

THE AGREEMENT made in duplicate

B E T W E E N:

NORTHERN ONTARIO HERITAGE FUND CORPORATION

a corporation existing under the laws of Ontario

(**"NOHFC"**)

- and -

THE CORPORATION OF THE TOWN OF FORT FRANCES

a municipal corporation existing under the laws of Ontario

(the **"Recipient"**)

Background:

NOHFC has among its objects the promotion and stimulation of economic initiatives in Northern Ontario.

The Recipient has applied to NOHFC for funds to assist the Recipient in carrying out the Project described in this Agreement.

NOHFC is willing to provide funds to the Recipient to assist the Recipient 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:

**ARTICLE 1
INTERPRETATION AND DEFINITIONS**

1.1 Interpretation. For the purposes of interpretation:

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

- (f) in the event of a conflict between the main body of the Agreement and any schedule, the main body of the Agreement governs unless the schedule states that the schedule or a provision or provisions of the schedule operate(s) despite the main body of the Agreement.

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

“Agreement” means this agreement for Project number 8210332 entered into between NOHFC and the Recipient and includes all of the schedules listed in section 26.1.

“BPSAA” means the *Broader Public Sector Accountability Act, 2010* (Ontario), including any directives and/or guidelines issued pursuant to that Act.

“Conflict of Interest” has the meaning ascribed to it in section 7.2.

“Effective Date” is the date the Agreement is signed by NOHFC.

“Eligible Project Costs” means the costs paid by the Recipient for the purpose of carrying out the Project for which NOHFC may provide Funds and that are (a) incurred by the Recipient between April 23, 2019 and the expiry or termination of the Agreement; (b) in the sole opinion of NOHFC, reasonable and necessary for carrying out the Project; and (c) limited to the amounts and Project cost categories set out in the Project Costs Chart in Schedule “B”.

“Event of Default” has the meaning ascribed to it in section 14.1.

“Excess Funds Amount” means the excess, if any, of $X - Y$ where
“X” is the amount of Funds provided to the Recipient under the Agreement; and
“Y” is the Project Percentage of the total Eligible Project Costs paid by the Recipient to complete the Project.

“Funding Year” means:

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

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

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

“Maximum Funds” means the maximum amount payable to the Recipient in respect of Eligible Project Costs under the Agreement, which is the lesser of: (i) the Project Percentage of the total Eligible Project Costs paid by the Recipient to complete the Project, and (ii) \$65,000.

“NOHFC Claim Schedule” means the NOHFC claim schedule set out in Schedule “C”.

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

“Notice” means any communication given or required to be given under the Agreement.

“Party” means either NOHFC or the Recipient and **“Parties”** means NOHFC and the Recipient.

“Project” means the undertaking described in Schedule “A” and in the Project Plan in Schedule “C”.

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

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

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

“Project Percentage” means 44.83%.

“Project Plan” means the chart setting out milestones/activities and timelines for the Project in Schedule “C”.

“Quarter” or **“Quarters”** means one or more of the following four periods of time in NOHFC’s fiscal year: April 1 up to and including June 30, July 1 up to and including September 30, October 1 up to and including December 31, and January 1 up to and including March 31.

“Reports” means the financial and progress reports described in Schedule “E” and any other reports requested by NOHFC.

“Request for Funds” means the form set out in Schedule “D” of the Agreement.

“Wind Down Costs” means the Recipient’s reasonable costs to wind down the Project.

ARTICLE 2 REPRESENTATIONS, WARRANTIES AND COVENANTS

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

- (a) it is, and shall continue to be for the term of the Agreement, a validly existing legal entity with full power to fulfill its obligations under the Agreement;
- (b) it has, and shall continue to have for the term of the Agreement, the experience and expertise necessary to carry out the Project;
- (c) any information the Recipient provided to NOHFC contained in its application and in support of its application (including information relating to any eligibility requirements) was true and complete at the time the Recipient provided it, and shall continue to be true and complete for the term of the Agreement in every respect, except as set out to the contrary in the Agreement; and
- (d) no Conflict of Interest exists.

- 2.2 **Execution of Agreement.** The Recipient represents and warrants that:
- (a) it has the full power and authority to enter into the Agreement; and
 - (b) it has taken all necessary actions to authorize the execution of the Agreement.
- 2.3 **Governance.** The Recipient represents, warrants and covenants that it has, and shall maintain for the period during which the Agreement is in effect, by-laws or other legally necessary instruments to:
- (a) establish procedures to ensure the ongoing effective functioning of the Recipient;
 - (b) establish decision-making mechanisms;
 - (c) provide for the prudent and effective management of the Funds;
 - (d) establish procedures to enable the successful completion of the Project;
 - (e) establish procedures to enable the timely identification of risks to the completion of the Project and strategies to address the identified risks;
 - (f) establish procedures to enable the preparation and delivery of all Reports required pursuant to Article 8; and
 - (g) deal with such other matters as the Recipient considers necessary to ensure that the Recipient carries out its obligations under the Agreement.
- 2.4 **Supporting documentation.** Upon request, the Recipient shall provide NOHFC with proof of the matters referred to in this Article 2.

