

**My Main Street Community Activator Program
Ultimate Recipient Agreement Project «Project_Number»**

Made this 25 day of March, 2022 (the “**Effective Date**”)

Between:

Canadian Urban Institute,

A non-share capital corporation established under the laws of Ontario
and registered as a charitable organization under the laws of Canada,
(hereinafter “**CUI**”)

and

The Corporation of the Town of Tecumseh
(hereinafter the “**Ultimate Recipient**”)

Whereas:

- A. The Federal Economic Development Agency for Southern Ontario (“**FedDev**”) has developed the Southern Ontario Prosperity Program (the “**SOPP**”), which is intended to stimulate economic activity in neighbourhoods across Southern Ontario by supporting small and medium sized enterprises located in Southern Ontario;
- B. CUI has entered into an agreement with FedDev (the “**FedDev Agreement**”) for the implementation of the SOPP through the My Main Street Community Activator Program (the “**MMS Program**”);
- C. The MMS Program will focus on supporting the recovery from the pandemic across Southern Ontario by revitalizing main streets and facilitating the return of locally owned independent businesses;
- D. CUI is empowered by the FedDev Agreement to select qualified recipients for MMS Program funding and to distribute that funding accordingly on behalf of the Agency;
- E. The Ultimate Recipient is an incorporated not-for-profit organization approved for funding by CUI;
- F. The Ultimate Recipient has applied to CUI to participate in the MMS Program and to receive funding for its Eligible Project (as defined herein);
- G. CUI has selected the Ultimate Recipient to be a MMS Program participant and a therefore a recipient of MMS Program funding in support of the Eligible Project;

Now Therefore, in consideration of the mutual covenants contained in this agreement (the “**Agreement**”), CUI and the Ultimate Recipient agree as follows:

1. Purpose of the Agreement

1.1 The purpose of this Agreement is to set out the terms and conditions under which CUI will distribute Eligible Project funding to the Ultimate Recipient, as well as the relationship between CUI and the Ultimate Recipient.

2. Interpretation

2.1 **Definitions.** In this Agreement, the following terms have the meaning given in this section, unless otherwise specified:

Agreement means this funding agreement, including all annexes hereto, as amended, restated or added to from time to time.

Completion Date means the Project completion date, December 31, 2022.

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

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

Eligibility Period means January 1 to December 31, 2022.

Eligible Project means the Ultimate Recipient’s Eligible Project as described in Annex 1 – Statement of Work to this Agreement.

FedDev means the Federal Economic Development Agency for Southern Ontario.

FedDev Agreement means the agreement between CUI and FedDev relating to the implementation of the MMS program.

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.

Funds and Funding mean the funds transferred by CUI to the Ultimate Recipient on behalf of FedDev for the carrying out of the Eligible Project.

Minister means the Minister responsible for FedDev, or any one or more of the Minister’s representatives.

MMS Program means programming focused on supporting the recovery from the pandemic across Southern Ontario by revitalizing main streets and facilitating the return of locally owned independent businesses.

SOPP means the Southern Ontario Prosperity Program as created and defined by FedDev.

3. Duration of Agreement

3.1 This Agreement comes into force on the Effective Date first stated above and will terminate on the date on which the Eligible Project is complete, unless otherwise determined 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:

Subsection 6.8 – Overpayment or non-entitlement
Section 7 – Reporting, Monitoring, Audit and Evaluation
Section 9 – Indemnification and Limitation of Liability
Subsection 11.1(c) – Representations
Section 13 – Default and Remedies
Section 14 – Project Assets and Intellectual Property
Section 15 – General

4. Terms of Participation in the MMS PROGRAM

4.1 The Ultimate Recipient agrees to act strictly in accordance with the terms of this Agreement with respect to its participation in the MMS PROGRAM.

4.2 The Ultimate Recipient represents and warrants to CUI that it has the power to enter into this Agreement and to perform its obligations hereunder.

4.3 The Ultimate Recipient shall not have the authority to do any act on behalf of CUI or the Agency.

4.4 The Ultimate Recipient agrees to comply with instructions provided by CUI to acknowledge the support through the Government of Canada and FedDev in their communications about support received through the MMS PROGRAM, including websites, news releases, social media, success stories, and announcements.

