

THE CORPORATION OF THE CITY OF BROCKVILLE
By-Law Number 020-2015

A by-law to authorize the Corporation of the City of Brockville to enter into an agreement with Her Majesty the Queen in Right of Ontario as represented by the Minister of Agriculture, Food and Rural Affairs for funding under the Rural Economic Development Program for the Build Aquatarium Project

WHEREAS the Council for the Corporation of the City of Brockville at a meeting held on March 10, 2015 agreed to enter into an agreement with the Her Majesty the Queen in Right of Ontario as represented by the Minister of Agriculture, Food and Rural Affairs for funding under the Rural Economic Development Program for the Build Aquatarium Project.

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE CITY OF BROCKVILLE ENACTS AS FOLLOWS:

1. That the Mayor and City Clerk are hereby authorized to execute the Rural Economic Development Agreement for the Build Aquatarium Project, as attached hereto and forming part of this by-law.

Given under the Seal of the
Corporation of the City of Brockville
and passed this 10th day of March, 2015


Mayor


City Clerk



THE AGREEMENT effective as of November 6, 2014

BETWEEN:

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

("OMAFRA")

- and -

THE CORPORATION OF THE CITY OF BROCKVILLE

(the "Recipient")

Background:

OMAFRA funds projects similar to the Project described in Schedule "A" under the Rural Economic Development Program.

The Recipient has applied to OMAFRA for funds under the Rural Economic Development Program to assist the Recipient in carrying out the Project and OMAFRA wishes to provide such funds.

Consideration:

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

ARTICLE 1. DEFINITIONS

1.1. Interpretation. For the purposes of interpretation:

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

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

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

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

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

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

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

"Eligible Costs" means the costs described under Part B.1 of Schedule "B" of this Agreement that are directly attributable to the Project and are incurred and paid by the Recipient between the Effective Date and the Project Completion Date and, more specifically, according to Part B.2 of Schedule B of this Agreement.

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

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

"Funding Year" means:

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

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

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

"Maximum Funds" means **\$47,500.00**

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

"Parties" means OMAFRA and the Recipient.

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

"Project Completion Date" means the date set out for completion of the project in Schedule "A".

"Reports" means the reports described in Schedules "D", "E" and "F".

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

ARTICLE 2. REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1. General. The Recipient represents, warrants and covenants that:

- a) it is, and shall continue to be for the term of the Agreement, a validly existing legal entity with full power to fulfill its obligations under the Agreement;
- b) it has, and shall continue to have for the term of the Agreement, the experience and expertise necessary to carry out the Project; and
- c) any information the Recipient provided to OMAFRA in support of its request for Funds (including information relating to any eligibility requirements) was true and complete at the time the Recipient provided it, and shall continue to be true and complete for the term of the Agreement in every respect.

2.2. Execution of Agreement. The Recipient represents and warrants that:

- a) it has the full power and authority to enter into the Agreement; and
- b) it has taken all necessary actions to authorize the execution of the Agreement.

2.3. Governance. The Recipient represents, warrants and covenants that it has, and shall maintain, in writing, for the period during which the Agreement is in effect:

- a) a code of conduct and ethical responsibilities for all persons at all levels of the Recipient's organization;
- b) procedures to ensure the ongoing effective functioning of the Recipient;
- c) decision-making mechanisms;
- d) procedures to provide for the prudent and effective management of the Funds;
- e) procedures to enable the successful completion of the Project;
- f) procedures to enable the timely identification of risks to the completion of the Project and strategies to address the identified risks;
- g) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7; and
- h) procedures to deal with such other matters as the Recipient considers necessary to ensure that the Recipient carries out its obligations under the Agreement.

2.4. **Supporting Documentation.** Upon request, the Recipient shall provide OMAFRA with proof of the matters referred to in Article 2.