ARTICLE 3

TERM OF THE AGREEMENT, USE OF FUNDS AND PROJECT

- 3.1 **Term.** The term of the Agreement shall commence on the Effective Date and shall expire after the occurrence of all of the following unless terminated earlier pursuant to Article 13 or Article 14:
- (a) the completion of the Project in accordance with the terms and conditions of the Agreement; and
 - (b) the receipt by NOHFC of all Reports required under this Agreement satisfactory to NOHFC.
- 3.2 **Project and use of Funds.** The Recipient shall:
- (a) carry out the Project;
 - (i) in accordance with the terms and conditions of the Agreement; and
 - (ii) in compliance with all federal and provincial laws and regulations, all municipal

by-laws, and other orders, rules, by-laws, and industry standards applicable to any aspect of the Project;

- (b) at its own expense, obtain all permits, licences, approvals and authorizations required to complete the Project and satisfy the terms and conditions of the Agreement;
- (c) use the Funds only for the purpose of carrying out the Project; and
- (d) spend the Funds only in accordance with the Project Budget.

ARTICLE 4 CHANGES

4.1 No changes. The Recipient shall:

- (a) not make any changes to the Project and/or the Project Budget without the prior written consent of NOHFC, which consent may be conditional on recovery of the Funds provided to the Recipient; and
- (b) abide by the terms and conditions NOHFC may require in giving such consent.

4.2 Notification. The Recipient shall notify NOHFC promptly if it becomes aware of:

- (a) any actual or potential material changes to the Project and/or Project Budget; and
- (b) any event that may affect the Recipient's ability to complete the Project in accordance with the Agreement.

ARTICLE 5 FUNDS, PAYMENT AND CARRYING OUT THE PROJECT

5.1 Obligation to fund.

- (a) Subject to the terms and conditions of the Agreement, NOHFC shall reimburse the Recipient for Eligible Project Costs paid by the Recipient up to the amount of the Maximum Funds.
- (b) NOHFC is not responsible for any cost overruns related to the Project. The Recipient shall provide its own funds or funds from other sources for all Eligible Project Costs not reimbursed by NOHFC in the Project Costs Chart and all Ineligible Project Costs. The Recipient is responsible for all costs that exceed the Eligible Project Costs set out in the Project Costs Chart.

5.2 Payment of Funds.

- (a) Subject to the terms and conditions of the Agreement, NOHFC shall:
 - (i) provide the Funds to the Recipient in accordance with the NOHFC Claim Schedule;

- (ii) issue a cheque in the Recipient's name or deposit the Funds electronically into an account designated by the Recipient in writing, provided that the account resides at a Canadian financial institution and is in the name of the Recipient.
- (b) To initiate reimbursement of Eligible Project Costs by NOHFC, the Recipient shall submit the following to NOHFC:
 - (i) a completed Request for Funds; and
 - (ii) copies of all invoices or such other evidence satisfactory to NOHFC or its agents, in their sole discretion, of costs incurred relating to the Eligible Project Costs claimed in the submitted Request for Funds and copies of cancelled cheques and/or such other evidence satisfactory to NOHFC or its agents, in their sole discretion, of payment of the Eligible Project Costs claimed.

5.3. Limitations on funding.

- (a) If the total Eligible Project Costs paid by the Recipient are less than the estimated Eligible Project Costs set out in the Project Costs Chart, NOHFC may, in its sole discretion:
 - (i) vary the amount of Eligible Project Costs that it reimburses; and
 - (ii) where applicable, demand the repayment of the Excess Funds Amount, whereupon the amount demanded by NOHFC shall immediately become due and payable.
- (b) Following receipt of the items specified in section 5.2(b), in each Quarter, NOHFC agrees to pay to the Recipient an amount equal to the Project Percentage of Eligible Project Costs claimed in each request for Funds up to the amount payable for each Quarter set out in the NOHFC Claim Schedule.
- (c) In the event the Recipient:
 - (i) wishes to amend the NOHFC Claim Schedule by an amount equal to or greater than \$100,000;
 - (ii) wishes to transfer amounts between cost categories in the Project Costs Chart; and/or
 - (iii) does not claim reimbursement of any Eligible Project Costs by NOHFC in any Quarter where the amount of the NOHFC Claim for that Quarter as set out in the NOHFC Claim Schedule exceeds \$100,000,

the Recipient shall complete the appropriate section(s) of the Change Request Form as set out in Schedule "F" and submit it to NOHFC. NOHFC may approve or reject all or part of any such change request in its sole discretion. In the event NOHFC signs a Change Request Form, this Agreement shall be amended accordingly.
- (d) NOHFC shall hold back 10% of \$65,000, to be released only after all of the following have occurred:

- (i) completion of the Project in accordance with the Agreement;
 - (ii) receipt by NOHFC of all Reports required under the Agreement; and
 - (iii) receipt by NOHFC of the final Request for Funds for the Project.
- (e) The Recipient shall not use the Funds for any Eligible Project Costs for which the Recipient is in receipt of funds from other sources. The Recipient shall promptly notify NOHFC if any other funds are received for the Project from sources other than those set out in the Project Funding Chart or in amounts from the sources set out in the Project Funding Chart that are greater than the amounts set out in the Project Funding Chart. If the Recipient receives funds for the Project from sources that are not listed in the Project Funding Chart or in amounts from the sources set out in the Project Funding Chart that are greater than the amounts set out in the Project Funding Chart, in its sole discretion, NOHFC may reduce the amount of the Funds it provides to the Recipient by, or demand the repayment of, an amount equal to the additional funds, whereupon the amount demanded by NOHFC shall immediately become due and payable, to ensure that there is no duplication of funding for the Project.
- (f) NOHFC may, in its sole discretion, provide Funds to the Recipient in advance of the Recipient incurring Eligible Project Costs. If NOHFC provides Funds to the Recipient in advance, NOHFC will not make any further payments of Funds until the Recipient has submitted, in respect of the Recipient's spending of such advance on Eligible Project Costs, evidence satisfactory to NOHFC that the Funds advanced have been spent solely on Eligible Project Costs.
- (g) The Recipient acknowledges that the amount of Funds available to it pursuant to the Agreement is based on the net costs to the Recipient, net of any costs (including taxes) for which the Recipient has received, will receive, or is eligible to receive, a rebate, credit or refund.

