



City of Hamilton

HAMILTON TOURISM DEVELOPMENT CORPORATION BOARD OF DIRECTORS AGENDA

Meeting #: 23-001
Date: November 30, 2023
Time: 12:30 p.m.
Location: Room 192, 1st Floor (hybrid) (RM)
71 Main Street West

1. APPOINTMENT OF CHAIR AND VICE-CHAIR
2. APPROVAL OF AGENDA
(Added Items, if applicable, will be noted with *)
3. DECLARATIONS OF INTEREST
4. APPROVAL OF MINUTES OF PREVIOUS MEETING
5. COMMUNICATIONS
6. DELEGATION REQUESTS
7. DELEGATIONS
8. STAFF PRESENTATIONS
 - 8.1 Hamilton Tourism Development Corporation and Municipal Accommodation Tax Overview
9. CONSENT ITEMS
10. DISCUSSION ITEMS
 - 10.1 Hamilton Tourism Development Corporation By-Law No. 1

- 10.2 Approval of the 2023 Budget
- 10.3 Signing Authority for Certain Agreements
 - a. Operating Agreement
 - b. Line of Credit - Business Operations
 - c. Line of Credit - Administrative
- 10.4 Municipal Accommodation Tax Reserve Fund Policy

11. MOTIONS

- 11.1 Board of Directors Resolutions

12. NOTICES OF MOTION

13. GENERAL INFORMATION / OTHER BUSINESS

14. PRIVATE AND CONFIDENTIAL

15. ADJOURNMENT

Hamilton Tourism Development Corporation and Municipal Accommodation Tax Overview



Presentation to: The Board of Directors, Hamilton Tourism Development Corporation

Presentation by: Manager of Tourism and Events, City of Hamilton

Meeting: November 30, 2023



PRESENTATION PURPOSE

To provide an overview of the

- 1) Governance structure of the Hamilton Tourism Development Corporation (Corporation)
 - role of its Board of Directors
 - role of City Council as the Sole Shareholder of the Corporation.
- 2) Municipal Accommodation Tax (MAT) implementation in Hamilton.
- 3) Resolutions for approval at today's Board of Directors meeting.

HAMILTON TOURISM DEVELOPMENT CORPORATE GOVERNANCE

February 23, 2022: Council approved the Business Case to incorporate a municipal service corporation to function as the eligible tourism entity and receive 50% of the MAT funds.

The Business Case outlined:

- the purpose of the corporation
- its mandate, objectives, principles
- governance structure
- accountability; and
- reporting matters.

HAMILTON TOURISM DEVELOPMENT CORPORATE GOVERNANCE

August 2, 2022: The non-profit, non-share capital corporation, named "Hamilton Tourism Development Corporation, was incorporated.

- City is the Sole Voting Member.
- Sole Voting Member is represented by City Council.
- Council is responsible to safeguard the Corporation's funds.

November 16, 2022: Council approved the Council Member appointments to the Corporation for the 2022-2026 Term of Council.

- Board of Directors comprised of 3 Council members – Councillor Cassar, Councillor Hwang, and Councillor Spadafora.
- Responsible to supervise the management of the business and affairs of the Corporation. Corporation.

MUNICIPAL ACCOMMODATION TAX (MAT)

2017:

The Province of Ontario grants municipalities the authority for municipalities to implement MAT on transient accommodation stays of 29 nights or less.

MAT to provide revenue to support destination marketing and tourism development initiatives, including investing in hosting significant tourism festivals and events that positively impact the local economy.

The Province requires municipalities to share a minimum of 50% of MAT with an eligible tourism entity; in Hamilton's case, this is the Corporation.

MAT IMPLEMENTATION IN HAMILTON

August 12, 2022: Council approved

- 1) By-law No. 22-209 establishing a mandatory MAT at a rate of 4%, effective January 1, 2023, on transient accommodation stays.
- 2) The Ontario Restaurant Hotel Motel Association as the MAT collection agent.
- 3) The City's MAT Reserve Policy No FPAP-RE-004.
- 4) Two line of credit agreements between the Corporation and the City.

As of September 30, 2023, MAT revenue collected = \$1,578,000

Total 2023 Year-End MAT Revenue = \$2.2 Million (estimate)

Corporation's 2023 MAT Reserve funds = \$1,094,200 (estimate)

BOARD OF DIRECTORS MEETINGS

November 30, 2023: Business of the Corporation's first Board of Directors meeting

- (i) the appointment of the Corporation's officers
- (ii) approval of the Corporate By-Law
- (iii) approval of the 2023 Budget
- (iv) approval of the Corporation's MAT Reserve Fund Policy, and
- (v) provision of signing authority

Early 2024: Board of Directors meeting

- (i) 2024 budget
- (ii) Business Plan
- (iii) recommendations on implementing the Business Plan

BY-LAW NO. 1

being a by-law relating generally to the conduct of the business and affairs of the Hamilton Tourism Development Corporation

BE IT ENACTED AND IT IS HEREBY ENACTED as a by-law of the Hamilton Tourism Development Corporation (hereinafter called the “**Corporation**”)

1. INTERPRETATION

1.1 Defined Terms. The following terms shall have the meanings set out after them:

- (i) “**Act**” means the *Not-for-Profit Corporations Act, 2010* (Ontario) together with the regulations made pursuant thereto and any statute or regulations that may be substituted therefor, as amended from time to time;
- (ii) “**Articles**” means the articles of incorporation of the Corporation as amended or restated from time to time;
- (iii) “**Board of Directors**” means the board of directors of the Corporation;
- (iv) “**By-law**” means this by-law;
- (v) “**Corporation**” means the Hamilton Tourism Development Corporation;
- (vi) “**City**” means the City of Hamilton;
- (vii) “**Council**” means the City's Mayor and duly elected members of Council;
- (viii) “**Council Resolution**” means a resolution of Council reached pursuant to the City's Procedural By-law.
- (ix) “**Director**” means a director of the Corporation;
- (x) “**notice**” means written or electronic notice;
- (xi) “**officer**” means an officer of the Corporation;
- (xii) “**person**” means an individual, a corporation, the Crown, a municipality, an agency, a board, a commission or any other entity;
- (xiii) “**Sole Member**” means the City of Hamilton;
- (xiv) “**Sole Member Direction**” means the Sole Member Declaration and Sole Member Direction issued by the Corporation to the City, as amended.

- 1.2 Sole Member's Decisions and Actions.** Unless otherwise specifically provided for in this By-Law, any decision, determination or election made or vote exercised or action taken by the Sole Member shall be subsequently ratified by Council.
- 1.3 Applicable Law.** As a municipal services corporation, the Corporation is subject to legislative requirements beyond those imposed on standard businesses and not-for-profit corporations. The Corporation is subject to a number of statutes and regulations, including but not limited to the *Not-for-Profit Corporations Act, 2010* (Ontario), the *Municipal Act, 2001* (Ontario) and Ontario Regulation 599/06: Municipal Services Corporations under the *Municipal Act, 2001* (Ontario Regulation 599/06) or any successor or replacement legislation or regulation. This By-law and the activities of the Corporation shall conform with all applicable law.
- 1.4 Conflict between Articles and By-law.** In the event of a conflict between the provisions contained in the Articles and the provisions contained in the By-law, the provisions contained in the Articles shall prevail.
- 1.5 Conflict between By-law and Sole Member Direction.** In the event of a conflict between the provisions contained in the By-law and the provisions contained in the Sole Member Direction, the provisions contained in the By-law shall prevail.

2. HEAD OFFICE

- 2.1** The head office of the Corporation shall be in the City, and at such place therein as the Directors may from time to time determine.

3. SEAL

- 3.1** The Corporation may have a corporate seal in the form approved from time to time by the Board of Directors and by the Sole Member. If a corporate seal is approved by the Board of Directors and by the Sole Member, the Secretary of the Corporation shall be the custodian of the corporate seal.

4. DIRECTORS

- 4.1 Number and Quorum.** Until changed by special resolution or articles of amendment, the number of Directors shall be three (3). A majority of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. Notwithstanding vacancies on the Board of Directors, the remaining Directors may exercise all the powers of the Board of Directors so long as a quorum of the Board of Directors remains in office.
- 4.2 Sole Member to Appoint Directors.** The Sole Member shall appoint the Board of Directors. To be eligible to serve as a Director, an individual must not be statutorily disqualified from being a director under the Act or otherwise and shall be a resident

Canadian. In addition, members of Council who act as Directors shall:

- (i) have been elected to such office by qualified electors in accordance with the *Municipal Elections Act*, 1996, S.O. 1996, c.32, as amended or shall have been appointed as a member of Council pursuant to the provisions for filling vacancies in the *Municipal Act*, 2001, S.O. 2001, c.25, as amended; and
- (ii) be approved as candidates for the Board of Directors by resolution of the Sole Member.

4.3 Term of Office. The Term of appointment for all Directors shall be concurrent with the term of Council or until their successors are appointed, in any event in accordance with the relevant provisions of the Act.

4.4 Resignation. A Director may resign the office of Director by notice in writing to the Corporation and such resignation becomes effective when received by the Corporation or at the time specified in the resignation, whichever is later.

4.5 Vacancies. Subject to the relevant provisions of the Act, if a Director ceases to be a Director for any reason, the Sole Member shall fill the vacancy created thereby as soon as is reasonably possible with persons eligible for appointment as a Director. For greater certainty, a Director ceases to hold office when they die, resign (from the Board of Directors, the City or Council, as the case may be), is removed from office by the Sole Member, or otherwise become disqualified to serve as Director.

4.6 Removal of Directors. Notwithstanding Section 3.6 of the Sole Member Direction, and for greater certainty, a Director may be removed from the Board of Directors for any reason by the Sole Member by way of a Sole Member resolution.

A Director may be also be removed from the Board of Directors by resolution of the Board of Directors, at a properly constituted meeting, for any of the following reasons:

- (i) breach of the Director's obligations under the *Not-for-Profit Corporations Act*;
- (ii) conflict of interest that cannot be resolved in any other manner satisfactory to the Board of Directors and the Sole Member;
- (iii) engagement in activities that are deemed by the Board of Directors and/or the Sole Member to be inconsistent with the principles, objectives and other provisions of this Direction;
- (iv) inability to meet the eligibility criteria of a Board of Directors member as described in section 4.2 herein; or
- (v) absence from three (3) consecutive meetings of the Board of Directors during any calendar year without written approval of the Board of Directors.

4.7 Meetings of Directors. Meetings of the Board of Directors may be held at the head office of the Corporation or at any other place in Ontario or by means of conference telephone, electronic or such other communications facilities as permit all persons participating in the meeting to communicate with each other, simultaneously and instantaneously, and a Director participating in such a meeting by such means is deemed to be present at the meeting.

Meetings of the Board of Directors shall be regular and open (provided that such meetings may only be closed to the public if the subject matter is of the type listed in subsection 239(2) of the *Municipal Act, 2001* (Ontario) or any successor or replacement legislation.

In addition to scheduled meetings of the Board of Directors, any two (2) Directors may at any time call a special meeting of the Board of Directors in order to address a matter of an urgent nature. Notice of such meeting shall be delivered, conveyed by telephone or transmitted by e-mail to:

- (i) each Director; and
- (ii) the Sole Member (through the City Clerk for distribution to the Mayor and members of Council and, as appropriate, to the public);

not less than twenty-four (24) hours before the meeting is to take place or shall be mailed to:

- (i) each Director; and
- (ii) the Sole Member (through the City Clerk for distribution to the Mayor and members of Council and, as appropriate, to the public);

not less than forty-eight (48) hours before the meeting is to take place.

After the appointment of Directors at a Sole Member's meeting, for the first meeting of the Board of Directors to be held immediately following such meeting, or in the case of a Director elected to fill a vacancy on the Board of Directors, for the meeting at which such election is made, no notice of such meeting shall be necessary to the newly elected Director or Directors in order to validly constitute such meeting, provided a quorum of Directors be present.

No error or omission in giving such notice for a meeting of Directors shall invalidate such meeting or invalidate or make void any proceedings taken or had at such meeting and any Director may at any time waive notice of any such meeting and any Director may ratify and approve of any or all proceedings taken or had thereat.

The Board of Directors shall appoint a chair who shall preside at meetings and may

perform any other duties assigned by the Board of Directors.

4.8 Meetings Without Notice. A meeting of the Board of Directors may be held at any time and place permitted by the Act or the Articles or this By-law without notice or on shorter notice than that provided for herein, and proceedings thereat shall not be invalidated if all the Directors are present in person or by electronic means or if not so present have received notice, or before or after the meeting or the time prescribed for the notice thereof, in writing waive notice of or accept short notice of such meeting.

4.9 Signed By-Laws and Resolutions in Lieu of Meeting of the Board of Directors. Any resolution signed by all the Directors is as valid and effective as if passed at a meeting of the Directors duly called, constituted and held for that purpose.

4.10 Voting. Questions arising at any meeting of the Board of Directors shall be decided by a majority of votes. All votes at any such meeting shall be taken by ballot if so demanded by any Director present, but, if no such demand is made, the vote shall be taken in the usual way by assent or dissent. A declaration by the chair of the meeting that a resolution has been carried and an entry to that effect in the minutes shall be *prima facie* evidence of the fact of the number or proportion of the votes recorded in favour of or against such resolution.

4.11 Remuneration of Directors. The Directors of the Corporation shall serve without remuneration from the Corporation and no Director shall directly or indirectly receive any profit from the position as such; provided that a Director may be paid by the Corporation reasonable expenses incurred in the performance of their duties as a Director.

4.12 Indemnity of Directors and Officers.

Subject to the limitations contained in the Act, the Corporation shall indemnify and save harmless every Director and officer of the Corporation, a former Director or officer of the Corporation, or any other person who has undertaken or is about to undertake any liability on behalf of the Corporation (the "Indemnitees"), and their heirs, executors, administrators and estate shall be indemnified and saved harmless, out of the funds of the Corporation, from and against:

- (i) all costs, charges and expenses whatsoever which such Director, officer or other person may sustain or incur in respect of or arising out of any action, suit or proceeding which is brought, commenced or prosecuted against such person, for or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by such person, in or about the good faith execution of the duties of office or in respect to any such liability; and
- (ii) all other costs, charges and expenses which such person may sustain or

incur in or about or in relation to the affairs thereof, except such costs, charges or expenses as are occasioned by such person's own dishonesty, negligent act or omission, wilful neglect or default or conduct outside the course and scope of their duties as a Director or officer of the Corporation, as the case may be.

The aforementioned indemnification is conditional upon the following: (i) the Indemnitee must have acted honestly and in good faith with a view to the best interests of the Corporation; and (ii) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Indemnitee must have had reasonable grounds for believing that their conduct was lawful.

For greater certainty, the Corporation shall also indemnify the Indemnitees in such other circumstances as the Act may permit or require, from time to time.

The Corporation may purchase and maintain insurance for the benefit of the Indemnitees against such liabilities and in such amounts as the Board of Directors from time to time may determine and as permitted by the Act.

4.13 Protection of Directors and Officers. No Director or officer of the Corporation shall be liable for the acts, receipts, neglects or defaults of any other Director or officer or employee, or for joining in any receipt or other act for conformity, or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired by order of the Board of Directors for or on behalf of the Corporation or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Corporation shall be invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or corporation with whom any moneys, securities or effects of the Corporation shall be deposited, or for any loss, conversion, misapplication or misappropriation of or damage resulting from any dealings with any moneys, securities or other assets belonging to the Corporation or for any loss occasioned by any error of judgment or oversight on such person's part or for any other loss, damage or misfortune whatsoever which may happen in the execution of the duties of the office or in relation thereto unless the same shall happen by or through such person's own wilful neglect or default or conduct outside the course and scope of their duties as a Director or officer of the Corporation.

The Directors may rely upon the accuracy of any statement or report prepared by the Corporation's auditor and shall not be responsible or held liable for any loss or damage resulting from any actions based upon such statement or report.

4.14 Action by the Board. Subject to the Sole Member Direction, the Board of Directors shall manage or supervise the management of the business and affairs of the Corporation. Subject to the terms and conditions set forth in this By-law, the powers of the Board of Directors may be exercised by a meeting of the Directors at which quorum is present or by resolution in writing signed by all of the Directors entitled to vote on that resolution at a meeting of the Board of Directors. Where there is a vacancy on the Board of Directors, the remaining directors may exercise all the powers of the Board of Directors so long as a quorum remains in office. Where the Corporation has only one

Director, that Director may constitute a meeting.

4.15 Business Plans and Budgets. Subject to any agreement with the Sole Member, the creation and management of business plans and an annual operating budget will be the responsibility of the Board of Directors for provision to the Sole Member (through the City Clerk for distribution to the Mayor and members of Council).

4.16 Policies and Procedures. Subject to any agreement with the Sole Member, the Board of Directors shall prepare corporate policies and procedures or adopt the Sole Member's policies and procedures. The Corporation shall maintain a log of such policies and procedures and shall make them available to the Board of Directors, to the Sole Member and its staff, and to the public.

5. COMMITTEES AND ADVISORS

5.1 Committees. The Board of Directors may appoint such committees as it, from time to time, considers advisable.

No committee shall have the power to act for or on behalf of the Corporation or otherwise commit or bind the Corporation to any course of action. Committees shall only have the power to make recommendations to the Board of Directors as the Board of Directors may, from time to time, direct. Members of committees shall be appointed by and hold office at the pleasure of the Board of Directors. Members of committees need not be members of the Board of Directors. The chair of each committee shall submit to the Board of Directors such reports as the Board of Directors may, from time to time, request, but, in any event, each chair shall submit an annual report to the Board of Directors at such time as the Board of Directors may, from time to time, determine.

5.2 Advisors. The Board of Directors (subject to the approval of the Sole Member) or the Sole Member may from time to time appoint advisors to serve the Corporation in such positions other than as officers, with such titles and with such powers and duties and for such terms of service, as the Board of Directors (subject to the approval of the Sole Member) or the Sole Member deems advisable.

6. MEMBERSHIP

6.1 Membership. The Sole Member shall be the City and upon passage of this By-law by the Board of Directors, such Sole Member shall be deemed to have been admitted by the Board of Directors as the Sole Member of the Corporation.

6.2 Voting. All questions proposed for the consideration of the Sole Member at any Sole Member's meeting shall be decided by a majority of the votes of the members of Council in attendance at such meeting.

6.3 Governance Framework. The Sole Member may establish a corporate governance framework for decision-making, strategic planning, budget and business plans, and corporate policies.

7. SOLE MEMBER MEETINGS

- 7.1 Meetings.** The annual or any special or general Sole Member's meeting shall be held at the head office of the Corporation or elsewhere in Ontario as the Board of Directors shall appoint or by means of conference telephone, electronic or such other communications facilities as permit all persons participating in the meeting to communicate with each other, simultaneously and instantaneously, and a person participating in such a meeting by such means is deemed to be present at the meeting. The Sole Member shall be entitled to be present at all Sole Member's meeting. Any other person may be admitted at the invitation of the Sole Member or with the consent of the meeting.
- 7.2 Signed Resolutions in Lieu of Member's Meetings.** Any resolution signed by the Sole Member is as valid and effective as if passed at a Member's meeting duly called, constituted and held for that purpose.
- 7.3 Agenda and Notice.** At every annual Sole Member's meeting, in addition to any other business that may be transacted, the report of the Board of Directors, the financial statements and the report of the auditor shall be presented. The Sole Member may consider and transact any business either special or general without any notice thereof at any Sole Member's meeting. The Sole Member shall be entitled to call at any time a special or general Sole Member's meeting.
- 7.4 Error or Omission in Notice.** No error or omission in giving notice of any annual, special or general Sole Member's meeting or any adjourned meeting, whether annual, special or general, shall invalidate such meeting or make void any proceedings taken thereat and the Sole Member may at any time waive notice of any such meeting and may ratify, approve and confirm any or all proceedings taken or had thereat.
- 7.5 Adjournment.** Any Sole Member's meeting may be adjourned to any time and from time to time and such business may be transacted at such adjourned meeting as might have been transacted at the original meeting from which such adjournment took place. No notice shall be required of any such adjournment. Such adjournment may be made notwithstanding that no quorum is present.
- 7.6 Quorum and Voting.** A quorum for the transaction of business at any Sole Member meeting shall consist of a majority of the members of Council. At all Sole Member meetings every question shall be decided by a majority of the votes of the members of Council in attendance at such meeting.

8. OFFICERS

- 8.1 General.** The Board of Directors may appoint the President, one or more vice-presidents (to which title may be added words indicating seniority or function), a Secretary and a Treasurer of the Corporation. The Board of Directors may appoint deputy officers and/or such other officers as the Board of Directors or the Sole Member may from time to time determine. Subject to the approval of the Sole Member, the Board of Directors may fix any remuneration to be paid to officers, agents, servants, and employees of the Corporation.
- 8.2 Vacancy.** A vacancy occurring from time to time in these offices may be filled by the Board of Directors with an individual identified by the Board of Directors by way of a resolution of the Board of Directors. One (1) person may hold more than one (1) office except that of President and Secretary, and any person who holds both the office of Secretary and Treasurer may be known as the Secretary-Treasurer.
- 8.3 President.** If appointed pursuant to this By-law, the president shall be the chief executive officer of the Corporation and, subject to the authority of the Board of Directors, shall have general supervision of the business and affairs of the Corporation and shall perform such other duties as may from time to time be determined by the Board of Directors.
- 8.4 Vice-Presidents.** Vice-presidents shall have such powers and duties as the Board of Directors or the President may from time to time specify.
- 8.5 Secretary.** Until changed by a resolution of the Board of Directors, the City Clerk shall be the Secretary of the Corporation. The Secretary shall give or cause to be given all notices required to be given to the Sole Member, Directors and the auditor, shall attend all meetings of the Board of Directors, all Sole Member's meetings and all committee meetings of the Board of Directors and shall enter or cause to be entered in books kept for that purpose minutes of all proceedings at all such meetings and shall perform such other duties as may from time to time be determined by the Sole Member. The Secretary shall be the custodian of all books, papers, records, documents and other instruments belonging to the Corporation.
- 8.6 Treasurer.** The Treasurer shall keep or cause to be kept proper accounting records as required by the Act and shall deposit all moneys or other valuable effects in the name and to the credit of the Corporation in such bank or banks as may from time to time be designated by the Sole Member, shall disburse the funds of the Corporation under the direction of the Board of Directors, and shall render to the Board of Directors at the regular meetings thereof whenever required an account of all transactions made as Treasurer, and of the financial position of the Corporation and shall also perform such other duties as may from time to time be determined by the Sole Member.

- 8.7 Other Officers.** The duties of all other officers shall be such as the terms of their engagement call for or as the Sole Member requires of them. Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by such assistant, unless the Sole Member otherwise directs.
- 8.8 Variation of Duties.** The Sole Member may from time to time, vary, add to or limit the powers and duties of any officer or officers.
- 8.9 Agents and Attorneys.** The Board of Directors shall have power from time to time to appoint agents or attorneys for the Corporation with such powers of management or otherwise (including the power to subdelegate) as may be thought fit.
- 8.10 Term of Office.** The Board of Directors, in its discretion, may remove any officer of the Corporation, without prejudice to such officer's rights under any employment contract. Otherwise, each officer appointed by the Board of Directors shall hold office until their successor is duly appointed, or until their earlier resignation (from office or from the City, as the case may be) or otherwise becomes disqualified to serve as an officer.
- 8.11 Employees.** The President may engage, or arrange for the services of employees, contractors, consultants and other personnel as may be required to perform such duties as may be assigned to them by the President.

9. CONFLICTS OF INTEREST- DIRECTORS, OFFICERS AND ADVISORS

- 9.1 *Municipal Conflict of Interest Act.*** The Directors and officers of the Corporation shall be deemed to be members for the purposes of the *Municipal Conflict of Interest Act* (Ontario) or any successor or replacement legislation.
- 9.2 Conflicts of Interest.** A Director, officer or advisor who has a real or perceived direct or indirect interest in a contract, act, transaction, or proposal with the Corporation, whether direct or indirect, shall disclose their interest to the Board of Directors.

Where a Director has disclosed a conflict of interest with the Corporation such Director shall not debate or vote on the matter that is the subject of the conflict.

Where an officer or advisor has disclosed a conflict of interest with the Corporation such officer or advisor shall not advise on the matter that is the subject of the conflict.

Subject to compliance with the law, and subject to compliance with the conflict of interest provisions in this by-law, no contract or arrangement entered into by or on behalf of the Corporation in which a Director is directly or indirectly interested shall be voided or voidable and no Director shall be liable to account to the Corporation

or its Members or creditors for any profit realized from any contract or arrangement by reason of any fiduciary relationship.

Where a Director has failed to comply with the conflict of interest provisions of this by-law and where a contract or arrangement has been entered into with the Corporation, the contract may be deemed to be voided or voidable and the Director may be liable to account to the Corporation or the Sole Member or creditors for any profit realized from the contract or arrangement by reason of a fiduciary relationship.

The Board of Directors in its discretion may submit any contract, act, transaction, or proposal with the Corporation for approval or ratification by the Sole Member and, subject to the provisions of the Act, any such contract, act, transaction, or proposal that shall be approved or ratified or confirmed by the Sole Member shall be valid and binding upon the Corporation.

A Director, officer or advisor who has a real or perceived direct or indirect interest in a contract, act, transaction or proposal with the City shall disclose this to the Board of Directors.

When any City employee or any individual appointed by the City who is carrying out their duties with respect to City business or with respect to the Corporation in the capacity as a Director or officer or employee of the Corporation, such City employee or individual appointed by the City shall not be deemed to have a conflict of interest.

Where a Director, officer, employee or advisor has disclosed a conflict of interest with the City the person shall not debate, vote or advise the Corporation on the matter, nor shall the Director, officer or advisor lobby, advise or make recommendations to, Council on the matter that is the subject of the conflict.

10. AUDITOR AND AUDITS

10.1 Auditor. Unless the President of the Corporation deems it necessary to appoint a different auditor, the external auditor for the City shall be the external auditor for the Corporation and shall have all of the rights and powers of an auditor provided under the *Municipal Act, 2001*.

10.2 Audits. The Corporation shall be subject to audit by the City's Internal Auditor (or designate as identified by the City's Internal Auditor from time to time), as required by the Sole Member.

11. EXECUTION OF DOCUMENTS

11.1 Execution of Instruments. Deeds, transfers, assignments, contracts, obligations, certificates and other instruments may be signed on behalf of the Corporation by any

two individuals being a director or officer. In addition, the Board of Directors may from time to time direct the manner in which and the person or persons by whom any particular deed, transfer, assignment, contract, obligation, certificate or other instrument or class of instruments may or shall be signed. Any signing officer may affix the corporate seal (if any) to any instrument. Any signing officer may certify a copy of any instrument, resolution, by-law or other document of the Corporation to be a true copy thereof.

11.2 Execution in Counterpart. Any article, notice, resolution, requisition, statement or other document required or permitted to be executed by more than one person may be executed in several documents of like form each of which is executed by one or more of such persons, and such documents, when duly executed by all persons required or permitted, as the case may be, to do so, shall be deemed to constitute one document and to bear the date as of the date of execution thereof by the last such person.

12. BORROWING

12.1 Borrowing. Subject to the limitations (if any) set out in the Act, the Articles of Incorporation of the Corporation, this By-law, or the Sole Member Direction, and only with the approval of the Sole Member, the Board of Directors may:

- (i) borrow money on the credit of the Corporation;
- (ii) issue, sell or pledge securities of the Corporation;
- (iii) give a guarantee on behalf of the Corporation to secure performance of any present or future indebtedness, liability or obligation of any person; and
- (iv) charge, mortgage, hypothecate, pledge or otherwise create a security interest in all or any of the currently owned or subsequently acquired real or personal, moveable or immovable, property of the Corporation including book debts, rights, powers, franchises and undertakings, to secure any such bonds, debentures, notes, securities or any other evidences of indebtedness or guarantee or any other present or future indebtedness, liability or obligation of the Corporation.

13. BANKING

13.1 Accounts. The Treasurer (or designate as identified by the Treasurer from time to time) shall open and administer a corporate bank account(s) for the Corporation, including making deposits, transfers and issuing cheques as required and as directed by the Corporation.

13.2 Signing Authority. The President and Treasurer (or such designate(s) as identified from time to time) and/or such other persons identified by the Board of Directors and approved by the Sole Member from time to time shall be signing officers of the

Corporation with respect to banking matters.

14. NOTICE

14.1 Notice. Whenever under the provisions of this By-law notice is required to be given, such notice may be given either personally or sent by e-mail or other electronic transmission, or by depositing same in a post office or public letter box, in a post-paid, sealed wrapper addressed to the Director, officer or Sole Member at the address, as the same appears on the books of the Corporation. For the purpose of sending any notice, the address of the Sole Member, Director or officer shall be the last address as recorded on the books of the Corporation. Whenever under the provisions of this By-law notice is required to be given to the City Clerk or City Manager, such notice may be sent by e-mail to the relevant email address provided from time to time by each of the City Clerk or City Manager. A notice or other document so sent by post shall be deemed to be sent at the time when the same was deposited in a post office or a public letter box as aforesaid, or if sent by e-mail or electronic transmission shall be deemed to be sent upon successful transmission.

14.2 Omissions and Errors. The accidental omission to give any notice to any Director, officer, auditor, Sole Member or member of a committee of the Board of Directors or the non-receipt of any notice by any such person or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting held pursuant to such notice or otherwise founded thereon.

14.3 Waiver of Notice. Any person entitled to attend a meeting of the Sole Member, Board of Directors, officers, auditor or a committee of the Board of Directors may at any time waive any notice, or waive or abridge the time for any notice, required to be given to them under any provision of the Act, the regulations thereunder, the Articles, this By-law or otherwise and such waiver or abridgement, whether given before or after the meeting or other event of which notice is required to be given, shall cure any default in the giving or in the time of such notice, as the case may be.

15. BOOKS AND RECORDS

15.1 Books and Records. The Directors shall see that all necessary books and records of the Corporation required by this By-law or by any applicable statute or law are regularly and properly kept.

16. FISCAL YEAR

16.1 The fiscal year of the Corporation shall terminate on the 31st day of December in each year.

17. DISSOLUTION

17.1 Upon the dissolution of the Corporation, after the payment of all the debts and liabilities of the Corporation, its remaining property shall be distributed and disposed of to the City of Hamilton, as a municipal government and the Sole Member.

18. INTERPRETATION

18.1 In this By-law, where the context so requires or permits, the singular shall include the plural and the plural singular, the word "person" shall include firms and corporations, and the masculine gender shall include the feminine and neuter gender.

ENACTED by the Board of Directors of the Corporation this ___ day of _____, 2023.

HAMILTON TOURISM DEVELOPMENT CORPORATION
2023 DRAFT OPERATING BUDGET
November 30, 2023

FISCAL PERIOD: January 1 to December 31, 2023

| | 2023 Draft Budget |
|-------------------------------------|------------------------------|
| Revenue | |
| Municipal Accommodation Tax Revenue | \$ 1,094,200 |
| Total Revenue | <u>\$ 1,094,200</u> |
| Expenses | |
| Software Subscription | \$ 1,190 |
| Professional fees: | |
| Consulting | 5,000 |
| City Staff | 27,694 |
| Insurance | 3,000 |
| Legal Fees | 677 |
| Financial Charges | 100 |
| Total Expenses | <u>\$ 37,661</u> |
| Net Income | <u><u>\$ 1,056,539</u></u> |

OPERATING AGREEMENT
(the “**Agreement**”)

THIS AGREEMENT is effective as of the ___ day of _____, 2023 (the “**Effective Date**”)

BETWEEN:

CITY OF HAMILTON
(the “**City**”)

-and-

HAMILTON TOURISM DEVELOPMENT CORPORATION
(the “**Corporation**”)

(individually a “**Party**” and together the “**Parties**”)

WHEREAS the Corporation is a municipal services corporation incorporated pursuant to *Ontario Regulation 599/06 – Municipal Services Corporations* (being a regulation under the *Municipal Act, 2001*, SO 2001, c.25);

AND WHEREAS the City is the sole member of the Corporation;

AND WHEREAS the Corporation is an ‘eligible tourism entity’ for purposes of *Ontario Regulation 435/17 - Transient Accommodation Tax* (being a regulation under the *Municipal Act, 2001*, SO 2001, c.25) and provides tourism promotion and tourism development services to the City;

AND WHEREAS the Parties desire to enter into this Agreement to satisfy the requirements of Section 6 of *Ontario Regulation 435/17 - Transient Accommodation Tax*.

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein and subject to the terms and conditions hereinafter set out, the Parties hereby agree as follows:

ARTICLE 1 – DEFINITIONS

1.1 In this Agreement, unless the context requires otherwise, the following words, phrases and terms shall have the meaning ascribed to them as follows:

- (a) “**Annual Report**” has the meaning ascribed to it in Section 5.1 herein;
- (b) “**Auditor**” shall have the meaning ascribed to it in the Sole Member Direction;

- (c) “**Auditor’s Report**” shall have the meaning ascribed to it in the Sole Member Direction;
- (d) “**Board**” means the Board of Directors of the Corporation;
- (e) “**Confidential Information**” shall have the meaning ascribed to it in the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, as amended;
- (f) “**Council**” means the Council of the City;
- (g) “**External Auditor’s Findings Report**” shall have the meaning ascribed to it in the Sole Member Direction;
- (h) “**Financial Statements**” shall have the meaning ascribed to it in the Sole Member Direction;
- (i) “**MAT**” means the Municipal Accommodation Tax implemented by the City pursuant to *Ontario Regulation 435/17 - Transient Accommodation Tax*;
- (j) “**Sole Member**” means the City in its capacity as the sole member of the Corporation;
- (k) “**Sole Member Direction**” means the Sole Member Direction and Sole Member Declaration made and issued by the City to the Corporation;
- (l) “**Tourism Strategy**” means the tourism strategic plan approved by Council, as amended from time to time.

ARTICLE 2 – BACKGROUND

2.1 The Parties acknowledge and agree with each other that:

- (a) the Corporation was incorporated pursuant to the *Not-for-Profit Corporations Act*, 2010, SO 2010, c.15;
- (b) the City has or intends to, as the case may be, enact(ed) a by-law to impose a municipal accommodation tax (“MAT”) pursuant to *Ontario Regulation 435/17 - Transient Accommodation Tax*;
- (c) the Corporation was incorporated to serve as an ‘eligible tourism entity’ for the purposes of *Ontario Regulation 435/17 - Transient Accommodation Tax*;

- (d) *Ontario Regulation 435/17 - Transient Accommodation Tax* allows a municipality to provide an eligible tourism entity with fifty percent (50%) of the annual MAT revenue collected (less the City's reasonable costs of collecting and administering the MAT that are attributable to such fiscal year), to be used for the exclusive purpose of promoting tourism;
- (e) the City desires to provide the Corporation with fifty percent (50%) of the City's annual collected MAT revenue (less the City's reasonable costs of collecting and administering the MAT that are attributable to such fiscal year), subject to the terms and conditions set forth herein; and
- (f) the Parties desire to enter into this Agreement in order to set out reasonable financial accountability matters to ensure that amounts paid to the Corporation are used for the exclusive purpose of promoting tourism, pursuant to *Ontario Regulation 435/17 - Transient Accommodation Tax*.

ARTICLE 3 – PAYMENT OF MAT FUNDS TO CORPORATION

- 3.1 Subject to the terms and conditions set forth in this Agreement, the City shall transfer to the Corporation fifty percent (50%) of the annual collected MAT revenue (less the City's reasonable costs of collecting and administering the MAT that are attributable to such fiscal year).
- 3.2 The frequency of payments from the City to the Corporation shall be determined at the sole discretion of the City, from time to time.

ARTICLE 4 - OBJECTIVES OF THE CORPORATION

- 4.1 The Corporation acknowledges and agrees that all amounts paid to it by the City pursuant to Section 3.1 herein shall be used for the exclusive purpose of providing the City with tourism promotion and tourism development services, consistent with the objectives set forth in Section 4.2 herein, and as may be further requested by the City from time to time.
- 4.2 The Corporation shall strive to fulfil the following objectives while providing tourism promotion and tourism development services to the City:
 - (a) assist in securing and executing the hosting and promotion of events that are deemed to be a regional, provincial, national and/or international draw;
 - (b) support the creation of tourism product development which brings new and innovative products, experiences, and services to the market for tourists to enjoy;

- (c) support tourism sector development and capacity-building;
- (d) promote and market Hamilton as a leading destination for tourism, leisure and business travel with an emphasis on promoting overnight stays; and
- (e) undertake its duties using objective decision-making that is accountable and transparent, with a focus on providing City-wide benefits.

ARTICLE 5 – FINANCIAL ACCOUNTABILITY

5.1 Annual Report. The Board shall prepare and approve an “Annual Report” and submit and present same to the City, in its capacity as Sole Member, at a Sole Member meeting, which may be the Annual General Meeting. The Annual Report shall include:

- (a) such explanations, notes and information as are required to account for any variances between the actual results from operations and the budgeted amounts set forth in the approved budget, and any material variances in the projected ability of any business activity to meet or continue to meet the financial objectives of the City;
- (b) information that is likely to materially affect the City’s objectives;
- (c) information regarding any matter, occurrence or other event which is a material breach or violation of any law, including findings of internal and other audits;
- (d) information on progress and accomplishments relative to the Corporation’s strategic business plan;
- (e) information regarding the performance of the Corporation such that the City can determine that the strategic business plan has been respected;
- (f) information regarding the performance of the Corporation such that the City can determine that the Sole Member Direction has been respected; and
- (g) such additional information as the City may specify from time to time.

5.2 Financial Statements. The Board shall deliver to the City, in its capacity as Sole Member, as soon as practicable, the Corporation’s audited annual Financial Statements signed on behalf of the Board by two (2) members of the Board along with a copy of the Auditor’s Report.

- 5.3 Accounting.** The Corporation shall adopt and use the accounting policies and procedures that may be approved by the Board from time to time and all such policies and procedures shall be in accordance with Canadian generally accepted accounting principles and applicable regulatory requirements.
- 5.4 Auditor.** The City, in its capacity as Sole Member, shall appoint an Auditor licensed under the *Public Accounting Act*, 2004, S.O. 2004, c.8 and who shall be engaged to prepare and provide the Auditor's Report and the External Auditor's Finding Report. The Auditor shall also be engaged to prepare a management letter for the purposes of indicating to the Corporation specific ways to improve reporting and financial operations to help foster efficient management of the Corporation's resources. The management letter will also describe whether the Corporation has corrected any identified deficiencies in legislative compliance and in internal controls.
- 5.5 Access to Records.** The City shall have unrestricted access to the books and records of the Corporation during normal business hours. The City shall treat all information of the Corporation with the same level of care and confidentiality as any Confidential Information of the City.

ARTICLE 6 – GENERAL PROVISIONS

- 6.1 Term and Termination.** This Agreement shall be effective as of the Effective Date and shall continue in effect until the earlier of:
- (a) the dissolution of the Corporation; or
 - (b) the City provides the Corporation with written notice of its desire to terminate this Agreement.
- 6.2** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 6.3** In the event that any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining provisions of this Agreement will not be affected and shall continue in full force and effect.
- 6.4** The Corporation shall not assign this Agreement in whole or in part without the express written consent of the City.
- 6.5** This Agreement may be amended by the written consent of both Parties.
- 6.6** No waiver of a breach by a Party shall constitute an amendment or consent to or waiver of any other different or subsequent breach.

- 6.7 The Corporation is deemed to be an institution for the purposes of the *Municipal Freedom of Information and Protection of Privacy Act*.
- 6.8 This Agreement shall enure to the benefit of and be binding upon the respective successors, administrators and assigns of each Party.
- 6.9 Pursuant to Section 16 of *Ontario Regulation 599/06 – Municipal Services Corporations*, the Corporation is hereby authorized to operate within the boundaries of the City.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK. SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date.

CITY OF HAMILTON

Per: _____
Name:
Title: Mayor
Date:

Per: _____
Name:
Title: City Clerk
Date:

HAMILTON TOURISM DEVELOPMENT CORPORATION

Per: _____
Name:
Title: President
Date:

Per: _____
Name:
Title: Treasurer
Date:

LINE OF CREDIT AGREEMENT - BUSINESS OPERATIONS
(the “**Agreement**”)

THIS AGREEMENT is made as of the ____ day of _____, 2023 (the “**Effective Date**”)

BETWEEN:

CITY OF HAMILTON
(the “**City**”)

-and-

HAMILTON TOURISM DEVELOPMENT CORPORATION
(the “**Borrower**”)

(collectively the “**Parties**” and individually a “**Party**”)

WHEREAS the Borrower is a not-for-profit corporation incorporated pursuant to the *Not-for-Profit Corporations Act, 2010*, SO 2010, c 15., in order to promote tourism and develop tourism products for and within the City of Hamilton;

AND WHEREAS the Borrower desires to obtain from the City a line of credit facility and the City desires to provide to the Borrower a line of credit facility;

AND WHEREAS the Borrower intends to use the line of credit facility to finance certain business activities of the Borrower;

AND WHEREAS City staff report PED20009(c) authorized and directed the Mayor and City Clerk to execute, on behalf of the City, a line of credit agreement between the City and the Borrower, for financial support to an upset limit of Two Million Dollars (\$2,000,000) for the payment of certain business operations expenses incurred by the Borrower;

AND WHEREAS the purpose of this Agreement is to codify the terms and conditions under which the City is prepared to make the aforementioned line of credit facility available to the Borrower.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged by the Parties, the Parties agree as follows:

ARTICLE 1

INTERPRETATION

1.1 PREAMBLE. The Parties acknowledge and agree that the statements in the foregoing preamble are true in substance and in fact.

1.2 DEFINED TERMS. All capitalized terms used in this Agreement that are not defined shall have the following meanings:

- (a) “Business Day” means a day that is not a Saturday, a Sunday, a day when the administrative offices of the City are closed, and/or a day considered to be a statutory holiday in the Province of Ontario.
- (b) “Default” or “Event of Default” means the occurrence of any of the events listed in Section 6.1.
- (c) “Governmental Authority” means any federal, provincial, local, municipal or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), and any arbitrator to whom a dispute has been presented by law or by agreement of the Parties with an interest in such dispute.
- (d) “Interest Rate” means the interest payable on the Principal Indebtedness, as further detailed in Section 3.4.
- (e) “line of credit” or “line of credit facility” or “LOC” means the line of credit facility made available to the Borrower by the City pursuant to this Agreement, as more fully described in Article 3.
- (f) “Material Adverse Event” means any circumstance or event that, individually or collectively with other circumstances or events, may reasonably be expected to have an adverse effect on the financial condition or business of the Borrower, as presently conducted or as proposed to be conducted.
- (g) “Maturity Date” means the fifth (5th) anniversary of the Effective Date, unless extended pursuant to the terms and conditions set forth herein.
- (h) “Personal Information” shall have the meaning ascribed to it in the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario).
- (i) “Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, Governmental Authority or any other form of entity.

