

Schedule "A"

This **CONDITIONAL CONTRIBUTION AGREEMENT** is made among:

NORTHERN ONTARIO HERITAGE FUND CORPORATION
a corporation existing under the laws of Ontario

("NOHFC")

- and -

TOURISM SAULT STE. MARIE
a corporation existing under the laws of Ontario

("TSSM")

- and -

THE CORPORATION OF THE CITY OF SAULT STE. MARIE
a municipality existing under the laws of Ontario

("City of SSM")

(TSSM and City of SSM, as co-recipients, collectively the "Recipients", and each a "Recipient")

Background:

NOHFC's objects include the promotion and stimulation of economic initiatives in Northern Ontario.

The Recipients have applied to NOHFC for funds to assist the Recipients in carrying out the Project.

NOHFC is willing to provide funds to the Recipients to assist the Recipients in carrying out the Project on the terms and conditions set forth herein.

Consideration:

In consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Parties agree as follows:

1.0 INTERPRETATION AND DEFINITIONS

1.1 Interpretation. For the purposes of interpretation:

- (a) words in the singular include the plural and vice-versa, and words in one gender include all genders;
- (b) the background and the headings do not form part of this Agreement; they are for reference only and shall not affect the interpretation of this Agreement;

- (c) any reference to dollars or currency shall be to Canadian dollars or currency;
- (d) the words “include”, “includes”, and “including” are used to indicate nonexclusive examples and not that the Parties intended such examples to be an exhaustive list;
- (e) any provision of this Agreement that states that NOHFC “may” do or agree to something, means that NOHFC may choose to do (or agree to) or to not do (or agree to) such thing in its sole discretion; and
- (f) in the event of a conflict between the main body of this Agreement and any schedule, the main body of this Agreement governs unless otherwise specified.

1.2 **Definitions.** In this Agreement the following terms shall have the following meanings:

“**Agreement**” means this agreement, in respect of project number 7520282 and entered into among NOHFC and the Recipients, all of the following schedules, and any amending agreement entered into as provided in Section 14.2:

- (a) Schedule A – Project Description;
- (b) Schedule B – Project Budget; and
- (c) Schedule C – Change Request Form.

“**Application Date**” means the date that the application for funding in respect of the Project was received by NOHFC, being February 21, 2024.

“**Business Day**” means a day other than: (a) a Saturday or Sunday; (b) any statutory holiday in the Province of Ontario; or (c) any other day on which the Province of Ontario has elected to be closed for business.

“**Change Request Form**” means the form attached as Schedule C, or such other form as NOHFC prescribes from time to time, in which the Recipients request to amend certain terms of this Agreement pursuant to Section 3.3.

“**Conflict of Interest**” means any circumstance that, in the opinion of NOHFC, constitutes a conflict of interest, including:

- (a) in relation to the process of applying for funding for the Project, any circumstance where a Recipient (or any Related Party) has or could be perceived to have an unfair advantage, or engages in conduct, directly or indirectly, that could give it an unfair advantage over other applicants;
- (b) in relation to the performance of its obligations under this Agreement, any circumstance where a Recipient (or any person who has the capacity to influence a Recipient’s decisions) has outside commitments, relationships, or financial interests that interfere with, or could be seen to interfere with, a Recipient’s objective, unbiased, and impartial judgment relating to the Project, the use of the Funds, or both; and
- (c) any situation where a Related Party owns, is employed by, or otherwise has an interest in an organization (other than a Recipient’s organization) that is carrying out work related to the Project.

“**Effective Date**” means the date on which this Agreement is signed by NOHFC.

“Eligible Project Costs” means the costs paid by a Recipient that are (a) incurred by a Recipient between the Application Date and the Project Completion Date; (b) in the opinion of NOHFC, reasonable and necessary for carrying out the Project; (c) limited to the cost categories and the amounts set out in the column captioned “Eligible Project Costs” in the Project Costs Chart, together with any explanatory notes thereto; and (d) net of any costs (including taxes) for which a Recipient has received, will receive, or is eligible to receive, a rebate, credit, or refund.

“Event of Default” has the meaning ascribed to it in Section 10.1.

“Excess Funds Amount” means the excess, if any, of X – Y where:

“X” is the amount of Funds provided to the Recipients under this Agreement; and

“Y” is the total Eligible Project Costs, multiplied by the Project Percentage.

“Funds” means the money NOHFC provides to the Recipients pursuant to this Agreement.

“Ineligible Project Costs” means all Project costs that are not Eligible Project Costs.

“Maximum Funds” means the maximum amount payable to the Recipients under this Agreement, which is the lesser of: (a) the Project Percentage of the total Eligible Project Costs, and (b) \$900,000.

“Northern Ontario” means the territorial districts of Algoma, Cochrane, Kenora, Manitoulin, Nipissing, Parry Sound, Rainy River, Sudbury, Thunder Bay, and Timiskaming.

“Party” means either NOHFC or the Recipients (TSSM and City of SSM collectively or alone, as the context requires), and **“Parties”** means NOHFC and the Recipients.

“Project” means the undertaking described in Schedule A.

“Project Budget” means the budget for the Project set out in Schedule B.

“Project Completion Date” has the meaning ascribed to it in Schedule A.

“Project Costs Chart” means the chart of Project costs set out in Section 1 of Schedule B.

“Project Funding Chart” means the chart of Project funding set out in Section 2 of Schedule B.

“Project Location” means the location of the Project specified in Section 2 of Schedule A.

“Project Percentage” means the maximum percentage of Eligible Project Costs reimbursable by NOHFC under this Agreement, as set out in Section 2 of Schedule B and as may be adjusted from time to time by NOHFC pursuant to Section 4.1(d).

“Project Plan” means the milestones and timelines for the Project set forth in Section 3 of Schedule A.

“Project Report” means a written report on the Project, duly executed by the Recipients in the form specified by (and in substance satisfactory to) NOHFC.

“Public Entity” means any “public entity” as defined in the *Financial Administration Act* (Ontario).

“Related Party” includes any shareholder, director, officer, or employee of a Recipient, any individual related by blood, adoption, or marriage to any such person (each of the foregoing, a **“Person”**), or any other person not dealing at arms’ length (as such term is defined in the *Income Tax Act* (Canada)) with any such Person.

“Reports” means the reports described in Article 6.0 and any other reports requested by NOHFC.

“Request for Funds” means a request for Funds duly executed by the Recipients in the form specified by (and in substance satisfactory to) NOHFC.

2.0 THE PROJECT

2.1 **Term.** The term of this Agreement shall commence on the Effective Date and shall expire on the date that is three years after the Project Completion Date, unless terminated earlier in accordance with the terms of this Agreement. Notwithstanding the foregoing, if, under this section, the term of the Agreement would run longer than five years from the Effective Date, then the term of the Agreement shall expire on the fifth anniversary of the Effective Date.

2.2 **Project Completion.** The Recipients shall carry out and complete the Project:

- (a) by the Project Completion Date; and
- (b) in accordance with the Project Budget,

and otherwise in accordance with the terms and conditions of this Agreement.

2.3 **Project Costs.** Whenever a Recipient acquires goods or services to be claimed as Eligible Project Costs, it shall do so through a process that promotes the best value for money. If the Recipients are selecting third-party contractors from which to acquire goods or services to be claimed as Eligible Project Costs in an amount greater than \$30,300, a competitive process must be used, including a written request for at least three submissions, written evaluation of submissions received and a written agreement with the successful contractor. Notwithstanding the foregoing, NOHFC may consent in writing to a non-competitive process over \$30,300 if details of urgency, special expertise, confidentiality, savings, or other circumstances warrant it.

2.4 **Conflict of Interest.** The Recipients shall carry out the Project and use the Funds in a manner that avoids any actual, potential, or perceived Conflict of Interest, except as disclosed to and expressly approved by NOHFC in writing. The Recipients shall promptly disclose to NOHFC any circumstances that a reasonable person would interpret as being a Conflict of Interest, and comply with any terms and conditions that NOHFC may require as a result of such disclosure.

2.5 **Movement and Disposal of Assets.** Except with NOHFC’s prior written consent and subject to and without limiting the other terms and conditions of this Agreement, the Recipients shall not, from the Effective Date until the date that is three years after the Project Completion Date, sell, lease, or otherwise dispose of, or store or move to any location outside of Northern Ontario, any asset purchased, improved, or created, in whole or in part, with the Funds, or for which Funds were provided, in whole or in part, provided that the Recipients may sell, lease, or dispose

of assets having an aggregate purchase cost not in excess of \$10,000 to the extent such sale, lease, or disposal is not otherwise prohibited by this Agreement.

2.6 **Buildings and Facilities.** Except with NOHFC's prior written consent, from the Effective Date until the date that is three years after the Project Completion Date, the City of SSM shall continue to own, continue to lease or continue to have the right to use (as applicable) all buildings, facilities, or land purchased, constructed, or improved, in whole or in part, with the Funds, or for which, in whole or in part, Funds were provided.

2.7 **Publicity.**

- (a) Unless otherwise directed by NOHFC, the Recipients shall, in a form and manner approved by NOHFC, acknowledge the support of NOHFC in all publications of any kind (including digital), relating to the Project.
- (b) In order to acknowledge NOHFC's support for the Project, at NOHFC's request, the Recipients shall:
 - (i) install and maintain in good condition one or more signs or plaques supplied by NOHFC in conspicuous and visually unobstructed locations near the Project as approved by NOHFC; and/or
 - (ii) display NOHFC's visual identity digitally, in a format and manner approved by NOHFC.
- (c) The Recipients shall indicate in all of their Project-related publications, whether written, oral, visual, digital, or otherwise, that the views expressed in the publication are the views of the Recipients and do not necessarily reflect those of NOHFC or the Government of Ontario.

3.0 **CHANGES**

3.1 **No Changes.** The Recipients shall not make any changes to the Project, the Project Budget, or the Project Plan without the prior written consent of NOHFC.

3.2 **Notification.** The Recipients shall notify NOHFC promptly if a Recipient becomes aware of any actual or potential changes as described in Section 3.1, or of any event that could reasonably be expected to affect the Recipients' ability to complete the Project in accordance with this Agreement.

3.3 **Change Requests.** In the event the Recipients:

- (a) wish to amend the Project Plan; and/or
- (b) wish to amend any portion of the Project Budget;

the Recipients shall submit a Change Request Form (with the appropriate section(s) completed) to NOHFC. NOHFC may approve or reject all or part of any such change request. If a Change Request Form is executed by both NOHFC and the Recipients, this Agreement shall be amended as set forth therein. Any other amendments to this Agreement must be made in accordance with Section 14.2.

4.0 FUNDS AND PAYMENT

4.1 Payment of Funds.

- (a) Subject to the terms and conditions of this Agreement, NOHFC shall:
 - (i) provide Funds to reimburse the Recipients for Eligible Project Costs in an amount that is equal to the Project Percentage of Eligible Project Costs, up to the aggregate limit of the Maximum Funds; and
 - (ii) provide such Funds by issuing a cheque in a Recipient's name or depositing the Funds electronically into an account designated by the Recipients in writing, provided that the account resides at a Canadian financial institution and is in the name of a Recipient.
- (b) NOHFC shall have no obligation to provide any disbursement of Funds to a Recipient until the Recipients have submitted the following (in form and substance satisfactory to NOHFC):
 - (i) a completed Request for Funds;
 - (ii) copies of all invoices and/or such other documentation satisfactory to NOHFC evidencing costs incurred relating to the Eligible Project Costs claimed in the submitted Request for Funds; and
 - (iii) copies of cancelled cheques and/or such other documentation satisfactory to NOHFC evidencing payment by a Recipient of the Eligible Project Costs claimed in the submitted Request for Funds.
- (c) NOHFC may provide Funds to a Recipient in advance of the Recipient incurring Eligible Project Costs. If NOHFC provides Funds to a Recipient in advance pursuant to this Section 4.1(c), the Recipient shall spend such Funds solely on Eligible Project Costs, and NOHFC shall not make any further disbursement of Funds until the Recipients have (in addition to satisfying all other necessary requirements under this Agreement) submitted evidence satisfactory to NOHFC that the Funds so provided pursuant to this Section 4.1(c) have been spent solely on Eligible Project Costs.
- (d) If the total Eligible Project Costs are less than the estimated Eligible Project Costs set out in the Project Costs Chart, NOHFC may vary the Project Percentage to permit an aggregate disbursement of Funds of up to the maximum set forth in clause (b) of the definition of Maximum Funds.

4.2 Limitations on Funding.

- (a) NOHFC shall hold back a portion of the total Funds payable to the Recipients hereunder equal to 10% of the Maximum Funds, to be released to the Recipients only after all of the following have occurred:
 - (i) receipt by NOHFC of all Reports required to date under the Agreement, including the final Project Report required pursuant to Section 6.1(a), following the completion of the Project in accordance with this Agreement; and

- (ii) receipt by NOHFC of the final Request for Funds for the Project in accordance with Section 4.1(b)(i).
- (b) The Recipients shall promptly notify NOHFC if any funds are received for the Project from sources not shown in the Project Funding Chart or in amounts that exceed the amounts set out in the Project Funding Chart. In any such case, NOHFC may reduce the Maximum Funds by, or demand the repayment of, an amount equal to any such additional funds, or vary the Project Percentage accordingly.
- (c) If any Excess Funds Amount exists at any time, NOHFC may:
 - (i) deduct an amount equal to the Excess Funds Amount from any further disbursement of Funds; or
 - (ii) demand the repayment of such Excess Funds Amount.

4.3 Conditions Precedent to Funding. NOHFC's obligation to provide Funds to the Recipients is subject to the satisfaction of the following conditions precedent (each in form and substance satisfactory to NOHFC):

- (a) NOHFC shall have received any information it may require to conduct a due diligence review of the Recipients and the Project, and NOHFC shall have completed and been satisfied with such review;
- (b) the Recipients shall have provided written evidence that the funds from all other sources set out in the Project Funding Chart have been committed;
- (c) the Recipients shall have provided all insurance certificates or other documents required pursuant to Article 8.0;
- (d) the Recipients shall have provided a completed electronic funds transfer information form enabling NOHFC to electronically transfer Funds into a bank account belonging to one or both of the Recipients; and
- (e) the Recipients shall have delivered all Reports required to date.

5.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 General. Each Recipient represents, warrants, and covenants that:

- (a) it is, and shall continue to be during the term of this Agreement, a validly existing legal entity with full power to fulfill its obligations under this Agreement;
- (b) it has, and shall continue to have during the term of this Agreement, the experience and expertise necessary to carry out the Project;
- (c) any information provided in, or in support of, the application to NOHFC for funding in respect of the Project (including information relating to any eligibility requirements) was true and complete at the time provided, and shall continue to be true and complete in all material respects for the term of this Agreement, except as set out to the contrary in this Agreement;

- (d) it is not in default, and shall continue to not be in default, of any term, condition, or obligation under any agreement with NOHFC, His Majesty the King in right of Ontario, or any other Public Entity;
- (e) it is, and shall at all times be, in compliance with any and all laws, statutes, by-laws, ordinances, decrees, requirements, directives, orders, judgments, licences, permits, codes, regulations, or other items having the force of law, and any applicable determinations, interpretations, rulings, orders, rules, or decrees of any governmental authority or arbitrator that is legally binding at the time (including obtaining, at its own expense, all permits, licences, approvals, and authorizations required to complete the Project and satisfy the terms and conditions of the Agreement), as well as all industry standards applicable to any aspect of such Recipient's operations or the Project;
- (f) it operates, and shall continue to operate during the term of this Agreement, its business in Northern Ontario;
- (g) it has, and shall maintain, the insurance required under Article 8.0; and
- (h) no Conflict of Interest exists, except as disclosed to and expressly approved by NOHFC in writing.