ARTICLE 3. TERM OF THE AGREEMENT

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

ARTICLE 4. FUNDS AND CARRYING OUT THE PROJECT

4.1. **Funds Provided.** Subject to the Recipient's strict compliance with the terms and conditions of this Agreement, OMAFRA shall:

- a) provide funds for fifty percent (**50%**) of the Eligible Costs that the Recipient incurred, paid and claimed in the required form subject to the respective deadlines and Funding Year limits set out in Schedule "C" to this Agreement. *Note: The percentage noted above in Article 4.1 a) is rounded to a whole number. For payment purposes the percentage is calculated to 10 decimal places and is based on the Eligible Costs that the Recipient incurred.*
- b) provide Funding up to the Maximum Funds to the Recipient;
- c) provide Funding as long as the total amount of the Funds and federal assistance for the Eligible Costs actually incurred and paid by the Recipient does not exceed seventy-five percent (75%), or in the case of special circumstances, ninety percent (90%) of those costs; and
- d) deposit the Funds into an account designated by the Recipient provided that the account:
 - i) is at a Canadian financial institution in Canada; and
 - ii) is in the name of the Recipient.

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

- a) may not provide any Funds to the Recipient until the Recipient provides the insurance certificate or other documents provided for in section 11.2;
- b) is not obligated to provide any Funds until it is satisfied with the progress of the Project and has received the progress report as described in Schedule "E" and the claim statement as described in Schedule "D";

c) may withhold any amount allocated to a particular Funding Year as set out in Schedule "C" if the Recipient fails to meet the corresponding Funding Year claim deadline and, if a payment is withheld pursuant to this provision,

i) shall have no further obligation to make this particular Funding Year payment to the Recipient thereafter;

ii) may reduce the amount of the Maximum Funds.

d) shall hold back 10% of the Funds until OMAFRA has received a completed Final Project Report in accordance with Schedule "F" that is satisfactory to OMAFRA in its sole and absolute discretion;

e) if, pursuant to the provisions of the *Financial Administration Act* (Ontario) as amended, OMAFRA does not receive the necessary appropriation from the Ontario Legislature for any payment Ontario may be obligated to make under the Agreement, OMAFRA is not obligated to make the payment and OMAFRA may, pursuant to section 13.1, terminate the Agreement or may reduce the amount of the Maximum Funds and may, in consultation with the Recipient, change the Project; and

f) is not obligated to pay interest on the hold back as described in d) or any other payments under this Agreement.

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

a) carry out the Project;

i) on or before the Project Completion Date according to the summary, activities and Timelines of the Project as set out in Schedules "A" and "B" of this Agreement; and the Budget and Payment Schedule as set out in Schedules "B" and "C" of this Agreement;

ii) in strict compliance with the terms of the Agreement; and

iii) in compliance with all federal and provincial laws or regulations, all municipal by-laws, and any other orders, rules or by-laws related to any aspect of the Project.

4.4. No Changes. The Recipient shall:

a) not make any changes to the Project, the Timelines and/or the Budget without the prior written consent of OMAFRA; and

b) abide by the terms and conditions OMAFRA may require pursuant to any consent.

4.5. Maximum Funds. The Recipient acknowledges that, notwithstanding any other provision herein, the Funds available to it pursuant to the Agreement shall never exceed the Maximum Funds.

4.6. Rebates, Credits and Refunds. The Recipient shall not use the Funds for any costs including taxes for which it has received, will receive, or is eligible to receive a rebate, credit or refund.

ARTICLE 5. ACQUISITION OF GOODS AND SERVICES

5.1. Acquisition. Subject to section 31 if the Recipient acquires supplies, equipment or services with the Funds, it shall do so through a process that promotes the best value for the money.

ARTICLE 6. CONFLICT OF INTEREST

6.1. No Conflict of Interest. The Recipient shall carry out the Project and use the Funds without an actual, potential or perceived conflict of interest.

- 6.2. **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where:
- a) the Recipient; or
 - b) any person who has the capacity to influence the Recipient's decisions; has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project and the use of the Funds.
- 6.3. **Disclosure to OMAFRA.** The Recipient shall:
- a) disclose to OMAFRA without delay any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest; and
 - b) comply with any terms and conditions that OMAFRA may prescribe as a result of the disclosure.

