

THIS AGREEMENT entered in duplicate as of the 10th day of November, 2006 and Amended and Restated as of the 1st day of September, 2018, and further Amended and Restated effective this 21st day of October, 2024.

BETWEEN:

THE CORPORATION OF THE CITY OF THUNDER BAY

(the "City")

-AND-

THUNDER BAY COMMUNITY ECONOMIC DEVELOPMENT COMMISSION INC.

(the "CEDC")

RECITALS:

- (a) The City recognizes the vital importance of local and regional economic growth to the long-term well-being of the community.
- (b) The City established the CEDC to be its primary, independent, Economic Development agency.
- (c) The City established the CEDC to be project-based, collaboration-driven, business-led, and community-supported.
- (d) The City and CEDC share a goal to capitalize on the energy associated with ideas by putting entities, financial and otherwise, together.
- (e) The City and the CEDC wish to enter into an Agreement delineating the roles and responsibilities of each to furthering economic and tourism development in and for Thunder Bay.
- (f) The City adopted By-law 74/2018 (the "By-law") to implement a Municipal Accommodation Tax (the "MAT") to generate funds to support tourism promotion and development that came into force on September 1, 2018 and is to be assessed on certain types of transient accommodations sold within the City of Thunder Bay.
- (g) The enabling legislation for the adoption of the By-law required that 50% of the net proceeds generated from the MAT be paid to an eligible not-for-profit tourism entity to be used for the exclusive purpose of tourism promotion and development.
- (h) The By-law required that the City Manager negotiate and execute an agreement with an eligible tourism entity that will act as the designated collaborator for the management of half of the net proceeds to be generated through the implementation of the MAT for the exclusive purpose of tourism promotion and development.

- (i) The CEDC has as a core mandate the furthering of economic development in and for the City of Thunder Bay and the Parties both recognize that the development of a vital tourism industry constitutes an integral part of any strategy adopted for the furthering of economic development in and for the City of Thunder Bay.
- (j) The Parties executed this agreement initially dated the 10th day of November 2006 (the "2006 Agreement") for the purchase of certain services that are complementary to the role of an eligible not-for-profit tourism entity and the Parties remain committed to working together, and with others, to achieve evolving priorities related to the Parties' strategic plans to ensure long term economic growth for the City of Thunder Bay.
- (k) In furtherance of the objectives set out in recitals (f)-(i), the Parties amended the 2006 Agreement in September of 2018 :
 - to allow the CEDC to accept responsibilities relative to tourism promotion and development that were previously the responsibility of the City's Tourism Division;
 - to reflect the additional responsibilities to be undertaken by CEDC; and,
 - to provide a framework for the designation of the CEDC as an eligible not-for-profit tourism entity to which 50% of the net proceeds generated from the MAT can be remitted.
- (l) The Parties wish to further amend the 2006 Agreement:
 - To transfer remaining funds held in the Project Fund to the Investment Fund, close off the Project Fund, and set new parameters for the CEDC's use of the Investment Fund going forward; and
 - Amend the reporting requirements of the CEDC.

THIS AMENDED AND RESTATED AGREEMENT is entered into in consideration of the exchange of covenants within it, and for other valuable consideration, the exchange and sufficiency of which are acknowledged by both parties.

ARTICLE 1.00: INTERPRETATION

1.01 *Definitions:* Wherever a term set out below appears in the text of this Agreement with its initial letters capitalized, the term is intended to have the meaning set out for it in this Section 1.01. Wherever a term below appears in the text of this Agreement in regular case, it is intended to have the meaning ordinarily attributed to it in the English language.

- (a) "Agreement" means this Amended and Restated document, including its recitals and any incorporated schedules, both of which are integral parts of it, as it may be amended from time to time in accordance with its own terms.

