

**SOLE MEMBER DIRECTION**  
**and**  
**SOLE MEMBER DECLARATION**

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**City of Hamilton**  
to  
**Hamilton Tourism Development Corporation**

**XXXXXX XX, 2022**

**SOLE MEMBER DIRECTION**  
**and**  
**SOLE MEMBER DECLARATION**

**WHEREAS** Hamilton Tourism Development Corporation (the “Corporation”) is a corporation incorporated and existing under the *Not-for-Profit Corporations Act*, 2010, SO 2010, c.15 (“*Not-for-Profit Corporations Act*”);

**AND WHEREAS** the City of Hamilton (the “City”) is the Sole Member of the Corporation;

**AND WHEREAS** through this Sole Member Direction and Sole Member Declaration made and issued by the City to the Corporation, it is the purpose of the City to:

- (i) inform the Corporation of certain expectations that the City has with respect to the Corporation and its activities;
- (ii) provide certain directions to the Corporation as to how its activities are to be conducted;
- (iii) provide certain restrictions on the assets, business activities and undertakings that the Corporation may own and conduct;
- (iv) provide certain principles that are to govern the activities of the Corporation; and
- (v) restrict certain actions by the Directors of the Corporation.

**NOW THEREFORE IT IS HEREBY DECLARED AND DIRECTED THAT:**

**ARTICLE 1 - INTERPRETATION**

**1.1** In this Direction, including its Schedules, unless the context requires otherwise, the following words, phrases and terms shall have the meaning ascribed to them as follows:

- (i) “**Articles**” means the Articles of Incorporation of the Corporation, dated XXXXXX XX, 2022, as amended from time to time;
- (ii) “**Annual Report**” has the meaning ascribed to it in section 4.1 herein;
- (iii) “**Auditor**” has the meaning ascribed to it in section 5.5 herein;
- (iv) “**Board**” means the Board of Directors of the Corporation;

- (v) **“Business Day”** means 0830 to 1630 on a day on which the City’s administrative offices are open for business;
- (vi) **“By-laws”** means the by-laws of the Corporation;
- (vii) **“City”** means the City of Hamilton;
- (viii) **“City Manager”** means the City Manager of the City;
- (ix) **“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;
- (x) **“Council”** means the Council of the City;
- (xi) **“Direction”** means this Sole Member Direction and Sole Member Declaration, as amended;
- (xii) **“Director”** means a member of the Board of Directors of the Corporation;
- (xiii) **“External Auditor’s Findings Report”** means communication of matters identified by the Auditor during the financial statements audit which matters include misstatements, other than trivial errors, fraud, misstatements that may cause future financial statements to be materially misstated, illegal or possibly illegal acts or significant weaknesses in internal control;
- (xiv) **“Financial Statements”** means, for any particular period, audited or unaudited (as stipulated in this Direction), consolidated or unconsolidated (as stipulated in this Direction), comparative financial statements of the Corporation consisting of not less than a balance sheet, a statement of income and retained earnings, a statement of change in financial position, a report or opinion of the Auditor (in the case of audited financial statements) and such other statements, reports, notes and information prepared in accordance with generally accepted accounting principles (consistently applied) and as are required in accordance with any applicable laws;
- (xv) **“MFIPPA”** means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, as amended, including any regulations thereunder and any successor legislation;
- (xvi) **“Officer”** means an officer of the Corporation;
- (xvii) **“Person”** means an individual, sole proprietorship, partnership, unincorporated association, unincorporated organization, trust body corporate and a natural person in their capacity as trustee, executor, administrator or other legal representative;