ARTICLE 7. REPORTING, ACCOUNTING AND REVIEW

- 7.1. **Preparation and Submission.** The Recipient shall:
- a) submit to OMAFRA at the address provided in Section 17.1, all Reports in accordance with the timelines and content requirements set out in Schedules "C", "D", "E" and "F" or in a form as may be specified by OMAFRA from time to time;
 - b) more particularly, if the project is longer than six months, submit progress reports on June 1st and December 1st of each Funding Year between the Effective Date and the Project Completion Date of this Agreement;
 - c) more particularly, submit the Final Project Report within sixty (60) Business Days of the Project Completion Date.
 - d) submit to OMAFRA at the address provided in Section 17.1, any other reports as may be requested by OMAFRA in accordance with timeline and content requirements specified by OMAFRA;
 - e) ensure that all Reports and other reports are completed to the full satisfaction of OMAFRA; and
 - f) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signing officer.
- 7.2. **Record Maintenance.** The Recipient shall keep and maintain:
- a) all financial records (including invoices) relating to the Funds or otherwise to the Project in a manner consistent with generally accepted accounting principles; and
 - b) all non-financial documents and records relating to the Funds or otherwise to the Project.
- 7.3. **Inspection.** OMAFRA, its authorized representatives or an independent auditor identified by OMAFRA may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, enter upon the Recipient's premises to review the progress of the Project and the Recipient's expenditure of the Funds, and for these purposes OMAFRA, its authorized representatives or an independent auditor identified by OMAFRA, may:
- a) inspect and copy the records and documents referred to in section 7.2; and
 - b) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds and/or Project.

- 7.4. **Disclosure.** To assist in respect of the rights set out in Section 7.3, the Recipient shall disclose any information reasonably requested by OMAFRA, its authorized representatives or an independent auditor identified by OMAFRA, and shall do so in a form reasonably requested by OMAFRA, its authorized representatives or an independent auditor identified by OMAFRA, as the case may be.
- 7.5. **No Control over Unrelated Information.** No provision of the Agreement shall be construed so as to give OMAFRA any control whatsoever over the Recipient's documentation or information that is not related to the Project or to the expenditure of Funds.
- 7.6. **Auditor General.** For greater certainty, OMAFRA's rights under this Article are in addition to any rights provided to the Auditor General pursuant to section 9(1) of the *Auditor General Act* (Ontario).

ARTICLE 8. CREDIT

- 8.1. **Acknowledge Support.** Unless otherwise directed by OMAFRA, the Recipient shall, in a form approved by OMAFRA, acknowledge the support of OMAFRA in any publication of any kind, written or oral, relating to the Project.
- 8.2. **Publication.** If the Recipient publishes any material of any kind, written or oral, relating to the Project, the Recipient shall indicate in the material that the views expressed are the views of the Recipient and do not necessarily reflect those of OMAFRA.
- 8.3. **Ontario Publicizing Information About the Recipient's Project.** The Recipient acknowledges that OMAFRA may publicize information regarding the Recipient's Project, including the amount of Funding received by the Recipient and the nature of the Project.

ARTICLE 9. FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

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

ARTICLE 10. INDEMNITY

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

ARTICLE 11. INSURANCE

- 11.1. **Recipient's Insurance.** the Recipient represents and warrants that it has, and shall maintain for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to the Project would maintain, including:
- a) commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than two million dollars (\$2,000,000.00) per occurrence. The policy shall include the following:
 - i) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;

- ii) a cross-liability clause;
- iii) contractual liability coverage; and
- iv) thirty (30) days written notice of cancellation, termination or material change.

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

ARTICLE 12. TERMINATION ON NOTICE

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

12.2. Consequences of Termination. If OMAFRA terminates the Agreement pursuant to section 12.1, OMAFRA may:

- a) cancel all further payment of Funds;
- b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and
- c) determine the Wind Down Costs, and:
 - i) permit the Recipient to offset the Wind Down Costs against the amount the Recipient owes pursuant to subsection 12.2(b); and/or
 - ii) subject to section 4.5, provide Funds to the Recipient to cover the Wind Down Costs.

ARTICLE 13. TERMINATION WHERE NO APPROPRIATION

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

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

- a) cancel all further payment of Funds;
- b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient.

13.3. No Additional Funds. For purposes of clarity, OMAFRA shall not provide Funds to the Recipient to cover the Wind Down Costs where there is a termination due to lack of appropriation.

