THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 11-012

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF AN AMENDMENT TO A FUNDING AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND THE PROVINCE OF ONTARIO REPRESENTED BY THE MINISTER OF ENERGY AND INFRASTRUCTURE AND THE MINISTER OF AGRICULTURE, FOOD AND RURAL AFFAIRS TO FACILITATE AN EXTENSION AND REALLOCATION OF FUNDING UNDER THE INFRASTRUCTURE STIMULUS FUND (ISF) FOR THE MARKET HALL RESTORATION PROJECT (FILE#2288)

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

That the Mayor and Clerk be hereby authorized to execute an amendment to the ISF Contribution Agreement File #2288 between the Corporation of the City of Peterborough, the Ministry of Energy and Infrastructure and the Ministry of Agriculture, Food and Rural Affairs in the form attached hereby as Schedule “A”, and to affix the Seal of the Corporation thereto.

By-law read a first, second and third time this 22nd day of February, 2011.

(Sgd.) Daryl Bennett, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk
AMENDING AGREEMENT

INFRASTRUCTURE STIMULUS FUND CONTRIBUTION AGREEMENT

Between

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

and the

Minister of Agriculture, Food and Rural Affairs
(jointly “Ontario” and as “OMAFRA” in the latter case)

And

THE CORPORATION OF THE CITY OF PETERBOROUGH
(the “Recipient”)

WHEREAS the Government of Canada established a $4.0 billion ISF under Canada’s Economic Plan to mitigate against the impacts of the global economic recession by increasing the total amount of construction activity to projects that were projected to start and be Substantially Completed in the Fiscal Years of 2009-2010 and 2010-2011;

AND WHEREAS the Government of Ontario also recognized the impacts of the global economic recession on the Province of Ontario and mitigated against those impacts by increasing the total amount of construction activity to projects that were projected to start and be Substantially Completed in the Fiscal Years 2009-2010 and 2010-2011;

AND WHEREAS Ontario and the Recipient (the “Parties”) entered into the Infrastructure Stimulus Fund Contribution Agreement on December 10, 2009 (the “Agreement”);

AND WHEREAS the purpose of the Agreement was directed at capital projects that involved moveable or non-moveable assets, constructed, rehabilitated, or improved, in whole or in part;

AND WHEREAS the Government of Canada and the Government of Ontario agreed that the deadline for the Eligible Costs of extended projects will be extended from March 31, 2011 to October 31, 2011;

AND WHEREAS the Recipient was, through outstanding project management, able to come in under budget for one or more of its Project(s) under the Agreement;

AND WHEREAS the Recipient asked the Government of Canada and the Government of Ontario to be allowed to use the remaining Financial Assistance that was not needed for one or more of its Project(s) for other “shovel ready” projects the Recipient was prepared to construct;
AND WHEREAS the Government of Canada and the Government of Ontario agreed to allow the Recipient to use the Financial Assistance that was not used for one or more of its Project(s) under the Agreement for other “shovel ready” project(s);

AND WHEREAS the Parties wish to amend certain provisions of the Agreement as set forth in this amending agreement (“Amendment”) to reflect the changes that have occurred since the Agreement was originally signed;

NOW THEREFORE, pursuant to section 17.10 of the Agreement and in accordance with the principles set out above and the mutual covenants and agreements herein, the sufficiency of which is acknowledged, the Parties hereby agree as follows:

1. **Amendments to Section 1 of Schedule “A” of the Agreement.** The following terms of Section 1 of Schedule “A” of the Agreement are amended as follows:

   (a) “End of Financial Assistance Date”. This definition is revoked and replaced with:


   (b) “Expiration Date”. This definition is revoked and replaced with:

   “Expiration Date” means March 31, 2013.

   (c) “Final Report Date”. This definition is revoked and replaced with:


   (d) “Project Completion Date”. This definition is revoked and replaced with:

   “Project Completion Date” means October 31, 2011.

2. **Additional Terms Added to Section 1 to Schedule “A” of the Agreement.** The following terms are added to Section 1 of Schedule “A” of the Agreement:

   (a) “Extended Project” means that Project(s) specifically indicated as being an extended project in Schedule “B” (Description of Project(s)) of this Agreement.

   (b) “Recycled-Funded Project(s)” means those Projects specifically indicated as being funded through recycled funds in Schedule “B” (Description of Project(s)) of this Agreement.

3. **Addition of Section 1.7 to Schedule “A” of the Agreement.** Section 1.7 is added to Schedule “A” of the Agreement as follows:

   **1.7 Terms and Conditions In Agreement Apply to Extended Project(s) and Recycled-Funded Project(s).** For greater certainty, all terms and conditions that apply to Projects under this Agreement apply, with any and all necessary modifications, to an Extended Project and a Recycled-Funded Project, including where the Recycled-Funded Project is also an Extended Project, under this Agreement.
4. **Addition of Section 3.6 to Schedule “A” of the Agreement.** Section 3.6 is added to Schedule “A” of the Agreement as follows:

3.6 **Deemed Ineligible Costs.** Notwithstanding anything else contained in the Agreement, any cost invoiced by March 31, 2011 that the Recipient fails to submit to OMAFRA for the payment of Financial Assistance by April 30, 2011 shall be deemed to be an Ineligible Cost.

