

THE CORPORATION OF THE TOWN OF AMHERSTBURG

By-law 2009-85

A By-law to authorize the execution of an Agreement

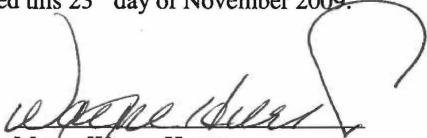
WHEREAS the Council of the Town of Amherstburg wishes to enter into an agreement that invests in improving Municipal Infrastructure and Building the Capacity of our Community that are fundamental to the quality of life and are necessary to ensure economic growth by implementing solutions to mitigate the impacts of the economic downturn on Amherstburg and Essex County residents by providing jobs and increasing business activity;

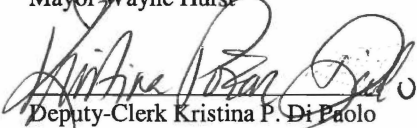
AND WHEREAS the Corporation deems it expedient to enter into an Agreement with Her Majesty the Queen in Right of Canada as represented by the Minister of Industry through the Community Adjustment Fund (CAF) Project Number 845-505182 in that regard under certain terms and conditions;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF AMHERSTBURG HEREBY ENACTS AS FOLLOWS:

1. That the Corporation of the Town of Amherstburg enter into an Agreement for funds towards the reconstruction of roads, pedestrian crosswalks and sidewalks, replacement of street lights, gateway signage, the construction of tourism kiosks and the completion of trail improvements that addressed our local need and objective of a community economic infrastructure; a copy of which Agreement is attached hereto and forms a part of this by-law.
2. That the Mayor and the Clerk be and the same are hereby authorized to execute the said Agreement on behalf of the Corporation and affix the Corporate seal thereto, as well as any and all other documents that may be necessary to give effect to the terms of the said Agreement.
3. This by-law shall come into force on the final passing thereof.

Read a first, second and third time and finally passed this 23rd day of November 2009.


Mayor Wayne Hurst


Deputy-Clerk Kristina P. Di Paolo

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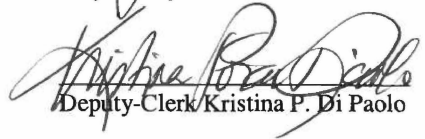
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Mayor Wayne Hurst


Deputy-Clerk/Kristina P. Di Paolo

Project Number: 845-505182

Mayor Wayne Hurst &
Pamela Malott, Chief Administrative Officer
The Corporation of the Town of Amherstburg
271 Sandwich St. S.
Amherstburg, ON N9V 2A5

Dear Mayor Hurst & Ms. Malott:

Re: The Corporation of the Town of Amherstburg

In response to your application dated June 12, 2009, Her Majesty the Queen in Right of Canada ("Her Majesty"), as represented by the Minister of Industry (the "Minister") hereby offers to make a contribution under the Community Adjustment Fund ("CAF") to The Corporation of the Town of Amherstburg (the "Recipient") (the Recipient and the Minister collectively referred to as the "Parties" or individually as the "Party") for the purposes of the project described in Annex 1 (the "Project"), upon the following terms and conditions:

1.0 The Agreement

1.1 This Agreement including Annex 1 - The Project - Statement of Work, Annex 1a - Environmental Mitigation Measures, Annex 2 - News Release Summary, Annex 3 - Costing Memorandum, Annex 4 (as provided for in subsection 7.1), Annex 5- Monthly Report, and Annex 6 - Monthly Employment Report upon being duly executed by the Recipient and the Minister, constitutes the entire agreement between the Parties pertaining to the matters contemplated hereby (the "Agreement") and supersedes all prior agreements, documents, undertakings and negotiations, whether oral or written of the Parties, related to its subject matter.

1.2 **Duration of Agreement.** This Agreement comes into force on the Date of Acceptance and will terminate:

- (a) twelve (12) months after the earlier of:
 - i) the completion of the Project to the satisfaction of the Minister; or
 - ii) the 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 latter, unless terminated earlier in accordance with the terms of this Agreement.

1.3 **Date of Acceptance.** The date of acceptance shall be the date the duplicate copy of this offer, duly executed by the Recipient, is received by the Minister (the "Date of Acceptance").

1.4 **Survival.** Notwithstanding the provisions of subsection 1.2 above, the rights and obligations of the Parties set forth in the following sections, shall survive the expiry or early termination of this Agreement, and shall remain in full force and effect:

Section 4 - Other Government Financial Support
Section 6 - Monitoring, Audit and Evaluation
Section 11 - Indemnification and Limitation of Liability
Section 12 - Default and Remedies
Section 14 - Project Assets
Section 16 - General
Subsection 16.11 - Dispute Resolution

The survival period shall lapse six (6) years after the expiry or early termination of this Agreement.

- 1.5 **Precedence.** In the event of, and only to the extent of, any conflict or inconsistency between the part of the Agreement that precedes the signatures of the Parties, and the annexes that follow, the part of this Agreement that precedes the signatures of the Parties shall apply. The order of precedence amongst the annexes of this Agreement will be:

Annex 1 - Statement of Work

Annex 1a - Environmental Assessment Act

Annex 3 - Costing Memorandum

Annex 2 - News Release Summary

Annex 4 - Recipient representation documents per subsection 7.1

Annex 5 - Monthly Report

Annex 6 - Monthly Employment Report

- 1.6 **Headings.** The headings used in this Agreement are inserted for convenience of reference only and shall not affect its interpretation.

2.0 The Project

- 2.1 The Project commencement date is August 27, 2009 (the "Commencement Date") and the Recipient shall insure that the project is completed to the Minister's satisfaction no later than March 31, 2010 ("Completion Date").

3.0 The Contribution

- 3.1 The Minister will make a non-repayable Contribution (the "Contribution") to the Recipient in respect of the Project in an amount not exceeding the lesser of:

(a) 95.18% of the eligible and supported costs outlined in Annex 1 (the "Eligible and Supported Costs") of \$11,835,000.00 of the Project incurred and paid, and

(b) \$11,265,000.00

- 3.2 The Minister shall not contribute to any Eligible and Supported Costs incurred prior to June 12, 2009 and later than March 31, 2010.

In no circumstances shall the Minister contribute to costs incurred after March 31, 2010. The Minister shall not consider any requests to extend this project and any underspending cannot be carried forward to the next fiscal year.

- 3.3 Notwithstanding 3.2, in no event will the Minister pay more than ten percent (10%) of the Contribution as set out under 3.1 towards Eligible and Supported Costs incurred by the Recipient prior to the Commencement Date.

- 3.4 The Minister shall not contribute to any Eligible and Supported Costs incurred by the Recipient that could cause the Contribution noted in subsection 3.1 above to exceed \$11,265,000.00 in the fiscal year ending March 31, 2010.

- 3.5 The Recipient shall use the Contribution solely and exclusively to support the Eligible and Supported Costs of the Project as detailed in Annex 1 and shall carry out the Project in a diligent and professional manner, using qualified personnel.

- 3.6 The Recipient shall be responsible for all costs of the Project, including cost overruns, if any.

4.0 Other Government Financial Support

- 4.1 The Recipient hereby confirms that for purposes of this Project no other federal, provincial, municipal or local government assistance, including tax credits, has been requested or received.
- 4.2 The Recipient shall promptly inform the Minister in writing in the event additional other government financial support has been requested or received 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.
- 4.3 In no instance will the total Canadian government funding towards the Eligible and Supported Costs being supported under this Agreement be allowed to exceed one hundred percent (100%) of the Eligible and Supported Costs under this Agreement.

5.0 Claims and Payments

- 5.1 The Recipient shall maintain accounting records that account for the Contribution paid to the Recipient and related Project costs in respect of this Agreement separate and distinct from any other funding.
- 5.2 **Claims Procedures.** The Recipient shall submit claims for reimbursement of Eligible and Supported Costs incurred, not more frequently than monthly and not less frequently than quarterly, in a form satisfactory to the Minister. Each claim will include the following information:
 - (a) an itemized summary of Eligible and Supported Costs incurred;
 - (b) for each expense being claimed, a copy of the invoice rendered to the Recipient (or if no invoice is available, the contract vendor's name and contact information, the date(s) that goods and services were provided, and the date the contract vendor was paid), if required by the Minister;
 - (c) a brief explanation of the claim;
 - (d) the most current Monthly Report (Annex 5), as outlined in Section 6.1;
 - (e) identification of any deferred payment amounts;
 - (f) a certification of the claim by an officer of the Recipient or other person satisfactory to the Minister, confirming the accuracy of the claim and all supporting information provided; and
 - (g) any other documentation in support of the claim as may be required by the Minister.

5.3 Advance Payments.

- (a) Where the Minister is satisfied and has determined that the Recipient's cash flow requirements justify the need for an advance against the Eligible and Supported Costs payable under this Agreement, the Minister may, at his sole discretion, pay to the Recipient advances based on submitted cash flow requirements for Eligible and Supported Costs to be paid during Fiscal Year 2009-10 up to twenty-five percent (25%) of the annual Contribution as specified under provision 3.1 a) with subsequent advances provided upon receipt of satisfactory reporting on progress and spending to date and the following procedures:
 - i) The Recipient shall submit to the Minister's satisfaction, a forecast of cash flow requirements to be incurred during the first advance period along with any documentation that the Minister may reasonably request.

- ii) The Recipient shall account for the use of any advances within one hundred and twenty (120) days of the beginning of the advance period.
- iii) Should subsequent advances be requested, the Minister may make additional advances provided that the Recipient shall follow the same process as outlined under i) and ii) above and has supplied the following information to the Minister's satisfaction:
 - (1) A statement of the Eligible and Supported Costs incurred during the previous advance period, or any other advance period, certified by a financial officer or other representative of the Recipient; and
 - (2) Submitted at least six (6) weeks before the start of the next advance.
- iv) If the amount of the advance exceeds the amount of Eligible and Supported Costs incurred during the previous advance period, the Minister shall deduct the excess amount and any interest earned from any other payment under this Agreement.

5.4 Final Claim Procedures.

- (a) In addition to the requirements set out in subsection 5.2 Claims Procedures, the Recipient's final claim pertaining to the final reimbursement of any Eligible and Supported Costs previously claimed or not; and/or the reconciliation of any outstanding advances, shall be signed by an authorized officer of the Recipient, or such other representative of the Recipient satisfactory to the Minister, and accompanied by the following, in a form satisfactory to the Minister in scope and detail:
 - (i) a final itemized statement of all Eligible and Supported Costs incurred and paid by the Recipient;
 - (ii) a final statement of total Project costs;
 - (iii) the final Monthly Employment Report as outlined in section 6.3;
 - (iv) a statement of the total government assistance (federal, provincial and municipal assistance) towards the eligible costs supported in the Agreement received or requested;
 - (v) a final report on the Project in the form provided or in a form similar to Annex 5;
 - (vi) an attestation confirming the Recipient's compliance with the terms and conditions of the Agreement; and
 - (vii) an attestation confirming that it is the final claim for payment and as such, it includes all final Eligible and Supported Costs submitted for payment.
- (b) The Recipient shall submit the final claim for reimbursement of Eligible and Supported Costs to the satisfaction of the Minister no later than three (3) months after the Completion Date but in any event no later than June 30, 2010. The Minister shall have no obligation to pay any claims submitted after this date.

5.5 Payment Procedures.

- (a) The Minister shall review and approve the documentation submitted by the Recipient following the receipt of the Recipient's claim, or will notify the Recipient of any deficiency in the documentation submitted which deficiency the Recipient shall immediately take action to address and rectify.
- (b) Subject to the maximum Contribution amounts set forth in subsections 3.1 and 3.4 and all other conditions in this Agreement, the Minister shall pay to the Recipient

the Minister's portion of the Eligible and Supported Costs set forth in the Recipient's claim in accordance with the Minister's customary payment practices.

- (c) The Minister may request at any time that the Recipient provides satisfactory evidence to demonstrate that all Eligible and Supported Costs claimed have been paid.
 - (d) The Minister may require that any claim submitted for payment of the Contribution be certified by the Recipient's external auditor or by an auditor approved by the Minister.
- 5.6 **Holdbacks.** Notwithstanding any other provision of this Agreement, the Minister may, at the Minister's sole discretion, withhold up to ten percent (10%) of the Contribution amount until:
- (a) the Project is completed to the satisfaction of the Minister;
 - (b) the final report has been submitted to the satisfaction of the Minister;
 - (c) audits, where required by the Minister have been completed to the satisfaction of the Minister; and
 - (d) the Minister has approved the final claim described in subsection 5.4.
- 5.7 **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 the Minister promptly and in any case no later than 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 in accordance with the *Interest and Administrative Charges Regulations*, in effect on the due date, plus three percent (3%) compounded monthly on overdue balances payable, from the date of the notice, until payment is received by the Minister.
- 5.8 **Sharing Ratios.** If the Minister makes individual payments that represent higher sharing ratios than those authorized for the total Contribution, in no event shall the overall sharing ratio calculated on the total Eligible and Supported Costs of the Project exceed the maximum authorized sharing ratios as provided in subsection 3.1 a).

6.0 Monitoring, Audit and Evaluation

- 6.1 **Monthly Report.** The Recipient shall submit to the Minister monthly progress reports and a final report, ("Monthly Report") substantially in the form of Annex 5 hereto, as provided in section 5.2, satisfactory to the Minister in scope and detail. These reports shall include, for capital projects only, a pictorial record of the progress, dated and time stamped, available in electronic format. A Report of a particular month must be submitted by the tenth (10th) day of the following month.
- 6.2 The Monthly Report referred to in subsection 6.1 shall contain information sufficient to allow the Minister to assess the progress of the Project, including for example, a description of work completed to date; a percentage of completion report signed-off by the managing architect or engineer (where applicable); photos that demonstrate the progress of the Project (where applicable); and a report on implementation of environmental mitigation measures (where applicable). Upon request of the Minister and at no cost to him, the Recipient will promptly elaborate upon any Monthly Report submitted.
- 6.3 **Monthly Employment Report.** The Recipient shall submit a Monthly Employment Report in the form of Annex 6, satisfactory to the Minister in scope and detail.

The Recipient shall submit the Monthly Employment Reports of a particular month by the tenth (10th) day of the following month.

- 6.4 The Minister may request that the Recipient submit to the Minister a copy of the Recipient's financial statements, within one hundred and twenty (120) calendar days of the Recipient's fiscal year end or within such longer period as may be authorized by the Minister.
- 6.5 The Recipient shall provide to the Minister a copy of any report or publication produced as a result of this Agreement, whether interim or final, as soon as the same becomes available.
- 6.6 The Recipient shall for the term of this Agreement and for a period of six (6) years after the expiry or early termination of this Agreement, at its own expense:
 - (a) preserve and make available for audit and examination by the Minister's representatives, proper books, accounts and records of the costs of the Project, wherever such books, and records may be located, and permit any authorized representative of the Minister to conduct such independent audits and evaluations as the Minister in his discretion may require;
 - (b) permit any authorized representatives of the Minister reasonable access to the Recipient's premises and documents 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 their results as the Minister may require for purposes of this Agreement and for statistical purposes.
- 6.7 The Minister shall have the right, at his own expense, and as and when he determines necessary, to perform audits of the Recipient's books, accounts, records, financial statements and claims for reimbursement of Eligible and Supported 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 and Supported Costs, ensuring compliance with the terms of this Agreement, and confirming amounts repayable to the Minister under the provisions of this Agreement.
- 6.8 Any audits performed hereunder will be carried out by auditors selected by the Minister, which may include any of the following: Department of Industry officials, an independent auditing firm, and 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.
- 6.9 **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.

7.0 Representations

7.1 The Recipient represents, warrants and covenants that:

- (a) it is a Municipally Created Organization 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. The relevant by-laws and resolution that authorize the same are attached to this Agreement by the Recipient as Annex 4.
- (c) it has acquired general liability insurance and property damage insurance, evidence of which must be included with the first Monthly Report, that is consistent with the level of risk exposure associated with the Project, as described in the Annex 1 - Project Statement of Work and will maintain such from the Commencement Date to the Project Completion Date.
- (d) the signatories to this Agreement, on behalf of the Recipient, have 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.

8.0 Federal Visibility Requirements

8.1 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.

8.2 In order to promote the support received from the Government of Canada, and to raise awareness of the CAF as part of Canada's Economic Action Plan (EAP), the Recipient agrees to the following requirements, to be implemented at the discretion of the Minister:

- (a) Coordinate and participate in a public announcement of the Agreement by the Minister or his designated representatives 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) Prominently display at the Project site in a manner prescribed by the Minister, promotional material or signage to be provided by the Minister, communicating the nature of the funded activities and/or the involvement of the Government of Canada;
- (c) Invite the Minister or his designated representatives to public/media events related to achievements or initiatives taken by the Recipient and acknowledge the role of the Government of Canada on these occasions;
- (d) Follow the Government of Canada protocol, as provided by the Minister, during public/media events involving the Recipient;
- (e) When providing information on the products and services funded in whole or in part by this Agreement (including financial assistance for an enterprise or organization), specify that the financial assistance is made possible through a contribution from the Government of Canada; and
- (f) Include the appropriate Government of Canada wordmark 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 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.

9.0 Official Languages

9.1 The Recipient in completing the Project will not be providing services to or communicating with members of an official languages minority community. Should there be a change in circumstances such that the Recipient will be providing services to and communicating with an official languages minority community, the Recipient agrees to comply with the requirements of the *Official Languages Act*, from that date forward.

10.0 Environmental and Other Requirements

10.1 The Minister has determined that while the Project is a "project" as defined by the *Canadian Environmental Assessment Act*, the Parties agree that the funds to be paid to the Recipient will enable the carrying out of one or more projects that are described in the *Exclusion List Regulations* and that accordingly, the Minister's decision to provide funding to the Recipient under this Agreement does not require the prior conduct of an environmental assessment under the Canadian Environmental Assessment Act.

10.2 The Recipient shall comply with all federal, provincial, territorial, municipal and other applicable laws governing the Recipient or the Project, or both, including but not limited to, statutes, regulations, by-laws, rules, ordinances and decrees. This includes legal requirements and regulations relating to environmental protection.

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 a change that would trigger a re-assessment of the Project under the *Canadian Environmental Assessment Act* is proposed for, or made to, the Project, the Parties agree that despite any other provision in this Agreement, the Minister's obligations under this Agreement will be suspended until a federal environmental assessment is completed and the updated mitigation measures being implemented as the case may be, are unlikely to result in any significant adverse environmental effects.
- 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 that may be affected by the terms of this Agreement.

11.0 Indemnification and Limitation of Liability

- 11.1 The Recipient shall at all times indemnify and save harmless the Minister, his 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, 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; or,
 - (c) any omission or other wilful or negligent act or delay of the Recipient or 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 wilful or negligent act or omission of an official, employee, or agent of the Minister 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 the provisions of this Agreement. Without limiting 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.

12.0 Default and Remedies

- 12.1 **Event of Default.** The Minister may declare that an event of default has occurred if:
- (a) the Project is not completed to the Minister's satisfaction by March 31, 2010;
 - (b) 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;
 - (c) 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;
 - (d) the Recipient has made an order or passed a resolution for the winding up of the Recipient, or the Recipient is dissolved;
 - (e) the Recipient has, in the opinion of the Minister, ceased to operate or has sold all or substantially all its assets;

- (f) the Project is carried out at locations other than those mentioned in the Statement of Work;
- (g) the Recipient has submitted false or misleading information, or has made a false or misleading representation to the Minister or in this Agreement;
- (h) the Recipient has not, in the opinion of the Minister, met or satisfied a term or condition of this Agreement;
- (i) the Recipient is not eligible or is otherwise not entitled to the Contribution; and/or,
- (j) the Recipient has not complied with the audit and evaluation requirements specified in this Agreement.

12.2 **Notice and Rectification Period.** The Minister may make a declaration of default by providing written notice to the Recipient of the condition or event which, in the Minister's opinion, constitutes an event of default under subsection 12.1. Except in the circumstances described in subsections (c) and (d) of section 12.1, the Minister may, in his discretion, advise the Recipient of the condition or event, and allow the Recipient a period of fifteen (15) calendar days, or such other time as the Minister may in his sole discretion decide, to correct the condition or event complained of, or to demonstrate to the satisfaction of the Minister that it has taken the necessary steps to correct the condition, failing which the Minister may immediately declare that an event of default has occurred. Notification by the Recipient of rectification shall be made in writing within the period of fifteen (15) calendar days or such other time as the Minister decided.

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:

- (a) terminate 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;
- (c) require the Recipient to repay forthwith to the Minister all or part of the Contribution; and
- (d) exercise any other remedy available to the Minister at law.

13.0 Notice

13.1 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.

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

Federal Economic Development Agency for Southern Ontario
151 Yonge Street, 3rd Floor
Toronto, ON M5C 2W7
Attention: Community Adjustment Fund

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

13.3 Any notice or correspondence to the Recipient shall be sent to the address indicated on the face of the present Agreement.

13.4 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.

14.0 Project Assets

(a) The Recipient shall retain title to, and ownership of, the capital assets, the cost of which has been contributed to by the Minister under this Agreement (the "Project Assets") for a minimum of six (6) years after the expiry or early termination of this Agreement, and shall not dispose of the same for a period of six (6) years after the expiry or early termination of this Agreement, without the prior written authorization of the Minister. As a condition of such consent, the Minister may require the Recipient to repay the Minister the whole or any part of the Contribution paid to the Recipient hereunder;

(b) The Recipient shall acquire and maintain on the Project Assets for a minimum of six (6) years after the expiry or early termination of this Agreement, property damage insurance that is consistent with the level of risk exposure associated with the Project.

15.0 Miscellaneous

15.1 The Recipient represents and warrants that no member of the House of Commons and Senate of Canada shall be admitted to any share or part of this Agreement or to any benefit arising from it, that are not otherwise available to the general public.

15.2 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* 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 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 legislation.

15.3 The Recipient represents and warrants that:

(a) any person who, for consideration, directly or indirectly, communicated with or arranged a meeting with a public office holder, in respect of any aspect of this Agreement, prior to the execution of the Agreement, was in compliance with all requirements of the *Lobbying Act*, as amended from time to time;

(b) any person who, for consideration, directly or indirectly, during the term of this Agreement and in respect of any aspect of this Agreement, communicates with or arranges a meeting with a public office holder, will be in compliance with all requirements of the *Lobbying Act*;

(c) at all relevant times it has been, is and will continue to remain in compliance with the *Lobbying Act*;

(d) it has not, nor has any person on its behalf, paid or provided or agreed to pay or provide, to any person, directly or indirectly, a commission, contingency fee or any other consideration (whether monetary or otherwise) that is dependant upon the execution of the Agreement or the person arranging a meeting with a public office holder; and

(e) it will not, during the term of this Agreement, pay or provide or agree to pay or provide to any person, directly or indirectly, a commission, contingency fee or any

other consideration (whether monetary or otherwise) that is dependant upon the person arranging a meeting with any official or employee of Her Majesty.

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

16.0 General

- 16.1 Any amount owed to the Minister under this Agreement shall constitute a debt due to Her Majesty and shall be recoverable as such. The Recipient agrees to make payment of any such debt forthwith on demand.
- 16.2 Debts due to Her Majesty will accrue interest in accordance with the *Interest and Administrative Charges Regulations*, in effect on the due date, plus three percent (3%) per annum compounded monthly on overdue balances payable, from the date on which the payment is due, until payment in full is received by the Minister. Any such amount is a debt due to Her Majesty and is recoverable as such.
- 16.3 Any debt due to Her Majesty by the Recipient may be offset against any amounts payable by Her Majesty to the Recipient. 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.
- 16.4 Neither this Agreement nor any part thereof shall be assigned by the Recipient without the prior written consent of the Minister.
- 16.5 Payment by the Minister of amounts due under this Agreement shall be conditional on there being a legislated appropriation for the fiscal year of the Government in which the payment is due. 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 of the Government in which such payment is made is not obtained, the Minister shall have the right to recover the amount so paid from the Recipient.
- 16.6 This Agreement is binding upon the Recipient, its successors and permitted assigns.
- 16.7 Subject to the *Access to Information Act* (Canada), to the *Library and Archives Act* of Canada, to section 8.0 of this Agreement and to Annex 2, 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.
- 16.8 Notwithstanding subsection 16.7, the Recipient waives any confidentiality rights to the extent such rights would impede Her Majesty from fulfilling its notification obligations to the World Trade Organization under Article 25 of the *Agreement on Subsidies and Countervailing Measures*.
- 16.9 This Agreement shall be subject to and construed in accordance with the laws of Canada and of Ontario.
- 16.10 In the event that the Minister is prevented from disbursing the full amount of the Contribution toward Eligible and Supported Costs incurred prior to March 31, 2010, the Parties agree to review the effects of such a shortfall in the Contribution on the implementation of the Agreement and to adjust, as appropriate, the mutual obligations specified therein.
- 16.11 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 arbitration 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.

- 16.12 No amendment to this Agreement shall be effective unless it is made in writing and signed by the Parties hereto.
- 16.13 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 the Minister and the Recipient, or between the Minister and a third party. Nothing in this Agreement shall be construed as authorizing either Party, or any third party, to contract for, incur any obligation on behalf of, or act as agent for a Party to this Agreement.
- 16.14 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 both 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.
- 16.15 Title to any intellectual property created solely by the Recipient as part of or in respect of the Project will vest with the Recipient or will be determined by applicable Canadian law, provided that the Minister shall be given the right to the use of any of such intellectual property (e.g. brochures, awareness, packages, etc.) for any governmental purposes.
- 16.16 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.
- 16.17 **Competitive process.** The Recipient shall acquire and manage all equipment, services and supplies required for the Project through a transparent, competitive process that ensures the best value for funds expended. Municipalities must follow their established procurement protocol as directed by the *Municipal Act*. All other Recipients must ensure that for equipment, services and supplies, the estimated cost of which exceeds \$25,000.00, the Recipient shall obtain at least three written quotes, copies of which will be provided to the Minister. A contract for these must be awarded to the lowest qualified bidder or, where the bid price is not the sole specified selection criterion, the highest ranked bidder.
- 16.18 **No conflict of interest.** The Recipient and its consultants and any of their respective advisors, partners, directors, officers, employees, agents and volunteers shall not engage in any activity or provide any services where such activity or the provision of such services creates a conflict of interest (actually or potentially in the sole opinion of the Minister) with the provision of services under this Agreement. For greater certainty, and without limiting the generality of the foregoing, a conflict of interest includes a situation where anyone associated with the Recipient is able to benefit financially from the Project or where such a person owns or has an interest in an organization that is carrying out work related to the Project.
- 16.19 **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.

This offer is open for acceptance for 30 days from the date that appears on its face after which time it will become null and void.

If further information is required, please contact Rick Saul at (416) 952-7119.

Yours truly,



David Elgie, Director
Community Adjustment Fund

The Corporation of the Town of Amherstburg
Project Number: 845-505182

Per: 
(Signature of Recipient's Representative)

MAYOR
(Title)

Per: 
(Signature of Recipient's Representative)

CHIEF ADMINISTRATIVE OFFICER
(Title)

The foregoing is hereby accepted on this 23RD day of November, 2009.

THE PROJECT - STATEMENT OF WORK
COMMUNITY ADJUSTMENT FUND

Recipient: The Corporation of The Town of Amherstburg

Project Number: 845-505182

Project Location: Town of Amherstburg, Ontario

Timing: Project commencement date is August 27, 2009 and project to be completed on or before March 31, 2010.

Purpose / Objectives / Activities of the Project

To undertake an urban renewal project which includes reconstruction of the road in the heritage core area, pedestrian crosswalks, sidewalks, street light replacement, gateway signage, parking lot and 11km of trails improvement.

As part of the Project deliverables, the Recipient shall:

Laird Avenue	Approx. Completion Date
a. Tender and Commence Project	October 1, 2009
b. South East Road Reconstruction, Including Curb	October 30, 2009
c. Hydro Duct Installation (approx. 13.5km) & Hydro Service Transfer	November 13, 2009
d. North East Road Reconstruction, Including Curb	November 13, 2009
e. South West Road Reconstruction, Including Curb	November 27, 2009
f. North End and South End Watermain Construction	December 11, 2009
g. North West Road Reconstruction, Including Curb	December 11, 2009
h. Sidewalk and Driveway Restoration	December 31, 2009
i. Landscaping	March 31, 2010
Total road work: 0.8 km (approx.)	
Trails	
j. Tender and Commence Project	October 5, 2009
k. Trail construction (approx. 5.4km)	March 31, 2010
Gateways	
l. Tender and Commence Project	October 19, 2009
m. Pond (approx. surface area 3,780 square metres)	November 6, 2009
n. Sidewalk Widening	November 13, 2009
o. Trees	November 30, 2009
p. Entrance Features (water falls, brick works and signage)	December 31, 2009
q. Landscaping	March 31, 2010
Sidewalks	
r. Tender and Commence Project	October 5, 2009
s. Replace various sidewalks totalling approx. 4,000 square metre	December 31, 2009
Street Light	
t. Tender and Commence	October 19, 2009
u. Installation of 440 electrical poles	March 31, 2010
High School	
v. Tender and Commence	October 1, 2009
w. Pedestrian signalization	December 31, 2009
x. Streetscape	March 31, 2010
Tourist Information Systems	
y. Tender and Commence	October 22, 2009
z. Installation of Information Broadcast System	December 31, 2009
aa. Installation of 8 tourism kiosks	March 31, 2010

Expected Results of the Project

The project will help improve the road infrastructure of the heritage core area. The longer term outcomes and benefits of the project are additional jobs related to tourism.

The equivalent of 90.5 full-time jobs will be created by March 31, 2010.

Project Costs and Financing:

<u>Project Costs:</u>		<u>Project Financing:</u>	
Eligible and Supported Costs		CAF	\$11,265,000
Construction	\$8,395,000	Provincial	\$0
Equipment	\$0	Federal	\$0
Professional Fees	\$1,420,000	Municipal	\$0
Materials and Supplies	\$2,020,000	Applicant Cash	\$570,000
Total Eligible and Supported Costs	\$11,835,000		
Ineligible Costs	\$0		
Total Project Costs	\$11,835,000	Total Project Financing	\$11,835,000

Please Note:

- 1) **Eligible and Supported Costs include the amount of federal goods and services tax, (GST), net of any refund or eligible credits due from the Canada Revenue Agency**
- 2) **The Recipient shall not redirect funding between cost categories, without written consent of the Minister**

NEWS RELEASE SUMMARY
COMMUNITY ADJUSTMENT FUND

Project Number: 845-505182

Name & Address of Recipient: The Corporation of the Town of Amherstburg 271 Sandwich St. S. Amherstburg, ON N9V 2A5	Recipient Contact: Wayne Hurst, Mayor Ph: (519) 736-0012 Pam Malott, Chief Administrative Officer Ph: (519) 736-0012
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Project Location: Town of Amherstburg, Ontario	Project Type: Implementation
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Supported Sector: Construction	Strategic Objective: Community Economic Infrastructure
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Project Description:

To reconstruct roads, pedestrian crosswalks and sidewalks, replace street lights, gateway signage, construct tourism kiosks, and complete trail improvements.

Community Adjustment Fund Support
(Authorized Assistance)

\$11,265,000.00

COSTING MEMORANDUM
COMMUNITY ADJUSTMENT FUND

1.0 General Conditions

- 1.1 Costs are Eligible and Supported 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 - The Project - Statement of Work,
 - (d) incurred in respect of activities which are incremental to the usual activities of the Recipient,
 - (e) incurred between June 12, 2009 and March 31, 2010,
 - (f) incurred before March 31, 2010, and
 - (g) notwithstanding 1.1(e), in no event will the Minister pay more than ten percent (10%) of the Contribution as set out under 3.1 towards Eligible and Supported Costs incurred by the Recipient prior to the Commencement Date.
- 1.2 Costs incurred by way of the exercise of an option to purchase or hire are eligible only if the exercise of the option is at the sole discretion of the Recipient and the option has been exercised between June 12, 2009 and March 31, 2010.
- 1.3 Except as outlined in subsection 2.3 of this Annex, the costs of all goods and services acquired from an entity which, in the opinion of the Minister, is not at arm's length from the Recipient, shall be valued at the cost which, in the opinion of the Minister, represents the fair market value of such goods or services, which cost shall not include any mark up for profit or return on investment.

2.0 Eligible Costs

Where consistent with the approved Eligible and Supported Costs, as defined in Annex 1 - The Project - Statement of Work, the following criteria will be used in determining eligibility of costs:

2.1 Travel Costs - Prime Transportation

Eligible and Supported travel costs of travel are those which are deemed necessary to the performance of the Project. To be eligible, travel costs must be clearly documented as to the purpose of each trip. Travel expenses, at economy rates, shall be charged as at actual costs, but only to the extent that they are considered reasonable by the Minister.

Necessary return airfare, train fare or bus fare at economy rates for participating personnel. Where a personal automobile is to be used, kilometre (mileage) allowance will be based on current Treasury Board of Canada Travel Directives. Eligible and Supported Costs shall be limited to the cost that would have been incurred and paid had normal public transportation at economy rates been used.

Actual costs at the destination will be allowed for food, accommodation and surface transportation (i.e., taxis, etc.). Meal rates will be based on current Treasury Board of Canada Travel Directives. Please note receipts are required for all items except meals. Entertainment (hospitality) costs are not eligible.

2.2 **Audit of Project Costs**

If expressly approved in writing by the Minister, Eligible and Supported Costs may include the cost of professional accountants certifying the accuracy of any costs claimed.

2.3 **Consultants**

The direct costs of studies and/or services carried out by a private contractor or consultant are eligible.

Where a particular contractor or consultant has been specified in the Agreement, and the Recipient wishes to proceed with the Project using another contractor or consultant, prior consultation with the Project officer is advised to ensure eligibility.

The Minister shall not contribute to the cost of the services of any consultant that is not, in the opinion of the Minister, at arm's length from the Recipient.

2.4 **Calculation of Direct Labour**

The Recipient may claim only that time worked directly on the Project and excludes indirect time, non-project related time, holidays, vacation, paid sickness, etc. Paid overtime, where considered reasonable in the opinion of the Minister, may be claimed. Time off in lieu of payment is not eligible. Time claimed will normally be expressed in hours.

The payroll rate is the actual gross pay rate for each employee (normal periodic remuneration before deductions). The payroll rate excludes all premiums (e.g. overtime), shift differentials and any reimbursement or benefit conferred in lieu of salaries or wages except as noted in the last paragraph.

Fringe benefits (CPP, EI, holidays, and vacations, etc.) of up to an allowance not exceeding twenty percent (20%) of direct labour may be claimed (supporting documentation not required).

2.5 **Goods & Service Tax (GST)**

Eligible and Supported Costs include the amount of federal goods and services tax, (GST), net of any refund or eligible credits due from the Canada Revenue Agency.

In order to have the GST approved as an eligible cost on future claims, the Recipient may be required to provide documentation verifying the organization's status under GST legislation.

3.0 **Ineligible Costs**

For greater certainty, any costs not specifically described as Eligible and Supported Costs in accordance with section 2.0, shall be ineligible for inclusion in the Eligible and Supported Costs. By way of example only, ineligible costs include the following:

- (a) costs of land or vehicle purchase;
- (b) refinancing;
- (c) costs of intangible assets such as goodwill, whether capitalized or expensed;
- (d) depreciation or amortization expenses;
- (e) interest on invested capital, bonds, debentures, or mortgages;

- (f) bond discount;
- (g) losses on investments, bad debts and any other debts;
- (h) fines or penalties;
- (i) costs related to litigation;
- (j) non-incremental wages;
- (k) fees for administrators, including payments to any member or officer of the Recipient's Board of Directors;
- (l) opportunity costs;
- (m) entertainment costs; and
- (n) costs of membership in a professional body.
- (o) lobbyist fees

Using the "Purpose/Objectives/Activities of the Project" and "Expected Results of the Project" sections of Annex 1, the Recipient will report monthly to the Minister on the progress of the Project, including a percentage of completion for each sub-section within Annex 1.

MONTHLY REPORT

Report for the Month of _____

Recipient: The Corporation of the Town of Amherstburg
Project Number: 845-505182
Project Location: Town of Amherstburg, Ontario

Action Required	Percent Complete
A) _____	_____
B) _____	_____
C) _____	_____
D) _____	_____
E) _____	_____
F) _____	_____
G) _____	_____

Please answer the following with each report

	Yes	No	Unsure
1. Are all aspects of the project activity on schedule?			
2. Will the Project be complete by March 31, 2010?			
3. Are all aspects of spending on schedule?			
4. Is there a revised cost forecast?			
5. Would a meeting with a CAF Representative be beneficial now?			

Signature _____

Date _____

Recipient: The Corporation of the Town of Amherstburg
Project Number: 845-505182

Monthly Employment Report for the Month of _____

<u>Job Creation</u>	<u>Person months</u>
(A) Within Recipient	_____
Subtotal (A)	_____
Cumulative Person months	_____
 (B) Job Contractors	
<u>Name of Sub-Contractor Companies</u>	<u>Person months</u>
1) _____	_____
2) _____	_____
3) _____	_____
4) _____	_____
5) _____	_____
Subtotal (B)	_____
Total Person months (A + B)	_____
Cumulative Total Person months	_____

Signature _____

Date _____