5.4. Conditions of funding. NOHFC's obligation to provide Funds to the Recipient is subject to fulfillment of the following conditions precedent to NOHFC's satisfaction:

- (a) the Recipient shall have provided the insurance certificate(s) or other documents provided for in Article 12;
- (b) the Recipient shall have provided written evidence satisfactory to NOHFC that the funds from other sources set out in the Project Funding Chart necessary to complete the Project have been committed;
- (c) NOHFC shall have received and been satisfied with the information provided by the Recipient pursuant to Article 8. If NOHFC is not satisfied with such information, it may adjust the amount of Funds it provides to the Recipient in any Quarter;
- (d) NOHFC shall have received and been satisfied with any information it may reasonably require to conduct a due diligence review of the Recipient and the Project, including without limitation:
 - (i) resolutions of the relevant municipal or band councils or not-for-profit boards of

directors or local services board by-laws or other documentation, as applicable, in form and substance satisfactory to NOHFC, confirming support for the Project, and

- (ii) if Recipient consists of more than one legal entity or organization, a list of Project-related or similar funding received from NOHFC by all such entities and organizations within the preceding 5 years; and
- (e) NOHFC shall have received a completed electronic funds transfer information form which will enable NOHFC to deposit the Funds into the Recipient's designated bank account by way of electronic funds transfer.

ARTICLE 6

ACQUISITION OF GOODS AND SERVICES; DISPOSAL OF ASSETS AND OWNERSHIP OF BUILDINGS AND FACILITIES; TRAVEL, MEAL AND ACCOMMODATION COSTS

- 6.1 **Acquisition.** If the Recipient acquires supplies, equipment or services with the Funds it shall do so through a process that promotes the best value for money. If the Recipient is selecting third-party contractors from which to acquire supplies, equipment or services for the Project for an amount greater than \$25,000 a competitive process must be used, including a written request for at least three proposals, written evaluation of bids received and a written agreement with the successful contractor. NOHFC may, at its sole discretion, consent in writing to a non-competitive procurement over \$25,000 if details of urgency, special expertise, confidentiality, savings or other circumstances warrant it.
- 6.2 **Disposal of assets.** The Recipient shall not, during the term of the Agreement and for three years after the expiry or termination of the Agreement, without NOHFC's prior written consent, sell, lease or otherwise dispose of any assets purchased with the Funds or for which Funds were provided, the cost of which exceeded \$10,000 at the time of purchase. This obligation shall survive the expiry or termination of the Agreement.
- 6.3 **Buildings and Facilities.** Unless NOHFC otherwise agrees in writing, Recipient shall own or lease all buildings or facilities purchased, constructed or improved with the Funds for a period of time no shorter than the life of any capital improvement made to the buildings or facilities, which period of time shall, for further clarification, at a minimum last for three years after the expiry or termination of the Agreement. This obligation shall survive the expiry or termination of the Agreement.
- 6.4 **Travel, meal and accommodation costs.** If travel, meal and accommodation costs associated with the Project will be claimed as Eligible Project Costs, such costs must comply with the requirements of the Ontario Public Service Travel, Meal and Hospitality Expenses Directive, a copy of which may be found online at: <https://www.ontario.ca/document/travel-meal-and-hospitality-expenses-directive>.

ARTICLE 7

CONFLICT OF INTEREST

- 7.1 **No Conflict of Interest.** The Recipient shall carry out the Project and use the Funds in a manner that avoids any Conflict of Interest.
- 7.2 **Conflict of Interest includes.** For the purposes of this Agreement, a Conflict of Interest

includes:

- (a) in relation to the process of applying for Funds, any circumstance where the Recipient has or could be perceived to have an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage over other applicants; and
- (b) in relation to the performance of its obligations under the Agreement, any circumstances where the Recipient (or any person who has the capacity to influence the Recipient's decisions) has outside commitments, relationships or financial interests that interfere with, or could, or could be seen to interfere with, the Recipient's objective, unbiased and impartial judgment relating to the Project and the use of the Funds.

7.3 Disclosure to NOHFC. The Recipient shall:

- (a) disclose to NOHFC without delay any circumstances that a reasonable person would interpret as being a Conflict of Interest; and
- (b) comply with any terms and conditions that NOHFC may reasonably prescribe as a result of such disclosure.

ARTICLE 8 REPORTING, ACCOUNTING AND REVIEW

8.1 Preparation and submission. The Recipient shall:

- (a) submit to NOHFC at the address provided in section 18.1, all Reports using the appropriate form of report set out in Schedule "E" in accordance with the timelines and content requirements set out in the Reports Schedule in Schedule "E", or in a form as specified by NOHFC from time to time;
- (b) submit to NOHFC at the address provided in section 18.1, any other Reports requested by NOHFC in accordance with the timelines and content requirements specified by NOHFC;
- (c) ensure that all Reports are completed to the satisfaction of NOHFC;
- (d) ensure that all Reports are signed on behalf of the Recipient by an authorized signing officer; and
- (e) submit to NOHFC one copy of the Redevelopment Plans (as defined in Schedule "A") electronically or on disc, in Word or such other format as NOHFC may agree, and shall attach one paper copy to the final report required under the Agreement to evidence the completion of the Project in accordance with the Agreement.

