

FUNDING AGREEMENT
TOURISM RECOVERY AND INNOVATION PROGRAM (TRIP)
- CAPITAL PROJECTS

This Agreement made this day of **[insert date]**, 2021

BETWEEN:

ONTARIO'S HIGHLANDS TOURISM ORGANIZATION (OHTO).

(hereinafter referred to as "**OHTO**")

-and-

[auto populate Business Legal Name from General Details form]

(hereinafter referred to as the "**Recipient**")

WHEREAS **[auto populate Business Legal Name from General Details form]** is recognized as an Ontario's Highlands-based organization that will provide economic benefits to the community;

AND WHEREAS OHTO (on behalf of Her Majesty the Queen in Right of Canada) has agreed to provide funding to the Recipient pursuant to the conditions outlined within this Agreement;

AND WHEREAS the Recipient accepts funding from the OHTO upon the terms and conditions set out in this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, OHTO and the Recipient agree as follows:

1. TERM OF AGREEMENT

This Agreement shall commence on the date the parties execute this Agreement and shall remain in force until **December 31, 2021** (the "**Term**"), unless terminated earlier as set out hereafter.

2. FUNDING CONTRIBUTION / USE OF FUNDS

Subject to all other provisions of this Agreement, OHTO agrees to provide a funding contribution to the Recipient in the amount of **[insert awarded amount]**. The said funding payments shall hereinafter be referred to as the "Funding Contribution".

The Recipient shall apply the Funding Contribution only to the services and activities as set out in Schedule "A" (the "Purpose of Funding"). The said services and funding shall hereinafter be referred to as the "Eligible Project". In the event any of the Funding Contribution is not applied to the Eligible Project, such amounts shall be immediately repayable to OHTO.

3. OHTO IS NOT AN EMPLOYER

- (a) The Recipient, its employees, agents and volunteers, shall not be deemed to be employees of OHTO for any purpose and will not be entitled to any employee benefits offered by OHTO to its employees, nor will the Recipient, its agents, employees or volunteers be entitled to any statutory benefits or protections granted to employees.
- (b) Nothing in this Agreement shall constitute or be construed to create a partnership, joint venture or the relationship of master and servant as between OHTO and the Recipient and the Recipient shall not hold itself out as an employee or partner of the OHTO.

4. REPORTING REQUIREMENTS

Successful applicants will be required to submit a Post-Award Report, which will contain a brief summary of the project, including a synopsis of how the project helped to protect jobs and visitor experience. Recipient shall provide such information within thirty (30) days of such request.

5. AUDIT REQUIREMENTS

- (a) The Recipient shall keep and make available proper books of account and records of the financial management of the Funding Contribution provided under this Agreement for a minimum of 1 year after the date of completion of the Eligible Project and in accordance with generally accepted business and accounting practices;
- (a) The Recipient shall, within five (5) days of receiving a request from OHTO, make its books, accounts and records available for inspection and audit by representatives of OHTO and/or officers, officials, employees and agents of Her Majesty to ensure compliance with the terms and conditions of this Agreement;
- (b) The Recipient shall make available to OHTO any information pertaining to its programs or governance structure that may be requested by OHTO that is not subject to confidentiality or non-disclosure agreements with third parties; and
- (c) The Recipient authorizes officers, officials, employees and agents of OHTO and Her Majesty at all reasonable times to inspect and copy any records, invoices and documents in the possession or under the control of the Recipient which relate to the Funding Contribution.
- (d) The audit requirements in this Article 5 shall survive for three (3) years beyond the expiration or termination of this Agreement and any renewals hereof.

6. RESIDUAL FUNDS

The Recipient agrees that any portion of the Funding Contribution that remains unused at the end of the Term or at the termination of the Agreement shall remain the property of OHTO and the Recipient shall repay any such amount to OHTO upon request.

7. NON-ASSIGNMENT

The Recipient shall not assign the whole or any part of the Funding Contribution, including the sale or disposal of any assets acquired, constructed, rehabilitated or improved with the funds provided under the Agreement, without the prior written consent of OHTO. If the Recipient does assign the whole or any part of the Funding Contribution without written consent of OHTO, the amount assigned shall immediately be repaid to OHTO.

