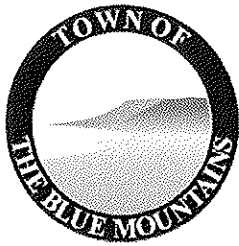


STAFF REPORT: PLANNING & BUILDING SERVICES



REPORT TO: Council
 MEETING DATE: October 13, 2010
 REPORT NO.: SRB.10.20
 SUBJECT: New Town Hall – FCM Green
 Municipal Fund Agreement
 PREPARED BY: David Finbow, Director, Planning &
 Building Services

A. Recommendations

THAT Council receive Staff Report SRB.10.20 with respect to “New Town Hall – FCM Green Municipal Fund Agreement” and authorize the Mayor and Clerk to sign the Agreement upon the written advice of the Director, Financial and Information Services and the Town’s solicitor.

B. Background

As Council is aware, the Town was successful in its Loan and Grant Application to the Federation of Canadian Municipalities (FCM) Green Municipal Fund (GMF). FCM has forwarded copies of the Agreement for execution by no later than October 25, 2010. In this regard, the Town’s Financial Services and Information Services Department and Town’s solicitor are in the process of reviewing the Agreement. Given that the Agreement is FCM’s GMF Form Agreement, which has been executed by numerous municipalities; it is unlikely that there will be significant issues or concerns with the Agreement.

Loan Amount

The Agreement indicates that the Loan Amount is:

an amount that is equal to the lesser of the sum of three million three hundred thousand dollars (\$3,300,000); or, seventy two and seven three-hundredths percent (72.73%) of Eligible Costs.

With an interest rate:

That is equal to the higher of an amount with an annual rate that is equal to the higher of the average of the GoC ten (10) year benchmark bond yield and the long-term GoC benchmark bond yield minus one point fifty percent (1.5%) per annum; and, two percent (2.0%).

The current Government of Canada 10 year benchmark bond yield is 3.38%. As 3.38% – 1.5% is 1.88%, the FCM GMF Loan rate would be set at 2%. In comparison, Infrastructure Ontario’s current lending rate on a ten year term is 3.14% (net savings of 1.14%).

Grant Amount

The Agreement indicates that the Grant Amount is:

An amount that is equal to the lesser of the sum of three hundred thirty-thousand dollars (\$330,000); or seven and twenty seven one hundredths (7.27%) of Eligible Costs.

It is noted that the maximum Grant Amount is tied to the Loan Amount at a ratio of 1/10.

Financial Impact

The approved 2010 Budget indicates "Financing of project through FCM at estimated 1.5% interest rate" and did not anticipate an FCM Grant whereas the current FCM loan rate is 2%.

On January 25, 2010, Council considered Staff Report SRB.10.04 wherein Town Staff reported the following:

Federation of Canadian Municipalities (FCM) Grant and Loan Funding

Two applications have been submitted to FCM with respect to the New Town Hall - one being for Brownfields and the second being for Energy. Initial FCM comments reflect that there is greater likelihood that the Energy application will be successful with it being noted that same reflecting: \$3 million loan at 1.5% below the Bank of Canada Bond Rate; and, a \$300,000 grant. With respect to the loan, the Director, Financial & Information Services advises that Infrastructure Ontario is currently offering loans to municipalities at 4.74%, based on a 20 year term, whereas FCM's loan is reflective of 2.5% (representing an interest difference of \$839,000 over the term).

As Council will note, the FCM GMF Agreement sets out a repayment schedule of forty semi-annual instalments (10 years) versus the 20 year time frame noted in the January 25, 2010 Report. Based on a ten year term, the savings from the FCM GMF over the 10 Year Infrastructure Ontario rate equates to approximately \$205,000. In addition, if the full Loan Amount is accessed, the Grant amount would equal \$330,000 (Total Loan and Grant savings/sourcing are \$535,000).

This Report has been prepared in consultation with the Financial & Information Services Department.

C. The Blue Mountains' Strategic Plan

*"Providing a strong, well managed municipal government."
"Addressing the Town's infrastructure needs."*

D. Environmental Impacts

N/A

E. Budget Impact

The financial impact of the FCM GMF Agreement is positive. Based on the repayment of the full amount of the loan over a 10 year period, the savings would equate to approximately \$205,000. If the full Loan Amount is accessed, the Grant amount would equal \$330,000. The potential savings for the Town are \$535,000.

F. Addendums

1. FCM GMF Agreement (no Schedules)

Respectfully submitted by:

David Finbow
Director, Planning & Building Services

GREEN MUNICIPAL FUND (GMF)

Project No.: 10325

Project Title: Town of The Blue Mountains New Town Hall

**Combined Loan and Grant Agreement
2009 Energy Projects - Municipalities**

Between

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

- and -

**FEDERATION OF CANADIAN MUNICIPALITIES,
as Trustee of the Green Municipal Fund**

This document is not an offer to enter into a contract and, until executed by all parties, it is not a contract.

LOAN AND GRANT AGREEMENT

THIS AGREEMENT is made as of the date of last signature on the signature page.

BETWEEN:

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

(herein called the “Municipality”)

-and-

FEDERATION OF CANADIAN MUNICIPALITIES, as Trustee of the Green Municipal Fund.

(herein called “FCM”)

WHEREAS:

- A. the Government of Canada (herein called “GoC”) and FCM have established the Green Municipal Fund (herein called “GMF”) to assist municipalities in Canada with municipal environmental projects;
- B. the GoC has funded GMF, which is being administered by FCM as trustee thereof;
- C. FCM, in its capacity as trustee of GMF, has agreed to provide the Municipality with a loan and a grant for use by the Municipality solely for the environmental project described in this Agreement; and
- D. this Agreement contains the terms for the administration and remittance of the loan and grant by FCM to the Municipality, the use of the loan and the grant by the Municipality and the repayment of the loan by the Municipality to FCM.

NOW THEREFORE, the parties hereby agree as follows:

ARTICLE 1
DEFINITIONS AND SCHEDULES

Section 1.01 **Definitions.** Whenever used in this Agreement and unless the context otherwise requires, the following terms have the following meanings:

“**Act**” means the *Municipal Act, 2001* (Ontario), as amended from time to time;

“**Actual Energy Consumption**” means the energy consumption of the building or structure which is the subject of the Project, measured during any twelve (12) consecutive month period within the three (3) year period after the Project is Substantially Performed, in such manner as is acceptable to FCM. In the event the Project is a Retrofit, the Actual Energy Consumption will be measured in a manner which is consistent with the measurement of the Baseline Energy Consumption. In the event the Project is a New Building, the Actual Energy Consumption may be measured through data obtained using an appropriate sampling plan or through a model verified by a third party acceptable to FCM;

“**Audit Report**” means the audit report attached as Part 3 of Schedule E;

“**Authorizing By-law(s)**” has the meaning provided in Section 4.01;

“**Baseline Energy Consumption**” means, in the event that the Project is a Retrofit, the average annual energy consumption (normalized for weather variations) of the building or structure which is the subject of the Project, as determined during a twelve (12) consecutive month period which precedes the undertaking of the Project by no more than thirty-six (36) months, as more particularly set out in Part 1 of Schedule A;

“**Borrowing By-law**” means the by-law of the Municipality substantially in the form attached hereto as Schedule F, incorporating such additional information as may be required by FCM to properly record the making of the Disbursement on the terms and conditions of this Agreement;

“**Business Day**” means a day of the year other than a Saturday or Sunday or a statutory holiday observed in the Province of Ontario;

“**Contribution**” means the advance of the Grant Amount by FCM to the Municipality as provided in this Agreement;

“**Contribution Date**” has the meaning provided in Section 2.14;

“**Debenture**” has the meaning provided in Section 2.05(b);

“**Disbursement**” means the disbursement of the Loan by FCM to the Municipality as provided in this Agreement;

“**Disbursement Date**” has the meaning provided in Section 2.05;

“**Eligible Costs**” has the meaning provided in Part 2 of Schedule A;

“**Environmental Results Report**” means the environmental results report attached as Schedule I;

“**Events of Default**” means the events specified or referred to in Section 6.01;

“Financial Audit” means an audit of the Municipality’s Statement of Expenses set forth in Part 2 of Schedule E relating to the Project which is to be conducted at or after the time the Project is Substantially Performed. The financial audit shall be carried out by an independent public accountant acceptable to FCM in accordance with GAAP and the scope of financial audit outlined in Part 1 of Schedule E. The financial audit shall be completed and submitted with the Statement of Expenses set forth in Part 2 of Schedule E and otherwise in the form of the Audit Report set forth in Part 3 of Schedule E;

“GAAP” means the generally accepted accounting principles for local governments as recommended, from time to time, by the Public Sector Accounting Board of the Canadian Institute of Chartered Accountants;

“Grant” means the grant of funds by FCM to the Municipality as contemplated by this Agreement;

“Grant Amount” means the amount to be advanced by FCM on account of the Grant, up to the maximum amount set forth in Section 2.12;

“Loan” means the loan of funds by FCM to the Municipality as contemplated by this Agreement;

“MNECB Standard” means the Model National Energy Code of Canada for Buildings (1997), as published by the National Research Council of Canada;

“New Building” means that more than one half (½) of the building or structure which is the subject of the Project did not exist, prior to the undertaking of the Project by the Municipality, all as is more particularly set out in Part 1 of Schedule A;

“Principal Amount of the Loan” means the principal amount of the loan made by FCM to the Municipality, up to the maximum amount set forth in Section 2.02;

“Project” means the municipal environmental project described in Part 1 of Schedule A;

“Project Completion Date” has the meaning provided in Section 2.03;

“Project Completion Report” means the project completion report attached as Schedule H;

“Project Progress Report” means the project progress report attached as Schedule G;

“Request for Disbursement/Contribution” means the Request for Disbursement/Contribution attached hereto as Schedule B;

“Required Minimum Environmental Benefit” means:

- (a) in the event that the Project is a Retrofit, that the Total Energy Savings divided by the Baseline Energy Consumption is equal to or greater than thirty percent (30%) and the Project has been completed in accordance with the description thereof set out in Part 1 of Schedule A; and
- (b) in the event that the Project is a New Building, that the Total Energy Savings divided by the modeled energy consumption of the building which is the subject of the Project determined using the MNECB Standard is equal to or greater than forty percent (40%) and the Project has been completed in accordance with the description thereof set out in Part 1 of Schedule A.

“**Retrofit**” means the addition of new building materials, elements and components not provided in the original building design and construction of the building or structure which is the subject of the Project, all as is more particularly set out in Part 1 of Schedule A;

“**Signage**” means a plaque and/or other signage in compliance with the specifications outlined in Schedule J;

“**Statement of Expenses**” means the statement of expenses attached as Part 2 to Schedule E;

“**Substantially Performed**” means the Project is ready for use or is being used for the purposes intended;

“**Term**” shall begin on the Disbursement Date and end on such date which is **240** months after the Disbursement Date; and

“**Total Energy Savings**” means:

- (a) in the event that the Project is a Retrofit, the result of the Baseline Energy Consumption less the Actual Energy Consumption; and
- (b) in the event that the Project is a New Building, the result of the modeled energy consumption of the building which is the subject of the Project determined using the MNECB Standard less the Actual Energy Consumption.

Section 1.02 **Schedules**. The following annexed Schedules form part of this Agreement:

- Schedule A: Part 1: Description of the Project
 Part 2: Description of Project Costs
 Part 3: Particulars of the Sources of Funding
- Schedule B: Form of Request for Disbursement/Contribution
- Schedule C: Form of Certificate of Incumbency and Authority
- Schedule D: Form of Legal Opinion
- Schedule E: Audit Requirements
 Part 1: Scope of Financial Audit
 Part 2: Form of Statement of Expenses
 Part 3: Form of Audit Report
- Schedule F: Form of Borrowing By-law
- Schedule G: Project Progress Report
- Schedule H: Project Completion Report
- Schedule I: Environmental Results Report
- Schedule J: Project Signage Specifications

Section 1.03 **Interpretation.** In this Agreement:

- (a) the division into Sections and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement;
- (b) the expressions "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions refer to this Agreement and not to any particular portion of this Agreement; and
- (c) unless specified otherwise or the context otherwise requires: (i) references to any Section are references to the Section of this Agreement; (ii) "including" or "includes" means "including (or includes) but is not limited to" and shall not be construed to limit any general statement preceding it to the specific or similar items or matters immediately following it; (iii) references to any legislation, statutory instrument or regulation or a section thereof, unless otherwise specified, is a reference to the legislation, statutory instrument, regulation or section as amended, restated and re-enacted from time to time; (iv) references to currency or to "\$" shall be to lawful currency of Canada; and (v) words in the singular include the plural and vice-versa and words in one gender include all genders.

ARTICLE 2
THE LOAN AND GRANT

Section 2.01 **Purpose.** FCM is providing each of the Loan and the Grant to the Municipality for the sole purpose of assisting the Municipality in the performance of the Project.

Section 2.02 **Principal Amount of the Loan.** Subject to and in accordance with the terms and conditions of this Agreement and in reliance upon the representations, warranties and covenants of the Municipality hereinafter set forth, FCM agrees to lend to the Municipality, and the Municipality agrees to borrow from FCM, an amount that is equal to the lesser of:

- (a) the sum of three million three hundred thousand dollars (\$3,300,000); or
- (b) seventy two and seventy three one hundredths percent (72.73%) of Eligible Costs

provided that, if the aggregate amount of funding received or to be received from all sources of funding, other than the Municipality, as described in Part 3 of Schedule A delivered pursuant to Section 3.01(j) (all as determined and calculated by FCM) is greater than the total costs incurred by the Municipality in respect of the Project, as evidenced by the delivery contemplated in Section 3.01(h), then FCM may reduce the Loan amount determined pursuant to this Section 2.02 to such amount as it deems appropriate, in its sole and absolute discretion.

Section 2.03 **Project Completion Date.** The Municipality anticipates that the Project will be Substantially Performed by no later than the 31st day of March, 2011 (the "**Project Completion Date**"). As contemplated by Section 5.03 the Municipality shall inform FCM as soon as it becomes aware that the Project is not likely to be Substantially Performed by such date.

Section 2.04 **Loan Expiration Date.** If the Municipality fails to meet the conditions of Disbursement set forth in Article 3, and/or fails to request the Disbursement as provided for in Section 2.05 within three (3) years from the date of this Agreement, then FCM may, at its sole and absolute discretion and on notice to the Municipality, forthwith terminate this Agreement.

Section 2.05 **Disbursement.** At any time following the Project being Substantially Performed, the Municipality shall request the advance of the Loan by way of the Disbursement (which shall not exceed the amount determined pursuant to Section 2.02) by delivering to FCM a completed Request for Disbursement/Contribution in the form of Schedule B, at least thirty (30) days before the date of the Disbursement set out therein provided that the Disbursement requested is equal to or less than two million dollars (\$2,000,000) and at least sixty (60) days before the date of the Disbursement set out therein if the Disbursement requested is greater than two million dollars (\$2,000,000), which date shall be a Business Day (the “**Disbursement Date**”). Provided that the conditions of Disbursement set forth in Article 3 have been met when the Municipality submits the Request for Disbursement/Contribution, other than those conditions set out in Section 3.01(g), Section 3.01(h) and Section 3.01(j) which must be satisfied at least five (5) Business Days before the Borrowing By-law is passed and Section 3.01(e), Section 3.01(k), Section 3.01(l) and Section 3.01(m) which must be satisfied at least five (5) Business Days before the Disbursement Date, FCM shall:

- (a) calculate the Principal Amount of the Loan and, therefore, the amount of the Disbursement, in the manner contemplated by Section 2.02 and shall provide written notice thereof to the Municipality not less than five (5) days prior to the Disbursement Date; and
- (b) pay the Disbursement to the Municipality on the Disbursement Date against issuance by the Municipality to FCM of a debenture substantially in the form appended to the Borrowing By-law attached hereto as Schedule F (the “**Debenture**”) in the amount of the Disbursement. The Debenture will be issued by the Municipality in accordance with the provisions of the Act.

Section 2.06 **Interest.**

- (a) The Municipality shall pay interest on the Principal Amount of the Loan that is from time to time outstanding to FCM at an annual rate that is equal to the higher of:
 - (i) (A) the average of the GoC ten (10) year benchmark bond yield and the long-term GoC benchmark bond yield both in effect five (5) Business Days immediately preceding the date on which the Borrowing By-law is passed (which yields will be shown on the website of the Bank of Canada at www.bankofcanada.ca) minus (B) one point fifty percent (1.50%) per annum; and
 - (ii) two percent (2.00%) per annum.

For greater certainty, the annual rate shall not be lower than two percent (2.00%) per annum. The annual rate of interest so determined is subject to increase as provided in

- (b) Such interest shall be calculated and accrued semi-annually, not in advance, from the Disbursement Date based on the actual number of days outstanding, after as well as before default, including after any judgment, until the Principal Amount of the Loan has been repaid in full.
- (c) Interest at the aforesaid rate on the Principal Amount of the Loan that is from time to time outstanding shall become due and be payable semi-annually, not in advance, commencing on the date which is six (6) months following the Disbursement Date, and shall continue to be paid semi-annually, not in advance, until the Principal Amount of the Loan has been repaid in full.

Section 2.07 **Repayment.** The Municipality shall repay to FCM the Principal Amount of the Loan in forty (40) equal consecutive semi-annual instalments of combined (blended) principal and interest in

the manner set forth in the Debenture, commencing on the date that is six (6) months after the Disbursement Date and ending on the earlier of the date that is either: (a) the last day of the Term; or (b) the date on which the Principal Amount of the Loan has been repaid as a result of one or more prepayments in accordance with Section 2.09.

Section 2.08 **Interest in the Event of a Default.** If the Municipality defaults in the payment of any sum due for the outstanding Principal Amount of the Loan or interest thereon at any time appointed for payment thereof as contained in Section 2.06 and Section 2.07, the Municipality shall, until such overdue principal and/or interest amount(s) has/have been paid in full, pay to FCM interest on the Principal Amount of the Loan and interest thereon then outstanding at an annual rate that equals: (a) the annual rate provided for in Section 2.06(a)(i)(A) plus (b) two percent (2.00%) per annum, calculated from the date of such default. Any payment received by FCM from the Municipality following default in the payment of any sum due for the principal amount of the Loan or interest thereon by the Municipality shall be applied, first, to the interest incurred pursuant to this Section 2.08 in respect of such overdue principal and/or interest amount(s), secondly, in respect of the interest on the overdue principal amount of the Loan and, thirdly, in respect of the overdue principal amount of the Loan.

Section 2.09 **Prepayment.** Following the expiration of the first half of the Term, the Municipality may on any subsequent semi-annual payment date, on not less than thirty (30) days notice to FCM, prepay all or part of the Principal Amount of the Loan that is then outstanding, provided it simultaneously pays all accrued interest thereon plus an amount equal to three percent (3.00%) of the Principal Amount of the Loan so prepaid. In the case of a prepayment of a part of the Principal Amount of the Loan, the amount of such prepayment cannot be less than the sum of one hundred thousand dollars (\$100,000.00). In that event, a new amortization schedule will be provided to the Municipality effective as of the date of the prepayment and such new amortization schedule shall be deemed to replace the amortization schedule that constitutes part of the Debenture in respect of which the prepayment was effected. Upon delivery by the Municipality of a prepayment notice, the Municipality shall be obligated to effect prepayment in accordance with the terms of the notice and this Section 2.09. Any amounts prepaid may not be re-borrowed.

Section 2.10 **Payments.**

- (a) Payments of principal and interest due to FCM under this Agreement shall be made by the Municipality to FCM's credit at:

Name of Bank: Royal Bank of Canada
Address of Bank: 90 Sparks Street, Ottawa, Ontario K1P 5T6
Bank no.: 003
Transit no.: 00006
to the credit of FCM's account no.: 102-427-2
and the Loan reference no.: GMF 10325

or as FCM may otherwise designate from time to time by notice to the Municipality.

- (b) Notwithstanding the foregoing, upon the prior written approval of FCM, the Municipality may make alternative arrangements in respect of the manner of payment of principal and interest due to FCM under this Agreement, including payment by preauthorized debit, cash, certified cheque, money order or wire of immediately available funds.
- (c) Interest shall accrue until payment is received by FCM's banker. If the date for any payment under this Agreement is not a date on which banks are open for business at the place where such

payment is to be made, then the Municipality shall make such payment on the next succeeding day on which banks are open for business in such place.

- (d) Subject to Section 2.08, if FCM shall at any time receive less than the full amount then due and payable under this Agreement, FCM shall have the right to allocate and apply such payment in any manner and for such purpose as FCM shall solely determine, notwithstanding any instruction of the Municipality to the contrary.

Section 2.11 Covenant to Pay. The Municipality promises to pay to FCM punctually in accordance with this Agreement all amounts, including the Principal Amount of the Loan, interest, fees, costs, expenses and other monies owing by the Municipality to FCM under this Agreement. The Municipality hereby waives presentment for payment of this promise to pay, demand, protest or notice of any kind.

Section 2.12 Grant Amount. Subject to and in accordance with the terms and conditions of this Agreement and in reliance upon the representations, warranties and covenants of the Municipality hereinafter set forth, FCM agrees to contribute towards the Eligible Costs, an amount that is equal to the lesser of:

- (a) the sum of three hundred thirty thousand dollars (\$330,000); or
(b) seven and twenty seven one hundredths percent (7.27 %) of Eligible Costs;

provided that, if the aggregate amount of funding received or to be received from all sources of funding, other than the Municipality, as described in Part 3 of Schedule A delivered pursuant to Section 3.01(j) (all as determined and calculated by FCM) is greater than the total costs incurred by the Municipality in respect of the Project, as evidenced by the delivery contemplated in Section 3.01(h), then FCM may reduce the Grant amount determined pursuant to this Section 2.12 to such amount as it deems appropriate, in its sole and absolute discretion.

Notwithstanding the foregoing, no Grant will be awarded if the Project fails to achieve the Required Minimum Environmental Benefit.

Section 2.13 Grant Expiration Date. If the Municipality fails to meet the conditions of Contribution set forth in Article 3, including achieving the Required Minimum Environmental Benefit, and/or fails to request the Contribution as provided for in Section 2.14 within the three (3) year period from the time the Project is Substantially Performed then FCM may, at its sole and absolute discretion and on notice to the Municipality, forthwith terminate its obligation to provide the Grant pursuant to Section 2.12 of this Agreement.

Section 2.14 Contribution. At any time following the Project being Substantially Performed, and provided that the Loan has been disbursed in accordance with this Agreement, the Municipality shall request the advance of the Grant by way of a single Contribution (which shall not exceed the amount determined pursuant to Section 2.12) by delivering to FCM a completed Request for Disbursement/Contribution in the form of Schedule B, at least thirty (30) days before the date of the Contribution set out therein, which date shall be a Business Day (the "**Contribution Date**"). Provided that the conditions of Contribution set forth in Article 3 have been met when the Municipality submits the Request for Disbursement/Contribution, FCM shall:

- (a) calculate the amount of the Grant and, therefore, the amount of the Contribution, in the manner contemplated by Section 2.12 and shall provide written notice thereof to the Municipality not less than five (5) days prior to the Contribution Date; and
- (b) pay the Contribution to the Municipality on the Contribution Date.

Section 2.15 Conflict. In the event of any conflict between the terms of this Agreement and the terms of the Debenture, the terms of the Debenture shall prevail over the terms hereof.

ARTICLE 3 CONDITIONS OF DISBURSEMENT OF THE LOAN AND CONDITIONS OF CONTRIBUTION OF THE GRANT

Section 3.01 Conditions of Disbursement of the Loan. The obligation of FCM to remit the Disbursement is conditional upon the following conditions being satisfied:

- (a) the Municipality has completed and submitted to FCM the Project Completion Report in the form of Schedule H and shall have obtained FCM approval of the report thereafter;
- (b) the Municipality has delivered to FCM a completed Request for Disbursement/Contribution in the form of Schedule B relating to the Loan;
- (c) the Municipality has provided FCM with a copy of the Authorizing By-law(s), which Authorizing By-law(s) is/are found satisfactory by FCM;
- (d) the Municipality has delivered to FCM a copy of the Certificate of Incumbency and Authority in the form of Schedule C;
- (e) at least five (5) Business Days before the Disbursement Date, the Municipality has delivered to FCM a legal opinion in the form of Schedule D, which is found satisfactory by FCM;
- (f) the Municipality has delivered to FCM confirmation that the Project substantially conforms to the Project description set out in Part 1 of Schedule A;
- (g) at least five (5) Business Days before the date on which the Borrowing By-law is passed, the Municipality has conducted and delivered to FCM the Financial Audit (and all attachments thereto) in the form of Schedule E, which is found satisfactory by FCM. All invoices and receipts together with back-up documentation must be kept for audit purposes;
- (h) at least five (5) Business Days before the date on which the Borrowing By-law is passed, the Municipality has determined and delivered to FCM, substantially in the form of Part 2 of Schedule A and certified by a person named in the Certificate of Incumbency and Authority in the form of Schedule C, the total costs of the Project for the period beginning March 22, 2010 and ending on the date on which the Project was Substantially Performed, being expenses which:
 - (i) are actually and reasonably incurred;
 - (ii) are directly related to the Project;
 - (iii) were incurred and in an amount which is in accordance with applicable industry standards;
 - (iv) would not otherwise have been incurred by the Municipality but for the Project; and
 - (v) other than in-kind contributions set out under the heading "In-Kind" in the definition of Eligible Costs, be an actual cash outlay by or on behalf of the Municipality to third parties acting at arm's length that can be documented through invoices, receipts or contracts;

- (i) the Municipality's project manager in relation to the Project has delivered to FCM a document, in form and substance acceptable to FCM, specifying the date on which the Project was Substantially Performed and confirming that all necessary governmental approvals, consents, authorizations and licenses that were required for the Project were obtained;
- (j) at least five (5) Business Days before the date on which the Borrowing By-law is passed, the Municipality has: (i) provided details of any changes to Part 3 of Schedule A, in form and substance satisfactory to FCM; and (ii) delivered to FCM evidence in form and substance acceptable to FCM, confirming that each of the sources of funding described in Part 3 of Schedule A has contractually agreed on the conditions and amount of its funding of the Project;
- (k) at least five (5) Business Days but no more than thirty-five (35) Business Days before the Disbursement Date, the Municipality has passed the Borrowing By-law substantially in the form attached hereto as Schedule F, which Borrowing By-law is found satisfactory by FCM;
- (l) at least five (5) Business Days before the Disbursement Date, the Municipality has made arrangements satisfactory to FCM to deliver to FCM a Debenture in the principal amount of the Disbursement together with such other documentation as FCM may reasonably require;
- (m) the Municipality shall have fulfilled the requirements set out in the Act to authorize the issuance of the Debenture;
- (n) the Municipality has delivered to FCM confirmation satisfactory to FCM that the following conditions have been satisfied: **No additional conditions imposed.**

Each of the foregoing conditions is included for the benefit of FCM and may be waived in whole or in part at FCM's sole discretion by notice to the Municipality.

Section 3.02 **Conditions of Contribution of the Grant.** The obligation of FCM to remit the Contribution is conditional upon the following conditions being satisfied within the three (3) year period immediately following the Project being Substantially Performed:

- (a) the conditions of Disbursement of the Loan set out in Section 3.01 remain completed and/or true and correct, as applicable, on and as of the Contribution Date;
- (b) the Municipality has delivered to FCM a completed Request for Disbursement/Contribution in the form of Schedule B relating to the Grant;
- (c) the Municipality has delivered to FCM, and obtained FCM approval of, the Environmental Results Report in the form of Schedule I which confirms that the Project has achieved the Required Minimum Environmental Benefit, verified by a third party acceptable to FCM;
- (d) in the event that the Municipality incurs additional Eligible Costs since the submission of the initial Statement of Expenses and Audit Report referred to in Section 3.01, the Municipality shall deliver to FCM an updated Statement of Expenses confirming in a manner satisfactory to FCM, the additional Eligible Costs incurred by the Municipality in relation to the Project and confirming that the Grant will be used for the purpose set forth in Section 2.01 together with an Audit Report in the form of Part 3 of Schedule E which is found satisfactory to FCM. All invoices and receipts together with back-up documentation must be kept for audit purposes; and

- (e) the Municipality has delivered to FCM confirmation satisfactory to FCM that the following conditions have been satisfied: **No additional conditions imposed**

Each of the foregoing conditions is included for the benefit of FCM and may be waived in whole or in part at FCM's sole discretion by notice to the Municipality.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

Section 4.01 **Representations and Warranties**. The Municipality represents and warrants that:

