

Presented To:	City Council
Presented:	Tuesday, Sep 08, 2020
Report Date	Friday, Aug 21, 2020
Type:	Managers' Reports

Request for Decision

Economic Development Governance

Resolution

THAT the City of Greater Sudbury approves the Operating Agreement outlining the relationship between the City of Greater Sudbury Community Development Corporation (CGSCDC, operating as the Greater Sudbury Development Corporation or GSDC) and the City of Greater Sudbury, as outlined in the report entitled "Economic Development Governance", from the Chief Administrative Officer, presented at the City Council meeting on September 8, 2020; and

THAT the Chief Administrative Officer (CAO) is directed to sign the Agreement on the City's behalf according to delegated authority, and;

THAT, as per the terms of the new Operating Agreement, the City of Greater Sudbury approve the nominations for new GSDC Board members as recommended by the GSDC Nomination Committee and as endorsed by the GSDC Board itself at its Annual General Meeting of June 24, 2020, to appoint the following members to the GSDC Board:

Jennifer Abols; Robert Haché; Anthony Lawley; Mike Mayhew; Claire Parkinson and Shawn Poland, each to serve on the Board of Directors of the City of Greater Sudbury Community Development Corporation for a three (3) year term ending June 2023.

Signed By

Report Prepared By

Meredith Armstrong
Acting Director of Economic
Development
Digitally Signed Aug 21, 20

Financial Implications

Steve Facey
Manager of Financial Planning &
Budgeting
Digitally Signed Aug 22, 20

Recommended by the C.A.O.

Ed Archer
Chief Administrative Officer
Digitally Signed Aug 26, 20

Relationship to the Strategic Plan / Health Impact Assessment

This report refers to operational matters.

Report Summary

Over the past months, the GSDC Board has worked to develop a revised Operating Agreement that incorporates the appropriate recommendations from the review process conducted in 2018 and 2019. This new Agreement seeks to confirm a shared understanding of the roles and responsibilities of the GSDC Board in terms of its work with the City, including with City Council as well as the CGS Economic Development Division. The Agreement was approved by the GSDC Board and recommended for Council's endorsement on June 24, 2020 and is now presented for Council approval.

In alignment with the terms of the new Operating Agreement, the GSDC Board is also seeking Council's approval for the new Board Members endorsed by the Board at its Annual General Meeting held in June 2020.

Financial Implications

There are no financial implications associated with this report.

Economic Development Governance

Report Date: August 12, 2020

Summary

New Operating Agreement

In 2018, the City's Auditor General provided a report on the Greater Sudbury Development Corporation (GSDC) governance structure, including a recommendation to review and update the current Operating Agreement between the GSDC and the City, which is dated May 3, 2007.

Following this, the GSDC Board embarked on additional work to review the governance structure of the GSDC, including an independent consultant report completed in consultation with Board members.

Over the past months, the GSDC Board has worked with the City's Economic Development staff as well as with the Mayor's Office to develop a revised Operating Agreement that incorporates the appropriate recommendations from this review process. This new Agreement seeks to confirm a shared understanding of the roles and responsibilities of the GSDC Board in terms of its work with the City, including with City Council as well as the CGS Economic Development Division. The Agreement was approved by the GSDC Board and recommended for Council's endorsement on June 24, 2020 through GSDC Board motion 2020-042.

Pending Council's approval and the execution of the Agreement, the GSDC Board is also committed to implementing this new Operating Agreement in a consistent and transparent manner to ensure the bylaws, policies and procedures of the Board are in alignment with the terms of the Agreement. To do so, the Board has established a Policy Review Committee in order to collaborate with staff on the implementation of the new Operating Agreement and the updating of related Board policies, the process of which is to be reported to the GSDC Board on a regular basis.

Appointment of New GSDC Board Members

In alignment with the terms of the new Operating Agreement, the GSDC Board is also seeking Council's approval for the new Board Members endorsed by the Board at its Annual General Meeting held on June 24, 2020.

These new members were engaged using the following process:

- A public call-out was developed with assistance from CGS Communications in order to solicit community interest in board membership
- The GSDC Board's Nomination Committee then reviewed submissions in order to identify potential board member candidates based on skill sets and alignment with strategic direction;
- The results of the Nomination Committee were brought to the GSDC Board for review and recommendation;
- These candidates are now being brought to Council for final endorsement.

This year's candidates are Jennifer Abols; Robert Haché; Anthony Lawley; Mike Mayhew; Claire Parkinson and Shawn Poland, each to serve on the Board of Directors of the City of Greater Sudbury Community Development Corporation for a three-year term ending June 2023.

Highlights of the new Operating Agreement

The Operating Agreement is attached for Council's review and approval. Highlights include:

- A renewed mandate of the GSDC Board to collaborate with the City to promote community economic development "by encouraging, facilitating and supporting community strategic planning and increasing self-reliance, investment and job creation within the city in an effective, transparent and accountable manner"
- The GSDC Board's formal adoption of the City's values as outlined in the City's "Strategic Plan 2019-2027": Innovation, Integrity, Respect, Foresight, Trust, and Compassion
- The contributions of the GSDC Board to economic development activities including
 - o input and recommendations for economic development and investment attraction opportunities in alignment with identified strategy and priorities
 - o supporting and fostering alliances and partnerships between economic sectors, industries, institutions and community organizations
 - o reviewing results of the City's Economic Development Services' efforts including demonstrated economic benefits and impacts;
 - o as part recipient of the proceeds of the Municipal Accommodation Tax program, providing oversight, reviewing findings and approving recommendations of the Tourism Development Committee including the Tourism Strategy
 - o reviewing and approving grant allocations through the Community Economic Development program and the Greater Sudbury Arts and Culture Grant Program
- Clear definitions of the roles of the City's Director of Economic Development and the Chief Administrative Officer as well as the City's contributions in relation to the GSDC Board
- The GSDC Board's preparation of an annual business plan and budget, with the support and assistance of the Economic Development division, monitoring progress and achievements while maintaining flexibility to respond to new opportunities; the Board will also undertake an annual planning and goal prioritization process to identify opportunities to align with the City's economic development activities, objectives and priorities
- New GSDC Board member nominations to be brought forward for Council approval following a public call-out, review of candidates by the GSDC Nomination Committee and endorsement of successful candidates by the GSDC Board itself
- Any items required to be heard in a closed session of the GSDC Board will be determined as such using criteria outlined in section 239 of the *Municipal Act 2001*; once brought forward in a Closed session of the GSDC Board, these items will also be brought forward to Council at their first available closed meeting as an information item through a staff report
- Council authorization remains a requirement for any investments exceeding \$250,000, to be brought forward through a staff report
- The Board will provide quarterly updates to Council through its Finance & Administration Committee with the assistance of the Director of Economic Development; additionally, Council will receive

written highlights following each GSDC Board meeting on investment decisions and grant program allocations as well as its activities and actions in relation to strategic priorities and emerging opportunities

These activities will be achieved in collaboration with the City's Economic Development staff team and resources.

Background

The GSDC identified the need to review the operating agreement with the City of Greater Sudbury and to update its corporate by-laws and governance practices as priorities for 2018. Subsequent to this, and as part of its ongoing responsibilities to regularly review all arms-length boards associated with the municipality, the CGS Auditor General (AG) brought forward recommendations for the GSDC Board in its report dated May 31, 2018 (a link to the full report is included below).

The audit focused on the oversight structures and systems in place within the GSDC, including:

- Structure and mandate;
- Definition of roles and responsibilities of the organization and its senior leadership team;
- Oversight exercised by the organization over its respective areas of responsibility; and
- Oversight exercised by other government bodies over the organization.

The AG report stated that the framework of the GSDC is generally effective, but also identified several issues for improvement. The relationship between the City and the GSDC is set out in an Operating Agreement dated May 3, 2007, and the AG report emphasized that this Agreement required updating to ensure that there is a shared understanding of the respective roles, responsibilities and authorities of the GSDC and the City.

In response to the findings of the AG report, the GSDC Board conducted a third-party review of the Board's governance structure in 2018. In addition to this work, the GSDC Board embarked on a thorough review of its governance structure with the commitment to strengthen the Board's operations, enhance communications in the spirit of transparency and collaboration, and align with Council's strategic priorities for economic development.

The recommendations resulting from this review have been incorporated as part of the new Operating Agreement between the City of Greater Sudbury and the GSDC Board, with explicit obligations and expectations regarding the Board role, responsibilities and reporting requirements.

This Operating Agreement has also been developed in collaboration with the Mayor's Office as well as support provided by the City's Legal department.

References

1. Auditor General's Report/Governance Audit of the City of Greater Sudbury Community Development Corporation, Audit Committee, June 19, 2018:

<https://agendasonline.greatersudbury.ca/index.cfm?pg=feed&action=file&attachment=27332.pdf>

2. Economic Development Governance, Council meeting, September 10, 2019:

<https://agendasonline.greatersudbury.ca/index.cfm?pg=feed&action=file&attachment=27332.pdf>

This **OPERATING AGREEMENT** made this 22nd day of September, 2020

BETWEEN:

CITY OF GREATER SUDBURY

(the "City")

-and-

**THE CITY OF GREATER SUDBURY COMMUNITY
DEVELOPMENT CORPORATION**

(the "CGSCDC")

WHEREAS economic development at the municipal level is paramount to the promotion of growth, accessibility and stability, and to establishing strong, cohesive partnerships in the realm of the global market economy;

AND WHEREAS the City's Economic Development Services implements City Council's commitment to economic growth in the City of Greater Sudbury through strategic activities that enhance job growth and create investment opportunities in the community;

AND WHEREAS the CGSCDC is a separately incorporated not-for-profit corporation led by a Board of Directors appointed by due process of which the Mayor and up to three (3) members of City Council shall be members of an eighteen (18) member Board;

AND WHEREAS the CGSCDC collaborates with the City to promote community economic development by encouraging, facilitating and supporting community strategic planning and increasing self-reliance, investment and job creation within the city in an effective, transparent and accountable manner;

AND WHEREAS the City and the CGSCDC are committed to realizing economic growth in the community while maintaining responsive, fiscally prudent and open governance;

AND WHEREAS this Operating Agreement sets out the respective roles of and relationship between the City and the CGSCDC that supports economic development activities in the city;

NOW THEREFORE in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Vision and Values

- 1.1 The CGSCDC formally adopts and endorses the City's values as elucidated in the City's "Strategic Plan 2019-2027", as may be amended or replaced from time to time: Innovation, Integrity, Respect, Foresight, Trust, and Compassion.

2. Economic Development Objectives and Directions

- 2.1 The City focuses on certain key areas of economic development activities, including but not limited to:
- (a) investment attraction and investment aftercare, including development facilitation;
 - (b) business retention and expansion, and export development;
 - (c) support for small businesses and entrepreneurs;
 - (d) support for workforce development, capacity, resiliency, job creation and skills building, including immigration support;
 - (e) development, management and marketing of the tourism sector; and
 - (f) development and support of the local arts and culture sector, including film.
- 2.2 The CGSCDC shall contribute to the City's economic development activities as follows:
- (a) provide input and recommendations for economic development and investment attraction opportunities in alignment with identified strategy, priorities and work plans;
 - (b) support and foster alliances and partnerships between economic sectors, industries, institutions and community organizations in order to cultivate the growth and diversification of the local economy;
 - (c) review results of the City's Economic Development Services' efforts including demonstrated economic benefits and impacts;
 - (d) as the Eligible Tourism Entity in receipt of proceeds of the Municipal Accommodation Tax (MAT) program, provide oversight, review the findings and approve recommendations of the Tourism Development Committee, and formally approve the Five-Year Strategy and associated Annual Work Plans for Tourism as detailed in the MAT Operating Agreement attached hereto as Schedule "A";

- (e) review and approve grant allocations through the Community Economic Development Program as detailed in Schedule “B” attached hereto; and
- (f) review and approval grant allocations through the Greater Sudbury Arts and Culture Grant Program as detailed in Schedule “B” attached hereto.

3. Governance, Structure and Operations

3.1 The CGSCDC:

- (a) shall comply with the provisions of the *Business Corporations Act*, R.S.O. 1990, c. B.16 (the “Act”), and its regulations, and any successor legislation;
- (b) shall be governed by its Board of Directors, which Board shall include the Mayor and up to three (3) members of Council;
- (c) shall elect its own Chair and Vice Chair;
- (d) may establish committees of the Board as it deems appropriate;
- (e) not employ or retain any staff or contractors or purchase any goods or services;
- (f) notwithstanding subsection 3.1(d), establish a “Policy Review Committee” committed to the ongoing review and updating of the CGSCDC’s by-laws and policies to ensure compliance with all relevant legislation and this Operating Agreement, as well as to improve effectiveness; and
- (g) create and update as necessary an orientation package outlining the roles and obligations of each member of its Board.

3.2 In the event of a non-councillor vacancy on the Board,

- (a) the CGSCDC shall advertise publicly a request for application for director(s);
- (b) the CGSCDC’s nomination committee, or such other committee as is constituted by the Board to address the matter, shall identify and interview potential Board member candidates based on skill set and suitability to the CGSCDC’s strategic direction;
- (c) the CGSCDC’s nomination committee, or such other committee as is constituted by the Board to address the matter, shall recommend the proposed candidates to the Board for appointment; and

- (d) the Board shall then recommend the appointments to City Council through a staff report for final approval.
- 3.3 In the event of a councillor vacancy on the Board, except for the Mayor, Council shall select another councillor member in a manner deemed appropriate by Council in its sole discretion.
- 3.4 The City, at its sole cost, shall provide the CGSCDC such space in a municipal facility and the services of City staff as to facilitate the CGSCDC's work.
- 3.5 The City shall provide funding for the Community Economic Development and Arts and Culture Grant Programs through its budget process each year.
- 3.6 Requests or direction received from Council regarding the use of CGSCDC funds for City projects related to the advancement of economic development objectives shall be reviewed by the CGSCDC via its Community Economic Development Program as detailed in Schedule "B" attached hereto for approval by the CGSCDC Board.
- 3.7 The City's Director of Economic Development shall:
 - (a) be the primary point of contact between the City and the CGSCDC; and
 - (b) be an *ex officio* non-voting member of the Board and all committees.
- 3.8 The City's Director of Economic Development or their designate(s) shall:
 - (a) in consultation with the Board, prepare all meeting agendas;
 - (b) ensure that all meeting agendas and minutes of open meetings are posted online on the "Economic Development" section of the City's website; and
 - (c) provide regular updates to the CGSCDC on the progress made in achieving the CGSCDC's strategic objectives and priorities described in subsections 5.1(a) through (c).
- 3.9 The City shall include and maintain the CGSCDC and its directors as named insureds under its comprehensive insurance policy.
- 3.10 All directors shall cooperate fully with City staff and the City's insurers, adjusters and counsel in relation to the preparation for and the conduct of any claim or proceeding.

4. Transparency and Accountability

- 4.1 The CGSCDC, through its Board, shall supervise the management of the business and affairs of the CGSCDC, and in doing so shall act honestly and in good faith with a view to the best interests of the CGSCDC and the City, and shall exercise the same degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
- 4.2 The CGSCDC shall adopt and maintain the following policies acceptable to the City, and adapt them for use by the Board as may be appropriate or necessary:
 - (a) conflict of interest;
 - (b) records management, including Board and committee(s) meeting, open and closed, minutes; and
 - (c) communication of the CGSCDC's activities and actions to the public, specifically in relation to the Board's work described in section 2.2 herein.
- 4.3 In addition to the foregoing, the CGSCDC shall comply with:
 - (a) the City's Purchasing By-law 2014-1, as amended, as it may be amended or replaced from time to time; and
 - (b) the City's "French Language Services Policy".
- 4.4 Without limiting anything described in this Operating Agreement, the CGSCDC shall comply with such City policies as may be implemented by by-law by the City, or provided to the CGSCDC by the City from time to time.
- 4.5 Notwithstanding this section 4, nothing herein shall prevent the CGSCDC from adopting a policy that may be more stringent or rigorous than a policy adopted or implemented by the City.
- 4.6 The CGSCDC agrees that, despite the provisions of the Act, all CGSCDC meetings of its Board or its committees shall be open to the public, save and except where the Board in consultation with the City's Director of Economic Development determines that a meeting or part of the meeting may be closed to the public provided the subject matter being considered by the Board or its committee is:
 - (a) personal matters about an identifiable individual, including a municipal employee;
 - (b) litigation or potential litigation, including matters before administrative tribunals, affecting the CGSCDC or the City;

- (c) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
 - (d) information explicitly supplied in confidence to the CGSCDC by Canada, a province or territory or a Crown agency of any of them;
 - (e) a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the CGSCDC, which, if disclosed could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons or organization; or
 - (f) a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the CGSCDC.
- 4.7 Without limiting the applicability of subsection 5.1(e), the CGSCDC shall report to City Council any matter(s) addressed by the CGSCDC Board or any of its committees in a closed meeting to the first available closed meeting of City Council as an information item through a staff report.
- 4.8 The CGSCDC shall produce minutes from each meeting, open and closed, and ensure that the approved minutes of all open meetings are provided to the City's Director of Economic Development within forty-eight (48) hours of the meeting at which they have been approved for posting on the "Economic Development" section of the City's website.