8. DEFAULT AND TERMINATION

Prior to the expiration of the Term, or any renewal thereof, OHTO may terminate this Agreement upon thirty days (30) written notice in the event that any of the following occurs:

- (a) The Recipient becomes bankrupt or insolvent or goes into receivership or becomes subject to the provisions of the *Bankruptcy and Insolvency Act, 2001* R.S.C. 1985, c.B-3 or any other Act for the benefit of creditors, or goes into liquidation either voluntarily or under an order of a court of competent jurisdiction or makes a general assignment for the benefit of its creditors or otherwise acknowledges its insolvency;
- (b) The Recipient suspends or fails to carry on in a responsible manner its business obligations for a time period exceeding two (2) continuous months;
- (c) A court of competent jurisdiction determines that the Recipient, at the time that OHTO provided the whole or any part of the Funding Contribution, lacked the legal capacity or was not legally entitled to receive such Funding Contribution, or by so doing was in violation of any applicable law or regulation;
- (d) Any material representations made to OHTO or its representatives by the Recipient contained herein or in any reporting requirements are substantially false;
- (e) There is a significant adverse material change in the Recipient's ability to provide the Services pursuant to this Agreement;
- (f) A court of competent jurisdiction determines that the Recipient violated any legislation or municipal by-law related to the Funding Contribution;
- (g) The Recipient fails to provide OHTO with a completed Post-Award Report as described in section 4 of this Agreement without notifying OHTO of the reason for the delay; or
- (h) The Recipient uses the Funding Contribution for a purpose other than that of the Eligible Project as set out in this Agreement or otherwise violates any terms or conditions of this Agreement and has not remedied or commenced to remedy and thereafter diligently pursued the remedy of such default, within thirty (30) days from the date of receiving written notice thereof from OHTO.

9. INDEMNITY AND LIABILITY

- (a) The Recipient shall indemnify and save harmless OHTO from any claims, demands, losses, costs, charges, actions and other proceedings, made or brought against, suffered by or imposed upon OHTO or its property in respect of any loss, damage or injury, including injury resulting in death, to any person or property directly or indirectly arising out of, resulting from or sustained by reason of the negligence of the Recipient, its employees, agents, volunteers, officers or directors, or the Recipient's non-performance of its obligations under this Agreement.

- (b) OHTO shall not be liable to the Recipient or any other party in relation to the Funding Contribution and/or the Eligible Project provided by the Recipient pursuant to the terms of this Agreement and the parties agree that the Recipient shall not be deemed an agent of OHTO for any purpose under this Agreement. The Recipient shall be solely responsible for the payment of any individuals employed, engaged or retained by the Recipient for the purpose of assisting it in the fulfilment of its obligations under this Agreement.

- (c) The Recipient shall at all times indemnify and save harmless OHTO, Her Majesty, its officers, officials, employees and agents, from and against all claims and demands, losses, costs, damages, actions, suits or other proceedings (including, without limitation, those relating to injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights) by whomsoever brought or prosecuted, or threatened to be brought or prosecuted, in any manner based upon or occasioned by any injury to persons, damage to or loss or destruction of property, economic loss or infringement of rights, caused by, or arising directly or indirectly from:
 - (i) the Eligible Project, its operation, conduct or any other aspect thereof;

 - (ii) 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;

 - (iii) the design, construction, operation, maintenance and repair of any part of the Eligible Project; and

 - (iv) any omission or other wilful or negligent act or delay of the Recipient and their respective employees, officers, or agents, except to the extent to which such claims and demands, losses, costs, damages, actions, suits, or other proceedings relate to the negligent act or omission of an officer, official, employee, or agent of OHTO or Her Majesty, in the performance of their duties.

- (d) OHTO and Her Majesty shall have no liability under this Agreement, except for payments of the Funding Contribution, in accordance with and subject to the provisions of this Agreement. Without limiting the generality of the foregoing, OHTO and officers, officials, employees and agents of Her Majesty shall not be liable for any direct, indirect, special or consequential damages, or damages for loss of revenues or profits of the Recipient.

10. CONFLICT OF INTEREST AND CONFIDENTIAL INFORMATION

- (a) The Recipient, or any of its subcontractors and any of their respective advisors, directors, officers, employees, agents and volunteers shall not engage in any activity or provide any services to OHTO where such activity or the provision of such services creates a conflict of interest (actually or potentially in the sole opinion of OHTO acting reasonably) with the provision of the Eligible Project pursuant to this Agreement.
- (b) If during the term of this Agreement an actual or potential conflict of interest arises, the Recipient shall disclose to OHTO without delay such actual or potential conflict of interest and if a significant conflict of interest is deemed to exist, the Recipient shall, at OHTO's request, take such steps as are necessary to remove the conflict of interest.
- (c) "**Confidential Information**" is defined as any information disclosed to the Recipient by OHTO that is marked proprietary or confidential, or that would logically be considered proprietary or confidential under the circumstances of its disclosure. All Confidential Information shall, during the Term of this Agreement and, at all times thereafter, be held by the Recipient in a fiduciary capacity and solely for the benefit of OHTO. The Recipient further agrees that it will not, either during the term of this Agreement or at any time thereafter, use for their own purposes or outside of the scope of this Agreement, any such Confidential Information or disclose, divulge or otherwise, communicate, whether orally, in writing or otherwise, to any person or persons, any such Confidential Information, unless such information has been generally known to the public at large.
- (d) The Recipient assures that, where lobbyists are utilized, they are registered in accordance with the Lobbying Act and that no actual or potential conflict of interest exists nor any contingency fee arrangement.
- (e) The Recipient assures that any former public office holder that derives benefit from this Agreement will be in compliance with the Conflict-of-Interest Act and the Values and Ethics Code for the Public Sector.
- (f) A breach of this section by the Recipient shall entitle OHTO to terminate the Agreement, in addition to any other remedies that OHTO has in the Agreement, in law or in equity.