- (b) "Board" means the board of directors of CEDC.
- (c) "CEDC" means Thunder Bay Community Economic Development Commission Inc., incorporated by the City (as authorized under the *Municipal Act, 2001*) in accordance with the *Corporations Act*.
- (d) "City" means The Corporation of the City of Thunder Bay, a municipal corporation under the *Municipal Act, 2001*.
- (e) "Community Collaborator" means a person, unincorporated association, or entity that is resident in Thunder Bay or the Thunder Bay Community with an interest in either Economic Development or Tourism Development. It includes: businesses, business organizations, and individuals. It is a flexible term which can change from time to time depending upon the project or idea being discussed by the Board. For clarification, the use of the word "collaborator" in this defined term is not intended to convey any legal or other special relationship between any persons.
- (f) "Conference" means a gathering of persons with a common interest and includes: meetings, trade shows, conferences, seminars, sporting events, athletic tournaments, and similar get-togethers.
- (g) "Council" means the elected municipal council for the City.
- (h) "Dispute" means a disagreement between the City and CEDC regarding the interpretation of any of the articles of this Agreement. This includes disagreements relating to sums of money owed or to be paid under this Agreement for any service, for any asset, for damages or otherwise.
- (i) "Economic Development" means commerce-based development that will add to the local economy through more than merely increased assessment to the City. To meet the definition, such development must do one or more of the following:
 - i. create employment for more than one person on a sustainable basis;
 - ii. involve an investment of money from outside Thunder Bay;
 - iii. involve the creation of a product that can be marketed outside Thunder Bay;and/or,
 - iv. involve the expansion or retention of an existing business in the community.
- (j) "Economic Development Proponent" means a person with an idea, concept or project that involves Economic Development.
- (k) "MAT" means the Municipal Accommodation Tax, more fully identified in subsection (f) of the recitals.

- (l) "Investment Fund" has the meaning set out in Section 3.05.
- (m) "Thunder Bay" means the geographic area within the City's jurisdiction.
- (n) "Tourism Development" means increasing the instances of travel by persons to Thunder Bay for pleasure or business. To meet the definition, the idea, concept or project for development must do one or more of the following:
 - i. primarily involve a Conference;
 - ii. enhance the reputation and image of the City as a desirable destination;
 - iii. strengthen the image of Thunder Bay as a safe, friendly and welcoming City;
 - iv. promote one or more of particular institutions or features of the City;
 - v. promote events that take place in the City; or,
 - vi. enhance visitor experiences to the City through such opportunities as the development of tours, events, and infrastructure.
- (o) "Tourism Proponent" means a person with an idea, concept or project that involves Tourism Development.
- (p) Intentionally deleted.
- (q) "Proponent" means a person with an idea, concept or project that does not meet the definition of "Economic Development" or "Tourism Development" noted above.

1.02 Interpretation:

- (a) The captions, article and section names and numbers appearing in this Agreement are for convenience of reference only and have no effect on its interpretation.
- (b) All provisions of this Agreement creating obligations on either party will be construed as covenants.
- (c) This Agreement is to be read with all changes of gender or number required by the context.
- (d) The words "include", "includes", and "including" are not to be read as limiting the words or phrases which precede them.

1.03 Severability: If any article, section, subsection, paragraph, clause or sub clause or any of the words contained in this Agreement are held wholly or partially illegal, invalid or unenforceable by any court or tribunal of competent jurisdiction, the City and CEDC agree that the remainder of this Agreement shall not be affected by that determination but shall remain in full force and effect.

ARTICLE 2.00: PURCHASE OF SERVICES/RELATIONSHIP OF PARTIES

2.01 A *CEDC Service Provision*: The City agrees to purchase from CEDC, and CEDC agrees to provide to the City, the following broadly described services:

- (a) CEDC will act as the City's primary point of contact for Tourism Development and Economic Development opportunities, projects and/or funding requests including Community Health Sciences recruitment;
- (b) CEDC will actively seek collaborative opportunities with Community entities who are actively pursuing Economic Development or Tourism Development opportunities, particularly those that could enhance the economic prosperity of the community on a sustainable basis;
- (c) CEDC will work to attract new businesses and tourism to the City;
- (d) CEDC will provide site location assistance and analysis for potential new businesses;
- (e) CEDC will market and promote the City to existing and potential new business ventures and tourism initiatives to enhance the economic prosperity of the community;
- (f) CEDC will identify and foster strategic alliances within and between the public and private sectors;
- (g) CEDC will help to build the confidence of existing businesses and labour force participants in the community;
- (h) CEDC will help to build an appreciation of the importance of tourism in existing businesses and labour force participants in the community;
- (i) CEDC will consult with and provide strategic advice to the City on matters of Economic Development importance;
- (j) CEDC will operate, or arrange for the operation, of the City's entrepreneur centre in a manner that is consistent with applicable legislation and contractual agreements; and
- (k) CEDC will exercise appropriate decision-making with respect to financial matters delegated to it by Council and will report to Council for approvals for financial matters which require approval.

