

OPERATING AGREEMENT
(the "Agreement")

THIS AGREEMENT is effective as of the ____ day of _____, 2022 (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 designation 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 and in any event no later than the 31st 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.

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: F. Eisenberger
Title: Mayor
Date:

Per: _____
Name: A. Holland
Title: City Clerk
Date:

HAMILTON TOURISM DEVELOPMENT CORPORATION

Per: _____
Name:
Title: President
Date:

Per: _____
Name:
Title: Treasurer
Date: