



## GENERAL ISSUES COMMITTEE REPORT 22-015

9:30 a.m.

August 4, 2022

Council Chambers, City Hall, 2<sup>nd</sup> Floor  
71 Main Street West, Hamilton, Ontario

**Present:** Mayor F. Eisenberger, Acting Deputy Mayor B. Clark (Chair)  
Councillors M. Wilson, J. Farr, N. Nann, S. Merulla, R. Powers,  
T. Jackson, E. Pauls, B. Johnson, Deputy Mayor J. P. Danko,  
M. Pearson, L. Ferguson, A. VanderBeek, and J. Partridge

**Absent:** Councillor T. Whitehead – Personal

### THE FOLLOWING ITEMS WERE REFERRED TO COUNCIL FOR CONSIDERATION:

**1. Barton Village Business Improvement Area Revised Board of Management (PED22174) (Wards 2 and 3) (Item 7.1)**

That the following individuals be appointed to the Barton Village Business Improvement Area (BIA) Board of Management:

- (a) Tyler Cowie;
- (b) Melissa McSweeney;
- (c) Robert Iszkula;
- (d) Jacob Tutt.

**2. Community Benefits Protocol Advisory Committee (HSC19066(a)) (City Wide) (Item 8.1)**

That Report HSC19066(a), respecting Community Benefits Protocol Advisory Committee, be received.

**3. Community Benefits Protocol Advisory Committee (HSC19066) (City Wide) (Item 8.1(a))**

- (a) That Report HSC19066, respecting Community Benefits Protocol Advisory Committee be received.

- (b) That the terms of reference for the Community Benefits Protocol Sub-Committee, be approved as follows:

**Purpose**

The Community Benefits Protocol Sub-Committee is created with the purpose to:

- Develop a protocol for the use and prioritization of Community Benefits Agreements in the City of Hamilton.
- Consider opportunities to include Social Procurement within publicly funded tenders.
- Create a venue to inform, connect and encouraged Community Benefits Agreements within the City.

A Community Benefits Agreement (CBA) is founded on a shared, legally binding commitment between government, the contracting firm and community to build and complete public infrastructure projects through an effective, efficient, transparent, fair and inclusive process that supports good jobs and prevailing industry standards. (Source: Hamilton Community Benefits Network)

The use of CBAs is in alignment with the Corporate Strategic Plan as it relates to:

- Community Engagement & Participation
- Economic Prosperity and Growth
- Healthy and Safe Communities
- Clean and Green

**Membership**

As a Sub-Committee of Council, the Committee shall be made up of the following voting members:

- 3 City Councillors
- 2 representatives from the Hamilton Community Benefits Network

Staff shall attend the Community Benefits Protocol Sub-Committee as required. The Committee shall be supported by management level staff from the following:

- Healthy and Safe Communities Department
- Planning and Economic Development Department
- Corporate Services Department, Financial Services and Taxation Division, Procurement Section
- Corporate Services Department, Financial Planning and Policy Division

**Accountability**

The Community Benefits Protocol Sub-Committee shall report through the General Issues Committee to City Council.

**Meetings**

Meetings shall be held on a monthly basis, or at the call of the Chair.