5. **Addition of Section 4.18 to Schedule “A” of the Agreement.** Section 4.18 is added to Schedule “A” of the Agreement as follows:

4.18 **Adjust Financial Assistance Being Provided By the Government of Canada.** If, in the sole and absolute discretion of Ontario, Ontario is of the opinion that the Government of Canada has, for whatever reason, ceased its funding for the Project, Ontario may Adjust the Financial Assistance in order to account for the reduction of funding for the Project from the Government of Canada.

6. **Revocation and Replacement of Schedule “B” of the Agreement.** Schedule “B” of the Agreement is revoked and replaced with the Schedule “B” attached to this Amendment.

7. **Revocation and Replacement of Clause C.2 a) of Schedule “C” of the Agreement.** Clause C.2 a) of Schedule “C” of the Agreement is revoked and replaced with the following:

a) costs incurred prior to June 5, 2009, unless the Project is a Recycle-Funded Project, in which case it will be costs incurred prior to receiving an approval for the Recycle-Funded Project from Ontario;

8. **Revocation and Replacement of Schedule “D” of the Agreement.** Schedule “D” of the Agreement is revoked and replaced with the Schedule “D” attached to this Amendment.

9. **Condition Precedent For Amendment That Project Must Have Incurred Eligible Costs By March 31, 2011.** It is a condition precedent for this Amendment that the Project must have incurred Eligible Costs by March 31, 2011. Notwithstanding anything else contained herein, this Amendment or any part thereof may be deemed null and void at Ontario’s sole discretion if the Recipient’s Project has not incurred Eligible Costs by March 31, 2011.

10. **Defined Terms.** Any capitalized term used in this Amendment but not defined herein shall have the same meaning given to it in the Agreement.

11. **Amendment May Be Signed in Counterparts.** The Parties agree that this Amendment may be signed in counterparts.

12. **Amendment Comes Into Effect When Recipient Signs.** This Amendment comes into effect on the day that the Recipient signs the Amendment.

13. **The Agreement.** The Parties acknowledge and agree that the Agreement continues as a valid and binding agreement, subject only to this Amendment, and that all other terms and conditions of the Agreement apply *mutatis mutandis.*
IN WITNESS WHEREOF Ontario and the Recipient have respectively executed this Amendment as of the dates indicated below.

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

Name: The Honourable Bob Chiarelli  
Title: Minister of Infrastructure  
Date

and by the Minister of Agriculture, Food and Rural Affairs
by:

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

RECIPIENT'S NAME: THE CORPORATION OF THE CITY OF PETERBOROUGH
by:

Name:  
Title:  
Date

Affix Corporate Seal

Name:  
Title:  
Date

I/We have authority to bind the Recipient.
# SCHEDULE “B”
## DESCRIPTION OF THE PROJECT(S)

<table>
<thead>
<tr>
<th>FILE NUMBER</th>
<th>PROJECT TITLE</th>
<th>PROJECT DESCRIPTION</th>
<th>PROJECT CONSTRUCTION START DATE</th>
<th>ABORIGINAL CONSULTATION SCHEDULE L</th>
<th>EXTENDED PROJECT</th>
<th>RECYCLED-FUNDED PROJECT</th>
</tr>
</thead>
<tbody>
<tr>
<td>2288</td>
<td>Market Hall Restoration Project</td>
<td>This project is for the restoration of Market Hall.</td>
<td>05/26/2009</td>
<td>L1</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>16133</td>
<td>City Hall (Main Building) HVAC Replacement</td>
<td>The project will remove all existing perimeter hot water cabinet heaters, install new Variable Air Volume (VAV) boxes, replace roof top units and install new washroom exhaust fans and gas fired humidification units.</td>
<td>02/28/2011</td>
<td>L1</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>16127</td>
<td>Peterborough Airport Maintenance Building</td>
<td>The project is for the construction of an Airport Maintenance Building for equipment storage and repairs necessary for maintaining the airport pavement, grounds and other required maintenance.</td>
<td>02/07/2011</td>
<td>L1</td>
<td>Yes</td>
<td>Yes</td>
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</table>
### SCHEDULE “D”
#### PROJECT FINANCIAL ASSISTANCE

<table>
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<tr>
<th>PROJECT NUMBER*</th>
<th>TOTAL ELIGIBLE COSTS</th>
<th>ONTARIO MAXIMUM FINANCIAL ASSISTANCE</th>
<th>FEDERAL MAXIMUM FINANCIAL ASSISTANCE</th>
<th>MAXIMUM FINANCIAL ASSISTANCE</th>
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<td>2288</td>
<td>$8,386,000</td>
<td>$2,795,333</td>
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<td>$166,666</td>
<td>$333,333</td>
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</table>

OMAFRA will hold back 10% of the Maximum Financial Assistance, the release of which shall be contingent on acceptance of the Recipient’s Final Report detailing the progress and status of the Project and substantiating that the Project has been Substantially Completed. Such report must contain the information required in the Final Report as set out in Section 6.3 of Schedule “A” of this Agreement. OMAFRA is not obligated to pay interest on the holdback or any other payments under this Agreement.