

**THE CORPORATION OF THE  
TOWNSHIP OF EDWARDSBURGH/CARDINAL  
BY-LAW NO. 2016- 11**

**"A BY-LAW TO AUTHORIZE THE MAYOR AND CLERK TO EXECUTE  
A FUNDING AGREEMENT WITH  
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
AS REPRESENTED BY THE MINISTER OF ECONOMIC DEVELOPMENT,  
EMPLOYMENT AND INFRASTRUCTURE"**

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

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

**AND WHEREAS** the Council of the Township of Edwardsburgh/Cardinal wishes to enter into a funding agreement with Her Majesty the Queen in Right of Ontario as represented by the Minister of Economic Development, Employment and Infrastructure for purposes of furthering economic development in the Johnstown Industrial Park by providing new road and servicing infrastructure;

**NOW THEREFORE** the Council of The Corporation of the Township of Edwardsburgh/Cardinal enacts as follows:

1. The Mayor and Clerk are hereby authorized to execute a Grant Agreement which shall be identified as Schedule A and attached hereto.
2. Schedule A shall form part of this by-law.

Read a first and second time in open Council this 25<sup>th</sup> day of February, 2016.

Read a third and final time, passed, signed and sealed in open Council this 25<sup>th</sup> day of February, 2016.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

## CONDITIONAL GRANT AGREEMENT

THIS AGREEMENT is effective February 25, 2016 (the "Effective Date").

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented  
by the MINISTER OF ECONOMIC DEVELOPMENT, EMPLOYMENT  
AND INFRASTRUCTURE**  
(hereinafter referred to as "Ontario")

**-AND-**

**TOWNSHIP OF EDWARDSBURGH/CARDINAL**  
(hereinafter referred to as the "Recipient")

**RECITALS:**

1. The Recipient intends to implement the Project. The Project will lead to long term benefits to the Province of Ontario through investment and job creation related to the Project.
2. Pursuant to the *Attracting Investment and Creating Jobs Act, 2012*, (Ontario), Ontario is continuing the Eastern Ontario Development Fund ("EODF") to assist regional/municipal/sectoral organizations in Ontario to support business investment and economic development in key sectors in Ontario.
3. Ontario has agreed to provide a Grant to the Recipient through the EODF on the terms more particularly described in this Agreement in order to assist the Recipient with the financing of the Project and the delivery of economic benefits to the community.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is expressly acknowledged by the parties, Ontario and the Recipient agree as follows:

### **ARTICLE 1 - INTERPRETATION**

- 1.1 Definitions.** The following terms shall have the meanings ascribed to them below unless there is something in the context inconsistent therewith:

**"Actual Investment"** means the dollar amount of the actual and verifiable expenditures made by the Recipient on account of the Project Investment Commitment as at the date such calculation is to be made.

**"Agreement"** means this agreement, including all of the Schedules hereto, and all amendments made hereto in accordance with the provisions hereof.

**"Applicable Laws"** means any law, statute, by-law, ordinance, decree, requirement, directive, order, judgment, license, permit, code or regulation having the force of law, and

any applicable determination, interpretation, ruling, order or decree, of any governmental authority or arbitrator, which is legally binding at such time.

**"Application"** means the application approved by Ontario prepared by the Recipient on November 6, 2015 and supporting material submitted to Ontario in support of a request for the Grant.

**"Annual Cap"** means the maximum financial obligation payable by Ontario in any Fiscal Year as set out in section 5.1.

**"Amount Incurred"** has the meaning set out in section 5.2(a)(i).

**"Carry Forward Amount"** has the meaning set out in section 5.2(c).

**"CICA"** means the Canadian Institute of Chartered Accountants and any successor institute.

**"Clawback"** means the Investment Target Clawback as described in Article 4.

**"Deemed Abandonment"** means the failure to complete the Project on or before the Project Completion Date.

**"Disbursement"** means any payment of funds by Ontario to the Recipient on account of the Grant and includes the Performance Payment.

**"Effective Date"** means the date first set out herein.

**"Eligible Project Costs"** means those costs directly attributable to the Project as more particularly described in Schedule "B" that are incurred and paid by the Recipient after the Effective Date up to and including the Project Completion Date.

**"Eligible Project Expenditures"** means the dollar amount of the actual and verifiable expenditures made by the Recipient on account of the Eligible Project Costs incurred and paid after the Effective Date up to and including the Project Completion Date, or such other date as required under the Agreement.

**"Event of Default"** means the occurrence of any one or more of the events listed in section 10.1.

**"Force Majeure"** has the meaning ascribed to it in section 11.13.

**"Final Certificate and Report"** means a final certificate Project status report substantially in the form of Schedule "E".

**"Financial Statements"** means the annual financial statements signed by a senior officer consisting of a statement of income, balance sheet, and statement of cash flow for a Fiscal Year, together with the notes thereto, all prepared in accordance with GAAP.

**"Fiscal Year"** means either Fiscal Year 1 or Fiscal Year 2 (and **"Fiscal Years"** means both) where:

**"Fiscal Year 1"** means the period from the Effective Date to and including December 31, 2016;

**"Fiscal Year 2"** means the period from January 1, 2017 to and including December 31, 2017.

**"GAAP"** means Canadian generally accepted accounting principles as adopted by the CICA applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles and includes International Financing Reporting Standards to the extent the same is adopted by the CICA and is in effect on the relevant date.

**"Grant"** means a conditional grant in the total amount of up to \$399,000, as such amount may be reduced in accordance with section 5.2.

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

**"Investment Target Clawback"** has the meaning set out in section 4.1.

**"Material Adverse Effect"** means a material adverse effect on the business, assets, operations or financial condition of the Recipient.

**"Non-Arm's Length"** and similar phrases have the meaning attributed thereto for the purposes of the *Income Tax Act* (Canada) and **"Arm's Length"** shall have the opposite meaning.

**"Ontario Support"** means the actual amount advanced by Ontario to the Recipient on account of the Grant.

**"Performance Payment"** means the final Disbursement, if any, calculated in accordance with sections 5.1 and 5.3.

**"Project"** has the meaning set out in Schedule "A".

**"Project Completion Date"** means December 31, 2017.

**"Project Financing"** means the financing for the Project as more particularly set out in Schedule "A-1".

**"Project Investment Commitment"** means a minimum expenditure of \$1,140,000 on account of Eligible Project Expenditures.

**"Project Status Report"** means a report substantially in the form of Schedule "C-2".

**"Related Parties"** includes any shareholder, director, officer or employee of the Recipient or any individual related by blood, adoption or marriage to any such person or any corporation or other person not dealing at Arm's Length with any such person.

**"Request for Disbursement"** means the officer's certificate attached as Schedule "C".

**"Term"** means the term of the Agreement which shall commence on the Effective Date and shall expire on March 31, 2018, unless terminated earlier in accordance with the provisions of the Agreement.

- 1.2** 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.
- 1.3** Auditors. All references to auditors in the Agreement are to independent third party external licensed public accountants.
- 1.4** Conflict. In the event of a conflict between any provision in the Schedules to the Agreement and the body of the Agreement, the provisions of the body of the Agreement shall prevail.
- 1.5** Schedules. All references to Schedules refer to Schedules of the Agreement which are part of and form an integral part of the Agreement. The schedules of the Agreement are:
- |                |   |
|----------------|---|
| Schedule "A"   | Project Description   |
| Schedule "A-1" | Milestones, Deliverables, Timelines and Project Related Definitions |
| Schedule "A-2" | Table of Summary Project Information                                |
| Schedule "B"   | Eligible Project Costs  |
| Schedule "B-1" | Project Investment Commitment Budget                                |
| Schedule "C"   | Request for Disbursement  |
| Schedule "C-1" | Schedule of Paid Eligible Project Costs                             |
| Schedule "C-2" | Project Status Report   |
| Schedule "D"   | Annual Certificate  |
| Schedule "E"   | Final Certificate and Report  |
| Schedule "E-1" | Eligible Project Expenditure Certificate                            |
| Schedule "E-2" | Auditor's Certificate   |

## **ARTICLE 2 – THE PROJECT**

- 2.1** Completion of Project. The Recipient shall complete the Project on or before the Project Completion Date in accordance with the Project description, milestones and deliverables, timelines and Eligible Project Costs, all as more particularly set out in Schedules "A", "A-1" and "B-1".
- 2.2** Project Investment. The Recipient agrees to invest a minimum amount equal to the Project Investment Commitment between the Effective Date and the Project Completion Date.
- 2.3** Project Financing. The Recipient agrees that financing for completion of the Project has been arranged as described in Schedule "A-1". Any overruns or Project Financing deficiencies are to be the responsibility of Recipient.

## **ARTICLE 3 – CONDITIONAL GRANT**

- 3.1** Grant. Subject to and in accordance with all of the terms and conditions of the Agreement, and in reliance on the representations and warranties in Article 7, Ontario agrees to provide to the Recipient the Grant to assist the Recipient to finance Eligible Project Costs.
- 3.2** Use of Funds. All Grant funds shall be used by the Recipient solely for the payment of Eligible Project Costs.



**3.3 Procurement.** The Recipient shall ensure that during the Term all contracts and subcontracts, including consultant contracts, for work and services and for the purchase of goods related to the Project are:

- (a) obtained pursuant to a competitive process that ensures best value for money; and
- (b) if the estimated cost of the contracts or subcontracts for the work and services and for the purchase of goods related to the Project exceed \$25,000, the Recipient shall obtain at least three written quotes unless:
  - (i) the expertise the Recipient is purchasing is specialized and is not readily available; or
  - (ii) the Recipient has previously researched the market for a similar purchase and knows prevailing market costs for the work, services or goods purchased.

#### **ARTICLE 4 - MANDATORY REPAYMENT OF GRANT**

**4.1 Investment Target Clawback.** If the Project Investment Commitment is not achieved on or before the Project Completion Date, the Recipient shall repay a cash amount to Ontario in accordance with the following formula:

$$\text{Investment Target Clawback} = \text{Ontario Support}^{\wedge} - \left( \frac{\text{Actual Project Investment}}{\text{Investment Commitment}} * \$399,000 \right)$$

^^when calculating the Investment Target Clawback at the Project Completion Date, the Ontario Support shall be deemed to include any earned but unpaid portion of the Performance Payment

The Investment Target Clawback shall be calculated as at the earlier of (i) an Event of Default; and (ii) the Project Completion Date. The Recipient shall repay the Investment Target Clawback, if any, within 20 days of notification in writing from Ontario. Notwithstanding any other provision of the Agreement, if the Recipient does not deliver to Ontario the auditor's certificate and Final Certificate and Report described in sections 6.5 and 6.6 within the required time, then the Investment Target Clawback amount shall be deemed to be an amount equal to the Ontario Support, which amount shall be immediately due and payable.

**4.2 Clawback Maximum.** Notwithstanding anything contained herein, the Investment Target Clawback cannot be negative or greater than 100% of the Ontario Support. Upon notice to the Recipient, interest shall accrue on the calculated amount in accordance with section 10.6.

#### **ARTICLE 5 - TERMS AND CONDITIONS OF DISBURSEMENTS**

**5.1 Annual Cap.** Subject to the provisions of the Agreement, the Grant is to be paid in annual instalments which shall not exceed the Annual Cap for each Fiscal Year. The Annual Cap for each Fiscal Year is the maximum amounts specified below:

- (i) Fiscal Year 1 - \$270,900; and
- (ii) Fiscal Year 2 - \$128,100; the Fiscal Year 2 Annual Cap is comprised of a \$48,300 annual payment and a \$79,800 payment for completion of the Project in accordance with the terms of the Agreement (the "**Performance Payment**").

## 5.2 Disbursement Calculation.

- (a) Disbursement Amount. For Fiscal Year 1, Ontario will disburse the Fiscal Year 1 Annual Cap subject to section 5.4; for all remaining Fiscal Years, subject to section 5.5, in each Fiscal Year, Ontario will disburse the lesser of:
  - (i) the aggregate of (i) 35% of Eligible Project Costs incurred and paid in that Fiscal Year (the "**Amount Incurred**") and (ii) any Carry Forward Amount;
  - and
  - (ii) the Annual Cap for that Fiscal Year.
- (b) Reduction of Grant for Fiscal Years 1 and 2. Where the sum of the Amount Incurred in respect of Fiscal Year 1 and Fiscal Year 2 is less than the sum of the Annual Cap for Fiscal Year 1 and Fiscal Year 2, Ontario shall reduce the aggregate amount of the Grant by the difference between (i) the sum of the Annual Cap for Fiscal Year 1 and Fiscal Year 2 and (ii) the sum of the Amount Incurred in respect of Fiscal Year 1 and Fiscal Year 2.
- (c) Determination of Carry Forward Amount. The "Carry Forward Amount" means the amount by which the Amount Incurred in a Fiscal Year exceeds the Annual Cap for that Fiscal Year. Each time a Carry Forward Amount is applied in a Disbursement calculation, the Carry Forward Amount available in the next Fiscal Year shall be reduced by the amount disbursed; any unused portion of the Carry Forward Amount shall continue to be included in the Disbursement calculation in succeeding Fiscal Years until the Carry Forward Amount is fully exhausted. For the avoidance of doubt, in no event shall the Recipient be entitled to receive any funds in excess of the maximum amount of the Grant under the Agreement.

## 5.3 Performance Payment Disbursement. Subject to the provisions of the Agreement, Ontario will disburse the Performance Payment within 90 days of:

- (a) the Recipient meeting to Ontario's satisfaction the conditions of disbursement including, in accordance with section 5.5, providing Ontario with a Request for Disbursement and the necessary evidence that the Recipient has incurred and paid Eligible Project Costs since the date of the immediately preceding Disbursement; and
- (b) receipt and acceptance by Ontario of a Final Certificate and Report and an auditor's certificate as required pursuant to sections 6.5 and 6.6.

Provided however that the Performance Payment shall be reduced by the amount of the Investment Target Clawback, if any. If the Performance Payment is less than the Clawback, the Recipient shall pay to Ontario the difference between the Clawback and the Performance Payment.

## 5.4 Condition of First Disbursement. Ontario will disburse to the Recipient the Annual Cap for Fiscal Year 1 upon the satisfaction of the conditions precedent listed below, but only in the event that the conditions precedent in subsections 5.4(a), (b), (c), (d), (e), (f) and (g) have been met or waived in writing by Ontario on or before the day that is 180 days after the Effective Date of this Agreement. If the conditions precedent in subsections 5.4(a), (b), (c), (d), (e), (f) and (g) have not been met or waived in writing by Ontario on or before the day that is 180 days after the Effective Date of this Agreement, Ontario

may immediately terminate this Agreement without liability, penalty or costs upon notice to the Recipient.

- (a) Insurance. Ontario will have received a valid certificate of insurance evidencing the insurance coverage that the Recipient is required to maintain pursuant to section 8.8.
- (b) Project Financing. Ontario will have received evidence satisfactory to it that all financing, other than the Grant, obtained or to be obtained by the Recipient in respect of the Project, as described in Schedule "A-1", has been confirmed.
- (c) Municipal By-Law. Ontario will have received a copy of a municipal by-law authorizing the Recipient to proceed with the project and enter into the Agreement with Ontario.
- (d) Property Sale. Ontario will have received a copy of a registered transfer of land evidencing the transfer of the Property (as described in Schedule "A"), to Giant Tiger Stores Limited.
- (e) Site Plan Approval. Ontario will have received written evidence satisfactory to it that site plan approval for Giant Tiger Stores Limited's development on the Property (as described in Schedule "A"), has been obtained and that all required permits, approvals and municipal authorizations, in addition to those required in section 5.4(f) have been obtained for the Project.
- (f) Environmental Compliance. Ontario will have received confirmation, in a form and substance satisfactory to Ontario, that the Recipient has received all necessary approvals from the Ministry of Environment and Climate Change ("MOECC") for the Project, including an Environmental Compliance Approval for the new sewers that the Recipient is installing on the Property.
- (g) Ontario Regulation 403/02 under the *Municipal Act, 2001*. Ontario will have received evidence satisfactory to it that the Recipient has calculated an updated debt and financial obligation limit before it undertakes any new long term borrowing, based on Ontario Regulation 403/02 under the *Municipal Act, 2001* or written evidence satisfactory to it that the Recipient is not required to do so by the Ministry of Municipal Affairs and Housing.
- (h) The Recipient shall have provided Ontario with a certificate, in a form and substance satisfactory to Ontario, that Eligible Project Costs in the amount of \$744,000 have been incurred and paid in respect of the Fiscal Year 1 Annual Cap.
- (i) The Recipient shall have satisfied all of the conditions of disbursement set out in section 5.5.

