any of the terms or conditions of this Agreement shall not be construed as a waiver of the Ministry's right to require further performance of any such terms or conditions, and the obligations of the Recipient with respect to such performance shall continue in full force and effect.
- 17.6 *Division of Agreement.*** The division of this Agreement into schedules, articles, sections, clauses, paragraphs and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 17.7 *Governing law.*** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in Ontario.
- 17.8 *Survival.*** All of the provisions of this Agreement that expressly or by their nature survive the expiry or any termination of this Agreement (including the provisions of subsections 4.1, 4.5, 4.6, 4.7, 4.8 (Financial Assistance), subsections 5.1, 5.2, 5.3 (Project Award, Management and Completion) Section 6 (Reporting Requirements), Section 7 (Records and Audit), Section 8 (Overpayment), Section 10 (Indemnity), Section 11 (Disposition and Operation of Facility), Section 12 (Conflict of Interest and Confidentiality), Section 13 (Communications and Recognition), Section 14 (Covenants, Representations and Warranties), Section 15 (Default, Enforcement and Termination), and Section 17 (Miscellaneous) of Schedule "A"; Schedule "E"; Schedule "B" (Useful Life of Facility); and Schedule "G" (the Recipient's obligation to maintain a permanent plaque in cases where it is necessary to install a permanent plaque) shall continue subsequent to and despite such termination or expiry, until they are satisfied or by their nature expire.
- 17.9 *No assignment.*** This Agreement shall not be assigned by the Recipient. The Ministry may assign this Agreement on written notice to the Recipient.
- 17.10 *No Amendment.*** This Agreement shall not be varied or amended except by a document in writing, dated and signed on behalf of the Ministry and the Recipient.
- 17.11 *Interest.*** The Ministry reserves the right to demand interest on any repayment of Financial Assistance owing by the Recipient under the terms of this Agreement at the then-current interest rate charged by the Ministry on accounts receivable. The Recipient shall pay the amount of interest owing upon receipt of a written demand and within the period specified by the Ministry.
- 17.12 *Ministry and Recipient independent.*** Nothing in this Agreement shall be deemed to constitute the Recipient an employee, servant, agent, partner of or in joint venture with the Ministry for any purpose whatsoever.
- 17.13 *Recipient cannot represent the Governments of Canada or Ontario.*** The provision of Financial Assistance to the Recipient pursuant to this Agreement is for the sole purpose of, and is limited to, carrying out the Project. The Recipient warrants and agrees that under no circumstances shall it enter into any contract or commitment in the name of or on behalf of the Governments of Canada and/or Ontario. The Recipient acknowledges and agrees that it is not by the terms of this Agreement or otherwise, granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the Governments of Canada and/or



Ontario, to act as an agent of the Governments of Canada and/or Ontario, or to bind the Governments of Canada and/or Ontario in any manner whatsoever other than as specifically provided in this Agreement.

- 17.14 Consultants.** The Ministry acknowledges that, in connection with carrying out the Project, the Recipient may engage one or more Consultants. The Ministry acknowledges and agrees that the Recipient shall have the sole authority and responsibility for such employees, agents or Consultants, including their hiring and termination. The Recipient acknowledges and agrees that the Recipient shall be responsible for all acts and actions of the Recipient's employees, agents and Consultants and that all such acts and actions shall be treated as actions of the Recipient for the purposes of this Agreement.
- 17.15 Lobbyists and Agent Fees.** The Recipient warrants that any person hired, for payment, or to speak or correspond with any employee or other person representing the Recipient, concerning any matter relating to the contribution under this Agreement or any benefit hereunder and who is required pursuant to the *Lobbying Act*, R.S.C. 1985, c. 44 (4th Supp.), as amended, is registered pursuant to the *Lobbying Act*, R.S.C. 1985, c. 44 (4th Supp.), as amended. The Recipient also warrants that it has not and nor will it make a payment or other compensation to any legal entity that is contingent upon or is calculated upon the contribution hereunder or negotiating the whole or any part of the terms of this Agreement.
- 17.16 Cooperation.** The Ministry and the Recipient agree to cooperate with one another and will be frank, candid and timely when dealing with one another and will endeavour to facilitate the implementation of this Agreement.
- 17.17 Data.** The Recipient agrees that the Government of Ontario may, in its sole discretion, gather and compile information and data required under this Agreement and disclose such information and data to the Government of Canada.
- 17.18 Priority.** Where there is a conflict between one or more of the schedules of this Agreement, the following order of priority shall apply: the "other provisions" contained in Schedule "F", Schedule "A", Schedule "C", Schedule "B" and all other schedules.
- 17.19 Entire Agreement.** The Agreement constitutes the entire Agreement between Government of Ontario and the Recipient with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and/or agreements.

- END OF GENERAL TERMS AND CONDITIONS -

**SCHEDULE "B"**  
**DESCRIPTION OF THE PROJECT(S)**

<b>PROJECT NUMBER</b>	<b>PROJECT TITLE</b>	<b>PROJECT CONSTRUCTION START DATE</b>	<b>ABORIGINAL CONSULTATION SCHEDULE L</b>	<b>Useful Life of Facility (years)</b>
R1294	Revitalization of Tennis Courts	2009-08-17	L.1	12

**PROJECT DESCRIPTION**

The Maynard tennis court facility is in major need of revitalization. At present, no tennis is played on the courts due to cracked and dangerous pavement, no tennis posts or nets and no visible court painted lines. This project will resurface the courts, paint the court boundaries, and install posts and nets. A paved pathway leading to the courts will permit accessibility for all.

It is the community's wish to extend the tennis court facility into a multi-use, multi-season recreation infrastructure asset. This is to be accomplished through, in addition to the tennis court revitalization:

- Purchase and installation of permanent basketball standards.
- Installation of permanent outdoor lighting to extend the hours of use.

The work to be undertaken is an incremental construction activity that would not otherwise be possible without the funding from this program.

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

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**C.1 ELIGIBLE COSTS**

**C.1.1** Subject to Section C.2, Eligible Costs are all direct costs that are, in the Ministry's opinion, properly and reasonably incurred and paid by the Recipient under a Contract for goods or services necessary for the implementation of the Project:

- a) the costs to rehabilitate or repair fixed capital assets of recreational infrastructure, including new construction that is either adding to or replacing existing recreational infrastructure assets or capacity;
- b) the fees paid to professionals, technical personnel, consultants and contractors specifically engaged to undertake the surveying, design, engineering, manufacturing or construction of a project infrastructure asset and related facilities and structures;
- c) the costs of environmental assessments, monitoring, and follow-up programs as required by the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37, as amended and the *Environmental Assessment Act*, R.S.O. 1990, c. E. 18, as amended and the costs of remedial activities, mitigation measures and follow-up identified in any environmental assessment;
- d) the costs described in Schedule "G" as Eligible Costs;
- e) the costs of Project-related signage, lighting, Project markings and utility adjustments;
- f) the costs of developing and implementing innovative techniques for carrying out the Project, as determined by the Ministry;
- g) costs of related to following the Aboriginal Consultation Protocol set out in Schedule "L", including the translation of documents into languages spoken by the interested Aboriginal community(ies);
- h) Recipient audit and evaluation costs as specified in this Agreement, with the exception of costs related to the retaining of an external auditor; and
- i) other costs that are considered to be direct and necessary for the successful implementation of the Project and that have been approved in advance, and in writing, by the Ministry.

**C.1.2** Employee and Equipment costs

The incremental costs of the Recipient's employees or equipment may be included in its Eligible Costs under the following conditions.

- a) the Recipient is a local, regional or First Nation's government;
- b) the Recipient satisfies the Ministry that it is not economically feasible to tender a Contract;

- c) employees or equipment are employed directly in respect of the work that would have been the subject of the Contract; and
- d) approved in advance and in writing by the Ministry.

### **C.2.1 INELIGIBLE COSTS**

The following costs are ineligible for Financial Assistance:

- a) costs incurred before June 26, 2009 and after March 31, 2011;
- b) movable equipment;
- c) services or works that, in the opinion of the Ministry, are normally provided by the Recipient or a related party;
- d) salaries and other employment benefits of any employees of the Recipient except as indicated in section C.1.2;
- e) the Recipient's overhead costs, its direct or indirect operating or administrative costs, and more specifically, its costs related to planning, engineering, architecture, supervision, management and other activities normally carried out by its staff;
- f) costs of feasibility and planning studies;
- g) taxes for which the Recipient is eligible for a tax rebate, credit or refund and all other costs eligible for rebates, credits or refunds;
- h) costs of land acquisition, leasing land, buildings, equipment and other facilities, real estate fees and related costs;
- i) financing charges, legal fees and loan interest payments (including those related to easements (e.g. surveys));
- j) the value of any goods and services which are received through donations or in kind;
- k) routine repair and maintenance costs; and
- l) the costs described in Schedule "G" as Ineligible Costs.