5. Communications and Deliverables

- 5.1 The CGSCDC shall:
- (a) prepare for the CGSCDC an annual business plan and budget with projected deliverables to monitor progress and measure achievement while maintaining flexibility to respond to new opportunities;
 - (b) undertake an annual planning and goal prioritization process to identify opportunities to align the CGSCDC's endeavours with the City's economic development activities, objectives and priorities;
 - (c) establish a process for the evaluation by clients and proponents of funding programs and customer service in support of continuous improvement; and
 - (d) work collaboratively with the City's Economic Development Services in the development of the deliverables described in subsections 5.1 (a) through (c); and

- (e) provide copies to the City of the deliverables described in subsections 5.1 (a) through (c).

5.2 The CGSCDC shall, with the assistance of the Director of Economic Development or their designate(s), report to the City as follows:

- (a) to the City's Finance and Administration Committee for quarterly updates on CGSCDC activities, including accurate, ongoing and enhanced information with respect to project investments in economic development, through a staff report;
- (b) to City Council for information following each Board meeting, highlights on the CGSCDC's investment decisions and grant program allocations as well as its activities and actions in relation to strategic priorities and emerging opportunities through a written communication to the City's Director of Economic Development and all members of Council;
- (c) to City Council for information on the investment and implementation of the Municipal Accommodation Tax (MAT) strategy and revenues for tourism development purposes as detailed in the MAT Operating Agreement attached hereto as Schedule "A";
- (d) to City Council for information at the next Council meeting after committing to any investment into a project with a total project value of or exceeding \$250,000.00 through a staff report; and
- (e) to City Council for authorization prior to committing to an investment of \$250,000 or more in any project through a staff report.

5.3 The CGSCDC agrees that where, in the opinion of the City's Director of Economic Development, a matter to be reported by the CGSCDC to the City's Finance and Administration Committee or to City Council is a matter properly heard during a closed meeting of either the City's Finance and Administration Committee or City Council as permitted by section 239 of the *Municipal Act, 2001*, the City's Director of Economic Development may bring a report or make a presentation in relation to that matter to the City's Finance and Administration Committee or to City Council in a closed meeting.

5.4 The reporting structure described in section 5.2 is a minimum requirement and more frequent reporting is encouraged.

6. General

- 6.1 This Operating Agreement shall come into effect upon execution by both parties and continue in effect until terminated, and replaces the Operating Agreement dated May 3, 2007.
- 6.2 The parties agree to review this Operating Agreement at least every five (5) years or as often as is deemed necessary by the parties.
- 6.3 The terms of this Operating Agreement may be amended, altered, substituted, deleted, replaced or added to only if such modification is in writing, signed by the parties and expressly stated to be a modification of this Operating Agreement.
- 6.4 Either party may terminate this Operating Agreement at any time upon giving at least 120 days' notice in writing to the other party with no reason or cause and without liability, cost or penalty.
- 6.5 Notice required in connection with this Operating Agreement shall be given in writing and may be given by personal delivery or by registered mail, courier, electronically or facsimile transmission, addressed to the recipient as follows:

City of Greater Sudbury
P.O. Box 5000
Station "A"
200 Brady Street
Sudbury ON P3A 5P3

Attention: Meredith Armstrong, Director, Economic Development

Email: meredith.armstrong@greatersudbury.ca
Fax: (705) 671-6767

City of Greater Sudbury Community Development Corporation
200 Brady Street
P.O. Box 3700, Station "A"
Sudbury, ON
P3E 3L9

Attention: Chair

Email:
Fax: (705)

or to such other address or facsimile number as may be designated by notice by either party to the other.

- 6.6 Nothing in this Operating Agreement shall be read or construed as conferring upon the CGSCDC, its officers, directors, employees or members the status of employee, or agent of, or partner or joint venture with the City.
- 6.7 The CGSCDC shall not assign this Operating Agreement, or any part thereof, without the prior written consent of the City, which approval may be withheld by the City in its sole discretion or given subject to such terms and conditions as the City may impose.
- 6.8 This Operating Agreement embodies the entire agreement between the City and the CGSCDC, and supersedes any other understanding or agreement, collateral, oral or otherwise.
- 6.9 This Operating Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
- 6.10 This Operating Agreement shall be binding upon the parties, their successors and their permitted assigns.

IN WITNESS WHEREOF the parties hereto sign by their duly authorized signing officers.

CITY OF GREATER SUDBURY

Ed Archer, Chief Administrative Officer

**CITY OF GREATER SUDBURY
COMMUNITY DEVELOPMENT
CORPORATION**

Andrée Lacroix, Chair

**City of Greater Sudbury/CGSCDC Operating Agreement
Schedule A**

This Eligible Tourism Entity Agreement, made in quadruplicate, this 10th day of April, 2019

Between:

City of Greater Sudbury

(the "City")

-and-

The City of Greater Sudbury Community Development Corporation

(the "CGSCDC")

Whereas the CGSCDC is a not-for-profit corporation incorporated under the *Corporations Act*, R.S.O. 1990, c. C.38, as a community development corporation for the City of Greater Sudbury;

And Whereas by an Operating Agreement between the parties, the City agreed to provide certain staff, services and facilities to and for the benefit of CGSCDC to assist it to fulfill its mandate to promote economic development in the City, and required the CGSCDC to comply with various policies, procedures and other requirements of the City;

And Whereas the Letters Patent of the CGSCDC have been amended to include the mandate to promote tourism in the City of Greater Sudbury but the Operating Agreement has not been amended to provide for services in support of the tourism mandate;

And Whereas by By-law 2018-127 Council of the City of Greater Sudbury levied a municipal accommodation tax, pursuant to the *Municipal Act, 2001*, S.O. 2001, c. 25;

And Whereas O. Reg. 435/17: Transient Accommodation Tax made under the *Municipal Act, 2001*, S.O. 2001, c. 25, requires that in each Fiscal Year or part Fiscal Year in which a municipal accommodation tax is in effect, that the municipality pay to one or more eligible tourism entities, at least one half of the revenue collected, net of the municipality's reasonable costs of collecting and administering the tax attributable to that Fiscal Year, to be expended on the promotion of tourism and to provide for financial accountability for expenditure of such amounts;

And Whereas Council of the City of Greater Sudbury wishes to enter into an agreement with the CGSCDC to set out the terms on which the CGSCDC will act as the City's eligible tourism entity pursuant to O. Reg. 435/17;

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

Part 1 - Interpretation and Definitions

Interpretation

1. For the purposes of interpretation of this Agreement:

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

Terminology

2. When used in this Agreement, the following terms when capitalized will have the meanings ascribed to them below:

"Agreement" means this Agreement entered into between the City and the CGSCDC and includes the schedules;

"Budget" means the annual Budget for expenditure of the Funds on the Program during a Fiscal Year approved by the Board of Directors of the CGSCDC in accordance with section 6;

"Eligible Tourism Entity" has the meaning in O. Reg. 435/17: Transient Accommodation Tax under the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended or replaced from time to time;

"Eligible Program Costs" has the meaning in Schedule A;

"Fiscal Year" means the period commencing on January 1st and ending on December 31st, and includes the period from the start of the Term until December 31st and the period from January 1st to the end of the Term;

"Funds" has the meaning in subsection 6(1);

"MAT" or "Municipal Accommodation Tax" means the Municipal Accommodation Tax collected under the MAT By-law;

"MAT By-law" means By-law 2018-127 of the City of Greater Sudbury to Establish the Municipal Accommodation Tax, as amended or replaced from time to time;

"Operating Agreement" refers to the operating agreement between the City of Greater Sudbury and the CGSCDC dated May 3, 2007 as amended or replaced from time to time;

"Parties" means the City and the CGSCDC and "Party" means either the City or the CGSCDC;

"Program" means the activities involved in the promotion of tourism, including development of tourism products, as more particularly described in Schedule "A", Part 1;

“Term” has the meaning in Section 23, and where applicable, includes an Extension Term, as that term is used in section 24;

“Tourism Development Subcommittee” means the subcommittee of the Board of Directors of the CGSCDC as described in subsection 5(2);

“Treasurer” means the person appointed by Council for the City of Greater Sudbury as Treasurer for the City from time to time and includes his or her designate; and

“Work Plan” means the annual Work Plan for the operation of the Program in each Fiscal Year as approved by the Board of Directors of the CGSCDC, in accordance with section 6 and may include a multi-year Work Plan.