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

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

- a) in the opinion of OMAFRA the Recipient has knowingly provided false or misleading information regarding its request for Funds or in any other communication with OMAFRA;
- b) in the opinion of OMAFRA the Recipient breaches any representation, warranty, covenant or material requirement of the Agreement, including failing to do any of the following in accordance with the terms of the Agreement:
 - i) carry out the Project;

- ii) use the Funds; and/or
 - iii) provide Reports or such reports as may have been requested;
- c) the nature of the Recipient's operations, its corporate status or its organizational structure changes so that it no longer meets one or more of the applicable eligibility requirements of the program under which OMAFRA provides the Funds;
- d) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver;
- e) the Recipient ceases to operate; and
- f) an event of Force Majeure continues for a period of sixty (60) days or more.
- 14.2. Corrective Action.** If an Event of Default occurs OMAFRA may, at any time, take one or more of the following actions:
- a) initiate any action OMAFRA considers necessary in order to facilitate the successful continuation or completion of the Project;
 - b) suspend the payment of Funds for such period as OMAFRA determines appropriate;
 - c) reduce the amount of the Funds;
 - d) cancel all further payment of Funds;
 - e) demand the repayment of an amount equal to any Funds the Recipient used for purposes not agreed upon by OMAFRA;
 - f) demand the repayment of an amount equal to any Funds OMAFRA provided to the Recipient; and/or
 - g) terminate the Agreement at any time, including immediately, upon giving Notice to the Recipient.
- 14.3. Opportunity to Remedy.** In addition to its rights provided for in section 14.2, OMAFRA may provide the Recipient an opportunity to remedy the Event of Default by providing Notice to the Recipient:
- a) of the particulars of the Event of Default; and
 - b) of the period of time within which the Recipient is required to remedy the Event of Default.
- 14.4. Recipient not Remediating.** If OMAFRA has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 14.3 and:
- a) the Recipient does not remedy the Event of Default within the time period specified in the Notice;
 - b) it becomes apparent to OMAFRA that the Recipient cannot completely remedy the Event of Default within the time specified in the Notice or such further period of time as OMAFRA considers reasonable; or
 - c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to OMAFRA.
- OMAFRA may initiate any one or more of the actions provided for in subsections 14.2 (a), (b), (c), (d), (e), (f) and (g).
- 14.5. Effective Date of Termination.** Termination under this Article shall take effect as set out in the Notice in section 12.1.

ARTICLE 15. FUNDS AT THE END OF A FUNDING YEAR

15.1. **Funds at the End of a Funding Year.** Without limiting any of OMAFRA's rights under Article 14, if the Recipient has not:

- a) met a claim deadline set out in Schedule "C";
- b) satisfied OMAFRA in its sole and absolute discretion, that all of the Funds allocated to the corresponding Funding Year, as set out in Schedule "C" of this Agreement, were spent by the Recipient that same Funding Year to carry out the Project in accordance with the terms and conditions of the Agreement

OMAFRA may reduce the Funds allocated to that Funding Year and the Maximum Funds accordingly.

ARTICLE 16. REPAYMENT

- 16.1. **Debt Due.** If OMAFRA demands the payment of any monies, including any Funds from the Recipient or if the Recipient owes any monies, including any Funds, to OMAFRA, whether or not their repayment has been demanded by OMAFRA, such monies shall be deemed to be a debt due and owing to OMAFRA by the Recipient, and the Recipient shall pay or return the amount to OMAFRA immediately unless OMAFRA directs otherwise.
- 16.2. **Interest Rate.** OMAFRA may charge the Recipient interest on any monies owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.
- 16.3. **Cheque Payable To.** The Recipient shall pay any monies owing to OMAFRA by cheque payable to the "Ontario Minister of Finance" and mailed to OMAFRA at the address provided in section 17.1.

ARTICLE 17. NOTICE

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

To OMAFRA:	To the Recipient:
Ministry of Agriculture, Food and Rural Affairs 4th Floor, 1 Stone Road West Guelph, Ontario N1G 4Y2 Attention: Brent Kennedy, Director Rural Programs Branch Fax: (519) 826-3398 Email: RED@ontario.ca	The Corporation of the City of Brockville 1 King Street, P.O. Box 5000 Brockville, Ontario K6V 7A5 Attention: David Paul Director of Economic Development Fax: (613) 342-8780 Email: dpaul@brockville.com

17.2. **Notice Given.** Notice shall be deemed to have been received:

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

17.3. **Postal Disruption.** Despite subsection 17.2(a), in the event of a postal disruption:

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

ARTICLE 18. SEVERABILITY OF PROVISIONS

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

ARTICLE 19. WAIVER

- 19.1. **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 17. Any waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply.