**4. Municipal Accommodation Tax (PED20009(c)) (City Wide) (Item 10.1)**

- (a) That the By-law to establish a Municipal Accommodation Tax (MAT) at a rate of 4%, effective January 1, 2023, attached as Appendix "A" to Report PED20009(c), be passed;
- (b) That the single source procurement of the Ontario Restaurant Hotel and Motel Association (ORHMA) to collect the Municipal Accommodation Tax from Hamilton transient accommodations and remit the tax to the City of Hamilton pursuant to Procurement Policy #11 - Non-competitive Procurements, be approved;
- (c) That the Mayor and City Clerk be authorized and directed to execute, on behalf of the City, a Municipal Accommodation Tax Collection Agreement, together with all necessary ancillary documents, between the City of Hamilton and the Ontario Restaurant Hotel and Motel Association with content acceptable to the General Manager, Corporate Services Department and the Director of Tourism and Culture, and in a form satisfactory to the City Solicitor;
- (d) That the Hamilton Tourism Development Corporation (HTDC) Sole Member Direction and Sole Member Declaration, attached as Appendix A to General Issues Committee Report 22-015, be approved;
- (e) That the Mayor and City Clerk be authorized and directed to execute, on behalf of the City, the Sole Member Direction and Sole Member Declaration, attached as Appendix A to General Issues Committee Report 22-015, in a form satisfactory to the City Solicitor;
- (f) That three members of Council be appointed to the Board of Directors of the Hamilton Tourism Development Corporation for the 2022-2026 term of Council;
- (g) That the Operating Agreement between the City of Hamilton and Hamilton Tourism Development Corporation, attached as Appendix B to General Issues Committee Report 22-015, be approved;
- (h) That the Mayor and City Clerk be authorized and directed to execute, on behalf of the City, the Operating Agreement between the City of Hamilton

and Hamilton Tourism Development Corporation, attached as Appendix B to General Issues Committee Report 22-015;

- (i) That the Asset Transfer Policy, attached as Appendix C to General Issues Committee Report 22-015, be approved;
- (j) That the Mayor and City Clerk be authorized and directed to execute, on behalf of the City, a line of credit agreement between the City of Hamilton and the Hamilton Tourism Development Corporation, for financial support to an upset limit of \$250,000 for Hamilton Tourism Development Corporation start-up administrative expenses, in accordance with the terms outlined in Appendix D to General Issues Committee Report 22-015 and such other conditions deemed appropriate by the General Manager, Corporate Services Department in consultation with the General Manager, Planning and Economic Development Department, and in a form satisfactory to the City Solicitor;
- (k) That the Mayor and City Clerk be authorized and directed to execute, on behalf of the City, a line of credit agreement between the City of Hamilton and the Hamilton Tourism Development Corporation, for financial support to an upset limit of \$2,000,000 for Hamilton Tourism Development Corporation tourism promotion and product development expenses, in accordance with the terms outlined in Appendix E to General Issues Committee Report 22-015 and such other conditions deemed appropriate by the General Manager, Corporate Services Department in consultation with the General Manager, Planning and Economic Development Department, and in a form satisfactory to the City Solicitor;
- (l) That the Interim Directors of the Hamilton Tourism Development Corporation be directed to establish a Hamilton Tourism Development Corporation Municipal Accommodation Tax Reserve Fund;
- (m) That the annual interest costs associated with the lines of credit, as outlined in Recommendations (j) and (k) of Report PED20009(c), be funded from the Hamilton Tourism Development Corporation Municipal Accommodation Tax Reserve Fund; and
- (n) That staff be directed to report back to the General Issues Committee respecting a proposed methodology for Municipal Accommodation Tax collection from registered short-term rental operators in Hamilton and remittance of the tax to the City of Hamilton and the Hamilton Tourism Development Corporation.

**5. Open Streets Temporary Linear Urban Park (PED22075(a)) (City Wide) (Item 10.2)**

That Report PED22075(a), respecting an Open Streets Temporary Linear Urban Park, be received.

**6. Environmental Remediation and Site Enhancement (ERASE) Redevelopment Grant Application, 488 & 500 Upper Wellington Street, Hamilton ERG-22-02 (PED22169) (Ward 8) (Item 10.3)**

- (a) That Environmental Remediation and Site Enhancement (ERASE) Redevelopment Grant Application ERG-22-02, submitted by 488-500 Upper Wellington Nominee Inc. (488-500 Upper Wellington LP/Fengate Asset Management) owner of the properties at 488 and 500 Upper Wellington Street, Hamilton for an ERASE Redevelopment Grant not to exceed \$5,354,800, for estimated eligible remediation costs provided over a maximum of ten (10) years, be authorized and approved in accordance with the terms and conditions of the ERASE Redevelopment Agreement;
- (b) That the General Manager of the Planning and Economic Development Department be authorized and directed to execute the Environmental Remediation and Site Enhancement (ERASE) Redevelopment Agreement together with any ancillary documentation required, to give effect to the ERASE Redevelopment Grant for 488-500 Upper Wellington Nominee Inc. (488-500 Upper Wellington LP/Fengate Asset Management), owner of the properties 488 and 500 Upper Wellington Street, Hamilton in a form satisfactory to the City Solicitor;
- (c) That the General Manager of the Planning and Economic Development Department be authorized and directed to administer the Grant and Grant Agreement including but not limited to: deciding on actions to take in respect of events of default and executing any Grant Amending Agreements, together with any ancillary amending documentation, if required, provided that the terms and conditions of the Environmental Remediation and Site Enhancement (ERASE) Redevelopment Grant, as approved by City Council, are maintained and that any applicable Grant Amending Agreements are undertaken in a form satisfactory to the City Solicitor.

**7. Potential Cost Associated with the Preliminary C5167 Arbitration Award on Unpaid Leave of Absence (HUR21008(d)) (City Wide) (Item 10.4)**

That Report HUR21008(d), respecting Potential Cost Associated with the Preliminary C5167 Arbitration Award on Unpaid Leave of Absence, be received.

**8. Business Improvement Area Sub-Committee Report 22-007, July 12, 2022  
(Item 10.5)**

**(a) Ottawa Street Business Improvement Area Expenditure Request  
(Item 11.1)**

- (i) That the expenditure request from the Ottawa Street Business Improvement Area, in the amount of \$13,120.36 for the purchase of branded banners, office and street maintenance, street furniture maintenance, hanging basket maintenance, and hanging baskets for Fall / Winter to be funded from the Community Improvement Plan (CIP) Contribution Program (BIA Payments Account 815010-56905), be approved; and,
- (ii) That the expenditure request from the Ottawa Street Business Improvement Area, in the amount of \$16,884.50 for the cost of Christmas décor, Christmas décor storage and maintenance, and hanging baskets for Spring / Summer, to be funded from the Shared Parking Revenue Program (Parking Revenue Account 815010-45559), be approved.

**(b) Concession Street Business Improvement Area Expenditure Request  
(Item 11.2)**

That the expenditure request from the Concession Street Business Improvement Area, in the amount of \$8,283.09 for the purchase and maintenance of 2022 summer hanging flower baskets for Concession Street to be funded from the Community Improvement Plan (CIP) Contribution Program (BIA Payments Account 815010-56905), be approved.

**9. Hamilton-Wentworth District School Board Liaison Committee Report 22-002,  
June 27, 2022 (Item 10.6)**

That the Hamilton-Wentworth District School Board Liaison Committee Report 22-002, June 27, 2022, be received.

**10. West Harbour Development Sub-Committee Report 22-002 (July 19, 2022)  
(Item 10.7)**

**(a) Discovery Centre Strategy Framework: Strategy Development  
Process Update and Next Steps (Opportunity Study) (PED21090(c))  
(Ward 2) (Item 8.1)**

- (i) That as part of the continuation of Step 2 “Conduct Opportunity Study” of the Discovery Centre Strategic Framework approved by Council in February 2022, staff be directed to undertake the following:
  - (a) Initiation of the community and stakeholder consultation process;
  - (b) Consultation with the Hamilton Public Library (HPL) and the Hamilton Museum Citizens Group, as well as heritage stakeholders regarding potential partnership opportunities for co-locating civic uses and providing heritage-based visitor experiences within the Discovery Centre Opportunity Study Site;
  - (c) Consultation with the urban Indigenous community regarding how the utilization of the Discovery Centre Opportunity Study Site can contribute to the advancement of the Actions of the 2019 Hamilton Urban Indigenous Strategy themes of “Land”, “Spirit” and “People”;
  - (d) Assessment of the capital and operational costs for the Discovery Centre building, and the impact to the Energy, Fleet and Facilities Division portfolio; and
  - (e) Preparation of a general market assessment to evaluate the potential interest, viability, and financial market valuation, for a variety of commercial uses on the Subject Site, to be funded from West Harbour Capital Project Account No. 4411606004, up to a maximum limit of \$100 K; and
  - (f) That in accordance with Step 3 “Confirm Vision” of the Discovery Centre Strategic Framework approved by Council in February 2022, that staff report back to the West Harbour Development Sub-Committee by no later than Q1 2023 with a summary of the stakeholder and community consultation, including HPL and the Hamilton Museum Citizens Group consultation; findings of the general market assessment; findings of the capital and operational cost analysis; and an assessment of alternatives for the future vision of the Site.
- (b) West Harbour Re-Development Plan - Status Update (PED17181(d)) (Ward 2) (Item 10.1)**
  - (i) That Report PED17181(d), respecting West Harbour Re-Development Plan - Status Update (Ward 2), be received.

**11. Light Rail Transit Sub-Committee Report 22-002 (July 18, 2022) (Item 10.8)**

**(a) Hamilton Light Rail Transit (LRT) Design Update (PED22118(a)) (City Wide) (Item 8.1)**

- (i) That Report PED22118(a) respecting Hamilton Light Rail Transit (LRT) Design Update, be received.

**(b) Hamilton Light Rail Transit (LRT) Project Update**

- (i) That staff be directed to report back to the Light Rail Transit Sub-Committee at the September 26, 2022 meeting, respecting how the project is being managed on behalf of the City, the design considerations, the City's policy frameworks that will be informing the design process and how the changes since 2019 can be incorporated into the design.
- (ii) That staff be directed to prepare the report in full collaboration with Metrolinx, in order to ensure it is a joint project.

**(c) Inclusion of the Hamilton Community Benefits Network as a key stakeholder to the LRT Sub-Committee (Added Item 9.1 (a))**

- (i) That the Hamilton Community Benefits Network be included as a key stakeholder to the Light Rail Transit Sub-Committee to attend meetings as an advisor to the Sub-Committee.

**(d) Metrolinx - Community Benefits Approach within the Hamilton Light Rail Transit (LRT) Project (Added Item 9.1 (b))**

- (i) That Metrolinx be requested to provide a presentation at the September 26, 2022 Light Rail Transit Sub-Committee meeting respecting the community benefits approach they have taken in the past with other projects and how they intend to include a community benefits approach within the Hamilton Light Rail Transit project.

**12. Hamilton Future Fund Report 22-001, July 13, 2022 (Item 10.9)**

**(a) Hamilton Future Fund Investment Performance Reports (FCS22059) (City Wide) (Item 7.4)**

- (i) That Report FCS22059 respecting Hamilton Future Fund Investment Performance, be received.



**(b) Hamilton Future Fund – City of Hamilton Treasurer’s Investment Reports (FCS22060) (City Wide) (Item 7.5)**

- (i) That FCS22060 respecting Hamilton Future Fund – City of Hamilton’s Treasurer’s Investment Reports, be received.

**(c) Hamilton Future Fund Reserve Status and Project Funding as of December 31, 2021 (FCS22066) (City Wide) (Item 7.6)**

- (i) That Report FCS22066 respecting Hamilton Future Fund Reserve Status and Project Funding as of December 31, 2021, be received.

**13. License of Land in the City of Hamilton (PED22175) (Ward 2) (Item 14.1)**

- (a) That the direction within Report PED22175, be approved;
- (b) That the sum of \$2,500 be funded from Project ID Account No. 59806-3561850200 and be credited to Dept. ID Account No. 59806-812036 (Real Estate – Admin Recovery) for recovery of expenses including real estate and legal fees and cost;
- (c) That the City Solicitor be authorized and directed to complete the Licence of Land in the City of Hamilton, located in Ward 2, on behalf of the City, including paying any necessary expenses, amending the closing, due diligence and other dates, and amending and waiving terms and conditions on such terms deemed reasonable;
- (d) That the Mayor and City Clerk be authorized and directed to execute all necessary documents for the Licence of Land in the City of Hamilton, located in Ward 2, in a form satisfactory to the City Solicitor;
- (e) That the complete Report PED22175, respecting the Licence of Land in the City of Hamilton, located in Ward 2, remain confidential until completion of the real estate transaction.

**FOR INFORMATION:**

**(a) APPROVAL OF AGENDA (Item 2)**

The Committee Clerk advised the Committee that there were no changes to the agenda.

The agenda for the August 4, 2022 General Issues Committee meeting, was approved, as presented.

**(b) DECLARATIONS OF INTEREST (Item 3)**

Councillor Danko declared a non-disqualifying interest for Item 10.6, respecting Hamilton-Wentworth District School Board Liaison Committee Report 22-002, June 27, 2022, as his wife is the Chair of the Hamilton Wentworth District School Board.

Councillor Wilson declared a non-disqualifying interest for Item 8.1, respecting Community Benefits Protocol Advisory Committee (HSC19066(a)) (City Wide), as the organization for which her spouse works is one of the funders of the Community Benefits Network.

Councillor Wilson declared a disqualifying interest for Item 10.3, respecting Environmental Remediation and Site Enhancement (ERASE) Redevelopment Grant Application, 488 & 500 Upper Wellington Street, Hamilton ERG-22-02 (PED22169) (Ward 8), as her spouse is on the Board of one of the principles on the development.

**(c) STAFF PRESENTATIONS**

**(i) Community Benefits Protocol Advisory Committee (HSC19066(a)) (City Wide)**

Angela Burden, General Manager, Healthy & Safe Communities, and Karl Andrus, Community Benefits Network, provided the presentation respecting HSC19066(a) - Community Benefits Protocol Advisory Committee.

The presentation, respecting HSC19066(a), Community Benefits Protocol Advisory Committee, was received.

For disposition of this matter, refer to Item 2.

**(d) PUBLIC HEARINGS / DELEGATIONS (Item 9)**

**(i) Anthony Marco, Hamilton Community Benefits Network, respecting Items 8.1 and 8.1(a) – Reports HSC19066 and HSC19066(a) – Community Benefits Protocol Advisory Committee (Item 9.1.a.)**

Anthony Marco, Hamilton Community Benefits Network, addressed the committee respecting Items 8.1 and 8.1(a) – Reports HSC19066 and HSC19066(a) – Community Benefits Protocol Advisory Committee

**(ii) Mark Ellerker, Hamilton Community Benefits Network, respecting Items 8.1 and 8.1(a) – Reports HSC19066 and HSC19066(a) – Community Benefits Protocol Advisory Committee (Item 9.1.a.)**

Mark Ellerker, Hamilton Community Benefits Network, addressed the committee respecting Items 8.1 and 8.1(a) – Reports HSC19066 and HSC19066(a) – Community Benefits Protocol Advisory Committee

The following delegations respecting Items 8.1 and 8.1(a) - Reports HSC19066 and HSC19066(a) - Community Benefits Protocol Advisory Committee, were received:

1. Anthony Marco, Hamilton Community Benefits Network
2. Mark Ellerker, Hamilton Community Benefits Network

For disposition of this matter, refer to Items 2 and 3.

The General Issues Committee recessed for one half hour until 1:18 p.m.

**(e) GENERAL INFORMATION AND OTHER BUSINESS**

**(i) Amendments to the Outstanding Business List (Item 13.1)**

The following amendments to the Outstanding Business List, were approved:

**(a) Items Considered Complete and to be Removed**

1. Municipal Accommodation Tax  
Addressed as Item 10.1 on today's agenda
2. Open Streets Temporary Linear Urban Park  
Addressed as Item 10.2 on today's agenda

**(f) PRIVATE & CONFIDENTIAL (Item 14)**

The General Issues Committee determined that it was not necessary to move into Closed Session respecting Item 14.1.

For disposition of this matter, refer to Item 13.

**(g) ADJOURNMENT (Item 15)**

There being no further business, the General Issues Committee was adjourned at 1:29 p.m.

Respectfully submitted,

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B. Clark, Acting Deputy Mayor  
Chair, General Issues Committee

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Tamara Bates  
Legislative Coordinator,  
Office of the City Clerk

**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:

**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 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.

**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:





## CORPORATE POLICY

**POLICY TITLE:** ASSET TRANSFER - HAMILTON TOURISM DEVELOPMENT CORPORATION

**POLICY NO.:**

<b>Effective Date:</b>	
------------------------	--

<b>POLICY STATEMENT</b>
This Policy establishes a framework for the transfer of City of Hamilton ("City") owned asset(s) to Hamilton Tourism Development Corporation ("HTDC").
<b>PURPOSE</b>
The objective of this policy is to permit and facilitate the transfer of City owned and controlled assets to HTDC pursuant to applicable legislation.
<b>SCOPE</b>
This policy applies to any instance where City owned assets are transferred to HTDC.
This policy applies to all City employees that are responsible for the management of financial resources.
<b>LEGISLATIVE REQUIREMENTS</b>
<ol style="list-style-type: none"> <li>1. <i>Municipal Act, 2001</i>, S.O. 2001, c. 25 and O.Reg.599/06 - Municipal Service Corporations</li> <li>2. All applicable laws including federal, provincial, municipal by-laws, policies and procedures.</li> </ol>
<b>DEFINITIONS</b>
<ol style="list-style-type: none"> <li>1. <b>Asset(s):</b> A resource with economic value with an expectation that it will provide a future benefit. An asset can include real and personal property, monies, securities, equipment, intellectual property, and any resource that could deliver a prospective profit and/or benefit.</li> <li>2. <b>City Staff:</b> Employees of the City, unless otherwise stated.</li> <li>3. <b>Council:</b> The Council of the City of Hamilton.</li> </ol>

**4. Transfer:** A change of ownership from one party to another.

**5. Hamilton Tourism Development Corporation (HTDC):** a not-for-profit corporation, wholly owned by the City, incorporated pursuant to the *Not-for-Profit Corporations Act*, 2010, SO 2010, c.15.

## POLICY

The following principles apply to this policy:

- 1) The City shall ensure all applicable legislation, including but not limited to the *Municipal Act*, 2001 is adhered to in any asset transfer.
- 2) Prior to any transfer of assets, Finance staff shall determine the fair market value of the assets, further determination may involve the use of an appraiser, but such an appraisal shall not necessarily be required where staff is of the opinion that a fair market value can be accurately determined.
- 3) Asset transfers must be approved by Council in advance of the transfer.
- 4) City Council may attach any term, condition, guideline, restriction or such to any asset transfer as it deems necessary or appropriate, including but not limited to:
  - a) happening of an event or events;
  - b) Specifying the permitted use of the asset(s);
  - c) Providing for an obligation on HTDC to transfer back the asset upon the Restricting or prohibiting further transfer, sale or lease of the asset;
  - d) Attaching a purchase price of the asset to be paid to the City by HTDC; and
  - e) Any repayment or conditional payment terms.
- 5) The disposition or transfer of assets shall be recorded in the asset ledger in accordance with Public Sector Accounting Standards (PSAB) and the City's accounting policies.
- 6) Where a third party (e.g. Government of Canada, Province of Ontario) has contributed funds to any asset being transferred, the City shall give notice to the parties that made part of the contribution if such notice is required by law or agreement.

<b>RESPONSIBILITY FOR THE POLICY</b>	Corporate Services Department Director of Financial Planning, Administration and Policy
<b>POLICY HISTORY</b>	This Policy has been approved by Council on <b>XXX</b> through Report PED20009(c)

### **Administrative Line of Credit Agreement Terms and Conditions**

Parties.	City of Hamilton (the “City”) and the Hamilton Tourism Development Corporation (the “Borrower”). The Borrower has applied to the City for a Line of Credit to provide funds for the administration operations of the Borrower.
Purpose.	The loan is being made to the Borrower relating to the financing of administration expenses of the Borrower. Expense examples include bookkeeping services, fees (e.g. banking, audit, insurance), computer software, and other supplies.
<b>Terms</b>	
Loan Amount.	The City will make available to the Borrower up to Two Hundred and Fifty Thousand Dollars (\$250,000 CAN) by way of advances.
Advances.	Advances will be made from the available funding, on an as required basis.
Closing Date.	Closing Date means the date the agreement is fully executed; projected to be on or before December 31, 2022.
Interest.	The Borrower will pay interest on the outstanding principal amount of the loan advanced from time to time at a rate of interest per annum equal to 5.25% plus a 0.25% administrative fee consistent with the City’s external loan guidelines.
Line of Credit Expiry Date.	The line of credit will expire on or before December 31, 2027.
Payments of Interest.	The Borrower will pay payments consisting of interest only calculated and compounded annual based on the revolving balance.
Payments of Principal.	The Borrower will pay the Principal in full on the 5 <sup>th</sup> anniversary of the Closing Date, or sooner if the Borrower is financially able. If HTDC defaults on their payments the City would have authority to draw funds from the City of Hamilton Municipal Accommodation Tax Reserve and the HTDC reserve.
<b>Conditions</b>	
Taxes.	The Borrower will file federal and provincial filings and reports which are required to be filed by it in respect of all taxes.
Financial Statements.	The Borrower’s financial statements will present the financial position of the Borrower and the results of its operations in accordance with generally accepted accounting principles applied on a consistent basis.
Reporting to the City.	The Borrower shall provide the City with annual audited financial statements and other required documents through the City’s Boards and Shareholders reporting structure and schedule.

Insurance.	The Borrower will maintain insurers insurance with respect to its business in the form of General Liability and Directors and Officers Liability.
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**Other Provisions to be included in the Agreement**

- Repayment
- Representations and Warranties
- Covenants
- Events of Defaults and Acceleration
- Indemnification
- And other general provisions or conditions deemed appropriate by the General Manager, Corporate Services Department in consultation with the General Manager, Planning and Economic Development Department, and in a form satisfactory to the City Solicitor.

**Business Line of Credit Agreement Terms and Conditions**

Parties.	City of Hamilton (the “City”) and the Hamilton Tourism Development Corporation (the “Borrower”). The Borrower has applied to the City for a Line of Credit to provide funds for the business activities of the Borrower.
Purpose.	As outlined in it’s Articles of Incorporation, the objectives of HTDC are to develop tourism products and promote Hamilton as a destination for tourists, visitors, festival and event attendees, conference delegates and business travellers. For greater clarity, tourism products relate to the eight sectors of the tourism industry: accommodation, adventure tourism and recreation, attractions, festivals, events and conferences, food and beverage, tourism services, transportation, and travel trade.
<b>Terms</b>	
Loan Amount.	The City will make available to the Borrower up to Two Million Dollars (\$2,000,000 CAN) by way of advances.
Advances.	Advances will be made from the available funding, on an as required basis.
Closing Date.	Closing Date means the date the agreement is fully executed; projected to be on or before December 31, 2022.
Interest.	The Borrower will pay interest on the outstanding principal amount of the loan advanced from time to time at a rate of interest per annum equal to 5.25% plus a 0.25% administrative fee consistent with the City’s external loan guidelines.
Payments of Interest.	The Borrower will pay payments consisting of Interest only calculated and compounded annual based on the revolving balance.
Payments of Principal.	The Borrower will pay the Principal in full on the 5 <sup>th</sup> anniversary of the Closing Date, or sooner if the Borrower is financially able. If HTDC defaults on their payments the City would have authority to draw funds from the City of Hamilton Municipal Accommodation Tax Reserve and the HTDC reserve.
Line of Credit Expiry Date.	The line of credit will expire on or before December 31, 2027.
<b>Conditions</b>	
Taxes.	The Borrower will file federal and provincial filings and reports which are required to be filed by it in respect of all taxes.
Financial Statements.	The Borrower's financial statements will present the financial position of the Borrower and the results of its operations in accordance with generally accepted accounting principles applied on a consistent basis.

Reporting to the City.	The Borrower shall provide the City with annual audited financial statements and other required documents through the City's Boards and Shareholders reporting structure and schedule.
Insurance.	The Borrower will maintain insurers insurance with respect to its business in the form of General Liability and Directors and Officers Liability.
<b>Other Provisions to be included in the Agreement</b>	
<ul style="list-style-type: none"> <li>• Repayment</li> <li>• Representations and Warranties</li> <li>• Covenants</li> <li>• Events of Defaults and Acceleration</li> <li>• Indemnification</li> <li>• And other general provisions or conditions deemed appropriate by the General Manager, Corporate Services Department in consultation with the General Manager, Planning and Economic Development Department, and in a form satisfactory to the City Solicitor.</li> </ul>	