1.3 CURRENCY. All dollar amounts in this Agreement are stated and shall be paid in Canadian currency.

1.4 SEVERABILITY. If any provision of this Agreement is determined to be void, invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in effect and continue to bind the Parties.

ARTICLE 2

TERM OF AGREEMENT

2.1 TERM. The term of this Agreement shall commence on the Effective Date and remain in effect until December 31, 2027, unless terminated early or extended in accordance with the terms of this Agreement (the “**Term**”). For greater certainty, all of the obligations, covenants, warranties, conditions and agreements of the Borrower pursuant to this Agreement shall survive the termination or expiration of this Agreement until satisfied or until they expire by their nature.

ARTICLE 3

AMOUNT AND TERMS - LINE OF CREDIT

3.1 DESCRIPTION. The City agrees, pursuant to the terms and conditions set forth herein, to provide the Borrower with a line of credit facility up to a maximum amount of Two Million Dollars (\$2,000,000) (the “**LOC**”), representing the maximum aggregate amount of the advances of funds from the LOC (each an “**Advance**”) that may be outstanding from time to time under the LOC (the “**Principal Indebtedness**”), from which the Borrower may draw down, at any time and from time to time during the Term, a principal amount not to exceed at any one time outstanding, as to all such Advances in the aggregate, the Principal Indebtedness.

The Borrower, for value received, hereby pledges to pay to the City the Principal Indebtedness in the manner hereinafter provided, together with interest and any and all other monies which may from time to time be owing hereunder or pursuant hereto.

3.2 PURPOSE. The LOC shall only be used by the Borrower for the payment of certain business operations expenses incurred by the Borrower and shall not be used for any other purposes.

3.3 ACCOUNT OF RECORD. Any record maintained by the City in which the City records the details of the Principal Indebtedness and the amounts re-paid by the Borrower to the City shall constitute *prima facie* evidence of the indebtedness of the Borrower to the City under this Agreement with respect to the Principal Indebtedness and all other amounts owing by the Borrower to the City under this Agreement.

3.4 INTEREST. Interest shall be payable on the Principal Indebtedness at the rate of five and one quarter percent (5.25%) per annum, plus a one quarter percent (0.25%) administrative fee, accrued from day to day, compounded annually and shall be calculated and payable monthly in each year, unless otherwise specified by the City from time to time. Interest at the Interest Rate on all outstanding Advances shall be payable with the then Principal Indebtedness on the Maturity Date.

Interest at the Interest Rate shall accrue on overdue interest and shall be payable on demand by the City.

3.5 BORROWING NOTICES. All Advances shall be made by the City to the Borrower as soon as is practicable following receipt by the City of written request from the Borrower.

3.6 PREPAYMENT. The Borrower may prepay, in whole or in part, the Principal Indebtedness, and all interest accrued on any outstanding Advances, at any time prior to the Maturity Date, without the prior written consent of the City and without payment of premium or penalty.

3.7 REPAYMENT OF OUTSTANDING PRINCIPAL INDEBTEDNESS. The Borrower shall repay the Principal Indebtedness, together with all interest accrued on any outstanding Advances, to the City on the Maturity Date or at such other time as may be specified by the City from time to time.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

4.1 The Borrower hereby represents and warrants to the City, as of the Effective Date, that to the best current actual knowledge of the Borrower:

- (a) the Borrower is a not-for-profit corporation, duly organized and validly existing under the provincial laws of Ontario, with all necessary power and authority to enter into this Agreement and to consummate the transactions herein contemplated. The Borrower is duly qualified to conduct business in the Province of Ontario;
- (b) all proceedings required to be taken by or on behalf of the Borrower to authorize the Borrower to execute and deliver this Agreement and to perform the covenants, obligations and agreements of the Borrower hereunder have been duly taken. No consent to the execution and delivery of this Agreement by the Borrower or the performance by the Borrower of its covenants, obligations and agreements hereunder is required from any partner, board of directors, shareholder, creditor, investor, judicial, legislative or administrative body, Governmental Authority to which the Borrower is subject or any other Person, other than any such consent which has already been given;

- (c) this Agreement constitutes the valid and legally binding obligation of the Borrower, enforceable in accordance with its terms and conditions, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws presently or hereafter in effect, affecting the enforcement of creditors' rights generally and by general principles of equity whether applied in a proceeding at law or in equity;
- (d) there is no litigation, action, suit, claim, investigation or other proceeding of a material nature by or before any court, tribunal or other governmental agency or Governmental Authority pending or currently threatened against the Borrower that questions the validity of this Agreement or the transactions contemplated herein or that could either individually or in the aggregate have a material and/or adverse effect on the business, operations, assets, conditions, affairs, or prospects of the Borrower, or any Person for whom the Borrower is legally responsible, financially or otherwise;
- (e) the Borrower is not now and has not been subject to any proceeding commenced by or against the Borrower, whether voluntary or involuntary, seeking to have an order for relief entered against the Borrower as debtor or to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for the Borrower or its assets; and
- (f) no representation or warranty made in this Agreement by the Borrower contains any untrue statement of a material fact or omits to include any material fact necessary to make such representation or warranty not misleading to the City in light of the circumstances in which such representation or warranty is made.

4.2 The Borrower acknowledges and agrees that it shall promptly notify the City of any material change to the representations set out in Section 4.1.

ARTICLE 5 **COVENANTS**

5.1 The Borrower covenants and agrees that during the Term and until all the Principal Indebtedness and/or outstanding interest has been repaid to the City in full, and except as otherwise permitted by the prior written consent of the City, that the following shall apply:

- (a) the Borrower shall remain a valid and existing corporation in accordance with the provincial laws of Ontario and the federal laws of Canada applicable therein;
- (b) the Borrower shall use the funds advanced under the LOC as contemplated by this Agreement for lawful purposes and only in accordance with the terms and conditions set out in this Agreement;
- (c) the Borrower shall pay all amounts owing (including interest, costs and any other applicable charges) under this Agreement;
- (d) the Borrower shall comply with all tax statutes administered by the Ministry of Finance of Ontario and shall file all returns required to be filed under all provincial tax statutes and properly remit all taxes due and payable under such statutes;
- (e) the Borrower shall promptly provide, upon written request from the City, all data, documents and information requested by the City from time to time concerning the Borrower's financial condition and any other documents and/or information as the City may deem necessary in its sole and absolute discretion;
- (f) at any time, the City may conduct an audit, investigation or inquiry in relation to the LOC and the Borrower shall co-operate with the City and provide free access to such staff, documents, books, records and accounts as may be requested by the City;
- (g) the Borrower shall promptly notify the City of the existence or occurrence of any event, which with the passage of time, the giving of notice, or both, would constitute a Default pursuant to this Agreement;
- (h) the Borrower shall promptly notify the City of any event or change in the financial condition of the Borrower which may result in a Material Adverse Event in the financial condition of the Borrower; and
- (i) the Borrower shall promptly notify the City of the occurrence or threatened occurrence of any litigation, dispute, arbitration, proceeding or other circumstance the result of which, if determined adversely, would be a judgment or award against it, and from time to time provide the City with all information requested by the City concerning any such proceedings.

ARTICLE 6
DEFAULT

6.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events (each an “**Event of Default**”) shall constitute a default pursuant to this Agreement:

- (a) the failure of the Borrower to pay, when due, any payment of principal and/or interest payable to the City pursuant to this Agreement or any other charge with respect to the Principal Indebtedness, or the amount of any fee or payment required of the Borrower pursuant to this Agreement;
- (b) the failure of the Borrower to observe, perform or comply with any of the terms, warranties, representations, conditions, covenants and/or obligations applicable to the Borrower pursuant to this Agreement;
- (c) if the Borrower makes or has made a false or misleading statement or representation in respect of any matter related to this Agreement, other than in good faith, to the City;
- (d) the occurrence and continuance of any of the following with respect to the Borrower:
 - (i) the voluntary or involuntary filing by it of a petition in bankruptcy or similar proceeding or for reorganization or for an arrangement under any bankruptcy or insolvency law or for a receiver or trustee;
 - (ii) an assignment or proposal by it for the benefit of creditors or an admission by the Borrower, in writing, of an inability to pay its debts as they become due;
 - (iii) the entry of a judgment of insolvency against it by any Governmental Authority;
 - (iv) the Borrower becomes insolvent;
 - (v) the Borrower terminates all or substantially all of its business or operations; or
 - (vi) the Borrower takes any steps to dissolve, liquidate or wind itself up.

6.2 ACCELERATION AND TERMINATION OF RIGHTS. If the Borrower commits an Event of Default or any other event which causes the City, acting in good faith, to deem itself at risk, then at the option of the City all monies owing pursuant to this Agreement shall immediately become due and payable to the City upon demand and the City shall not be obligated to make any further Advances or disbursements until such Event of Default has been remedied to the satisfaction of the City in its sole discretion.

6.3 REMEDY. If the Borrower commits an Event of Default then the City, in its sole discretion, may permit the Borrower to commence any necessary action to remedy the Event of Default and/or perform any such covenants or agreements, all in a manner deemed fit by the City. If the City permits any such action by the Borrower to remedy an Event of Default then the Borrower shall have five (5) Business Days from the date the City provided consent to commence any such action and the Borrower shall remedy the Event of Default within a time period to be determined by the City in its sole discretion. Any expenses incurred by the City in respect of the foregoing shall be an indebtedness included in the Principal Indebtedness.

If the Borrower fails to commence or complete the remedy in accordance with this Section then all monies owing pursuant to this Agreement shall immediately become due and payable to the City upon demand.

6.4 REMEDIES CULULATIVE. The Parties acknowledge and agree that the rights and remedies of the City pursuant to this Agreement are cumulative and are in addition to any rights or remedies provided for under applicable law or equity. Any single or partial exercise by the City of any right or remedy shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the City may be lawfully entitled.

ARTICLE 7 **ACCOUNTABILITY**

7.1 FINANCIAL CONTROLS. The Borrower shall ensure that there are adequate financial controls in place to ensure the accuracy, completeness and auditability of the Borrower's financial reporting.

7.2 ACCESS TO RECORDS. The Borrower shall, on forty-eight (48) hours prior written notice from the City, give the City free and unrestricted access to such staff, documents, books, records and accounts as may be required by the City, for the purpose of verifying compliance with this Agreement and proper use of the LOC.

7.3 AUDIT OR INVESTIGATION. At any time, the City, or any representative of the City, may conduct an audit, investigation or inquiry in relation to the LOC and the Borrower shall cooperate with the City and provide free and unrestricted access to such staff, documents, books, records and accounts as may be requested by the City.

In any event, the Borrower shall provide to the City, within sixty (60) days of receiving a written request from the City, an audited financial statement respecting the expenditure of all Advances made to the Borrower pursuant to this Agreement.