ARTICLE 20. INDEPENDENT PARTIES

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

ARTICLE 21. ASSIGNMENT OF AGREEMENT OR FUNDS

- 21.1. **No Assignment.** The Recipient shall not assign any part of the Agreement or any Funds without the prior written consent of OMAFRA which OMAFRA may, in its sole discretion, provide or withhold.
- 21.2. **Agreement to Extend.** The rights and obligations contained in the Agreement shall extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

ARTICLE 22. GOVERNING LAW

- 22.1. **Agreement Governed By.** The Agreement and the rights, obligations and relations of the Parties shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement shall be conducted in Ontario.

ARTICLE 23. FURTHER ASSURANCES

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

ARTICLE 24. CIRCUMSTANCES BEYOND THE CONTROL OF EITHER PARTY

- 24.1. **Force Majeure Means.** For the purposes of the Agreement, "Force Majeure" means an event that is:
- a) beyond the reasonable control of a Party; and
 - b) makes a Party's performance of its obligations under the Agreement impossible or so impracticable as reasonably to be considered impossible in the circumstances.
- 24.2. **Force Majeure Includes.** Force Majeure includes:
- a) infectious diseases, war, riots and civil disorder;
 - b) storm, flood, earthquake or other severely adverse weather conditions;
 - c) confiscation or other similar action by government agencies;
 - d) lawful act by a public authority; and

e) strikes, lockouts and other labour actions,

24.3. Force Majeure Shall Not Include. Force Majeure shall not include:

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

24.4. Failure to Fulfil Obligations. Subject to section 14.1(f), the failure of either Party to fulfil any of its obligations under the Agreement shall not be considered to be a breach of, or Event of Default under, the Agreement to the extent that such failure to fulfill the obligation arose from an event of Force Majeure, if the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of the Agreement.

ARTICLE 25. SURVIVAL

25.1. Survival. The provisions in Article 1, sections 4.6, 7.1 (to the extent that the Recipient has not provided the Reports), 7.2, 7.3, 7.4, 7.5, 7.6, Articles 8 and 10, sections 12.2, 13.2, 13.3, 14.1, 14.2 (c), (d), (e), (f) and (g), 14.4, Articles 16, 17, 18, 22, 26, 27 and 29, 30 and all applicable definitions, cross-referenced provisions and Schedules shall continue in full force and effect for a period of seven (7) years from the date of expiry or termination of the Agreement.

ARTICLE 26. SCHEDULES

26.1. Schedules. The Agreement includes the following schedules:

- a) Schedule A - Project
- b) Schedule B - Budget, Schedule and Eligible Costs
- c) Schedule C - Claim Deadlines and Claim Limits for Funding Years
- d) Schedule D - Claim Statement
- e) Schedule E - Progress Report
- f) Schedule F - Final Project Report

ARTICLE 27. ENTIRE AGREEMENT

27.1. Entire Agreement. The Agreement constitutes the entire Agreement between the Parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements.

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

ARTICLE 28. COUNTERPARTS

28.1. Counterparts. The Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ARTICLE 29. JOINT AND SEVERAL LIABILITY

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

ARTICLE 30. RIGHTS AND REMEDIES CUMULATIVE

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

ARTICLE 31. BPSAA

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

ARTICLE 32. FAILURE TO COMPLY WITH OTHER AGREEMENTS

32.1. Other Agreements. If the Recipient:

- a) has failed to comply (a 'Failure') with any term, condition or obligation under any other agreement with Her Majesty the Queen in Right of Ontario or a Crown agency;
- b) has been provided with notice of such Failure in accordance with the requirements of such other agreement; and
- c) has, if applicable, failed to rectify such Failure in accordance with the requirements of such other agreement

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

ARTICLE 33. CONSENT

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

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

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

Name: George Borovilos

Title: Assistant Deputy Minister (A)

Date: March 31/2015

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

THE CORPORATION OF THE CITY OF BROCKVILLE

Name: David Henderson

Title: Mayor

Date:

Name: Sandra MacDonald

Title: Clerk

Date:

I/We have authority to bind the Recipient.

SCHEDULE "A"
PROJECT

Recipient Name: The Corporation of the City of Brockville

Project Title: Build Aquatarium

Project Completion Date: June 30, 2015

Project Summary: The City of Brockville will complete the first year of planning and marketing the Aquatarium.

Project Category: Promotion and/or marketing and/or outreach

Project Type(s): Implement - Regional Marketing

SCHEDULE "B"
BUDGET, SCHEDULE AND ELIGIBLE COSTS

B.1 BUDGET AND SCHEDULE

Eligible Costs by Eligible Activity		
#	Eligible Activity	Eligible Costs (\$)
1.	Advertising (Creative & Placement)	\$37,200.00
2.	Special Promotions	\$21,000.00
3.	Web-Based Marketing	\$29,000.00
4.	Signage	\$7,000.00
5.	Tradeshows	\$800.00
Total Eligible Costs		\$95,000.00

Eligible Costs by Funding Year					
Funding Year	Quarter 1 (Apr - Jun)	Quarter 2 (Jul - Sep)	Quarter 3 (Oct - Dec)	Quarter 4 (Jan -Mar)	Funding Year Total
2014-15	\$0.00	\$0.00	\$0.00	\$54,450.00	\$54,450.00
2015-16	\$40,550.00	\$0.00	\$0.00	\$0.00	\$40,550.00
Total Eligible Costs					\$95,000.00

B.2 ELIGIBLE COSTS

Subject to Section B.3 below, "**Eligible Costs**" under this Agreement, and more particularly Section B.1 of this Schedule "B", are all direct costs which are in OMAFRA's sole and absolute opinion properly and reasonably incurred in Ontario, and paid by the Recipient under a contract for goods or services necessary for the implementation of the Project. Eligible Costs will include only the following:

Actual cash outlays that are documented through invoices, receipts or other Recipient records acceptable to Ontario;

- Project Management, such as:
 - Consultant fees;
 - Business planning development; and
 - Professional fees such as legal, architectural, accounting, etc. that are specifically related to the project.
- Minor Capital, including:
 - Sub-contractor fees;
 - Equipment (e.g. for prototype development), structural modifications to accommodate the installation of equipment;
 - Architectural design work, engineering work (studies, environmental assessments, etc.);
 - Renovations and retrofits to existing structures (materials or supplies and labour to renovate existing space);
 - Technology upgrades such as computer hardware, software, and network cables.
- Training costs.
- Marketing or promotions costs.
- Travel costs associated with Project development and implementation, subject to Provincial directives.
- Studies and research.
- Administrative costs directly related to Project implementation.
- Wages for new hires to work 100 per cent on Project related activities.

B.3 INELIGIBLE COSTS

The following costs are "**Ineligible Costs**" under this Agreement:

Ineligible Costs include but are not limited to the following costs, which are not eligible in any instance:

- Hospitality costs (unless public-facing)
- Major capital including:
 - Land, buildings and major infrastructure;
 - Additions to buildings, teardowns or rebuilds;
 - Leasing; and
 - Powerlines, plumbing, telecommunications lines or equipment, water lines, etc. outside of the buildings.
- Direct wage subsidies for existing staff.

- In-Kind contributions. An in-kind contribution is identified as goods and services that are contributed to a project by the applicant and co-applicants that would otherwise have to be purchased or contracted in order to complete the Project.
- Debt restructuring, fundraising or financing.
- Normal or on-going business and production operations not directly related to the Project.
- Costs of trucks or other vehicles.
- Cost for which the Recipient is eligible to receive a refund or rebate (including harmonized sales tax).
- Costs incurred in preparing an application.
- Costs of alcohol, international travel, per diems or gifts.

B.4 PROJECT FINANCING OF ELIGIBLE COSTS

Source	Amount
City of Brockville	\$47,500.00
RED Funding	\$47,500.00
Total Eligible Costs	\$95,000.00

SCHEDULE "C"
CLAIM DEADLINES & CLAIM LIMITS FOR FUNDING YEARS

C.1 PAYMENT SCHEDULE

Funding Year	Deadlines to Claim Funds Allocated to the Funding Year	Total Eligible Costs Year Limits An amount up to: \$95,000.00	RED Funding Year Amounts An amount up to: \$47,500.00
2014-15 (April 1, 2014 to March 31, 2015)	• No later than May 31, 2015 for all Eligible Costs incurred between April 1, 2014 and March 31, 2015 *	\$54,450.00	\$27,225.00
2015-16 (April 1, 2015 to March 31, 2016)	• No later than May 31, 2016 for all Eligible Costs incurred between April 1, 2015 and March 31, 2016 *	\$40,550.00	\$20,275.00
Total		\$95,000.00	\$47,500.00

*Or sixty (60) Business Days after Project Completion Date as specified in Schedule "A", whichever comes first.



