

City Funding Agreement

THE AGREEMENT is effective as of the **XXXXXX** (Effective Date).

BETWEEN:

THE CORPORATION OF THE CITY OF SAULT STE. MARIE

(hereinafter referred to as the "City")

-and-

XXXXXX

(hereinafter referred to as the "Recipient")

WHEREAS the City Council has passed a resolution to contribute funding to the above noted recipient on a claims basis;

AND WHEREAS the parties have mutually agreed to the covenant and funding as set out in this Agreement;

NOW THEREFORE the parties hereto agree as follows:

1.0 Term

The Agreement will commence on the Effective Date and will expire twelve (12) months after:

- i) The completion of the project on insert **XXXXXX**; or
- ii) Upon the date on which all amounts due to the Recipient by the City under this Agreement, have been paid in full.

Whichever is later, unless terminated by the City pursuant to the terms contained herein.

Upon the expiry of the Agreement, the Recipient shall follow the provisions of Section 3.5 of this Agreement.

2.0 Use of Funds

The Recipient acknowledges and agrees to the following:

- i. To use the Funds solely for the activities and/or services eligible for funding as set out in Annex "A" and that the City retains the right to assess the Recipient's use of Funds at any time; and
- ii. That the amount of Funds available to it pursuant to this Agreement is determined by calculating the actual costs to the Recipient and subtracting any income including taxes, rebates, other grants, credits or refunds, for which the Recipient has received, will receive, or is eligible to receive during the Term.

3.0 Funds Provided

Subject to the terms and conditions of the Agreement, the City shall provide Funds to the Recipient in respect to the Project in the amount not exceeding the lesser of:

- i. XXXXX
- ii. 100% of the incurred Eligible & Supported Costs of \$XXX of the Project outlined in Annex A

The Recipient acknowledges that:

- i. It is not eligible to receive any funding or grants from any City source in addition to the Funds agreed to herein for the Term of the Agreement save and except for Municipal Tax Rebate Programs and City Council approved special grant programs; and
- ii. Any and all amounts owing to the City must be paid in full before the Funds will be released.

3.1 Use of Funds

The Recipient shall use the Funds solely and exclusively to support the Eligible and Supported Costs of the Project as detailed in Annex B and shall carry out the Project in a diligent and professional manner.

3.2 Funds upon Expiry of Agreement

The Recipient shall, upon expiry of the Agreement or upon termination of the Agreement by the City, forthwith return to the City any remaining Funds in its possession using a method of payment that is agreeable to the City.

3.3 Repayment of Overpayment

If at any time the City provides Funds to the Recipient in an amount excess to that which the Recipient is entitled to under the Agreement, the City may:

- i. Deduct an amount equal to the excess Funds from any further installments; or
- ii. Demand that the Recipient repay an amount equal to the excess Funds to the City, wherein the Recipient shall forthwith comply.

3.4 Accounting Records

The City retains the right to review or audit the Recipient's accounting records at any time and the Recipient shall provide full access to any and all such records as requested by the City.

The recipient shall maintain all financial records relating to the project for at least seven (7) years after the end of the agreement.

3.5 Reports

The Recipient shall:

- i. Submit to the City all reports and documents in accordance with the timelines and content requirements set out in the Reports Annex C.
- ii. Ensure that all Reports are signed on behalf of the Recipient by an authorized signing officer; and
- iii. Present to City Council a final report following the completion of the project on a date specified by the City including but not limited to a summary of its funding, revenue and expenses, and a summary of the impact that the City funding has had, if any, on fulfilling the mandate of the organization.

4.0 Total Government and Other Sources of Funding

- i) The Recipient hereby confirms that for the purpose of this Project, the following additional sources of government funding including without limitation, federal, provincial, municipal, or local government assistance has been approved or received:

| | |
|--------------------------|---------------|
| City of Sault Ste. Marie | XXXXXX |
| NOHFC (If applicable) | 0 |
| Fednor (If applicable) | 0 |
| Other (If applicable) | 0 |
| Recipient | 0 |
| TOTAL | XXXXXX |

5.0 Procurement

5.1 The Recipient shall be responsible and accountable for the procurement of goods, services or Assets related to the Project in accordance with a written policy.

5.2 The Recipient shall favour a competitive process for the procurement of goods, Assets and services for the Project that enhances access, transparency, competition and fairness and results in best value. The Recipient agrees to ensure that a reasonable number of suppliers are given an opportunity to bid and should avoid

situations where there may be a bias toward awarding a contract for goods, services or Assets for the Project to a specific person or entity.

5.3 The Recipient shall maintain procurement files containing all relevant procurement documentation including, without being limited to, purchase requisitions, tender documents or records of telephone bids, tender evaluations, contracts or purchase orders, invoices, and shipping and receiving documentation. Such procurement files will be maintained for at least seven (7) years after the end of the agreement.

5.4 Eligible Expenses must be invoiced directly to the recipient. Expenses which are invoiced to any party that is not the recipient will not be eligible for reimbursement.

6.0 Claims and Payments

Subject to the terms and conditions of the Agreement, the City shall reimburse the Recipient for Eligible Project Costs paid by the Recipient up to the amount of the maximum funds. The City will accept two claims for this project; one during the interim of the project, and a final claim at the completion of the project.

6.1 Payment Procedures

Payments will be made on the basis of documented claims for reasonable eligible and supported costs incurred. To initiate reimbursement of Eligible and Supported Costs, the Recipient shall submit:

- i. Copies of vendor invoices, proof of payment, spreadsheet detailing applicable HST rebates, and copies of government funding claims, including but not limited to FedNor or NOHFC.
- ii. A certification, by an authorized signatory of the Recipient, with respect to the accuracy of the claim and submitted documentation and with respect to its compliance with the terms and conditions of the Agreement.
- iii. A completed electronic funds transfer information form which will enable the City to deposit the Funds into the Recipient's designated bank account by way of electronic funds transfer;
- iv. Any other documentation in support of the claim as may be required by the City.

6.1.1. The City shall review and approve the documentation submitted by the Recipient following the receipt of the Recipient's claim, or will notify the Recipient of any deficiency in the documentation submitted which the Recipient shall immediately take action to address and rectify.

6.1.2. Subject to the maximum Contribution amounts set forth in subsection 3.0 and all other conditions in this Agreement, the City shall pay to the Recipient the City's portion of the Eligible and Supported Costs set forth in the Recipient's claim in accordance with the City's payment practices.

6.1.3. The City may request at any time that the Recipient provide satisfactory evidence to demonstrate that all Eligible and Supported Costs claimed have been paid.

6.1.4. The City may require that any claim submitted for payment of the Contribution be certified by the Recipient's external auditor or by an auditor approved by the City.

6.2 Final Claim Procedures

In addition to the requirements set out in subsection 6.1, with respect to the Recipients' final claim for any Eligible and Supported Costs, the Recipient shall submit to the City in scope and detail:

- i. A final statement of total Project costs;
- ii. A statement of the total funding provided from all sources for the Project, including total government funding received;
- iii. A final Activity Report on the Project;
- iv. A final Results Report on the outcomes and impacts of the Project for evaluation purposes; and
- v. A certification, by an authorized signatory of the Recipient, that this is the final claim for payment and includes all final Eligible and Supported costs incurred and Paid submitted for payment.

The Recipient shall submit the final claim for Eligible and Supported Costs no later than six (6) months after the completion date or early termination date of the project. The City shall have no obligation to pay any claims submitted after that date.

7.0 Recognition

Recognition, if applicable, shall be in the following means:

The City logo is to be included in project reports and appropriate marketing products. (If applicable)

8.0 Indemnity and Limitation of Liability

8.1 This Agreement is a Contribution Agreement only, not a contract for services or a contract of service or employment, or leased space, and nothing in this Agreement, or the parties' relationship or actions is intended to create, nor shall be construed as creating, a partnership, employment or agency relationship between the City and the Recipient. This Recipient is not in any way authorized to make a promise, agreement or contract or to incur any liability of behalf of the City, nor shall the Recipient make a promise, agreement or contract and incur any liability on behalf of the City, and the Recipient shall be solely responsible for any and all payments and deductions required by applicable laws.

8.2 The Recipient shall at all times indemnify and save harmless the City, its officials, employees and agents, from and against all claims and demands, losses, costs, damages, actions, suits or other proceedings (including, without limitation, those relating to injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights) by whomsoever brought or prosecuted, or threatened to be brought or prosecuted, in any manner based upon, caused by, or arising directly or indirectly from:

- A) the Project, its operation, conduction or any other aspect thereof;
- B) the performance or non performance of this Agreement, or the breach or failure to comply with any term, condition, representation or warranty of this Agreement, by the Recipient, its officers, employees and agents, or by a third party or its officers, employees, or agents; or
- C) any omission or other wilful or negligent act or delay or the Recipient or third party and their respective employees, officers, or agents,

except to the extent to which such a claim and demands, losses, costs, damages, actions, suits, or other proceedings relate to the wilful act or omission of an official, employee, or agent of the City in the performance of its duties.

8.3 The City shall have no liability under this Agreement except for payments of the Contribution in accordance with the provisions of this Agreement. Without limiting the foregoing, the City shall not be liable for any direct, indirect, special or consequential damages, or damages for loss of revenues or profits of the Recipient.

The City, its agents, employees and servants will not be held liable in the event the Recipient enters into loan, a capital lease or other long-term obligation in relation to the Project for which the Contribution is provided.

9.0 Default

The Recipient agrees that any default to the terms and conditions contained herein by the Recipient shall result in the immediate stoppage of payments from the City and may result in the immediate termination of the Agreement. The Recipient further agrees that a default arising from any use of Funds that is contrary to the terms of this Agreement as determined by the City and may also result in the repayment of Funds to the City in an amount proportionate to the Funds that were improperly used in a method of payment specified by the City. Each of the following events shall constitute an **"Event of Default"**:

- ii) If in the opinion of the City, the Recipient has knowingly provided false or misleading information regarding its request for funding or in any communication with the City;
- iii) If in the opinion of the City, 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 Agreement:

1. Carry out the Project
 2. Complete the project by the expiry date
 3. Use or spend Funds; and/or
 4. Provide Reports
- iv) 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 the City provides the Funds;
- v) 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;
- vi) If any bankruptcy, reorganization, arrangement or insolvency proceedings for relief under any bankruptcy or similar laws for the relief of debtors are instituted against the Recipient or is consented to by the Recipient, or, if contested by the Recipient, is not dismissed within 30 days;
- vii) The Recipient ceases to operate; or
- viii) A Conflict of interest that cannot be resolved to the City's satisfaction, acting reasonable.

9.1 If an Event of Default occurs, the City may, at any time, take one or more of the following actions:

- i) Initiate any action the City considers necessary in order to facilitate the successful continuation or completion of the Project;
- ii) Suspend the payment of Funds for such period as the City determines appropriate;
- iii) Reduce the amount of the Funds;
- iv) Cancel all further payment of Funds;
- v) Demand the repayment of any Funds remaining in the possession or under the control of the Recipient, whereupon the amount demanded by the City shall immediately become due and payable;
- vi) Demand the repayment of an amount equal to any Funds the Recipient used for purposes not agreed upon by the City, whereupon the amount demanded by the City shall immediately become due and payable;
- vii) Terminate the Agreement, effective immediately, upon giving written Notice to the Recipient; and/or
- viii) Exercise any other rights or remedies available to the City under this Agreement or applicable law.

10.0 Termination

The City may, at its sole discretion at any time and for any reason, cancel this Agreement on six (6) months' written notice to the Recipient. In the event of such early termination of this Agreement, the Recipient acknowledges that same shall result in the immediate stoppage of any future payment of Funds from the City up to the date of termination.

In the event that the City elects to terminate the Agreement as a result of an Event of Default on the part of the Recipient, as set out in Section 9.0 above, the sole determination of which shall be made by the City in its sole discretion, the remedies, terms and conditions set out in Section 9.0 and Section 9.1 herein shall apply.

11.0 Notice

Any notice pursuant to any of the provisions of this Agreement shall be given in writing addressed:

In the case of notice to the City of SSM:

Deputy CAO, Community Development & Enterprise Services
The Corporation of the City of Sault Ste. Marie
99 Foster Drive
Sault Ste. Marie, ON P6A 5N1

In the case of notice to the Recipient:

XXXXXXXXx

12.0 General Provisions

12.1 General Expenses Incurred

Any charges or expenses incurred by either party in preparation for or as a result of this Agreement or the parties' meetings and communications or any work done hereunder are to the sole account of the party incurring same unless otherwise agreed in writing.

12.2 Applicable Law

This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

12.3 Assignment

The Recipient shall not assign or transfer this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld.

12.4 Entire Agreement

There are no covenants, representations, warranties, agreements or other conditions expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this **Agreement**, save as expressly set out or incorporated by reference herein. This Agreement constitutes the entire agreement of the parties and supersedes

all prior representations, proposals, discussions, and communications, whether oral or in writing. This Agreement may be modified only by written instrument signed by both parties.

12.5 Counterparts

This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and shall be effective as of the formal date hereof.

14.0 Execution of Agreement

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day, month and year first above written.

THE CORPORATION OF THE CITY OF SAULT STE. MARIE

By: _____ Date _____

Name and Title _____

I have the authority to bind the Corporation.

XXXXXX

By: _____ Date _____

Name and Title _____

I have the authority to bind the Corporation.

ANNEX "A" PROJECT DESCRIPTION**1. PROJECT DESCRIPTION**

XXXX

2. THE KEY PERFORMANCE TARGETS ARE:**THE KEY PERFORMANCE TARGETS ARE:****Visitor Attendance and Origin (projected)**

Projected Numbers

| |
|---|
| Local Participation |
| Regional Visitors |
| Ontario Visitors |
| National Visitors (Canada) |
| International Visitors (Outside of Canada) |
| TOTAL VISTORS (40km+) |

Economic Impact (based on \$175 per visitor per day) XXXXX**Season (Peak, Shoulder, Low) Low****A) Project Dates:**

- a. Commencement Date –XXXX
- b. Completion Date – XXXX

ANNEX "B" PROJECT COSTS AND FINANCING

RECIPIENT'S NAME: SOO FINNISH NORDIC SKI CLUB

ALLOCATION: \$XXXXXX

The Recipient acknowledges this is a claims basis payment for Eligible Projects with Eligible Costs

ELIGIBLE GRANT EXPENDITURES

- XXXXX

* Eligible Costs include the amount of Harmonized Sales Tax, (HST), net of any refund or eligible credits due from the Canada Revenue Agency.

** Upon request, the Recipient will provide copies of invoices for other cost categories to monitor overall Project spending and the City's share of eligible and total costs.

ANNEX "C" REPORTING

The following documents shall be filed with the Finance Department of the City:

1. Claims for Eligible and Supported costs incurred in accordance with 6.1
2. Final claims procedures in accordance with 6.2