11. INSURANCE

- (a) The Recipient shall obtain and maintain during the Term of the Agreement commercial general liability insurance acceptable to OHTO, which shall be subject to limits of not less than two million (\$2,000,000) inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof;
- (b) The commercial general liability insurance shall include coverage for:
 - (i) Premises, property and operations liability;
 - (ii) Broad form products and broad form completed operations liability;
 - (iii) Blanket contractual liability;
 - (iv) Cross liability;

- (v) Personal and advertising injury liability;
 - (vi) Severability of interest clause;
 - (vii) Owner's and contractor's protective coverage;
 - (viii) Employers Liability;
 - (ix) Non-Owned automobile liability; and
 - (x) Occurrence property damage.
- (c) The commercial general liability insurance policies shall be in the name of the Recipient and upon request, a certificate of insurance shall be provided naming OHTO, as an additional insured thereunder;
- (d) The liability insurance policies shall contain upon request an endorsement to provide all named insured and additional insured parties with thirty (30) days prior written notice of cancellation or of a material change that would diminish coverage;
- (e) With respect to the Recipient providing professional services with any exposure to errors and omissions claims, The Recipient shall maintain Professional Liability Insurance with a policy limit for each single claim of not less than \$1 million; and
- (f) Evidence of insurance satisfactory to OHTO shall be provided prior to the release of any funds.

12. OCCUPATIONAL HEALTH AND SAFETY AND WORKPLACE SAFETY AND INSURANCE ACT

- (a) The Recipient shall be responsible, where applicable, for the health and safety of its workplace and be in compliance with the provisions of the Occupational Health and Safety Act, R.S.O. 1990. c.O.1, as amended, and its regulations or any successor legislation ("OHSA") and the requirements under the Workplace Safety and Insurance Act, S.O. 1997, c.16, Sch. A ("WSIA");
- (b) At any time during the Term of this Agreement, the Recipient shall, when requested by OHTO, provide evidence of compliance by itself and/or its subcontractors (whichever is applicable) with respect to the WSIA, and failure to provide satisfactory evidence shall result in payment being held by OHTO until OHTO has received satisfactory evidence.

13. TERRITORIAL DELIVERY OF SERVICES

The Recipient shall ensure that the beneficiaries of the Eligible Project will be the businesses and residents of Ontario's Highlands represented by the geographical boundaries of RTO-11 as established by the Province of Ontario.

14. CHANGES TO FUNDING

OHTO may terminate or reduce the Funding Contribution at its sole discretion in the event of any of the following circumstances:

- (a) The Eligible Project is cancelled or delayed;

- (b) The Recipient fails in a significant way to meet its own stated objectives and standards or fails to execute its confirmed program of services and activities as assessed through the evaluation process;
- (c) The Recipient undergoes significant disruption in service due to changes in its governance structure and control without the prior knowledge of OHTO and there is no satisfactory plan to address these issues;
- (d) The Recipient fails to meet its obligations related to the Funding Contribution or the Eligible Project and/or fails to provide OHTO with the required reports stipulated in section 2 in a timely manner;
- (e) The Recipient fails to provide OHTO with a deficit reduction plan within sixty (60) days of receiving such a request from OHTO.

In the event OHTO terminates or reduces the Funding Contribution in accordance with this Article 14 it shall provide written notice to the Recipient of same, accompanied by a statement of any amounts owing by the Recipient to OHTO as a result of such termination or reduction. The Recipient shall repay any such amounts to OHTO within thirty (30) days of receipt of notice of same. For further certainty, the fact that the Funding Contribution or any portion thereof, has been spent or committed by the Recipient in no way derogates from the obligation of the Recipient to make repayment in full of same.