- (a) it is duly established under the laws of the Province of Ontario and has the legal power and authority to enter into, and perform its obligations under, this Agreement and the Project;
- (b) this Agreement has been duly authorized and executed by it and constitutes a valid and binding obligation of it, enforceable against it in accordance with its terms;
- (c) neither the making of this Agreement nor the compliance with its terms and terms of the Project will conflict with or result in breach of any of the terms, conditions or provisions of, or constitute a default under any indenture, debenture, agreement or other instrument or arrangement to which the Municipality is a party or by which it is bound, or violate any of the terms or provisions of the Act, the Municipality's by-laws or any license, approval, consent, judgment, decree or order or any statute, rule or regulation applicable to the Municipality;
- (d) before the council of the Municipality authorized the Project and before it authorized any additional cost amounts and any additional debenture authorities in respect thereof (if any), the council of the Municipality had its treasurer calculate an updated limit in respect of its most recent annual debt and financial obligation limit received from the Ministry of Municipal Affairs and Housing in accordance with the applicable debt and financial obligation limits regulation. In connection therewith, before each such authorization, the treasurer determined that the estimated annual amount payable in respect thereof would not cause the Municipality to reach or exceed its updated limit with the result that such authorizations were made without the approval of the Ontario Municipal Board;
- (e) the by-law(s) of the Municipality authorizing the Project and this Agreement (the "**Authorizing By-law(s)**") has been, and the Borrowing By-law will be enacted and passed by the Council of the Municipality in full compliance with the Act at meetings at which a quorum was, or will be, in the case of the Borrowing By-law, present. Forthwith after the passage of the Authorizing By-law(s) and of the Borrowing By-law the same was, or will be, in the case of the Borrowing By-law, signed by the Head of Council and by the Clerk and sealed with the seal of the Municipality;
- (f) all of the recitals contained in the Authorizing By-law(s) and the Borrowing By-law are, or will be, in the case of the Borrowing By-Law, true in substance and fact and no application has been made or action brought to quash, set aside or declare invalid such By-laws nor have the same been in any way repealed, altered or amended, and such By-laws are, or will be, in the case of the Borrowing By-Law, now in full force and effect;
- (g) the Municipality is not subject to any restructuring order under any applicable statutory authority, accordingly, no approval of the entering into of this Agreement or of any Borrowing By-law is

required to be given by any transition board or commission appointed in respect of the restructuring of the Municipality;

- (h) no litigation, arbitration or administrative proceedings are current or pending or have been threatened, and so far as the Municipality is aware no claim has been made, which is likely to have an adverse effect on its performance of the Project or its compliance with its obligations under this Agreement;
- (i) the Municipality owns all right, title and interest, including all intellectual property rights, in and to the Project Completion Report and the Environmental Results Report that it will submit to FCM pursuant to Article 3, prepared by or on behalf of the Municipality and has sole and exclusive rights to the use thereof. Any person involved in the preparation of such reports has executed and delivered to the Municipality a written agreement which effects the assignment to the Municipality of all right, title and interest therein, including all intellectual property rights, and provides that such person has waived all its non-assignable rights (including moral rights) therein; and
- (j) the Project Completion Report and the Environmental Results Report that it will submit to FCM pursuant to Article 3, prepared by or on behalf of the Municipality, do not infringe upon any of the intellectual property rights of any other person and the Municipality has not received any charge, complaint, claim, demand, or notice alleging any interference, infringement, misappropriation or violation of the intellectual property rights of any other person, nor does the Municipality know of any valid grounds for any bona fide claims.

ARTICLE 5 COVENANTS

Section 5.01 **Affirmative Covenants.** Unless FCM shall otherwise agree in writing:

- (a) the Municipality covenants and agrees that it shall use the Loan and the Grant only for the Project;
- (b) the Municipality covenants and agrees that it shall carry out the Project and conduct the activities thereof in compliance with all applicable laws and regulations and, without restricting the generality of the foregoing, in compliance with all applicable environmental, health and safety laws of the Province of Ontario and of Canada;
- (c) the Municipality covenants and agrees that it shall carry out the Project with due diligence and efficiency and in accordance with sound engineering, financial and business practices; maintain its accounts, management information and cost control system and books of accounts adequately to reflect truly and fairly the financial condition of the Project and to conform to GAAP. **The Municipality covenants and agrees that it shall keep all such books and records of the Project for seven (7) years after the later of the Disbursement Date and the Contribution Date;**
- (d) upon FCM's request with reasonable prior notice thereto, the Municipality covenants and agrees that it shall permit representatives of FCM, during its normal office hours, to visit any of the premises where the Project activities are conducted and to have access to its books of accounts and records relating to the Project and permit FCM to communicate directly with, including the receipt of information from, its external auditors regarding its accounts and operations relating to the Project;

- (e) the Municipality shall own all right, title and interest, including all intellectual property rights, in and to the Project Completion Report and the Environmental Results Report that it will submit to FCM pursuant to Article 3, prepared by or on behalf of the Municipality and shall have sole and exclusive rights to the use thereof. The Municipality shall ensure that any person involved in the preparation of the Project Completion Report and the Environmental Results Report owns all right, title and interest, including all intellectual property rights, in the materials which they prepare for the Municipality, has executed and delivered to the Municipality a written agreement which effects the assignment to the Municipality of all such right, title and interest therein, including all intellectual property rights, and provides that such person has waived all its non-assignable rights (including moral rights) therein; and
- (f) the Municipality covenants and agrees that it shall deliver, or shall cause to be delivered, original copies of the legal opinion and of the Debenture at least five (5) Business Days before the making of the Disbursement.

Section 5.02 **Negative Covenants.** Unless FCM shall otherwise agree in writing, the Municipality shall not during the Term of this Agreement:

- (a) use the Loan or the Grant for expenditures that are not Eligible Costs;
- (b) at any time (i) reach or exceed its updated debt and financial obligation limit mandated by applicable government authorities; (ii) fail to meet and pay any of its debentures or interest thereon (if any) when due; (iii) fail to meet and pay any of its other debts or liabilities when due and default in payment is occasioned from financial difficulties affecting it; or (iv) develop financial problems such that default or unusual difficulty in meeting debts or obligations or in providing adequate funds to meet current expenditures may ensue, or has failed to levy the necessary rates to meet current expenditures;
- (c) make any material change to the nature or scope of the Project or carry out the Project in a manner which materially differs from that described in Schedule A hereof; or
- (d) sell, assign, transfer, lease, exchange or otherwise dispose of, or contract to sell, assign, transfer, lease, exchange or otherwise dispose of, any of the properties, whether movable or immovable, of the Project, whether now owned or hereafter acquired, and whether to a private sector partner of it or otherwise, except if provided for in Schedule A.

Section 5.03 **Ongoing Information and Notice Requirements.** The Municipality shall provide to FCM during the Term of this Agreement the following information, in form and substance satisfactory to FCM:

- (a) prompt notice of any change to the Project Completion Date as set out in Section 2.03;
- (b) within 30 days of request by FCM, a completed Project Progress Report in the form of Schedule G;
- (c) within one hundred and twenty (120) days after the end of each fiscal year, which is the 31st day of December, one (1) copy of its complete financial statements for such fiscal year (which shall be in agreement with its books of account, shall include the aggregate amounts owing to secured creditors, preferred creditors and general creditors, respectively, of it, and shall be prepared in accordance with GAAP), together with an audit report thereon from an independent public

accountant acceptable to FCM; furthermore, FCM may require such an audit report at any time or times if there is an Event of Default;

- (d) prompt notice of any proposed change in the nature or scope of the legal status of the Municipality;
- (e) prompt notice of any act or thing which does or may materially and adversely affect the Project or the ability of the Municipality to perform its obligations under this Agreement and the Project;
- (f) prompt notice of any litigation or administrative proceedings, together with copies of any written legal documents as FCM may request, before any court or arbitral body or other authority which might materially and adversely affect the Project or the ability of the Municipality to perform its obligations under this Agreement and in respect of the Project;
- (g) immediate notice of the occurrence of any Event of Default relating to it specifying the nature of such Event of Default, and the steps, if any, that it is taking to remedy the same; and
- (h) such other information as FCM may from time to time reasonably request from it by notice to it.

ARTICLE 6 EVENTS OF DEFAULT

Section 6.01 **Events of Default.** The following events are “Events of Default”:

- (a) default shall have occurred in the payment of any outstanding portion of the Principal Amount of the Loan, interest thereon, or other amounts payable by the Municipality in respect of the Loan and/or under this Agreement and such default shall have continued for a period of not less than five (5) days;
- (b) the Municipality: (i) reaches or exceeds its updated debt and financial obligation limit mandated by applicable government authorities; (ii) has failed to meet and pay any of its debentures or interest thereon (if any) when due; (iii) has failed to meet and pay any of its other debts or liabilities when due and default in payment is occasioned from financial difficulties affecting it; or (iv) has or may develop financial problems such that default or unusual difficulty in meeting debts or obligations or in providing adequate funds to meet current expenditures may ensue, or has failed to levy the necessary rates to meet current expenditures;
- (c) default shall have occurred in the performance of any covenant, agreement or undertaking of the Municipality contained in this Agreement, save and except as provided for in the foregoing Section 6.01(a), and any such default shall have continued for a period of not less than fifteen (15) days after notice thereof shall have been given to the Municipality, as applicable, by FCM;
- (d) any representation or warranty confirmed or made in Article 4 or in a Request for Disbursement/Contribution under this Agreement or in connection with the execution and implementation of this Agreement or in connection with the Project, is found to have been incorrect or misleading;
- (e) if control and charge over the administration of all the affairs of the Municipality are vested in any person other than the Municipality;

- (f) if any act or thing which, in the determination of FCM, does or may materially and adversely affect the Project or the ability of the Municipality to perform its obligations under this Agreement and the Project has occurred or may occur.

Section 6.02 Remedies. Upon the occurrence of an Event of Default, FCM may by notice to the Municipality:

- (a) terminate this Agreement; and
- (b) take such action or proceedings in compliance with applicable laws or regulations as FCM in its sole discretion deems expedient to collect the amounts owing by the Municipality to FCM hereunder (which, for greater certainty, excludes the Grant Amount), all without any additional notice, presentment, demand, protest or other formality, all of which are hereby expressly waived by the Municipality.

Section 6.03 Saving of Rights. No course of dealing and no delay in exercising, or omission to exercise, any right, power or remedy accruing to FCM upon any default under this Agreement shall impair any such right, power or remedy or be construed to be a waiver thereof or any acquiescence therein; nor shall the action of FCM in respect of any such default, or any acquiescence by it therein, affect or impair any right, power or remedy of FCM in respect of any other default.

ARTICLE 7 MISCELLANEOUS PROVISIONS

Section 7.01 Publications and Signage.

- (a) The Municipality shall recognize and state in an appropriate manner, as approved by FCM, the financial assistance offered by GMF concerning the Project and the contribution of the GoC to the GMF.
- (b) The Municipality shall have affixed, in content, form and manner acceptable to FCM Signage in accordance with Schedule J, in a conspicuous location on or about the properties of the Project acknowledging the contribution of FCM, the GMF and the GoC to the completion of the Project, and has provided evidence thereof which is found satisfactory by FCM.
- (c) The Municipality shall incorporate the following language into the Project Completion Report and the Environmental Results Report that it will submit to FCM pursuant to Article 3, unless it has received written notice to the contrary from FCM:

“© 200X, **The Corporation of the Town of The Blue Mountains.** All Rights Reserved.

This project was carried out with assistance from the Green Municipal Fund, a Fund financed by the Government of Canada and administered by the Federation of Canadian Municipalities. Notwithstanding this support, the views expressed are the personal views of the authors, and the Federation of Canadian Municipalities and the Government of Canada accept no responsibility for them.”

- (d) The Municipality grants FCM a perpetual, non-exclusive, non-transferable and royalty-free license to use, reproduce, distribute, modify, adapt, change formats, display and translate the Project Completion Report and the Environmental Results Report that it will submit to FCM

pursuant to Article 3, prepared and/or delivered by or on behalf of the Municipality to FCM pursuant to this Agreement in furtherance of the goals and objectives of the FCM and/or the GMF.

Section 7.02 **Communication.** The Municipality shall during the Term of this Agreement:

- (a) promptly inform FCM of upcoming promotional events related to the Project and allow FCM and the GoC to participate in such promotional events;
- (b) comply with any FCM GMF guidelines for the planning of communications and the respective roles of the Municipality and of FCM in the coordination and implementation of a communications strategy relating to the Project; and
- (c) cooperate in providing reasonable information on the Project to other interested persons to permit the sharing of knowledge and lessons learned about the Project during the Term of this Agreement and for five (5) years following termination hereof.