- (xviii) **“Resident Canadian”** means an individual who is a Canadian citizen ordinarily resident in Canada or, in the alternative, a permanent resident within the meaning of the *Immigration and Refugee Protection Act* (S.C. 2001, c.27) and ordinarily resident in Canada;
- (xix) **“Sole Member”** means the City in its capacity as the sole member of the Corporation;
- (xx) **“Tourism Strategy”** means the tourism strategic plan approved by Council, as amended from time to time.
- 1.2 Extended Meanings.** All words importing the singular number include the plural and vice-versa and words importing gender include all genders.
- 1.3 Conflict between Articles and Direction.** In the event of a conflict between the provisions contained in the Articles and the provisions contained in this Direction, the provisions contained in the Articles shall prevail.
- 1.4 Conflict between By-laws and Direction.** In the event of a conflict between the provisions contained in the By-laws and the provisions contained in this Direction, the provisions contained in this Direction shall prevail.
- 1.5 Severability.** In the event that any provision of this Direction shall be deemed invalid, illegal or unenforceable by a court of competent jurisdiction, it shall not affect the validity, legality or unenforceability of any other provision contained in this Direction.
- 1.6 Applicable Law.** This Direction shall be governed by and construed in accordance with the laws of the Province of Ontario and the Federal laws of Canada applicable therein.

## **ARTICLE 2 - PURPOSES, OBJECTIVES, PRINCIPLES AND ACTIVITIES**

- 2.1 Purposes.** This Direction is made for the following purposes:
- (i) **Recognize Board Authority.** Recognize the Board’s authority to manage or supervise the management of the business and affairs of the Corporation in accordance with this Direction.
  - (ii) **Communicate the Requirements of the Sole Member.** Provide the Board with the Sole Member’s requirements regarding the Corporation.
  - (iii) **Accountability Framework.** Provide for a framework of accountability, responsibility and relationship between the Sole Member and the Corporation.

**2.2 Principles.** The Sole Member directs that, in the best interest of the Corporation, all Directors shall cause the Corporation to conduct its affairs in a responsible and prudent manner and as part of that:

- (i) the Corporation shall conduct its affairs and provide its services to the City in a reliable, effective, efficient and commercially prudent basis and which complies with all Applicable Laws;
- (ii) the Corporation shall conduct its affairs in accordance with its contractual obligations, including without limitation, any applicable operating agreements;
- (iii) the Corporation shall ensure that its policies and programs are consistent with the principles set out in this Direction; and
- (iv) the Corporation shall ensure that its policies and programs are consistent with the plans, policies, procedures and corporate values established by the City from time to time.

**2.3 Objectives.** The objectives sought to be achieved by the Sole Member with this Direction are as follows:

- (i) the Corporation will utilize its assets for the purpose of providing tourism promotion services to the City;
- (ii) the Corporation will utilize its assets for the purpose of providing tourism development services to the City;
- (iii) the Corporation will utilize its assets for the purpose of pursuing the goals set forth in the Tourism Strategy;
- (iv) the Corporation will meet the financial performance standards set by the Sole Member and the Board, from time to time;
- (v) the Corporation will be responsible for making policy and operational decisions and shall be accountable for same; and
- (vi) the Corporation will act to mitigate financial risks to the Sole Member.

**2.4 Activities.** Subject to the Corporation’s financial resources and consistent with the overall principles and objectives outlined in this Direction, the Corporation may engage in any of the following business activities:

- (i) businesses permitted by Applicable Laws;

- (ii) businesses that are approved by the Board, including the following business activities, some of which are presently being carried on by the Corporation, namely:
  - a. providing tourism promotion services to the City; and
  - b. providing tourism development services to the City.

### **ARTICLE 3 - DIRECTORS AND OFFICERS**

**3.1 Board Responsibilities.** Subject to any matters requiring Sole Member approval pursuant to this Direction, the Board shall manage or supervise the management of the business and affairs of the Corporation in a manner consistent with the principles, objectives and other provisions outlined in this Direction. This shall include, without limitation:

- (i) establishing the values, mission and vision for the Corporation, consistent with the Tourism Strategy;
- (ii) establishing policies to guide the operations of the Corporation;
- (iii) approving an annual operating plan and budget for the Corporation;
- (iv) approving an annual capital plan and budget for the Corporation;
- (v) monitoring the performance of the Corporation in terms of finances, costs and quality of services; and
- (vi) for matters requiring approval of the Sole Member pursuant to the *Not-for-Profit Corporations Act* or this Direction, the mandate of the Board is to provide the Sole Member with a timely written analysis and recommendation pursuant to Section 5.7 herein.