5.2 Execution of Agreement. Each Recipient represents and warrants that:

- (a) it has the full power, authority, and capacity to enter into this Agreement; and
- (b) it has taken all necessary actions (if any) to authorize the execution and delivery of this Agreement.

5.3 Governance. Each Recipient represents, warrants, and covenants that it has, shall maintain and shall follow during the term of this Agreement:

- (a) a code of conduct and ethical responsibilities for all persons at all levels of such Recipient's organization;
- (b) procedures to ensure such Recipient's ongoing effective functioning;
- (c) decision-making mechanisms;
- (d) procedures to manage the Funds prudently and effectively;
- (e) procedures to enable the successful completion of the Project;
- (f) procedures to identify risks to the completion of the Project and strategies to address the identified risks, in each case in a timely manner;
- (g) procedures to enable the preparation and delivery of all Reports required pursuant to this Agreement; and
- (h) procedures to address such other matters as such Recipient considers necessary to ensure that such Recipient carries out its obligations under this Agreement.

6.0 REPORTING, ACCOUNTING, AND REVIEW

- 6.1 **Reporting.** The Recipients shall prepare and provide to NOHFC (in form and substance satisfactory to NOHFC):
- (a) within 90 days after the Project Completion Date, a completed and duly executed final Project Report, together with a final Request for Funds;
 - (b) if the Project has not yet been completed, within 60 days after each anniversary of the Effective Date, a completed and duly executed interim Project Report reporting on the status of the Project; and
 - (c) any other information, including accounts, data, and projections, or other Reports as NOHFC may request from time to time, within the timelines set out by NOHFC.
- 6.2 **Record Maintenance.** The Recipients shall keep and maintain, for a period of 7 years after the creation thereof, all records (both financial and non-financial, including invoices and evidence of payment) relating to this Agreement, Eligible Project Costs, the Funds, or the Project in a manner consistent with either international financial reporting standards or generally accepted accounting principles or any comparable accounting standards that apply to the Recipients.
- 6.3 **Records Review.** NOHFC may, upon 24 hours' notice to the Recipients and during normal business hours, enter upon any Recipient's premises to conduct an audit or investigation of any Recipient regarding the Recipient's compliance with the Agreement, including assessing: (a) its books and financial records, including the records referred to in Section 6.2; (b) its affairs, finances, and accounts; (c) the progress of the Project; (d) the Recipient's allocation and expenditure of the Funds; or (e) any representation or warranty made to NOHFC.
- 6.4 **Cooperation.** Each Recipient shall, on request by NOHFC: (a) provide NOHFC access to all of its records and documents associated with this Agreement or the Project, wherever located; (b) permit NOHFC to inspect, and assist NOHFC to copy and remove, such records and documents; (c) provide any information to NOHFC that NOHFC may identify, in any form requested; and (d) carry out any activities that NOHFC requests in connection with this Article 6.0.
- 6.5 **No Control of Records.** For clarity, no provision of this Agreement shall be construed as giving NOHFC any control whatsoever over the Recipients' records.
- 6.6 **Auditor General.** NOHFC's rights under this Article are in addition to any rights provided to the Auditor General pursuant to the *Auditor General Act* (Ontario).
- 6.7 **Audit Report.** If NOHFC or the Auditor General believes that there are inaccuracies in, or inconsistencies between, any information submitted to NOHFC and a Recipient's financial records and books of account, NOHFC or the Auditor General may request, and the Recipients shall provide at their own expense, an audit report from a public accountant licensed under the laws of Ontario. The audit report shall be satisfactory to NOHFC and/or the Auditor General, as applicable, in form and content and address:
- (a) Funds received to date;
 - (b) Eligible Project Costs incurred by the Recipients to date;
 - (c) whether Eligible Project Costs that have been claimed were incurred in accordance with

the Project and this Agreement; and

- (d) any other financial information pertaining to this Agreement as may be reasonably specified in the request.

7.0 INDEMNITY

7.1 Indemnification. Each Recipient shall indemnify and hold harmless Northern Ontario Heritage Fund Corporation and each of its directors, officers, agents, advisors, and representatives from and against any and all liability, losses, 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 this Agreement.

8.0 INSURANCE

8.1 Recipients' Insurance. Each Recipient represents, warrants and covenants that it has, and shall maintain until the final disbursement of Funds is made under this Agreement, at its own cost and expense (with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent), and comply with the requirements of, 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 for third party bodily injury, personal injury, and property damage, to an inclusive limit of not less than \$2,000,000 per occurrence, which commercial general liability policy shall include the following:

- (a) coverage on an occurrence basis;
- (b) Northern Ontario Heritage Fund Corporation and each of its directors, officers, agents, advisors, and representatives as additional insureds with respect to liability arising in the course of performance of the Recipients' obligations under, or otherwise in connection with, this Agreement;
- (c) a cross-liability clause;
- (d) contractual liability coverage; and
- (e) at least 30-days' written notice of cancellation or material change.

8.2 Proof of Insurance. Each Recipient shall, in accordance with Section 4.3(c) and as NOHFC may otherwise request, provide NOHFC with certificates of insurance, or other proof as NOHFC may require, that confirms the insurance coverage required by Section 8.1. Further, upon the request of NOHFC, each Recipient shall make available to NOHFC a copy of each insurance policy that relates to the Project or otherwise to this Agreement, or both.

8.3 Third Party Insurance. Each Recipient shall ensure that any subcontractors retained to perform any part or parts of the Project shall have insurance in place that is: (a) appropriate to the Project risks; and (b) consistent with commercial practice in the subcontractor's industry.

9.0 TERMINATION ON NOTICE

9.1 **Termination on Notice.** NOHFC may terminate this Agreement at any time, for any reason and without liability, penalty, or costs, upon giving at least 30 days' notice to the Recipients.

9.2 **Consequences of Termination.** If NOHFC terminates this Agreement pursuant to Section 9.1, NOHFC may take one or more of the following actions:

- (a) cancel further disbursements of Funds;
- (b) demand and require the repayment of any Funds remaining in the possession or under the control of the Recipients; and
- (c) determine the Recipients' reasonable costs to wind down the Project, and do either or both of the following:
 - (i) permit the Recipients to offset such costs against the amount owing pursuant to Section 9.2(b); and/or
 - (ii) provide Funds to the Recipients to cover some or all of such costs.

10.0 EVENT OF DEFAULT AND CORRECTIVE ACTION

10.1 **Events of Default.** Each of the following events shall constitute an "Event of Default":

- (a) in the opinion of NOHFC, any Recipient has provided false or misleading information to NOHFC;
- (b) any representation or warranty provided to NOHFC (herein or otherwise) by or on behalf of any Recipient is incorrect in any material respect on the date on which such representation or warranty was made;
- (c) in the opinion of NOHFC, any Recipient breaches any covenant, or any other term or condition of this Agreement, including failing to do any of the following in accordance with the terms and conditions of this Agreement, without the prior written consent of NOHFC:
 - (i) carry out and complete the Project by the Project Completion Date;
 - (ii) complete the milestones set out in the Project Plan in accordance with the timing set out in the Project Plan;
 - (iii) use or spend Funds; and/or
 - (iv) provide Reports;
- (d) the nature or location of any Recipient's operations, any Recipient's financial condition, or any Recipient's organizational structure changes such that such Recipient no longer meets one or more of the applicable eligibility requirements of the program under which it was approved for NOHFC funding;

- (e) any Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, files for the appointment of a receiver, or applies to take the benefit of any statute for the relief of debtors;
- (f) if any bankruptcy, reorganization, arrangement, or other insolvency proceeding under any statute for the relief of debtors is instituted in respect of any Recipient and is consented to by such Recipient, or, if contested by such Recipient, is not dismissed within 30 days;
- (g) any Recipient fails to comply with any term, condition, or obligation under any other agreement with NOHFC, His Majesty the King in right of Ontario or any other Public Entity, or any Recipient experiences an event of default under any such agreement, and such failure or event of default continues after the applicable notice and cure period, if any, and is continuing;
- (h) any Recipient ceases to operate in Northern Ontario; or
- (i) a Conflict of Interest exists that cannot be resolved to NOHFC's satisfaction.

10.2 **Corrective Action.** If an Event of Default has occurred and is continuing, NOHFC may, at any time, take one or more of the following actions:

- (a) initiate any action NOHFC considers necessary in order to facilitate the successful continuation or completion of the Project;
- (b) suspend the payment of Funds for such period as NOHFC determines appropriate;
- (c) reduce the Maximum Funds or the Project Percentage;
- (d) cancel all further disbursements of Funds;
- (e) demand the repayment of any Funds remaining in the possession or under the control of any Recipient;
- (f) demand the repayment of an amount equal to any Funds the Recipients used for purposes not agreed to by NOHFC;
- (g) demand the repayment of an amount equal to any Funds NOHFC provided to the Recipients;
- (h) demand payment to NOHFC of an amount equal to any costs NOHFC incurs to enforce its rights under this Agreement, including any costs associated with any audit, inspection, or collection hereunder, and any other legal or professional costs;
- (i) terminate this Agreement without liability, penalty, or costs to NOHFC, which termination may take effect at any time specified by notice, including immediately; and/or
- (j) exercise any other rights or remedies available to NOHFC under this Agreement or applicable laws,

provided that, upon the occurrence of an Event of Default under Section 10.1(e) or 10.1(f), NOHFC's obligation to make any further payment of Funds shall immediately terminate, all

Funds provided by NOHFC shall be deemed to have been demanded for repayment pursuant to Section 10.2(g), and such Funds shall immediately become due and payable, automatically and without any notice, demand, or act by NOHFC, all of which are expressly waived by the Recipients.

10.3 **Opportunity to Remedy.** Without prejudicing its rights under Section 10.2, NOHFC may provide the Recipients an opportunity to remedy the Event of Default by providing notice to the Recipients of:

- (a) the particulars of the Event of Default;
- (b) the period of time that NOHFC is providing for the Recipients to remedy the Event of Default; and
- (c) any conditions that NOHFC imposes in order to be satisfied that the Recipients have remedied the Event of Default.

10.4 **Recipients Not Remediating.** If NOHFC has provided the Recipients with an opportunity to remedy the Event of Default pursuant to Section 10.3 and:

- (a) the Recipients do not remedy the Event of Default to NOHFC's satisfaction within the time period specified in the notice;
- (b) NOHFC determines that the Recipients cannot satisfactorily remedy the Event of Default within the time period specified in the notice or such further period of time as NOHFC considers reasonable; or
- (c) the Recipients are not proceeding to remedy the Event of Default in a way that is satisfactory to NOHFC;

then NOHFC may immediately initiate any one or more of the actions provided for in Section 10.2.

11.0 **REPAYMENT AND SET OFF**

11.1 **Debt Due.** If a Recipient owes any monies to NOHFC, whether or not their return or repayment has been demanded by NOHFC, such monies shall be deemed to be a debt due and owing to NOHFC by the Recipients, and the Recipients shall pay such amount to NOHFC immediately (unless NOHFC directs otherwise) by cheque payable to "Northern Ontario Heritage Fund Corporation", mailed to NOHFC at the address provided in Section 13.1.

11.2 **Interest Rate.** NOHFC may charge the Recipients interest on any monies owing to NOHFC by a Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

11.3 **Set Off.** Without limiting the application of any applicable laws, if a Recipient is indebted to NOHFC, His Majesty the King in right of Ontario, or any Public Entity (under this or any other agreement between them), NOHFC shall have the right to set off the amount of such indebtedness against the amount of Funds owing to the Recipients under this Agreement and to reduce the total amount of Funds payable to the Recipients by such amount.

12.0 PAYMENT BY NOHFC OF AMOUNTS OWING BY RECIPIENTS

- 12.1 **Amounts Owing by Recipients and Subcontractors.** Each Recipient covenants and agrees to pay when due, and to ensure that any of its subcontractors pays when due, all amounts required to be paid by it/its subcontractors to complete the Project in accordance with this Agreement.
- 12.2 **NOHFC's Right to Pay Amounts Due and Unpaid by Recipients or Subcontractors.** In the event a Recipient or any of its subcontractors fails to pay when due all amounts required to be paid by it or its subcontractors to complete the Project in accordance with this Agreement, NOHFC shall have the right, but for greater certainty, no obligation (and in addition to and not in substitution for any other right it may have pursuant to this Agreement or otherwise at law or in equity), to pay any such amount due and unpaid by a Recipient or its subcontractors and to deduct such amount from any amount due and owing to the Recipients pursuant to this Agreement, together with all costs incurred by NOHFC in connection therewith, or to demand the repayment of such amount from the Recipients together with all costs incurred by NOHFC in connection therewith.

13.0 NOTICE

- 13.1 **Notice in Writing and Addressed.** Any notice given under this Agreement shall be in writing and shall be delivered by personal delivery or courier, mailed by registered mail, or sent by fax or e-mail, and shall be addressed to NOHFC and the Recipients, respectively, as follows, or as any Party later designates to the other by notice:

To NOHFC:

Northern Ontario Heritage Fund Corporation
70 Foster Drive, Suite 200
Sault Ste. Marie, Ontario P6A 6V8

Attention: Executive Director

Fax: 705-945-6701

E-mail:

NOHFC.FinancialServicesUnit@ontario.ca

To the Recipients:

Tourism Sault Ste. Marie and The
Corporation of the City of Sault Ste. Marie
99 Foster Dr.
Sault Ste. Marie, Ontario P6A 5X6

Attention: Travis Anderson, Director of
Tourism and Community Development

Fax: N/A

E-mail: t.anderson@cityssm.on.ca

- 13.2 **Notice.** Any notice given by personal delivery, registered mail, or courier shall be deemed to have been given and received on the day of actual delivery thereof; provided that if any such day is not a Business Day, on the first Business Day thereafter. Any notice given by electronic means on a Business Day before 4:00 p.m. shall be deemed to have been given and received on such Business Day, and otherwise shall be deemed to have been given and received on the first Business Day following transmission.
- 13.3 **Postal Disruption.** Despite Section 13.2, following the occurrence and during the continuation of a postal disruption:
- (a) notice by registered mail shall not be deemed to be given or received; and
 - (b) the Party giving notice shall give notice by e-mail, personal delivery, courier, or fax.

14.0 ENTIRE AGREEMENT AND MODIFICATION OF AGREEMENT

- 14.1 **Entire Agreement.** This Agreement constitutes the entire agreement among the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations, understandings, and agreements regarding such subject matter.
- 14.2 **Modification of Agreement.** This Agreement may only be amended by a written agreement duly executed by the Parties.
- 14.3 **Consent.** Wherever the consent of NOHFC is referenced in this Agreement, the decision to provide (or not provide) such consent shall be at NOHFC's sole discretion, and NOHFC's consent may be given subject to the satisfaction of any terms and conditions specified by NOHFC (including the recovery of Funds provided to the Recipients).
- 14.4 **Waivers in Writing.** The failure or delay by NOHFC in exercising any right or remedy with respect to any breach of this Agreement by a Recipient shall not operate as a waiver or release thereof, or of any other right or remedy. Any waiver must be in writing and signed by NOHFC to be effective, and shall be limited only to the specific breach waived.

15.0 ASSIGNMENT

- 15.1 **No Assignment.** The rights and obligations of the Recipients under this Agreement are not assignable to any other person without the prior written consent of NOHFC, which NOHFC may provide or withhold. The rights and obligations of NOHFC under this Agreement may be assigned by NOHFC without the prior consent of the Recipients, and NOHFC shall, to the extent of the interest assigned, be released from its obligations under this Agreement but in any event shall continue to be entitled to the benefits of Article 7.0.
- 15.2 **Enurement.** This Agreement shall enure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors, and permitted assigns.

16.0 ACKNOWLEDGEMENTS

- 16.1 **Acknowledgements.** Each Recipient acknowledges that:
- (a) NOHFC is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario), as amended from time to time, and that any information provided to NOHFC in connection with the Project or otherwise in connection with this Agreement may be subject to disclosure in accordance with that Act;
 - (b) by receiving the 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);
 - (c) His Majesty the King in right of Ontario has issued expenses, perquisites, and procurement directives and guidelines pursuant to the *Broader Public Sector Accountability Act, 2010* (Ontario);

- (d) the Funds are:
 - (i) to assist the Recipients to carry out the Project and not to provide goods or services to NOHFC or the Government of Ontario; and
 - (ii) funding for the purposes of the *Public Sector Salary Disclosure Act, 1996* (Ontario); and
- (e) NOHFC is not responsible for carrying out the Project, and, without limiting the foregoing, the Recipients shall remain responsible for any cost overruns related to the Project.

17.0 SURVIVAL

17.1 **Survival.** The provisions in Article 1.0, Section 2.4, Section 2.5, Section 2.6, Section 2.7, Sections 4.2(b) and 4.2(c), Article 6.0, Article 7.0, Sections 10.1, 10.2(e), (f), (g), (h), and (j), Article 11.0, Article 12.0, Article 13.0, Article 14.0, Article 15.0, Article 16.0, Article 17.0, Sections 18.1, 18.2, 18.3, 18.4, 18.5, 18.6, 18.7, and all applicable definitions used, and provisions and schedules cross-referenced therein, shall survive any expiry, termination, or cancellation of the Agreement, and continue in full force and effect for a period of 7 years thereafter.

18.0 MISCELLANEOUS

18.1 **Governing Law.** This Agreement and the rights, obligations, and relations of the Parties shall 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 this Agreement shall be conducted in Ontario.

18.2 **Agreement into Effect.** The Recipients will provide such further assurances as NOHFC 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, including executing and delivering further documents, necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

18.3 **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. Any invalid or unenforceable provision shall be deemed to be severed.

18.4 **Parties Independent.** Each Recipient acknowledges that it is not an agent, joint venturer, partner, or employee of NOHFC or any of its directors, officers, agents, advisors, or representatives, and no Recipient shall take any actions that could establish or imply such a relationship.

18.5 **Agent.** Each Recipient acknowledges that NOHFC may from time to time appoint agents, representatives, and independent auditors to carry out any of its rights or obligations under this Agreement.

18.6 **Joint and Several Liability.**

- (a) Each Recipient is, and at all times shall be, jointly and severally liable to NOHFC for the obligations of the Recipients under the Agreement, regardless of which Recipient requested, received, used, or directly enjoyed the benefit of the Funds.
- (b) Upon the occurrence of any Event of Default, NOHFC may enforce this Agreement independently as to each Recipient and independently of any other remedy NOHFC at any time may have or hold in connection therewith. Each Recipient expressly waives any right to require NOHFC to proceed against any other Recipient, and agrees that NOHFC may proceed against any Recipient in such order as it shall determine in its sole and absolute discretion.

18.7 **Rights and Remedies Cumulative.** The rights and remedies of NOHFC 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.

18.8 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18.9 **Execution by Electronic Means.** This Agreement may be executed by electronic signature and delivered by fax or e-mail transmission, which shall be considered as an original signature for all purposes, and shall have the same force and effect as an original signature. The words "execution," "signed," "signature," and similar words in this Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity, and enforceability as a manually executed signature.

[Signature page follows]

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

NORTHERN ONTARIO HERITAGE FUND CORPORATION

Date

Name: John Guerard
Title: Executive Director

TOURISM SAULT STE. MARIE

Date

Name:
Title:

Name:
Title:

I/We have authority to bind the corporation.

THE CORPORATION OF THE CITY OF SAULT STE. MARIE

Name: MATTHEW SHOEMAKER
Title: MAYOR

Name: RACHEL TYCZINSKI
Title: CITY CLERK

I/We have authority to bind the municipality.

**SCHEDULE A
PROJECT DESCRIPTION**

1. Project Summary

The Recipients will construct a connector trail system that will create a green space passage between 3rd and 4th Line and that will link the urban Hub Trail to Wishart Park, Hiawatha Highlands, Kinsmen Park, the Voyager Trail Network, and the Algoma Trail Network. As part of the construction of the new connector trail system, the Recipients will:

- (a) assemble a prefabricated bridge and install that bridge over the Root River;
- (b) construct civil works including abutments; and
- (c) construct the connecting trails.

The Recipients will carry out and complete enhancements to Wishart Park by:

- (a) installing boardwalks and a viewing platform in Wishart Park;
- (b) installing interpretative signage in Wishart Park; and
- (c) installing play equipment in Wishart Park.

2. Project Location

Sault Ste. Marie, Ontario

3. Project Plan

The Recipients shall complete each of the Project milestones no later than the date set across from such milestone in the table below.

<i>Project milestones</i>	<i>Timing</i>	
	<i>Start (month/ year)</i>	<i>End (month/ year)</i>
Engineering Design	10/01/2024	06/30/2026
Bridge Fabrication/installation	10/01/2024	05/01/2025
Abutment/civil work	01/01/2024	6/30/2025
Connector Trail	10/01/2024	06/30/2026
Boardwalk/play equipment	08/01/2025	11/15/2026

Project completion date (the "Project Completion Date"): December 31, 2026

**SCHEDULE B
PROJECT BUDGET**

1. Project Costs Chart

Project cost category	Eligible Project Costs	Ineligible Project Costs	Total cost
Engineering/construction	\$50,000	\$0	\$50,000
Bridge fabrication and delivery/installation	\$600,000	\$0	\$600,000
Abutments and civil works	\$500,000	\$0	\$500,000
Connector trail construction	\$300,000	\$0	\$300,000
Boardwalk and viewing platform	\$150,000	\$0	\$150,000
Play equipment	\$200,000	\$0	\$200,000
TOTAL	\$1,800,000	\$0	\$1,800,000

2. Project Funding Chart

Funding sources	Financing type	Project cost category	Total funding
NOHFC	Conditional contribution	Eligible Project Costs	\$900,000
Recipients	Cash	All costs	\$450,000
Trans Canada Trail	Conditional Contribution	Eligible Project Costs	\$60,000
Federal Ministry of Infrastructure and Communities	Conditional Contribution	Eligible Project Costs	\$390,000
TOTAL			\$1,800,000
Project Percentage (NOHFC % of total Eligible Project Costs)			50%

**SCHEDULE C
CHANGE REQUEST FORM**

TO: Northern Ontario Heritage Fund Corporation (“**NOHFC**”)

RE: Conditional contribution agreement among Tourism Sault Ste. Marie and The Corporation of the City of Sault Ste. Marie, as co-recipients, (collectively the “**Recipients**”) and NOHFC effective as of [], 20[] (as the same may be amended from time to time, the “**Agreement**”). Capitalized terms used but not defined herein shall have the meanings attributed to such terms in the Agreement.

The Recipients hereby request the following modifications to the Agreement:

- Changes to Project Plan** (For a requested change to the Project milestones and/or their respective timelines, and/or the Project Completion Date.)

[Indicate new Project milestones, their respective timelines, and Project Completion Date below. If the new information you provide is acceptable to NOHFC, this section will replace what appears in the Agreement upon the effectiveness of this amendment.]

Replace the Project Plan with the following:

Project Plan

The Recipients shall complete each of the Project milestones no later than the date set across from such milestone in the table below.

Project milestones	Timing	
	Start (month/ year)	End (month/ year)

Project completion date (the “**Project Completion Date**”): _____, 20__

(Change Request Form continued on following page – please fill out all applicable sections)

**SCHEDULE C
CHANGE REQUEST FORM (CONT'D)**

2. **Changes to Project Budget** (For a requested change to any portion of the Project Budget, including the Project Costs Chart and/or the Project Funding Chart.)

[Speak to your Project Officer about filling in these charts. If your requested revisions are acceptable to NOHFC, these charts, as applicable, will replace what appears in the Agreement upon the effectiveness of this amendment.]

- Replace the Project Costs Chart with the following:

Project Costs Chart

Project cost category	Eligible Project Costs	Ineligible Project Costs	Total cost
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
	\$	\$	\$
TOTAL	\$	\$	\$

- Replace the Project Funding Chart with the following:

Project Funding Chart

Funding sources	Financing type	Project cost category	Total funding
			\$
			\$
			\$
			\$
			\$
TOTAL			\$
Project Percentage (NOHFC % of total Eligible Project Costs)			%

(Change Request Form continued on following page – please fill out all applicable sections)

SCHEDULE C
CHANGE REQUEST FORM (CONT'D)

3. Amendment

The Recipients hereby request the aforementioned amendment(s) to the Agreement and certify that:

- (a) the information provided to NOHFC (and/or its agents or representatives) to support this request is true, complete, and accurate;
- (b) the representations and warranties set forth in the Agreement are true and correct in all material respects;
- (c) except as specifically dealt with herein, no Event of Default has occurred and is continuing; and
- (d) all of the Recipients' obligations to date, as set out in the Agreement, have been satisfied.

Further, the Parties herein agree that:

- (i) Section 2.1 of the Agreement is amended by deleting the sentence "Notwithstanding the foregoing, if, under this section, the term of the Agreement would run longer than five years from the Effective Date, then the term of the Agreement shall expire on the fifth anniversary of the Effective Date.", if that language is included in Section 2.1 of the Agreement; and
- (ii) notwithstanding Section 2.1 of the Agreement, if, under that section, the term of the Agreement would run longer than five years from the Amendment Effective Date (as defined below), then the term of the Agreement shall expire on the fifth anniversary of the Amendment Effective Date.

Except as may be specifically set forth herein, neither NOHFC's signature on this Change Request Form, nor anything contained herein, shall act as a waiver by NOHFC of any present or future default that may exist under the Agreement. Unless expressly amended herein, all terms and conditions of the Agreement remain in full force and effect, unamended.

This Change Request Form may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Change Request Form may be executed by electronic signature and delivered by fax or e-mail transmission, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature.

By their respective signatures below, each Party agrees to the amendments above and the Agreement is accordingly amended effective as of the date NOHFC has executed this form (the "**Amendment Effective Date**").

[Signature page follows]

**SCHEDULE C
CHANGE REQUEST FORM (CONT'D)**

TOURISM SAULT STE. MARIE

Name:
Position:

Date: _____

Name:
Position:

I/We have authority to bind the corporation.

THE CORPORATION OF THE CITY OF SAULT STE. MARIE

Name:
Position:

Name:
Position:

I/We have authority to bind the municipality.

NORTHERN ONTARIO HERITAGE FUND CORPORATION

Name:
Position:

Date: _____