8.2 Record maintenance. The Recipient shall keep and maintain for a period of seven years after the expiry or termination of the Agreement:

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

Project.

- 8.3 **Inspection.** NOHFC, its authorized representatives or an independent auditor identified by NOHFC may, at its own expense, upon 24 hours' Notice to the Recipient and during normal business hours, enter upon the Recipient's premises to review the progress of the Project and the Recipient's expenditure of the Funds, and for these purposes NOHFC, its authorized representatives or an independent auditor identified by NOHFC, may:
- (a) inspect and copy the records and documents referred to in section 8.2; and
 - (b) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds and/or Project.
- 8.4 **Disclosure.** To assist in respect of the rights set out in section 8.3, the Recipient shall disclose any information reasonably requested by NOHFC, its authorized representatives or an independent auditor identified by NOHFC, and shall do so in a form reasonably requested by NOHFC, its authorized representatives or an independent auditor identified by NOHFC, as the case may be.
- 8.5 **No control of Records.** No provision of the Agreement shall be construed so as to give NOHFC any control whatsoever over the Recipient's records.
- 8.6 **Auditor General.** For greater certainty, NOHFC's rights under this Article are in addition to any rights provided to the Auditor General pursuant to the *Auditor General Act* (Ontario).
- 8.7 **Audit report.** If NOHFC or the Auditor General believes that there are inaccuracies in, or inconsistencies between, any Request for Funds submitted to NOHFC and the Recipient's financial records and books of account, NOHFC or the Auditor General may request and the Recipient must provide at its own expense an audit report from a public accountant licensed under the laws of Ontario. The audit report must be satisfactory to NOHFC in form and content and address:
- (a) Funds received to date;
 - (b) Eligible Project Costs incurred by the Recipient to date;
 - (c) whether the Eligible Project Costs were incurred in accordance with the Project and the Agreement; and
 - (d) any other financial information pertaining to the Agreement as may be reasonably specified in the request.

ARTICLE 9 CREDIT

- 9.1 **Acknowledge support.** Unless otherwise directed by NOHFC, the Recipient shall, in a form approved by NOHFC, acknowledge the support of NOHFC in any publication of any kind, written or oral, relating to the Project.
- 9.2 **Publication.** If the Recipient publishes any material of any kind, written or oral, relating to the Project, the Recipient shall indicate in the material that the views expressed in the material are

the views of the Recipient and do not necessarily reflect those of NOHFC or the government of Ontario.

- 9.3 **Signage.** At NOHFC's request, the Recipient shall install and maintain in good condition one or more signs or plaques supplied by NOHFC to acknowledge NOHFC's support for the Project in conspicuous and visually unobstructed locations near the Project as approved by NOHFC.

ARTICLE 10 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- 10.1 **FIPPA.** The Recipient acknowledges that 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 the Agreement is subject to disclosure in accordance with that Act.

ARTICLE 11 INDEMNITY

- 11.1 **Indemnification.** The Recipient hereby agrees to indemnify and hold harmless the 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 the Agreement.

ARTICLE 12 INSURANCE

- 12.1 **Recipient's insurance.** The Recipient represents and warrants that it has, and shall maintain for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to the Project would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than \$2,000,000 per occurrence. The policy shall include the following:
- (i) 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 Recipient's obligations under, or otherwise in connection with, the Agreement;
 - (ii) a cross-liability clause;
 - (iii) contractual liability coverage; and
 - (iv) a 30 day written notice of cancellation.
- 12.2 **Proof of insurance.** The Recipient shall provide NOHFC with certificates of insurance, or other proof as may be requested by NOHFC, that confirms the insurance coverage as

provided for in section 12.1. Upon the request of NOHFC, the Recipient shall make available to NOHFC a copy of each insurance policy.

- 12.3 **Compliance with Recipient's insurance.** The Recipient shall comply with all provisions and requirements of any of the Recipient's insurance policies applicable to the Project.
- 12.4 **Third party insurance.** The Recipient shall ensure that any third party sources of funds for the Project and subcontractors retained to perform any part or parts of the Project shall have adequate insurance in place that is appropriate to the Project risks and to the third party.

ARTICLE 13 TERMINATION ON NOTICE

- 13.1 **Termination on Notice.** NOHFC may terminate the Agreement at any time upon giving at least 30 days' Notice to the Recipient.
- 13.2 **Consequences of Termination.** If NOHFC terminates the Agreement pursuant to section 13.1, NOHFC:
- (a) shall have no further obligation to make any payment of Funds;
 - (b) may demand the repayment of any Funds remaining in the possession or under the control of the Recipient, whereupon the amount demanded by NOHFC shall immediately become due and payable; and
 - (c) may determine the Recipient's reasonable Wind Down Costs, and either:
 - (i) permit the Recipient to offset the Wind Down Costs against the amount owing pursuant to subsection 13.2(b); and/or
 - (ii) subject to section 5.3(g) provide Funds to the Recipient to cover the Wind Down Costs.

