

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2019-081

By-law to enter into a Contribution Agreement between Her Majesty the Queen in Right of Canada as represented by the Minister responsible for Federal Economic Development Agency for Southern Ontario and the Corporation of the Town of Amherstburg for the Canadian Experiences Fund

WHEREAS under Section 9 of the Municipal Act 2001, S.O., 2001, c. 25, as amended, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act.

AND WHEREAS under Section 8(1) of the Municipal Act 2001, S.O., 2001, c. 25, as amended, shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues;

AND WHEREAS the Minister has established the Canadian Experiences Fund to create, improve or enhance tourism products, tourism facilities and experiences;

AND WHEREAS the Minister has agreed to make a non-repayable contribution to the Town of Amherstburg in support of the Eligible and Supported Costs of the Project (as defined in Schedule A);

AND WHEREAS the Council of the Town of Amherstburg deems it appropriate to enter into a contribution agreement with Her Majesty the Queen in Right of Canada for a maximum of \$250,000 from the Canadian Experiences Fund;

NOW THEREFORE the Council of the Corporation of the Town of Amherstburg enacts as follows:

1. That the Council of the Corporation of the Town of Amherstburg agrees to enter into the contribution agreement as attached hereto as Schedule "A" to this By-law.
2. That the Mayor and Clerk are hereby authorized to sign and seal said agreement on behalf of The Corporation of Town of Amherstburg.
3. This By-law shall come into force and take effect immediately upon the final passing thereof.

Read a first, second and third time and finally passed this 9th day of September, 2019.



MAYOR – Aldo DiCarlo



CLERK – Paula Parker



Federal Economic Development
Agency for Southern Ontario

Agence fédérale de développement
économique pour le Sud de l'Ontario

August 29, 2019

John Miceli, Chief Administrative Officer
The Corporation of the Town of Amherstburg
271 Sandwich Street South
Amherstburg, ON N9V 2A5

Dear John Miceli,

Re: Project #815117 The Corporation of the Town of Amherstburg – River Lights
Winter Festival

Further to your application for funding of a non-repayable contribution up to \$250,000 for eligible and supported costs, please find enclosed a copy of the Contribution Agreement for your project.

Please return a signed copy of the Contribution Agreement within 30 days of the date of this letter, acknowledging your acceptance of the terms and conditions of the agreement. Return the signed copy of the agreement to:

FedDev Ontario
101-139 Northfield Drive West
Waterloo, ON N2L 5A6
Attention: Sydney Marshall

The date of acceptance shall be the date this signed agreement is received by our offices. If this agreement is not received within 30 days of the date of this letter, it will become null and void. Please note that no payments can be issued until we have received a signed copy of this agreement.

Thank you for your participation in the Canadian Experience Fund. I extend my best wishes for the successful completion of your project.

Sincerely,

Neeve Zikman
A/Manager, Community Economic Development
Federal Economic Development Agency for Southern Ontario

encl.

Canada

**CANADIAN EXPERIENCES FUND
CONTRIBUTION AGREEMENT**

This Contribution Agreement is made as of **AUG 29 2019**

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 ("Minister")

AND: **THE CORPORATION OF THE TOWN OF
AMHERSTBURG** ("Recipient") a municipal / regional
government established under the laws of Ontario.

WHEREAS the Federal Economic Development Agency for Southern Ontario ("Agency") was created to strengthen southern Ontario's economic capacity for innovation, entrepreneurship and collaboration, and promote the development of a strong and diversified southern Ontario economy;

WHEREAS the Minister has established the Canadian Experiences Fund to create, improve or enhance tourism products, tourism facilities and experiences; and

WHEREAS the Minister has agreed to make a non-repayable contribution to the Recipient in support of the Recipient's Eligible and Supported Costs (as defined herein) of the Project.

NOW THEREFORE, in accordance with the mutual covenants and agreements herein, Her Majesty as represented by the Minister (as defined herein) 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 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:

Agency means the Federal Economic Development Agency for Southern Ontario.

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

Cash Flow Projection of the Project means a spreadsheet presentation of the Project's projected total quarterly revenues and expenses for the duration of the Project, and showing all other sources of cash and cash from the anticipated claims for the Contribution.

Completion Date means the Project completion date, March 31, 2020.

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

Control Period means the period of one (1) year 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 May 31, 2019

Eligible Costs means those costs incurred by the Recipient and which, in the opinion of the Minister, are reasonable and required to carry out the Project.

Eligible and Supported Costs means those Eligible Costs supported by the Contribution as identified in Annex 1 – Statement of Work and relating to the Project activities described therein and which are in

compliance with the costing guideline memorandum provided by the Agency as part of its claims documentation.

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

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.

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

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

Southern Ontario includes the following 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.

- 2.2 **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.
- 2.3 **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.
- 2.4 **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 - Reporting Requirements
Annex 3 - 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 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 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 6.8 – Overpayment or non-entitlement
Subsections 7.2, 7.3, 7.4, 7.5, 7.6 and 7.7 – Reporting, Monitoring, Audit and Evaluation
Section 11 – Indemnification and Limitation of Liability
Section 12 – Default and Remedies
Section 13 – Project Assets and Intellectual Property
Section 15 – General
Annex 2 – Reporting Requirements

3.3 **Commencement.** The Recipient agrees to commence the Project, no later than thirty (30) calendar days after the Date of Acceptance, otherwise the Minister may terminate this Agreement at the Minister's sole discretion.

4. **The Contribution**

4.1 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) *One hundred percent (100%) of Eligible and Supported Costs of the Project incurred by the Recipient; and*
- (b) *Two hundred fifty thousand dollars (\$250,000).*

4.2 The payment of the Contribution per Fiscal Year is set out in Annex I – Statement of Work.

4.3 The Minister shall not contribute to any Eligible and Supported Costs incurred prior to the Eligibility Date or later than the Completion Date.

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

4.5 **Holdbacks.** Notwithstanding any other provisions 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; and
- (b) the Recipient has satisfied all the conditions of this Agreement.

5. **Other Government Financial Support**

5.1 The Recipient hereby confirms that for purposes of this Project no federal, provincial, municipal or local government assistance has been requested, received or will be received except as disclosed in Annex I – 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 sources of funding.

6.2 **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 and in accordance with the claim schedule and costing guidance provided by the Minister.

6.3 The Recipient agrees to submit its first claim for Eligible and Supported Costs incurred within:

- (a) thirty (30) calendar days from the Date of Acceptance of this Agreement; or
- (b) thirty (30) calendar days from the date of Project commencement,

whichever is the later.

6.4 The Recipient agrees to submit its last claim for Eligible and Supported Costs incurred in each Fiscal Year on or before March 15th of that year. For claims related to the final quarter of the Fiscal Year, the Recipient shall also submit to the Minister, no later than March 15th, a detailed estimate of costs incurred but not yet claimed to the end of the Fiscal Year.

6.5 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 and Supported Costs, payable under this Agreement, the Minister may, at the Minister's sole discretion, pay to the Recipient an initial advance for claim for Eligible and Supported Costs, up to a maximum of seventy-five percent (75%) of the portion of the Contribution allocated to the Fiscal Year in which the request is made 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; and
 - (ii) the Recipient shall account by way of claim, to the satisfaction of the Minister, for the use of any advances within one hundred and twenty (120) days of the beginning of the advance period.
- (b) **Subsequent Advances.** Where the Minister is satisfied and has determined that the Recipient's cash flow requirements justify the need, the Minister may, at the Minister's sole discretion, make additional advances for Eligible and Supported Costs, subject to the following:
- (i) the Recipient follows the requirements outlined under (a) (i) and (a) (ii) above with respect to any subsequent advance;
 - (ii) the Recipient provides 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;
 - (iii) the Recipient provides a satisfactory report on progress and spending to date substantially in the form prescribed by the Minister; and
 - (iv) the Recipient submits the advance request at least two (2) weeks prior to the start of the advance period to which the advance request pertains.
- (c) The Recipient agrees to spend advances in the Fiscal Year 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 and Supported 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.

6.6 Final Claim Procedures.

- (a) The Recipient shall submit a final claim pertaining to the final reimbursement of any Eligible and Supported Costs, previously claimed or not, signed by a director or officer of the Recipient and accompanied by the final report on the Project, as more fully described in Annex 2 – Reporting Requirements.
- (b) The Recipient shall submit the final claim for reimbursement of Eligible and Supported Costs incurred to the satisfaction of the Minister no later than three (3) months after the Completion Date or the date the Project is completed to the satisfaction of the Minister, whichever is earlier. The Minister shall have no obligation to pay any claims submitted after this date.

6.7 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, it will notify the Recipient and the Recipient shall immediately take action to address and rectify the deficiency.
- (b) 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.

- 6.8 **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 as calculated in accordance with Subsection 15.2 of this Agreement.

7. Reporting, Monitoring, Audit and Evaluation

- 7.1 The Recipient agrees to provide the Minister with the reports as described in Annex 2 – Reporting Requirements, to the Minister's satisfaction.
- 7.2 Upon request of the Minister and at no cost to the Minister, 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's discretion may require 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 Her Majesty under the provisions of this Agreement.;
 - (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 and compliance with the terms of this Agreement; and
 - (c) supply promptly, on request, such other reports or 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 Any audits performed hereunder will be carried out by auditors selected by the Minister.
- 7.5 The Recipient agrees that the Minister, at the Minister's 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.
- 7.6 **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 **Representations.** 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 general liability insurance and property damage insurance, in adequate amounts consistent with the scope and investments of the Project ("Insurance"), but in any event no less than two million dollars in general liability insurance, and will maintain such for the duration of the Agreement and the Control Period;
- (d) signatory to this Agreement, on behalf of the Recipient, has been duly authorized under a borrowing by-law 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; and
- (i) the description of the Project in Annex 1 – Statement of Work is complete and accurate.

8.2 Covenants. The Recipient covenants and agrees that:

- (a) it shall use the Contribution solely and exclusively to support the Eligible and Supported Costs of the Project, and shall carry out the Project in accordance with the description in Annex 1 – Statement of Work, in a diligent and professional manner, using qualified personnel;
- (b) it shall obtain the prior written consent of the Minister before making any material change to any aspect of the Project or to the management of the Project or the Recipient;
- (c) it shall comply with the federal visibility requirements set out in Annex 3 – Federal Visibility Requirements; and
- (d) 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.

8.3 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.

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 main signage components related to the Project will be in both official languages; and
- (e) 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 without limitation, 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 federal, provincial, territorial, municipal bodies. The Recipient will certify to the Minister that it has done so.
- 10.3 **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, its 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 the Project or any action or inaction of the Recipient.
- 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 Project is carried out outside of Southern Ontario, is not meeting its objectives or milestones as set out in Annex 1 – Statement of Work, is not completed to the Minister's satisfaction by the Completion Date or the Project is abandoned in whole or in part;
 - (c) the Recipient makes a materially false or misleading statement concerning support by Her Majesty 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 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, disposed or transferred all or substantially all of its assets;
- (g) 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;
- (h) the Recipient has not, in the opinion of the Minister, met or satisfied a term or condition of this Agreement; or
- (i) the Recipient has not met or satisfied a term or condition under any other contribution agreement or agreement of any kind with Her Majesty.

12.2 **Notice of Breach 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. During the period of time specified in the notice, the Minister may suspend payment of any claim submitted before or after the date of notice.

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 and Intellectual Property**

13.1 The Recipient shall retain title to, and ownership of any assets (excluding any intellectual property), 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, 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.

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 are 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 an employee of the Recipient 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) the Recipient or 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 set out in 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 **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.
- 15.4 **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.
- 15.5 **Successors and Assigns.** This Agreement is binding upon the Recipient, its successors and permitted assigns.
- 15.6 **Confidentiality.** Subject to the *Access to Information Act* (Canada), the *Privacy Act*, the *Library and Archives Act* of Canada and Annex 3 – 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.
- 15.7 **International Disputes.** Notwithstanding Subsection 15.7 of this Agreement, the Recipient waives any confidentiality rights to the extent such rights would impede Her Majesty from fulfilling its notification obligations to a world trade panel for the purposes of the conduct of a dispute, in which Her Majesty is a party or a third party intervener. The Minister is authorized to disclose the contents of this Agreement and any documents pertaining thereto, whether predating or subsequent to this Agreement, or of the transactions contemplated herein, where in the opinion of the Minister, such disclosure is necessary to the defence of Her Majesty's interests in the

course of a trade remedy investigation conducted by a foreign investigative authority, and is protected from public dissemination by the foreign investigative authority. The Minister shall notify the Recipient of such disclosure.

- 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 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.
- 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 **Business Information.** Notwithstanding anything else contained in this Agreement, the Minister shall be given the right to the use of any of the Recipient's publicly available business information about the Project (e.g. brochures, awareness, packages, etc.).
16. **Notice**
- 16.1 Any notice, information or document required under this Agreement shall be effectively given, if delivered or sent by letter or email (postage or other charges prepaid). Any notice that is delivered shall be deemed to have been received on delivery; any notice sent by email shall be deemed to have been received when sent, any notice that is mailed shall be deemed to have been received eight (8) calendar days after being mailed.

16.2 All notices must be sent to the following addresses:

To the Minister

Federal Economic Development Agency for
Southern Ontario
101-139 Northfield Drive West
Waterloo, ON N2L 5A6
Attention: Canadian Experiences Fund

To the Recipient

The Corporation of the Town of
Amherstburg
271 Sandwich St. S
Amherstburg, ON N9V 2A5
Attention: Giovanni (John) Miceli

16.3 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 **Conditions Precedent.** As a condition precedent to the first disbursement of the Contribution:

- (a) the Recipient agrees to provide to 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 resolution authorizing the entering into of this Agreement;
- (b) the Recipient agrees to provide the Minister with a direct deposit authorization in the form prescribed by the Minister; and

17.2 The Recipient agrees to provide certificates of insurance and such other evidence of insurance consistent with Section 8.1 (c).

17.3 The Recipient represents and warrants that the Cash Flow Projection of the Project provided to the Minister accurately reflects the projected cash flow of the Project and agrees and covenants that it shall promptly notify the Minister of any material changes as determined by the Minister to such projected cash flow and obtain the Minister's prior written consent to such changes.

[remainder of page intentionally left blank]

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.: 815117

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Per: *Neeve Zikman*
Neeve Zikman
A/Manager, Community Economic Development
Federal Economic Development Agency
for Southern Ontario

Date: 2019 08 29

THE CORPORATION OF THE TOWN OF AMHERSTBURG

Per: *Giovanni Miceli*
Giovanni (John) Miceli
Chief Administrative Officer

Date: 2019/09/02

I have authority to bind the corporation.

Aldo Di Carlo
Mayor- Aldo Di Carlo

Date: 2019/09/17

Paska Parter
Clerk- Paska Parter

Date: 2019/09/09

CANADIAN EXPERIENCES FUND

THE PROJECT - STATEMENT OF WORK

Project Location: 242 Dalhousie St., Amherstburg, ON N9V 2M3
Project Start Date: May 31, 2019
Project Completion Date: March 31, 2020

Project Description/Purpose/Objective

The Corporation of the Town of Amherstburg focuses on tourism events/spaces and supports a number of historical sites and tourist attractions yearly.

The project aims to enhance winter economic development in rural Amherstburg through the expansion of and facility improvements to the River Lights Winter Festival, resulting in an anticipated doubling of attendance and an increase in tourist spending over the expanded 4 months.

The objective of the project is to enhance awareness of Amherstburg as a premier year round tourist destination, to educate visitors in Canadian culture, to attract LGBTQ2+ visitors through attraction marketing and to create new themed light displays.

A total of \$90,000 to be leveraged by the Town of Amherstburg; Public donations from local residents; and, Tourism Windsor Essex Pelee Island.

The specific objectives are:

- 1) To support economic diversification during the tourism winter season, by further supporting development of alternative tourism driven activities and attractions through day trips and overnight stays; to lengthen the duration of tourist visits; to expand the opportunities for local museums and galleries to increase their visitation and experiences by including them in our programming.
- 2) To expand awareness of Amherstburg as a premier year round tourist destination.
- 3) To educate visitors in Canadian culture through festival programming.
- 4) To attract LGBTQ2+ visitors through marketing, programming and new themed light displays.

The main activities to complete the project are:

- Lengthening the Amherstburg River Lights Winter festival from two to four months.
- Purchasing and installing additional energy efficient light attractions.
- Creating an additional 1.5 permanent positions within the town.
- Creating an electrical plan and work order for electrical infrastructure upgrades in both parks.
- Creating art installations and performances in partnership with educational institutions.
- Purchasing new recycling and refuse stations.
- Installing warming centres.
- Creating a new marketing campaign with a large U.S. visitor focus through new signage; a social media campaign; billboards and radio; advertising in "PRIDE" publications or digital marketing.
- Expanding new Canadian Culture programming for the enhanced festival with outdoor movies and additional live performances through visitor experience packages, including local restaurants, wineries and craft breweries.
- Working with the Amherstburg Chamber of Commerce and local business associations to create shopping experiences and promotions; creating a night market.
- Developing a program to highlight our cultural heritage through walking tours and activities.

Project Milestones

Project Milestones	Estimated Completion Date
Hire employees and contractors	November 1, 2019
Buy material and install electrical infrastructure and displays	November 16, 2019
Marketing plan and event readiness	December 1, 2019
Installation and readiness of event site	December 1, 2019
Final report on the project	March 31, 2020

Expected Results of the Project

- Number of tourist visitors increased from 35,000 in 2018 to 70,000 in 2019.
- Foreign investment in Amherstburg at \$917,840.
- Enhanced cultural heritage program for the festival through walking tours and activities and other visitor experience packages.

Key Project Impacts

Measurement	At Project End
Total cash leveraged	\$90,000
Number of new partnerships/collaborations formed	26
Number of organizations supported	0
Number of businesses supported	28
Value of investments in environmental sustainability	\$0
Number of new or improved tourism services and products (e.g., attractions, festivals, tours).	19
Number new or improved tourism facilities (e.g., trails, campgrounds, shelters)	2
Number (type of participant) (location) of workshops held ¹	0
Number (type of participant) (location) of individuals trained (other) ¹	0
Number (type of participant) (location) of partaking in LGBTQ2+ workshops/training ¹	0
Number (type of participant) (location) that received market readiness training (including Indigenous) ¹	0

Jobs

Jobs	Number of full-time equivalents ¹				Total
	Created		Maintained ²		
	Permanent ³	Temporary ⁴	Permanent	Temporary	
Forecasted Jobs by Project Completion	0	2	0	0	2

¹Full-time equivalent (FTE) is equivalent to one employee working full time or more than one person part-time, such that the total working time is the equivalent of one person working full-time. Generally, full-time positions will involve between 35 and 40 hours in a regular work week. A FTE calculation is the total hours worked in a week divided by the regular workweek. FTEs do not include positions created as a result of subcontracts to undertake work on the project (e.g. construction, suppliers, etc.).
²Maintained refers to employment that existed prior to the project, but which would not have continued, or would have been unlikely to continue, if the project had not been funded.
³Permanent job is a position without a fixed end date.
⁴Temporary job is defined as a temporary or contract position with a fixed end date.

Notes:

1. Type of participant and location information to be provided by the Recipient when submitting project reports as outlined in this agreement.

Project Costs & Financing

COSTS	Eligible & Supported ^{1,2}		Eligible & Not Supported		Ineligible		Total	
CAPITAL COSTS								
Facility construction/renovations	\$0	0.0%	\$0	\$0	\$0	\$0	\$0	0.0%
Equipment purchases/installation	\$0	0.0%	\$0	\$0	\$0	\$0	\$0	0.0%
Other Capital Costs ⁶	\$175,000	70.0%	\$0	\$0	\$175,000	\$0	\$175,000	70.0%
NON-CAPITAL COSTS								
Labour (employees) ⁴	\$43,750	17.5%	\$0	\$0	\$43,750	\$0	\$43,750	17.5%
Expertise (consulting, contract)	\$0	0.0%	\$0	\$0	\$0	\$0	\$0	0.0%
Other Non-Capital Costs ⁵	\$31,250	12.5%	\$0	\$0	\$31,250	\$0	\$31,250	12.5%
TOTAL	\$250,000	100%	\$0	\$0	\$250,000	\$0	\$250,000	100%

FINANCING	Eligible & Supported		Eligible & Not Supported		Ineligible		Total	
FedDev Ontario	\$250,000	100%	\$0	\$0	\$0	\$0	\$250,000	100%
Other Federal	\$0	0.0%	\$0	\$0	\$0	\$0	\$0	0.0%
Provincial	\$0	0.0%	\$0	\$0	\$0	\$0	\$0	0.0%
Municipal	\$0	0.0%	\$0	\$0	\$0	\$0	\$0	0.0%
Other Private (Equity/Financing)	\$0	0.0%	\$0	\$0	\$0	\$0	\$0	0.0%
Applicant	\$0	0.0%	\$0	\$0	\$0	\$0	\$0	0.0%
TOTAL	\$250,000	100%	\$0	\$0	\$0	\$0	\$250,000	100%

CONTRIBUTION ALLOCATIONS BY FISCAL YEAR ³	Eligible & Supported Project Costs	FedDev Ontario Contribution per Fiscal Year (\$, reimbursement %)	
2019-20	\$175,000	\$175,000	70%
2020-21	\$75,000	\$75,000	30%
TOTAL	\$250,000	\$250,000	100%

STACKING CALCULATION	Eligible Capital Costs	Eligible Non-Capital Costs
Total Eligible Costs	\$175,000	\$75,000
Total Government Contributions	\$175,000	\$75,000
Stacking %	70.0%	30.0%
Stacking Limit	70.0%	30.0%

Notes:

- Eligible and Supported Costs include the amount of the harmonized sales tax (HST), net of any refund or eligible credits due from the Canada Revenue Agency. In order to have the HST approved as an Eligible and Supported Cost on claims, the Recipient will be required to provide documentation verifying the organization's status under the relevant tax legislation.
- The Recipient shall not redirect funding amount between cost categories without the prior written consent of the Minister.
- FedDev Ontario's contribution allocations by Fiscal Year will not be reallocated without the prior written consent of the Minister. The Minister has no obligation to pay any amounts in any other Fiscal Years than those specified above. Failure to adhere to Fiscal Year allocations can result in a reduced contribution amount.
- Labour costs must be reasonable and directly related to the project activities. Associated benefits claimed for reimbursement will be the lesser of actual cost or 20% of the payroll rate for each employee. Further guidance on how to calculate labour is included in the claims documentation provided by FedDev Ontario.
- Food, accommodation and entertainment (hospitality) costs are not eligible. Non-Capital Costs include, but are not limited to: contract and consulting fees, materials, translation, printing, marketing, advertising and signage. Eligible travel costs will be reimbursed at no higher than the Treasury Board rate.
- Other Capital Costs include, but are not limited to: activities and material used for the installation of electrical infrastructure and displays and the installation and readiness of the event site

Annex 2

CANADIAN EXPERIENCES FUND

REPORTING REQUIREMENTS

1. **Reports.** The Recipient shall submit to the Minister a 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 progress of the Project. Reports will be submitted on the dates described in the reporting schedule provided by the Minister. The Minister may reassess the reporting frequency from time to time at the Minister's sole discretion and notify the Recipient of any changes.
2. **Annual report.** The Recipient shall submit to the Minister an annual report on the Project no later than April 15 of each year, substantially in the form and substance prescribed by the Minister.
3. **Final Report.** In accordance with Subsection 6.6, 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. This will include:
 - (a) a final statement of total Project costs;
 - (b) a statement of the total government assistance (federal, provincial and municipal assistance) received or requested towards the Eligible Costs of the Project; and
 - (c) a final certificate executed by a director or officer of the Recipient substantially in the form prescribed by the Minister.
4. **Financial Statements and Insurance.** The Recipient shall submit to the Minister a copy of the Recipient's insurance policy and financial statements, accompanied by an externally prepared audit report or review report (as determined by the Minister) that has been issued by a licensed public accountant. These financial statements will be submitted within one hundred and eighty (180) calendar days of the Recipient's fiscal year end or within such longer period, as may be authorized in writing by the Minister.

CANADIAN EXPERIENCES FUND

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 for reasons of transparency and proactive disclosure.
2. In order to promote the support received from the Minister, and to raise awareness of the Agency's ongoing work and impact across Southern Ontario, the Recipient agrees to, at the request of the Agency:
 - Participate in and assist with the coordination of a public announcement of the Project in the form of an event and/or news release, as determined by the Minister. The Recipient shall maintain the confidentiality of this Agreement until the public announcement takes place;
 - Highlight project achievements and milestones in the form of public events and/or news releases;
 - Celebrate project completion in the form of a public event and/or news release; and
 - Participate in and assist with activities and projects intended to demonstrate the Agency's impact across Southern Ontario, including, but not limited to: photo opportunities, site visits, success stories (in written and/or video formats), and promotion across available traditional and digital media platforms.

All public events requested by the Recipient are at the discretion of the Minister and will be supported by the Agency's Communications Branch. Notice of fifteen (15) business days must be given to the Minister for any public event.

For the activities listed above, the Minister may require access to the Recipient's work site(s), but only insofar as trades secrets or sensitive material, such as intellectual property or proofs of concept that may exist under or be in the patent process, are not divulged.

3. The Recipient agrees to include the appropriate "Government of Canada" wordmark and/or Agency funding acknowledgement in all publications and activities that describe or promote the products and services funded in whole or in part by this Agreement, including, but not limited to, web sites, social media, digital and print media. At minimum, this acknowledgement must be present on the Recipient's website no later than 60 days following the public announcement of the funding. All official government identifiers will be provided to the Recipient by the Agency and must be approved by the Agency prior to publication. 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 Recipient will acknowledge the support received from Her Majesty in all communication and promotional activities until twelve (12) months following the Project Completion Date.

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.

Visibility requirements may be exempted in circumstances where public acknowledgement of Ministerial support is detrimental to the Recipient and/or the Project. These cases must be made known to the Minister.