Claim Statement
Ontario Ministry of Agriculture, Food and Rural Affairs

Part 1 – Project Information		
File No.	Project Title:	Date:
Part 2 – Authorized Official		
Recipient's Name:	Title:	Telephone:
<p>The Recipient warrants that:</p> <ol style="list-style-type: none"> 1. The information provided herein and in any document attached is accurate and complete; 2. It is in compliance with all of the terms and conditions of the Agreement; 3. The Project as described in the Agreement will be completed by the Project Completion Date as set out in Schedule "A" to the Agreement; 4. The total amount of provincial, federal and municipal assistance claimed for the Eligible Costs for the Project do not exceed one hundred percent (100%) of the costs actually incurred and paid by the Recipient; and 5. There have been no overpayments by OMAFRA or any other organization or government. 		
<p>The undersigned solemnly warrants these statements are true as of the date written below.</p>		
Signature:	Date:	

Part 3 – Claim Information				
Claim #	Period Covered by this Claim (MM/DD/YYYY)		Final Claim	
	From	To	<input type="checkbox"/>	Yes No
			<input type="checkbox"/>	

Part 4 – Project Update	
Expected completion date of project (MM/DD/YYYY)	Are there any issues which may impact the project's success and timing of completion? If yes, please describe and include the actions you are taking to resolve the issues.

Part 5 – New Invoices – Paid Eligible Costs											
Invoices #	Dates of Invoice(s) (MM/DD/YYYY)	Vendor Name	Period of Invoice (MM/DD/YYYY)		Budget Item (Schedule "B" of the Agreement)	Work Description	Invoice Amount	Tax	Net Claim Amount (less tax)	Paid (Yes/ No)	Method of Payment (e.g. cheque #, VISA)
			From	To							
							\$	\$	\$		
							\$	\$	\$		
							\$	\$	\$		
							\$	\$	\$		
							\$	\$	\$		
							\$	\$	\$		
							\$	\$	\$		
							\$	\$	\$		
							\$	\$	\$		
TOTAL							\$	\$	\$		

Rural Programs Branch, 4th Floor,
1 Stone Rd W., Guelph, ON N1G 4Y2
Email: RED@ontario.ca
Fax: 519-826-3398

File No. _____

Project Title _____

Progress Reports are to be completed and submitted to OMAFRA by **June 1st and December 1st for the Term of the Agreement.**
Please contact your Project Analyst should you have any questions filling in this report.

Please describe the project activities that have been completed or are in progress for this reporting period.

Description of Activities	Start Date	End Date	Approved Eligible Expenditures per Activity	Amount Claimed to Date per Activity	Activity Status (On, Ahead, or Behind Schedule)	Issues to Date and Actions Taken to Resolve Issues	Confirm Expected Completion Date of Activity
			\$	\$			
			\$	\$			
			\$	\$			
			\$	\$			
			\$	\$			
			\$	\$			
			\$	\$			
			\$	\$			

Project Outcomes and Performance Measures	Results to Date

I UNDERSTAND THAT THIS INFORMATION WILL, SUBJECT TO THE TERMS AND CONDITIONS OF THE AGREEMENT, BE RELIED UPON BY THE GOVERNMENT OF ONTARIO TO ISSUE FUNDS.

NAME OF AUTHORIZED OFFICIAL (PRINT): _____

SIGNATURE: _____

SCHEDULE "F"
FINAL REPORT

Final Report

File No.

RED2-6239

Project Title

Build Aquatarium

Date

Project Recipient

The Corporation of the City of Brockville

Final Reports are to be completed and submitted to OMAFRA **within 60 days of the completion of the project.** Please contact your Project Analyst should you have any questions completing this report.

Section 1. Project Details

Is the following description of your Project as completed accurate?

The City of Brockville will complete the first year of planning and marketing the Aquatarium.