ARTICLE 14 EVENT OF DEFAULT AND CORRECTIVE ACTION

- 14.1 **Events of Default.** Each of the following events shall constitute an Event of Default:
- (a) if in the opinion of NOHFC, the Recipient has knowingly provided false or misleading information regarding its request for funding or in any communication with NOHFC;
 - (b) if any representation or warranty provided to NOHFC (herein or otherwise) by the Recipient is incorrect in any material respect on the date on which such representation or warranty was made;
 - (c) if in the opinion of NOHFC, the Recipient breaches any term or condition of the Agreement, including failing to do any of the following in accordance with the terms and conditions of the Agreement without the prior written consent of NOHFC:
 - (i) carry out and complete the Project by the Project completion date specified in Schedule "C";

- (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 of the Recipient's operations or its corporate status changes so that it no longer meets one or more of the applicable eligibility requirements of the program under which NOHFC provides the Funds;
- (e) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver;
- (f) if any bankruptcy, reorganization, arrangement or insolvency proceedings for relief under any bankruptcy or similar laws for the relief of debtors is instituted against the Recipient or is consented to by the Recipient, or, if contested by the Recipient, is not dismissed within 30 days;
- (g) the Recipient ceases to operate; or
- (h) a Conflict of Interest that cannot be resolved to NOHFC's satisfaction, acting reasonably.

14.2 **Corrective action.** If an Event of Default occurs, 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 amount of the Funds;
- (d) cancel all further payment of Funds;
- (e) demand the repayment of any Funds remaining in the possession or under the control of the Recipient, whereupon the amount demanded by NOHFC shall immediately become due and payable;
- (f) demand the repayment of an amount equal to any Funds the Recipient used for purposes not agreed upon by NOHFC, whereupon the amount demanded by NOHFC shall immediately become due and payable;
- (g) demand the repayment of an amount equal to any Funds NOHFC provided to the Recipient, whereupon the amount demanded by NOHFC shall immediately become due and payable;
- (h) terminate the Agreement immediately upon giving Notice to the Recipient; and/or

- (i) exercise any other rights or remedies available to NOHFC under this Agreement or applicable law.

14.3 **Opportunity to remedy.** In addition to its rights provided for in section 14.2, NOHFC may provide the Recipient an opportunity to remedy the Event of Default by providing Notice to the Recipient:

- (a) of the particulars of the Event of Default; and
- (b) of the period of time within which the Recipient is required to remedy the Event of Default.

14.4 **Recipient not remedying.** If NOHFC has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 14.3 and:

- (a) the Recipient does not remedy the Event of Default within the time period specified in the Notice;
- (b) NOHFC determines in its sole discretion that the Recipient cannot completely 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 Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to NOHFC,

NOHFC may initiate any one or more of the actions provided for in sections 14.2 (a), (d), (e), (f), (g), (h) and (i).

14.5 **Termination date.** The effective date of any termination under this Article shall be the last day of the Notice period, the last day of any subsequent Notice period or immediately, whichever applies.

ARTICLE 15

PAYMENT BY NOHFC OF AMOUNTS OWING BY RECIPIENT

15.1 **Amounts owing by Recipient and subcontractors.** The 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 the Agreement.

15.2 **NOHFC's right to pay amounts due and unpaid by Recipient or subcontractors.** In the event the Recipient or any of its subcontractors fails to pay when due, all amounts required to be paid by it/its subcontractors to complete the Project in accordance with the Agreement, NOHFC shall have the right, but for greater certainty, no obligation, in addition to and not in substitution for any other right it may have pursuant to the Agreement or otherwise at law or in equity, to pay any amount due and unpaid by the Recipient or its subcontractors and to deduct such amount from any amount due and owing from time to time to the Recipient pursuant to the Agreement together with all costs incurred by NOHFC in connection therewith or to demand the repayment of such amount from the Recipient together with all costs incurred by NOHFC in connection therewith.

ARTICLE 16
COMPLIANCE WITH AGREEMENT AND LAWS

- 16.1 **Compliance with Agreement.** The Recipient shall take all reasonable measures to ensure that its officers, directors, partners, employees, agents, contractors, subcontractors and volunteers are bound to observe the provisions of the Agreement. In all contracts relating to the Project, the Recipient shall include terms and conditions similar to and not less favourable to NOHFC than the terms and conditions of the Agreement to the extent that they are applicable to the subject of the contract.
- 16.2 **Compliance with Laws and Standards.** The Recipient shall take all reasonable measures to ensure that its officers, directors, partners, employees, agents, contractors, subcontractors and volunteers, if any, at all times comply with any and all applicable federal, provincial and municipal laws, ordinances, statutes, rules, regulations and orders. The Recipient shall obtain, at its own expense, all permits from public authorities which may be required in connection with the performance of this Agreement.

ARTICLE 17
REPAYMENT AND SET OFF

- 17.1 **Debt due.** If the Recipient owes any monies, including any Funds, 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 Recipient, and the Recipient shall pay or return the amount to NOHFC immediately unless NOHFC directs otherwise.
- 17.2 **Interest rate.** NOHFC may charge the Recipient interest on any monies owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.
- 17.3 **Set off.** If the Recipient is indebted to NOHFC 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 Recipient under this Agreement and to reduce the total amount of Funds payable to the Recipient by such amount.
- 17.4 **Cheque payable to.** The Recipient shall pay any monies owing to NOHFC by cheque payable to the "Northern Ontario Heritage Fund Corporation" and mailed to NOHFC at the address provided in section 18.1.

ARTICLE 18
NOTICE

- 18.1 **Notice in writing and delivered.** Notice shall be in writing and shall be delivered by personal delivery or courier, mailed by registered mail, or sent by fax or email, and shall be addressed to the Parties respectively as follows, or as either 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: Melanie.Muncaster@ontario.ca

To the Recipient:

The Corporation of the
Town of Fort Frances
320 Portage Avenue
Fort Frances, Ontario P9A 3P9

Attention: Doug Brown, Chief
Administrative Officer

Fax: 807-274-8479

Email: dbrown@fortfrances.ca

- 18.2 **Notice given.** 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 or if such day is not a Business Day, on the first Business Day thereafter. Any Notice given by fax or email 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 sending.
- 18.3 **Postal disruption.** Despite section 18.2, 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 email, personal delivery, courier, or fax.