4.5 The Ultimate Recipient warrants that it will comply with all federal, provincial, territorial, municipal and other applicable laws governing the Ultimate Recipient or the Eligible Project, or both, 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.

4.6 The Ultimate Recipient warrants that any assets acquired, constructed, rehabilitated or improved with the Funds provided under this Agreement will not be sold or otherwise disposed of without prior written approval from CUI for the term of the Agreement;

4.7 CUI reserves the right to transfer to any third party all rights, title and interest in this Agreement.

5. Funding

5.1 Subject to, and in accordance with, the terms and conditions of this Agreement, CUI will distribute to the Ultimate Recipient the following Funds in respect of the Eligible Project:

An amount not exceeding the lesser of:

- (a) One hundred percent (100%) of Eligible Costs of the Project incurred by the Ultimate Recipient; and
- (b) the total costs anticipated by the Ultimate Recipient's approved budget for the Eligible Project, as detailed in Annex 1 – Statement of Work,

but in any case, not less than fifty percent (50%) of the Eligible Costs of the Eligible Project.

5.2 No Funds shall be disbursed under this Agreement unless the Eligible Project meets and continues to meet the requirements of Section 10.

6. Claims and Payment of Funds

6.1 The Ultimate Recipient shall maintain accounting records that account for the Funding paid to the Ultimate Recipient and the related Eligible Project costs in respect of this Agreement, separate and distinct from any other sources of funding.

6.2 **Quarterly Claims.** The Ultimate Recipient may submit a claim for reimbursement of Eligible Costs a maximum of once per quarter. Each Quarterly Claim must be for Eligible Costs incurred during one of the following quarterly periods in the year:

- a) Beginning on January 1, 2022 and ending on (a) the date on which the Funding Agreement was signed or (b) March 31, 2022 whichever is later.
- b) Beginning the day after the final day of the previous quarter as calculated in (i) above, and ending on June 30, 2022.
- c) Beginning on July 1, 2022 and ending on September 30, 2022.
- d) Beginning on October 1, 2022 and ending on December 31, 2022.

Each Quarterly Claim must be submitted no later than one month after the end of the quarterly period to which it relates.

6.3 **Final Claims.** The Ultimate Recipient shall submit a Final Claim for reimbursement of Eligible Costs incurred during the Eligibility Period by February 1, 2023, in a form satisfactory to CUI and in accordance with Annex 2 – Costing Memorandum Guideline. The Final Claim must include the following information:

- (a) a final statement of total Eligible Project costs;

- (b) a statement of total government assistance (federal, provincial and municipal assistance) received or requested towards the Eligible Costs;
- (c) an itemized summary by cost category of Eligible Costs incurred substantially in the form prescribed by CUI;
- (d) a final report on the Eligible Project;
- (e) a certification of the claim by a director or officer of the Ultimate Recipient, confirming the accuracy of the claim and all supporting information provided;
- (f) if applicable, a certification by a director or officer of the Ultimate Recipient that any environmental mitigation measures that may be set out in this Agreement have been implemented; and
- (g) any other substantiating documentation (including without limitation, any invoice or proof of payment), as may be required by CUI.

6.4 The Ultimate Recipient shall submit the Final Claim for reimbursement of Eligible Costs incurred to the satisfaction of CUI no later than February 1, 2023 or the date the Eligible Project is completed to the satisfaction of CUI, whichever is earlier. CUI shall have no obligation to pay any claims submitted after this date.

6.5 **Advance Payments.** The Ultimate Recipient may request a one-time advance against Eligible Costs payable under this Agreement of up to twenty-five percent (25%) of the total costs anticipated by the Ultimate Recipient's approved budget for the Eligible Project, as detailed in Annex 1 – Statement of Work. A request for an advance must include a forecast of cash flow requirements to be incurred during the Eligibility Period along with any other documentation that CUI may reasonably request. CUI shall review the request and may, at its sole discretion, pay some or all of the requested advance to the Ultimate Recipient. Before any further funds can be issued, CUI requires that the Ultimate Recipient submit a reconciliation of incurred costs against the advance.

6.6 **Payment Procedures.**

- (a) CUI shall review and approve the documentation submitted by the Ultimate Recipient following the receipt of the Ultimate Recipient's claim and in the event of any deficiency in the documentation, it will notify the Ultimate Recipient and the Ultimate Recipient shall immediately take action to address and rectify the deficiency.
- (b) Subject to the maximum Funding amounts set forth in Subsection 5.1 and all other conditions contained in this Agreement, CUI shall pay to the Ultimate Recipient the Eligible Costs set forth in the Recipient's claim, in accordance with CUI's customary practices.

- (c) CUI may request at any time that the Ultimate Recipient provides satisfactory evidence to demonstrate that all Eligible Costs claimed have been paid.
 - (d) CUI may require, at CUI's expense, any claim submitted for payment of the Funding be certified by an auditor approved by CUI.
- 6.7 **Overpayment or Non-entitlement.** Where, for any reason, the Ultimate Recipient is not entitled to all or part of the Funding or the amount paid to the Ultimate Recipient exceeds the amount to which the Ultimate Recipient is entitled, the Funding or the amount in excess, as the case may be, shall constitute a debt due to CUI and shall be recovered as such from the Ultimate Recipient. The Ultimate Recipient shall repay CUI within thirty (30) calendar days from the date of CUI's notice, the amount of the Funding disbursed or the amount of the overpayment, as the case may be, together with any interest that may be calculated in accordance with this Agreement.
- 6.8 **Revenue Earned.** If the Ultimate Recipient earns any interest as a consequence of any revenue from all or part of the activities supported by the Funding, other than that interest or revenue which is used to pay for all or part of the Eligible Costs incurred by the Ultimate Recipient during the Eligible Project, CUI may in CUI's absolute discretion reduce the Funding by all or by such portion of the revenue as deemed appropriate.
7. **Records, Reporting, Monitoring and Audit**
- 7.1 The parties agree to maintain proper and accurate accounts and records of the Eligible Project for a minimum of 6 years after the date of completion of the Eligible Project.
- 7.2 **Reports.** The Ultimate Recipient agrees to provide CUI with the reports in the form prescribed by CUI and satisfactory to CUI in scope and detail, in order to allow CUI to assess the progress of the Eligible Project. Reports will be submitted on the dates described in the reporting schedule provided by CUI. CUI may reassess the reporting frequency from time to time at CUI's sole discretion and notify the Ultimate Recipient of any changes.
- 7.3 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.
- 7.4 The Minister may request a copy of any report or publication produced as a result of this Agreement or the Project, whether interim or final, as soon as it becomes available.
- 7.5 The Minister shall have the right to audit, or cause to have audited, the accounts and records of the Ultimate Recipient and to have a right of access to Eligible Project site and the books and accounts of the Ultimate Recipient. To this end, the Ultimate Recipient shall, at its own expense and for the duration of the Control Period:

- (a) Preserve and make available for audit and examination by CUI and the Minister proper books, accounts and records of the Eligible Project costs, wherever such books and records may be located, and permit CUI and the Minister to conduct such independent audits and evaluations as CUI's or the Minister's discretion may require;
- (b) upon reasonable notice and after consultation with the Ultimate Recipient, permit CUI and the Minister reasonable access to the Eligible Project site and/or the Recipient's premises and documents in order to inspect and assess the progress and results of the Eligible Project and compliance with the terms of this Agreement; and
- (c) supply promptly, on request, such other reports or data in respect of the Eligible Project and its results, as CUI or the Minister may require for purposes of this Agreement and for statistical and/or evaluation purposes.

7.6 **Auditor General of Canada.** The Ultimate Recipient acknowledges that the Auditor General of Canada may, at the Auditor General's cost, after consultation with CUI, conduct an inquiry under the authority of Subsection 7.1 (1) of the *Auditor General Act* in relation to this 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 Ultimate 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 Ultimate Recipient or by agents or contractors of the Ultimate Recipient, relating to this Agreement and use of the Funding; 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. Public Communications

- 8.1 The Ultimate Recipient consents to being contacted directly by CUI and/or the Minister in relation to success stories, announcements, ceremonies and other communications activities.
- 8.2 The Ultimate Recipient acknowledges the federal government's role in the funding provided through this Agreement;
- 8.3 The Ultimate Recipient consents to a public announcement of their project by or on behalf of the Minister in the form of a news release and/or event;
- 8.4 The Minister, through FedDev and CUI, shall inform the Ultimate Recipient of the date the public announcement is to be made, and the Ultimate Recipient shall maintain the confidentiality of the funding agreement until such date;

- 8.5 The Ultimate Recipient consents to the participation of the Minister or the Minister's representatives at the announcement event of the Eligible Project, and to have the event take place on a day mutually agreed upon by the Ultimate Recipient and the Minister or its representatives;
- 8.6 The Ultimate Recipient agrees to a media/public event upon completion of the Eligible Project with the Minister or the Minister's designated representatives at mutually agreeable venue, time and date; and
- 8.7 The Ultimate Recipient agrees to display promotional material and/or signage provided by the Agency at the event.

9. Indemnification and Limitation of Liability

- 9.1 The Ultimate Recipient shall at all times indemnify and save harmless CUI and 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:
- (a) the Eligible Project, its operation, conduct or any other aspect thereof;
 - (b) the performance or non-performance of this Agreement, or the breach or failure to comply with any term, condition, representation or warranty of this Agreement by the Ultimate Recipient, their officers, employees and agents, or by a third party or its officers, employees, or agents;
 - (c) the design, construction, operation, maintenance and repair of any part of the Eligible Project; and
 - (d) any omission or other willful or negligent act or delay of the Ultimate Recipient or a third party and their respective employees, officers, or agents, except to the extent to which such claims and demands, losses, costs, damages, actions, suits, or other proceedings relate to the negligent act or omission of an officer, official, employee, or agent of CUI or of Her Majesty, in the performance of his or her duties.
- 9.2 CUI shall have no liability under this Agreement, except for payments of the Funding in accordance with and subject to the provisions of this Agreement. Without limiting the generality of the foregoing, CUI and the Minister shall not be liable for any direct, indirect, special or consequential damages, or damages for loss of revenues or profits of the Ultimate Recipient.

10. Environmental

10.1 The Ultimate Recipient represents and warrants that the Eligible Project is not a “designated project” or a “project” under the applicable federal environmental and impact assessment legislation.

10.2 Construction or any other physical activity that is carried out in relation to the Eligible Project, including site preparation, will not be undertaken or will be suspended and no funds or additional funds will be payable by CUI to the Ultimate Recipient for the Eligible Project unless and until the requirements under the applicable federal environmental or impact assessment legislation are met and continue to be met:

- (c) where the Eligible Project is a “designated project” under the applicable federal environmental or impact assessment legislation,
 - (i) a decision pursuant to that legislation is made indicating that no environmental or impact assessment is required for the Eligible Project; or
 - (ii) a decision statement in respect of the Eligible Project is issued to the Ultimate Recipient indicating that:
 - 1) the Eligible Project is not likely to cause significant adverse environmental effects;
 - 2) the Eligible Project is likely to cause significant adverse environmental effects that the Governor in Council decides are justified in the circumstances, which decision statement may contain conditions in respect of the Eligible Project; or
 - 3) the adverse effects with respect to the impact assessment of the Eligible Project are in the public interest,
- (d) where the Eligible Project is a “project” under the applicable federal environmental or impact assessment legislation, a determination that the carrying out of the Project:
 - (i) is not likely to cause significant adverse environmental effects; or
 - (ii) is likely to cause significant adverse environmental effects and the Governor in Council decides that those effects are justified in the circumstances, and
- (e) where relevant the requirements under any applicable agreements between Her Majesty and Indigenous groups.

- 10.3 The Ultimate Recipient will provide the Minister with reasonable access to any Eligible Project site, for the purpose of ensuring that the terms and conditions of any environmental approval are met, and that any required conditions, mitigation measures, monitoring or program follow up have been carried out.
- 10.4 If, as a result of changes to the Eligible Project or otherwise, the Minister is of the opinion that an environmental or impact assessment or a subsequent determination is required for the Eligible Project, the Ultimate Recipient agrees that construction of the Eligible Project or any other physical activity that is carried out in relation to the Eligible Project, including site preparation, will not be undertaken or will be suspended and no funds or additional funds will become or will be payable by CUI or the Minister to the Ultimate Recipient for the Eligible Project unless and until:
- (a) where the Eligible Project is a “designated project” under the applicable federal environmental or impact assessment legislation;
 - (i) a decision pursuant to that legislation is made indicating that no environmental or impact assessment is required for the Eligible Project; or
 - (ii) a decision statement in respect of the Eligible Project is issued to CUI or Ultimate Recipient indicating that:
 - 1) the Eligible Project is not likely to cause significant adverse environmental effects;
 - 2) the Eligible Project is likely to cause significant adverse environmental effects that the Governor in Council decides are justified in the circumstances, which decision statement may contain conditions in respect of the Project or Eligible Project; or
 - 3) the adverse effects with respect to the impact assessment of the Project are in the public interest,
 - (b) where the Eligible Project is a “project” under the applicable federal environmental or impact assessment legislation, a determination that the carrying out of the Project:
 - i) is not likely to cause significant adverse environmental effects; or
 - ii) is likely to cause significant adverse environmental effects and the Governor in Council decides that those effects are justified in the circumstances, and
 - (c) where relevant the requirements under any applicable agreements between Her Majesty and Indigenous groups are met and continue to be met:

10.5 **Indigenous consultation.** The Ultimate Recipient acknowledges that CUI's obligation to provide the Funding is conditional upon Her Majesty satisfying any obligation that Her Majesty may have to consult with or to accommodate any Indigenous groups, which may be affected by the terms of this Agreement.

11. Representations and Covenants

11.1 **Representations.** The Ultimate Recipient represents and warrants that:

- (a) it is a not-for profit organization, duly incorporated and validly existing and in good standing under the laws of Ontario, and it has the power and authority to carry on its business, to hold its property and to enter into this Agreement. The Ultimate 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 Ultimate Recipient and when executed and delivered by the Recipient, this Agreement constitutes a legal, valid and binding obligation of the Recipient, enforceable against it in accordance with its terms;
- (c) this Agreement constitutes a legally binding obligation of the Ultimate 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;
- (d) the execution and delivery of this Agreement and the performance by the Ultimate 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 Ultimate Recipient's by-laws, any other corporate governance document subscribed to by the Recipient or any resolution of the Ultimate 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.
- (e) there are no actions, suits, investigations or other proceedings pending or, to the knowledge of the Ultimate Recipient, threatened and there is no order, judgment or decree of any court or governmental agency, which could

materially and adversely affect the Ultimate Recipient's ability to carry out the activities contemplated by this Agreement;

- (f) 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;
- (g) it owns or holds sufficient rights in any intellectual property required to carry out the Project;
- (h) the description of the Eligible Project in Annex 1 – Statement of Work is complete and accurate; and
- (i) it is located in Southern Ontario.

11.2 **Covenants.** The Ultimate Recipient covenants and agrees that:

- (a) it shall use the Funding solely and exclusively to support the Eligible Costs of the Eligible Project, and shall carry out the Eligible 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 CUI before making any material change to any aspect of the Eligible Project or to the management of the Eligible Project or the Ultimate Recipient; and
- (c) it shall acquire and manage all equipment, services and supplies required for the Eligible Project in a manner that ensures the best value for funds expended.

11.3 **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 Ultimate Recipient is not in default of compliance with any terms of this Agreement.

12. Official Languages

12.1 The Ultimate Recipient acknowledges and understands that:

- (a) any public acknowledgement of FedDev's support for the MMS program must be expressed in both official languages;
- (b) all MMS program information must be developed and made available in both official languages; and
- (c) all signage related to the MMS program must be in both official languages.

12.2 The Ultimate Recipient agrees that it will consider the needs of the official language minority community in developing the Eligible Project and related services, acknowledge FedDev's support for the Eligible Project in English and French, and specifically invite the official language minority community to participate in the development and implementation of the Eligible Project, if applicable.