**3.2 Officer Signing Authority.** All contracts entered into on behalf of the Corporation must be reviewed and executed by two Officers.

**3.3 Corporation Employees.** All employees currently employed by the City of Hamilton for the purposes of operating, administering and supporting the Corporation (the “Corporation Employees”) shall be City of Hamilton employees and shall report through an organizational structure approved by the City Manager. All Corporation Employees shall adhere to and be subject to the Human Resources and Corporate policies and procedures of the City of Hamilton, except to the extent that the Corporation has approved different policies and procedures in accordance with this Direction. In the event that the Corporation approves different policies and procedures in accordance with this Direction, such different policy and procedure shall be clearly communicated with Corporation Employees.

Notwithstanding the above, the Corporation is permitted to enter into employment agreements with individuals not employed by the City on such terms and conditions as may be acceptable to the Board, from time to time.

### 3.4 Conflict of Interest.

- (i) Board Compliance. The Directors and Officers shall comply with all applicable conflict of interest law including without limitation:
  - (a) *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, as amended, including any regulations thereunder and any successor legislation; and
  - (b) *Not-for-Profit Corporations Act*, including any regulations thereunder and any successor legislation.
- (ii) Employee Compliance. All Corporation Employees shall comply with all applicable conflict of interest law and any related Corporation and City policy in respect of conflicts of interest.

**3.5 Remuneration.** Except for remuneration from the City as approved by Council from time to time, the Directors shall serve as such without remuneration and no Director shall directly or indirectly receive any profit or payment of any nature from the Corporation on any basis including without limitation in the capacity of Officer. Notwithstanding the foregoing, Directors may be reimbursed for reasonable expenses incurred by them in the performance of their duties as Directors.

**3.6 Removal of Directors.** A Director may be removed from the Board by resolution of the Board, at a properly constituted meeting, for reasons including but not limited to:

- (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 and the Sole Member;
- (iii) engagement in activities that are deemed by the Board 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 member as described in subsection 5.1(i) herein;
- (v) absence from three (3) consecutive meetings of the Board during any calendar year without written approval of the Board.

### 3.7 Regulatory Matters.

- (i) MFIPPA. The Corporation is subject to MFIPPA, which requires the Board to appoint a “head” for the purposes of disclosing or refusing to disclose “records” or “confidential information,” as those expressions are defined in MFIPPA. The

Corporation shall appoint the City Clerk, or their designate, as the head of the Corporation for the purposes of MFIPPA.

- (ii) Other Legislation. If the Corporation is subject to any other legislation the such legislation shall prevail over this Direction where there is a conflict between this Direction and such legislation. Should such a conflict occur, the Corporation shall contact the Sole Member to discuss the manner in which the interests of the Sole Member may best be protected.
- (iii) Annual General Meeting. The Board shall hold an annual general meeting of the Sole Member not later than six (6) months after the end of the Corporation's fiscal year.

**3.8 Insurance.** The Corporation shall carry directors' and officers' liability insurance for the Directors and Officers of the Corporation in an amount and upon terms consistent with industry norms as determined by the Board.

#### **ARTICLE 4 - BOARD ACCOUNTABILITY**

**4.1 Annual Report.** The Board shall prepare and approve an "Annual Report" and submit and present same to the Sole Member at a Sole Member meeting, which may be the Annual General Meeting. The Annual Report shall include:

- (i) 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 Sole Member;
- (ii) information that is likely to materially affect the Sole Member's objectives;
- (iii) 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;
- (iv) information on progress and accomplishments relative to the Corporation's strategic business plan;
- (v) information regarding the performance of the Corporation such that the Sole Member can determine that the strategic business plan has been respected;
- (vi) information regarding the performance of the Corporation such that the Sole Member can determine that this Direction has been respected; and
- (vii) such additional information as the Sole Member may specify from time to time.