Part 2 - Representations

Representations – General

3.(1) The CGSCDC represents, warrants and covenants that:

- (a) it is, and shall continue to be for the Term of this Agreement, a validly existing legal not for profit corporation with full power to fulfill its obligations under this Agreement;
- (b) it qualifies as and throughout the Term shall continue to qualify as an Eligible Tourism Entity;
- (c) it has, pursuant to the Operating Agreement, and shall continue during the Term of this Agreement to have the resources, experience, expertise, facilities, equipment, skilled personnel, management and knowledge necessary or required to conduct the Program in a competent and professional manner; and
- (d) the conduct of the Program shall not infringe or induce the infringement of any intellectual property rights of any third party, and that it has obtained assurance with respect to any intellectual property of any third party that any rights or integrity or other moral rights associated therewith have been waived.

Representations – Execution of Agreement

4. The CGSCDC represents and warrants that:

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

Representations – Governance

5.(1) The CGSCDC represents, warrants and covenants that it has established, and shall maintain for the period during which this Agreement is in effect, effective procedures and protocols to enable:

- (a) timely and responsive decision-making;

- (b) prudent and effective management and utilization of the Funds;
 - (c) tourism and accommodation stakeholders to provide input into the Program and use of the Funds to carry out the Program;
 - (d) the effective promotion of tourism within the City and otherwise enable the successful conduct of the Program;
 - (e) the timely identification of risks to the operation of the Program and strategies to address the identified risks; and
 - (f) the preparation and delivery of all reports required pursuant to this Agreement.
- (2) The CGSCDC represents, warrants and covenants that it has established and will maintain in place during the Term of this Agreement, a Tourism Development Subcommittee which will:
- (a) be responsible to provide advice, recommendations, information and expertise to the CGSCDC board on planning, recommendations and monitoring of the Program, such as:
 - (i) development and recommendation of:
 - A an annual Work Plan;
 - B initiatives to promote tourism;
 - C an annual operating Budget; and
 - D potential contribution to City capital infrastructure initiatives;
 - (ii) monitoring and evaluation of any initiatives implemented by the CGSCDC and the impact on the tourism industry; and
 - (iii) recommending any changes to the Board of the CGSCDC regarding approved programs and Budget allocation,
 - (b) have a membership comprising:
 - (i) two members of the CGSCDC board of directors;
 - (ii) three representatives from the accommodation sector;
 - (iii) two community representatives of the tourism sector, exclusive of the accommodation sector; and
 - (iv) one non-voting representative of the Economic Development staff of the City,
 - (c) meet no less often than quarterly; and

- (d) provide interim reports to the CGSCDC board of directors no less often than twice a year in addition providing a comprehensive annual report on the matters outlined in paragraph 5(2)(a).
- (3) The CGSCDC acknowledges that the Board of Directors of the CGSCDC is responsible for decisions and actions of the CGSCDC under this Agreement, and it may not delegate its responsibilities to the Tourism Development Subcommittee.

Budget and Work Plan

6.(1) The CGSCDC will, for each Fiscal Year or part thereof in the Term:

- (a) after consideration of the recommendations of the Tourism Development Subcommittee referred to in subsection 5(2), prepare a Work Plan for the Program activities proposed to be undertaken during the Fiscal Year using the Funds;
- (b) after consideration of the recommendations of the Tourism Development Subcommittee referred to in subsection 5(2), prepare a Budget for the proposed expenditure of the Funds on Eligible Program Costs in support of the Work Plan;
- (c) secure the approval of Council for the City prior to including in a Budget:
 - (i) any proposed expenditure from the Funds on an undertaking or activity in an amount in excess of \$250,000;
 - (ii) funding for the employment costs associated with increasing the number of permanent full-time equivalent staff employed by the City or retaining services of contract staff for a period of more than two years, where the additional staff are providing services to the CGSCDC which are attributable to the operation of the Program,
- (d) secure the approval of the Treasurer prior to including in a Budget:
 - (i) a contribution to the City toward the development of a City capital infrastructure project which will assist in the promotion of tourism where:
 - A the expenditure in any year on a single City capital infrastructure project exceeds \$50,000; and
 - B the City capital infrastructure project to be funded will have an impact greater than \$5,000 per year on the City's operating Budget, or
 - (ii) an expenditure for the acquisition, construction, development or betterment of an asset to be used in the promotion of tourism or as a tourism product, that would be owned and/or, where applicable, operated by the City of Greater Sudbury;
- (e) provide the Treasurer annually with a copy of the Work Plan and Budget established for the Fiscal Year; and

- (f) provide a copy to the Treasurer of any amendments made to the Work Plan or Budget or both as the case may be.
- (2) The CGSCDC shall not use the Funds to acquire capital infrastructure asset but may secure other tangible capital assets. Where approval has been secured in accordance with clause 6(1)(d)(ii), the CGSCDC may request the City to acquire the approved tangible capital asset and provide the necessary Funds for such acquisition. Any such asset will be owned by the City and where applicable, operated by the City at its expense.
- (3) The Council for the City may approve or refuse consent under paragraph 6(1)(c) and the Treasurer may approve or refuse consent under paragraph 6(1)(e), in whole or in part and may impose conditions for any such approval.

Part 3 – Funds and Payment of Funds

Calculation of Funds Payable

- 7.(1) Subject to section 9, the City will pay to the CGSCDC in each Fiscal Year or part thereof during the Term of this Agreement, Funds in an amount determined using the following formula:

$$(A - B) \times 0.50$$

Where:

“A” is the revenue from the MAT received by the City in respect of the payment period; and

“B” is the City’s reasonable costs of collecting and administering the MAT that are attributable to the payment period, as determined by the Treasurer in his sole discretion.

- (2) For the purposes of subsection 7(1), reasonable costs will be incurred exclusively for the collecting and administering the MAT, and will include as representative examples:
 - (a) actual costs related to: wages, benefits, postage, stationery, collection efforts, information technology costs, audit expenses, charges for payments of MAT received from providers using debit or credit card; and
 - (b) an allocation of office overhead expense, calculated in accordance with standard City protocols for City services, in accordance with guidelines established by the Ministry of Municipal Affairs and Housing.
- (3) The City makes no representation as to the amount of Funds, if any, which will be payable to the CGSCDC in any Fiscal Year.

Payment of / Control Over Funds

- 8.(1) Subject to section 9, the payment of Funds to the CGSCDC for the 2018 Fiscal Year shall be made on or before February 28, 2019.

- (2) Subject to section 9, commencing in the 2019 Fiscal Year, the Funds will be paid to the CGSCDC in four installments where the combined payment periods for the installments comprises the whole of the Fiscal Year. Installment payments shall be advanced on dates determined by the Treasurer, provided however that all of the Funds payable for a Fiscal Year will be paid no later than sixty days after the end of that Fiscal Year.
- (3) Within sixty days of the end of each Fiscal Year or part thereof in the Term, the City shall provide to the CGSCDC:
 - (a) a statement setting out the calculation of the amount of the Funds payable to the CGSCDC for the Fiscal Year, in accordance with subsection 7(1), amounts paid to date and any amount owing to the CGSCDC or to the City as the case may be; and
 - (b) payment of any amount then owing to the CGSCDC.
- (4) The City will provide financial services for the benefit of the CGSCDC as if the Operating Agreement applied to the tourism mandate of the CGSCDC.
- (5) An allocation by the City of the Funds to the credit of the CGSCDC in accounting records of the City being maintained for the CGSCDC shall be sufficient evidence of payment to the CGSCDC. Provided however, that in the event that the CGSCDC opens an interest bearing bank account in its own name with a Canadian Financial Institution during the Term of this Agreement, the City will pay the Funds directly to the CGSCDC which shall be responsible to deposit the Funds to the said account and any interest earned thereon shall be utilized for the purposes of the Program.
- (6) The CGSCDC shall have control over and be responsible for the expenditure of the Funds and shall use the Funds only in accordance with section 10 of this Agreement. Requests by the CGSCDC for payments from the Funds while maintained by the City will be subject to compliance with standard City protocols. Any payments on Eligible Program Costs made by the City on the direction of the CGSCDC or recoverable by the City shall be charged against or recoverable from the Funds. The City may recover from the Funds, any Eligible Program Costs incurred by the City without further authorization from the CGSCDC.

