

CANADA 150 COMMUNITY INFRASTRUCTURE PROGRAM

CONTRIBUTION AGREEMENT

This Contribution Agreement is made as of _____

BETWEEN: **HER MAJESTY THE QUEEN IN RIGHT OF CANADA** (“Her Majesty”) hereby represented by the Minister responsible for Federal Economic Development Agency for Southern Ontario

AND: **Town of Kingsville** (“Recipient”) a municipal government established under the laws of Ontario.

WHEREAS the Federal Economic Development Agency for Southern Ontario (“Agency”) was created to help make Canadians more productive and competitive in the knowledge-based economy, by supporting economic development, economic diversification, job creation, and sustainable, self-reliant communities in southern Ontario;

WHEREAS in its 2016 Budget, the Government of Canada allocated an additional \$150 million to the Canada 150 Community Infrastructure Program (“CIP 150”) to renovate, expand and improve existing community infrastructure assets; and

WHEREAS the Minister has agreed to make a non-repayable contribution to the Recipient up to the maximum amount of one hundred eighty-one thousand five hundred (\$181,500) in support of the Recipient’s Eligible Costs (as defined herein) of the Project (as defined herein),

NOW THERETOFORE, in accordance with the mutual covenants and agreements herein, Her Majesty as represented by the Minister and the Recipient agree as follows:

1. Purpose of the Agreement

The purpose of this Agreement is to set out the terms and conditions under which the Minister will provide CIP 150 (as defined herein) funding in support of the Project (as defined herein).

2. Interpretation

2.1 Definitions. In this Agreement, a capitalized term has the meaning given to it in this section, unless the context indicates otherwise:

Aboriginal Government means a band council within the meaning of section 2 of the *Indian Act*; or a government authority established pursuant to a Self-Government Agreement or a Comprehensive Land Claim Agreement, given effect and declared valid by federal legislation.

Agency means the Federal Economic Development Agency for Southern Ontario.

Agreement means this agreement including all the annexes attached hereto, as such may be amended, restated or supplemented, from time to time.

CIP 150 means the Canada 150 Community Infrastructure Program as described in the recitals hereto.

Contribution means the contribution to Eligible Costs in the amount stipulated in Subsection 4.1.

Control Period means the period of six (6) years following the period determined in Subsection 3.1 as the duration of the Agreement.

Date of Acceptance means the date on which the duplicate fully executed copy of this Agreement is received by the Minister.

Eligibility Date means April 1, 2016.

Eligible Costs means those Project Costs supported by the Contribution and which are identified in Annex 1 – Statement of Work and relating to the Project activities described therein and which are in compliance with Annex 2 – Costing Guideline Memorandum.

Event of Default means the events of default described in Subsection 12.1 hereof.

Final Report means the report described in Subsection 7.1 hereof.

Final Report Date means June 30, 2018.

Fiscal Year means the Government of Canada's fiscal year beginning on April 1st of a year and ending on March 31st of the following year.

Minister means the Minister responsible for the Agency or any one or more of his representatives.

Parties means the Minister and the Recipient and **Party** means any one of them.

Program Completion Date means March 31, 2018.

Project means the project described in Annex 1 – Statement of Work.

Project Costs means the total costs of the Project as set out in Annex 1 – Statement of Work.

Southern Ontario includes the following 2011 Statistics Canada Census Regions: 1 Stormont, Dundas and Glengarry; 2 Prescott and Russell; 6 Ottawa; 7 Leeds and Grenville; 9 Lanark; 10 Frontenac; 11 Lennox and Addington; 12 Hastings; 13 Prince Edward; 14 Northumberland; 15 Peterborough; 16 Kawartha Lakes; 18 Durham; 19 York; 20 Toronto; 21 Peel; 22 Dufferin; 23 Wellington; 24 Halton; 25 Hamilton; 26 Niagara; 28 Haldimand-Norfolk; 29 Brant; 30 Waterloo; 31 Perth; 32 Oxford; 34 Elgin; 36 Chatham-Kent; 37 Essex; 38 Lambton; 39 Middlesex; 40 Huron; 41 Bruce; 42 Grey; 43 Simcoe; 46 Haliburton; and 47 Renfrew.

“Substantially Completed” has the same meaning and shall be determined in accordance with how the term “substantially performed” is determined in subsection 2(1) of the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended, and **“Substantial Completion”** shall have a corresponding meaning.

- 2.2 **Singular/Plural.** Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural.
- 2.3 **Entire Agreement.** This Agreement comprises the entire agreement between the Parties. No prior document, negotiation, provision, undertaking or agreement in relation to the subject matter of this Agreement has legal effect. No representation or warranty, whether express, implied or otherwise, has been made by the Minister to the Recipient, except as expressly set out in this Agreement.
- 2.4 **Inconsistency.** In case of inconsistency or conflict between a provision contained in the part of the Agreement preceding the signatures and a provision contained in any of the Annexes to this Agreement, the provision contained in the part of the Agreement preceding the signatures will prevail.
- 2.5 **Annexes.** This Agreement contains the following Annexes as described below, which form an integral part of this Agreement:

Annex 1 - Statement of Work
Annex 2 - Costing Guideline Memorandum
Annex 3 - Reporting Requirements
Annex 4 - Federal Visibility Requirements

3. Duration of Agreement

- 3.1 **Duration of Agreement.** This Agreement comes into force on the Date of Acceptance and, subject to Subsection 3.2, will terminate:

- (a) twelve (12) months after the earlier of:

- i) the Project is Substantially Completed; or
 - ii) the Program Completion Date.
 - (b) upon the date on which all amounts due by the Recipient to Her Majesty under this Agreement, have been paid in full, whichever is the later, unless terminated earlier in accordance with the terms of this Agreement.
- 3.2 **Control Period.** Notwithstanding the provisions of Subsection 3.1 above, during the Control Period, the rights and obligations described in the following sections shall continue beyond the duration of the Agreement:

Section 5 - Other Government Financial Support
 Subsection 6.6 – Overpayment and non-entitlement
 Subsections 7.3, 7.4, 7.5, 7.6 and 7.7 - Monitoring, Audit and Evaluation
 Subsection 8.1c) and 8.2c) – Representations and Covenants
 Section 11 - Indemnification and Limitation of Liability
 Section 12 - Default and Remedies
 Section 13 – Project Assets
 Subsection 15.9 - Dispute Resolution

4. **The Contribution**

- 4.1 Subject to the terms and conditions of this Agreement, the Minister will make a non-repayable contribution to the Recipient in respect of the Project in an amount not exceeding the lesser of (a) and (b) as follows:
- (a) maximum 15.13% of total Eligible Costs of the Project incurred and paid by the Recipient; and
 - (b) \$181,500
- 4.2 The payment of the Contribution per Fiscal Year is estimated at amounts as specified in Annex 1 – Statement of Work. The Minister will have no obligation to pay any amounts in any other fiscal years than those specified in Annex 1 – Statement of Work.
- 4.3 The Recipient acknowledges that notwithstanding the date of execution of this Agreement, the Minister will not reimburse costs incurred by it prior to April 1, 2016 or later than the Program Completion Date.
- 4.4 The Minister shall not contribute to any Eligible Costs incurred by the Recipient which could cause the Contribution, noted in Subsection 4.1 herein to be exceeded.
- 4.5 The Recipient shall be responsible for all costs of the Project, including cost overruns, if any.

4.6 **Holdbacks.** Notwithstanding any other provisions of this Agreement, the Minister will, at the Minister's sole discretion, withhold up to ten percent (10%) of the Contribution amount until:

- (a) the Project is Substantially Completed;
- (b) the Recipient has satisfied all the conditions of this Agreement;
- (c) the Final Report described in Subsection 6.4(a)(ii) has been submitted to the satisfaction of the Minister;
- (d) audits and site visits, where required by the Minister, have been completed to the satisfaction of the Minister; and
- (e) the Minister has approved the final claim described in Subsection 6.4.

5. Other Government Financial Support

- 5.1 The Recipient hereby confirms that for purposes of this Project no other federal, provincial, local Government assistance has been requested, received or will be received, except as disclosed in Annex 1 – Statement of Work.
- 5.2 The Recipient shall promptly inform the Minister in writing in the event additional other government financial support has been requested or received for the Project, during the term of this Agreement and acknowledges and agrees that an adjustment to the amount of the Contribution and a request for repayment of part or all of the amounts paid to the Recipient may be made as a result thereof. The amount of repayment requested will constitute a debt due to Her Majesty and will be recovered as such from the Recipient.
- 5.3 In no instance will the total government funding towards the Eligible Costs of the Project be allowed to exceed one hundred percent (100%) of the total Eligible Costs.

6. Claims and Payments

- 6.1 The Recipient shall maintain accounting records that account for the Contribution paid to the Recipient and the related Project Costs in respect of this Agreement, separate and distinct from any other funding.
- 6.2 **Claims Procedures.** The Recipient shall submit claims for reimbursement of Eligible Costs incurred and paid, not less frequently than semi-annually or more frequently than monthly, in a form satisfactory to the Minister. Each claim will include the following information:

- (a) an itemized summary by cost category of Eligible Costs incurred and paid, substantially in the form prescribed by the Minister;
- (b) a certification of the claim by a director or officer of the Recipient, confirming the accuracy of the claim and of all supporting information provided;
- (c) if applicable, a certification by a director or officer of the Recipient that any mitigation measures listed in Annex 5 – Environmental Mitigation Measures have been implemented; and
- (d) substantiating documentation (including without limitation, any invoice or proof of payment), as may be required by the Minister.

6.2.1 The Recipient agrees to submit its last claim for Eligible Costs in each Fiscal Year on or before March 1st of that Fiscal Year.

6.3 Advance Payments.

- (a) **Initial Advance.** Where the Minister is satisfied and has determined that the Recipient's cash flow requirements justify the need for an advance against the Eligible Costs payable under this Agreement, the Minister may, at his sole discretion, pay to the Recipient an initial advance for Eligible Costs up to 25% on the portion of the Contribution allocated to Fiscal Year 2016-2017, subject to the following:
 - (i) The Recipient submits to the Minister's satisfaction, a forecast of cash flow requirements to be incurred during the initial advance period along with any documentation that the Minister may reasonably request.
 - (ii) The Recipient shall account by way of claim, to the satisfaction of the Minister, for the use of any advances.
- (b) The Recipient agrees to spend advances in the Fiscal Year in which the advance was made, failing which the Recipient agrees to reimburse the Minister any unspent amounts. If the amount of the advance exceeds the amount of Eligible Costs incurred during the previous advance period, the Minister may deduct the excess amount and any interest earned by such excess from any other payment under this Agreement.

6.4 Final Claim Procedures.

- (a) The Recipient shall submit a final claim pertaining to the final reimbursement of any Eligible Costs previously claimed or not, signed by a director or officer of the Recipient and accompanied by the following, in addition to the requirements set out in Subsection 6.2, in a form satisfactory to the Minister in scope and detail:
 - (i) a confirmation that it is the final claim for payment and as such, it includes all final Eligible Costs submitted for payment; and
 - (ii) a Final Report substantially in the form prescribed by the Minister.
- (b) The Recipient shall submit the final claim for reimbursement of Eligible Costs to the satisfaction of the Minister the earlier of:
 - (i) the date which falls no later than three (3) months after Project is Substantially Completed; and
 - (ii) the Final Report Date.

The Minister shall have no obligation to pay any claims submitted after this date.

6.5 Payment Procedures.

- (a) The Minister shall review and approve the documentation submitted by the Recipient following the receipt of the Recipient's claim and in the event of any deficiency in the documentation, the Minister will notify the Recipient and the Recipient shall immediately take action to address and rectify the deficiency.
- (b) Subject to the maximum Contribution amounts set forth in Subsection 4.1 and all other conditions contained in this Agreement, the Minister shall pay to the Recipient the Eligible Costs set forth in the Recipient's claim, in accordance with the Minister's customary practices.
- (c) The Minister may request at any time that the Recipient provides satisfactory evidence to demonstrate that all Eligible Costs claimed have been paid.
- (d) The Minister may require, at his expense, any claim submitted for payment of the Contribution be certified by the Recipient's external auditor or by an auditor approved by the Minister.

- 6.6 **Overpayment or non-entitlement.** Where, for any reason, the Recipient is not entitled to all or part of the Contribution or the amount paid to the Recipient exceeds the amount to which the Recipient is entitled, the Contribution or the amount in excess, as the case may be, shall constitute a debt due to Her Majesty and shall be

recovered as such from the Recipient. The Recipient shall repay Her Majesty within thirty (30) calendar days from the date of the Minister's notice, the amount of the Contribution disbursed or the amount of the overpayment, as the case may be, together with interest calculated in accordance with the *Interest and Administrative Charges Regulations*, in effect on the due date, from the date of the notice until payment is received by Her Majesty.

- 6.7 If the Recipient earns any interest as a consequence of any advance payment of the Contribution or earns any revenue as a result of the Project, the Minister may in his absolute discretion reduce the Contribution by all or by such portion of the revenue (including the interest) as he deems appropriate.

7. Monitoring, Audit and Evaluation

- 7.1 The Recipient agrees to provide the Minister with the reports as described in Annex 3 – Reporting Requirements, satisfactory in scope and detail, in order to allow the Minister to assess the outcome and costs of the Project.
- 7.2 Upon request of the Minister and at no cost to him, the Recipient shall promptly elaborate upon any report submitted or provide such additional information as may be requested.
- 7.3 The Recipient shall at its own expense:
- (a) preserve and make available for audit and examination by the Minister, proper books, accounts and records of the Project Costs, wherever such books, and records may be located, and permit the Minister to conduct such independent audits and evaluations as the Minister in his discretion may require;
 - (b) upon reasonable notice and after consultation with the Recipient, permit the Minister reasonable access to the Project site and/or the Recipient's premises and documents in order to inspect and assess the progress and results of the Project;
 - (c) supply promptly, on request, such other data in respect of the Project and its results, as the Minister may require for purposes of this Agreement and for statistical and/or evaluation purposes.
- 7.4 The Minister shall have the right, at his own expense, and as and when he determines necessary, to perform audits of the Project Costs and the Recipient's books, accounts, records, financial statements and claims for reimbursement of Eligible Costs, and the Recipient's administrative, financial and claim certification processes and procedures, for the purposes of verifying the costs of the Project, validating claims for reimbursement of Eligible Costs, ensuring compliance with the terms of this

Agreement, and confirming amounts repayable to Her Majesty under the provisions of this Agreement.

- 7.5 Any audits performed hereunder will be carried out by auditors selected by the Minister, which may include any of the following: Agency officials, an independent auditing firm, and/or the Recipient's external auditors. The Minister will provide the Recipient with a description of the scope and criteria of the audit and the expected time frames for completion of the audit and public release of the related reports.
- 7.6 The Recipient agrees that the Minister, at his expense, may engage outside firms or individuals, unrelated to the Government of Canada, with the required expertise to evaluate and monitor the Project and its implementation or review any documents submitted by the Recipient. The Recipient agrees to provide access to any site, meeting or to any document in relation to the Project to such firms or individuals.
- 7.7 **Auditor General of Canada.** The Recipient acknowledges that the Auditor General of Canada may, at the Auditor General's cost, after consultation with the Recipient, conduct an inquiry under the authority of Subsection 7.1(1) of the *Auditor General Act* in relation to any funding agreement (as defined in Subsection 42(4) of the *Financial Administration Act*) with respect to the use of funds received. For purposes of any such inquiry undertaken by the Auditor General, the Recipient shall provide, upon request and in a timely manner, to the Auditor General or anyone acting on behalf of the Auditor General:
- (a) all records held by the Recipient or by agents or contractors of the Recipient, relating to this Agreement and the use of the Contribution; and
 - (b) such further information and explanations as the Auditor General, or anyone acting on behalf of the Auditor General, may request relating to this Agreement and/or the Contribution.

8. **Representations and Covenants**

8.1 The Recipient represents and warrants that:

- (a) it is a municipal government and is in good standing under the laws of Ontario, and has the power and authority to carry on its business, to hold its property and to enter into this Agreement and it has the power and authority, and has met all legal requirements, necessary to carry on business, hold property, and to enter into, deliver and perform this Agreement. The Recipient warrants that it shall remain as such for the duration of this Agreement;
- (b) the execution, delivery and performance of this Agreement have been duly and validly authorized by the necessary corporate actions of the Recipient and when executed and delivered by the Recipient, this Agreement constitutes a

legal, valid and binding obligation of the Recipient, enforceable in accordance with its terms;

- (c) it has acquired, at its own expense, general liability insurance and property damage insurance, in an adequate amount consistent with the scope of the operations and the Project that a prudent person carrying out a project similar to the Project would maintain, and will maintain such for the duration of the Agreement and the Control Period.
- (d) the signatory(ies) to this Agreement, on behalf of the Recipient, has(ve) been duly authorized to execute and deliver this Agreement;
- (e) this Agreement constitutes a legally binding obligation of the Recipient, enforceable against it in accordance with its terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization and other laws affecting generally the enforcement of the rights of creditors and subject to a court's discretionary authority with respect to the granting of a decree, ordering specific performance or other equitable remedies;
- (f) the execution and delivery of this Agreement and the performance by the Recipient of its obligations hereunder will not, with or without the giving of notice or the passage of time or both:
 - (i) violate the provisions of the Recipient's by-laws, any other corporate governance document subscribed to by the Recipient or any resolution of the Recipient;
 - (ii) violate any judgment, decree, order or award of any court, government agency, regulatory authority or arbitrator; or
 - (iii) conflict with or result in the breach or termination of any material term or provision of, or constitute a default under, or cause any acceleration under, any license, permit, concession, franchise, indenture, mortgage, lease, equipment lease, contract, permit, deed of trust or any other instrument or agreement by which it is bound.
- (g) there are no actions, suits, investigations or other proceedings pending or, to the knowledge of the Recipient, threatened and there is no order, judgment or decree of any court or governmental agency, which could materially and adversely affect the Recipient's ability to carry out the activities contemplated by this Agreement;
- (h) it has obtained or will obtain all necessary licences and permits in relation to the Project, which satisfy the requirements of all regulating bodies of appropriate jurisdiction;

- (i) all information provided during the CIP 150 application process remains true, correct and complete in every respect except as set out to the contrary herein; and
- (j) the description of the Project in Annex 1 – Statement of Work is complete and accurate.

8.2 The Recipient covenants and agrees that:

- (a) it shall obtain the prior written consent of the Minister before making any change to any aspect of the Project or to the management of the Project or Recipient.
- (b) it shall acquire and manage all equipment, services and supplies required for the Project in a manner that ensures the best value for funds expended and it shall comply with its procurement policies, rules and regulations.
- (c) it shall maintain the usage as described in Annex 1 – Statement of Work, of any assets to which the Minister has contributed to for a minimum of six (6) years after the expiry or the termination of this Agreement.
- (d) the Project is located in southern Ontario.
- (e) it shall contribute no less than fifty percent (50%) to the Eligible Costs of the Project.
- (f) it shall use the Contribution solely and exclusively to support the Eligible Costs of the Project, as detailed in Annex 1 - Statement of Work and in Annex 2 - Costing Guideline Memorandum and shall carry out the Project in a diligent and professional manner, using qualified personnel and the Project shall be Substantially Completed on or before the Program Completion Date.
- (g) it shall comply with the Federal Visibility Requirements as set out in Annex 4 – Federal Visibility Requirements.

9. Official Languages

The Recipient agrees:

- (a) that any public acknowledgement of the Agency's support for the Project will be expressed in both official languages;
- (b) that basic project information will be developed and made available in both official languages;

- (c) to invite members of the official-language minority community to participate in any public event relating to the Project, where appropriate;
- (d) that all signage related to the Project will be in both official languages;
- (e) that basic service (e.g. reception can provide bilingual resources or staff, upon request) and communication, both print and electronic (notices, announcements, publications, advertisements or documents), will be made available in both official languages; and
- (f) that it shall pay for all translation costs save for those which the Minister may incur with respect to any announcement or other public communications.

10. Environmental and Other Requirements

- 10.1 The Recipient represents that the Project is not a “designated project” as defined in the *Canadian Environmental Assessment Act, 2012* (“CEAA”) and is not being carried out on “federal lands” as defined in the CEAA.
- 10.2 The Recipient agrees to comply with all federal, provincial, territorial, municipal and other applicable laws governing the Recipient and the Project, including but not limited to, statutes, regulations, by-laws, rules, ordinances and decrees. This includes legal requirements and regulations relating to environmental protection and the successful implementation of and adherence to any mitigation measures, monitoring or follow-up program, which may be prescribed by the Minister or by other federal, provincial, territorial, municipal bodies. The Recipient will certify to the Minister that it has done so.
- 10.3 The Recipient will provide the Minister with reasonable access to any Project site, for the purpose of ensuring that the terms and conditions of any environmental approval are met, and that any required mitigation measures, monitoring or program follow up have been carried out, to the satisfaction of the Minister.
- 10.4 If as a result of changes to the Project or otherwise, should a subsequent assessment be required in accordance with CEAA for the Project, the Minister and the Recipient agree that the Minister’s obligations under this Agreement will be suspended from the moment that the Minister informs the Recipient, until (i) a decision statement has been issued to the Recipient or, if applicable, the Minister has decided that the Project is not likely to cause significant adverse environmental effects, and (ii) if required, an amendment to this Agreement has been signed, setting out any conditions included in the decision statement. The Recipient agrees to comply with any such conditions.
- 10.5 **Aboriginal consultation.** The Recipient acknowledges that the Minister’s obligation to pay the Contribution is conditional upon Her Majesty satisfying any

obligation that Her Majesty may have to consult with or to accommodate any Aboriginal groups, which may be affected by the terms of this Agreement.

11. Indemnification and Limitation of Liability

11.1 The Recipient shall at all times indemnify and save harmless Her Majesty, her officers, officials, employees and agents, from and against all claims and demands, losses, costs, damages, actions, suits or other proceedings (including, without limitation, those relating to injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights) by whomsoever brought or prosecuted, or threatened to be brought or prosecuted, in any manner based upon or occasioned by any injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights, caused by, or arising directly or indirectly from:

- (a) the Project, its operation, conduct or any other aspect thereof;
- (b) the performance or non-performance of this Agreement, or the breach or failure to comply with any term, condition, representation or warranty of this Agreement by the Recipient, its officers, employees and agents, or by a third party or its officers, employees, or agents;
- (c) the design, construction, operation, maintenance and repair of any part of the Project; or
- (d) any omission or other wilful or negligent act or delay of the Recipient or a third party and their respective employees, officers, or agents, except to the extent to which such claims and demands, losses, costs, damages, actions, suits, or other proceedings relate to the negligent act or omission of an officer, official, employee, or agent of Her Majesty, in the performance of his or her duties.

11.2 The Minister shall have no liability under this Agreement, except for payments of the Contribution, in accordance with and subject to the provisions of this Agreement. Without limiting the generality of the foregoing, the Minister shall not be liable for any direct, indirect, special or consequential damages, or damages for loss of revenues or profits of the Recipient.

11.3 Her Majesty, her agents, employees and servants will not be held liable in the event the Recipient enters into a loan, a capital or operating lease or other long-term obligation in relation to the Project for which the Contribution is provided.

12. Default and Remedies

12.1 Event of Default. The Minister may declare that an Event of Default has occurred if:

- (a) the Recipient has failed or neglected to pay Her Majesty any amount due in accordance with this Agreement;
- (b) the Recipient fails to proceed diligently with the Project, or abandons the Project in whole or in part, or the Project is not Substantially Completed by the Program Completion Date;
- (c) the Recipient makes a materially false or misleading statement concerning support by the Minister in any internal and/or public communication, other than in good faith;
- (d) the Recipient becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute, from time to time in force, relating to bankrupt or insolvent debtors;
- (e) an order is made or the Recipient has passed a resolution for the winding up or liquidation of the Recipient, or the Recipient is dissolved;
- (f) the Recipient has, in the opinion of the Minister, ceased to carry on business or has sold all or substantially all of its assets;
- (g) the Project is carried out at locations, other than those mentioned in Annex 1 - Statement of Work;
- (h) the Recipient has submitted false or misleading information, or has made a false or misleading representation to the Agency, the Minister, in this Agreement or in its application for the Contribution;
- (i) the Recipient has not, in the opinion of the Minister, met or satisfied a term or condition of this Agreement;
- (j) the Recipient has not met or satisfied a term or condition under any other contribution agreement or agreement of any kind with Her Majesty;
- (k) the Recipient is not eligible or is otherwise not entitled to the Contribution; or,
- (l) the Recipient has not complied with the monitoring, audit and evaluation requirements, specified in this Agreement.

12.2 Notice and Rectification Period. Except in the case of default under Subsection 12.1 (d), (e) and (f), the Minister will not declare that an Event of Default has

occurred unless he has given prior written notice to the Recipient of the occurrence, which in the Minister's opinion constitutes an Event of Default. The Recipient shall, within such period of time as the Minister may specify in the notice, either correct the condition or event or demonstrate, to the satisfaction of the Minister, that it has taken such steps as are necessary to correct the condition, failing which the Minister may declare that an Event of Default has occurred.

12.3 Remedies. If the Minister declares that an Event of Default has occurred, the Minister may immediately exercise any one or more of the following remedies, in addition to any remedy available at law:

- (a) terminate the Agreement, including any obligation by the Minister to make any payment under this Agreement, including any obligation to pay an amount owing prior to such termination;
- (b) suspend any obligation by the Minister to make any payment under this Agreement, including any obligation to pay an amount owing prior to such suspension; and
- (c) require the Recipient to repay forthwith to Her Majesty all or part of the Contribution, and that amount is a debt due to Her Majesty and may be recovered as such.

12.4 The Recipient acknowledges the policy objectives served by the Minister's agreement to make the Contribution, that the Contribution comes from the public monies, and that the amount of damages sustained by Her Majesty in an Event of Default is difficult to ascertain and therefore, that it is fair and reasonable that the Minister be entitled to exercise any or all of the remedies, provided for in this Agreement and to do so in the manner provided for in this Agreement, if an Event of Default occurs.

13. Project Assets

13.1 The Recipient shall retain title to, and ownership of any assets, the cost of which has been contributed to by the Minister under this Agreement and shall not sell, assign, transfer, encumber, pledge, grant a security interest or otherwise dispose of same, for a minimum of six (6) years after the expiry or termination of this Agreement without the prior written consent of the Minister. As a condition of such consent, the Minister may require the Recipient to repay Her Majesty the whole or any part of the Contribution paid to the Recipient hereunder in the following proportions:

Where the Project asset is sold, assigned transferred, encumbered, pledged, leased, or disposed of:	Repayment of Contribution (in current dollars)
Within 2 Years after Substantial Completion	100%

Between 2 and 6 Years after Substantial Completion	55%
6 Years after Substantial Completion	0%

- 13.2 At any time during the six (6) years following the date the Project is Substantially Completed, the Recipient agrees to notify the Minister in writing of any transaction triggering the above-mentioned repayments, at least ninety (90) days in advance.

14. Miscellaneous

- 14.1 The Recipient represents and warrants that no member of the House of Commons or Senate of Canada shall be admitted to any share or part of this Agreement or to any benefit arising from it, that is not otherwise available to the general public.
- 14.2 The Recipient confirms that no current or former public servant or public office holder, to whom the *Values and Ethics Code for the Public Service*, the *Values and Ethics Code for the Public Sector*, the *Policy on Conflict of Interest and Post-Employment* or the *Conflict of Interest Act* applies, shall derive direct benefit from the Agreement, including any employment, payments or gifts, unless the provision or receipt of such benefits is in compliance with such codes and the legislation. Where the Recipient employs or has a major shareholder, who is either a current or former (in the last twelve (12) months) public office holder or public servant in the federal government, the Recipient shall demonstrate compliance with these codes and the legislation.
- 14.3 The Recipient represents and warrants that:
- (a) it has not paid, nor agreed to pay to any person, either directly or indirectly, a commission, fee or other consideration that is contingent upon the execution of this Agreement, or upon the person arranging a meeting with a public office holder;
 - (b) it will not pay, nor agree to pay to any person, either directly or indirectly, any commission, fee or other consideration that is contingent upon the person arranging a meeting with a public office holder;
 - (c) it is and any persons who are or have been engaged by the Recipient to communicate or arrange meetings with public office holders, regarding the Project or this Agreement, are in full compliance with all requirements of the *Lobbying Act*; and
 - (d) any persons who may be engaged by the Recipient to communicate or arrange meetings with public office holders, regarding the Project or this Agreement, will at all times be in full compliance with the requirements of the *Lobbying Act*.

- 14.4 The Recipient acknowledges that the representations and warranties in this section are fundamental terms of this Agreement. In the event of breach of these, the Minister may exercise the remedies provided under Subsection 12.3.

15. General

- 15.1 **Debt due to Canada.** Any amount owed to Her Majesty under this Agreement shall constitute a debt due to Her Majesty and shall be recoverable as such. Unless otherwise specified herein, the Recipient agrees to make payment of any such debt forthwith on demand.
- 15.2 **Interest.** Debts due to Her Majesty will accrue interest in accordance with the *Interest and Administrative Charges Regulations*, in effect on the due date, compounded monthly on overdue balances payable, from the date on which the payment is due, until payment in full is received by Her Majesty. Any such amount is a debt due to Her Majesty and is recoverable as such.
- 15.3 **Set-Off.** Without limiting the scope of set-off rights provided in the *Financial Administration Act*, the Minister may set off against the Contribution, any amounts owed by the Recipient to Her Majesty under legislation or contribution agreements and the Recipient shall declare to the Minister all amounts outstanding in that regard, when making any claim under this Agreement.
- 15.4 **No Assignment of Agreement.** Neither this Agreement nor any part thereof shall be assigned by the Recipient, without the prior written consent of the Minister.
- 15.5 **Annual Appropriation.** Payment by the Minister of amounts due under this Agreement shall be conditional on there being a legislated appropriation for the Fiscal Year in which the payment is to be made. The Minister shall have the right to terminate or reduce the Contribution, in the event that the amount of the appropriation is reduced or denied by Parliament. In the event that any portion of the Contribution has been paid to the Recipient and the legislated appropriation for the Fiscal Year in which such payment is made is not obtained, the Minister shall have the right to recover the amount so paid from the Recipient.
- 15.6 **Successors and Assigns.** This Agreement is binding upon the Recipient, its successors and permitted assigns.
- 15.7 **Confidentiality.** Subject to the *Access to Information Act* (Canada), the *Privacy Act*, the *Library and Archives Act* of Canada and Annex 4 – Federal Visibility Requirements, the Parties shall keep confidential and shall not disclose the contents of this Agreement or the transactions contemplated hereby, without the consent of all Parties.

15.8 **Governing Law.** This Agreement shall be subject to and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

15.9 **Dispute Resolution.** If a dispute arises concerning the application or interpretation of this Agreement, the Parties shall attempt to resolve the matter through good faith negotiation, and may, if necessary and the Parties consent in writing, resolve the matter through mediation or by arbitration, by a mutually acceptable mediator or arbitrator in accordance with the Commercial Arbitration Code set out in the schedule to the *Commercial Arbitration Act* (Canada), and all regulations made pursuant to that Act.

15.10 **No Amendment.** No amendment to this Agreement shall be effective unless it is made in writing and signed by the Parties hereto.

15.11 **No Agency.** No provision of this Agreement or action by the Parties will establish or be deemed to establish any partnership, joint venture, principal-agent or employer-employee relationship in any way, or for any purpose, between Her Majesty and the Recipient, or between Her Majesty and a third party. The Recipient is not in any way authorized to make a promise, agreement or contract and to incur any liability on behalf of Her Majesty, nor shall the Recipient make a promise, agreement or contract and incur any liability on behalf of Her Majesty, and shall be solely responsible for any and all payments and deductions, required by the applicable laws.

15.12 **No Waiver.** Any tolerance or indulgence demonstrated by one Party to the other, or any partial or limited exercise of rights conferred on a Party, shall not constitute a waiver of rights, and unless expressly waived in writing, the Parties shall be entitled to exercise any right and to seek any remedy, available under this Agreement or otherwise at law. Either Party may, by notice in writing, waive any of its rights under this Agreement.

15.13 **Public Dissemination.** All reports and other information that the Minister collects, manages or has a right to receive or produce in accordance with this Agreement, or that the Recipient collects, creates, manages and shares with the Minister, shall be deemed to be "Canada Information". The Minister shall have the right, subject to the provisions of the *Access to Information Act*, to release to the public, table before Parliament, or publish by any means, any Canada Information, including such excerpts or summaries of the Canada Information as he may, from time to time, decide to make.

15.14 **No conflict of interest.** The Recipient and its consultants and any of their respective advisors, partners, directors, officers, shareholders, employees, agents and volunteers shall not engage in any activity where such activity creates a real, apparent or potential conflict of interest in the sole opinion of the Minister, with the carrying out of the Project. For greater certainty, and without limiting the generality of the foregoing, a conflict of interest includes a situation where anyone associated with the

Recipient owns or has an interest in an organization that is carrying out work related to the Project.

15.15 Disclose potential conflict of interest. The Recipient shall disclose to the Minister without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest.

15.16 Severability. If for any reason a provision of this Agreement that is not a fundamental term of the agreement between the Parties is found to be or becomes invalid or unenforceable, whether in whole or in part, such provision or part thereof declared invalid or unenforceable shall be deemed to be severable and shall be deleted from this Agreement and all remaining terms and conditions of this Agreement will continue to be valid and enforceable.

16. Notice

16.1 Any notice, information or document required under this Agreement shall be effectively given, if delivered or sent by letter or facsimile (postage or other charges prepaid). Any notice that is delivered shall be deemed to have been received on delivery; any notice sent by facsimile shall be deemed to have been received one (1) working day after being sent, any notice that is mailed shall be deemed to have been received eight (8) calendar days after being mailed.

16.2 Any notice or correspondence to the Minister shall be addressed to:

Federal Economic Development Agency for Southern Ontario
101-139 Northfield Drive West
Waterloo, ON N2L 5A6
Attention: Canada 150 Community Infrastructure Program

or to such other address, as is designated by the Agency in writing.

16.3 Any notice or correspondence to the Recipient shall be addressed to:

Town of Kingsville
2021 Division Road North
North Kingsville ON N9Y 2Y9
Attention: Chief Administrative Officer

16.4 Each of the Parties may change the address, which they have stipulated in this Agreement by notifying in writing the other party of the new address, and such change shall be deemed to take effect fifteen (15) calendar days after receipt of such notice.

17. Special Conditions

17.1 As a condition precedent to initial disbursement:

- (a) The Recipient agrees to provide the Minister an officer's certificate executed by an officer of the Recipient in the form prescribed by the Minister which includes certified copies of the Recipient's constating documents, by-laws and the resolution authorising the entering into of this Agreement; and,
- (b) the Recipient shall arrange pre-authorized payments or such other method of payment, as requested in writing by the Minister

17.2 **Renewal of Representations.** It is a condition precedent to any disbursement under this Agreement that the representations and warranties contained in this Agreement are true at the time of payment and that the Recipient is not in default of compliance with any terms of this Agreement.

18. Acceptance

The Recipient agrees that unless the Minister receives a duly executed duplicate copy of this Agreement within thirty (30) calendar days of the date of execution by the Minister, this Agreement is revocable at the discretion of the Minister.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement through authorized representatives.

Project No.: **809576**

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Per: 

Date: July 21, 2017

Federal Economic Development Agency
for Southern Ontario

TOWN OF KINGSVILE

Per: _____

Date: _____

I have authority to bind the Recipient.

Per: _____

Date: _____

I have authority to bind the Recipient.

Annex 1**CANADA 150 COMMUNITY INFRASTRUCTURE PROGRAM****STATEMENT OF WORK**

Recipient: Town of Kingsville

Project Title: Renovation of Grovedale Arts and Culture Centre

Project Location: 103 Park Street, Kingsville, ON N9Y 1N6

PROJECT DESCRIPTION:

Updating Grovedale Arts and Culture Centre to meet the needs of the community.

The project activities will include but are not limited to:

- Demolishing the existing 6,000 sq. ft. structure, and excavating and reconstructing a new foundation and structure over the existing footprint which will include;
 - a prep kitchen;
 - washrooms and entry ways that meet the Accessibility for Ontarians with Disabilities Act standards;
 - energy efficient lighting and windows;
 - a new roof and HVAC system; and
 - a built-in speaker system, projector, screen, and sound board;
- Creation of an exterior canteen;
- Reconstructing the parking lot; and
- Landscaping.

Estimated date of commencement: July 3, 2017

Estimated date of Substantial Completion: March 31, 2018

FEDDEV ONTARIO CONTRIBUTION BY FISCAL YEAR

2016/2017	2017/2018	Total
\$0	\$181,500	\$181,500

PROJECT COSTS AND FINANCING:

CAPITAL		
Eligible Costs		
Costs	Amount	
Planning/Design/ Engineering	\$54,135	
Repair/Construction	\$1,037,594	
Project Management	\$18,045	
Other	\$0	
Contingency	\$90,226	
Total Eligible Costs (TEC)	\$1,200,000	
Financing		
FedDev Ontario Contribution	\$181,500	15.13%
Other Federal Contribution	\$0	0%
Recipient Contribution	\$1,018,500	84.87%
Other (specify source)	\$0	0%
Other (specify source)	\$0	0%
Sub-Total Financing TEC	\$1,200,000	100.00%
Ineligible Components		

STACKING LIMITS	
STACKING – CAPITAL	
Total Eligible Costs	\$1,200,000
Total Government Contributions (Federal, Provincial, and Municipal)	\$1,200,000
Estimated Investment Tax Credits	\$0
Contribution subject to Stacking %	\$1,200,000
Stacking %	100%
Total Government Stacking Limit	100%

Please Note:

- 1) Eligible Costs include the amount of the harmonized sales tax (HST), net of any refund or eligible credits due from the Canada Revenue Agency.
- 2) The list of ineligible components shown is not exhaustive. For more information on ineligible costs, see Annex 2.
- 3) The Recipient shall not redirect funding between cost categories without prior written consent of the Minister.
- 4) Incremental costs (i.e. employees and/or materials and/or equipment) have been approved up to the following maximum amounts, which are included in the Total Eligible Costs indicated above:
 - Employees: \$0
 - Materials: \$0
 - Equipment: \$0

Annex 2

CANADA 150 COMMUNITY INFRASTRUCTURE PROGRAM

COSTING GUIDELINE MEMORANDUM

1.0 General Conditions

- 1.1 Costs are Eligible Costs for the purposes of this Agreement only if they are, in the opinion of the Minister,
- (a) directly related to the intent of the Project,
 - (b) reasonable,
 - (c) appear in Annex 1 - Statement of Work,
 - (d) incurred in respect of activities, which are incremental to the usual activities of the Recipient, and
 - (e) constitute Eligible Costs as defined in Section 2.0 of this Annex.
- 1.2 Costs submitted for reimbursement must be net of any refund or eligible tax credits (including HST). In order to have the HST approved as an Eligible Cost, the Recipient will be required to provide documentation verifying the organization's status under the relevant tax legislation.

2.0 Eligible Costs

Eligible Costs may only include the following:

- (a) project costs incurred between the Eligibility Date and the Program Completion Date;
- (b) fees paid to professionals, technical personnel, consultants and contractors specifically engaged for the purpose of the Project;
- (c) costs of environmental assessments, mitigation measures, monitoring, and follow-up programs as required by the *Canadian Environmental Assessment Act*, 2012 or equivalent legislation;
- (d) costs of any public announcement and official ceremony, or of any temporary or permanent signage as further described in Subsection 2.2 below;

- (e) other costs that are considered to be direct and necessary for the successful implementation of the Project and that have been approved in advance, and in writing, by the Minister; and
- (f) for municipal, regional and Aboriginal Governments, incremental costs listed in Subsection 2.1 below.

2.1 Employee, Material and Equipment costs

While these costs are not normally eligible for reimbursement, the incremental costs of the Recipient's employees, materials or equipment may be included in its Eligible Costs under the following conditions:

- (a) the Recipient is a municipal, regional or an Aboriginal Government; and
- (b) the Recipient satisfies the Minister that it is not economically feasible to tender a contract; and
- (c) employees, material or equipment are employed directly in respect of the work that would have been the subject of the contract; and
- (d) costs are approved in advance and in writing by the Minister, and are included in Annex 1 – Statement of Work.

2.2 Communications

- (a) For the purposes of events, Eligible Costs include the following:
 - Printing and mailing invitations;
 - Light refreshments, such as coffee, tea, juice, donuts, muffins, snacks;
 - Project material for display and/or media kit;
 - Signage; and
 - Rentals such as: flagpoles, stage, chairs, podium, PA system.
- (b) For the purposes of Project signage, Eligible Costs include reasonable costs incurred to produce signage.

3.0 Ineligible Costs

Costs related to the following items are ineligible costs:

- (a) Project Costs incurred before the Eligibility Date and after the Program Completion Date;

- (b) services or works that, in the opinion of the Minister, are normally provided by the Recipient or a related party;
- (c) salaries and other employment benefits of any employees of the Recipient except as indicated in Subsection 2.1 above;
- (d) the Recipient's overhead costs, its direct or indirect operating or administrative costs, and more specifically, its costs related to planning, engineering, architecture, supervision, management and other activities normally carried out by its staff;
- (e) cost of feasibility and planning studies;
- (f) taxes for which the Recipient is eligible for a tax rebate and all other costs eligible for rebates;
- (g) any loan interest or other finance charges;
- (h) cost of land or any interest therein (including easements), and related costs;
- (i) legal fees;
- (j) cost of leasing of equipment by the recipient except for as indicated in Subsection 2.1 above;
- (k) temporary installations;
- (l) moveable equipment, including but not limited to motorized vehicles, furniture, computers, art work and sports equipment;
- (m) the value of any goods and services which are received through donations or in-kind;
- (n) costs for food and entertainment except as indicated in Subsection 2.2 above;
- (o) routine maintenance costs; and
- (p) for the purposes of communications events, Ineligible Costs include the following: alcoholic beverages, china, waiters, guest mileage or transportation, wine glasses, lamps, tea wagons, plants, gifts, and honorariums.

Annex 3

CANADA 150 COMMUNITY INFRASTRUCTURE PROGRAM

REPORTING REQUIREMENTS

1. **Semi-annual Progress Reports.** The Recipient shall submit, at a minimum, semi-annual progress reports until Project completion, substantially in the form prescribed by the Minister and satisfactory to the Minister in scope and detail, in order to allow the Minister to assess the progress of the Project. The progress report will detail progress on the implementation of the Project, and amounts received through this Agreement, amounts expended on projects, and an overall update on the Project status. These reports are due April 15th and October 15th covering the six month periods ending March 31st and September 30th respectively.
2. **Final Reporting Requirements.** In accordance with Subsection 6.4, the Recipient shall submit to the Minister a Final Report on the Project, substantially in the form prescribed by the Minister and satisfactory to the Minister in scope and detail, in order to allow the Minister to assess the outcome of the Project.
3. **Recognition of Funding.** In order to acknowledge the Government of Canada's support for the Project, the Recipient shall submit photograph(s) of the required signage as required by the Minister.

Annex 4

CANADA 150 COMMUNITY INFRASTRUCTURE PROGRAM

FEDERAL VISIBILITY REQUIREMENTS

1. The Recipient agrees that its name, the amount of the Contribution and a description of the general nature of the activities supported under this Agreement may be made publicly available by the Minister.
2. In order to promote the support received from the Minister, and to raise awareness of the Canada 150 Community Infrastructure Program, the Recipient agrees to the following requirements, at the request of the Agency:
 - (a) Participate in and assist with coordination of a public announcement of the Agreement by the Minister in the form of an event and/or news release as provided by the Minister. The Recipient shall maintain the confidentiality of this Agreement until such public announcement;
 - (b) Coordinate a mutually agreeable venue, date and time, in light of the availability of the Minister, for public/media events outlining Project achievements, such as groundbreaking or completion ceremonies, or initiatives undertaken by the Recipient and acknowledging the role of the Minister on these occasions. Unless otherwise agreed to in advance by the Minister, no event will take place without at least fifteen (15) business days' notice to the Minister;
 - (c) Participate in, coordinate and accommodate activities that showcase the results or expected results of the Minister's support, including but not limited to public showcase events, site visits, photo opportunities, production of promotional products (including but not limited to, photos and images, video, print and new media). This includes providing access to the Recipient's work site(s) to the Agency staff. The Recipient agrees that the Minister may contact it for the purposes of preparing project success stories;
 - (d) When providing information on the products and services funded in whole or in part by this Agreement, specify that the financial assistance is made possible through a contribution from the Minister;
 - (e) Prominently display in a manner prescribed by the Minister, promotional material or signage according to a design specified by the Minister and produced and installed at the Recipient's expense, communicating the nature of the funded activities and/or the involvement of the Minister; and
 - (f) Include acknowledgement, in a manner prescribed by the Minister, in all publications and advertising describing or promoting the products and services

funded in whole or in part by this Agreement, including, but not limited to, electronic media (web, television, video), and print media (signs, print advertising, brochures, magazines, maps, posters). The Recipient will consult with the Minister in preparing the content and look of all such material, which must be approved in advance. The Recipient will provide the Agency with no less than ten (10) business days for the approval of all materials prior to its release.

The Minister may, by notice in writing given to the Recipient, require that recognition of the support provided by the Minister not be made in any public communication of the Recipient.