ARTICLE 19 SEVERABILITY OF PROVISIONS

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

ARTICLE 20 WAIVER

- 20.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 18. Any waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply.

ARTICLE 21 INDEPENDENT PARTIES

- 21.1 **Parties independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of NOHFC or any Indemnified Party and the Recipient shall not take any actions that could establish or imply such a relationship.

ARTICLE 22
ASSIGNMENT OF AGREEMENT OR FUNDS

- 22.1 **No assignment.** The Recipient shall not assign any part of the Agreement or the Funds without the prior written consent of NOHFC which NOHFC may, in its sole discretion, provide or withhold.
- 22.2 **Enurement.** The Agreement shall enure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors and permitted assigns.

ARTICLE 23
GOVERNING LAW

- 23.1 **Governing law.** The 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 the Agreement shall be conducted in Ontario.

ARTICLE 24
FURTHER ASSURANCES

- 24.1 **Agreement into effect.** The Parties shall do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to its full extent.

ARTICLE 25
SURVIVAL

- 25.1 **Survival.** The provisions in Article 1; section 3.2; section 5.1; section 5.2; sections 5.3(a), (d), (e) and (g); Article 8; Article 9; Article 10; Article 11; sections 14.1, 14.2(e), (f), (g) and (i); Article 15; Article 16; Article 17; Article 18; Article 21; Article 23; Article 24; Article 25; Article 26; Schedule "A", Schedule "B" and Schedule "C" shall continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement.

ARTICLE 26
SCHEDULES

- 26.1 **Schedules.** The Agreement includes the following schedules:
- (a) Schedule A - Project Description;
 - (b) Schedule B – Project Budget;
 - (c) Schedule C – Project Plan and NOHFC Claim Schedule;
 - (d) Schedule D – Request for Funds;
 - (e) Schedule E – Reports; and
 - (f) Schedule F – Change Request Form.

ARTICLE 27
ENTIRE AGREEMENT AND MODIFICATION OF AGREEMENT

- 27.1 **Entire Agreement.** The Agreement constitutes the entire agreement between the Parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements.
- 27.2 **Modification of Agreement.** The Agreement may only be amended by a written agreement duly executed by the Parties. If the Recipient wishes to amend the Agreement, the Recipient will complete the appropriate sections of the Change Request Form as set out in Schedule "F" and submit it to NOHFC. NOHFC is under no obligation to consider Change Request Forms submitted after this date. NOHFC may approve or reject all or part of any such change request in its sole discretion and may require the Recipient to enter into a separate amending agreement. In the event NOHFC signs a Change Request Form, this Agreement will be amended accordingly.

ARTICLE 28
BPSAA

- 28.1 **BPSAA.** For the purposes of clarity, if the Recipient is subject to the BPSAA and in the event that there is a conflict between any of the requirements of the Agreement and the requirements of the BPSAA, the BPSAA shall prevail.

ARTICLE 29
FAILURE TO COMPLY WITH OTHER AGREEMENTS

- 29.1 **Other Agreements.** If the Recipient:
- (a) has failed to comply (a "**Failure**") with any term, condition or obligation under any other agreement with NOHFC;
 - (b) has been provided with notice of such Failure in accordance with the requirements of such other agreement;
 - (c) has, if applicable, failed to rectify such Failure in accordance with the requirements of such other agreement; and
 - (d) such Failure is continuing,

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

ARTICLE 30
SIGNATURE

- 30.1 **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.
- 30.2 **Execution by Electronic Means.** This Agreement may be executed by electronic signature and delivered by facsimile 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 words of like import 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 or enforceability as a manually executed signature.

ARTICLE 31 TIME IS OF THE ESSENCE

- 31.1 **Time is of the essence.** Time is of the essence in the performance of obligations under the Agreement.

[Signature page follows]

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

NORTHERN ONTARIO HERITAGE FUND CORPORATION

Melanie Muncaster
Executive Director

Date

THE CORPORATION OF THE TOWN OF FORT FRANCES

Name:
Position:

Date

Name:
Position:

Date

I/We have authority to bind the Recipient.

SCHEDULE “A”

PROJECT DESCRIPTION

1. Project summary

The Recipient will hire a consulting firm to work with the community to complete redevelopment plans (the “**Redevelopment Plans**”) for two properties that were formerly part of the pulp and paper mill’s operations in the heart of the community: (1) the 22.68 acre site known as the Shevlin Wood Yard, and (2) the city lot known as the Nursing Station, strategically located at the gateway to Rainy Lake Square events area in the downtown.

The proposed consulting team will include professional planners, landscape architect, economic analyst and engineering professionals.

The Redevelopment Plans will include a broad public consultation, various development options, economic impact analysis and costing plan.

2. Project purpose

The purpose of the Project is for the Recipient to use the Redevelopment Plans to attract investors to the community, which will ultimately lead to job creation, economic diversification, community development and growth, and increased tourism.

3. Project location

Fort Frances, Ontario

SCHEDULE "B"
PROJECT BUDGET

1. Project Costs Chart

<i>Project cost category</i>	<i>Eligible Project Costs**</i>	<i>Ineligible Project Costs</i>	<i>Total cost</i>
Request for proposal development*	\$0	\$1,000	\$1,000
Consulting Fees	\$145,000	\$0	\$145,000
TOTAL	\$145,000	\$1,000	\$146,000

**The request for proposal was developed by Rainy River Future Development Corporation as an in-kind contribution and is therefore an Ineligible Project Cost.*

***Eligible Project Costs may include travel, meal and accommodation costs that comply with the Travel, Meal and Hospitality Expenses Directive (see section 6.4 of the Agreement). Non-compliant costs are ineligible for funding by NOHFC.*

2. Project Funding Chart

<i>Funding sources</i>	<i>Financing type</i>	<i>Project cost category</i>	<i>Eligible Project Costs</i>	<i>Ineligible Project Costs</i>	<i>Total funding</i>
NOHFC	Conditional contribution	Eligible Project Costs	\$65,000	\$0	\$65,000
FedNor	Conditional contribution	Eligible Project Costs	\$60,000	\$0	\$60,000
Rainy River Future Development Corporation	Cash and in-kind	Eligible Project Costs and Ineligible Project Costs	\$4,000	\$1,000	\$5,000
Recipient	Cash	Eligible Project Costs	\$16,000	\$0	\$16,000
TOTAL:			\$145,000	\$1,000	\$146,000
NOHFC % of total Eligible Project Costs			44.83%		

SCHEDULE "C"

PROJECT PLAN AND NOHFC CLAIM SCHEDULE

(To be completed by the Recipient)

1. Project Plan

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

2. NOHFC Claim Schedule

	Funding Year 1 (ending Mar 31/2021)				Funding Year 2 (ending Mar 31/2022)				
	Apr 1- Jun 30	Jul 1- Sep 30	Oct 1- Dec 31	Jan 1- Mar 31	Apr 1- Jun 30	Jul 1- Sep 30	Oct 1- Dec 31	Jan 1- Mar 31	Total
Eligible Project Costs									
NOHFC claim									

3. Project completion date: _____

SCHEDULE "D"

REQUEST FOR FUNDS FORM

Claim Number:

1. **Project Progress**

<i>Project milestones</i>	<i>% Complete</i>	<i>Comments</i>
TOTAL		

2. **Is this the Recipient's final request for Funds for the Project?**

☐

No

☐

Yes

3. **Request for Funds (Current Claim)**

NOHFC Funds are disbursed on a reimbursement basis. To initiate reimbursement of Eligible Project Costs by NOHFC, the Recipient shall complete the request for Funds form and submit it to NOHFC along with the following:

- (a) a copy of all invoices, or such other evidence satisfactory to NOHFC or its agents, in their sole discretion, of costs incurred itemized in the *Detailed Listing of Transactions* table in section 5 of this form relating to all Eligible Projects Costs claimed in this request for Funds; and
- (b) evidence of payment itemized in the *Detailed Listing of Transactions* table in section 5 of this form relating to all Eligible Project Costs claimed in this request for Funds (cancelled cheques and/or other such evidence satisfactory to NOHFC or its agents, in their sole discretion).

(Request for Funds Form continued on following pages. Please fill out all pages.)

SCHEDULE "D" (CONT'D)**REQUEST FOR FUNDS FORM****4. Eligible Project Costs - Claim status**

Please complete this table below in conjunction with the tables in section 5 of this form.
Only the subtotals from the tables completed in section 5 should be identified in the "Total Eligible Project Costs this request" column of the table below.

Eligible Project Cost category	Total Eligible Project Cost amount	Total Eligible Project Costs of all claims submitted to date (not including this request)	Eligible Project Costs this request	Balance of Eligible Project Costs remaining (after this request)	Table no. if applicable (from section 5 of this form)
Consulting Fees	\$145,000				
TOTAL	\$145,000				
NOHFC Funds (44.83%)	\$65,000				

Total Eligible Project Costs this request: \$ _____ (A)

NOHFC % of Eligible Project Costs 44.83% (B)

Current Payment Request: \$ _____ (C)
(A x B)

(Request for Funds Form continued on following pages. Please fill out all pages.)

SCHEDULE "D" (CONT'D)

REQUEST FOR FUNDS FORM

5. Detailed Listing of Transactions for each Eligible Project Cost category

Please complete one table for each of the Eligible Project Cost categories (in section 4 of this form) for which a claim is currently being made.

Table 1: <Eligible Project Cost category: _____>

Item no.	Date of Invoice	Name of Supplier	Description of Item or Service Purchased	Invoice Number	Amount (net of all rebate(s), credit(s), or refund(s), where applicable)	Payment Reference (Cheque No.)
1						
2						
3						
				Subtotal		

Table 2: <Eligible Project Cost category: _____>

Item no.	Date of Invoice	Name of Supplier	Description of Item or Service Purchased	Invoice Number	Amount (net of all rebate(s), credit(s), or refund(s), where applicable)	Payment Reference (Cheque No.)
1						
2						
3						
				Subtotal		

(Request for Funds Form continued on following pages. Please fill out all pages.)

SCHEDULE "D" (CONT'D)

REQUEST FOR FUNDS FORM

6. Certification

Must be completed for all requests for Funds.

On behalf of the Recipient, I certify that:

1. the costs for which reimbursement is requested in line (A) above have been incurred and actually paid for by the Recipient;
2. the costs being claimed in this form are all Eligible Project Costs only (as that term is defined in the Agreement);
3. if the costs being claimed in this form are for supplies, equipment or services, the Recipient has acquired such supplies, equipment or services through a process that promotes the best value for money;
4. the representations and warranties set forth in the Agreement are true and correct in all material respects on the date set out below;
5. no Event of Default has occurred as of the date set out below; and
6. all of the Recipient's obligations to date, as set out in the Agreement, have been satisfied.

Signature:

Date:

Name of signatory:

Title:

I have authority to bind the Recipient.