13. Default and Remedies

13.1 **Event of Default.** CUI may declare that an Event of Default has occurred if:

- (a) the Ultimate Recipient has failed or neglected to pay CUI any amount due in accordance with this Agreement;
- (b) the Eligible Project is not meeting its objectives or milestones as set out in Annex 1 – Statement of Work, is not completed to CUI's satisfaction by the Completion Date or the Eligible Project is abandoned in whole or in part;
- (c) the Ultimate 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 Ultimate 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 Ultimate Recipient has passed a resolution for the winding up of the Ultimate Recipient, or the Ultimate Recipient is dissolved;
- (f) the Ultimate Recipient has, in the opinion of CUI, ceased to carry on business or has sold, disposed or transferred all or substantially all of its assets;
- (g) the Eligible Project is carried out outside of Southern Ontario, unless an exception is set out in Annex 1 – Statement of Work;
- (h) the Ultimate Recipient has submitted false or misleading information, or has made a false or misleading representation to CUI in this Agreement or in its application for the Funding;
- (i) the Ultimate Recipient has not, in the opinion of CUI, met or satisfied a term or condition of this Agreement;
- (j) the Ultimate Recipient has not met or satisfied a term or condition under any other agreement of any kind with CUI;
- (k) the Ultimate Recipient is not eligible or is otherwise not entitled to the Funding; or

- (l) the Ultimate Recipient has not complied with the reporting, monitoring, audit and evaluation requirements, specified in this Agreement.

13.2 **Notice of Breach and Rectification Period.** CUI will not declare that an Event of Default has occurred unless it has given prior written notice to the Ultimate Recipient of the occurrence, which in CUI's opinion constitutes an Event of Default. The Ultimate Recipient shall, within such period of time as CUI may specify in the notice, either correct the condition or event or demonstrate, to the satisfaction of CUI, that it has taken such steps as are necessary to correct the condition, failing which CUI may declare that an Event of Default has occurred. During the period of time specified in the notice, CUI may suspend payment of any claim submitted before or after the date of notice.

13.3 **Remedies.** If CUI declares that an Event of Default has occurred, CUI 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 CUI to make any payment under this Agreement, including any obligation to pay an amount owing prior to such termination;
- (b) suspend any obligation by CUI to make any payment under this Agreement, including any obligation to pay an amount owing prior to such suspension; and
- (c) require the Ultimate Recipient to repay forthwith to CUI all or part of the Funding, and that amount is a debt due to CUI and may be recovered as such.

14. **Project Assets and Intellectual Property**

14.1 Title to and ownership of any assets the cost of which has been contributed to by Funding under this Agreement shall be determined by CUI in accordance with the FedDev Agreement, CUI's policy on intellectual property, and any applicable Canadian law.

15. **General**

15.1 **No Assignment of Agreement.** Neither this Agreement nor any part thereof shall be assigned by the Ultimate Recipient, without the prior written consent of CUI.

15.2 **Successors and Assigns.** This Agreement is binding upon the Ultimate Recipient, its successors and permitted assigns.

15.3 **Confidentiality.** Subject to the law and this Agreement, 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.

- 15.4 **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.
- 15.5 **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.
- 15.6 **No Amendment.** No amendment to this Agreement shall be effective unless it is made in writing and signed by the Parties hereto.
- 15.7 **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 CUI and the Ultimate Recipient, or between CUI and a third party. The Ultimate Recipient is not in any way authorized to make a promise, agreement or contract and to incur any liability on behalf of CUI, nor shall the Ultimate Recipient make a promise, agreement or contract and incur any liability on behalf of CUI, and shall be solely responsible for any and all payments and deductions, required by the applicable laws.
- 15.8 **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.
- 15.9 **Public Dissemination.** All reports and other information that CUI or the Minister collects, manages or has a right to receive or produce in accordance with this Agreement, or that the Ultimate Recipient collects, creates, manages and shares with CUI or 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.
- 15.10 **No conflict of interest.** The Ultimate 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 CUI, with the carrying out of the Eligible 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 Eligible Project.

- 15.11 **Disclose potential conflict of interest.** The Ultimate Recipient shall disclose to CUI without delay any actual or potential situation that may be reasonably interpreted as either a conflict of interest or a potential conflict of interest.
- 15.12 **Severability.** If for any reason a provision of this Agreement that is not a fundamental term of the agreement between the Parties is found to be or becomes invalid or unenforceable, whether in whole or in part, such provision or part thereof declared invalid or unenforceable shall be deemed to be severable and shall be deleted from this Agreement and all remaining terms and conditions of this Agreement will continue to be valid and enforceable.
- 15.13 **Business Information.** Notwithstanding anything else contained in this Agreement, CUI and the Minister shall be given the right to the use of any of the Ultimate Recipient's publicly available business information about the Eligible Project (e.g. brochures, awareness, packages, etc.).
- 15.14 **Tax.** The Ultimate Recipient acknowledges that financial assistance from government programs may have tax implications for its organization and that advice should be obtained from a qualified tax professional.

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 CUI

Canadian Urban Institute
 30 St. Patrick Street, Suite 500
 Toronto, Ontario M5T 3A3
Attention: Mary Rowe

To the Ultimate Recipient

«Org_Name»
 917 Lesperance Road
 Tecumseh, Ontario N8N 1W9
Attention: Gary McNamara

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. Acceptance

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

18. Counterparts and Electronic Signature

18.1 This Agreement and any amendments may be signed in counterparts and by electronic signature, including PDF and any other electronic copies acceptable to the Parties. Such electronic signature shall be deemed to be an original for the purpose of this Agreement with the same legal effect as an original signature.

In Witness Whereof the Parties hereto have executed this Agreement through authorized representatives.

Canadian Urban Institute

Per: _____
Mary Rowe
Canadian Urban Institute

Date: _____

I have authority to bind the corporation.

Corporation of The Town of Tecumseh

Per: _____
Gary McNamara
Mayor

Date: _____

Corporation of The Town of Tecumseh

Per: _____
Laura Moy
Clerk

Date: _____

I have authority to bind the corporation.

**Southern Ontario Prosperity Program
Ultimate Recipient Agreement**

Annex 1 – Statement of Work

Between:

Canadian Urban Institute,
(hereinafter “CUI”)

and

«Org_Name»
(hereinafter the “Ultimate Recipient”)

Project Name: «Project_Name»

Project Number: «Project_Number»

Project Description:

«Project_Description»

Project Budget: «Ask»

Total approved My Main Street project budget amount: «Ask»

See attached budget for detailed approved funding breakdown.

**Southern Ontario Prosperity Program
Ultimate Recipient Agreement**

Annex 2 – Costing Memorandum Guideline

between:

Canadian Urban Institute,
(hereinafter “CUI”)

and

«Org_Name»
(hereinafter the “Ultimate Recipient”)

1. General Conditions

- 1.1 Costs are Eligible Costs for the purposes of this Agreement only if they are, in the opinion of CUI and FedDev:
- a) directly related to the intent of the Eligible Project;
 - b) reasonable;
 - c) appear in Annex 1 – Statement of Work; and,
 - d) incurred between the Eligibility Date and the Completion Date.
- 1.2 Costs submitted for reimbursement must be net of any refund or eligible tax credits (including HST).
- 1.3 Costs incurred by way of the exercise of an option to purchase or hire are eligible, only if the exercise of the option is at the sole discretion of the Ultimate Recipient and the option has been exercised and the costs incurred between the Eligibility Date and the Completion Date.
- 1.4 The costs of all goods and services acquired from an entity which, in the opinion of CUI, is not at arm’s length from the Ultimate Recipient, shall be valued at the cost which, in the opinion of CUI, represents the fair market value of such goods or services, which cost shall not include any mark up for profit or return on investment.
- 1.5 No cost described in Subsection 1.4 above shall be eligible for inclusion in Eligible Costs, unless the Ultimate Recipient causes the supplying entity to maintain proper books, accounts and records of the costs related to the Sub-Project, and to provide CUI and FedDev access to such books, accounts and records.

2. Eligible Costs

2.1 Travel Costs – Transportation

- a) Eligible costs incurred for travel are those, which are deemed necessary to the performance of the Eligible Project. To be eligible, travel costs must be clearly documented as to the purpose of each trip. Travel expenses, at economy rates, shall

be charged at actual costs, but only to the extent that they are considered reasonable by CUI.

- b) Necessary return airfare, train fare or bus fare at economy rates for participating personnel, where a personal automobile is to be used, kilometre (mileage) allowance will be based on current Treasury Board of Canada Travel Directives. Eligible Costs shall be limited to the cost that would have been incurred and paid had normal public transportation at economy rates been used.
- c) Food and accommodation costs are eligible only if deemed necessary to the performance of the Project in the opinion of CUI. If eligible, food and accommodation allowances will be based on current Treasury Board of Canada Travel Directives.
- d) Costs that are, in the opinion of CUI, entertainment or hospitality costs are not eligible.

2.2 Consultants

- a) The direct costs of studies and/or services carried out by a private contractor or consultant are Eligible Costs.
- b) Where a particular contractor or consultant has been specified in the Agreement, and the Ultimate Recipient wishes to proceed with the Eligible Project using another contractor or consultant, prior consultation with CUI is advised to ensure eligibility.
- c) The cost of the services of any consultant that is not, in the opinion of CUI, at arm's length from the Ultimate Recipient, shall not be Eligible Costs.

2.3 Calculation of Direct Labour

- a) Labour and benefit costs claimed by the Ultimate Recipient as direct Eligible Costs toward the Eligible Project will include only that time worked directly on the Eligible Project at the payroll rate and excludes indirect time, non-project related time, holidays, vacation, bonuses, paid sickness, etc., except as noted below. Paid overtime, where considered reasonable in the opinion of CUI, may be claimed. Time off in lieu of payment is not eligible. Time claimed will normally be expressed in hours.
- b) The payroll rate is the actual gross pay rate for each employee (normal periodic remuneration before deductions). The payroll rate excludes all premiums (e.g. overtime, payment in lieu of vacation), shift differentials and any reimbursement or benefit conferred in lieu of salaries or wages except those noted below.
- c) Claims relating to the employer's portion of the Ontario Workplace Safety and Insurance Board (WSIB), statutory benefits (e.g., Canada Pension Plan (CPP), Employment Insurance (EI) and vacation) and discretionary benefits (i.e., dental, extended health, disability and life insurance, pension plans, holiday and paid leave) negotiated as part of collective agreements or other salary and benefit packages shall be limited to the lesser of:
 - i. actual cost; and
 - ii. twenty percent (20%) of the payroll rate of each employee.

- d) Benefits such as car allowances and other benefits beyond those listed above are not eligible.

2.4 Sales Taxes

- a) Eligible Costs include the amount of the harmonized sales tax (HST), net of any refund or eligible credits due from the Canada Revenue Agency.
- b) In order to have the HST approved as an Eligible Cost on claims, the Ultimate Recipient will be required to provide documentation verifying the organization's status under the relevant tax legislation.

2.5 Ineligible Costs

- a) For greater certainty, any costs that do not qualify as Eligible Costs in accordance with section 1 of this Annex, shall be ineligible for inclusion in the Eligible Costs. By way of example only, ineligible costs include, but are not limited to, the following:
 - i. costs of land, building or vehicle purchase;
 - ii. refinancing;
 - iii. costs of intangible assets such as goodwill, whether capitalized or expensed;
 - iv. depreciation or amortization expenses;
 - v. interest on invested capital, bonds, debentures, or mortgages;
 - vi. bond discount;
 - vii. losses on investments, bad debts and any other debts;
 - viii. fines or penalties;
 - ix. costs related to litigation;
 - x. non-incremental wages;
 - xi. fees for administrators, including payments to any member or officer of the Ultimate Recipient's Board of Directors;
 - xii. opportunity costs;
 - xiii. hospitality and entertainment costs;
 - xiv. capital expenditure (e.g. new construction and renovation of existing infrastructure and buildings);
 - xv. costs of individual membership in a professional body (e.g. professional designations);
 - xvi. and lobbyist fees.