**SCHEDULE “D”  
FINANCIAL ASSISTANCE**

Project Number	Total Eligible Costs (\$)	Breakdown of Financial Assistance (\$)					Recipient's Obligation (\$)
		Expected Financial Assistance		Federal Maximum Financial Assistance	Ontario Maximum Financial Assistance	Maximum Financial Assistance	Total Other Funds (as outlined in Schedule K)
		2009-10	2010-11				
R1294	\$30,800	\$20,534	\$0	\$10,267	\$10,267	\$20,534	\$10,266

Subject to Section 4.4 of Schedule “A”, the Ministry will provide Financial Assistance to the Recipient for each project described above following receipt and approval of a Progress Report specific to each project as submitted on a monthly basis by the Recipient to the Ministry.

The amount payable by the Ministry to the Recipient will be based on the invoice summary and attached invoices as submitted with each Progress Report and will be equal to the proportion of Maximum Financial Assistance to the Total Eligible Cost.

The Ministry will pay up to 90% of the Maximum Financial Assistance per project prior to the receipt from the Recipient of the Final Report specific to that project. The Ministry will retain 10% of the Maximum Financial Assistance per project pending receipt of the Final Report specific to that project, regardless of Eligible Costs incurred by the Recipient prior to its completion of the Final Report specific to that project. The Ministry will pay the retained 10% of the Maximum Financial Assistance specific to that project upon acceptance of the Recipient's Final Report for that project and receipt of a Solemn Declaration of Substantial Completion for a specific Project. Each such Final Report must contain the information required in the Final Report as set out in Section 6.3 of Schedule “A”. The Ministry is not obligated to pay interest on the 10% retained or any other payments under this Agreement.

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

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The Ministry and the Recipient agree to the following Federal Requirements:

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

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

3. The Recipient further agrees to indemnify and hold the Federal Government, its directors, officers, employees and agents, for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, which the Federal Government, its directors, officers, employees and agents may incur, otherwise than by reason of their own negligence or willful misconduct, as a result of or arising out of or in relation to any breach by the Recipient of the terms of this Agreement, or the Recipient's own negligence or willful misconduct.
4. The Recipient acknowledges that the provisions of the *Access to Information Act*, R.S.C. 1985, c. A-1, as amended and the *Privacy Act*, R.S.C. 1985 c. P-21, as amended and regulations thereunder bind the Federal Government.
5. The Recipient acknowledges that the Federal Government is or will be the owner of certain

distinguishing marks comprised of designs, trademarks and official marks in relation to RInC/Ontario REC (the "Federal Licensed Marks") and the Recipient is subject to the requirements of Section 13 (Communication and Recognition) of this Agreement, with appropriate changes, in relation to the Federal Licensed Marks.

6. No member of the House of Commons or of the Senate of Canada shall be admitted to any share or part of any contract, agreement or commission made pursuant to this Agreement or to any benefit arising therefrom.
7. Notwithstanding any provisions of this Agreement, all obligations of the Federal Government incurred by virtue of this Agreement shall be subject to the *Financial Administration Act*, R.S.C. 1985, c. F-11, as amended.
8. Pursuant to the requirements of the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37, as amended, the Recipient will follow the general environmental mitigation measures outlined in the document entitled "Screening under the Canadian Environmental Assessment Act" and any Project-specific environmental mitigation measures as communicated to the Recipient by the Federal Government.
9. The Recipient acknowledges and agrees that the Federal Government may, in its sole discretion, exercise the Ministry's right to monitor the Project, perform audits and/or gather data pursuant to the terms and conditions of this Agreement.
10. The Recipient shall, in all public communications (including but not limited to Web sites, publications, news releases, presentations, annual reports, on-site signage) acknowledge the financial contribution of the Governments of Canada and Ontario. The Recipient shall consent to a form of acknowledgement which has been approved by the Minister or his/her representatives, and which may include text in both official languages, an official government symbol and/or other graphic elements. The Recipient also consents to limit the acknowledgement to applications agreed upon by the Minister or his/her representatives and to terminate the acknowledgement upon the request by the Minister or his/her representatives.
11. The Recipient warrants that:
  - a) it has not, nor has any person on its behalf, paid or provided or agree to pay or provide, to any person, directly or indirectly, a commission, contingency fee or any other consideration (whether monetary or otherwise) that is dependant upon the execution of the Agreement or the person arranging a meeting with any Public Office Holder as defined in the *Lobbying Act*, R.S.C. 1985, c. 44 (4th Supp.), as amended;
  - b) it will not, during the term of this Agreement, pay or provide or agree to pay or provide to any person, directly or indirectly, a commission, contingency fee or any other consideration (whether monetary or otherwise) that is dependant upon the person arranging a meeting with any Public Office Holder;
  - c) any person who, for consideration, directly or indirectly, communicated with or arranged a meeting with any Public Office Holder, in respect of any aspect of this Agreement, prior to the execution of the Agreement, was in compliance with all

RInC/Ontario REC Contribution Agreement for Infrastructure Projects  
requirements of the Act;

- d) any person who, for consideration, directly or indirectly, during the term of this Agreement and in respect of any aspect of this Agreement, communicates with or arranges a meeting with any Public office Holder will be in compliance with all requirements of the Act; and
- e) at all relevant time the Recipient has been, is and will remain in compliance with the Act.



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

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**R1294**

**Revitalization of Tennis Courts**

The Ministry and the Recipient agree to the following additional provisions:

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

(a) If to the Ministry:

Guy Madore  
Ministry of Tourism Eastern Region  
347 Preston Street, 4th Floor  
Ottawa, ON  
K1S 3J4

Phone : (613) 742-3365  
Fax : (613) 742-5300  
E-mail : Guy.Madore@ontario.ca

Attention: Guy Madore, Program Consultant

(b) If to the Recipient:

Township of Augusta  
3560 County Rd. 26  
Prescott  
K0E 1T0

Phone : 613-925-4231  
E-mail : rbennett@augusta.ca

Attention: Richard Bennett, CAO

2. Other provisions: nil

3. Other Reporting Requirements: nil

## **SCHEDULE "G"** **COMMUNICATIONS REQUIREMENTS**

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

### **Purpose of Schedule**

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

### **General Principles**

The Recipient agrees to work with RInC/Ontario REC officials and other partners to undertake communication activities for the Project in an open, effective and proactive manner, ensuring equal recognition and prominence of all parties making a significant financial contribution to the Project when logos, symbols, flags and other types of identification are used.

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

All events and signage will follow these Communications Requirements and any other requirements that may be specified by the Ministry from time to time.

Both official languages will be used for public information and signage in accordance with the *Official Languages Act, R.S.C. 1985, c. 31 (4th Supp.)*, as amended.

The Recipient may produce information kits, brochures, public reports and Web pages providing information on the Project and Agreement for private-sector interest groups, contractors and members of the public. These products must indicate that the Project received Financial Assistance from the Governments of Canada and Ontario under RInC/Ontario REC. The Recipient will consult with the Governments of Canada and Ontario in preparing the content and look of all such material. All communications referencing the Governments of Canada and Ontario must be approved.

### **Events**

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

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

The Recipient may invite other elected officials and members of council. The Recipient should

also invite local interested parties, such as contractors, architects, labour groups, and community leaders as early as possible, and in consultation with the Governments of Canada and Ontario, prior to the event.

All written communications (invitations, public service announcements, posters, news releases, etc.) must indicate that the Project received Financial Assistance from the Governments of Canada and Ontario under RInC/Ontario REC. The Governments of Canada and Ontario will assist the Recipient in coordinating the attendance of federal and provincial representatives, as well as developing an agenda, news release, etc. All parties will approve and receive final copies.

Federal, provincial and municipal flags (where applicable) should also be on display at all RInC/Ontario REC events.

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

### **Signage**

The Recipient agrees to install Project signage to communicate the nature of the Project and the involvement of the Governments of Canada and Ontario and the Recipient, in accordance with federal and provincial signage guidelines available on the RInC/Ontario REC website at [www.rinc-on.ca](http://www.rinc-on.ca)

### **Eligible Costs**

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

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

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

The cost of certain items such as alcoholic beverages, china, tents, waiters, guest mileage or transportation, wine glasses, lamps, tea wagons, plants, photographers and gifts are Ineligible Costs.

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

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

**SCHEDULE "H"  
EXPENDITURE AND JOB CREATION REPORT**



**Recreational Infrastructure Fund (RInC) in Ontario and Ontario Recreational Program  
(Ontario REC)**

**EXPENDITURE AND JOB CREATION REPORT**

<b>Project Title:</b>	Revitalization of Tennis Courts
<b>Project Number:</b>	R1294

**Expenditure Forecast Table**

<b>Quarter</b>	<b>(April - June) Q1</b>	<b>(July - Sept.) Q2</b>	<b>(Oct. - Dec.) Q3</b>	<b>(Jan .- March) Q4</b>
<b>2009/10</b>				
<b>2010/11</b>				

**Jobs Created / Sustained Table**

	<b>Average Number of Temporary Jobs</b>
<b>Previous Quarter (show date ranges)</b>	
<b>Current Quarter (show date ranges)</b>	

<b>Prepared By:</b>	
<b>Phone Number:</b>	
<b>Report Date:</b>	

**SCHEDULE "I"**  
**BUDGET**

R1294

**Revitalization of Tennis Courts**

#	Eligible Costs	\$
1	<b>Design &amp; Engineering Costs</b>	\$0
2	<b>Construction Costs</b>	\$18,500
3	<b>Project Management Costs</b>	\$0
4	<b>Other Eligible Costs (Show details below.)</b>	\$0
5	Basketball Standards	\$1,600
6	Outdoor Lighting	\$7,500
7	Provincial signage	\$ 400
8		\$
9	<b>Contingency Allowance (Maximum 10% of Eligible Costs)</b>	\$2,800
10	<b>Subtotal - Eligible Project Costs (Sum of Lines 1 through 9)</b>	<b>\$30,800</b>
#	Other Costs (Show details below)	\$
11		\$
12		\$
13		\$
14		\$
15		\$
16	<b>Subtotal - Other Costs (Sum of Lines 11 through 15)</b>	<b>\$</b>
17	<b>Total Project Costs (Lines 10 + 16)</b>	<b>\$30,800</b>

#	Financial Assistance	% of Eligible Costs	\$
18	<b>Ontario - Maximum Financial Assistance</b>	0.33	\$10,267
19	<b>Canada - Maximum Financial Assistance</b>	0.33	\$10,267
20	<b>Ontario &amp; Canada - Maximum Financial Assistance (18 + 19)</b>	0.67	\$20,534

#	Proposed Cash Flows	2009-10	2010-11	Total \$
21	<b>Eligible Costs (Line 10)</b>	\$30,800	\$	\$30,800
22	<b>Total Costs (Line 17)</b>	\$30,800	\$	\$30,800
23	<b>Financial Assistance (Line 20)</b>	\$20,534	\$0	\$20,534

**SCHEDULE "J"**  
**PROJECT TIMELINE**

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**R1294**

**Revitalization of Tennis Courts**

**Project Construction Start Date:** 2009-08-17

**Anticipated Project End Date:** 2009-10-17

	<b>PROJECT MILESTONES &amp; ACTIVITIES</b>	<b>TIMELINES</b>
1.	Tennis court preparation (removal of tree stumps in fence, repair fencing, prep surface)	17/08/09 - 31/08/09
2.	Tennis court resurfacing (weather dependent)	15/09/09 - 31/05/10
3.	Basketball Standards installation (weather dependent)	26/10/09 - 31/05/10
4.	Pathway levelling and paving (weather dependent)	15/04/10 - 31/05/10
5.	Outdoor lights installation (weather dependent)	15/04/10 - 31/05/10

**SCHEDULE "K"  
OTHER FUNDING**

**R1294  
Revitalization of Tennis Courts**

The Other Funds are as follows (to be completed for each Project listed in Schedule "B"):

<b>Source</b>	<b>Amount Committed (\$)</b>	<b>Amount Anticipated (\$)</b>	<b>Total (\$)</b>
Township of Augusta	\$10,266.00	\$	\$10,266.00
	\$	\$	\$
	\$	\$	\$
<b>Total Other Funds →</b>			<b>\$10,266.00</b>



**SCHEDULE "L.1"**  
**ABORIGINAL CONSULTATION PROTOCOL**

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**1.0 Definitions**

For the purposes of this Schedule "L.1", "**Aboriginal Communities**" 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*.

**2.0 Responsibilities of the Recipient**

2.1 The Recipient shall immediately notify the Ministry:

- (i) of contact by any Aboriginal communities regarding the Project; or
- (ii) if any Aboriginal archaeological resources are discovered in the course of the Project,

and in either case, the Ministry may direct the Recipient to take such actions, including without limitation suspension of the Project, as the Ministry may require. The Recipient shall comply with the Ministry's direction.

2.2 The Recipient shall provide in any contracts with third parties for the Recipient's right and ability to respond to direction from the Ministry as the Ministry may provide in accordance with section 2.1.

## SCHEDULE "L.2" ABORIGINAL CONSULTATION PROTOCOL

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### 1.0 Purpose

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

### 1.1 Definitions

For the purposes of this Schedule "L.2":

**"Aboriginal Communities"** 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*.

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

### 2.0 Responsibilities of the Ministry

2.1 The Ministry is responsible for:

- (i) determining the Aboriginal Communities to be consulted in relation to the Project, if any, and advising the Recipient of same;
- (ii) the preliminary and ongoing assessment of the depth of consultation required with the Aboriginal Communities;
- (iii) at its discretion, delegating procedural aspects of consultation to the Recipient pursuant to this Agreement;
- (iv) directing the Recipient to take such actions, including without limitation suspension of the Project, as the Ministry may require;
- (v) satisfying itself, where it is necessary to do so, that the consultation process in relation to the Project has been adequate and the Recipient is in compliance with this Agreement; and
- (vi) satisfying itself, where any Aboriginal or treaty rights and asserted rights of Aboriginal Communities require accommodation, that Aboriginal Communities are appropriately accommodated in relation to the Project .

### 3.0 Responsibilities of the Recipient

3.1 The Recipient hereby acknowledges that, for the purposes of any S. 35 Duty borne by the Ministry, the Recipient is the Ministry's delegate and in this capacity is responsible for carrying

out the procedural aspects of consultation delegated to it by the Ministry pursuant to this Agreement.

3.2 The Recipient is responsible for:

- (i) giving notice to the Aboriginal Communities regarding the Project, if such notice has not already been given by the Recipient or the Ministry;
- (ii) informing the Aboriginal Communities about the Project and providing to the Aboriginal Communities a full description of the Project unless such description has been previously provided to them;
- (iii) following up with the Aboriginal Communities in an appropriate manner to ensure that Aboriginal Communities are aware of the opportunity to express comments and concerns about the Project, including any concerns regarding adverse impacts on hunting, trapping, fishing, plant harvesting or on burial grounds or archaeological sites of cultural significance to the Aboriginal Community;
- (iv) informing the Aboriginal Communities of the regulatory and approval processes that apply to the Project of which the Recipient is aware after reasonable inquiry;
- (v) maintaining the Aboriginal Communities on the Recipient's mailing lists of interested parties for environmental assessment and other purposes and providing to the Aboriginal Communities all notices and communications that the Recipient provides to interested parties and any notice of completion;
- (vi) making all reasonable efforts to build a positive relationship with the Aboriginal Communities in relation to the Project;
- (vii) providing the Aboriginal Communities with reasonable opportunities to meet with appropriate representatives of the Recipient and meeting with the Aboriginal Communities to discuss the Project;
- (viii) if appropriate, providing reasonable financial assistance to Aboriginal Communities to permit effective participation in consultation processes for the Project;
- (x) considering comments provided by the Aboriginal Communities regarding the potential impacts of the Project on Aboriginal or treaty rights or asserted rights, including adverse impacts on hunting, trapping, fishing, plant harvesting or on burial grounds or archaeological sites of cultural significance to an Aboriginal Community, or on other interests, or any other concerns or issues regarding the Project;
- (xi) answering any questions to the extent of the Recipient's ability and receiving comments from the Aboriginal Communities, notifying the Ministry of the nature of the questions or comments received and maintaining a chart showing the issues raised by the Aboriginal Communities and any responses the Recipient has provided;

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

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

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

- (i) provide to the Ministry, upon request, complete and accurate copies of all documents provided to the Aboriginal Communities in relation to the Project;
- (ii) keep reasonable business records of all its activities in relation to consultation and provide the Ministry with complete and accurate copies of such records upon request;
- (iii) provide the Ministry with timely notice of any Recipient mailings to, or Recipient meetings with, the representatives of any Aboriginal Community in relation to the Project;
- (iv) immediately notify the Ministry of any contact by any Aboriginal Communities regarding the Project and provide copies to the Ministry of any documentation received from Aboriginal Communities;
- (v) advise the Ministry in a timely manner of any potential adverse impact of the Project on Aboriginal or treaty rights or asserted rights of which it becomes aware;
- (vi) immediately notify the Ministry if any Aboriginal archaeological resources are discovered in the course of the Project;
- (vii) provide the Ministry with summary reports or briefings on all of its activities in relation

to consultation with Aboriginal Communities, as may be requested by the Ministry;  
and

- (viii) if applicable, advise the Ministry if the Recipient and an Aboriginal Community propose to enter into an agreement directed at mitigating or compensating for any impacts of the Project on Aboriginal or treaty rights or asserted rights.

3.5 The Recipient shall, upon request lend assistance to the Ministry by filing records and other appropriate evidence of the activities undertaken both by the Ministry and by the Recipient in consulting with Aboriginal Communities 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 the Ministry and by the Recipient, to the relevant regulatory or judicial decision-makers.

#### 4.0 **No Implicit Acknowledgement**

4.1 Nothing in this Agreement shall be construed as an admission, acknowledgment, agreement or concession by the Ministry or the Recipient, that a S. 35 Duty applies in relation to the Project, nor that any responsibility set out herein is, under the Constitution of Canada, necessarily a mandatory aspect or requirement of any S. 35 Duty, nor that a particular aspect of consultation referred to in Section 3.1 hereof is an aspect of the S. 35 Duty that could not have lawfully been delegated to the Recipient had the Parties so agreed.

#### 5.0 **General**

5.1 This Agreement shall be construed consistently with but does not substitute for any requirements or procedures in relation to Aboriginal consultation or the S. 35 Duty that may be imposed by a ministry, board, agency or other regulatory decision-maker acting pursuant to laws and regulations. Such decision-makers may have additional obligations or requirements. Nonetheless, the intent of the Ministry is to promote coordination among provincial ministries, boards and agencies with roles in consulting with Aboriginal Communities 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 Communities, the Recipient, the Ministry, and provincial ministries, boards, agencies and other regulatory decision-makers.

**SCHEDULE "M"**  
**FORM OF CERTIFICATE**

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Project Number: **R1294**

**CERTIFICATE OF Township of Augusta**

RE: Recreational Infrastructure Canada Program in Ontario (RInC) and Ontario  
Recreational Program (Ontario REC)

AND RE: **Township of Augusta** (the "**Recipient**") **Revitalization of Tennis Courts**

AND RE: Funding agreement entered into between the Recipient and Her Majesty the  
Queen in Right of Ontario dated (the "**Agreement**")

TO: Her Majesty the Queen in Right of Ontario

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The Recipient hereby certifies that:

1. It has fully and diligently reviewed the invoices included and summarized in the attached report (the "**Invoices**").
2. All of the Invoices have been paid by the Recipient to third parties acting at arm's length.
3. Unless clearly specified in the attached report, all of the Invoices meet the requirements of an Eligible Cost (as that term is defined and described in the Agreement).
4. All of the work related to the Invoices has been performed.
5. All of the work related to the Invoices was procured using a competitive process/tender if and as required by Sections 5.6, 5.7 and 5.8 of Schedule "A" to the Agreement.
6. As of the date hereof, the Recipient is in full compliance of its obligations pursuant to the Agreement.

**DATED** the    day of    ,

**Township of Augusta**

by:

\_\_\_\_\_  
Name:

Title:

:

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



**R1294**  
**Revitalization of Tennis Courts**

**Recreational Infrastructure Fund (RInC) in Ontario and Ontario Recreational Program  
(Ontario REC)**

**SOLEMN DECLARATION OF SUBSTANTIAL COMPLETION**

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

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

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

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

(Signature)

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Witness Name:  
Title