**5.5** Conditions of All Disbursements. On or before each Disbursement, the following conditions shall be met or have been complied with to the satisfaction of Ontario:

- (a) Request for Disbursement. Within 60 days following the end of each Fiscal Year, the Recipient shall provide Ontario with a Request for Disbursement. Ontario will have no obligation to pay the Disbursement if the Recipient has not requested the Disbursement within the required 60 day period.



- (b) Accounting Evidence. The Recipient shall have provided satisfactory evidence to Ontario that the Recipient has incurred and paid Eligible Project Costs to earn 100% of the requested Disbursement, which evidence shall include the following:
- (i) schedule "C-1" to the Request for Disbursement setting out in detail Eligible Project Costs that have been incurred and paid in the Fiscal Year;
  - (ii) a Project Status Report;
  - (iii) if the Recipient submits a Request for a Disbursement in respect of Eligible Project Costs incurred and paid to Non-Arm's Length suppliers, the Recipient shall provide the certificate of the Recipient described in section 5.5(b)(i) above together with a certificate of the external auditor of the Recipient confirming that the transaction was on terms that are fair and reasonable to the Recipient and that are no less favourable to the Recipient than those that could be obtained in a comparable transaction from an Arm's Length supplier. Provided however, that an auditor's certificate shall not be required for Eligible Project Costs which have been incurred and paid by the Recipient and submitted to Non-Arm's Length suppliers where invoices can be produced supporting the transaction at no increased cost; and
  - (iv) at Ontario's option, invoices from suppliers may also be required
- (c) Inspection. Ontario shall have had the opportunity to physically inspect the Project.
- (d) No Event of Default. No Event of Default or an event which would otherwise be an Event of Default but for the giving of notice and the passage of time to remedy the Event of Default shall have occurred and be continuing, nor shall the Disbursement result in the occurrence of any Event of Default.
- (e) Attainment of Milestones and Deliverables. The Recipient has satisfactorily performed and attained, in the opinion of Ontario, acting reasonably, the milestones and deliverables set out in Schedule "A-1" as of the date of the Request for Disbursement.

## 5.6 Conditions to the Grant.

- (a) Any Disbursement to be made by Ontario pursuant to the Agreement is subject to there being an appropriation by the Legislative Assembly for the Fiscal Year in which the Disbursement is to be made. If Ontario does not receive the necessary appropriation, Ontario shall not be obligated to make any such payment. As a consequence, Ontario may terminate the Agreement immediately upon giving notice to the Recipient and may demand repayment of any portion of the Grant that has not been used or committed by the Recipient to defray Eligible Project Expenditures.
- (b) The total Grant received by the Recipient cannot exceed 35% of total Eligible Project Expenditures, up to the maximum amount of the Grant.
- (c) If any fees, levies or taxes are owed by the Recipient to Her Majesty the Queen in right of Ontario or her agencies, including the Minister of Finance, the Recipient hereby authorizes Ontario to pay any or all of these amounts on behalf of

the Recipient out of the amount of the Grant. Ontario will notify the Recipient prior to implementing any set-off of funds.

## **ARTICLE 6 - REPORTING AND MONITORING**

- 6.1** Annual Certificate. Within 60 days after the end of each Fiscal Year during the Term, the Recipient shall provide to Ontario a certificate signed on behalf of the Recipient by a senior financial officer in the form of Schedule "D".
- 6.2** Annual Project Status Report. Within 60 days after the end of each annual period of each Fiscal Year during the Term, the Recipient shall provide Ontario with a Project Status Report satisfactory to Ontario and signed by an officer of the Recipient. Ontario, at its sole discretion, reserves the right to demand more frequent Project Status Reports.
- 6.3** Financial Reports. The Recipient shall provide Ontario within 120 days after the end of each Fiscal Year during the Term Financial Statements reviewed by the Recipient's municipal auditor for the Fiscal Year then ended.
- 6.4** Other Reports. The Recipient shall promptly furnish to Ontario such other reports and information as Ontario may reasonably require.
- 6.5** Auditor's Certificate. Within 120 days of the last day of the Term or as required by section 10.3, the Recipient shall provide Ontario with an auditor's certificate in the form of Schedule "E-2" certifying:
- (a) that Eligible Project Costs have been incurred and paid by the Recipient between the Effective Date and Project Completion Date; and
  - (b) the Project Expenditures certificate of the Recipient with respect to total Project Expenditures.
- 6.6** Final Project Certificate and Report. Within 120 days of the last day of the Term or as required by section 10.3, the Recipient shall provide Ontario with a Final Certificate and Report satisfactory to Ontario and signed by an officer of the Recipient, in the form of Schedule "E" together with such other information as may be requested by Ontario.
- 6.7** Review. The Recipient will permit persons designated by Ontario to visit and inspect the Project, at Ontario's expense, to examine its books and financial records, and to discuss its affairs, finances and accounts all at such reasonable times as may be requested by Ontario. Ontario's right of inspection includes the right to perform a full or partial audit. Without limiting the generality of the foregoing, the Recipient shall at Ontario's request meet with Ontario or its duly authorized agent at least annually to review the progress of the Project and to review the Recipient's compliance with the terms and conditions of the Agreement. At Ontario's option, invoices from suppliers may also be required.
- 6.8** Notice. The Recipient shall provide prompt notice to Ontario of any Material Adverse Effect.

## **ARTICLE 7 - REPRESENTATIONS AND WARRANTIES**

- 7.1** Representations and Warranties. The Recipient represents and warrants to and in favour of Ontario:
- (a) The Recipient is a municipal corporation under the laws of the Province of Ontario and has the power and authority to carry on its business as presently carried on, to hold property, and to enter into the Agreement. The execution, de-

livery and performance of the Agreement have been or will be duly and validly authorized by all necessary action of the Recipient, and when executed and delivered will constitute legal, valid and binding obligations of the Recipient enforceable in accordance with its respective terms;

- (b) it has, and shall continue to have for the Term, the experience and expertise necessary to carry out the Project;
- (c) it has taken all necessary actions to authorize the execution of the Agreement including passing a municipal by-law authorizing the Recipient to enter into the Agreement with Ontario;
- (d) it has, and shall maintain for the Term:
  - (i) a code of conduct and ethical responsibilities at all levels for all persons of the Recipient's organization;
  - (ii) procedures to ensure the ongoing effective functioning of the Recipient;
  - (iii) decision-making mechanisms;
  - (iv) procedures to provide for the prudent and effective management of the Grant;
  - (v) procedures to enable the successful completion of the Project;
  - (vi) procedures to enable the timely identification of risks to the completion of the Project and strategies to address the identified risks;
  - (vii) procedures to enable the preparation and delivery of all reports required pursuant to Article 6; and
  - (viii) procedures to deal with such other matters as the Recipient considers necessary to ensure that the Recipient carries out its obligations under the Agreement.
- (e) The Project Financing, Project budget and estimates of expenditures are accurately set out in Schedules "A", "A-1" and "B-1";
- (f) With respect to the information and documentation, including forecasts, submitted to Ontario in support of the Application, that:
  - (i) the forecasts were based upon the judgment of directors and officers of the Recipient, who considered the most likely set of future conditions in their opinion at that time and their impact upon the Recipient;
  - (ii) the information used in preparing the Application substantially reflects the plans of the Recipient;
  - (iii) the assumptions relied upon in preparing the forecasts are appropriate in the opinion of directors and officers of the Recipient;
  - (iv) adequate support documentation outlining methods and procedures used in preparing the forecasts is available from the Recipient;
  - (v) all statements and documentation provided to Ontario in support of the Application are true and correct; and
  - (vi) the Recipient confirms the Recipient's consent to release the Recipient's taxpayer information to the Ministry of Finance for the purpose of verifying compliance with all statutes administered by the Ministry of Finance and for the purposes of administering the EODF.

The Recipient recognizes that Ontario has relied upon the truth, authenticity and accuracy of the information and documentation contained in the Application in authorizing the Grant.

- (g) The proceeds of the Grant will be used by the Recipient exclusively for Eligible Project Costs and for no other purposes;
- (h) There are no actions, suits or proceedings pending or, to the knowledge of the Recipient, threatened, or criminal convictions which would reasonably be expected to have a Material Adverse Effect on the Project or the ability of the Recipient to perform its obligations under the Agreement;
- (i) There is no fact which the Recipient has not disclosed in writing to Ontario which adversely affects or, so far as the Recipient can now reasonably foresee, will adversely affect the Project or the ability of the Recipient to perform its obligations under the Agreement in each case, in any material respect;
- (j) The Recipient is not in default in any material respect in connection with Canadian federal, provincial, municipal or local taxes, assessments or other imposts or penalties due and unpaid in respect of its income, business or property or for the payment of any tax instalment due in respect of its current taxation year. The Recipient has fulfilled all material requirements under the *Income Tax Act*, the *Canada Pension Plan Act* and the *Employment Insurance Act* for withholding of amounts from employees and has remitted all amounts withheld to the appropriate authorities within the prescribed times;
- (k) The Recipient has not received any notice of any construction liens currently outstanding in respect of the Project or the Property; and
- (l) The Recipient is in compliance with all Applicable Laws, including the *Accessibility for Ontarians with Disabilities Act, 2005* (Ontario). The Recipient has not received notice of, does not know of or have reasonable grounds to know of, any fact that could result in or give rise to non-compliance with the *Accessibility for Ontarians with Disabilities Act, 2005* (Ontario) or any other Applicable Law.

## **ARTICLE 8 –AFFIRMATIVE COVENANTS**

- 8.1** Project Completion. The Recipient shall cause the Project to be completed in accordance with the Project description, timelines, milestones and deliverables set out in Schedules "A" and "A-1" on or before the Project Completion Date. The Recipient shall immediately notify Ontario of any increase in the total cost of the Project.
- 8.2** Use of Proceeds. The Grant will be used by the Recipient solely for Eligible Project Costs.
- 8.3** Rights of Inspection and Inquiry. The Recipient shall keep and maintain all records, invoices and other documents relating to the Grant in a manner consistent with GAAP, and keep them available for review by Ontario and its agents or authorized representatives, including the Auditor General, during the Term and for a period of seven years thereafter.
- 8.4** Compliance with Agreements. The Recipient will perform and satisfy all covenants and obligations to be performed by it under the Agreement, and under any other agreement or undertaking now or hereafter made between it and Ontario.

- 8.5** Existence. The Recipient will preserve and maintain its existence, rights, powers, licences, privileges, and goodwill, and exercise any rights of renewal or extensions of any leases, licences, or any other rights which are necessary or material to the conduct of its business.
- 8.6** Compliance with Laws. The Recipient shall comply with all Applicable Laws which could affect the Project and the Recipient's obligations under the Agreement, including the *Accessibility for Ontarians with Disabilities Act, 2005* (Ontario).
- 8.7** Taxes. The Recipient shall file all material tax returns and pay or cause to be paid as they become due all taxes, assessments, and governmental charges lawfully levied and imposed upon its property or upon its business, including with respect to the Project, unless the same are being diligently contested in good faith and by appropriate proceedings or as to which a bona fide dispute may exist.
- 8.8** Insurance. The Recipient shall put in effect and maintain for the period during the Term, at its own expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to the Project would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than two million dollars (\$2,000,000) per occurrence. The policy shall include the following:
- (i) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;
  - (ii) a cross-liability clause;
  - (iii) contractual liability coverage; and
  - (iv) 30 day written notice of cancellation, termination or material change.
- The Recipient shall provide Ontario with a copy of the certificate that confirms the required insurance coverage and, within 60 days of the renewal, any renewal replacement certificates as may be necessary. Upon the request of Ontario, the Recipient shall make available to Ontario a copy of each insurance policy.
- 8.9** Indemnity. The Recipient agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including without limitation, legal, expert and consultant fees and disbursements), causes of action, actions, claims, demands, lawsuits or other proceedings, 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 Ontario.
- 8.10** Litigation. The Recipient shall give to Ontario notice of any criminal charges filed against the Recipient together with notice, including reasonable particulars, of each action, suit or proceeding which claims damages in excess of \$500,000 against the Recipient pending, or to the knowledge of the Recipient, threatened before any court or before any tribunal, governmental department, commission or agency.
- 8.11** Notice to Ontario. The Recipient shall provide prompt notice of any Material Adverse Effect with respect to the Project.
- 8.12** Credit for Contribution. Unless otherwise directed by Ontario, the Recipient shall, in a form approved by Ontario, acknowledge and credit Ontario's financial contribution to the



Project in all of its advertising and promotional material of whatever nature or kind relating to the Project.

## **ARTICLE 9 – NEGATIVE COVENANTS**

- 9.1** Disposition of Assets. The Recipient covenants and agrees that, during the Term, it shall not, without the prior written approval of Ontario, sell, assign, transfer, lease, license, convey or otherwise dispose any of the Project assets or all or substantially all of the assets comprising the Project, except such dispositions as would be consistent with the disposition of surplus assets in the normal course of business.

## **ARTICLE 10 - DEFAULT AND ENFORCEMENT**

- 10.1** Events of Default. Each of the following is an Event of Default:

- (a) failure by the Recipient to perform or comply with any covenant or other term of the Agreement required to be performed or complied with by the Recipient, including, but not limited to, the failure to perform or comply with the reporting requirements set out in Article 6;
- (b) failure by the Recipient to repay any amount of the Grant when it becomes due, including failure to pay the Clawback required pursuant to Article 4;
- (c) failure by the Recipient to make a Request for Disbursement in accordance with section 5.5;
- (d) abandonment or Deemed Abandonment of the Project by the Recipient;
- (e) if any representation or warranty made by the Recipient in the Agreement or any certificate delivered to Ontario pursuant hereto shall be or become materially untrue in any respect;
- (f) if the Recipient (i) is dissolved, liquidated or wound up or makes a proposal in writing to be dissolved; (ii) admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes a proceeding seeking a judgment of bankruptcy or a receiving order or an order adjudicating or declaring it to be bankrupt or insolvent or seeking liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debt under any law including the *Companies Creditors Arrangement Act* or the *Bankruptcy and Insolvency Act*; (v) has a resolution passed for its winding-up, official management or liquidation; (vi) seeks or becomes subject to the appointment of an administrator, liquidator, receiver, receiver-manager, trustee or similar official for it or for all or substantially all its assets; (vii) has a secured party take possession of a substantial or material portion of its assets or has a distress, execution, attachment, sequestration or other legal process levied or enforced on or against a substantial or material part of its assets; (viii) ceases to carry on business; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts or events;
- (g) if any bankruptcy, reorganization, arrangement or insolvency proceedings for relief under any bankruptcy or similar laws for the relief of debtors, including, without limitation, any of the proceedings or petitions described in subpara-

graph (g) above are instituted against the Recipient and are consented to by the Recipient or, if contested by the Recipient, are not dismissed within 30 days;

- (h) default of material obligations of the Recipient including a default of a term or condition, but for the giving of notice and/or the passage of time to remedy;
- (i) default of a term or condition in any other agreement between Province of Ontario and the Recipient but for the giving of notice and/or the passage of time to remedy;
- (j) final judgment or decree for the payment of money due is obtained or entered against the Recipient, except in respect of a judgment which (i) was the subject of a *bona fide* dispute, (ii) is not material to the financial condition, business or operations of the Recipient (and without restricting the generality of the foregoing, a judgment of \$50,000 or more shall be deemed to be material), and (iii) is paid in full within 30 days after judgment;
- (k) any part of the Project Financing that has become unavailable is not replaced by the Recipient within 90 days on similar terms and conditions; and
- (l) occurrence of a Material Adverse Effect.

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

**10.3** Remedies. In addition to any other rights which Ontario may have under the Agreement, if any Event of Default shall occur and be continuing, Ontario shall have the following rights and remedies provided that it has first given written notice of the Event of Default to the Recipient and the Recipient has failed for whatever reason, subject to Force Majeure, to remedy the Event of Default within 20 days of the receipt of such notice, or such longer period of time as Ontario may consent to in writing:

- (a) Ontario may, immediately, without further notice to the Recipient, terminate the Agreement;
- (b) Ontario shall be relieved of all obligations to make further Disbursements to the Recipient;
- (c) Ontario shall be entitled to retain the Performance Payment and any unpaid Carry Forward Amount;
- (d) An amount equal to the sum of the Investment Target Clawback shall become immediately due and payable to Ontario; such repayment amount shall be calculated as of the date of the specified Event of Default based upon Actual Investment as of the date of calculation as verified by an auditor's certificate in the form of Schedule "E-2" and/or a Final Certificate and Report in the form of Schedule "E", such auditor's certificate and Final Certificate and Report being due within 60 days of the specified Event of Default; and
- (e) Ontario may avail itself of any of its legal remedies that are available to Ontario at law or in equity and in its sole discretion, exercise any right or recourse and/or proceed by any action, suit, remedy, or proceeding against the Recipient author-

ized or permitted by law for the recovery of any and all amounts payable to Ontario pursuant to the Agreement, and no such remedy for the enforcement of the rights of Ontario shall be exclusive of, or dependent on, any other remedy, but any one or more of such remedies may from time to time be exercised independently or in combination, provided however, that in no event shall the Recipient be required to pay to Ontario any amount in excess of the Ontario Support together with the costs of collection pursuant to section 10.5 and interest pursuant to section 10.6.

Notwithstanding the foregoing, Ontario shall not be required to provide any notice or a remedy period under this section 10.3 for any Event of Default arising under section 10.1 (b), (d), (f) or (g).

- 10.4** Additional Remedies Upon Certain Events of Default. In addition to the remedies contained in section 10.3, upon the occurrence of an event specified in section 10.1(b), (d), (f) and (g) an amount equal to the Ontario Support shall become immediately due and payable to Ontario.
- 10.5** Costs of Collection. All reasonable costs and expenses of collection, including legal fees and professional fees associated therewith, of Ontario and its agents of all amounts owing hereunder shall be for the account of the Recipient and shall be added to the principal amount of the Grant.
- 10.6** Interest After Default. The Recipient expressly acknowledges that the interest at the then current rate charged by the Province of Ontario on accounts receivable shall apply, from the date of the notice to the Recipient, to any and all amounts in the event that that Ontario exercises any of its remedies pursuant to sections 10.3 or 10.4 until payment in full, during the course of any and all proceedings to collect such amounts, and such interest rate shall apply to and be exigible as additional damages in any award of damages made by a court of competent jurisdiction pursuant to any such action, all without the necessity of any further act or agreement or notification to the Recipient.

## **ARTICLE 11 - GENERAL**

- 11.1** Conflict of Interest. The Recipient shall ensure that the Project is carried out in all its aspects without a conflict of interest by any person associated with the Project in whatever capacity. For these purposes, a conflict of interest includes a situation in which a person associated with the Project or any member of his or her family is able to benefit financially from his or her involvement in the Project. Nothing in this section shall prevent the Recipient if it so chooses from reimbursing its volunteers for their reasonable out of pocket expenses incurred in connection with the Project. The Recipient shall disclose to Ontario without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest and shall comply with any terms and conditions that Ontario may prescribe as a result of the disclosure.
- 11.2** Entire Agreement. The Agreement contains the entire agreement between the Recipient and Ontario and supersedes all prior agreements, obligations, statements, representations, understandings, warranties, communications and negotiations, whether oral or written, with respect to the subject matter of the Agreement.
- 11.3** Amendments. The Agreement may be amended, altered or modified only by written documents signed by both Ontario and the Recipient.

- 11.4 Survival.** Article 4 (Mandatory Repayment of Grant), sections 5.1, 5.2 and 5.3 (as it relates to the Performance Payment Disbursement), Article 6 (Reporting and Monitoring), Article 7 (Representations and Warranties), section 8.3 (Rights of Inspection and Inquiry), section 8.9 (Indemnity), Article 10 (Default and Enforcement), section 11.2 (Entire Agreement), section 11.4 (Survival), section 11.11 (Non-Agent), section 11.12 (Governing Law), section 11.15 (Severability) and section 11.16 (Disclosure of the Agreement), and all applicable cross-referenced provisions and schedules shall survive any expiry, termination or cancellation of the Agreement. Without limiting the foregoing, all representations and warranties of the Recipient contained herein or in any certificate or other writing delivered in connection herewith will survive the transactions contemplated hereby and are material and have been or will be relied upon by Ontario notwithstanding any investigation made by or on behalf of Ontario. For the purpose of the foregoing, all statements contained in any certificate or other writing delivered by or on behalf of the Recipient pursuant hereto or in connection with the transactions contemplated hereby shall be deemed to be representations and warranties of the Recipient contained herein.
- 11.5 Waiver.** No provision of the Agreement shall be deemed to be waived, and no breach excused, unless such waiver or consent excusing the breach is in writing and signed by the party to be charged with such waiver or consent. A waiver of any provision of the Agreement, or of any breach of any provision of the Agreement, is not to be deemed or construed to be a waiver of any other provision of the Agreement, or of any other breach, whether of the same or of any other provision, nor shall any delay or omission on the part of any party to the Agreement to exercise or avail itself of any right it has or may have under the Agreement, operate as a waiver of any such breach or right, nor will any waiver or failure to enforce any of the provisions of the Agreement in any way affect the validity of the Agreement or any part of it.
- 11.6 Materiality and Merger.** All representations, warranties and covenants of the Recipient made in the Agreement, or in any other document, certificate, expenditure statement, or writing delivered by or on behalf of the Recipient pursuant to the provisions of the Agreement, or otherwise with respect to the Agreement and the transactions contemplated in the Agreement, are material, are deemed to have been relied upon by Ontario and survive the execution of the Agreement.
- 11.7 Time.** Time is of the essence of the Agreement.
- 11.8 Assignment.** The Agreement and all documents delivered pursuant to it enure to the benefit of Ontario and the Recipient, their respective assigns and successors at law. The Agreement may not be assigned by the Recipient without the written consent of Ontario.
- 11.9 Further Assurances.** The Recipient agrees at any time and from time to time after the execution and delivery of the Agreement to execute and deliver such further acts and things as Ontario may reasonably request in order to fully effect the purpose of the Agreement and the transactions contemplated herein.
- 11.10 Notices.** Any notice, request, demand, consent, approval, correspondence, report or other communication required pursuant to or permitted under the Agreement must be in writing and must be given by personal delivery, or transmitted by fax or other electronic message which provides a hard copy, or be sent by first class mail, postage or charges prepaid, and addressed to the party to whom it is intended at its address as set out below or addressed as either party may later designate to the other in writing:

*To Ontario:*

Ministry of Economic Development, Employment and Infrastructure

Corporate Services Division  
Investment Funding and Coordination Branch  
Coordination and Reporting Unit  
77 Grenville St., 10<sup>th</sup> Floor  
Toronto, ON M7A 2C1  
Attention: Manager, Coordination and Reporting Unit  
Facsimile No.: (416) 360 - 1817  
Telephone No.: (416) 325 - 6867

*To the Recipient:*

Township of Edwardsburgh/Cardinal  
18 Centre Street  
Spencerville, ON K0E 1X0  
Attention: Debra McKinstry, CAO/Clerk  
Facsimile No.: (613) 658 - 3445  
Telephone No.: (613) 658 - 3055

Any such notice shall be deemed to be received, if personally delivered or sent by fax or other electronic message on the day it is sent and if such notice is sent by first class mail it shall be deemed to have been received on the date that is five days after the date of mailing.

- 11.11 Non-Agent.** The Recipient and Ontario agree and declare that nothing in the Agreement shall be construed as creating a partnership, joint venture, or agency relationship between the Recipient and Ontario.
- 11.12 Governing Law.** The Agreement and the rights of the parties hereto shall be governed in all respects by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and each party irrevocably attorns to the jurisdiction of the courts of the Province of Ontario.
- 11.13 Force Majeure.** In the Agreement, "Force Majeure" includes civil commotions, acts of God, weather, fires, floods, explosions, natural catastrophes, sabotages, accidents, failures of power, riots, invasion, insurrection and any additional peril or occurrence which is, in the opinion of Ontario a Force Majeure. Upon the occurrence, if any, of an event which is a Force Majeure, the party whose performance is affected, whether Ontario or the Recipient, shall to the extent reasonably possible, minimize its adverse impact. Neither Ontario nor the Recipient shall be in breach of the Agreement, if, upon the occurrence of a Force Majeure and after delay minimization, either Ontario or the Recipient delays performance of its obligations hereunder for such reasonable period of time so as to enable the harmed party to overcome the effects of the Force Majeure; provided, however, neither Ontario nor the Recipient shall delay performance of any obligation of the Agreement such that, cumulatively, such delays will extend the Term for more than two years.
- 11.14 Counterparts.** The Agreement may be signed in counterparts, each of which when taken together, will constitute an original Agreement.
- 11.15 Severability.** Any provision of the Agreement prohibited by law or otherwise ineffective will be ineffective only to the extent of such prohibition or ineffectiveness and will be severable without invalidating or otherwise affecting the remaining provisions of the Agreement.



**11.16 Disclosure of the Agreement to the Public and Third Parties.**

**(a) *Freedom of Information and Protection of Privacy Act***

- (i) The Recipient acknowledges that Ontario is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that Ontario may be required to disclose information contained in the Agreement or the entire Agreement itself pursuant to the provisions of that Act.
- (ii) The Recipient represents and warrants that, other than the information set forth in Schedule A-1 and Schedule B-1, none of the information contained in the Agreement or in any schedules to the Agreement reveals a trade secret or scientific, technical, commercial, financial or labour relations information that has been implicitly or explicitly supplied in confidence to Ontario, the disclosure of which to a person other than a party to this Agreement could reasonably be expected to:
  - (A) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of the Recipient; or
  - (B) result in undue loss to the Recipient.

**(b) *Attracting Investment and Creating Jobs Act, 2012***

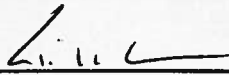
- (i) The Recipient acknowledges that the minister responsible for the *Ministry of Economic Development and Trade Act* (Ontario) (the "**Minister**") is required by the *Attracting Investment and Creating Jobs Act, 2012* (Ontario) to make this Agreement available for inspection by the public, provided that commercially-sensitive information may be redacted.
- (ii) The Recipient represents and warrants that, other than the information set forth in Schedule A-1 and Schedule B-1, none of the information contained in the Agreement or in any schedule to the Agreement is commercially-sensitive information.
- (iii) The Recipient
  - (A) irrevocably consents, other than with respect to the information contained in Schedule A-1 and Schedule B-1, to the Minister making this Agreement and the information contained in this Agreement available to the public for public inspection, in a form the Minister deems appropriate in the Minister's sole discretion; and
  - (B) acknowledges, without limiting its consent under Section 11.16(b)(iii)(A) in any way, that the information set forth in Schedule A-2 will be made available to the public by being posted to a government website approximately 90 days after the execution of this Agreement.

**11.17 Participation in Public Announcement by Ontario.** The Recipient shall, if requested and upon receipt of at least 72 hours notice from Ontario in the manner prescribed by Section 11.10, participate in a public event announcing Ontario's grant of funds to the Recipient in connection with the Project.

The parties hereby execute the Agreement in the Province of Ontario.

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the MINISTER OF ECONOMIC DEVELOPMENT, EMPLOYMENT AND INFRASTRUCTURE**

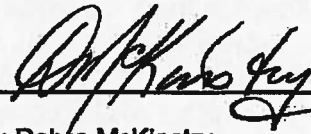
19-04-16  
Date of Signature

Per: 

Giles Gherson  
Deputy Minister

**TOWNSHIP OF EDWARDSBURGH/CARDINAL**

March 31, 2016  
Date of Signature

Per: 

Name: Debra McKinstry  
Title: CAO/Clerk

I have the authority to bind the Recipient.

## **SCHEDULE "A"**

### **PROJECT DESCRIPTION**

#### **Background:**

Giant Tiger Stores Limited has signed a conditional agreement of purchase and sale with the Recipient to purchase 225 acres in the Johnstown Industrial Park owned by the Recipient (the "**Property**") in order to construct a consolidated dry good distribution facility. The Recipient anticipates that this development will generate 300 jobs in the Township of Edwardsburgh/Cardinal upon completion and 25-30 jobs during construction.

#### **Project Description:**

In order to facilitate the development by Giant Tiger Stores Limited on the Property, the Recipient shall carry out the following:

- Provide road access to the Property;
- Extend utilities (i.e. water and sewer lines) to the Property along a new road that the Recipient shall construct as part of this Project north of County Road 2 to Newport Drive (160 metres of road and underground infrastructure and 380 metres of road extension);
- Road construction (as described above), which shall be completed by June 30, 2017;
- Street light installation on the Property; and
- Engineering work associated with the Project.

**SCHEDULE "A-1"**  
**MILESTONES, DELIVERABLES, TIMELINES**  
**AND PROJECT RELATED DEFINITIONS**

**Milestones, Deliverables and Timelines:**

Milestone # and timeline	Deliverable(s) at this milestone
1 – Effective Date to December 31, 2016	Engineering work targeted for completion at the end of April, 2016 including application to MOECC for extension of services and final design of road and utility layout. Work will begin immediately to create and issue tender documents in preparation to begin construction upon receipt of all required approvals.
	Environmental Compliance Approval from the MOECC received (targeting Summer, 2016)
	Start of construction, targeting August 2016 or immediately following approval of extension of services by MOECC.
	Underground work completed, including excavation for construction of roads and placement of water and sewer infrastructure in the road allowance.
	Road infrastructure completed, first layer of road laid (including road base and two layers of asphalt) and allowed to settle.
2 –January 1, 2017 to December 31, 2017	Utilities and streetlights installed (including overhead utilities such as Hydro and Telephone services) no later than March 31, 2017.
	Second layer of asphalt laid on the road in May/June 2017 (depending upon weather conditions).
	Project Complete

## **Definitions**

**“Project Financing”** means

<b>Source</b>	<b>Nature of Financing</b>	<b>Amount</b>
Ontario	EODF Grant	\$399,000
Recipient	Cash on hand	\$741,000
TOTAL, being the Eligible Project Costs		\$1,140,000



**SCHEDULE "A-2"**  
**TABLE OF SUMMARY PROJECT INFORMATION**

• Grant Recipient	• Township of Edwardsburgh/Cardinal
• Project Location	• Edwardsburgh/Cardinal (Leeds and Grenville)
• Project Description	• Road construction, extension of utilities, street light installation and associated engineering work to facilitate the construction of a consolidated dry good distribution facility by a private corporation to be located in Johnstown, Ontario.
• Effective Date of Grant Agreement	• February 25, 2016
• Maximum Amount of Grant	• \$399,000
• Eligible Project Costs	• \$1,140,000

## **SCHEDULE "B"**

### **ELIGIBLE PROJECT COSTS**

- *This schedule contains the list of Eligible Cost Categories for the Project.*
- *Please use these Eligible Cost Categories when preparing the Project Investment Commitment Budget.*
- *In order to be eligible, the cost must be incurred and paid after the Effective Date.*
- *The total amount of provincial and federal assistance for an Eligible Cost cannot exceed 50% of the cost.*
- *Provincial Stacking not permitted- combining EODF assistance with loan or grant funding from other Provincial programs/agencies is not permitted.*

### **ELIGIBLE COSTS**

The following shall be used, where necessary, to clarify the categories and description of Eligible Costs set out in the budget sections of "Schedule B". They do not expand the universe of Eligible Costs.

Eligible Costs are actual costs directly attributable to and necessary for the completion of the Project and were not wholly or partially for another purpose, subject to the terms and conditions of the Agreement, and subject to review and approval by Ontario.

Eligible Costs are one-time costs directly attributable to the development and implementation of the Project. They are to fund a project that would not otherwise be undertaken. Eligible Costs do not include ongoing costs of production or operations. Labour, materials, overhead, and other costs for the production of saleable items are not eligible.

Eligible Costs are actual cash outlays that must be documented through invoices, receipts, or Recipient records acceptable to Ontario and are subject to verification by an independent auditor. Evidence of payment must be maintained for audit purposes. Acting reasonably, Ontario's decisions as to the expenditure eligibility and valuation shall be final and determinative.

#### **Eligible Cost Categories:**

- Infrastructure for immediate investment such as public infrastructure (e.g. site servicing, power service upgrades) required for securing an immediate private sector investment. Publicly held infrastructure required securing an immediate private sector investment [e.g. infrastructure costs normally funded by public bodies to enable a prospect to locate and operate at a specific site]. Public infrastructure required to improve the investment-readiness of a community/region
- Business attraction costs (e.g. costs to support invited-presentations to investment prospects or to engage prospects in communities shortlisted for a specific investment). Any business attraction costs spent outside of Ontario are subject to prior written approval by Ontario
- Project facility modifications/upgrades required for the project (e.g. construction costs/retrofits associated with an expansion to a facility on land already owned by the organisation, site servicing, power service upgrades, HVAC, new requirements for fire-detection and suppression, embedded energy generation systems, ICT used internally for business/operations integration or to meet specialized customer/client needs)

- Equipment and machinery required for the project (e.g. new technology, new high performance equipment and machinery, maintenance equipment associated with new technologies or systems)
- One time internal labour (project specific)
- One-time materials (project specific)
- Specialized expertise required for the project (third-party engineering services, software development, project management, etc.).
- Skills training, including employer-provided, related to the project
- Project-related permits, fees and other similar charges

**Ineligible Cost Categories:**

- Ongoing operational labour costs, e.g. salaries, wages, including those that are not directly related to the project or are incurred either before the project begins or after the project is complete (a maximum of four years after the project starts)
- Costs for in-kind contributions
- Overhead costs
- Lease costs
- Any marketing, sales or distribution/shipping costs (e.g. website development, creative development, etc.)
- Debt service costs, federal or provincial income taxes, surtaxes and special expenses (e.g. legal fees)
- Working capital costs for regular production or operations (e.g. inventory or materials)
- Costs associated with the preparation and submission of an application to EODF, such as success fees, third party government relations services, legal, accounting and consulting services
- Vehicles and off-site equipment, including costs associated with the purchase/lease or operation of vehicles or off-site equipment
- Costs not incurred in Ontario, except when the only supplier(s) of services or equipment are outside of Ontario
- Replacement capital equipment, including office technology used for regular administration
- Purchase of land or buildings, or construction costs of a building, except where the construction is an extension of or expansion to a facility on land already owned by the organisation
- Travel, conferences, meals, hospitality, memberships

***Rebates, Credits and Refunds***

- any costs, including taxes, for which the Recipient has received, will receive, or is eligible to receive, a rebate, credit or refund.

## SCHEDULE "B-1"

### PROJECT INVESTMENT COMMITMENT BUDGET:

#### PROJECT BUDGET:

	<b>Total</b>	<b>Total</b>	<b>Total</b>
	<b>Effective Date to Dec 31, 2016</b>	<b>Jan 1, 2017 to Dec 31, 2017</b>	<b>All Years</b>
<b>EODF/SWODF ELIGIBLE COSTS</b>			
Infrastructure for immediate investment	<b>\$774,000</b>	<b>\$366,000</b>	<b>\$1,140,000</b>
Business Attraction Costs			
Equipment and Machinery			
One-time labour (internal)			
One-time materials			
Specialized Expertise			
Skills Training			
Project-related permits, fees and other charges			
<b>SUB-TOTAL-ELIGIBLE COSTS</b>	<b>\$774,000</b>	<b>\$366,000</b>	<b>\$1,140,000</b>
<b>TOTAL PROJECT COSTS</b>	<b>\$774,000</b>	<b>\$366,000</b>	<b>\$1,140,000</b>

**SCHEDULE "C"**  
**REQUEST FOR DISBURSEMENT FOR FISCAL YEAR ●**

**Date:** ●

**To:** Ministry of Economic Development, Employment and Infrastructure ("**Ontario**")  
Corporate Services Division  
Investment Funding and Coordination Branch  
Coordination and Reporting Unit  
77 Grenville St., 10<sup>th</sup> Floor  
Toronto, ON M7A 2C1  
Attention: Manager, Coordination and Reporting Unit

**From:** Township of Edwardsburgh/Cardinal (the "**Recipient**")

**Re:** Agreement between Ontario and the Recipient dated effective February 25, 2016  
(the "**Agreement**")

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Except as otherwise defined herein, all capitalized terms shall have the meanings given to them in the Agreement.

1. I, *[insert name and title]* of the Recipient, on behalf of the Recipient having made such enquiries as I have deemed necessary and advisable for this certificate and hereby certify that to the best of my knowledge, information and belief:
  - (a) On and as of the date hereof, all representations and warranties contained in Article 7 of the Agreement are true and correct.
  - (b) On and as of the date hereof, no Event of Default, whether or not Ontario has been given notice thereof, has occurred and is continuing.
    - (a) On and as of the date hereof, the Recipient has legal access to the Property in order to carry out the Project.
    - (b) On and as of the date hereof, the Recipient has not incurred a cost overrun for the Project for which the Recipient has not obtained additional financing to pay for any such cost.
  - (c) On and as of the date hereof, the Recipient is in compliance with Applicable Laws including the including the *Accessibility for Ontarians with Disabilities Act, 2005* (Ontario).
  - (d) On and as of the date hereof, no Material Adverse Effect has occurred.
  - (e) Attached hereto is a Schedule of Paid Eligible Project Costs ("C-1") which is true and accurate and relates to Eligible Project Costs on account of the Project which have been incurred and paid by the Recipient during the period commencing ● and ending ●. Schedule "C-1" does not include any Eligible Project Costs incurred and paid to Non-Arm's Length suppliers. *[Note: In the event that*



*there are costs paid to Non-Arm's Length suppliers include the certificate or invoices required by Section 5.5(b)(iii) of the Agreement.]*

- (f) **[NTD: include the following for the first Disbursement]** I certify that Eligible Project Costs in the amount of \$● have been incurred and paid with respect to the first Disbursement.

2. I certify that the Disbursement will be used in accordance with the Agreement.
3. I certify that the information provided herein is accurate and is being relied upon to disburse funds in respect of the Grant.
4. Attached is a Project Status Report in the form of Schedule "C-2" which is true and correct.
5. (a) The Recipient hereby requests a Disbursement for Fiscal Year ● in the amount of \$● (the "**Amount Incurred**").  
  
(b) **[NTD: include as applicable.]** The requested Disbursement exceeds the Annual Cap for this Fiscal Year by \$●; this amount being the Carry Forward Amount for Fiscal Year ●. **OR** The Annual Cap exceeds the requested Disbursement by \$●. **OR [for Fiscal Year 1** The requested Disbursement is less than the Fiscal Year 1 Annual Cap but greater than the first Disbursement, the difference being \$●. **OR** The requested Disbursement is less than the Fiscal Year 1 Annual Cap and less than the first Disbursement.]  
  
(c) The Annual Cap for this Fiscal Year is \$●.  
  
(d) The Recipient has an unused Carry Forward Amount from previous Fiscal Years in the amount of \$●.

**IN WITNESS WHEREOF** the undersigned has hereunto signed these presents this ● day of ● 201●.

Per: c/s

*[insert name and title of officer]*

**SCHEDULE "C-1"**  
**SCHEDULE OF PAID ELIGIBLE PROJECT COSTS**

Recipient Name: ● Fiscal Year ● Annual Cap for Fiscal Year ●:
---

Eligible Project Cost Category	Project Component (list Project components here)	Eligible Project Expenditures Claimed This Period
Infrastructure for Immediate Investment	<i>[NTD: insert/delete rows as appropriate/necessary]</i>	
	<b>Subtotal</b>	<b>\$</b>
Business Attraction Costs		
	<b>Subtotal</b>	<b>\$</b>
Project Facility modifications/upgrades		
	<b>Subtotal</b>	<b>\$</b>
Equipment and Machinery		
	<b>Subtotal</b>	<b>\$</b>
One time labour		
	<b>Subtotal</b>	<b>\$</b>
One time materials		
	<b>Subtotal:</b>	<b>\$</b>
Specialized Expertise		
	<b>Subtotal:</b>	<b>\$</b>
Skills Training		
	<b>Subtotal:</b>	<b>\$</b>
Project-related permits, fees and other charges		
	<b>Subtotal:</b>	<b>\$</b>
<b>Total Eligible Project Costs claimed this period:</b>		<b>\$</b>

**Note:** Recipient to retain all records and invoices in support of paid Eligible Project Costs, subject to audit by Ontario.

### Total Disbursements to Date

Total Grant:					
Disbursement Period	Annual Cap Amount (\$)	Amount Incurred (35% of Eligible Project Costs incurred and paid)	Carry Forward Amount (Amount by which the Amount Incurred exceeds the Annual Cap)	Unused Carry Forward Amount	Grant Amount Requested
Fiscal Year 1					
Fiscal Year 2					
Performance Payment					
Total					

**SCHEDULE "C-2"**  
**PROJECT STATUS REPORT**

**[NTD: this is form of status report, do not include details]**

**Milestone Status:**

Provide a status report with respect to the achievement of milestones, deliverables and time-lines for the Project as described in Schedule "A-1". Explain any actual or anticipated delays with respect to milestone completion under 'Comments' and provide a revised expected completion date, if necessary.

<b>Milestone #</b>	<b>Deliverables</b>	<b>Revised Expected Completion Date (if necessary)</b>	<b>% Complete</b>	<b>Comments</b>	<b>Actual Completion Date</b>
Project Start					
Fiscal Year 1					
Fiscal Year 2					
Project End					

<b>Sources of Project Financing (\$)</b>	<b>Nature of Financing</b>	<b>Projected Financing</b>	<b>Updated Forecast</b>
Recipient			
Ontario	EODF Conditional Grant		
Other Sources (identify and detail)			
Other government funding (identify and detail)			
<i>[NTD:insert rows as needed]</i>			
<b>TOTAL</b>			

### Budget Status

Provide a budget report detailing the Project's original budget, Eligible Project Costs and revised forecasts or Eligible Project Expenditures, as applicable (for reference, see Project Budget in Schedule "B-1"). Explain any variances greater than 10% in any category of Eligible Project Costs under 'Comments'.

	Original Project Budget	Revised Forecast	Original Project Budget	Fiscal Year 1	Revised Forecast	Original Project Budget	Fiscal Year 2	Revised Forecast	Original Project Budget	Total All Years	Revised Forecast/ Eligible Project Ex- penditures	Forecast Variance	Comments (Explain vari- ances greater than 10%)
ELIGIBLE PROJECT COSTS	Fiscal Year 1	Fiscal Year 1	Fiscal Year 2					Fiscal Year 2	Total All Years	Total All Years	\$	%	
Infrastructure for Im- mediate Investment													
Business Attraction Costs													
Project Facility modi- fications/upgrades													
Equipment and Ma- chinery													
One time labour													
One time materials													
Specialized Expertise													
Skills Training													
Project-Related per- mits, fees and other charges													
<b>SUB-TOTAL- ELIGIBLE PROJECT COSTS</b>													
<b>TOTAL PROJECT COSTS</b>													

**SCHEDULE "D"**  
**ANNUAL CERTIFICATE**

**DATE:**

**TO:** Ministry of Economic Development, Employment and Infrastructure ("Ontario")  
Corporate Services Division  
Investment Funding and Coordination Branch  
Coordination and Reporting Unit  
77 Grenville St., 10<sup>th</sup> Floor  
Toronto, ON M7A 2C1

Attention: Manager, Coordination and Reporting Unit

**RE:** Agreement between Ontario and Township of Edwardsburgh/Cardinal (the "Recipient") dated effective February 25, 2016 (the "Agreement")

Except as otherwise defined herein, all capitalized terms shall have the meanings given to them in the Agreement.

I, ●, *[name and title]* of the Recipient, on behalf of the Recipient, do hereby certify as follows:

1. The Recipient has expended during the Fiscal Year ●, \$● on account of the Project Expenditures.
2. The Recipient has expended during the Fiscal Year ●, \$● on account of the Eligible Project Costs.
3. The Recipient has (has not) incurred cost overruns, (which overruns have been financed by ●).
4. Attached hereto is a Project Status Report in the form of Schedule "C-2" which is true and accurate.
5. On and as of the date hereof, no Event of Default, whether or not Ontario has been given notice thereof, has occurred and is continuing.
6. I have reviewed the activities of the Recipient with a view of determining whether during the Fiscal Year ● the Recipient has observed each of the covenants and conditions in the Agreement. I confirm that to the best of my knowledge and belief the Recipient has observed each of the covenants and conditions. *[Note: include up to end of Term.]*

**IN WITNESS WHEREOF** the undersigned has hereunto signed these presents this ● day of ●, 201●.

Per: c/s

*[insert name and title of officer of Recipient]*



**SCHEDULE "E"**  
**FINAL CERTIFICATE AND REPORT**

**TO:** Ministry of Economic Development, Employment and Infrastructure ("**Ontario**")  
Corporate Services Division  
Investment Funding and Coordination Branch  
Coordination and Reporting Unit  
77 Grenville St., 10<sup>th</sup> Floor  
Toronto, ON M7A 2C1

Attention: Manager, Coordination and Reporting Unit

**RE:** Agreement between the Ontario and Township of Edwardsburgh/Cardinal (the "**Recipient**") dated effective February 25, 2016 (the "**Agreement**")

Except as otherwise defined herein, all capitalized terms shall have the meanings given to them in the Agreement.

I, *[Insert name and title of senior officer]* on behalf of the Recipient, hereby certify without personal liability as follows:

1. The Recipient has incurred and paid a minimum of \$● in total Eligible Project Expenditures. Attached hereto is the Project Expenditure Certificate and Auditor's Certificate in the form of Schedules "E-1" and "E-2".

2. Attached is a final Project Status Report in the form of Schedule "C-2" which is true and accurate.

**IN WITNESS WHEREOF** the undersigned has hereunto signed these presents this ● day of ●, 201●.

Per: \_\_\_\_\_ c/s  
*[insert name of senior officer]*

**SCHEDULE "E-1"**  
**ELIGIBLE PROJECT EXPENDITURE CERTIFICATE**

**TO:** Ministry of Economic Development, Employment and Infrastructure ("Ontario")  
Corporate Services Division  
Investment Funding and Coordination Branch  
Coordination and Reporting Unit  
77 Grenville St., 10<sup>th</sup> Floor  
Toronto, ON M7A 2C1

Attention: Manager, Coordination and Reporting Unit

**RE:** Agreement between the Ontario and Township of Edwardsburgh/Cardinal (the  
"Recipient") dated effective February 25, 2016 (the "Agreement")

Except as otherwise defined herein, all capitalized terms shall have the meanings given to them in the Agreement.

I, ● [Insert name and title of senior officer] of the Recipient, on behalf of the Recipient, hereby certify that the Recipient has incurred and paid a minimum of \$● in total Eligible Project Expenditures for the period between the Effective Date and the Project Completion Date as described below:

<b>Total Project Expenditures</b>	<b>\$</b>
Infrastructure for Immediate Investment	
Business Attraction Costs	
Project Facility modifications/upgrades	
Equipment and Machinery	
One time labour	
One time materials	
Specialized Expertise	
Skills Training	
Project related permits, fees and other charges	
Total Eligible Project Expenditures	

**IN WITNESS WHEREOF** the undersigned has hereunto signed these presents this ● day of ●, 201●.

Per: c/s  
[insert name and title]

**SCHEDULE "E-2"**  
**AUDITOR'S CERTIFICATE**

Ministry of Economic Development, Employment and Infrastructure ("**Ontario**")  
Corporate Services Division  
Investment Funding and Coordination Branch  
Coordination and Reporting Unit  
77 Grenville St., 10<sup>th</sup> Floor  
Toronto, ON M7A 2C1

Attention: Manager, Coordination and Reporting Unit

**RE:** Agreement between Her Majesty the Queen in right of Ontario as represented by the Minister of Economic Development, Employment and Infrastructure ("**Ontario**") and Township of Edwardsburgh/Cardinal (the "**Township**") dated effective February 25, 2016 (the "**Agreement**")

Except as otherwise defined herein, all capitalized terms shall have the meanings given to them in the Agreement.

We have audited the accompanying Schedules (the "**Schedules**") which comprise a summary of significant accounting policies and other explanatory information, relating to the Request for Disbursement Certificate dated [insert date] for the period [\*] to [\*]. The Schedules have been prepared by management of the Township based on the Conditions to Subsequent Disbursements (section 5.5) and Final Project Certificate and Report (section 6.6) provisions of the Agreement:

- Schedule of Paid Eligible Project Costs with total expenditures of [\$\*\*\*] (Schedule "C-1"); and
- Certificate of total Eligible Project Expenditures dated [insert date] as required in Section 6.6 of the Agreement, an original of which is attached hereto as Schedule "E-1"; and

**Management's responsibility for the Schedules**

Management of the Township is responsible for the preparation of the Schedules in accordance with the Conditions to Subsequent Disbursements and Final Project Certificate and Report provisions of the Agreement, and for such internal control as management of the Township determines is necessary to enable the preparation of the Schedules that is free from material misstatement, whether due to fraud or error.

**Auditor's responsibility**

Our responsibility is to express an opinion on the Schedules based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the Schedules are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the Schedules. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misinformation of the Schedules, whether due to fraud or error. In making those risk assessments, the auditor considers internal control rele-

vant to the Company's preparation of the Schedules in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the Schedules.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

**Opinion**

In our opinion, the Schedules for the period ● to ● is prepared, in all material respects, in accordance with the Conditions to Subsequent Disbursements and Final Project Certificate and Report provisions of the Agreement.

**Basis of accounting and restriction on distribution and use**

Without modifying our opinion, we draw attention to the note to the Schedules, which describe the basis of accounting. The Schedules are prepared to assist the Township to comply with the financial reporting provisions of the Agreement. As a result, the Schedules may not be suitable for another purpose. Our report is intended solely for the Township and Ontario and should not be distributed to or used by parties other than the Township and Ontario.

**DATED:**

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*Signed*  
*Chartered Accountant*