- 4.2 Financial Statements.** The Board shall deliver to the Sole Member, as soon as practicable and in any event no later than the 31<sup>st</sup> day of May in the year following the end of each fiscal year, 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.
- 4.3 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.
- 4.4 Procurement.** The Corporation shall adopt and use a procurement policy that is open, fair, transparent and consistent with the principles of public procurement. In the event that the Corporation fails to adopt such a procurement policy, it shall by default be subject to the procurement policy adopted by the City from time to time. Furthermore, the Sole Member may, at any time, require the Corporation to follow the procurement policy of the City.
- 4.5 Access to Records.** The Sole Member shall have unrestricted access to the books and records of the Corporation during normal business hours. The Sole Member shall treat all information of the Corporation with the same level of care and confidentiality as any Confidential Information of the Sole Member.

## ARTICLE 5 - SOLE MEMBER MATTERS

- 5.1 Sole Member to Appoint Directors.** The Sole Member shall appoint the Board in accordance with this Section 5.1:
- (i) Eligibility for Board Membership. To be eligible to serve as a Director, an individual must not be statutorily disqualified from being a director under the *Not-for-Profit Corporations Act* or otherwise and shall be a resident Canadian. In addition, members of Council who act as Directors shall:
    - a. 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
    - b. be approved as candidates for the Board by resolution of the Sole Member.
- 5.2 Composition of the Board.** Initially, the Corporation shall have a minimum of three (3) Directors. The Corporation may, from time to time, change the number of Directors that the Corporation shall have by special resolution of the Sole Member.

**5.3 Vacancies.** Subject to the relevant provisions of the *Not-for-Profit Corporations Act*, if a member of the Board 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 pursuant to this Direction.

**5.4 Term of Appointment.** The Term of appointment for all Board members 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 *Not-for-Profit Corporations Act*.

**5.5 Auditor.** The 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.

**5.6 Other Matters Requiring Sole Member Approval.**

**Corporate Issues.** Without the prior written approval of the Sole Member, the Corporation shall not:

- (i) create any debt;
- (ii) enter into any transaction or take any action that requires Sole Member approval pursuant to the *Not-for-Profit Corporations Act*;
- (iii) make any acquisition or disposition howsoever of: (i) any business, (ii) any assets, shares, securities or equity, partnership or joint venture interests, or (iii) any rights capable of becoming or affecting any of the foregoing;
- (iv) declare any dividend or make any other distribution;
- (v) make any decision that would materially affect the tax or regulatory status of the Corporation;
- (vi) grant any loan, guarantee of indebtedness or performance or provide financial assistance howsoever to any entity other than the Corporation and the City;
- (vii) enter into any transaction or take any action that requires the approval of the Sole Member pursuant to this Direction;
- (viii) pass or amend any by-laws with respect to the composition or number of Directors or the term of Directors;

- (ix) pass or amend any by-laws that are inconsistent with this Direction;
- (x) take any steps to wind-up or dissolve the Corporation;
- (xi) take or institute any proceedings for any legal reorganization of the Corporation.

**5.7 Materials to Accompany Approval Requests.** Requests by the Corporation to the Sole Member for approvals in relation to Section 5.6 shall be in writing and shall be accompanied by a written analysis and recommendation in connection with the matter in respect of which approval is requested; provided, however, that if it is not practicable for the request to be accompanied by such analysis and recommendation, the analysis and recommendation shall be provided to the Sole Member at the earliest practicable time following such request.

**5.8 Decisions of the Sole Member.** Approvals and decisions of the Sole Member in relation to this Direction will be given to the Corporation in writing signed by the Sole Member Representative, and approvals and decisions so signed may be relied upon by the Corporation as being the approval and decision of the Sole Member.