Section 7.03 **Notices and Requests.** Any notice, demand, request or other communication to be given or made under this Agreement to FCM or to the Municipality shall be in writing and may be made or given by personal delivery, by ordinary mail, by facsimile or by electronic mail, addressed as follows:

To the Municipality:

The Corporation of the Town of The Blue Mountains
26 Bridge Street
P.O. Box 310
Thornbury, ON
N0H 2P0

Attention: Mr. David Finbow
Director, Planning & Building Services

- telephone: 519-599-3131 ext. 246
- by facsimile: 519-599-3018
- by electronic mail: dfinbow@thebluemountains.ca

Alternate Contact:

Attention: Mr. Robert Cummings
Director of Financial & Information Services

- telephone: 519-599-3131 ext 245
- by electronic mail: rcummings@thebluemountains.ca

To FCM:

Federation of Canadian Municipalities
24 Clarence Street
Ottawa, Ontario
K1N 5P3

Attention: Mr. Jim Wren
Project Officer - Contracts

- telephone: 613-907-6373
- by facsimile: 613-244-1515
- by electronic mail: jwren@fcm.ca

Any notice, demand, request or other communications made or given by personal delivery shall be deemed to have been made or given on the day of actual delivery thereof, and if made or given by ordinary mail, on the 3rd Business Day following the deposit thereof in the mail, and if made or given by facsimile transmission or by electronic mail, on the 1st Business Day following the transmittal thereof. If the party giving any notice, demand, request or other communications knows or reasonably ought to know of any difficulties with the postal system that might affect the delivery of mail, such notice, demand, request or other communications shall not be mailed, but shall be given by personal delivery, facsimile transmission or electronic mail.

Section 7.04 **Release and Indemnification.** The Municipality acknowledges and agrees that:

- (a) By accepting or approving anything required to be accepted or approved pursuant to this Agreement or the Project, FCM shall not be deemed to have warranted or represented the accuracy, sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not constitute a warranty or representation to anyone with respect thereto by FCM.
- (b) The Municipality releases and forever discharges FCM and its directors, officers, agents, servants and employees from any claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses arising out of or in consequence of any loss, injury or damage to the Municipality or its property in any way relating to this Agreement and/or the Project.
- (c) The Municipality agrees to indemnify and save harmless FCM and its directors, officers, agents, servants and employees from all claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs and expenses (including, without limitation, all legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement) arising directly or indirectly as a consequence of such matter suffered or incurred by FCM and its directors, officers, agents, servants and employees as a result of or arising directly or indirectly out of or in connection with: (i) the carrying-out of the Project; (ii) any act of, or failure to act by, the Municipality or its directors, officers, agents, servants or employees; (iii) any inaccuracy of any representation or warranty contained in this Agreement or in any agreement, instrument, certificate or other document delivered pursuant hereto; (iv) any breach or non-performance by the Municipality of any covenant to be performed by it that is contained in this Agreement or in any agreement, certificate or other document delivered pursuant hereto; and (v) any breach or alleged breach by the Municipality of the intellectual property rights of any person, and, without limiting the generality of the foregoing, FCM shall not be liable for any bodily injury, death or property damage of any person or any claim against the Municipality or its directors, officers, agents, servants or employees by which FCM may be made or attempted to be made a party and any incidental, indirect, special or consequential damages, or any loss of use, revenue or profit to the Municipality or its directors, officers, agents, servants or employees arising out of or in any way related to this Agreement or the Project.

- (d) The Municipality shall be solely and fully responsible for the undertaking, implementation and completion of the Project or any element thereof. FCM shall not be responsible in any way whatsoever for the undertaking, implementation and completion of the Project or any element thereof. The Municipality acknowledges and agrees that it shall be responsible for all acts of its directors, officers, agents, servants and employees and that all such acts shall be treated as acts of the Municipality for the purposes of this Agreement.

Section 7.05 FCM's Limited Liability. FCM has executed this Agreement solely in its capacity as trustee of the GMF and not in its own capacity. Accordingly, recourse with respect to any liability or obligation of FCM in connection with this Agreement shall be limited only to the property and assets of the GMF and neither FCM nor any director, officer, agent, servant or employee thereof shall have any personal liability therefor.

Section 7.06 Further Assurances. The Municipality shall promptly execute and deliver, upon request by FCM, all such other and further documents, agreements, opinions, certificates and instruments as may be reasonably required by FCM to more fully state the obligations of either party to this Agreement or to make any recording, file any notice or obtain any consent.

Section 7.07 Amendment. Any amendment of any provision of this Agreement, including the Schedules, must be in writing and signed by both parties.

Section 7.08 Choice of Language. It is the express wish of the parties that this Agreement and any related documents be drawn up and executed in English. Les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais.

Section 7.09 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

Section 7.10 Choice of Forum. The parties hereto agree and intend that the proper and exclusive forum for any litigation of any disputes or controversies arising out of or related to this Agreement shall be a Court of competent jurisdiction located in the Province of Ontario, City of Ottawa.

Section 7.11 Effectiveness. This Agreement shall continue in force until all other monies payable hereunder have been fully paid to FCM in accordance with the provisions hereof.

Section 7.12 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Municipality may not assign or otherwise transfer all or any part of its rights or obligations under this Agreement without the prior written consent of FCM.

Section 7.13 Severability. In the event that any part of a provision(s) of this Agreement is (are) held to be invalid, unenforceable, or void, such provision(s) shall, by the adjudicating body, be applied to the fullest extent possible and shall be read-down only to the extent absolutely necessary to comply with applicable law. If any provision(s) of this Agreement is (are) held to be invalid, unenforceable, or void, such provision(s) shall be severed from the rest of the Agreement. The fact that part of a provision(s) or an entire provision(s) has (have) been held to be invalid, unenforceable, or void such determination shall not affect the validity and enforceability of any other remaining provisions.

Section 7.14 Waiver of Rights. Except as expressly provided in this Agreement, any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the party giving it, and only in the specific instance and for the specific purpose

for which it has been given. No failure on the part of a party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

Section 7.15 **Entire Agreement**. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior correspondence, agreements, negotiations, discussions and understandings, if any, written or oral.

Section 7.16 **Audit**. FCM reserves the right, at its own expense, to audit compliance by the Municipality with this Agreement at any time.

Section 7.17 **Counterparts**. This Agreement may be executed in two counterparts and, in such case, each such counterpart shall be deemed an original, but both of which together shall constitute one and the same agreement.