

## ONTARIO TRANSFER PAYMENT AGREEMENT

THE AGREEMENT is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

### BETWEEN :

**Her Majesty the Queen in right of Ontario  
as represented by the Minister of Municipal Affairs and  
Housing**

(the “Province”)

- and -

The Corporation of the Town of Tecumseh

(the “Recipient”)

### BACKGROUND

The Government of Canada has established the National Disaster Mitigation Program (“the Program”) to support projects that contribute to the reduction of the impacts of natural disasters on Canadians.

This Project was chosen by Canada for funding through Intake 5 of the Program.

The Ministry of Municipal Affairs and Housing administers the funding of the Projects occurring in Ontario.

The Recipient intends to carry out the Project.

The Province wishes to provide Funds to the Recipient for the Project.

### CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Province and the Recipient agree as follows:

#### 1.0 ENTIRE AGREEMENT

1.1 The agreement, together with:

Schedule “A” - General Terms and Conditions  
Schedule “B” - Project Specific Information and Additional Provisions  
Schedule “C” - Project  
Schedule “D” - Budget  
Schedule “E” - Payment Plan  
Schedule “F” - Reports  
Schedule “G” - Aboriginal Consultation, and  
any amending agreement entered into as provided for in section 4.1,

constitutes the entire agreement between the Parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements.

## **2.0 CONFLICT OR INCONSISTENCY**

2.1 **Conflict or Inconsistency.** In the event of a conflict or inconsistency between the Additional Provisions and the provisions in Schedule “A”, the following rules will apply:

- (a) the Parties will interpret any Additional Provisions in so far as possible, in a way that preserves the intention of the Parties as expressed in Schedule “A”; and
- (b) where it is not possible to interpret the Additional Provisions in a way that is consistent with the provisions in Schedule “A”, the Additional Provisions will prevail over the provisions in Schedule “A” to the extent of the inconsistency.

## **3.0 COUNTERPARTS**

3.1 The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

## **4.0 AMENDING THE AGREEMENT**

4.1 The Agreement may only be amended by a written agreement duly executed by the Parties.

## **5.0 ACKNOWLEDGEMENT**

5.1 The Recipient acknowledges that:

- (a) by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the *Broader Public Sector Accountability Act, 2010* (Ontario), the *Public Sector Salary Disclosure Act, 1996* (Ontario), and the *Auditor General Act* (Ontario);
- (b) Her Majesty the Queen in right of Ontario has issued expenses, perquisites, and procurement directives and guidelines pursuant to the *Broader Public Sector Accountability Act, 2010* (Ontario);
- (c) the Funds are:
  - (i) to assist the Recipient to carry out the Project and not to provide goods or services to the Province;
  - (ii) funding for the purposes of the *Public Sector Salary Disclosure Act, 1996* (Ontario);
- (d) the Province is not responsible for carrying out the Project; and
- (e) the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

**- SIGNATURE PAGE FOLLOWS -**

The Parties have executed the Agreement on the dates set out below.

**HER MAJESTY THE QUEEN IN RIGHT OF  
ONTARIO as represented by the Minister of  
Municipal Affairs and Housing**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name: The Honourable Steve Clark  
Title: Minister of Municipal Affairs and Housing

The Corporation of the Town of Tecumseh

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name: Gary McNamara  
Title: Mayor

I have authority to bind the Recipient.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name: Laura Moy  
Title: Director Corporate Services & Clerk

I have authority to bind the Recipient.

**SCHEDULE “A”  
GENERAL TERMS AND CONDITIONS**

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**A1.0 INTERPRETATION AND DEFINITIONS**

A1.1 **Interpretation.** For the purposes of interpretation:

- (a) words in the singular include the plural and vice-versa;
- (b) words in one gender include all genders;
- (c) the headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;
- (d) any reference to dollars or currency will be in Canadian dollars and currency; and
- (e) “include”, “includes” and “including” denote that the subsequent list is not exhaustive.

A1.2 **Definitions.** In the Agreement, the following terms will have the following meanings:

“**Additional Provisions**” means the terms and conditions set out in Schedule “B”.

“**Agreement**” means this agreement entered into between the Province and the Recipient, all of the schedules listed in section 1.1, and any amending agreement entered into pursuant to section 4.1.

“**Budget**” means the budget attached to the Agreement as Schedule “D”.

“**Business Day**” means any working day, Monday to Friday inclusive, excluding statutory and other holidays, namely: New Year’s Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province has elected to be closed for business.

“**Effective Date**” means the date set out at the top of the Agreement.

“**Event of Default**” has the meaning ascribed to it in section A13.1.

“**Expiry Date**” means the expiry date set out in Schedule “B”.

“**Funding Year**” means:

- (a) in the case of the first Funding Year, the period commencing on the Effective Date and ending on the following March 31; and
- (b) in the case of Funding Years subsequent to the first Funding Year, the period commencing on April 1 following the end of the previous Funding Year and ending on the following March 31.

“**Funds**” means the money the Province provides to the Recipient pursuant to the Agreement.

“**Indemnified Parties**” means Her Majesty the Queen in right of Ontario, Her ministers, agents, appointees, and employees.

“**Maximum Funds**” means the maximum Funds set out in Schedule “B”.

“**Notice**” means any communication given or required to be given pursuant to

the Agreement.

**“Notice Period”** means the period of time within which the Recipient is required to remedy an Event of Default pursuant to section A13.3(b), and includes any such period or periods of time by which the Province extends that time in accordance with section A13.4.

**“Parties”** means the Province and the Recipient.

**“Party”** means either the Province or the Recipient.

**“Project”** means the undertaking described in Schedule “C”.

**“Reports”** means the reports described in Schedule “F”.

## **A2.0 REPRESENTATIONS, WARRANTIES, AND COVENANTS**

**A2.1 General.** The Recipient represents, warrants, and covenants that:

- (a) it is, and will continue to be, a validly existing legal entity with full power to fulfill its obligations under the Agreement;
- (b) it has, and will continue to have, the experience and expertise necessary to carry out the Project;
- (c) it is in compliance with, and will continue to comply with, all federal and provincial laws and regulations, all municipal by-laws, and any other orders, rules, and by-laws related to any aspect of the Project, the Funds, or both; and
- (d) unless otherwise provided for in the Agreement, any information the Recipient provided to the Province in support of its request for funds (including information relating to any eligibility requirements) was true and complete at the time the Recipient provided it and will continue to be true and complete.

**A2.2 Execution of Agreement.** The Recipient represents and warrants that it has:

- (a) the full power and authority to enter into the Agreement; and
- (b) taken all necessary actions to authorize the execution of the Agreement.

**A2.3 Governance.** The Recipient represents, warrants, and covenants that it has, will maintain in writing, and will follow:

- (a) a code of conduct and ethical responsibilities for all persons at all levels of the Recipient’s organization;
- (b) procedures to enable the Recipient’s ongoing effective functioning;
- (c) decision-making mechanisms for the Recipient;
- (d) procedures to enable the Recipient to manage Funds prudently and effectively;
- (e) procedures to enable the Recipient to complete the Project successfully;
- (f) procedures to enable the Recipient to identify risks to the completion of the Project and strategies to address the identified risks, all in a timely manner;
- (g) procedures to enable the preparation and submission of all Reports

required pursuant to Article A7.0; and

- (h) procedures to enable the Recipient to address such other matters as the Recipient considers necessary to enable the Recipient to carry out its obligations under the Agreement.

A2.4 **Supporting Proof.** Upon the request of the Province, the Recipient will provide the Province with proof of the matters referred to in Article A2.0.

### A3.0 TERM OF THE AGREEMENT

A3.1 **Term.** The term of the Agreement will commence on the Effective Date and will expire on the Expiry Date unless terminated earlier pursuant to Article A11.0, Article A12.0, or Article A13.0.

### A4.0 FUNDS AND CARRYING OUT THE PROJECT

A4.1 **Funds Provided.** The Province will:

- (a) provide the Recipient up to the Maximum Funds for the purpose of carrying out the Project;
- (b) provide the Funds to the Recipient in accordance with the payment plan attached to the Agreement as Schedule “E”; and
- (c) deposit the Funds into an account designated by the Recipient provided that the account:
  - (i) resides at a Canadian financial institution; and
  - (ii) is in the name of the Recipient.

A4.2 **Limitation on Payment of Funds.** Despite section A4.1:

- (a) the Province is not obligated to provide any Funds to the Recipient until the Recipient provides the certificates of insurance or other proof as the Province may request pursuant to section A10.2;
- (b) the Province is not obligated to provide instalments of Funds until it is satisfied with the progress of the Project;
- (c) the Province may adjust the amount of Funds it provides to the Recipient in any Funding Year based upon the Province’s assessment of the information the Recipient provides to the Province pursuant to section A7.1; or
- (d) if, pursuant to the *Financial Administration Act* (Ontario), the Province does not receive the necessary appropriation from the Ontario Legislature for payment under the Agreement, the Province is not obligated to make any such payment, and, as a consequence, the Province may:
  - (i) reduce the amount of Funds and, in consultation with the Recipient, change the Project; or
  - (ii) terminate the Agreement pursuant to section A12.1.
- (e) if, the Province does not receive the funding from the Government of Canada for payment under the Agreement, the Province is not obligated to make any such payment, and, as a consequence, the Province may:
  - (i) reduce the amount of Funds and, in consultation with the Recipient,

change the Project; or

- (ii) terminate the Agreement pursuant to section A12.1.

**A4.3 Use of Funds and Carry Out the Project.** The Recipient will do all of the following:

- (a) carry out the Project in accordance with the Agreement;
- (b) use the Funds only for the purpose of carrying out the Project;
- (c) spend the Funds only in accordance with the Budget;
- (d) not use the Funds to cover any cost that has or will be funded or reimbursed by one or more of any third party, ministry, agency, or organization of the Government of Ontario.

**A4.4 Interest Bearing Account.** If the Province provides Funds before the Recipient's immediate need for the Funds, the Recipient will place the Funds in an interest bearing account in the name of the Recipient at a Canadian financial institution.

**A4.5 Interest.** If the Recipient earns any interest on the Funds, the Province may:

- (a) deduct an amount equal to the interest from any further instalments of Funds; or
- (b) demand from the Recipient the payment of an amount equal to the interest.

**A4.6 Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement are to reimburse the Recipient for the Eligible Expenses incurred by the Recipient and will not exceed the lesser of the Maximum Funds or 50 per cent of the Recipient's Eligible Expenses.

**A4.7 Rebates, Credits, and Refunds.** The Province will calculate Funds based on the actual costs to the Recipient to carry out the Project, less any costs (including taxes) for which the Recipient has received, will receive, or is eligible to receive, a rebate, credit, or refund.

#### **A5.0 RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS**

**A5.1 Acquisition.** If the Recipient acquires goods, services, or both with the Funds, it will:

- (a) do so through a process that promotes the best value for money; and
- (b) comply with the *Broader Public Sector Accountability Act, 2010* (Ontario), including any procurement directive issued thereunder, to the extent applicable.

**A5.2 Disposal.** The Recipient will not, without the Province's prior written consent, sell, lease, or otherwise dispose of any asset purchased or created with the Funds or for which Funds were provided, the cost of which exceeded the amount as provided for in Schedule "B" at the time of purchase.

#### **A6.0 CONFLICT OF INTEREST**

- A6.1 **No Conflict of Interest.** The Recipient will carry out the Project and use the Funds without an actual, potential, or perceived conflict of interest.
- A6.2 **Conflict of Interest Includes.** For the purposes of Article A6.0, a conflict of interest includes any circumstances where:
- (a) the Recipient; or
  - (b) any person who has the capacity to influence the Recipient's decisions, has outside commitments, relationships, or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased, and impartial judgment relating to the Project, the use of the Funds, or both.

A6.3 **Disclosure to Province.** The Recipient will:

- (a) disclose to the Province, without delay, any situation that a reasonable person would interpret as an actual, potential, or perceived conflict of interest; and
- (b) comply with any terms and conditions that the Province may prescribe as a result of the disclosure.

## **A7.0 REPORTS, ACCOUNTING, AND REVIEW**

A7.1 **Preparation and Submission.** The Recipient will:

- (a) submit to the Province at the address referred to in section A17.1, all Reports in accordance with the timelines and content requirements as provided for in Schedule "F", or in a form as specified by the Province from time to time;
- (b) submit to the Province at the address referred to in section A17.1, any other reports as may be requested by the Province in accordance with the timelines and content requirements specified by the Province;
- (c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and
- (d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signing officer.

A7.2 **Record Maintenance.** The Recipient will keep and maintain:

- (a) all financial records (including invoices) relating to the Funds or otherwise to the Project in a manner consistent with generally accepted accounting principles; and
- (b) all non-financial documents and records relating to the Funds or otherwise to the Project.

A7.3 **Inspection.** The Province, its authorized representatives, an independent auditor identified by the Province or Her Majesty the Queen in Right of Canada as Represented by the Minister of Public Safety and Emergency Preparedness may, at their own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, enter upon the Recipient's premises to review the progress of the Project and the Recipient's allocation and expenditure of the Funds and, for these purposes, the Province, its authorized representatives an independent auditor identified by the Province or Her Majesty the Queen in Right of Canada as Represented by the Minister of Public Safety and



Emergency Preparedness may take one or more of the following actions:

- (a) inspect and copy the records and documents referred to in section A7.2;
- (b) remove any copies made pursuant to section A7.3(a) from the Recipient's premises; and
- (c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds, the Project, or both.

A7.4 **Disclosure.** To assist in respect of the rights provided for in section A7.3, the Recipient will disclose any information requested by the Province, any authorized representatives, or any independent auditor identified by the Province, and will do so in the form requested by the Province, any authorized representative, or any independent auditor identified by the Province, as the case may be.

A7.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

A7.6 **Auditor General.** The Province's rights under Article A7.0 are in addition to any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

## A8.0 COMMUNICATIONS REQUIREMENTS

A8.1 **Acknowledge Support.** Unless otherwise directed by the Province, the Recipient will:

- (a) acknowledge the support of the Province and the Government of Canada for the Project; and
- (b) ensure that the acknowledgement referred to in section A8.1(a) is in a form and manner as directed by the Province.

A8.2 **Publication.** The Recipient will indicate, in any of its Project-related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

## A9.0 INDEMNITY

A9.1 **Indemnification.** The Recipient hereby agrees to indemnify and hold harmless the Indemnified Parties, Her Majesty the Queen in Right of Canada as Represented by the Minister of Public Safety and Emergency Preparedness and her employees and agents from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, by whomever made, sustained, incurred, brought or prosecuted, in any way arising out of or in connection with the Project or otherwise in connection with the Agreement, unless solely caused by the respective negligence or wilful misconduct of the Province or Her Majesty the Queen in Right of Canada as Represented by the Minister of Public Safety and Emergency Preparedness or her employees and agents.

## A10.0 INSURANCE

A10.1 **Recipient's Insurance.** The Recipient represents, warrants, and covenants that it has, and will maintain, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to the Project would maintain, including commercial general liability insurance

on an occurrence basis for third party bodily injury, personal injury, and property damage, to an inclusive limit of not less than the amount provided for in Schedule "B" per occurrence. The insurance policy will include the following:

- (a) the Indemnified Parties, Her Majesty the Queen in Right of Canada as Represented by the Minister of Public Safety and Emergency Preparedness and her employees and agents as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;
- (b) a cross-liability clause;
- (c) contractual liability coverage; and
- (d) a 30-day written notice of cancellation.

**A10.2 Proof of Insurance.** The Recipient will:

- (a) provide to the Province, either:
  - (i) certificates of insurance that confirm the insurance coverage as provided for in section A10.1; or
  - (ii) other proof that confirms the insurance coverage as provided for in section A10.1; and
- (b) upon the request of the Province, provide to the Province a copy of any insurance policy.

#### **A11.0 TERMINATION ON NOTICE**

**A11.1 Termination on Notice.** The Province may terminate the Agreement at any time without liability, penalty, or costs upon giving at least 30 days' Notice to the Recipient.

**A11.2 Consequences of Termination on Notice by the Province.** If the Province terminates the Agreement pursuant to section A11.1, the Province may take one or more of the following actions:

- (a) cancel further instalments of Funds;
- (b) demand from the Recipient the payment of any Funds remaining in the possession or under the control of the Recipient; and
- (c) determine the reasonable costs for the Recipient to wind down the Project, and do either or both of the following:
  - (i) permit the Recipient to offset such costs against the amount the Recipient owes pursuant to section A11.2(b); and
  - (ii) subject to section A4.1(a), provide Funds to the Recipient to cover such costs.