Limitations on Advances / Support under Operating Agreement

- 9.(1) Despite sections 7 and 8 the City is not obligated to provide any Funds to the CGSCDC in any Fiscal Year unless:
 - (a) the Work Plan and the Budget have been provided to the Treasurer in accordance with the requirements of this Agreement; and
 - (b) the CGSCDC is in good standing under this Agreement.
- (2) The CGSCDC acknowledges and agrees that the City has no obligation to provide any money in support of the Program in excess of the Funds provided for in this Agreement. The CGSCDC may not borrow against future installments of Funds. Any costs incurred by the CGSCDC in the conduct of the Program in excess of the Funds payable to the CGSCDC under this Agreement are for the sole expense of the CGSCDC. To the extent that the City honors any such over expenditures by the CGSCDC, the City may recover

such amounts from one or more future installments of the Funds until the City has been repaid. Any amount not recoverable in such manner shall be a debt owing to the City.

- (3) In further support of the Program, the CGSCDC may rely on services, equipment and facilities provided under the Operating Agreement for the operation of the Program. Any services, equipment or facilities provided by the City which are attributable to the Program in excess of the level of support provided under the Operating Agreement for economic development purposes shall be Eligible Program Costs payable or recoverable from the Funds.

Use of Funds

10.(1) The CGSCDC will use the Funds only:

- (a) for the purpose of conducting the Program;
 - (b) on Eligible Program Costs; and
 - (c) in accordance with the Budget established by the CGSCDC for that Fiscal Year.
- (2) The CGSCDC will utilize the Funds in a responsible manner, to achieve value for money and recognizing that it is a steward of public funds.
- (3) The CGSCDC shall not lend or give away any Funds provided under this Agreement, or guarantee or underwrite the repayment of any obligation of any third party. The Parties acknowledge that provision of a contribution towards the costs of delivering an approved tourism initiative by a third party, is not contravention of this section.

Reserves

11.(1) Reserves shall be maintained by or for the CGSCDC for:

- (a) that part of the Funds being allocated in the Budget for expenditure in a future Fiscal Year as a contribution to a City capital infrastructure project promoting tourism or other tangible capital asset identified in the Budget; and
 - (b) that part of the Funds not expended in a Fiscal Year in accordance with the Budget for any reason.
- (2) Payment may be made from either Reserve on Eligible Program Costs in accordance with the Budget for the Fiscal Year in which the payments are made.

Part 4 - Carrying Out the Program

Conduct of Program – General

- 12.(1) The CGSCDC will be responsible for the timely and effective development, implementation, operation and management of the Program, and shall be responsible for the entire costs of the Program including, without limitation, any cost overruns.
- (2) The CGSCDC will carry out the Program in compliance this Agreement, including Schedule “A”, and all federal, provincial or municipal laws or regulations and codes, and

any orders, rules or by-laws related to any aspect of the Program. Without limiting the generality of the foregoing, the CGSCDC will, in the conduct of the Program secure and maintain in good standing, all permits, licences, approvals required under any federal, provincial or municipal statute, by-law, regulation or code.

- (3) Where the City is the issuer of any permit, licence, approval or authorization required as part of the Program, the entering into of this Agreement shall not be construed or deemed to be:
 - (a) a waiver of any obligation to obtain any such permit, licence, authorization or approval by the City;
 - (b) an approval by the City in its capacity as an issuer; or
 - (c) a representation by the City that the such permit, licence, authorization or approval will be issued.
- (4) The CGSCDC shall notify the City as soon as possible in the event that it becomes aware of actual or possible delays in, or inability to continue with, or to carry out or to complete the Program or any part thereof, as the case may be.
- (5) The CGSCDC will not make any material changes to the Program without the prior written consent of the City, which may be withheld or given subject to conditions.

Tendering for Goods and Services

- 13.(1) The CGSCDC will acquire all supplies, equipment and services, purchased with the Funds using an open, public competitive acquisition process and in accordance with the provisions of the Operating Agreement.
- (2) The CGSCDC will, on request of the City, provide evidence of compliance with requirements of this section.
- (3) The CGSCDC is advised to include in any procurement provisions to address the possible termination of Funding under this Agreement.
- (4) The CGSCDC shall preserve any assets costing \$1,000 or more acquired by it with the Funds under this Agreement unless:
 - (a) the Treasurer authorizes their disposition;
 - (b) it is necessary to replace assets which are subject to wear; or
 - (c) it is necessary to replace assets which have become outdated.
- (5) The CGSCDC agrees that on the termination or expiry of this Agreement it will transfer to the City at no charge, any asset or assets, which cost \$1,000 or more which were acquired with the Funds, and which it still owns or has rights to.

Consultation

- 14.(1) Authorized representatives of the Parties shall meet as required, or upon request of either Party, to consult regarding the status of the Program and to address any concerns related to the Program or this Agreement.
- (2) The CGSCDC's authorized representatives shall be the City's Director of Economic Development and the Chair of the Board of Directors or their authorized designate.
- (3) The City's authorized representative shall be the Treasurer. Any power, right or function of the City, contemplated by this Agreement may, except where expressly provided to the contrary, be exercised by the City's Chief Administrative Officer or his authorized designate, unless, in the opinion of the Chief Administrative Officer, the matter is such that direction is required from Council for the City.
- (4) Either Party may change its authorized representative in writing, using the notice procedure in section 29.

Conflict of Interest

- 15.(1) The CGSCDC will carry out the Program and use the Funds in a manner that no person associated with the Program in any capacity will have a potential or actual conflict of interest.
- (2) For these purposes, a conflict of interest includes a situation in which a person associated with the Program or any member of his or her family is able to benefit financially from his or her involvement in the Program. A financial advantage which flows to the person only as one of a broad class of person is not a contravention.
- (3) The CGSCDC will disclose to the City without delay any situation that may be reasonably interpreted as either an actual or potential conflict of interest.

Part 5 - Reporting, Accounting and Review

Records

- 16.(1) The CGSCDC will be responsible to maintain or cause to be maintained, proper records of activities related to the Program and prepare and submit reports respecting the Program in accordance with this Agreement. All reports shall be in a form acceptable to the Treasurer and meet the substantive requirements of this Agreement.
- (2) All data collected and all reports, deliverables, documents and materials prepared by the CGSCDC in the conduct of the Program shall be the sole and exclusive property of the City and all such records as may be requested by the Treasurer shall be delivered by the CGSCDC to the City at the end of the Term of this Agreement. After transfer to the City, the CGSCDC shall destroy all copies of such records and information unless required to be maintained pursuant to applicable law.

Reporting

- 17.(1) The CGSCDC will submit a written report to the City, annually, within ninety days of the end of each Fiscal Year and provide such reports to the City during the year as the City may request from time to time. Such report shall include, without limitation:
- (a) particulars of activities engaged in during the Fiscal Year to promote of tourism, including a description to the benefits to the community resulting from such activities;
 - (b) particulars of any tourism products developed;
 - (c) an outline of proposed activities to promote tourism or proposed tourism products for the next Fiscal Year;
 - (e) a description of the key performance indicators used to measure the success of the Program in promoting tourism and the outcomes from applying those key performance indicators to the Program overall and individual Program activities; and
 - (f) such other information as may be requested by the City to assist in assessing the Program.
- (2) The CGSCDC will deliver all reports in a form satisfactory to the City and where a form is prescribed by the City, shall use the prescribed form.
- (3) The CGSCDC understands that reports submitted will form part of an open public record. The CGSCDC agrees that the City may publicly release this Agreement and any Reports submitted under this Agreement, whether in hard copy or in electronic form, on the internet or otherwise.

Financial Records

- 18.(1) The CGSCDC is responsible to maintain:
- (a) all financial records, invoices and other financially-related documents relating to the Funds or otherwise to the Program in a manner consistent with generally accepted accounting principles; and
 - (b) such records available for review or investigation by the City for a period of seven years from the date of the expiry or termination of this Agreement,
- (2) The CGSCDC shall have audited financial statements prepared which include a schedule which accounts for Funds and expenditures in accordance with this Agreement.
- (3) The City is providing certain financial services to the CGSCDC pursuant to the Operating Agreement and agrees to extend those services to this Agreement as if the Operating Agreement applied to the tourism mandate of the CGSCDC. Any additional services or service level beyond that provided for in the Operating Agreement will be an Eligible Expense. Nothing herein releases the CGSCDC from co-operating with the City as required to secure compliance with subsections 18(1) or

(2).

Inspection and Audit

- 19.(1) The City or its authorized representatives may, upon twenty-four hours notice to the CGSCDC and during normal business hours enter upon any premises owned or occupied by the CGSCDC for any one or more of the following purposes:
- (a) to review the status and manner of operation and conduct of the Program;
 - (b) inspect and copy any financial records, invoices and other financially-related documents in the possession or under the control of the CGSCDC which relate to the Funds or otherwise to the Program; and
 - (c) inspect and copy non-financial records in the possession or under the control of the CGSCDC which relate to the Funds or otherwise to the Program, except that, where such records relate to a third party served by the Program, the City will obtain the consent of the third party before inspecting or copying such records.
- (2) The CGSCDC will cooperate with the City in respect of the exercise of the City's rights set out in subsection 19(1), and the CGSCDC will provide any information in respect of the Funds or the Program that the City may reasonably request and where necessary shall provide access to such other premises that the information required by the City is located.
- (3) The purposes for which the City may exercise its rights under this section 19 include determining:
- (a) for what items and purposes the CGSCDC expended the Funds; and
 - (b) whether the CGSCDC conducted the Program effectively and in accordance with the terms of this Agreement.

Limitation of Liability

20. The City, its officers, employees and agents will not be liable to the CGSCDC, its subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors for any liability, loss, costs, damages and expenses (including legal fees), causes of action, actions, claims, demands, lawsuits and other proceedings, howsoever caused that arise out of or are in any way related to the Program or this Agreement.

Indemnity

21. The CGSCDC will indemnify and hold harmless the City from and against any and all Claims by whomever made, sustained, incurred, brought or prosecuted, including for third party bodily injury (including death), personal injury and property damage, in any way based upon, occasioned by or attributable to anything done or omitted to be done by the CGSCDC, its subcontractors or their respective directors, officers, agents, employees, partners, affiliates, volunteers or independent contractors in the course of carrying out the Program or otherwise in connection with this Agreement. The CGSCDC further agrees to indemnify and hold harmless the City for any incidental, indirect,

special or consequential damages, or any loss of use, revenue or profit, by any person entity or organization, including, without limitation, the City, claimed or resulting from such Claims.

Acknowledgement of City

- 22.(1) The CGSCDC will acknowledge, in a format approved by the City, that the Program is funded by MAT but is conducted by the CGSCDC.
- (2) The CGSCDC will indicate, in any of its Program-related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the CGSCDC and do not necessarily reflect those of the City.

Part 6 - Term / Extension / Termination

Term of Agreement

- 23.(1) Unless earlier terminated, this Agreement is for a term of five years, from September 1st, 2018 to August 31st, 2023, inclusive.
- (2) Despite the expiry of the Term or an extension term, the City will pay to the CGSCDC any Funds owing to it, in an amount equal to the lesser of the Eligible Program Costs actually incurred in accordance with the Budget prior to the expiry or earlier termination of this Agreement and the Funds calculated in accordance with subsection 6(1) to the expiry or other termination date.

Extension

24. The City shall have the option at its sole discretion to extend the Term of this Agreement for two additional terms of five years each, (each of which is called an "Extension Term"), subject to the following:
 - (a) the option shall be exercised by notice in writing given by the Treasurer on behalf of the City to the CGSCDC no less than two month prior to the expiration date of the Term or first Extension Term of this Agreement, provided that such notice shall be validly given only if at the time it is given, the CGSCDC is not in material default under any of the terms, covenants and conditions in this Agreement on its part to be observed and performed; and
 - (b) the extension of the Term of this Agreement upon the exercise of each such option shall be upon the terms and conditions and subject to all the provisions of this Agreement, provided however that there shall be no further extension beyond the total of fifteen years provided for herein.

Termination – No Fault

25. Either Party may terminate this Agreement at any time upon giving at least one hundred and twenty days written notice to the other Party without reason or cause and without liability, cost or penalty.

Termination and Corrective Action

26.(1) The City may terminate this Agreement immediately upon giving notice to the CGSCDC if:

- (a) in the opinion of the City:
 - (i) the CGSCDC has knowingly provided false or misleading information regarding its spending of the Funds or in any other communication with the City;
 - (ii) the CGSCDC breaches any provision of this Agreement;
 - (iii) the CGSCDC is unable to complete the Program or is likely to discontinue it; or
 - (iv) it is not reasonable for any reason for the CGSCDC to complete the Program;
- (b) the nature of the CGSCDC's mandate changes or it ceases to qualify as an Eligible Tourism Entity;
- (c) the CGSCDC 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; or
- (d) the CGSCDC ceases to operate.

(2) If the City considers that it is appropriate to allow the CGSCDC the opportunity to remedy a breach of this Agreement, the City may give the CGSCDC an opportunity to remedy the breach by giving the CGSCDC written notice:

- (a) of the particulars of the breach;
- (b) of the period of time within which the CGSCDC is required to remedy the Breach; and
- (c) that the City will terminate this Agreement:
 - (i) at the end of the notice period provided for in the notice if the CGSCDC fails to remedy the breach within the time specified in the notice; or
 - (ii) prior to the end of the notice period provided for in the notice if it becomes apparent to the City that the CGSCDC cannot completely remedy the breach within that time or such further period of time as the City considers reasonable, or the CGSCDC is not proceeding to remedy the breach in a way that is satisfactory to the City.

(3) If the City has provided the CGSCDC with an opportunity to remedy the breach and:

- (a) the CGSCDC does not remedy the breach within the time period specified in the notice;

- (b) it becomes apparent to the City that the CGSCDC cannot completely remedy the breach within the time specified in the notice or such further period of time as the City considers reasonable; or
- (c) the CGSCDC is not proceeding to remedy the breach in a way that is satisfactory to the City,

the City may immediately terminate this Agreement by giving notice of termination to the CGSCDC.

- (4) Despite the City's right to terminate this Agreement pursuant to subsection 26(1), the City may, in addition to and in the alternative to subsection 26(2), choose not to terminate this Agreement and may take whatever corrective action it considers necessary and appropriate, including suspending Funds for such period as the City determines, to ensure the successful completion of the Program in accordance with this Agreement.
- (5) The effective date of any termination under this section will be the last day of the notice period, the last day of any subsequent notice period or immediately, whichever applies.

Automatic Termination

- 27. This Agreement shall terminate automatically and without need for notice to the CGSCDC in the event that:
 - (a) the MAT By-law is repealed or is otherwise terminated; or
 - (b) the *Municipal Act, 2001*, S.O. 2001, c 25, is amended such that the City is no longer entitled to levy a MAT.

Funds Upon Expiry or Termination

- 28.(1) Upon expiry or other termination of this Agreement the City:
 - (a) will not make any further payments of any part of the Funds to the CGSCDC other than as may be required to cover Eligible Program Costs incurred in accordance with the Budget prior to the date of expiry or other termination, to a maximum of the amount of Funds then owing to the CGSCDC;
 - (b) may demand the repayment of any Funds (including any interest) remaining in the possession or under the control of the CGSCDC, including those Funds in reserves; and
 - (c) may demand the repayment of an amount equal to any Funds not used in accordance with this Agreement.
- (2) Where the City is utilizing its bank account for the purposes of managing Funds under the control of the CGSCDC, the City may make appropriate entries to reflect that such part of the Funds as may be owing to the City under paragraph 28(1)(b) or (c) are no longer under the control of the CGSCDC.

Notices

- 29.(1) Notice required under this Agreement shall be sent by personal delivery or by registered mail.
- (2) Notices by mail shall be deemed to have been received on the fifth business day after the date of mailing.
- (3) Notices by personal delivery shall be deemed to have been received at the time of delivery if sent between the hours of 8:30 a.m. and 4:00 p.m. on Monday to Friday inclusive, unless such day is a holiday, and otherwise, on the next following day between Monday and Friday inclusive.
- (4) Notices to the parties shall be sent to the following addresses:
- CGSCDC:**
The City of Greater Sudbury Community Development Corporation
P.O. Box 5000, Station "A"
200 Brady Street, Sudbury, Ontario, P3A 5P3
Attention: Secretary Treasurer
- City:**
City of Greater Sudbury
Box 5000, Station A
200 Brady Street, Sudbury, Ontario, P3A 5P3
Attention: Chief Administrative Officer
- (5) The Parties may designate in writing to each other a change of address at any time.