**5.9 Sole Member Representative.** The Sole Member hereby designates the City Clerk and Mayor (or such other person(s) as may be designated by Council from time to time) as the legal representatives of the Sole Member (“Sole Member Representative”) for the purposes of: (i) communicating to the Corporation on behalf of the Sole Member any consent or approval required pursuant to the *Not-for-Profit Corporations Act* or providing any consent, approval, direction, communication or any information to be provided by the Sole Member to the Corporation pursuant to this Direction; and (ii) receiving from the Corporation any communications or information to be provided to the Sole Member by the Corporation for the purposes of this Direction. All communications for the purposes of this Direction between the Sole Member and the Corporation shall be transmitted to and from the President of the Corporation, on behalf of the Corporation, and the Sole Member Representative, on behalf of the Sole Member.

## ARTICLE 6 - CONFIDENTIALITY

### 6.1 Confidentiality.

- (i) Confidentiality Exceptions. The Directors, Officers and the Sole Member shall ensure that all Confidential Information of the Corporation is not disclosed or otherwise made available to any Person, except to the extent that:
  - a. Disclosure to the Corporation’s Employees, authorized agents of the Corporation or other employees or agents of the Sole Member is necessary for the performance of any of their duties and obligations under this Direction; and

- b. disclosure is required in the course of judicial proceedings or pursuant to law.

**6.2 Requests to Disclose.** In the event any of the Directors, Officers or the Sole Member receive a request to disclose any Confidential Information pursuant to legal process of any kind, such Director, Officer or the Sole Member shall notify the Corporation promptly so that the Corporation may seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is obtained, any of the Directors, Officers or the Sole Member shall furnish only that portion of the Confidential Information which any of the Directors, Officers or Sole Member is/are advised by legal counsel is legally required and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be afforded to the Confidential Information.

## **ARTICLE 7 - EXCHANGE OF INFORMATION**

**7.1 General.** Any demand, notice or communication to be given under this Direction and not otherwise addressed in this Direction shall be in writing and signed by an authorized signatory and shall be personally delivered, mailed by prepaid mail, sent by facsimile or email as follows:

All demands, notices and communications shall:

- (i) if delivered personally, be deemed to have been received upon receipt;
- (ii) if transmitted by facsimile or email, be deemed to have been given on the second (2nd) business day following the day they were sent; and
- (iii) if mailed, be deemed to have been given on the third (3rd) business day following the date they were mailed.

## **ARTICLE 8 - ENFORCEMENT**

**8.1 Voting Power.** The Board and the Sole Member shall at all times use their voting powers (whether by way of vote or written consent) in accordance with the provisions of this Direction and for the purposes of effectuating the same.

**8.2 Further Assurances.** The Corporation, upon reasonable request of the Sole Member, shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts and assurances as may be required for the better carrying out and performance of all the terms of this Direction.

## **ARTICLE 9 - COMMENCEMENT, AMENDMENT AND TERMINATION**

**9.1 Commencement.** This Direction shall come into effect as of XXXXXXXXXX and continue in effect until terminated by the Sole Member.

**9.2 Amendment.** This Direction may be amended solely at the discretion of the Sole Member by written resolution.

**9.3 Termination.** This Direction may be terminated solely at the discretion of the Sole Member upon written notice to the Board of any such proposed termination.

**9.4 No Third-Party Beneficiaries.** Nothing in this Direction shall entitle any entity other than the Sole Member to any claim, cause of action, remedy or right of any kind in respect of this Direction or the subject matter of this Direction.

**CITY OF HAMILTON**

Signed for and on behalf of the City of Hamilton as the sole member of the Corporation  
by:

Signed: \_\_\_\_\_  
Name:  
Title:  
Date:

Signed: \_\_\_\_\_  
Name:  
Title:  
Date: