

Sample Shared Cost Arrangement Agreement

Agreement #:

Project Title:

THIS AGREEMENT dated for reference the day of , 20 .

BETWEEN

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, represented by the Minister of AGRICULTURE, CORPORATE GOVERNANCE, POLICY AND LEGISLATION BRANCH
(the "Province")

AND *Legal Name of Recipient*

(the "Recipient")

The parties to this Agreement agree as follows:

SECTION 1 - DEFINITIONS

1. Where used in this Agreement

- (a) "Financial Contribution" means the total aggregate value stipulated in Schedule B;
- (b) "Material" means all findings, data, reports, documents, records and material, (both printed and electronic, including but not limited to, hard disk or diskettes), whether complete or otherwise, that have been produced, received, compiled or acquired by, or provided by or on behalf of the Province to, the Recipient as a direct result of this Agreement, but does not include
 - I. personal information which could reasonably be expected to reveal the identity of clients;
 - II. property owned by the Recipient;
- (c) "Project" means the project described in Schedule A;
- (d) "Services" means the services described in Schedule A;
- (e) "Term" means the duration of the Agreement stipulated in Schedule A;
- (f) "Third Party" means any person or entity or its officers, employees or agents, other than a party to this Agreement that is involved in the delivery of the Services.
- (g) "Refund" means any refund or remission of federal or provincial tax or duty available with respect to any items that the Province has paid for or agreed to pay for under this Agreement.

SECTION 2 - APPOINTMENT

The Recipient must carry out and complete the Project described in Schedule A and may use the Province's funding only for the purpose specified in Schedule A.

SECTION 3 – PAYMENT OF FINANCIAL CONTRIBUTION

Subject to the provisions of this Agreement, the Province must pay the Recipient the amount, in the manner, and at the times set out in Schedule B.

The Province has no obligation to make the Financial Contribution unless the Recipient has complied with the criteria set out in Schedule A.

The Province's obligation to make the Financial Contribution is subject to

- (a) sufficient monies being available in an appropriation, as defined in the *Financial Administration Act* ("FAA"), to enable the Province, in any fiscal year when any payment of money by the Province to the Recipient falls due pursuant to this Agreement, to make that payment; and
- (b) Treasury Board, as defined in the FAA, not having controlled or limited, pursuant to the FAA, expenditure under any appropriation referred to in subparagraph (a) of this paragraph.

The Recipient must

- (a) apply for any Refund or remission of federal or provincial tax or duty available with respect to any items that the Province has paid for or agreed to pay for under this Agreement, and
- (b) on receipt of the Refund, comply with the requirements concerning the use, application or remittance of the Refund set out in Schedule B.

The previous paragraph continues in force indefinitely, even after this Agreement expires or is terminated.

The Recipient is responsible for any Provincial Sales Tax (PST) and Goods and Services Tax (GST) and any other charges for which the Province has not expressly agreed to accept responsibility under the terms of this Agreement.

The Recipient must declare any amounts owing to the government under legislation or an agreement. Amounts due to the Recipient under this Agreement may be set-off against amounts owing to the government.

SECTION 4 - REPRESENTATIONS AND WARRANTIES

The Recipient represents and warrants to the Province, with the intent that the Province rely on it in entering into this Agreement, that

- (a) all information, statements, documents and reports furnished or submitted by the Recipient to the Province in connection with this Agreement are true and correct;

- (b) the Recipient has no knowledge of any fact that materially adversely affects, or so far as it can foresee, might materially adversely affect, the Recipient's properties, assets, condition (financial or otherwise), business or operations or its ability to fulfill its obligations under this Agreement; and
- (c) the Recipient is not in breach of, or in default under, any law of Canada or of the Province of British Columbia applicable to or binding on it.

All statements contained in any certificate, application, proposal or other document delivered by or on behalf of the Recipient to the Province under this Agreement or in connection with any of the transactions contemplated by it are deemed to be representations and warranties by the Recipient under this Agreement.