Confidentiality

- 30.(1) The CGSCDC agrees that all personal information, that the CGSCDC accesses or of which the CGSCDC acquires knowledge as a result of the conduct of the Program, will be used, retained, protected, disclosed and disposed of in accordance with all applicable municipal, provincial and federal laws and regulations governing the collection, use, retention, disclosure and disposal of such information, including without limitation, the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended.
- (2) The CGSCDC shall maintain the confidentiality and shall not use, disclose or release, at any time during the Term of this Agreement, or thereafter, any of the information acquired by it during the course of conducting the Program or any purposes other than the conduct of the Program.
- (3) Failure to comply with this section will be grounds for immediate termination of this Agreement, at the discretion of the Treasurer.

Severability of Provisions

31. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision of this Agreement and any invalid or unenforceable provision will be deemed to be severed.

Amendment and Waiver

- 32.(1) No amendment of or addition to this Agreement will be valid unless it is in writing and signed by each Party.
- (2) A waiver of any failure to comply with any term of this Agreement will be in writing and signed by the party providing the waiver. Any waiver must refer to a specific failure to comply and will not have the effect of waiving any subsequent failures to comply.

Relationship

33. (1) Nothing in this Agreement shall be read or construed as conferring upon the CGSCDC, its officers or directors the status of employee or agent of, or partner or joint venture with the City.
- (2) The Parties acknowledge that this Agreement is entered for the purpose of providing Funds for the conduct of the Program and is not a purchase of service or other arrangement. The CGSCDC is solely responsible for any costs incurred in the delivery of the Program in excess of the Funds provided for in this Agreement.

Assignment of Agreement of Funds

34. The CGSCDC will not assign this Agreement or the Funds or any part thereof without the prior written consent of the City, which consent may not be unreasonably and arbitrarily withheld or given subject to such terms and conditions as the City may impose.

Governing Law

35. This Agreement and the rights, obligations and relations of the parties to this Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and enforced in the court system of Ontario.

Further Assurance and Consents

- 36.(1) The Parties agree to do or cause to be done all acts or things necessary to implement and carry into effect this Agreement to its full extent.
- (2) The CGSCDC acknowledges that the City may impose conditions on any consent it provides pursuant to this Agreement.

Circumstances Beyond the Control of Either Party

- 37.(1) Neither Party will be responsible for damage caused by delay or failure to perform under the terms of this Agreement resulting from matters beyond the control of the City and the CGSCDC including strike, lockout or any other action arising from a labour dispute, fire, flood, act of God, war, riot or other civil insurrection, lawful act of public authority, or delay or default caused by a common carrier which cannot be reasonably foreseen or provided again.
- (2) Subsection 37(1) shall not apply to:

- (a) any event that is caused by the negligence or intentional action of a party or such party's agents or employees;
- (b) any event that a diligent party could reasonably have been expected to take into account at the time of execution of this Agreement and avoid or overcome in the carrying out of its obligations under the Agreement; or
- (c) the insufficiency of funds or failure to make any payment required hereunder.

Obligations Surviving Termination

- 38. All obligations of this Agreement shall expressly or by their nature survive termination or expiration of this Agreement and shall continue in full force subsequent to and notwithstanding such termination or expiration until and unless they are satisfied or by their nature expire.

Priorities

- 39. In the event of any of conflict or inconsistency between the body of this Agreement any of the Schedules forming part of this Agreement, the body of the Agreement shall prevail.

Counterparts

- 40. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement will be considered fully executed when all Parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart. This Agreement may be executed and delivered by facsimile signatures and will be binding on all parties as if executed by original signature and delivered personally.

Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)

- 41.(1) The CGSCDC acknowledges that the City is bound by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M-56, as amended from time to time, and that any information provided to the City in connection with this Agreement is subject to disclosure in accordance with the requirements of that Act.
- (2) The CGSCDC acknowledges that the City may make public the name and business address of the CGSCDC, the amount of the Funds and the purpose for which the Funds has been provided.

Time of Essence

- 42. Time will be of the essence in all respects. No extension of or waiver pursuant to this Agreement will operate as a waiver of this provision.

Entire Agreement

43. This Agreement and the attached Schedules embody the entire Agreement and supercede any other understanding or agreement, collateral, oral or otherwise, existing between the Parties at the date of execution other than the Operating Agreement which shall continue in effect and be read in conjunction with this Agreement.

Third Party Observance

44. The CGSCDC shall take all reasonable measures to ensure that its directors, officers, employees, agents, contractors and servants are bound to observe the terms of this Agreement.

Contra Proferentem Rule Not Applicable

45. Should any provisions of this Agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting or construing the same shall not apply a presumption that the terms thereof shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared the same, it being agreed that both Parties, directly or through their agents have participated in the preparation of this Agreement.

Rights and Remedies Cumulative

46. The rights and remedies of the Parties to this Agreement are cumulative and are in addition to and not in substitution for any rights and remedies provided by law or in equity.

Binding

47. This Agreement shall be binding upon the Parties and their permitted assigns.

[remainder of the page intentionally left blank]

[signing page follows]

IN WITNESS WHEREOF, the City and the CGSCDC have respectively executed and delivered this Agreement.

Dated at Sudbury this 10th day of April, 2019.

Authorized by City Council Resolution CC2018-208	
REVIEWED BY:	
Finance	<u>RR</u>
Legal Services	

CITY OF GREATER SUDBURY


Executive Director of Finance, Assets and Fleet

Dated at Sudbury this _____ day of _____, 2019.

**THE CITY OF GREATER SUDBURY
COMMUNITY DEVELOPMENT CORPORATION**

Per:


Name, Title

Per:

Name, Title

Per:

Name, Title

I/We have authority to bind the corporation.

SCHEDULE "A"

PART 1 - PROGRAM DESCRIPTION

- 1.(1) The Program shall consist of the promotion of tourism within the City, including the development of tourism products. For the purposes of this description:
 - (a) "Promotion" means activities that will make known or increase the sales of accommodations and attractions in the City of Greater Sudbury but does not include the direct promotion of the accommodation providers in the City;
 - (b) "Tourism" refers to the activities that people engage in during their travel and stay in places outside of their home city for a consecutive period of time whether for leisure or business.
- (2) The Program will include activities such as:
 - (a) gathering and maintaining information about tourism related activities, festivals, events and attractions;
 - (b) disseminating information regarding the City of Greater Sudbury and its tourism related activities and attractions in an effective manner and to appropriate target groups so as to increase the appeal of Greater Sudbury as a destination of choice for tourists. As part the process, the CGSCDC will use a variety of media;
 - (c) promoting activities, festivals, events and attractions of interest to the tourism market. Promotional activities can include, but are not limited to the following:
 - (i) marketing or advertising campaigns for activities such as outdoor/natural, historical, cultural, recreational or business travel through means such as websites, digital promotion including social media, print collateral, exhibition booths, and similar activities;
 - (ii) creation of advertisements, brochures, leaflets, posters, merchandise, videos, press releases, travel guides, digital content;
 - (iii) offering package tours and visitor experiences; and
 - (iv) improving public facilities and related infrastructure including support for festival, events, sports tournaments and conferences,
 - (d) collecting data to assist in measuring increases in tourism such as increased occupancy rates in transient accommodation such as hotels and motels; dated admission numbers from local tourism-related attractions;
 - (e) providing advice and assistance in the development and hosting of tourism related activities, festivals, events and attractions;
 - (f) making capital contributions towards proposed City owned capital infrastructure projects which will promote tourism; and
 - (g) purchase or development of tourism products.

The Program content and allocation of funds provided for the Program will be guided by the Tourism Development Committee, established in accordance with this Agreement.

Part 2 - Program Guiding Principles

- 2.(1) **Uses:** The portion of the funds collected and contributed to the CGSCDC as the Eligible Tourism Entity will be used exclusively on activities and programs that directly support the development of the tourism industry and the marketing of destinations from which they were generated, including any administration costs of the program delivery.
- (2) **Industry Wide:** Uses of funds should be for the broad benefit of the tourism industry. Notwithstanding certain strategies, programs may focus on certain industry segment(s). The Eligible Tourism Entity should seek governance checks and balances that represent the broader industry. Furthermore, for additional clarity any assessment collected should never be recognized as revenue for any "for share" company.
- (3) **Transparency for the Industry:** The tourism industry will determine the most effective use of funds and be prepared to communicate these to interested parties. Best practices in governance should be adopted.
- (4) **Accountability:** Expenditures should be accounted for independently and/or by dedicated accounts or cost centers. Annual reporting of the collection and spending should be undertaken.