7.4 RECORD MAINTENANCE. The Borrower shall keep and maintain:

- (a) all financial records (including invoices) relating to the Principal Indebtedness in a manner consistent with generally accepted accounting practices; and
- (b) all non-financial documents and records relating to the Principal Indebtedness.

ARTICLE 8

INSURANCE AND INDEMNITY

8.1 INSURANCE REQUIREMENTS. During the Term the Borrower shall obtain and maintain, at its own expense, commercial general liability insurance in an amount and with such coverage as may be specified by the City from time to time.

8.2 PROOF OF INSURANCE. The Borrower shall provide the City with proof of the insurance required by this Agreement in the form of valid certificates of insurance that reference this Agreement and confirm the required coverage, before the execution of this Agreement by the City, and renewal replacements on or before the expiry of the insurance. The Borrower shall obtain the insurance policies described in this Agreement with an insurance company acceptable to the City, and its commercial general liability insurance policy shall be endorsed to include the City of Hamilton as an additional insured and provide 30 days' written notice of cancellation or material change. Certificate holder for the City will be addressed as the City of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5 Attn: Director of Tourism and Culture. Upon the request of the City, a copy of each insurance policy shall be made available to it.

8.3 INDEMNIFICATION. The Borrower shall defend, indemnify and save harmless the City and its employees, elected officials, representatives and agents (the "**Indemnified Parties**") from and against any and all claims, actions, causes of action, proceedings, interests, demands, losses, costs (including legal fees and expenses), assessments, fees, expenses, injuries, charges, damages, liabilities, and obligations of any kind that may be sustained, incurred, brought, asserted, prosecuted or threatened to be brought or prosecuted in any manner against any of the Indemnified Parties in any way arising out of or in connection with this Agreement or in connection with the operations, activities or business of the Borrower, whether arising directly or indirectly, or due to the result of wilful misconduct or negligent act, omission or delay, on the part of the Borrower, its employees, contractors, agents or voluntary workers, other than any claim arising directly from the gross negligence or wilful misconduct of the Indemnified Parties.

ARTICLE 9
GENERAL CONTRACT PROVISIONS

9.1 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

9.2 LANGUAGE. The Parties have required that this Agreement be drawn up in the English language.

9.3 NOTICE. All notices and other communications required or permitted under this Agreement must be in writing and will be deemed given when: delivered personally; sent by overnight courier; or transmitted by facsimile or email with the word "NOTICE" written in the subject line. Notices must be sent to a Party at the following addresses, or to such other place as the Party may subsequently designate for its receipt of notices in accordance with this Section:

To City of Hamilton:

Attention: Director, Tourism and Culture Division
Department: Planning and Economic Development
Office Phone No.: +1-905-546-2424

Mailing Address:

City of Hamilton
Tourism and Culture Division
P.O. Box 2040
Hamilton, Ontario L8P 4Y5

With a copy to:

Attention: City Clerk
Department: Corporate Services, City Clerk's Office
Phone No.: +1-905-546-2424 Ext. 4408
Email: Clerk@hamilton.ca

Mailing Address:

City of Hamilton
City Clerk
P.O. Box 2040
Hamilton, Ontario L8P 4Y5

To the Borrower:

Attention: Treasurer, Hamilton Tourism Development Corporation
Office Phone No.: +1-905-546-2424 Ext. 4157

Email: Shelley.Hesmer@hamilton.ca

Mailing Address:

City of Hamilton

Treasurer, Hamilton Tourism Development Corporation

P.O. Box 2040

Hamilton, Ontario L8P 4Y5

9.4 AMENDMENT AND WAIVER. This Agreement may be amended, supplemented or modified only by written agreement signed by each Party. No covenant or condition in this Agreement or Event of Default shall be deemed to be waived or consented to by the City unless such waiver or consent is in writing and signed by an authorized representative of the City. Any waiver granted by the City shall be effective for the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of the City pursuant to this Agreement. No waiver of a provision of this Agreement shall operate as a waiver of any other provision or of the same provision on a future occasion. The City may impose any terms and/or conditions on any consent the City may grant to the Borrower pursuant to this Agreement.

9.5 COMPLIANCE WITH APPLICABLE LAWS. The Borrower acknowledges and agrees that it shall comply in all respects with all applicable legal requirements governing its duties, obligations and practices respecting its obligations under this Agreement.

9.6 RELATIONSHIP OF THE PARTIES. The relationship of the Borrower and City under this Agreement is that of independent parties, each acting in its own best interests. Notwithstanding anything in this Agreement to the contrary, this Agreement does not constitute and shall not be construed as constituting a partnership, joint venture or agency between the City and the Borrower. No Party shall have any right to obligate or bind the other Party in any manner whatsoever.

9.7 ASSIGNMENT. Neither Party may assign this Agreement nor the rights granted herein without the express written consent of the other Party. Any assignment that fails to comply with this provision shall be deemed invalid.

9.8 BINDING AGREEMENT. The Parties acknowledge and agree that this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms and conditions contained herein.

9.9 ENUREMENT. The Parties acknowledge that the terms and conditions of this Agreement shall be binding upon, and enure to the benefit of, the Parties and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any Person (other than the Parties and their permitted successors and assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants,

conditions or provisions contained herein nor any standing or authority to enforce the terms and conditions of this Agreement.

9.10 CONFLICT OF INTEREST. The Parties shall not act in any case where there may be any conflict of interest between them. Immediately upon becoming aware of a conflict of interest situation or a potential conflict of interest situation, the affected Party shall notify the other Party in writing, and both Parties shall forth-with work collaboratively to remove the cause(s) of the conflict of interest.

9.11 COUNTERPARTS. This Agreement and any other document delivered in connection herewith may be executed and delivered in counterparts and by scan or facsimile and each such counterpart, taken together, will constitute one and the same agreement.

9.12 MFIPPA REQUIRED DISCLOSURE. The disclosure of information relating to this Agreement and the Agreement itself are governed in accordance with the disclosure requirements of the applicable laws, including the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M56 (“MFIPPA”). In accordance with MFIPPA, this will notify the Borrower that all correspondence, documentation and information provided to the City or its employees, agents or representatives by the Borrower in connection with or arising out of this Agreement shall become a record of the City. City records are subject to the provisions of MFIPPA, and the City’s obligations under MIFPPA may require records to be released. The Borrower acknowledges that the City is subject to the collection, use and disclosure obligations set out in MFIPPA and that this Agreement is therefore subject to MFIPPA. The Borrower agrees to comply with all applicable privacy legislation, including MFIPPA and the *Personal Information and Electronic Documents Act*, 2000, c.5 (“PIPEDA”).

9.13 DISCLOSURE NOTIFICATION. In accordance with MFIPPA, this will notify the Borrower that any Personal Information that the Borrower provides to the City during the Term is being collected under the authority of the *Municipal Act* (Ontario).

9.14 MFIPPA PUBLIC RECORD. The Borrower’s name at a minimum will be made public on request. In addition, certain contractual information must be disclosed to the City of Hamilton Council and accordingly may become part of the public record.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.
SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date.

CITY OF HAMILTON

By: _____

Name: A. Horwath

Title: Mayor

By: _____

Name: J. Pilon

Title: Acting City Clerk

HAMILTON TOURISM DEVELOPMENT CORPORATION

By: _____

Name: J. Thorne

Title: President

I have authority to bind the corporation.

LINE OF CREDIT AGREEMENT - ADMINISTRATIVE
(the “**Agreement**”)

THIS AGREEMENT is made as of the ____ day of _____, 2023 (the “**Effective Date**”)

BETWEEN:

CITY OF HAMILTON
(the “**City**”)

-and-

HAMILTON TOURISM DEVELOPMENT CORPORATION
(the “**Borrower**”)

(collectively the “**Parties**” and individually a “**Party**”)

WHEREAS the Borrower is a not-for-profit corporation incorporated pursuant to the *Not-for-Profit Corporations Act, 2010*, SO 2010, c 15., in order to promote tourism and develop tourism products for and within the City of Hamilton;

AND WHEREAS the Borrower desires to obtain from the City a line of credit facility and the City desires to provide to the Borrower a line of credit facility;

AND WHEREAS the Borrower intends to use the line of credit facility to finance certain administrative expenses of the Borrower incurred by the Borrower in conducting its business;

AND WHEREAS City staff report PED20009(c) authorized and directed the Mayor and City Clerk to execute, on behalf of the City, a line of credit agreement between the City and the Borrower, for financial support to an upset limit of \$250,000 for the Borrower’s start-up administrative expenses;

AND WHEREAS the purpose of this Agreement is to codify the terms and conditions under which the City is prepared to make the aforementioned line of credit facility available to the Borrower.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby irrevocably acknowledged by the Parties, the Parties agree as follows:

ARTICLE 1

INTERPRETATION

1.1 PREAMBLE. The Parties acknowledge and agree that the statements in the foregoing preamble are true in substance and in fact.

1.2 DEFINED TERMS. All capitalized terms used in this Agreement that are not defined shall have the following meanings:

- (a) “Business Day” means a day that is not a Saturday, a Sunday, a day when the administrative offices of the City are closed, and/or a day considered to be a statutory holiday in the Province of Ontario.
- (b) “Default” or “Event of Default” means the occurrence of any of the events listed in Section 6.1.
- (c) “Governmental Authority” means any federal, provincial, local, municipal or foreign governmental entity, authority or agency, court, tribunal, regulatory commission or other body, whether legislative, judicial or executive (or a combination or permutation thereof), and any arbitrator to whom a dispute has been presented by law or by agreement of the Parties with an interest in such dispute.
- (d) “Interest Rate” means the interest payable on the Principal Indebtedness, as further detailed in Section 3.4.
- (e) “line of credit” or “line of credit facility” or “LOC” means the line of credit facility made available to the Borrower by the City pursuant to this Agreement, as more fully described in Article 3.
- (f) “Material Adverse Event” means any circumstance or event that, individually or collectively with other circumstances or events, may reasonably be expected to have an adverse effect on the financial condition or business of the Borrower, as presently conducted or as proposed to be conducted.
- (g) “Maturity Date” means the fifth (5th) anniversary of the Effective Date, unless extended pursuant to the terms and conditions set forth herein.
- (h) “Personal Information” shall have the meaning ascribed to it in the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario).
- (i) “Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, Governmental Authority or any other form of entity.

1.3 CURRENCY. All dollar amounts in this Agreement are stated and shall be paid in Canadian currency.

1.4 SEVERABILITY. If any provision of this Agreement is determined to be void, invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in effect and continue to bind the Parties.

ARTICLE 2

TERM OF AGREEMENT

2.1 TERM. The term of this Agreement shall commence on the Effective Date and remain in effect until December 31, 2027, unless terminated early or extended in accordance with the terms of this Agreement (the “**Term**”). For greater certainty, all of the obligations, covenants, warranties, conditions and agreements of the Borrower pursuant to this Agreement shall survive the termination or expiration of this Agreement until satisfied or until they expire by their nature.

ARTICLE 3

AMOUNT AND TERMS - LINE OF CREDIT

3.1 DESCRIPTION. The City agrees, pursuant to the terms and conditions set forth herein, to provide the Borrower with a line of credit facility up to a maximum amount of Two Hundred Fifty Thousand Dollars (\$250,000) (the “**LOC**”), representing the maximum aggregate amount of the advances of funds from the LOC (each an “**Advance**”) that may be outstanding from time to time under the LOC (the “**Principal Indebtedness**”), from which the Borrower may draw down, at any time and from time to time during the Term, a principal amount not to exceed at any one time outstanding, as to all such Advances in the aggregate, the Principal Indebtedness.

The Borrower, for value received, hereby pledges to pay to the City the Principal Indebtedness in the manner hereinafter provided, together with interest and any and all other monies which may from time to time be owing hereunder or pursuant hereto.

3.2 PURPOSE. The LOC shall only be used by the Borrower for the payment of certain administrative expenses incurred by the Borrower in conducting its business, including without limitation: bookkeeping services, fees (banking, audit, legal, insurance), computer software and other supplies, and shall not be used for any other purposes.

3.3 ACCOUNT OF RECORD. Any record maintained by the City in which the City records the details of the Principal Indebtedness and the amounts re-paid by the Borrower to the City shall constitute *prima facie* evidence of the indebtedness of the Borrower to the City under this Agreement with respect to the Principal Indebtedness and all other amounts owing by the Borrower to the City under this Agreement.

3.4 INTEREST. Interest shall be payable on the Principal Indebtedness at the rate of five and one quarter percent (5.25%) per annum, plus a one quarter percent (0.25%) administrative fee, accrued from day to day, compounded annually and shall be calculated and payable monthly in each year, unless otherwise specified by the City from time to time. Interest at the Interest Rate on all outstanding Advances shall be payable with the then Principal Indebtedness on the Maturity Date.

Interest at the Interest Rate shall accrue on overdue interest and shall be payable on demand by the City.

3.5 BORROWING NOTICES. All Advances shall be made by the City to the Borrower as soon as is practicable following receipt by the City of written request from the Borrower.

3.6 PREPAYMENT. The Borrower may prepay, in whole or in part, the Principal Indebtedness, and all interest accrued on any outstanding Advances, at any time prior to the Maturity Date, without the prior written consent of the City and without payment of premium or penalty.

3.7 REPAYMENT OF OUTSTANDING PRINCIPAL INDEBTEDNESS. The Borrower shall repay the Principal Indebtedness, together with all interest accrued on any outstanding Advances, to the City on the Maturity Date or at such other time as may be specified by the City from time to time.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

4.1 The Borrower hereby represents and warrants to the City, as of the Effective Date, that to the best current actual knowledge of the Borrower:

- (a) the Borrower is a not-for-profit corporation, duly organized and validly existing under the provincial laws of Ontario, with all necessary power and authority to enter into this Agreement and to consummate the transactions herein contemplated. The Borrower is duly qualified to conduct business in the Province of Ontario;
- (b) all proceedings required to be taken by or on behalf of the Borrower to authorize the Borrower to execute and deliver this Agreement and to perform the covenants, obligations and agreements of the Borrower hereunder have been duly taken. No consent to the execution and delivery of this Agreement by the Borrower or the performance by the Borrower of its covenants, obligations and agreements hereunder is required from any partner, board of directors, shareholder, creditor, investor, judicial, legislative or administrative body, Governmental Authority to which the

Borrower is subject or any other Person, other than any such consent which has already been given;

- (c) this Agreement constitutes the valid and legally binding obligation of the Borrower, enforceable in accordance with its terms and conditions, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws presently or hereafter in effect, affecting the enforcement of creditors' rights generally and by general principles of equity whether applied in a proceeding at law or in equity;
- (d) there is no litigation, action, suit, claim, investigation or other proceeding of a material nature by or before any court, tribunal or other governmental agency or Governmental Authority pending or currently threatened against the Borrower that questions the validity of this Agreement or the transactions contemplated herein or that could either individually or in the aggregate have a material and/or adverse effect on the business, operations, assets, conditions, affairs, or prospects of the Borrower, or any Person for whom the Borrower is legally responsible, financially or otherwise;
- (e) the Borrower is not now and has not been subject to any proceeding commenced by or against the Borrower, whether voluntary or involuntary, seeking to have an order for relief entered against the Borrower as debtor or to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, arrangement, adjustment or composition under any law relating to bankruptcy, insolvency, reorganization or relief or debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for the Borrower or its assets; and
- (f) no representation or warranty made in this Agreement by the Borrower contains any untrue statement of a material fact or omits to include any material fact necessary to make such representation or warranty not misleading to the City in light of the circumstances in which such representation or warranty is made.

4.2 The Borrower acknowledges and agrees that it shall promptly notify the City of any material change to the representations set out in Section 4.1.

ARTICLE 5 **COVENANTS**

5.1 The Borrower covenants and agrees that during the Term and until all the Principal Indebtedness and/or outstanding interest has been repaid to the City in full,

and except as otherwise permitted by the prior written consent of the City, that the following shall apply:

- (a) the Borrower shall remain a valid and existing corporation in accordance with the provincial laws of Ontario and the federal laws of Canada applicable therein;
- (b) the Borrower shall use the funds advanced under the LOC as contemplated by this Agreement for lawful purposes and only in accordance with the terms and conditions set out in this Agreement;
- (c) the Borrower shall pay all amounts owing (including interest, costs and any other applicable charges) under this Agreement;
- (d) the Borrower shall comply with all tax statutes administered by the Ministry of Finance of Ontario and shall file all returns required to be filed under all provincial tax statutes and properly remit all taxes due and payable under such statutes;
- (e) the Borrower shall promptly provide, upon written request from the City, all data, documents and information requested by the City from time to time concerning the Borrower's financial condition and any other documents and/or information as the City may deem necessary in its sole and absolute discretion;
- (f) at any time, the City may conduct an audit, investigation or inquiry in relation to the LOC and the Borrower shall co-operate with the City and provide free access to such staff, documents, books, records and accounts as may be requested by the City;
- (g) the Borrower shall promptly notify the City of the existence or occurrence of any event, which with the passage of time, the giving of notice, or both, would constitute a Default pursuant to this Agreement;
- (h) the Borrower shall promptly notify the City of any event or change in the financial condition of the Borrower which may result in a Material Adverse Event in the financial condition of the Borrower; and
- (i) the Borrower shall promptly notify the City of the occurrence or threatened occurrence of any litigation, dispute, arbitration, proceeding or other circumstance the result of which, if determined adversely, would be a judgment or award against it, and from time to time provide the City with all information requested by the City concerning any such proceedings.

ARTICLE 6
DEFAULT

6.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events (each an “**Event of Default**”) shall constitute a default pursuant to this Agreement:

- (a) the failure of the Borrower to pay, when due, any payment of principal and/or interest payable to the City pursuant to this Agreement or any other charge with respect to the Principal Indebtedness, or the amount of any fee or payment required of the Borrower pursuant to this Agreement;
- (b) the failure of the Borrower to observe, perform or comply with any of the terms, warranties, representations, conditions, covenants and/or obligations applicable to the Borrower pursuant to this Agreement;
- (c) if the Borrower makes or has made a false or misleading statement or representation in respect of any matter related to this Agreement, other than in good faith, to the City;
- (d) the occurrence and continuance of any of the following with respect to the Borrower:
 - (i) the voluntary or involuntary filing by it of a petition in bankruptcy or similar proceeding or for reorganization or for an arrangement under any bankruptcy or insolvency law or for a receiver or trustee;
 - (ii) an assignment or proposal by it for the benefit of creditors or an admission by the Borrower, in writing, of an inability to pay its debts as they become due;
 - (iii) the entry of a judgment of insolvency against it by any Governmental Authority;
 - (iv) the Borrower becomes insolvent;
 - (v) the Borrower terminates all or substantially all of its business or operations; or
 - (vi) the Borrower takes any steps to dissolve, liquidate or wind itself up.

6.2 ACCELERATION AND TERMINATION OF RIGHTS. If the Borrower commits an Event of Default or any other event which causes the City, acting in good faith, to deem itself at risk, then at the option of the City all monies owing pursuant to this Agreement

shall immediately become due and payable to the City upon demand and the City shall not be obligated to make any further Advances or disbursements until such Event of Default has been remedied to the satisfaction of the City in its sole discretion.

6.3 REMEDY. If the Borrower commits an Event of Default then the City, in its sole discretion, may permit the Borrower to commence any necessary action to remedy the Event of Default and/or perform any such covenants or agreements, all in a manner deemed fit by the City. If the City permits any such action by the Borrower to remedy an Event of Default then the Borrower shall have five (5) Business Days from the date the City provided consent to commence any such action and the Borrower shall remedy the Event of Default within a time period to be determined by the City in its sole discretion. Any expenses incurred by the City in respect of the foregoing shall be an indebtedness included in the Principal Indebtedness.

If the Borrower fails to commence or complete the remedy in accordance with this Section then all monies owing pursuant to this Agreement shall immediately become due and payable to the City upon demand.

6.4 REMEDIES CULULATIVE. The Parties acknowledge and agree that the rights and remedies of the City pursuant to this Agreement are cumulative and are in addition to any rights or remedies provided for under applicable law or equity. Any single or partial exercise by the City of any right or remedy shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the City may be lawfully entitled.

ARTICLE 7

ACCOUNTABILITY

7.1 FINANCIAL CONTROLS. The Borrower shall ensure that there are adequate financial controls in place to ensure the accuracy, completeness and auditability of the Borrower's financial reporting.

7.2 ACCESS TO RECORDS. The Borrower shall, on forty-eight (48) hours prior written notice from the City, give the City free and unrestricted access to such staff, documents, books, records and accounts as may be required by the City, for the purpose of verifying compliance with this Agreement and proper use of the LOC.

7.3 AUDIT OR INVESTIGATION. At any time, the City, or any representative of the City, may conduct an audit, investigation or inquiry in relation to the LOC and the Borrower shall cooperate with the City and provide free and unrestricted access to such staff, documents, books, records and accounts as may be requested by the City.

In any event, the Borrower shall provide to the City, within sixty (60) days of receiving a written request from the City, an audited financial statement respecting the expenditure of all Advances made to the Borrower pursuant to this Agreement.

7.4 RECORD MAINTENANCE. The Borrower shall keep and maintain:

- (a) all financial records (including invoices) relating to the Principal Indebtedness in a manner consistent with generally accepted accounting practices; and
- (b) all non-financial documents and records relating to the Principal Indebtedness.

ARTICLE 8

INSURANCE AND INDEMNITY

8.1 INSURANCE REQUIREMENTS. During the Term the Borrower shall obtain and maintain, at its own expense, commercial general liability insurance in an amount and with such coverage as may be specified by the City from time to time.

8.2 PROOF OF INSURANCE. The Borrower shall provide the City with proof of the insurance required by this Agreement in the form of valid certificates of insurance that reference this Agreement and confirm the required coverage, before the execution of this Agreement by the City, and renewal replacements on or before the expiry of the insurance. The Borrower shall obtain the insurance policies described in this Agreement with an insurance company acceptable to the City, and its commercial general liability insurance policy shall be endorsed to include the City of Hamilton as an additional insured and provide 30 days' written notice of cancellation or material change. Certificate holder for the City will be addressed as the City of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5 Attn: Director of Tourism and Culture. Upon the request of the City, a copy of each insurance policy shall be made available to it.

8.3 INDEMNIFICATION. The Borrower shall defend, indemnify and save harmless the City and its employees, elected officials, representatives and agents (the "**Indemnified Parties**") from and against any and all claims, actions, causes of action, proceedings, interests, demands, losses, costs (including legal fees and expenses), assessments, fees, expenses, injuries, charges, damages, liabilities, and obligations of any kind that may be sustained, incurred, brought, asserted, prosecuted or threatened to be brought or prosecuted in any manner against any of the Indemnified Parties in any way arising out of or in connection with this Agreement or in connection with the operations, activities or business of the Borrower, whether arising directly or indirectly, or due to the result of wilful misconduct or negligent act, omission or delay, on the part of the Borrower, its employees, contractors, agents or voluntary workers, other than any claim arising directly from the gross negligence or wilful misconduct of the Indemnified Parties.

ARTICLE 9
GENERAL CONTRACT PROVISIONS

9.1 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

9.2 LANGUAGE. The Parties have required that this Agreement be drawn up in the English language.

9.3 NOTICE. All notices and other communications required or permitted under this Agreement must be in writing and will be deemed given when: delivered personally; sent by overnight courier; or transmitted by facsimile or email with the word "NOTICE" written in the subject line. Notices must be sent to a Party at the following addresses, or to such other place as the Party may subsequently designate for its receipt of notices in accordance with this Section:

To City of Hamilton:

Attention: Director, Tourism and Culture Division
Department: Planning and Economic Development
Office Phone No.: +1-905-546-2424

Mailing Address:

City of Hamilton
Tourism and Culture Division
P.O. Box 2040
Hamilton, Ontario L8P 4Y5

With a copy to:

Attention: City Clerk
Department: Corporate Services, City Clerk's Office
Phone No.: +1-905-546-2424 Ext. 4408
Email: Clerk@hamilton.ca

Mailing Address:

City of Hamilton
City Clerk
P.O. Box 2040
Hamilton, Ontario L8P 4Y5

To the Borrower:

Attention: Treasurer, Hamilton Tourism Development Corporation
Office Phone No.: +1-905-546-2424 Ext. 4157

Email: Shelley.Hesmer@hamilton.ca

Mailing Address:

City of Hamilton

Treasurer, Hamilton Tourism Development Corporation

P.O. Box 2040

Hamilton, Ontario L8P 4Y5

9.4 AMENDMENT AND WAIVER. This Agreement may be amended, supplemented or modified only by written agreement signed by each Party. No covenant or condition in this Agreement or Event of Default shall be deemed to be waived or consented to by the City unless such waiver or consent is in writing and signed by an authorized representative of the City. Any waiver granted by the City shall be effective for the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of the City pursuant to this Agreement. No waiver of a provision of this Agreement shall operate as a waiver of any other provision or of the same provision on a future occasion. The City may impose any terms and/or conditions on any consent the City may grant to the Borrower pursuant to this Agreement.

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9.8 BINDING AGREEMENT. The Parties acknowledge and agree that this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms and conditions contained herein.

9.9 ENUREMENT. The Parties acknowledge that the terms and conditions of this Agreement shall be binding upon, and enure to the benefit of, the Parties and their permitted successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any Person (other than the Parties and their permitted successors and assigns and as expressly provided herein) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants,

conditions or provisions contained herein nor any standing or authority to enforce the terms and conditions of this Agreement.

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**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.
SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date.

CITY OF HAMILTON

By: _____

Name: A. Horwath

Title: Mayor

By: _____

Name: J. Pilon

Title: Acting City Clerk

HAMILTON TOURISM DEVELOPMENT CORPORATION

By: _____

Name: J. Thorne

Title: President

I have authority to bind the corporation.

| | |
|---|---|
| Municipal Accommodation Tax Reserve Policy | Hamilton Tourism Development Corporation |
| Policy No: | |
| Page 1 of 2 | Approval: |

| | |
|-------------------------|--|
| POLICY STATEMENT | <p>The Hamilton Tourism Development Corporation (the “Corporation”) is a municipal services corporation incorporated pursuant to the Ontario <i>Not-for-Profit Corporations Act, 2010</i>, to function as an ‘eligible tourism entity’, as required by <i>Ontario Regulation 435/17 – Transient Accommodation Tax</i>, to receive 50% of the Municipal Accommodation Tax (“MAT”) revenues collected by the City of Hamilton (the “City”).</p> <p>This Policy sets out the guidelines for the sources, uses and appropriate target level for the balances in the Hamilton Tourism Development Corporation’s Municipal Accommodation Tax Reserve Fund (the “Reserve”).</p> |
| PURPOSE | <p>Subject to compliance with the Operating Agreement between the City and the Corporation, MAT revenues in the Reserve will be utilized for the following tourism purposes:</p> <ul style="list-style-type: none"> • to pursue the goals set forth in the City’s Tourism Strategy, as amended from time to time; • to secure and execute the hosting and promotion of events in Hamilton that are deemed to be a regional, provincial, national and/or international draw; • to support the creation of tourism product development to bring new and innovative products, experiences, and services to the Hamilton tourism market; • to market Hamilton as a leading destination for tourism, leisure and business travel with an emphasis on promoting overnight stays; and • to support tourism sector development and capacity-building in Hamilton. |
| SCOPE | <p>This policy applies to all MAT revenues remitted to the Corporation pursuant to <i>Ontario Regulation 435/17 – Transient Accommodation Tax</i>.</p> <p>This policy applies to the Corporation’s Board of Directors, its employees, City Council members, and City employees that are responsible for the management of financial resources or are otherwise involved with the operations of the Corporation.</p> |

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| PRINCIPLES | <p>The following principles apply to this policy:</p> <p>Source of Funding: Revenue Sharing – Pursuant to <i>Ontario Regulation 435/17 – Transient Accommodation Tax</i>, 50% of the MAT revenue collected by the City in any given fiscal year will be transferred to the Corporation.</p> <p>Interest Income - Interest earned on the unused actual cash balance to be held in the Reserve.</p> <p>Minimum Balance: A minimum of \$2 M must be available in the Reserve at all times, after which funds can be directed to the tourism purposes as outlined in the “PURPOSE” section of this policy and in compliance with the Operating Agreement between the City and the Corporation.</p> <p>Use of Funds: Reserve funds are to be used for the tourism purposes as outlined in the “PURPOSE” section of this policy and in compliance with the Operating Agreement between the City and the Corporation. Throughout the Reserve’s lifecycle, irrespective of changes in the Corporation’s leadership and activities, Reserve funds may not be used for non-tourism related activities as per <i>Ontario Regulation 435/17 – Transient Accommodation Tax</i>.</p> <p>Transfers from Reserves: All transfers from the Reserve are to be approved by the Corporation’s Board of Directors through a business case and budget submission (unless delegated authority has been granted by the Corporation’s Board of Directors to the officers of the Corporation). All relevant information is to be included with the requests.</p> <p>Reserve Reporting to the Sole Voting Member of the Corporation: The Board of Directors shall prepare and approve an Annual Report and audited annual Financial Statements and submit same to the Sole Voting Member of the Corporation (the City) at an annual general meeting of the Sole Voting Member.</p> |
| BORROWING FROM MAT RESERVE | Neither the City nor the Corporation can borrow from the Reserve for non-tourism related expenditures. |
| GOVERNING LEGISLATION | City of Hamilton By-law 22-209 Not-for-Profit Corporations Act, 2010, SO 2010, c.15 Municipal Act 2001, Section 400.1 and O.Reg. 435/17 |
| RESPONSIBILITY FOR THE POLICY | Board of Directors Hamilton Tourism Development Corporation |
| POLICY HISTORY | Authority: Item 4 (I), General Issues Committee Report 22-015 (PED20009(c)) Council Meeting: August 12, 2022 Ward: City Wide |

HAMILTON TOURISM DEVELOPMENT CORPORATION
(the "Corporation")

RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE CORPORATION

1. APPOINTMENT OF OFFICERS

BE IT RESOLVED that the following individuals, having consented to act as officers of the Corporation, are hereby appointed to the offices indicated next to their names, commencing on the date hereof and continuing thereafter until their successors are duly appointed:

- (i) Jason Thorne – President;
- (ii) John Summers – Vice-President; and
- (iii) Shelley Hesmer – Treasurer.

2. APPROVAL OF CORPORATE BY-LAW

BE IT RESOLVED that By-Law No. 1 of the Corporation, a copy of which is attached hereto, is hereby approved and enacted, as of the date hereof, as the sole by-law of the Corporation and continuing thereafter until amended or replaced by the Board of Directors of the Corporation.

3. APPROVAL OF THE 2023 BUDGET

BE IT RESOLVED that the 2023 Budget, a copy of which is attached hereto, be approved and adopted as of the date hereof.

4. SIGNING AUTHORITY RE: CERTAIN AGREEMENTS

BE IT RESOLVED that the President of the Corporation is hereby authorized and directed to execute, on behalf of the Corporation:

- (i) an Operating Agreement between the Corporation and the City of Hamilton, a copy of which is attached hereto, together with any necessary ancillary documents and/or agreements;
- (ii) a Line of Credit Agreement with the City of Hamilton, a copy of which is attached hereto, for financial support to an upset limit of Two Million Dollars (\$2,000,000) to be used for certain business operation expenses, together with any necessary ancillary documents and/or agreements; and
- (iii) a Line of Credit Agreement with the City of Hamilton, a copy of which is attached hereto, for financial support to an upset limit of Two Hundred Fifty

Thousand Dollars (\$250,000) to be used for certain business administration expenses, together with any necessary ancillary documents and/or agreements.

5. MAT RESERVE FUND POLICY

BE IT RESOLVED that the Corporation's MAT Reserve Fund Policy, a copy of which is attached hereto, be approved and adopted as of the date hereof.

6. CONFIRMATORY ACTIONS

BE IT RESOLVED that the officers of the Corporation are, and each acting alone is, hereby authorized to do and perform any and all such acts, including execution of any and all documents and certificates, as such officers shall deem necessary or advisable, to carry out the purposes and intent of the foregoing resolutions.

THE FOREGOING RESOLUTIONS are hereby consented to by the Board of Directors of the Corporation pursuant to the provisions of the *Not-for-Profit Corporations Act* (Ontario).

DATED the 30th day of November 2023.

CITY OF HAMILTON

Tammy Hwang

Craig Cassar

Mike Spadafora