15. LIAISING RELATIONSHIP AND COMMUNICATION OF INFORMATION BETWEEN OHTO AND THE RECIPIENT

- (a) The Executive Director from OHTO will act as a liaison officer to the Recipient for matters relating to this Agreement; and
- (b) The Recipient will reasonably inform the appointed OHTO representative of any new and significant matters related to this Agreement.

16. RIGHT OF EARLY TERMINATION

- (a) OHTO may terminate this Agreement for convenience at any time upon not less than twenty (20) days written notice of its intention to terminate;
- (b) The Recipient may terminate this Agreement for convenience at any time upon not less than twenty (20) days written notice of its intention to terminate;
- (c) In the event of a termination notice being given by OHTO:
 - (i) The Recipient shall make no further commitments in relation to the use of the Funding Contribution provided under this Agreement and shall cancel or otherwise reduce, to the extent possible, the amount of any outstanding commitments in relation to the Funding Contribution;
 - (ii) No damages or further compensation will be payable by OHTO as a result of the termination and,

- (iii) The Recipient shall repay any portion of OHTO's Funding Contribution that remains unused at the date of termination to OHTO.
- (d) In the event of a termination notice being given by the Recipient, the Recipient shall repay the full amount of the Funding Contribution to OHTO within thirty (30) days of the issuance of the termination notice.

17. DISPUTE RESOLUTION / ARBITRATION

- (a) All questions, controversy, claims or disputes arising out of or in connection with this Agreement shall be negotiated by the parties acting in good faith. Failing the successful negotiation of any dispute, all disputes shall be finally settled by arbitration in accordance with the Arbitration Act, 1991 (Ontario) or any successor or replacement legislation which may be in force, by a single arbitrator (the "Arbitrator") appointed by the mutual agreement of the parties hereto and failing such agreement by the senior justice of the Ontario Superior Court in Ottawa. The place of arbitration shall be Pembroke, Ontario, Canada and the language of arbitration shall be English.
- (b) The Arbitrator has the right to grant legal and equitable relief including injunctive relief and the right to grant permanent and interim injunctive relief. The Arbitrator shall not amend or otherwise alter the terms and conditions of this Agreement. The Arbitrator shall render a decision within ninety (90) days after his or her appointment as Arbitrator.
- (c) The final award of such Arbitrator shall be a condition precedent to an action in any court, including but not limited to an action to determine procedural or other issues involving the arbitration itself, and such award shall be final and binding on the parties with no appeal to any court. The parties hereby agree to carry out any decision or order of the Arbitrator in good faith
- (d) The Parties agree to keep all matters relating to any dispute arising in connection with this Agreement, the negotiation of any such dispute, or the arbitration of any dispute hereunder, confidential and shall not disclose same to any third party other than their legal or financial advisers.

18. NOTICE

Notice to be given shall, save as otherwise specifically provided, be in writing addressed to the party for whom it is intended and shall not be deemed received until actual receipt by the other party except if sent by telephone facsimile, in which case it shall be deemed received on the business day next following the date of transmission.

The mailing addresses of the parties shall be:

OHTO:

OHTO

ATTN: Nicole Whiting

PO Box 271

Beachburg, ON K0J 1C0

(Email) funding@ohto.ca

The Recipient:

[insert Full Name]

[insert Position]

[insert Organization name]

[insert Organization Address]

[insert telephone and mobile numbers]

[insert Email]

19. APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. As such, the Recipient agrees to comply with all federal, provincial, territorial, municipal and other applicable laws governing the Recipient and the Eligible Project, including without limitation, statutes, regulations, by-laws, rules, ordinances and decrees. This includes legal requirements and regulations relating to environmental protection and the successful implementation of and adherence to any mitigation measures, monitoring or follow-up program, which may be prescribed by federal, provincial, territorial, municipal bodies.

20. ENVIRONMENTAL REQUIREMENTS

If, as a result of changes to the Eligible Project or otherwise, officers, officials, employees and agents of Her Majesty are of the opinion that an environmental or impact assessment or a subsequent determination is required for the Eligible Project, the Recipient agrees that construction of the Eligible Project or any other physical activity that is carried out in relation to the Eligible Project, including site preparation, will not be undertaken or will be suspended and no funds or additional funds will become or will be payable by OHTO to the Recipient for the Eligible Project unless and until:

- (a) where the Eligible Project is a “designated project” under the applicable federal environmental or impact assessment legislation,
 - (i) a decision pursuant to that legislation is made indicating that no environmental or impact assessment is required for the Eligible Project; or
 - (ii) a decision statement in respect of the Eligible Project is issued to the Recipient indicating that:
 - 1) the Eligible Project is not likely to cause significant adverse environmental effects;
 - 2) the Eligible Project is likely to cause significant adverse environmental effects that the Governor in Council decides are justified in the circumstances, which decision statement may contain conditions in respect of the Eligible Project; or
 - 3) the adverse effects with respect to the impact assessment of the Eligible Project are in the public interest,
- (b) where the Eligible Project is a “project” under the applicable federal environmental or impact assessment legislation, a determination that the carrying out of the Eligible Project:
 - (i) is not likely to cause significant adverse environmental effects; or

- (ii) is likely to cause significant adverse environmental effects and the Governor in Council decides that those effects are justified in the circumstances, and
- (iii) where relevant the requirements under any applicable agreements between Her Majesty and Indigenous groups, are met and continue to be met.

21. GENERAL

- (a) This Agreement shall be binding on and inure to the benefit of OHTO, the Recipient and their respective successors and assigns, except that neither of the parties to this Agreement may assign any of these rights or obligations with respect to this Agreement without the prior written consent of the other party;
- (b) Any provision of this Agreement, which is or becomes prohibited or unenforceable in any jurisdiction shall not invalidate or impair the remaining provisions of this Agreement which shall be deemed severable from the prohibited or unenforceable provision and any prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable that provision in any other jurisdiction;
- (c) The fact that OHTO refrains from exercising a remedy it is entitled to exercise under this Agreement shall not be considered to be a waiver of such right and, furthermore, partial or limited exercise of a right conferred upon OHTO shall not prevent OHTO in any way from later exercising any other right or remedy under this Agreement or other applicable law;
- (d) Each of the parties agree to execute any additional documentation, or give such further assurances, as may be reasonably required in order to give effect to the spirit and intent of this Agreement;
- (e) Time shall be of the essence in this Agreement;
- (f) Subject to any sections which provide for the early termination of this Agreement, this Agreement shall remain in full force and effect until the payment and performance in full of all of the Recipient's obligations under this Agreement;
- (g) It is understood that information related to this Agreement is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56 and the *Access to Information Act*, R.S.C., 1985, c.A-1.
- (h) The Recipient and OHTO warrant that they have read this Agreement, including the attached Schedule "A", and understand and agree to be bound by it. The person signing this Agreement on behalf of the Recipient further warrants having full power and authority to enter into and to have this Agreement performed by the Recipient.
- (i) This Agreement may be amended only by written agreement between the parties. No amendment of any of the terms or provisions of the Agreement shall be deemed valid unless it is in writing. Amendments to Schedule "A" may be made by written agreement between the parties, provided that the overall objectives of the Services described in Schedule "A" are not thereby being altered.
- (j) Schedule "A" that is attached to this Agreement is incorporated into this Agreement by reference and is deemed to be part hereof.

- (k) This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had all signed the same document. All counterparts shall be construed together and shall constitute one and the same original agreement.

22. ADDITIONAL REQUIREMENTS

- (a) The Recipient consents to being contacted by OHTO and/or officers, officials, employees and agents of Her Majesty in relation to success stories, announcements, ceremonies and other communications activities and which specify that: (i) the Ultimate Recipient acknowledges the federal government's role in the funding provided through this Agreement;
- (b) The Recipient consents to a public announcement of their project by OHTO and/or officers, officials, employees and agents of Her Majesty in the form of a news release and/or event;
- (c) OHTO and/or officers, officials, employees and agents of Her Majesty shall inform the Recipient of the date the public announcement is to be made, and the Recipient shall maintain the confidentiality of the Agreement until such date;
- (d) The Recipient must consent to the participation of OHTO and/or officers, officials, employees and agents of Her Majesty (such as the Minister) at the announcement event of the Eligible Project, and to have the event take place on a day mutually agreed upon by the Recipient and OHTO and/or officers, officials, employees and agents of Her Majesty;
- (e) The Recipient agrees to a media/public event upon completion of the Eligible Project with OHTO and/or officers, officials, employees and agents of Her Majesty (such as the Minister) at mutually agreeable venue, time and date; and the Recipient must agree to display promotional material and/or signage provided by OHTO and/or officers, officials, employees and agents of Her Majesty at the event.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their respective officers duly authorized in that behalf on the date below indicated.

SIGNED, SEALED AND DELIVERED

ONTARIO'S HIGHLANDS TOURISM ORGANIZATION

Date: _____

Nicole Whiting, Executive Director

I have the authority to bind OHTO.

Date: _____

[Full Name, Position]

I have the authority to bind [auto populate with legal name from General Details form]

Schedule "A" – Purpose of Funding Contribution

[auto populate description of Eligible Project from application]