In furtherance of these services, CEDC will make itself available to deal with Economic Development and Tourism Development initiatives from the genesis of an idea through to completion wherever possible. It will respond promptly, and with reasonable efficacy, due diligence, and regard for public accountability, to project ideas brought forward by the community.

2.01B *Services CEDC Will Not Provide:* The CEDC will not:

- (a) be a source of funding or other support for projects that do not have the potential to generate additional economic activity for a sustainable period; nor
- (b) pursue ad hoc projects or new directions without the support of the majority of the Board.

2.02 *Consultation & Liaison:* CEDC acknowledges and agrees that the provision of services listed in Section 2.01A of this Agreement will involve consultation, collaboration & liaison with other Community entities.

2.03 *Changes to Services:* The City and CEDC may agree from time to time to add, eliminate, transfer or vary the Economic Development and Tourism Development services listed in Section 2.01A, recognizing that the financial arrangements between the City and CEDC may be adjusted to reflect such changes in purchased services.

2.04 *Consistent Strategies:* CEDC's marketing and promotional efforts will be generally consistent with the communications and brand strategies of the City.

2.05 *Mutual Referral Obligations:* The Parties will separately, but in collaboration with each other, identify opportunities to integrate their strategies relative to the pursuit of tourism and other development opportunities to be able to develop and implement appropriate, coordinated, effective and efficient strategies for these.

2.06 *Advance Notice:* The CEDC acknowledges the importance of advance notice to the City for planning purposes and, where the CEDC is planning to significantly reduce, stop, start, expand or cease to provide any of the services and operational activities that support any of the services contemplated under this Agreement, the CEDC will inform the City of such change with a view to providing the City with appropriate time to mitigate any adverse impacts.

ARTICLE 3.00: FUNDING & FINANCES

3.01 Annual Budget:

- (a) CEDC shall prepare and submit an annual budget by such date and in such form as the City may require. The budget shall include operational needs.
- (b) CEDC shall also communicate to the City any requirements for the Investment Fund.

3.02 *Private Sector Support:* CEDC shall undertake to seek financial and in-kind support from the private sector, including Community entities, to assist in enhancing the economic prosperity and Tourism Development in Thunder Bay. The progress of this undertaking shall be highlighted in CEDC's reports to the City as set out in Section 3.07 below.

3.03 *Funding:* For the services purchased and provided, the City shall provide CEDC with funding in accordance with the approved budget, in accordance with this Section 3.03,

- (a) the actual annual amount paid by the City to CEDC shall be based on the submission of CEDC's annual budget to the City and conditional on the approval of such annual budget by Council;
- (b) amounts paid by the City shall be for services specifically purchased by it, consistent with the annual budget of CEDC as approved by the City. Both parties recognize that CEDC may, as circumstances arise, expend funds in a manner determined by CEDC to be consistent with its annual business plan and within its annual approved budget, but not as may have been particularized within the budget at the time of approval by the Council;
- (c) the amount mentioned in {a) above shall be adjusted to reflect the addition, elimination, transfer or variance to the Economic Development services agreed upon from time to time by the City and CEDC;
- {d) the CEDC shall actively promote private project funding, and seek to obtain grants, contributions, bequests, gifts, sponsorships, and assets from other sources in furtherance of its objectives.

3.04 *Retention of Operating Surpluses:* To promote financial discipline within the CEDC and to maximize the funding available for future Economic Development and Tourism Development projects, the CEDC will retain any operating surpluses it generates with no impact on future operating budgets.

3.05 *The Investment Fund:* The City may provide to CEDC a sum of money on an annual basis in addition to CEDC's operating budget. The intent of this sum, referred to as the "Investment Fund", is to allow CEDC to fund Economic Development initiatives in amounts up to two hundred fifty thousand (\$250,000.00) dollars per project or project phase with available funding, without further approval by Council. CEDC agrees not to use the Investment Fund for any other purpose. CEDC further agrees that it will develop detailed criteria for funding approval and will not deviate from those criteria when approving payments from the Investment Fund.

3.06 *Intentionally Deleted.*

3.07 *Reports to Council:* CEDC will provide an annual report on all its activities to the Council in open session . This annual report will include detail on any Economic Development initiatives during that year for amounts below \$250K where Council approval was not sought. The CEDC shall also provide a second annual report on Tourism Development and use of the MAT funding in open session. The City acknowledges that such reports must respect the confidentiality of Community Partners and Economic Development Proponents.

3.08 *Corporate Services and City Assets:* The CEDC may continue to work with the City to maximize City Services while minimizing costs where it makes economic sense.

3.09 *Roles of the City and CEDC Clarified:* The City may choose not to exercise its authority for any of the activities which CEDC has assumed (detailed in Section 2.01A of this Agreement). It will continue to exercise its jurisdiction with respect to activities which CEDC will not provide (detailed in Section 2.01B of this Agreement).

(a) The City will develop and manage communications programs for City-wide marketing. CEDC will develop and manage communications for itself and its own marketing purposes.

(b) The City's economic development role continues to be:

- i) event development and management, cultural services and recreational opportunities that may contribute to the economy and benefit visitors and residents
- ii) provision and maintenance of municipal infrastructure and facilities;
- iii) provision of services that facilitates development approvals (planning, building, engineering);
- iv) approval of members for election to the Board following a qualifications-based selection process; and
- v) approval of project funding from the Investment Fund for any individual project involving a contribution of over two hundred fifty thousand (\$250,000.00) dollars.

Municipal Accommodation Tax

3.10 *Collection:* The City is solely responsible for the collection and general administration of the Municipal Accommodation Tax (MAT) including all activities related to the collection, accounting, reporting, auditing, budgeting, legal, reconciliation of accounts, and any other general requirements such as participant engagement and general communication with participants.

3.11 *Reserve:* The City shall reserve (the "Reserve") an amount consisting of 50 per cent of the amount determined using the formula,

$$A \text{ minus } B$$

in which,

"A" is the revenue from the tax received by the City in respect of the fiscal year, and

"B" is the City's reasonable costs of collecting and administering the tax that are attributable to the fiscal year.

The Reserve shall be held in a dedicated cost centre (henceforth identified as the "MAT Funding") for the purpose of quarterly remittance to eligible tourism entities.

3.12 *Eligible Tourism Entity:* Contingent on CEDC having obtained and maintaining such permits and approvals as are required by government and other authorities for the CEDC to operate its business and meet its obligations under this Agreement, the City shall designate the CEDC as an eligible tourism entity for the purpose of receiving and managing the MAT Funding.

3.13 *MAT Funding Transfers:* The City will transfer the MAT Funding, calculated on a quarterly basis, to the CEDC within 60 days following the quarter.

3.14 *Dependence on MAT Revenue:* The Parties understand and accept that the MAT Funding made available to the CEDC under this Agreement is conditional upon the maintenance of the MAT and that, if the MAT does not generate the anticipated level of revenue, the City will not be obligated to make any additional payments to the CEDC from other City resources or reserves.

3.15 *Segregated Bank Account:* The CEDC shall keep all MAT Funding received from the City in an independent bank account (the "MAT Account"), segregated from the CEDC's other accounts, to be used for the exclusive purpose of tourism promotion and development either within the City of Thunder Bay or for the benefit of the City of Thunder Bay.