SCHEDULE “E”

REPORTS

REPORTS SCHEDULE

Name of Report	Due Date(s)	Format and content requirements
1. Annual Report	Each anniversary of Effective Date	Form of Annual Report in Schedule “E”
2. Final Report	Attached to final Request for Funds completed and submitted to NOHFC	Form of Final Report in Schedule “E”, together with one copy of the Redevelopment Plans, as set out in subsection 8.1(e) of the Agreement

SCHEDULE "E" (CONT'D)

REPORTS

FORM OF ANNUAL REPORT

1. **Progress of Project:** Have the milestones/activities for this time period been completed? If so, please provide a detailed explanation of what they are and how they have been completed. If not, please provide a detailed explanation why, how this affects the Project in the future and how the Project will be brought back into compliance with the Project Plan.

2. **Financial information:** Have expenditures been in accordance with the Project Budget, the Project Plan and the NOHFC Claim Schedule? If so, please set out what the expected Eligible and Ineligible Project Costs for this time period were compare them with the actual Eligible and Ineligible Project Costs in a financial summary. If not, please provide the information requested above together with an explanation of why the expenditures do not match the expected Eligible and Ineligible Project Costs and how this may affect the Project in the future.

3. **Other performance measures:** Have the objectives of the Project been achieved to date? Please describe the economic activity that has resulted in a benefit to Northern Ontario to date (number of jobs created / sustained and Project contributor funding contributions).

Signature: _____

Date: _____

Name of signatory: _____

Title: _____

I/We have authority to bind the Recipient.

SCHEDULE "E" (CONT'D)

REPORTS

FORM OF FINAL REPORT

1. **Project Completion:** Have the milestones/activities as set out in this Agreement been completed? If so, please provide a detailed explanation of what they are and how they have been completed. If not, please provide a detailed explanation why and how this affected the overall Project.

2. **Financial information:** Have expenditures been in accordance with the Project Budget, the Project Plan and the NOHFC Claim Schedule? If so, please set out what the expected Eligible and Ineligible Project Costs were and compare them with the total actual Eligible and Ineligible Project Costs in a financial summary. If not, please provide the information requested above together with an explanation of why the expenditures did not match the expected Eligible and Ineligible Project Costs and how this affected the Project.

3. **Other performance measures:** Have the objectives of the Project as set out in this Agreement been achieved? Please describe the economic activity that has resulted in a benefit to Northern Ontario (actual number of jobs created / sustained and final Project contributor funding contributions). If the Project objectives were not achieved, please explain.

Signature: _____

Date: _____

Name of signatory: _____

Title: _____

I/We have authority to bind the Recipient.

SCHEDULE "F"

CHANGE REQUEST FORM

Please complete all appropriate sections (to be completed by Recipient)

1. ☐ Amendment to NOHFC Claim Schedule

(For a requested amendment of \$100,000 or more in any Quarter)

Indicate previous NOHFC Claim Schedule and the requested amended NOHFC Claim Schedule. Insert additional years, if required and provide the reasons for the requested amendment in the box below.

	<i>Funding Year 1 (ending Mar 31/20)</i>				
	<i>Apr 1- Jun 30</i>	<i>Jul 1- Sep 30</i>	<i>Oct 1- Dec 31</i>	<i>Jan 1- Mar 31</i>	<i>Total</i>
Previous					
New					

	<i>Funding Year 2 (ending Mar 31/20)</i>				
	<i>Apr 1- Jun 30</i>	<i>Jul 1- Sep 30</i>	<i>Oct 1- Dec 31</i>	<i>Jan 1- Mar 31</i>	<i>Total</i>
Previous					
New					

Reasons for requested amendment to NOHFC Claim Schedule:

2. ☐ Changes in Project Plan

(Complete where the Project milestones or their timing changes)

Indicate previous Project milestones and timing, the requested amended milestones and/or timing and reasons for the requested amendment in the box below.

<i>Project milestones</i>		<i>Timing</i>			
		<i>Start (month/ year)</i>		<i>End (month/ year)</i>	
Previous	New	Previous	New	Previous	New

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

SCHEDULE “F” (CONT’D)
CHANGE REQUEST FORM

Reasons for requested amendment to the Project Plan:

3. ☐ Amendment to Project completion date

(Complete where an amendment to the Project completion date is requested.)

Indicate the previous Project completion date, the requested Project completion date and provide reasons for the requested amendment in the box below.

Current Project completion date: _____

Requested Project completion date: _____

Reasons for requested amendment to the Project completion date:

4. ☐ Transfer of costs between Project Cost Categories

Indicate the requested transfer of amounts between cost categories set out in the Project Costs Chart (or in most recent Change Request Form agreed to by NOHFC) and provide reasons for the requested amendment in the box below.

Project Cost Category	Total Project Costs	
	PREV.	NEW
TOTAL		

Reasons for requested transfer of amounts between Project cost categories:

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

SCHEDULE "F" (CONT'D)

CHANGE REQUEST FORM

5. ☐ Other amendments to the Agreement

Indicate other amendment(s) being requested and the reasons for the requested amendment(s):

6. *Acknowledgement*

The Recipient hereby requests the aforementioned amendment(s) to the Agreement and certifies that the information provided to support the request is accurate. The Agreement is accordingly amended upon execution of this form by NOHFC. All other terms and conditions of the Agreement remain in full force and effect.

**THE CORPORATION OF THE
TOWN OF FORT FRANCES**

Print Name:

Position:

I have authority to bind the Recipient.

Date:_____

NORTHERN ONTARIO HERITAGE FUND CORPORATION

Name:

Position:

Date:_____