Part 3 - Eligible Program Costs

3.(1) General

Eligible Project Costs are those costs reasonably incurred by the CGSCDC or attributable to the CGSCDC by the City in accordance with this Agreement or the Operating Agreement, in the course of carrying out the Program and include the following but exclude Ineligible Program Costs. Costs are Eligible Program Costs only if they are:

- (a) directly related to Program activities; and
- (b) reasonable.

The portion of the cost of any goods and services purchased by the CGSCDC for which an HST input tax credit or rebate can be claimed, is excluded from Eligible Program Costs and not eligible. The CGSCDC shall as far as reasonable and practical take advantage of any HST rebates that may be available to it.

Eligible Expenditures can begin to accrue and can only be reimbursed to the CGSCDC following the Effective Date of the Agreement.

(2) Eligible Program Costs

Eligible Program Costs are all direct costs, which are specifically identified as having been incurred in the performance of the Program are Eligible Program Costs. In general these could include but are not limited to, the following categories of costs:

- (a) the direct employment costs, including but not limited to salaries, benefits and pension costs, associated with any increase in staffing provided to the CGSCDC by the City, over the staffing level as of the commencement of this Agreement, where such increase has been approved by Council for the City and to the extent that such additional staffing are delivering the Program;
- (b) communication/marketing costs associated with the marketing associated with the Program;
- (c) the costs of goods purchased for use in the Program in accordance with this Agreement;
- (d) the costs of services provided under contract by a consultant;
- (e) contribution to support or fund acquiring, planning, designing, constructing or renovating a City owned capital infrastructure Project which will promote tourism, or allocation to a reserve pending confirmation that such project is proceeding and where approved by Council in accordance with section 6 of this Agreement;
- (f) tangible capital assets to be used in the promotion of tourism, or as a tourism product, that would be owned and, where applicable, operated by the City of Greater Sudbury, where approved by Council in accordance with section 6 of this Agreement;
- (g) overhead costs, being those costs, which, though necessarily having been allocated by the City of Greater Sudbury for the conduct of the CGSCDC's business in general cannot be identified and measured as directly applicable to the Program; and
- (h) costs of facilities, services, supplies not provided by the City or in excess of the level provided by the City under the Operating Agreement

(3) Ineligible Program Costs

The following costs are not Eligible Program Costs:

- a) costs incurred prior to the commencement of the Term;
- b) entertainment expenses outside a defined program pursuant to section 1(2) of this Schedule;
- c) fines and penalties;
- d) membership fees for clubs;
- e) any goods and services which are received through donations or in kind;
- f) taxes for which the CGSCDC is eligible for a tax rebate and all other costs eligible for rebates; or

- g) expenditures on the direct promotion of one or more hotels, motels or other transient accommodation.

City of Greater Sudbury/CGSCDC Operating Agreement

SCHEDULE B

Community Economic Development (CED) Funding Program

The City of Greater Sudbury Community Development Corporation, operating as the Greater Sudbury Development Corporation (GSDC), serves as a catalyst in supporting projects that address priorities that will result in long term economic benefits to Greater Sudbury. This is done in part through the resources made available as part of the Community Economic Development program, or CED.

The goal of this program is to support projects and initiatives that demonstrate potential job and wealth creation, export development, promote investment and continued economic diversification. The Community Economic Development Committee, a sub-committee of the board, receives project funding applications and provides due diligence on behalf of the Board and Council.

The proposal template requires that proponents provide a standardized description of their project with detailed financials and economic impact projections. In turn, the evaluation tool enables Economic Development staff to review and analyze each project proposal and provide feedback to the Community Economic Development Committee. This process ensures that the GSDC is able to provide City Council with accurate, ongoing and enhanced information with respect to project investments in economic development.

Applicants may include private sector and public partnerships and organizations located in the City of Greater Sudbury. Applicants must clearly demonstrate how their project will deliver economic benefit(s) to the City of Greater Sudbury. The CED Fund seeks to support projects that:

- Align with the City's Economic Development Strategic Plan and associated objectives
- Create jobs and enhance job growth and investment opportunities
- Have a positive economic impact

The Community Economic Development Committee of the GSDC recommends investment of financial and/or non-financial resources in projects that promote new alliances, partnerships and sectoral development for the benefit of the community.

Greater Sudbury Arts & Culture Grant Program

Established in 2005, the City of Greater Sudbury's Arts and Culture Grant Program stimulates the growth and development of this important economic sector, increases its potential to attract and retain a talented and creative workforce and presents an investment in quality of life for all residents.

The City's Economic Development division, Tourism and Culture section coordinates the application process for the Arts & Culture Funding Program. The process of reviewing applications and determining allocations is conducted with two assessment committees. The recommendations of the Assessors are then brought forward to the City of Greater Sudbury Community Development Corporation (GSDC) Board of Directors for review and approval on behalf of City Council. The funding is disbursed to grant proponents through Contribution

Agreements, which also lay out requirements for reporting results and communicating the City's contribution.

Since its inception and under GSDC oversight, the program has allocated millions of dollars in funding to hundreds of local arts and culture organizations. This investment has led to the employment of hundreds of artists, the realization of dozens of festivals and a strong community impact.

Program Objectives

To provide funding support in line with the priorities identified in the *Cultural Plan* in order to foster the growth and development of the local arts and culture sector.

Strategic Directions of the <i>Cultural Plan</i>		
Creative Identity	Greater Sudbury is multicultural and has a unique historical relationship with its geographical landscape. Cultural resources help define the identities of individual communities as well as the shared identity of Greater Sudbury as a whole.	Support the binding effect that culture contributes towards maintaining a shared sense of community and identity.
Creative People	Creative individuals are at the heart of the creative economy, but also foster social development. Nearly everyone participates in creative pursuits in some aspect of their lives.	Foster and promote local talent within the creative cultural sector. Nourish dynamic and diverse cultural experiences for all levels within the community
Creative Places	Quality of place is a powerful driver in attracting and retaining talent in a global world.	Grow beautiful environments that reflect the cultural richness and heritage of the city. Design infrastructure with intention and create a cultural estate.
Creative Economy	Creativity and culture impact the economy in many ways, from directly employing people to being a component of almost any employment sector. There has been increasing recognition of the powerful role creativity and culture play in economic restructuring and generating wealth in our communities.	Build awareness and public engagement in cultural activities. Strengthen a diverse economy of cultural resources to maximize their contribution to economic development.

Applications are solicited through public announcements. Tourism & Culture staff review the applications, following principles of due diligence. The applications are reviewed by subcommittees of the Greater Sudbury Community Development Corporation (GSDC). Recommendations are then brought forth to the full GSDC Board for final approval. All funding is subject to the approval of the annual municipal budget by the Council of the City of Greater Sudbury.



CITY OF GREATER SUDBURY COMMUNITY DEVELOPMENT CORPORATION
GSDC Regular Meeting of June 24, 2020
Motion 2020 - 042

Moved by: _____

Seconded by: _____

WHEREAS the City of Greater Sudbury Auditor General's 2018 report on the Greater Sudbury Development Corporation (GSDC) governance structure included a recommendation to review and update the current Operating Agreement of the GSDC, which is dated May 3, 2007; and

WHEREAS the new Operating Agreement has been developed following a detailed review process and in consultation with the GSDC Board members over the past year; and

WHEREAS the new Operating Agreement represents a collaborative effort in order to ensure a shared understanding of the roles and responsibilities of the GSDC Board in terms of its work with the City of Greater Sudbury, including City Council and the Economic Development Division;

THEREFORE BE IT RESOLVED that the Greater Sudbury Development Corporation Board of Directors approve and adopt the Operating Agreement dated June 23, 2020 and recommend it for approval by City of Greater Sudbury Council; and

FINALLY, that the GSDC Board direct the Chair of the Board to sign the agreement on behalf of the Corporation once it has been approved and endorsed by City Council.

Chair of the Meeting

CITY OF GREATER SUDBURY COMMUNITY DEVELOPMENT CORPORATION
GSDC Annual General Meeting of June 24, 2020
Motion 2020 - 050

Moved by: _____

Seconded by: _____

THAT the members of the Greater Sudbury Development Corporation Board of Directors re-appointment of:

- Jennifer Abols
- Robert Haché
- Anthony Lawley
- Mike Mayhew
- Claire Parkinson and
- Shawn Poland

to serve on the Board of Directors of the City of Greater Sudbury Community Development Corporation for a three (3) year term ending June 2023.

Chair of the Meeting