- 3.16 *Use of MATFunding:*
- (a) The MAT Funding received by CEDC shall be used exclusively for the purpose of promotion and development of tourism in and for the City of Thunder Bay. CEDC will collaborate with the tourism industry; however, CEDC shall be solely responsible for determining the particular uses of the funding within the indicated purpose.
 - (b) If the uses of the MAT funding involve the creation of any types of intellectual properties (the "Materials"), CEDC shall grant to the City, at no cost, a perpetual right to use and reproduce any or all of those Materials.
- 3.17 *Canadian Public Sector Accounting Standards:* The CEDC will incorporate all rebates, credits, refunds and interest income that it receives from the use of the MAT Funding into the component of its budget that is related to tourism promotion and development within the City of Thunder Bay in accordance with Canadian Public Sector Accounting Standards for not-for-profit organizations.
- 3.18 *MAT Budgeting Process:* The CEDC will use reasonable estimates of anticipated rebates, credits and refunds in its budgeting process. The CEDC will use any rebates, credits, refunds and interest income that it receives from the use of the MAT Funding to provide services related to tourism promotion and development in the City of Thunder Bay.
- 3.19 *Funding Envelope:* The City shall not be responsible for any commitments or expenditures that the CEDC makes that are in excess of the MAT Funding available under this Agreement, nor does this Agreement commit the City to provide additional funds to the CEDC during or beyond the term of this Agreement.
- 3.20 *Audit Provisions:* The CEDC shall retain:
- (a) all records related to the CEDC's performance of its obligations under this Agreement for a period of at least seven years after this Agreement ceases to be in effect, whether due to expiry or otherwise. The CEDC's obligations under this section will survive if this Agreement ceases to be in effect, whether due to expiry or otherwise;
 - (b) all financial records, invoices and other financially-related documents relating to the MAT Funding or otherwise to the services in a manner consistent with international financial reporting standards as advised by the CEDC's auditor; and,
 - (c) all non-financial documents and records relating to the MAT Funding or otherwise to the services in a manner consistent with all applicable laws.

- 3.21 *Reporting:* The CEDC will provide to the City, in the form and within the time specified by the City, the Reports that the City requires for the purposes of exercising its powers and duties under this Agreement or for the purposes that are prescribed under any applicable laws. For certainty, nothing in this section or in this Agreement restricts or otherwise limits the City's right to access or to require access to information relative to the uses of MAT Funding that are made in accordance with applicable laws.
- 3.22 *Right to Audit:* The City may audit all financial and related records associated with MAT Funding including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the CEDC as being related to tourism promotion and development.
- 3.23 *Retention of Records:* The CEDC shall at all times during the term of this Agreement and for a period of seven (7) years after the end of this Agreement, keep and maintain records of the work performed pursuant to this Agreement including proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the CEDC.
- 3.24 *Availability of Records:* The CEDC shall, at its own expense, make such records (including copies and extracts of records as required) available for inspection and audit by the City at all reasonable times and without prior notice.
- 3.25 *Subcontractors and Suppliers:* The obligations of this Section 3.00 pertaining to Audit, Records and Reporting shall be explicitly included in any subcontracts or agreements formed between the CEDC and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfilment of the CEDC's obligations to the City related to MAT under this Agreement.
- 3.26 *Audit Costs:* Costs of any audits conducted under the authority of this Agreement and not addressed elsewhere will be borne by the City unless the audit identifies findings that would constitute a material breach of the agreement with the CEDC. The CEDC shall reimburse the City for the total costs of any audit that identifies a material breach of this agreement by the CEDC.
- 3.27 *These Audit Provisions are in Addition Not substitution:* This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, Provincial, or Municipal law, whether those rights, powers, or obligations are express or implied.
- 3.28 *Net Income and Investment of Operating Surplus:* The CEDC will be entitled to retain any net income or operating surplus of income over expenses earned in a funding year, subject to any in-year or year-end adjustments to MAT Funding.

- 3.29 *Net Income or Operating Surplus Retained by the CEDC:* Any net income or operating surplus retained by the CEDC shall be invested with consideration of risk and at the most favourable rate of interest available to it at the time, while ensuring that its liquidity requirements are being met and, when exercising its discretion to invest, the CEDC shall take into consideration the following priorities:
- (a) the need to preserve capital,
 - (b) liquidity, and,
 - (c) the return on investment.
- 3.30 *Events of Default related to MAT Funding:* In addition to events of default set out in Article 4.00 following the City may note the CEDC to be in default of this Agreement where:
- (a) the CEDC fails to apply the MAT Funding for purposes related to tourism promotion and development within or for the City of Thunder Bay;
 - (b) The CEDC fails to comply with any other provisions or requirements under this Agreement; or,
 - (c) The CEDC decides to suspend or cease all its activities in relation to the permitted uses for the MAT Funding.
- 3.31 *Notice of Default Related to MAT Funding:* Where the CEDC is found to be in breach of the Agreement through an Events of Default related to MAT Funding, the City may provide notice in writing to the CEDC providing details about the breach and specifying a period within which the breach must be rectified (the "Notice").
- 3.32 *CEDC Dispute of Notice:* Where the CEDC disputes any matter set out in the Notice, the Parties will discuss the circumstances that resulted in the Notice and, within 14 days of receiving the Notice, the CEDC may make representations to the City about the matters set out in the Notice.
- 3.33 *City to Consider CEDC's Dispute of Notice:* In making a determination about the matters set out in the Notice, the City will act reasonably and will consider the impact, if any, that a recovery of MAT Funding will have on the CEDC's ability to satisfy its objectives related to MAT Funding under this Agreement and will take into consideration the representations made by the CEDC about the matters set out in the Notice and the City will advise the CEDC of its decision in writing.
- 3.34 *Failure of CEDC to Rectify Breach:* Where the breach is not rectified within the time specified in the Notice, the City may terminate this Agreement immediately without further notice to the CEDC and the CEDC shall repay any of the MAT Funding not spent or applied towards the purpose of tourism promotion and development within or for the City of Thunder Bay within the time specified by the City.

- 3.35 *Timing for MAT Funding Recoveries by the City:* MAT Funding recoveries, if any, will occur in accordance with the timing set out in the City's decision. No recovery of MAT Funding will be implemented earlier than 30 Days after the delivery of the City's decision on the matters set out in the Notice.
- 3.36 *MAT Funding Recoveries to be Considered Debt to City:* If the City requests a re-payment by the CEDC of any MAT Funding in accordance with the terms set out in this Agreement, the amount shall be deemed to be a debt owing to the City by the CEDC.
- 3.37 *Set Off or Direct Payment of MAT Funding Recoveries:* The City may adjust future MAT Funding or other funding instalments from any other source payable to the CEDC to recover any amounts owed or may, at its discretion, direct the CEDC to pay the amount owing to the City and the CEDC shall comply with any such direction received from the City within 10 days of the receipt of such direction.
- 3.38 *Interest on MAT Funding Recoveries:* The City may charge the CEDC a prescribed rate of interest on any amount owing by the CEDC that is reflective of the current interest rate charged by the City on accounts receivable.
- 3.39 *Reports Upon Termination or Expiry of Agreement:* When MAT Funding ceases to be in effect, whether due to expiry or otherwise, the CEDC will provide to the City all such reports as the City may reasonably request relating to, or as a result of, this Agreement ceasing to be in effect.

ARTICLE 4.00: TERM AND TERMINATION

- 4.01 *Term of Agreement:* This Amended and Restated Agreement is intended to complete its current 5-year renewal term ending November 30, 2021 and shall be extended to August 31, 2023.
- 4.02 *Renewals:* Upon mutual consent of the parties, this Amended and Restated Agreement may be renewed for three (3) additional terms of five (5) years each on identical terms and conditions saving successive renewal rights, as of the extended expiry dates of August 31, 2023, August 31, 2028 and August 31, 2033. This Agreement shall be considered to have been automatically renewed unless either party notifies the other party on or before the date of February 1 prior to the expiry of the current term that it does not wish to renew the Agreement.
- 4.03 *Termination by the City:* The City may terminate this Agreement at any time, without cause, upon providing the CEDC with written notice of its intent to terminate this Agreement at least twelve (12) months prior to the date the termination is to be made effective.
- 4.04 *Events of Default:* The following constitute events of default:
- a) CEDC becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute from time to time being enforced relating to bankrupt or insolvent debtors;
 - b) CEDC ceases operation for a period of thirty (30) days;
 - c) CEDC knowingly submits false or misleading information to the City; or
 - d) CEDC is in breach of the performance of, or compliance with, any term, condition or obligation on its part to be observed or performed under the terms of this Agreement.
- 4.05 *Notice of Default:* In the event that the City considers CEDC to be in default in accordance with this Agreement, it will provide written notice to CEDC, specifying with reasonable particularity the details of the default. The notice shall specify a time period within which CEDC is to remedy the default. The time period specified shall be reasonable, given the circumstances of the default and the actions required to remedy it.
- 4.06 *Remediation of Default:* CEDC shall comply with notice it receives under Section 4.04, subject to any time extensions mutually agreeable to the parties.
- 4.07 *Failure to Remedy Default:* If CEDC does not comply with the notice it receives under Section 4.04, the City may either declare this Agreement to have been terminated, or the City may opt to continue with the Agreement. In the latter case, the City shall take whatever steps necessary to remedy the default in accordance with the notice, and all of the City's costs of that remediation will be the responsibility of CEDC within its operating budget.

- 4.08 *Termination:* This Agreement is considered to have been terminated in the following circumstances:
- a) termination by the City in accordance with this Agreement;
 - b) the enabling statutory authority or the required approvals under which the City has entered into this Agreement are repealed or rescinded so as to substantially limit or deprive the City of the authority to confer any of the rights or assume any of the obligations granted under this Agreement, and the City is unable with reasonable diligence within a period of two (2) years to obtain private legislation to remedy the deficiency of authority;
 - c) notice of termination is given to the City by CEDC on the ground that, despite negotiations in good faith between and reasonable efforts by CEDC and the City to settle the amount of funding to CEDC, the amount appropriated by the City in its sole discretion for CEDC is insufficient to enable CEDC in any substantial way to perform its responsibilities under this Agreement; or
 - d) the City and CEDC agree in writing at any time to the termination of this Agreement.
- 4.09 *Actions Upon Termination:* In the event of termination of this Agreement, all of the assets of CEDC, including bank accounts, used in fulfilling its obligations under this Agreement, shall immediately be turned over to the City. The City shall undertake all of CEDC's obligations set out in this Agreement, including operation of the entrepreneur centre.

ARTICLE 5.00: MISCELLANEOUS

5.01 Notice: Any notice to be given under this Agreement shall be sufficiently given if delivered by hand, or facsimile, or if sent by prepaid first class mail and addressed to CEDC at:

Thunder Bay Community Economic Development Commission
Attention: CEO
PO Box 800
Suite 201, 34 Cumberland Street North
Thunder Bay, Ontario, Canada P7C 5K4
Tel: (807) 625-3960
Fax: (807) 623-3962
Email: develop@thunderbay.ca

or to the City at:

The Corporation of the City of Thunder Bay
Attention: City Clerk
500 Donald Street East
Thunder Bay, Ontario P7E 5V3
Facsimile: 807-623 5468

Receipt of notice shall be deemed on:

- (a) the date of actual delivery of a hand-delivered document; or
- (b) the next business day following the date of confirmed facsimile transmission; or
- (c) five (5) days following the date of mailing of the notice;

whichever is applicable. The parties agree that formal notice shall not be provided by electronic mail transmission. Despite Section 5.05, either party may change its address for notice by giving notice of change of address pursuant to this Section.

5.02 *Dispute Resolution:* In the event any Dispute arises between the parties during the term of this Agreement, the provisions in this Section shall apply.

- (a) All Disputes shall be referred initially by the party raising it to the other party in writing for decision. The party receiving the details of the Dispute shall provide a written response within a reasonable time. The initial reference shall be from or to the CEO of CEDC and the City Manager (or their respective designates).

- (b) If the Dispute is not satisfactorily settled through the intervention of those to whom it was referred under sub-article (a), it shall be submitted to a single arbitrator, whose identity is to be agreed upon by the parties.
- (c) If a single arbitrator cannot be agreed upon by the parties within ten (10) days after the appointment of the single arbitrator has been requested by one of the parties, then each of them shall appoint an arbitrator who shall together appoint a single arbitrator.
- (d) If either party refuses or neglects to appoint an arbitrator within ten (10) days after the other party appoints an arbitrator and has served written notice upon the party refusing or neglecting to appoint an arbitrator, requiring such party to make such appointment, then the arbitrator first appointed shall, at the request of the party appointing him or her, proceed to hear and determine the dispute as if he or she were a single arbitrator appointed by both CEDC and the City for that purpose.

The provisions of this article shall be deemed to be submission to arbitration within the provisions of the *Arbitrations Act, 1991*, provided that any limitation on the remuneration of arbitrators imposed by that legislation shall not have application to any arbitration proceeding commenced pursuant to this Agreement. The parties may make further agreement or agreements in connection with the arbitration which shall be deemed to form part of the agreement to arbitration set out in this article.

- 5.03 *No Assignment:* The CEDC shall not transfer or assign any of the rights and obligations under this Agreement without the prior written approval of the City.
- 5.04 *Relationship of Parties:* The Parties understand and accept that the relationship between them is that of independent contractors and this Agreement shall not establish any relationship of partnership, joint venture, employment, franchise or agency between them. The CEDC shall not hold itself out as partner, joint venturer, employee, franchisee, or agent of the City and neither Party shall have the authority to bind the other, or incur obligations on the other Party's behalf, without the other Party's prior written consent.
- 5.05 *Amendments:* No supplement, amendment or waiver of or under this Agreement (apart from amendments to notice provisions of Section 5.01) shall be considered binding unless executed in writing by the party to be bound. No waiver by a party of any provision of this Agreement shall be considered to be a waiver of any other provision unless otherwise expressly provided.
- 5.06 *Public Record:* The Parties are aware, and accept, that the provisions of this Agreement are a matter of public record.

- 5.07 *Protection of City's Information:* Where applicable, the CEDC shall ensure that any personal information, data, or confidential information belonging to the City which is provided to, or hosted by, the CEDC, or to which the CEDC obtains access in the course of this Agreement, remains in Canada unless its removal is expressly permitted in writing by the City.
- 5.08 *Protection of Personal Information:* The CEDC shall comply with all laws pertaining to the protection of privacy and personal information to which the CEDC is subject and, where the City is subject to a request for the disclosure of any record of information created as a result of this Agreement (the "Records"), the CEDC shall provide the City with information, cooperation and assistance, as may be requested by the City, in order to enable the City to comply with any legal requirements to which the City is subject under any laws including the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 ("MFIPPA"), the *Personal Health Information Protection Act*, 2004, S.O. 2004, c. 3 ("PHIPA"), the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 ("PIPEDA"), the regulations and common law pertaining to protection of privacy and personal information which is required to be protected including those pertaining to the protection of personal, healthcare, or insurance information.
- 5.9 *Transfer of Records and Requests for Information:* The City and the CEDC acknowledge and agree that the City has a greater interest in all Records and, where the CEDC has been instructed by the City not to make the Records or any part thereof available to the public, and the CEDC receives a request under MFIPPA, PHIPA, PIPEDA, or any other legislation, as the case may be, for access to such Records, the CEDC will transfer the request and return the Records to the City pursuant to the transfer provisions of section 18 of MFIPPA.
- 5.10 *City Control of Records:* The CEDC will not purge or otherwise destroy any Records belonging to the City unless instructed to do so by the City. The City may, from time to time, request that the CEDC purge specified Records. Upon receipt of such a request the CEDC will supply the City with a copy of the specified Records in a suitable format and on a suitable medium. After receipt of these Records by the City, the CEDC will destroy all copies of the Records in their possession and shall provide written confirmation of the destruction to the City.
- 5.11 *Governing Law:* This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed as of the date first above written.

THE CORPORATION OF THE CITY OF THUNDER BAY

Per: _____
Title: Mayor

Per: _____
Title: City Clerk

I/We have the authority to bind the Corporation

THUNDER BAY COMMUNITY ECONOMIC DEVELOPMENT COMMISSION INC.

Per: _____
Title:

Per: _____
Title

I/We have the authority to bind the Corporation