

ByLaw 2011-13

**CANADA – ONTARIO MUNICIPAL RURAL INFRASTRUCTURE FUND (“COMRIF”)
PROGRAM**

FUNDING AGREEMENT FOR ASSET MANAGEMENT PROGRAM (AMP) PROJECT

Ministry of Agriculture, Food and Rural Affairs
File Number: 18056

THIS AGREEMENT made in triplicate as of the 10th day of August, 2011.

B E T W E E N:

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

(referred to herein as the “Ministry”)

A N D:

THE CORPORATION OF THE TOWNSHIP OF PRINCE

(referred to herein as the “Recipient”)

WHEREAS the Government of Ontario is investing in Ontario’s infrastructure;

AND WHEREAS the purpose of COMRIF is to improve and renew public infrastructure in Ontario’s small urban and rural communities with populations of less than 250,000;

AND WHEREAS the priority for COMRIF is improving water, sewage treatment, waste management and local roads and bridges;

AND WHEREAS the objectives for COMRIF include ensuring that sustainable infrastructure investments enhance and renew Ontario’s aging public infrastructure, improve the quality of the environment; protect the health and safety of citizens; support long-term economic growth; and build strong, sustainable communities by giving municipalities the tools they need.

AND WHEREAS Recipients under the COMRIF AMP may choose to access funding in order to undertake works related to addressing one or more of the following five stages of asset management: diagnostic, inspection, valuation, sustainability/planning and financial model.

AND WHEREAS the Ministry and the Recipient entered into a P-Agreement on July 10, 2007;

AND WHEREAS the P-Agreement, through no fault of the Parties, lapsed and therefore needs to be “revived” in order to allow the Recipient to complete the Project and allow the Ministry to make final payment(s) to the Recipient as well as release any holdback currently being held;

AND WHEREAS the Parties agree the best way to address this issue is to have this Agreement have the Effective Date of this Agreement be March 30, 2011;

AND WHEREAS this Agreement defines the terms and conditions of a financial contribution to assist with the Project under COMRIF AMP which is being administered by the Ministry;

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" - AMP Project Overview
- Schedule "C" - Eligible Costs
- Schedule "D" - Federal Requirements
- Schedule "E" - Additional Provisions
- Schedule "F" - Final Claim Report

constitute 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 Agriculture, Food and Rural Affairs
by:



Name: The Honourable Carol Mitchell
Title: Minister of Agriculture, Food and Rural Affairs



Date

RECIPIENT'S NAME: THE CORPORATION OF THE TOWNSHIP OF PRINCE
by:




Name: Ken Lamming
Title: Reeve

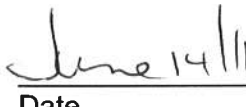


Date

Affix
Corporate
Seal



Name: Peggy Greco
Title: CAO/Administrator



Date

I/we have authority to bind the Recipient

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

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:

"Act" means the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, Chapter F.31, as amended.

"Adjust the Financial Assistance" means adjust the amount of the Financial Assistance on the Project or the amount of financial assistance for any other project(s) of the Recipient under the COMRIF Program, 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 of the Project in an amount to be determined by the Ministry and within the period specified by the Ministry.

"Agreement" means this 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 this Agreement.

"Asset Management Program (AMP)" means the Municipal Capacity Building component of the COMRIF Agreement as amended on November 15, 2006.

"Budget" means the Project budget set out in Schedule "B" hereto.

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

"Communication Requirements" means the communication conditions as set out in Section 12, or as directed by the Ministry from time to time.

"COMRIF Program" has the meaning given to it on the first page of this Agreement.

"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* (Ontario).

"Eligible Cost" has the meaning given to it in Section 3 of this Agreement and Schedule "C" hereto.

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

"Event of Default" has the meaning given to it in Section 14 of this Agreement.

"Expiration Date" means March 31, 2012.

"Expression of Interest" means documents provided by Recipient to access funding.

"Federal Government" means Her Majesty the Queen in Right of Canada.

"Federal Licensed Marks" has the meaning given to it in Section 6 of Schedule "D" hereto to this Agreement.

"Federal Maximum Financial Assistance" has the meaning set out in Schedule "B" hereto.

"Final Claim Report" has the meaning given to it in Section 6.1 of this Agreement.

"Final Claim Report Date" means August 31, 2011.

"Financial Assistance" means the funds contributed by the Senior Government to be advanced 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 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 in accordance with Generally Accepted Accounting Principles.

"Government of Ontario" means Her Majesty the Queen in Right of Ontario.

"Infrastructure" means publicly or privately owned fixed capital assets in Ontario for public use or benefit.

"Local Government" means a "municipality" as defined in the *Municipal Act, 2001* (Ontario) 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, but excludes municipalities having a population in excess of 250,000.

"Maximum Financial Assistance" has the meaning set out in Section 4.4 and Schedule "B" hereto.

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

"Ontario Maximum Financial Assistance" has the meaning set out in Schedule "B" hereto.

“P-Agreement” means the agreement entered into between the Ministry and the Recipient on July 10, 2007.

“Project” means the Asset Management Program project described in Schedule “B” hereto.

“Recipient” has the meaning given to it on the first page of this Agreement.

“Senior Government” means the Ministry and the Federal Government collectively.

“Substantially Performed” means all costs for the project have been incurred.

“Total Eligible Costs” has the meaning set out in Schedule “B” hereto.

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

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

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

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

1.6 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.

SECTION 2 TERM OF AGREEMENT

2.1 Retroactive effective date of Agreement. This Agreement shall be retroactively effective as of March 30, 2011.

2.2 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.

2.3 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.

SECTION 3 ELIGIBLE COSTS

- 3.1 *Eligible Costs.*** In order for a cost to be eligible for Financial Assistance pursuant to this Agreement (an "Eligible Cost"), the cost must be in accordance with 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 works that are specifically excluded from the description of the Project under this Agreement, the costs associated with that portion of the works are not eligible.
- 3.2 *Discretion of Ministry.*** Subject to Section 3.1, the eligibility of any items not listed in Schedule "C" to this Agreement will be determined in accordance with Ministry policies and guidelines. The final eligibility of items claimed is at the sole discretion of the Ministry. The Recipient should consult with Ministry staff when in doubt over specific items prior to incurring costs.
- 3.3 *Retention of Receipts.*** The Recipient shall retain all evidence (such as invoices, receipts, etc.) of payment related to Eligible Costs and such supporting documentation must be available to the Ministry when requested and maintained by the Recipient for audit purposes for a period of six years after the costs have been reimbursed by the COMRIF Joint Secretariat.
- 3.4 *Ineligible Costs.*** Notwithstanding anything else contained herein, the costs that are not eligible for Financial Assistance pursuant to this Agreement are set out in Schedule "C", Part C.2 (Ineligible Costs).
- 3.5 *Deemed ineligible.*** The Recipient acknowledges that any Eligible Cost that is not submitted in accordance with section 6.1 of this Agreement shall be deemed to be ineligible for Financial Assistance under this Agreement.
- 3.6 *Clarification.*** For clarity, the Recipient hereby expressly acknowledges that the inclusion of an item in the Budget does not necessarily mean that such item is an Eligible Cost. Where there is a conflict between the Budget and this Article, the provisions of this Article shall prevail.

SECTION 4 FINANCIAL ASSISTANCE

- 4.1 *Use of Financial Assistance.*** The Financial Assistance is intended for and shall be used only for Eligible Costs.
- 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 "B".
- 4.3 *Funds advanced.*** If Financial Assistance is provided to the Recipient by the Ministry prior to the Ministry receiving evidence that the associated Eligible Costs have already been paid by the Recipient, then such Financial Assistance, including all interest earned thereon, shall be deemed to remain the property of the Ministry and must be held by the

Recipient in trust for the Ministry in an interest bearing account pending payment of Eligible Costs. Without limitation, any payment of Financial Assistance that is made to the Recipient without the requirement of the Recipient first providing the Ministry with a Final Claim Report, in the format set out in Schedule "F", must meet the requirements of this Section.

- 4.4 Maximum Financial Assistance.** The total amount of Financial Assistance provided to the Recipient shall in any event be no greater than the Maximum Financial Assistance as noted in Schedule "B" hereto.
- 4.5 Excess funds.** Where actual costs are lower or appear likely to be lower than the total eligible expenditures identified in the Budget, or where additional funding is secured from other government sources such that the funds available to the Recipient for the Project (other than the Financial Assistance) exceed the Maximum Financial Assistance, the Recipient shall immediately notify the Ministry. The Ministry may, in its sole discretion, Adjust the Financial Assistance on the Project.
- 4.6 Interdependent Projects.** Where implementation of the Project is dependent on completion of a project by others and the interdependent project is not completed by others in whole or in part, the Ministry may, in its sole discretion, Adjust the Financial Assistance for the Project.
- 4.7 Recipient not carrying out Project.** The Recipient shall immediately notify the Ministry if it does not intend to carry out the 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 for the Project.
- 4.8 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 for the Project.
- 4.9 Alternatives to Project.** If the Recipient becomes aware of any alternatives to the Project that are more cost effective (for example, an area/joint servicing scheme), 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 alternatives to the Project that are more cost effective, the Recipient will be notified and the Ministry may, in its sole discretion, Adjust the Financial Assistance.
- 4.10 Goods and Services Tax and/or the Harmonized Sales Tax.** The Financial Assistance is based on the net amount of goods and services tax or the harmonized sales tax (as the case may be) to be paid by the Recipient pursuant to the *Excise Tax Act* (Canada), net of any applicable rebates.
- 4.11 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 the Project or is in default of compliance with any provisions of this Agreement or any applicable legislation.

- 4.12 **Insufficient funds provided by the Legislature.** If, in the opinion of the Ministry, 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 Ministry may terminate this Agreement in accordance with the terms specified in Section 14.5 of Schedule "A" of this Agreement.

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 completion of a project by others, the Recipient shall be fully responsible for obtaining any assurances that it may require from others in relation to the implementation of the Project by the Recipient.
- 5.2 **Ministry not responsible for implementation.** The Ministry shall not be responsible in any way whatsoever for the undertaking, implementation and completion of the Project or any interdependent project of others.
- 5.3 **Ministry not responsible for costs, etc.** The Ministry shall not be responsible for any claims, proceedings or judgments arising from any tender and bidding process that may be required.
- 5.4 **Behaviour of Recipient.** The Recipient shall 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 Schedule subject to any reasonable changes that the Ministry may agree to or require from time to time in writing.
- 5.5 **Competitive process.** The Recipient shall acquire and manage all equipment, services and supplies required for the Project through a transparent, competitive process that ensures the best value for funds expended. 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 and:
- a) the expertise 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.
- 5.6 **Trade Agreements.** If the Recipient is subject to any provincial or federal trade agreements to which the Government of Ontario is a party, the Recipient shall comply with the applicable requirements of such trade agreements. In particular, and without limitation, if the Recipient is subject to Annex 502.4 of the Agreement on Internal Trade, the Recipient shall comply with all of the applicable requirements of that Annex. In the

event of any conflict between the requirements of Sections 5.5 of this Agreement and the requirements of this Section 5.6, the requirements referenced in this Section 5.6 shall apply.

- 5.7 Final Claim Report.** The Recipient shall submit its Final Claim Report, in the format set out in Schedule "F", with the required documentation for approval, cost reviews, audits and settlement by the Final Claim Report Date of August 31, 2011 or such later date as is specified in writing by the Ministry. Upon completion of the cost reviews, 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, the required documentation for approval, cost reviews and audits on an interim basis.
- 5.8 Commencement of Project.** The Recipient shall begin the Project within six (6) months after the date of this Agreement, failing which this Agreement may be terminated pursuant to Section 14.
- 5.9 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 extent possible;
 - c) conform to all policies and procedures issued by the Senior Government for the COMRIF Program;
 - 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 issued by the Government of Ontario;
 - e) require that the parties thereto comply with all applicable legislation; and
 - f) authorize the Ministry and the Federal Government to gather data, perform audits and monitor the Project as they see fit.

SECTION 6 REPORTING REQUIREMENTS

- 6.1 Final Claim Report.** Within three months of the Project becoming Substantially Performed and no later than the Final Claim Report Date or such later date as is specified in writing by the Ministry, the Recipient shall submit a final report (the "Final Claim Report") for the Project to the Ministry in a form set out in Schedule "F" and the Recipient shall follow such administrative procedures as are specified from time to time by the Ministry. The Final Claim Report shall include:

- a) a certificate by an authorized official such as the chief financial officer of the Recipient certifying that the asset management works approved for funding have been undertaken;
- b) an invoice summary, in the form prescribed by the Ministry;
- c) a final cost summary in the form prescribed by the Ministry;
- d) when requested, all original invoices and receipts for the Project;
- e) details of any variance from the Project, the Budget and/or the Project Schedule;
and
- f) any other information respecting the Project that may be requested by the Ministry, including, but not limited to, audited financial statements.

Upon receipt of the Final Claim Report, the Ministry shall not be obligated to consider any further claims in relation to the Project.

SECTION 7 RECORDS AND AUDIT

- 7.1 *Separate records.*** The Recipient shall maintain separate records and documentation for the Project and keep all records and documentation for six (6) years after the final settlement of accounts referred to in Section 6.1 of Schedule "A" of this Agreement. Upon request, the Recipient shall submit 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 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 invoice summaries 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 the COMRIF Program, 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 the COMRIF Program, or any other provincial program(s). Such material shall be provided to the Ministry and other ministries of the Government of Ontario as may be requested from time to time, all in a form and manner satisfactory to the Ministry and other ministries of the Government of Ontario, as applicable.

- 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” of this Agreement. 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 Ministry and the Federal Government, their respective agents and employees, including the Ontario Provincial Auditor’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) confirm the results of the Project in terms of resolving the infrastructure problems that cause an immediate and serious problem for human health or the environment.
- 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 the COMRIF Program, or any other provincial program(s) (either current or future). In addition, the Ministry may, in its sole discretion, Adjust the Financial Assistance for the Project.

SECTION 8 OVERPAYMENT

- 8.1 Allowable Financial Assistance.** Funds advanced to the Recipient prior to settlement in accordance with Section 6.1 of Schedule “A” of this Agreement shall not be construed as a final determination of the amount of Financial Assistance applicable to the Project. Upon conducting a final cost review or audit of the Project, the Ministry will determine the final amount of Financial Assistance on the Project (the “Allowable Financial Assistance”). The Recipient agrees to repay to the Ministry, upon receipt of a written demand and within the period specified by the Ministry, that portion of the total of the funds advanced that exceeds the Allowable Financial Assistance applicable to the Project, as determined by the Ministry, as well as any funds 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 pursuant to Section 8.1 made on the Project from Financial Assistance payable on any other project(s) of the Recipient under the COMRIF Program or any other provincial program(s) (either current or future). Any overpayment made on any other project(s) of the Recipient under the COMRIF Program 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.

SECTION 9 INSURANCE AND BONDING

- 9.1 Insurance.** The Recipient shall put in effect and maintain in full force and effect or cause to be put into effect and maintained for the period during which this Agreement is in effect, with insurers acceptable to the Ministry:
- a) Comprehensive general liability insurance to an inclusive limit of not less than five million (\$5,000,000.00) dollars per occurrence for property, damage, bodily injury and personal injury including, at least, the following policy endorsements:
 - (i) Her Majesty the Queen in right of Ontario as an additional insured for the purposes of the Project only;
 - (ii) Cross liability;
 - (iii) Contractual liability;
 - (iv) Independent contractors;
 - (v) Products and completed operations;
 - (vi) Employer's liability and voluntary compensation;
 - (vii) 30 day written notice of cancellation;
 - (viii) Tenants legal liability (if applicable); and
 - (ix) Non-owned automobile coverage with blanket contractual and physical damage coverage for hired automobiles; and
 - b) All the necessary insurance that would be considered appropriate for a prudent Recipient of this type undertaking a project similar to the Project, including, where appropriate and without limitation, property, construction and errors and omissions insurance.
- 9.2 Certificates of Insurance.** Prior to any scheduled payment of Financial Assistance pursuant to this Agreement and throughout the term of this Agreement, the Recipient shall provide the Ministry with a valid certificate of insurance that references the Project, confirms the above requirements and identifies major exclusions in the policy.

SECTION 10 INDEMNITY

10.1 *Ministry not liable.* In no event shall the Ministry be liable for:

- a) any bodily injury, death or property damage to the Recipient, its employees, agents, or Consultants or for any claim, demand or action by any third party against the Recipient, its employees, agents, or Consultants, arising out of or in any way related to this Agreement or the Project; nor
- b) any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit to the Recipient, its employees, agents, or Consultants arising out of or in any way related to this Agreement or the Project.

10.2 *Recipient to indemnify.* The Recipient agrees to indemnify and hold harmless Her Majesty the Queen in right of Ontario, Her directors, officers, employees and agents from and against all suits, judgments, claims, demands, expenses, actions, causes of action and losses (including, without limitation, reasonable legal expenses and any claim for lien made pursuant to the *Construction Lien Act* (Ontario)) and for any and all liability for damages to property and injury to persons (including death) which Her Majesty the Queen in right of Ontario, Her directors, officers, employees and agents may incur, otherwise than by reason of their own negligence or wilful misconduct, as a result of or arising out of or in relation to: (a) the performance of this Agreement or any breach of the terms of this Agreement by the Recipient, its officers, servants, employees and agents, or by a third party, and any of its officers, employees, servants or agents; (b) the ongoing operation, maintenance and repair of the infrastructure resulting from the Project; or (c) any omission or other wilful or negligent act of the Recipient, a third party, their respective employees, officers, servants or agents.

10.3 *Further Indemnity.* The Recipient further agrees to indemnify and hold harmless Her Majesty the Queen in right of Ontario, Her directors, officers, employees and agents, for any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit, which Her Majesty the Queen in right of Ontario, Her directors, officers, employees and agents may incur, otherwise than by reason of their own negligence or wilful misconduct, as a result of or arising out of or in relation to: (a) the performance of this Agreement or any breach of the terms of this Agreement by the Recipient, its officers, servants, employees and agents, or by a third party, and any of its officers, employees, servants or agents; (b) the ongoing operation, maintenance and repair of the infrastructure resulting from the Project; or (c) any omission or other wilful or negligent act of the Recipient, a third party, their respective employees, officers, servants or agents.

SECTION 11 CONFLICT OF INTEREST AND CONFIDENTIALITY

11.1 *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 Her Majesty the Queen in right 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.

- 11.2 *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.
- 11.3 *Freedom of Information and Protection of Privacy Act.*** The Recipient acknowledges that the Ministry is bound by the provisions of the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended.

SECTION 12 COMMUNICATION AND RECOGNITION

- 12.1 *Acknowledge the support of the COMRIF Program.*** The Recipients shall acknowledge the support of the program in all reports and materials and in all advertising and publicity relating to the Project, in a format approved by the program.
- 12.2 *COMRIF Program publicize information. The Recipients acknowledge that the COMRIF Program may publicize information regarding the Asset Management Program, including project descriptions, participants and approved funding amounts.***
- 12.3 *Recipients views do not necessarily represent those of the COMRIF Program.*** The Recipients shall ensure the acknowledgement in any report or materials indicates that the views expressed in the report or materials are the views of the Recipients and do not necessarily reflect those of the COMRIF Program.

SECTION 13 COVENANTS, REPRESENTATIONS AND WARRANTIES

- 13.1 *Covenants, representations and warranties.*** 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 has authority and any necessary approval to enter into this Agreement and to carry out its terms;
 - c) 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* (Ontario), the *Building Code Act, 1992* (Ontario), the *Highway Traffic Act* (Ontario), the *Public Transportation and Highway Improvement Act* (Ontario), the *Bridges Act* (Ontario) and the Environmental Laws;

- d) it validly exists as a legal entity with full power to perform and observe all of the terms and conditions of this Agreement;
- e) where applicable, it has passed by-laws required to undertake the Project;
- f) it is now and will continue to be compliant with all Environmental Laws
- g) provided that the Recipient is not a municipality or a Crown Agency,
 - A. it is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada);
 - B. is either a corporation, a partnership or a sole proprietorship validly in existence; and
 - C. is registered and qualified to do business wherever necessary to carry out the Project;
- h) it has the experience, financial health and ability to carry out this Project;
- i) if the Recipient is a Local Government or a Crown Agency, it has the requisite legislative authority to carry out the Project;
- j) other than the Financial Assistance being provided pursuant to this Agreement, the Recipient has not and will not use any funds received from Her Majesty the Queen in Right of Ontario or a Crown Agency towards any aspect of the Project.
- k) all information provided during the AMP Initiative Expression of Interest submission process remains true, correct and complete in every respect except as set out to the contrary herein. Without limitation, the AMP Project Overview (Schedule "B") are as set out herein.

13.2 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 for the Project.

SECTION 14
DEFAULT, ENFORCEMENT AND TERMINATION

14.1 *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 pursuant hereto shall be materially untrue in any respect;
- c) if an order shall be made or an effective resolution passed for the winding up, or liquidation or dissolution of the Recipient or the Recipient is otherwise dissolved or ceases to carry on its operation;
- d) if the Recipient uses any of the Financial Assistance for a purpose not authorized by this Agreement without the prior written consent of 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, 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;
- 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 11 (Conflict of Interest and Confidentiality).

14.2 *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 there from, 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.

14.3 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 and 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 Government of Ontario on accounts receivable; and
- c) the Ministry may avail itself of any of its legal remedies that it may deem appropriate.

14.4 Additional remedies. In addition to the remedies described in Section 14.3, 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.

14.5 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 seven (7) 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 prior to its expiration, shall only be responsible for the payment of Financial Assistance on the portion of the Project completed

SECTION 15 NOTICE

15.1 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 "E" attached hereto or to such other person, address, facsimile number, telecopy number or email address as either party may from time to time notify the other in accordance with this Section. Any demand, notice or communication made or given by personal delivery shall be conclusively deemed to

have been given on the day of actual delivery thereof. Any demand, notice or communication made or given by facsimile, email or other electronic means of communication, if made or given at a time when it would be received by the recipient during its normal business hours on a Business Day, shall be deemed to be received at the time it is sent; otherwise, such electronic communication shall be deemed to be received on the first Business Day following the transmittal thereof. Any demand, notice or communication mailed by registered mail shall be deemed to have been received on the third Business Day following the day on which it was mailed.

- 15.2** *Representatives.* The individuals identified pursuant to Section 15.1 above 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 16 CONTRIBUTION ONLY

- 16.1** *Contribution.* This Agreement is a contract for a contribution only and nothing in it or done pursuant to it, is to be construed as constituting the Recipients as the Ministry's agent, employee, partner or joint venturer; and the Project shall be the sole property of the Recipients or the Beneficiaries as the case may be. This provision in favour of the Ministry shall be included in agreements between the Grantees and Beneficiaries.
- 16.2** *Intellectual Property Ownership.* All intellectual property in any material developed under this Agreement shall not belong to the Ministry.

SECTION 17 MISCELLANEOUS

- 17.1** *Terms binding.* The Recipient shall take all reasonable measures to ensure that its officers, directors, partners, employees, agents and the Consultant 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 Ministry than the terms and conditions of this Agreement to the extent that they are applicable to the work subcontracted, including but not limited to the requirements of Section 7.4 of Schedule "A" of this Agreement.
- 17.2** *Time 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 enure 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.** The following schedules, sections and provisions of this Agreement shall survive the expiration or early termination hereof: Section 4 (Financial Assistance), Section 6 (Reporting Requirements), Section 7 (Records and Audit), Section 8 (Overpayment), Section 10 (Indemnity), Section 11 (Conflict of Interest and Confidentiality), Section 12 (Communication and Recognition), Section 13 (Covenants, Representations and Warranties), Section 14 (Default, Enforcement and Termination) and Section 16.11 (Interest) of Schedule "A";
- 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 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.
- 17.12 Ministry and Recipient independent.** Nothing in this Agreement shall be deemed to constitute the Recipient an employee, servant, agent, partner or in joint venture with the Ministry for any purpose whatsoever.
- 17.13 Recipient cannot represent the Senior Government.** 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 Ministry and/or the Federal Government. 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 Ministry and/or the Federal Government, to act as an

agent of the Ministry and/or the Federal Government, or to bind the Ministry and/or the Federal Government 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 *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.
- 17.16 *Data.*** The Recipient agrees that the Ministry may, in its sole discretion, gather and compile data required under this Agreement and disclose such data to the Federal Government.
- 17.17 *Priority.*** Where there is a conflict between one or more of the schedules of this Agreement, the following order of priority shall apply: Schedule "A", Schedule "C", Schedule "B" and all other schedules.
- 17.18 *Joint authorship of Agreement.*** The Parties shall be considered joint authors of this Agreement and no provisions shall be interpreted against one Party by the other Party because of authorship.

- END OF GENERAL TERMS AND CONDITIONS -

SCHEDULE "B"
AMP PROJECT OVERVIEW

This schedule referentially incorporates the Schedule "B" (AMP Project Overview) from the P-Agreement as it read immediately before this agreement comes into effect.

SCHEDULE "E"
ADDITIONAL PROVISIONS

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

1. Further to Section 15 of Schedule "A" hereto, notice can be given at the following addresses:

(a) If to the Ministry:

Ministry of Agriculture, Food and Rural Affairs
1 Stone Road West, 4th Floor
Guelph, Ontario
N1G 4Y2

Phone: 1-866-306-7827
Fax: (519) 826-4336
E-Mail: comrifclaims@ontario.ca

(b) If to the Recipient:

Township of Prince
3042 Second Line W., R.R.6,
Sault Ste. Marie, ON P6A 6K4

Phone: (705) 779-2992
Fax: (705) 779-2725
E-Mail: bcoughlin@twp.prince.on.ca

SCHEDULE "F" FINAL CLAIM REPORT



Asset Management Program (AMP) Final Claim Report Demande de remboursement - Programme de gestion des biens d'infrastructure (PGBI)

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

Municipality / Municipalité	Project Claim # / No de la demande de remboursement pour le projet	Project Representative / Représentant(e) du projet	Authorized Official / Officier(a) autorisé(e)	Name / Nom	Date / Date
Period Covered by this Claim / Période visée par la demande	Telephone # / No de téléphone	FAX # / No de télécopieur	<small>I certify the costs are eligible costs and in compliance with the provincial legal agreement and the supporting invoices and receipts are available for audit. / J'atteste que les dépenses déclarées sont des dépenses admissibles et conformes à l'entente de financement et documents d'appui sont disponibles à une fin de vérification.</small> Signature / Signature		
From / De	To / à				
Project # / No de projet	Project Name / Nom du projet	Project Start Date / Date du début du projet			
		Project Completion Date / Date de la fin du projet			

Part 2 - New Invoices / Partie 2 - Nouvelles factures

Invoice # / No de facture	Date / Date	Period of Invoice / Période visée par la facture		Vendor Name / Nom du fournisseur	Work Description / Description des travaux A / B / C / D / E / F per below / comme en bas	Invoice Amount / Montant de la facture	GST Balance / Remboursement de la TPB	Net Claim amount / Montant net demandé	Paid / Payé (Tenure) / (Cumul)	Cheque # / No du chèque
		From / De	To / à							
						TOTAL / TOTAL	\$	\$		

Part 3 - Final Report Information / Partie 3 - Information du rapport final

A. Diagnostic / Le diagnostic \$

B. Inspection / L'inspection \$

C. Valuation / L'évaluation \$

D. Sustainability Planning / La viabilité - la planification \$

E. Financial Model / Le modèle financier \$

F. Miscellaneous / Divers \$

NET PROJECT TOTAL / PROJET NET TOTAL \$

Part 4 - Project Variance (i.e., budget, scope, timelines) / Partie 4 - Différence du projet (le budget, la limite, les horaires)

Part 5 - Project Verification / Partie 5 Vérification du projet

Project Benefits Achieved / Bénéfices du projet accomplis