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

Project Variances (if applicable)

In reading the description and forecasted and actual project completion date above, has your Project experienced any variances either in project scope or schedule? Please identify any other information with respect to the Project that may have changed or may have been altered. Ensure that you provide a rationale for any variances from the project description noted above.

Section 2. Benefits

1. Was the project developed through a collaboration and/or partnership or will it result in a collaboration or partnership? A collaboration includes arm's length multiple local entities who were committed to support the project and/or entities that span more than one municipal boundary who supported the project.

Entities include municipalities, community or not-for-profit organizations, industry and economic development associations, regional organizations, businesses, corporations, First Nations, Metis, Inuit and other broader public sector organizations.

- ☐ Yes If yes, how many collaborations and/partnership were developed? _____
- ☐ No

2. Please indicate which of the following benefits you have experienced or anticipate as a result of the project.

	At project completion	Result
The project helped to address economic barriers.	<input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, please indicate the number and type of barrier(s) addressed? # of barriers addressed _____ Type of barrier addressed: _____
The project enabled the training and/or skills development	<input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, how many people were trained? # of people trained _____
The project assisted in the attraction, retention and or expansion of businesses.	<input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, please indicate the number of businesses attracted, retained or expanded # of businesses retained _____ # of businesses attracted _____ # of businesses expanded _____ If no, do you anticipate future business attraction and/or expansion as a result of the project? <input type="checkbox"/> Yes <input type="checkbox"/> No # of future businesses retained _____ # of future businesses attracted _____ # of future businesses expanded _____
This project assisted in the creation and/or retention of jobs.	<input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, please indicate the number of jobs created or retained by job type. # of full-time jobs created _____ # of part-time jobs created _____ # of temporary jobs created _____ # of full-time jobs retained _____ # of part-time jobs retained _____ # of temporary jobs retained _____

Section 3. Financial Information

Approved Total Eligible Costs: \$95,000.00

Budget Item	Budgeted Costs	Actual Costs	Variance
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
GROSS ELIGIBLE COST	\$	\$	\$
Less HST (if included in the above numbers)	\$	\$	\$
TOTAL NET ELIGIBLE COST*	\$	\$	\$

**Total Net Eligible Cost should match the approved amount noted above.*

Section 4. Other Benefits / Information

Please provide any other information which demonstrates the success of the project and its impact on other stakeholders, rural communities and the province of Ontario.

[illegible]

Section 5. Service Experience

Based on your project experience with OMAFRA, please indicate with an "X" in the appropriate box for your response.

1. Please indicate the extent to which you agree or disagree with the following statements.	Strongly Agree	Agree	Neither Agree nor Disagree	Disagree	Strongly Disagree
	1	2	3	4	5
a. Once my project was approved, I received all the information needed to proceed to the next step of the project.					
b. The claim forms were easy to understand and complete.					
c. I was able to reach appropriate Ministry staff without difficulty.					
d. Ministry staff were knowledgeable.					
e. I received consistent advice from Ministry staff.					
f. Ministry staff were courteous.					

2. Overall, how satisfied were you with the amount of time it took to get the service that you required?	Very satisfied	Satisfied	Neither satisfied nor dissatisfied	Dissatisfied	Very dissatisfied

3. Overall, how satisfied were you with the service you received while implementing your project?	Very satisfied	Satisfied	Neither satisfied nor dissatisfied	Dissatisfied	Very dissatisfied

4. To what extent did the availability of this funding assistance influence your decision to undertake this project?	To a great extent	Somewhat	Very little	Not at all

5. Overall, did you find working in the portal fairly easy to understand?	Very easy	Somewhat	Not easy	Did not use the portal

Section 6. Confidentiality, Certification and Signature

Confidentiality

Information submitted in this report to the Province of Ontario will be subject to the *Freedom of Information and Protection of Privacy Act*. **Any information submitted in confidence should be clearly marked "CONFIDENTIAL" by the recipients.** Inquiries about confidentiality should be directed to the Rural Programs Branch.

Certification

1. The Project as described in the Agreement has been completed;

2. The Recipient is in compliance with all of the terms and conditions of the Agreement for the Project;
and
3. There have been no overpayments by OMAFRA or any other organization or government. All
payments made are to third parties.

The undersigned warrants that these statements are true.

Name & Title of Authorized Official (Print):	
Signature:	
Date:	