

## LINE OF CREDIT AGREEMENT - BUSINESS OPERATIONS (the "Agreement")

**THIS AGREEMENT** is made as of the \_\_\_\_ day of \_\_\_\_\_, 2023 (the "Effective Date")

**BETWEEN:**

**CITY OF HAMILTON**  
(the "City")

-and-

**HAMILTON TOURISM DEVELOPMENT CORPORATION**  
(the "Borrower")

(collectively the "**Parties**" and individually a "**Party**")

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

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

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

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

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

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

## **ARTICLE 1**

### **INTERPRETATION**

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

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

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

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

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

## **ARTICLE 2** **TERM OF AGREEMENT**

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

## **ARTICLE 3** **AMOUNT AND TERMS - LINE OF CREDIT**

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

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

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

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

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

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

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

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

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

#### **ARTICLE 4** **REPRESENTATIONS AND WARRANTIES**

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

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

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

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

## **ARTICLE 5** **COVENANTS**

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

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

**ARTICLE 6**  
**DEFAULT**

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

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

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

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

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

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

## **ARTICLE 7** **ACCOUNTABILITY**

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

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

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

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

**7.4 RECORD MAINTENANCE.** The Borrower shall keep and maintain:



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

## **ARTICLE 8**

### **INSURANCE AND INDEMNITY**

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

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

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

**ARTICLE 9**  
**GENERAL CONTRACT PROVISIONS**

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

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

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

**To City of Hamilton:**

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

**Mailing Address:**

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

With a copy to:

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

**Mailing Address:**

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

**To the Borrower:**

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

Email: Shelley.Hesmer@hamilton.ca

Mailing Address:

City of Hamilton

Treasurer, Hamilton Tourism Development Corporation

P.O. Box 2040

Hamilton, Ontario L8P 4Y5

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**CITY OF HAMILTON**

By: \_\_\_\_\_  
Name: A. Horwath  
Title: Mayor

By: \_\_\_\_\_  
Name: J. Pilon  
Title: Acting City Clerk

**HAMILTON TOURISM DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Name: J. Thorne  
Title: President  
*I have authority to bind the corporation.*