All representations, warranties, covenants and agreements made in this Agreement and all certificates, applications or other documents delivered by or on behalf of the Recipient are material, have been relied on by the Province, and continue in effect during the continuation of this Agreement.

SECTION 5 - INDEPENDENT RELATIONSHIP

No partnership, joint venture, agency or other legal entity is created by this Agreement or by any actions of the parties pursuant to this Agreement.

The Recipient is independent and neither the Recipient nor its servants, agents or employees are the servants, employees, or agents of the Province.

The Recipient must not commit or purport to commit the Province to the payment of money to anyone.

SECTION 6 – RECIPIENT'S OBLIGATIONS

The Recipient must

- (a) carry out the Services in accordance with the terms of this Agreement during the Term stated in Schedule A;
- (b) comply with the payment requirements set out in Schedule B, including all requirements concerning the use, application and expenditure of the payments provided under this Agreement;
- (c) comply with all applicable laws;
- (d) hire and retain only qualified staff;
- (e) unless agreed otherwise, supply, at its own cost, all labour, materials and approvals necessary to carry out the Services;
- (f) unless agreed otherwise, retain ownership to all assets acquired or intangible property created in the process of carrying out this Agreement;

- (g) co-operate with the Province in making the public announcements regarding the Services and the details of this Agreement that the Province requests; and
- (h) acknowledge the financial contribution made by the Province to the Recipient for the Services in any Materials, by printing on each of the Materials the following statement:

"We gratefully acknowledge the financial support of the Province of British Columbia"

SECTION 7 - RECORDS

The Recipient must

- (a) establish and maintain accounting and administrative records in form and content satisfactory of the Province, to be used as the basis for the calculation of amounts owing;
- (b) establish and maintain books of account, invoices, receipts and vouchers for all expenses incurred in form and content satisfactory to the Province; and
- (c) permit the Province, for contract monitoring and audit purposes, at all reasonable times, on reasonable notice, to enter any premises used by the Recipient to deliver the Services or keep any documents or records pertaining to the Services, in order for the Province to inspect, audit, examine, review and copy any findings, data, specifications, drawings, working papers, reports, surveys, spread sheets, evaluations, documents, databases and material, (both printed and electronic, including, but not limited to, hard disk or diskettes), whether complete or not, that are produced, received or otherwise acquired by the Recipient as a result of this Agreement.

The Province does not have control, for the purpose of the *Freedom of Information and Protection of Privacy Act*, of the records held by the Recipient.

SECTION 8 - REPORTS/STATEMENTS AND ACCOUNTING

At the sole option of the Province, any portion of the funds provided to the Recipient under this Agreement and not expended at the end of the Term

- (a) must be returned by the Recipient to the Minister of Finance;
- (b) may be retained by the Recipient as supplemental funding provided for under an amendment to this Agreement; or
- (c) may be deducted by the Province from any future funding requests submitted by the Recipient and approved by the Province.

SECTION 9 - CONFLICT OF INTEREST

The Recipient must not, during the Term, perform a service for or provide advice to any person if the performance of that service or the provision of the advice may, in the reasonable opinion of the Province, give rise to a conflict of interest between the obligations of the Recipient to the Province under this Agreement and the obligations of the Recipient to the other person.

SECTION 10 - CONFIDENTIALITY

The Recipient must treat as confidential all information and material supplied to or obtained by the Recipient, or any Third Party, as a result of this Agreement. The Recipient must not, without the prior written consent of the Province, permit its disclosure, except as required by applicable law or to the extent that the disclosure is necessary to enable the Recipient to fulfill its obligations under this Agreement.

SECTION 11 - DEFAULT

Any of the following events constitute an Event of Default:

- (a) the Recipient fails to comply with any provision of this Agreement;
- (b) any representation or warranty made by the Recipient in accepting this Agreement is untrue or incorrect;
- (c) any information, statement, certificate, report or other document furnished or submitted by or on behalf of the Recipient pursuant to or as a result of this Agreement is untrue or incorrect;
- (d) the Recipient ceases, in the opinion of the Province, to operate;
- (e) a change occurs with respect to any one or more, of the properties, assets, condition (financial or otherwise), business or operations of the Recipient which, in the opinion of the Province, materially adversely affects the ability of the Recipient to fulfill its obligations under this Agreement;
- (f) an order is made or a resolution is passed or a petition is filed for the liquidation or winding up of the Recipient;
- (g) the Recipient becomes insolvent or commits an act of bankruptcy or makes an assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
- (h) a bankruptcy petition is filed or presented against, or a proposal under *the Bankruptcy and Insolvency Act* (Canada) is made by, the Recipient;
- (i) a receiver or receiver-manager of any property of the Recipient is appointed;
- (j) the Recipient permits any sum which is not disputed to be due by it to remain unpaid after legal proceedings have been commenced to enforce payment.

SECTION 12 - TERMINATION

Upon the occurrence of any Event of Default and at any time after that the Province may, despite any other provision of this Agreement, at its option, elect to do any one or more of the following:

- (a) terminate this Agreement, in which case the payment of the amount required under the last paragraph of Section 12 of this Agreement discharges the Province of all liability to the Recipient under this Agreement;
- (b) require the Event of Default be remedied within a time period specified by the Province;
- (c) suspend any installment of the Financial Contribution or any amount that is due to the Recipient while the Event of Default continues;
- (d) waive the Event of Default;
- (e) pursue any other remedy available at law or in equity.

The Province may also terminate this Agreement on 30 days written notice, without cause.

The payment of the amount required under the last paragraph of Section 12 of this Agreement discharges the Province of all liability to the Recipient under this Agreement.

If this Agreement is terminated before 100% completion of the Project, the Province must pay to the Recipient that portion of the Financial Contribution which is equal to the portion of the Project completed to the satisfaction of the Province prior to termination.

SECTION 13 – DISPUTE RESOLUTION

The Parties agree to first refer any matter in dispute under this Agreement to senior officers of the Parties. If the matter cannot be resolved, they must submit it to a mediator as agreed upon by both Parties. The Parties must bear equally the expenditures directly related to the mediation process.

SECTION 14 – INSURANCE AND INDEMNITY

During the Term of this Agreement, the Recipient will provide, maintain and pay for insurance as specified in Schedule "D", which may be amended from time to time at the sole discretion of the Province.

Without limiting the provisions of subparagraph (c) of Section 6, the Recipient will comply with the Workers' Compensation Legislation for the Province of British Columbia.

The Recipient will indemnify and save harmless the Province, its employees and agents, from and against any and all losses, claims, damages, actions, causes of action, cost and expenses that the Province may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this Agreement, where the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission of the Recipient, or of any agent, employee, officer, director or sub Recipient of the Recipient pursuant to this Agreement, excepting always liability arising out of the independent negligent acts of the Province.

SECTION 15 – ASSIGNMENT AND SUB-CONTRACTING

The Recipient must not, without the prior, written consent of the Province

- (a) assign, either directly or indirectly, this Agreement or any right of the Recipient under this Agreement; or
- (b) sub-contract any obligation of the Recipient under this Agreement.

No sub-contract entered into by the Recipient relieves the Recipient from any of its obligations under this Agreement or imposes on the Province any obligation or liability arising from it.

This Agreement binds the Province and its assigns and the Recipient and the Recipient's successors and permitted assigns.

SECTION 16 - REPAYMENT OR REDUCTIONS

An amount paid by the Province to the Recipient or which is treated as such pursuant to the terms of this Agreement, and to which the Recipient is not entitled according to the terms of this Agreement is repayable to the Province and until repaid constitutes a debt due to the Province.

If for any reason, the Project is not completed to the satisfaction of the Province, the Recipient must repay to the Province the Province's Financial Contribution (or any part which has been paid to the Recipient) under this Agreement, within 30 days of receipt by the Recipient of a written request for repayment from the Province.

SECTION 17 – OTHER FUNDING

If the Recipient receives funding for or in respect of the Services from any person, firm, corporation or other government or governmental body, then the Recipient must immediately provide the Province with full details.

SECTION 18 - NOTICES

If in this Agreement any notice or other communication is required to be given by any of the parties, it must be given in writing. It is effectively given

- (a) by delivery to the address of the party set out below, on the date of delivery; or,
- (b) by pre-paid registered mail, to the address of the party set out below, on the fifth business day after mailing;
- (c) by facsimile, to the facsimile number of the party, mentioned in this Agreement, on the date the facsimile is sent; or
- (d) by e-mail, to the e-mail address of the party, mentioned in this Agreement, on the date the e-mail is sent.

The contact details of the parties are

Province: **Emily Shaw**
 PO Box 9120 Stn Prov Govt
 Victoria, BC V8W 9B4
 Tel. (250) 387-3232
 Fax: (250) 387-0357

Recipient: ***Contact Name, Address, Email, Phone & Fax #***

The address, phone number, facsimile number, or email set out above may be changed by notice in the manner set out in this provision.

SECTION 19 - NON-WAIVER

No term or condition of this Agreement and no breach by the Recipient of any term or condition is waived unless the waiver is in writing signed by the Province and the Recipient.

A written waiver by the Province of any breach by the Recipient of any provision of this Agreement is not a waiver of any other provision or of any subsequent breach of the same or any other provision of this Agreement.

SECTION 20 – ENTIRE AGREEMENT

This Agreement including the Schedules constitutes the entire Agreement between the parties with respect to the subject matter of this Agreement.

SECTION 21 - MISCELLANEOUS

Changes to this Agreement are only effective if made in writing and by both parties.

All of the provisions of this Agreement in favour of the Province and all of the rights and remedies of the Province, either at law or in equity, survive any expiration or sooner termination of this Agreement.

Nothing in this Agreement operates as a consent, permit, approval or authorization by the Province to or for anything related to the Project that by law, the Recipient is required to obtain unless it is expressly stated to be.

SECTION 22 - ACCEPTANCE

The Recipient indicates its agreement by dating and executing both copies of this Agreement in the space and manner indicated below and returning them to the contact shown above, free of any conditions. In signing or executing below, the Recipient is committing to a binding agreement.

IN WITNESS OF WHICH the parties have duly executed this Agreement as of the _____ day of _____, 20__.

SIGNED AND DELIVERED on behalf of the Recipient

Signature of Recipient's Signing Authority

Date

Printed Name & Title of Recipient's Signing Authority

SIGNED AND DELIVERED on behalf of the Province,

Signature of Province's Signing Authority

Date

Printed Name & Title of Province's Signing Authority

SCHEDULE A – SERVICES

The Project

TERM

Notwithstanding the date of execution of this Agreement, the term of this Agreement starts on _____ and ends on December 31st, 2018.

PROJECT

INSERT PROJECT DESCRIPTION FROM APPLICATION

PURPOSE & EXPECTED RESULTS

This a project funded by the the Grow Local program, the objective of the Grow Local Program is to provide funding to organization to increase the ability of British Columbians to grow food locally. The goals of the program are to:

- Increase engagement in local food production;
- Increase local food production knowledge and skills;
- Increase the perceived value of agriculture by British Columbians; and
- Strengthen community ability to create greater food supply security for all

INSERT PROJECT SPECIFIC PURPOSE AND EXPECTED RESULTS FROM APPLICATION

DELIVERABLES

Deliverables, Timelines and Milestones INSERT FROM PROJECT APPLICATION

Location INSERT FROM PROJECT APPLICATION

Participants INSERT FROM PROJECT APPLICATION

Roles and responsibilities INSERT FROM PROJECT APPLICATION

REPORTING REQUIREMENTS:

The Recipient must:

- submit to the B.C. Investment Agriculture Foundation all financial reports for review;
- submit to the B.C. Investment Agriculture Foundation all project reports for review; and

- communicate directly with the B.C. Investment Agriculture Foundation on all matters regarding the Agreement.

Financial Reporting:

Interim Reporting

The Recipient must provide an interim financial report by December 31st 2017 including

- a statement detailing the use of the Province's contributions provided during the Term, including an explanation of any financial variances against the proposed project budget.

Final Reporting

Following completion of the Project the Recipient must, no later than 30 days after the end of the Term, provide a final financial report including

- a Project income and expenditure summary which identifies all sources and use of the total Project funds over the duration of the entire Agreement;
- a statement detailing the use of the Province's contributions provided over the duration of the entire Agreement, including an explanation of any financial variances.

Certification / Attestation

All financial reports submitted by the Recipient must be certified by a senior officer of the Recipient's organization (such as a CEO or CFO) attesting to the correctness and completeness of the financial information provided.

Project Reporting

Ongoing Communication

The Recipient must make all reasonable efforts to respond to ad-hoc requests by the Province and IAF for information on Project progress. The Recipient must also advise the Province and IAF immediately of any substantial events that could impact the Project timeline.

Interim Reporting

The Recipient must provide an interim progress report by December 31st 2017 on the Project, and progress made in achieving the results as set out in Schedule A. The Interim report will:

- 1) Project highlights,
- 2) A summary of project activities and deliverables;
- 3) Program marketing and communications activities;

- 4) description of outcomes with respect to results set out in Schedule A, specifically assess the extent to which the following program objectives were met:
 - i) Increase engagement in local food production
 - ii) Increase local food production knowledge and skills
 - iii) Increase the perceived value of agriculture by participants
 - iv) Strengthen your community's ability to create greater food supply security for all.
- 5) quantitative and qualitative description of successes/accomplishments, challenges, and lessons learned
- 6) Recommendations to the Province for future program delivery.

Final Reporting

Final Report: Within 30 days of the end of the term of this Agreement, a final report (Final Report), in substantially the same format and with the same categories as the Interim Project Reports. For greater certainty, this obligation of the Recipient survives the termination of this Agreement.

SCHEDULE B

FINANCIAL CONTRIBUTION

PAYMENTS

1. The Province agrees to provide to the Recipient a maximum amount of \$25,000 during the Term of the Agreement.

2. Payments must be made as follows:

a) an initial payment of \$_____ within 60 days of the start of this Agreement.

3. Eligible Costs

Budget	\$
Project Costs	
<i>Project related Staff salary and benefits</i>	
Subcontractor	
Activities	
Communications and promotion	
Eligible inputs (cannot exceed 5%)	
Travel	
Total Project Costs	
Total Budget	\$25,000

Eligible costs

- Staff salary associated with project
- Hiring or subcontracting gardening experts
- Activities: Workshop costs (venue rental, refreshments, speaker fees); webinars; speakers;
- Communications and promotional activities (venue rentals, promotional materials, graphic design, printing, postage, office supplies, website services associated with the project)
- Limited input costs (e.g. seed packets, soil) – cannot exceed 5% of budget.
- Travel (as per government guidelines http://www2.gov.bc.ca/assets/gov/careers/all-employees/pay-and-benefits/work-related-expenses-allowances/travel_allowances.pdf)

Ineligible costs include, but are not limited to, the following:

- Any cost not specifically required for the execution of a project;
- Normal costs of establishing or maintaining a commercial operation, including costs to maintain compliance with requirements of law that pertain to the current business operations;

- Any travel costs beyond those provided for in the Travel and Meal Guidelines (http://www2.gov.bc.ca/assets/gov/careers/all-employees/pay-and-benefits/work-related-expenses-allowances/travel_allowances.pdf)
 - Purchase of land, building and facilities;
 - Lease of land, buildings and facilities
 - Financing charges, loan interest payments, bank fees, and charges;
 - Any cost, including a tax that is eligible for a rebate, credit or refund (including a refundable portion of the Government Sales Tax);
 - Gifts and incentives;
 - Permits and approvals;
 - Legal fees;
 - Costs incurred before the approval of the project or after the project completion date identified in the contribution agreement between the Province and a successful applicant;
 - Costs related to activities that directly influence or lobby any level of government.
4. The Recipient must submit to the Province, upon completion of the Project, a written statement of account showing
- (a) the Recipient's legal name and address;
 - (b) the date of the statement and a statement number for identification;
 - (c) the Agreement Number;
 - (d) the calculation of the Financial Contribution being claimed, with reasonable detail by budget category of the applicable part of the Project completed to statement date; and
 - (e) any other billing information reasonably requested by the Province.

Schedule D

Insurance

File:

Attachment to the Agreement with _____ for _____.

1. Without restricting the generality of the indemnification provisions contained in the Agreement, the Contractor shall, at its own expense, provide and maintain, during the term of this Agreement, the following insurance coverage as fully specified in Paragraph 12 and any additional insurance which it is required by law to carry or which it considers necessary to cover risks not otherwise covered by insurance specified in this Schedule in its sole discretion.
2. All such insurance described herein must be primary and not require the sharing of any loss by any insurer of the Province.
3. Where a warranty period is required by the Province under this Agreement, the Contractor shall ensure that Products and Completed Operations coverage, as applicable, shall be in force for the duration of the warranty period.
4. Insurance shall be placed with Insurers licensed to underwrite such insurance in Canada and in forms and amounts acceptable to the Province. All such insurance shall be at no expense to the Province. If the Province requires additional Insurance Coverage to be obtained by the Contractor, the additional expense of such additional insurance shall be borne by the Province.
5. Notwithstanding Paragraph 6, the Contractor shall, prior to the commencement of services and before any payments are made under this Agreement, file with the Ministry Representative evidence of insurance coverage in the form of a completed Province of British Columbia Certificate of Insurance (Form FIN 173). When requested by the Province, the Contractor shall provide certified copies of required insurance policies.
6. ICBC's Confirmation of Automobile Insurance Coverage (Form APV 47) or Confirmation of Unlicensed Vehicle Coverage (Form APV 45) may be used when applicable as evidence of Automobile Liability Insurance for vehicles or off-road vehicles used during the performance of the services.
7. The insurance policies, except for ICBC Automobile Liability Insurance, shall provide that the insurance shall not be cancelled or materially changed so as to affect the coverage provided under the Agreement, without the Insurer giving at least thirty (30) days prior written notice to the Province. Material change with respect to Professional Liability Insurance does not require the Insurer to give thirty (30) days prior written notice to the Province.
8. Failure to provide the required insurance documentation shall result in termination of this Agreement.
9. If the insurance policies expire prior to the end of the Agreement Term, the Contractor shall provide the ministry evidence of renewal or new policy

meeting the requirements of the expired insurance in the form of a completed Province of British Columbia Certificate of Insurance and ICBC's Form APV 47 or APV45, if applicable, at least ten (10) days prior to the expiry date of the policies listed in this Schedule.

10. The Contractor shall ensure that all its subcontractors performing Services under this Agreement carry insurance in the form and limits specified in Paragraph 12.
11. Unless stated otherwise under any subsection of Paragraph 12, where the Province is to be added as an Additional Insured or otherwise to be identified on the policy, it shall be written as follows: "Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Ministry of Agriculture and any of its employees, servants or agents".
12. The following forms of insurance and specified minimum limits are required:
 - a) **Commercial General Liability**

Commercial General Liability insurance in an amount not less than \$2 million inclusive per occurrence against bodily injury, personal injury, and property damage and including liability assumed under the Agreement.

Such policy(s) of insurance shall include, but not be limited to:

 - i) Products and Completed Operations Liability;
 - ii) Owner's and Contractor's Protective Liability;
 - iii) Contingent Employer's Liability;
 - iv) Blanket Written Contractual Liability;
 - v) Personal Injury Liability;
 - vi) Non-Owned Automobile Liability;
 - vii) Cross Liability;
 - viii) Employees as Additional Insureds;
 - ix) Broad Form Property Damage;

and where such further risk exists:

As per Paragraph 11, the Province is to be added as an "Additional Insured" under this policy.

- b) **Automobile Liability**

Where any licensed vehicle or off road vehicle is owned, leased, rented, or used in the performance of this Agreement, Third Party Automobile Liability insurance in an amount not less than \$2 million inclusive per occurrence must be provided for any such vehicle.