#### **A12.0 TERMINATION WHERE NO APPROPRIATION**

**A12.1 Termination Where No Appropriation.** If, as provided for in section A4.2(d) or in section 4 (2) (e), the Province does not receive the necessary appropriation from the Ontario Legislature for any payment the Province is to make pursuant to the Agreement, or if the Province does not receive funding from the Government of Canada for any payment the Province is to make pursuant to this Agreement, the Province may terminate the Agreement immediately without liability, penalty, or costs by giving Notice to the Recipient.

A12.2 **Consequences of Termination Where No Appropriation.** If the Province terminates the Agreement pursuant to section A12.1, the Province may take one or more of the following actions:

- (a) cancel further instalments of Funds;
- (b) demand from the Recipient the payment of any Funds remaining in the possession or under the control of the Recipient; and
- (c) determine the reasonable costs for the Recipient to wind down the Project and permit the Recipient to offset such costs against the amount owing pursuant to section A12.2(b).

A12.3 **No Additional Funds.** If, pursuant to section A12.2(c), the Province determines that the costs to wind down the Project exceed the Funds remaining in the possession or under the control of the Recipient, the Province will not provide additional Funds to the Recipient.

### **A13.0 EVENT OF DEFAULT, CORRECTIVE ACTION, AND TERMINATION FOR DEFAULT**

A13.1 **Events of Default.** Each of the following events will constitute an Event of Default:

- (a) in the opinion of the Province, the Recipient breaches any representation, warranty, covenant, or other material term of the Agreement, including failing to do any of the following in accordance with the terms and conditions of the Agreement:
  - (i) carry out the Project;
  - (ii) use or spend Funds; or
  - (iii) provide, in accordance with section A7.1, Reports or such other reports as may have been requested pursuant to section A7.1(b);
- (b) the Recipient's operations, its financial condition, or its organizational structure, changes such that it no longer meets one or more of the eligibility requirements of the program under which the Province provides the Funds;
- (c) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or a creditor makes an application for an order adjudging the Recipient bankrupt, or applies for the appointment of a receiver; or
- (d) the Recipient ceases to operate.

A13.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

- (a) initiate any action the Province considers necessary in order to facilitate the successful continuation or completion of the Project;
- (b) provide the Recipient with an opportunity to remedy the Event of Default;
- (c) suspend the payment of Funds for such period as the Province determines appropriate;
- (d) reduce the amount of the Funds;

- (e) cancel further instalments of Funds;
- (f) demand from the Recipient the payment of any Funds remaining in the possession or under the control of the Recipient;
- (g) demand from the Recipient the payment of an amount equal to any Funds the Recipient used, but did not use in accordance with the Agreement;
- (h) demand from the Recipient the payment of an amount equal to any Funds the Province provided to the Recipient; and
- (i) terminate the Agreement at any time, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

**A13.3 Opportunity to Remedy.** If, in accordance with section A13.2(b), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will give Notice to the Recipient of:

- (a) the particulars of the Event of Default; and
- (b) the Notice Period.

**A13.4 Recipient not Remediating.** If the Province provided the Recipient with an opportunity to remedy the Event of Default pursuant to section A13.2(b), and:

- (a) the Recipient does not remedy the Event of Default within the Notice Period;
- (b) it becomes apparent to the Province that the Recipient cannot completely remedy the Event of Default within the Notice Period; or
- (c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend the Notice Period, or initiate any one or more of the actions provided for in sections A13.2(a), (c), (d), (e), (f), (g), (h), and (i).

**A13.5 When Termination Effective.** Termination under Article will take effect as provided for in the Notice.

#### **A14.0 FUNDS AT THE END OF A FUNDING YEAR**

**A14.1 Funds at the End of a Funding Year.** Without limiting any rights of the Province under Article A13.0, if the Recipient has not spent all of the Funds allocated for the Funding Year as provided for in the Budget, the Province may take one or both of the following actions:

- (a) demand from the Recipient payment of the unspent Funds; and
- (b) adjust the amount of any further instalments of Funds accordingly.

#### **A15.0 FUNDS UPON EXPIRY**

**A15.1 Funds Upon Expiry.** The Recipient will, upon expiry of the Agreement, pay to the Province any Funds remaining in its possession or under its control.

#### **A16.0 DEBT DUE AND PAYMENT**

**A16.1 Payment of Overpayment.** If at any time the Province provides Funds in excess of the amount to which the Recipient is entitled under the Agreement,

the Province may:

- (a) deduct an amount equal to the excess Funds from any further instalments of Funds; or
- (b) demand that the Recipient pay an amount equal to the excess Funds to the Province.

A16.2 **Debt Due.** If, pursuant to the Agreement:

- (a) the Province demands from the Recipient the payment of any Funds or an amount equal to any Funds; or
- (b) the Recipient owes any Funds or an amount equal to any Funds to the Province, whether or not the Province has demanded their payment,

such Funds or other amount will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay the amount to the Province immediately, unless the Province directs otherwise.

A16.3 **Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

A16.4 **Payment of Money to Province.** The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province as provided for in Schedule "B".

A16.5 **Fails to Pay.** Without limiting the application of section 43 of the *Financial Administration Act* (Ontario), if the Recipient fails to pay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right of Ontario.

## A17.0 NOTICE

A17.1 **Notice in Writing and Addressed.** Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery, or fax, and will be addressed to the Province and the Recipient respectively as provided for Schedule "B", or as either Party later designates to the other by Notice.

A17.2 **Notice Given.** Notice will be deemed to have been given:

- (a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or
- (b) in the case of email, personal delivery, or fax, one Business Day after the Notice is delivered.

A17.3 **Postal Disruption.** Despite section A17.2(a), in the event of a postal disruption:

- (a) Notice by postage-prepaid mail will not be deemed to be given; and
- (b) the Party giving Notice will give Notice by email, personal delivery, or fax.

## A18.0 CONSENT BY PROVINCE AND COMPLIANCE BY RECIPIENT

A18.1 **Consent.** When the Province provides its consent pursuant to the Agreement, it may impose any terms and conditions on such consent and the Recipient will comply with such terms and conditions.

## **A19.0 SEVERABILITY OF PROVISIONS**

A19.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

## **A20.0 WAIVER**

A20.1 **Waiver Request.** Either Party may, in accordance with the Notice provision set out in Article A17.0, ask the other Party to waive an obligation under the Agreement.

A20.2 **Waiver Applies.** Any waiver a Party grants in response to a request made pursuant to section A20.1 will:

- (a) be valid only if the Party granting the waiver provides it in writing; and
- (b) apply only to the specific obligation referred to in the waiver.

## **A21.0 INDEPENDENT PARTIES**

A21.1 **Parties Independent.** The Recipient is not an agent, joint venturer, partner, or employee of the Province, and the Recipient will not represent itself in any way that might be taken by a reasonable person to suggest that it is, or take any actions that could establish or imply such a relationship.

## **A22.0 ASSIGNMENT OF AGREEMENT OR FUNDS**

A22.1 **No Assignment.** The Recipient will not, without the prior written consent of the Province, assign any of its rights or obligations under the Agreement.

A22.2 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors, and permitted assigns.

## **A23.0 GOVERNING LAW**

A23.1 **Governing Law.** The Agreement and the rights, obligations, and relations of the Parties will be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

## **A24.0 FURTHER ASSURANCES**

A24.1 **Agreement into Effect.** The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will otherwise do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

## **A25.0 JOINT AND SEVERAL LIABILITY**

A25.1 **Joint and Several Liability.** Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

## **A26.0 RIGHTS AND REMEDIES CUMULATIVE**

A26.1 **Rights and Remedies Cumulative.** The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

## **A27.0 FAILURE TO COMPLY WITH OTHER AGREEMENTS**

A27.1 **Other Agreements.** If the Recipient:

- (a) has failed to comply with any term, condition, or obligation under any other agreement with Her Majesty the Queen in right of Ontario or one of Her agencies (a “**Failure**”);
- (b) has been provided with notice of such Failure in accordance with the requirements of such other agreement;
- (c) has, if applicable, failed to rectify such Failure in accordance with the requirements of such other agreement; and
- (d) such Failure is continuing,

the Province may suspend the payment of Funds for such period as the Province determines appropriate.

## **A28.0 SURVIVAL**

A28.1 **Survival.** The following Articles and sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0, Article 3.0, Article A1.0 and any other applicable definitions, section A2.1(a), sections A4.2(d), A4.5, section A5.2, section A7.1 (to the extent that the Recipient has not provided the Reports or other reports as may have been requested to the satisfaction of the Province), sections A7.2, A7.3, A7.4, A7.5, A7.6, Article A8.0, Article A9.0, section A11.2, sections A12.2, A12.3, sections A13.1, A13.2(d), (e), (f), (g) and (h), Article A15.0, Article A16.0, Article A17.0, Article A19.0, section A22.2, Article A23.0, Article A25.0, Article A26.0, Article A27.0 and Article A28.0.

**- END OF GENERAL TERMS AND CONDITIONS -**

**SCHEDULE “B”  
PROJECT SPECIFIC INFORMATION AND ADDITIONAL PROVISIONS**

<b>Maximum Funds</b>	\$180,000.00
<b>Expiry Date</b>	June 30, 2020
<b>Amount for the purposes of section A5.2 (Disposal) of Schedule “A”</b>	\$5,000
<b>Insurance</b>	\$2,000,000
<b>Contact information for the purposes of Notice to the Province</b>	<p><b>Name: Mike Love</b></p> <p><b>Position: Senior Program Advisor</b></p> <p><b>Address: 777 Bay Street, Toronto, Ontario M5G 2E5, 16th Floor</b></p> <p><b>Fax: 416-585-7292</b></p> <p><b>Email: mike.love@ontario.ca</b></p>
<b>Contact information for the purposes of Notice to the Recipient</b>	<p><b>Name: Phil Bartnik, P.Eng.</b></p> <p><b>Position: Director Public Works &amp; Environmental Services</b></p> <p><b>Address: 917 Lesperance Road, Tecumseh ON N8N1W9</b></p> <p><b>Fax: 519-735-6712</b></p> <p><b>Email: pbartnik@tecumseh.ca</b></p>
<b>Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement</b>	<p><b>Name: Tom Kitsos, CPA, CMA BComm</b></p> <p><b>Position: Director Financial Services &amp; Chief Financial Officer</b></p> <p><b>Address: 917 Lesperance Road, Tecumseh ON N8N 1W9</b></p> <p><b>Fax: 519-735-6712</b></p> <p><b>Email: tkitsos@tecumseh.ca</b></p>

**Additional Provisions:**

**B.1 Article A4 of Schedule “A” is amended by adding the following sections:**

**A4.8 Aboriginal Consultation.** The Province and the Recipient agree to the following:

- (a) The provision of Funds under this Agreement is strictly conditional upon the Province satisfying any obligations that it may have with and, if required, accommodate any Aboriginal Group with an interest in the Project;
- (b) The Recipient will act as the Province’s delegate for any procedural aspects of any consultation obligations that the Province may have with any Aboriginal Group in relation to the Project;
- (c) The Recipient’s obligations as the Province’s delegate will include:



- (i) Following the process set out in Schedule “G” of the Agreement as it relates to engaging or consulting with any Aboriginal Group that may have an interest in the Project,
  - (ii) Taking directions from the Province in relation to engaging or consulting with any Aboriginal Group with an interest in the Project as well as any other directions the Province may issue in relation to engagement or consultations, including suspending or terminating the Project, and
  - (iii) Providing a detailed description of any actions the Recipient took in relation to engagement or consultation with any Aboriginal Group that has an interest in the Project as described in Schedule “G”; and
- (d) The Recipient will not commence or allow any third party to commence construction on any aspect of the Project for forty-five (45) Business Days, or such other time as the Province may direct, after it has provided the Province with written evidence that the Recipient has sent a notice about the Project to the Aboriginal Groups the Province has identified in accordance with Schedule “G” of the Agreement.

**A4.9 Eligible Expenditures.** Only the Recipient’s expenditures incurred in accordance with Schedule “C” and Schedule “D” are eligible for funding under this Agreement.

**B.2 Article A8 of Schedule “A” is amended by adding the following section:**

**A8.3 Languages.** If the Recipient is located in a municipality designated by section 14 of the French Languages Services Act, the Recipient will consider providing information concerning the Project to the public in both English and French.

**B.3 Schedule “A” is amended by adding the following section:**

**A29.0 Intellectual Property**

**A29.1 Definitions.** In this Article the following terms have the following meanings:

“**Intellectual Property**” means any intellectual, industrial or other proprietary right of any type in any form protected or protectable under the laws of Canada, any foreign country, or any political subdivision of any country, including, without limitation, any intellectual, industrial or proprietary rights protected or protectable by legislation, by common law or at equity’

“**Newly Created Intellectual Property**” means any Intellectual Property created by the Recipient in the course of performance of its obligations under the Agreement;

**A29.2 Recipient’s Grant of Licence**

The Recipient grants the Province and Her Majesty the Queen in Right of Canada, a royalty-free, permanent and non-exclusive license to use, produce, reproduce, distribute, translate, publish or perform, in any way, of any Newly Created intellectual property created by the Recipient in carrying out the Project or an adaptation, in any language, for any governmental non-commercial purpose.

**A29.3 Recipient’s Representation and Warranty Regarding Third-Party**

## **Intellectual Property**

The Recipient represents and warrants that the Newly Created Intellectual Property shall not infringe or induce the infringement of any Third-Party's Intellectual Property rights.

### **A29.4 Further Assurances Regarding Copyright**

At the request of the Province, at any time or from time to time, the Recipient shall execute and agrees to cause the Recipient's Personnel to execute a written licence referred to in section A29.2 to the Province in a form acceptable to the Province. The Recipient shall deliver such written licences(s) to the Province within ten (10) Business Days of the receipt of the request from the Province. The Recipient will obtain or execute any other document reasonably required by the Province to protect the Intellectual Property of the Province.

### **A29.5 Ministry May Prescribe Further Compliance**

The Province reserves the right to prescribe the specific manner in which the Recipient shall perform its obligations relating to this Article.

### **A29.6 Survival**

The obligations contained in this Article shall survive the termination or expiry of the Agreement.

## SCHEDULE "C" PROJECT

**Project Title:** Oldcastle Storm Water Master Plan

<p><b>Objectives</b></p> <p>The project aims to develop a Storm Water Master Plan (SWMP) for the drainage area in the Town of Tecumseh.</p>
<p><b>Description</b></p> <p>The project is to assess minor system drainage constraints, as well as existing flood risks/vulnerabilities associated with major storm events. With a clear understanding of the flood risks, the project objective is then to evaluate flood mitigation measures.</p> <p>The Oldcastle Hamlet area is primarily developed as industrial lands with rural cross-sections and low level of service via shallow drainage swales and relatively small pipe enclosures. Some older sites have been developed prior to any storm water management quantity control in regards to major storm events and more recent sites have practiced a pre-development versus post-development quantity control approach for storms up to the 1:00 year design storm. Thus, this area is believed to be at high-risk where a major storm event in the Oldcastle Hamlet is expected to cause significant surface ponding with limited overland flow capacity. The extent of surface ponding and potential damages is not understood at this time. This project aims first and foremost to gain a better understanding of the potential major storm flooding extents and impact and vulnerabilities to existing and future properties. With a clear understanding of the problem, this project aims to evaluate flood mitigation measures as well as inform the public of potential risks and mitigation measures.</p>
<p><b>Expected Outcomes</b></p> <p>Reducing impacts of disasters on Canadians:</p> <ul style="list-style-type: none"> <li>- By identifying major storm surface flooding extents and risk of damages under current 1:100 year design, as well as climate change scenarios</li> <li>- By informing public of risks via consultation</li> <li>- By implementing mitigation measures to reduce risks</li> </ul> <p>Reducing disaster-related financial liabilities for all levels of government:</p> <ul style="list-style-type: none"> <li>- By creating a watershed scale storm water management plan to address existing issues, identify risks/vulnerabilities, identify flood mitigation measures, communicate flood mitigation with public, and pro-actively guide future development.</li> </ul> <p>Reducing risk, developing capacity and/or enhancing resilience:</p> <ul style="list-style-type: none"> <li>- By educating public on the importance of climate change adaptation and the need for collaborative effort between both municipalities and private land owners.</li> </ul>
<p><b>Official Languages</b></p> <ol style="list-style-type: none"> <li>1. Ontario will follow the language legislation and/or policies of its own jurisdiction.</li> <li>2. Ontario will consider the needs of official language minority communities in relation to any stakeholder engagement activity.</li> <li>3. In carrying out the projects, Ontario agrees to take into consideration the needs of official language minority communities in Ontario.</li> </ol>

2) Work Plan Template					Add Row	Remove Row
Activities ?	Tasks ?	Deliverable(s)/ Product(s) ?	Resources ?	Timelines (Start and End Dates) [yyyy/mm/dd] ?	Considerations/ Comments ?	
Preliminary works	data collection and gap analysis.	list of data gaps to rectify	n/a	Start Date: End Date:	Start Date: 2018/08/24 End Date: 2019/03/31 non-NDMP funds	
Capacity Assessment	model setup and analysis of minor and major storm systems	identify storm drainage issues and major storm flooding extents	Ontario Ministry of the Environment (2008), Design Guidelines for Sewage Works	Start Date: 2019/04/01 End Date: 2019/08/01	Start Date: 2019/04/01 End Date: 2019/08/01	
Public Consultation	consult with public on existing risks/ vulnerabilities and flood mitigation measures	two PICs	Municipal Engineers Association, Municipal	Start Date: 2019/09/15 End Date: 2019/11/30	Start Date: 2019/09/15 End Date: 2019/11/30	
Stormwater Master Planning	develop stormwater master plan, including recommendations for infrastructure improvements, flood mitigation measures and guidance for future development.	stormwater master plan report	Municipal Engineers Association, Municipal	Start Date: 2019/08/01 End Date: 2020/03/31	Start Date: 2019/08/01 End Date: 2020/03/31	

## SCHEDULE "D"

### BUDGET

#### Revenues for Fiscal Year

2019-20

**Project Title:** Oldcastle Storm Water Master Plan

Government Funding (municipal, provincial, territorial and federal)	Amount
Public Safety Canada	\$180,000.00
Subtotal – Cash	\$180,000.00
Subtotal – In-kind	\$0.00
<b>Total Government Funding</b> <i>Government assistance <b>100%</b> (municipal, provincial, territorial and federal) cannot exceed 100% of eligible expenditures</i>	<b>\$180,000.00</b>
<b>Non-government Funding and other</b>	
Town of Tecumseh	\$270,000.00
Subtotal – Cash	\$270,000.00
Subtotal – In-kind	\$0.00
<b>Total Non-government Funding and other</b>	<b>\$270,000.00</b>
<b>Total Revenues:</b>	<b>\$450,000.00</b>

1. Cash: actual dollar value or revenues/funding received

2. In-Kind: non-cash input which is given a cash value

**Eligible Expenses for Fiscal Year**

**2019-20**

**Project Title:** Oldcastle Storm Water Master Plan

Detailed Eligible Expenditures by Category	Eligible Expenditures			
	Public Safety Canada Funding	Other Government Funding	Non Government Funding and other	Total
Consultant fees	\$180,000.00		\$270,000.00	\$450,000.00
Subtotal – Cash	\$180,000.00	\$0.00	\$270,000.00	\$450,000.00
Subtotal – In-kind		\$0.00	\$0.00	\$0.00
<b>Total Expenditures:</b>	<b>\$180,000.00</b>	<b>\$0.00</b>	<b>\$270,000.00</b>	<b>\$450,000.00</b>

1. Cash: actual dollar value or revenues/funding received

2. In-Kind: non-cash input which is given a cash value

**SCHEDULE “E”  
PAYMENT PLAN**

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**Progress Payments (as applicable)**

<b>April 1, 2019 to March 31, 2020</b>	
<b>Reporting Due Dates</b>	<b>Scheduled Payment Date</b>
October 11, 2019	December 12, 2019
April 10, 2020	June 12, 2020
<b>Final Payment (Holdback) at the end of the agreement</b>	
<b>Reporting Due Dates</b>	<b>Scheduled Payment Date</b>
No more than forty-five (45) days after the project’s stated end date	No more than sixty (60) days after the Province’s approval of the final financial statement and final project report

<b>Final Payment (Holdback) at the end of the Agreement</b>
<ul style="list-style-type: none"> <li>• Final Payment (holdback) = 3% of the Province’s contribution amount.</li> <li>• Final payment (holdback) from the Province is released upon receipt and approval of the Final Project Report and the final financial statement</li> <li>• The final financial statement (with actuals from all fiscal years) and the final Project report for the Project must be submitted by the Recipient to the Province no more than forty-five (45) days after the Project’s stated end date.</li> </ul>

## SCHEDULE “F” REPORTS

April 1, 2019 to March 31, 2020		
Reporting Due Dates	Period Covered for payments	Required documents
October 11, 2019	April 1, 2019 to September 30, 2019 (Q1 and Q2)	<ul style="list-style-type: none"> <li>• Initial financial statement with actuals for Q1 and Q2</li> <li>• Supporting documentation, such as invoices or receipts</li> <li>• Interim Project report</li> </ul>
April 10, 2020	October 1, 2019 to March 31, 2020 (Q3 and Q4)	<ul style="list-style-type: none"> <li>• Updated financial statement with actuals for Q3 and Q4</li> <li>• Supporting documentation, such as invoices or receipts</li> <li>• Interim Project report</li> </ul>

The Recipient will use a financial statement template provided by the Province in order to submit the financial statements to the Province prior to the reporting deadline.

Upon completion of the Project or upon the termination of the Agreement, the Recipient will include in the Final Project report a statement indicating the square kilometers of flood vulnerable area studied by the Project, which will be the performance measure for the Project.

### Non-Financial Project Report

#### **Reporting Requirements:**

The Recipient must submit a Project report that will indicate the Project implementation status, results achieved in accordance with its own performance management framework, project risk information update, and the financial expenditure requirements against the intended use and in accordance with eligible expenses.

The frequency of the reporting is specified in this Schedule.

The Non-Financial Project Report captures the Recipient’s progress with respect to an approved National Disaster Mitigation Program (NDMP) project. Instructions for submitting a Non-Financial Project Report are as follows:

#### **A) General Information:**

1. Enter the name of your Province / Territory.
2. Enter the Project Title of the project for which you are providing a report.
3. Identify if this Non-Financial Project Report is an **Interim** or a **Final** report.
4. Enter the Reporting Period of this Non-Financial Project Report by entering the start date and the end date of the reporting period.

#### **B) The Project Report Tables:**

The Project Report contains two tables: the “Completed Project Activities” table and the “Incomplete Project Activities” table.

1. For the “Completed Project Activities” table, include the following information for each of the following columns:
  - **“Activity”**: Enter a key activity that is related to your project
  - **“Related Tasks (i.e. sub-activities)”**: Enter the tasks that are required to complete the activity.



- **“Deliverables/Products”**: Enter the outputs and/or products that will be produced as a result of the activity being completed
- **“Resources”**: Enter the Human Resources that will lead and/or contribute to completing the activity. Enter the materials and/or equipment that will be essential for completing the activity.
- **“Timelines (Start and End Dates)”**: Enter the start and end dates for completing the activity.
- **“Considerations/Comments”**: Enter any additional comments and/or considerations that you feel are required to explain the status of the activity, and note any project risk information updates in this column.

2. For the “Incomplete Project Activities” table, include the following information for each of the following columns:

- **“Activity”**: Enter a key activity that is related to your project
- **“Status of Related Tasks (i.e. “sub-activities”)**: Enter the tasks that are required to complete the activity, and their current status (i.e. “on track”, “delayed”, “done”, etc.)
- **“Status of Deliverables (i.e. progress update)”**: Enter the outputs and/or products that will be produced as a result of the activity being completed and their current status (i.e. “on track”, “delayed”, “done”, etc.)
- **“Resources”**: Enter the Human Resources that will lead and/or contribute to completing the activity. Enter the materials and/or equipment that will be essential for completing the activity.
- **“Timelines (Start and End Dates)”**: Enter the planned start and end dates for completing the activity.
- **“Considerations/Comments”**: Enter the justification(s) for not completing the activity, provide any additional comments and/or considerations that you feel are required to explain the status of the activity, and note any project risk information updates in this column.

### Non-Financial Project Report Template

Province / Territory: \_\_\_\_\_

Project Title: \_\_\_\_\_

Project Report Type: \_\_\_\_\_ (“Interim” or “Final”)

Reporting period: \_\_\_\_\_ – \_\_\_\_\_  
 (enter start date) (enter end date)

**1. Completed Project Activities**

Activity	Related Tasks (i.e. “sub-activities”)	Deliverable(s) / Product(s)	Resources	Timelines (Start and End Dates)	Considerations/ Comments
1.					
2.					

3.					
4.					
5.					

**2. Incomplete Project Activities (i.e. not started or not completed)**

Activity	Status of Related Tasks (i.e. "sub-activities")	Status of Deliverables (i.e. progress update)	Resources	Timelines (Planned Start and End Dates)	Considerations/ Comments
1.					
2.					
3.					
4.					
5.					

## SCHEDULE "G"

### Aboriginal Consultation

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**The Recipient will perform the following activities in relation to contacting any Aboriginal Group including any First Nation Band Council potentially affected by the Project:**

1. Contact (by phone, email, mail, fax, etc.) any Aboriginal Group, including any First Nation Band Council, that the Recipient believes might be affected by the Project and any Aboriginal Group including any First Nation Band Council, the Province has directed the Recipient to contact.
2. Inform those Aboriginal Groups including any First Nations' Band Council of the Project that might affect their community, including:
  - Project details;
  - Canada's role in the project (i.e. Canada administers the National Disaster Mitigation Program (NDMP) and provides NDMP funding);
  - The Province's role in the Project (providing partial funding to the Recipient)
  - The Recipient's role in the project
  - Project lead and other key contacts;
  - Project timelines;
  - Project risks;
  - monitoring and performance management measures; and
  - additional relevant Project information (if any)
- 3 If an Aboriginal Group, including a First Nation Band Council, requests a meeting with the Recipient to discuss the Project, the Recipient will:
  - Arrange and attend the meeting;
  - Provide relevant information on the Project to the Aboriginal Group, including First Nation Band Council; and
  - Immediately advise the Province of the nature of any objections to the Project or accommodation requests expressed by the Aboriginal Group including a First Nation Band Council during the meeting.
- 4 Obtain the following information from every Aboriginal Group including any First Nation Band Council that was contacted and submit this information to the Province:
  - A confirmation that it has been made aware of the Project that might affect it;
  - A statement from the Aboriginal Group, including a First Nation Band Council, that indicates its support for the Project that might affect it, and if this position is final, preliminary or conditional in nature; and

- Any issues or concerns that the Aboriginal Group or First Nation Band Council raised in relation to the Project that might affect it.

5. Indicate to the Province what steps the Recipient has taken to address any issues raised in the engagement or consultation by an Aboriginal Group, including a First Nation Band Council.