

**MUNICIPAL ACCOMMODATION TAX  
FINANCIAL ACCOUNTABILITY AND SERVICES AGREEMENT**

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2023.

**BETWEEN**

**THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE**

(hereinafter called the "Town")

- and -

**TOURISM NOTL**

(hereinafter called "Tourism NOTL")

**WHEREAS** section 400.1 of the *Municipal Act*, 2001, SO 2001 c. 25, as amended (the "Act") permits the Town to impose a transient accommodation tax in respect of the purchase of transient accommodation within the Town and to enter into agreements with persons or entities to collect the said tax on behalf of the Town;

**AND WHEREAS** the Town has passed By-law No. 5435-22 imposing a Municipal Accommodation Tax ("MAT") pursuant to section 400.1 of the *Act*;

**AND WHEREAS** O.Reg. 435/17 under the *Act* requires a municipal corporation collecting MAT to make payments to an entity that meets the definition of Eligible Tourism Entity as defined in O.Reg. 435/17;

**AND WHEREAS** Tourism NOTL meets the definition of Eligible Tourism Entity as defined in O.Reg. 435/17 and is the Town's designated Destination Marketing Organization (DMO);

**AND WHEREAS** O.Reg. 435/17 requires a municipality and its Eligible Tourism Entity to enter into an agreement respecting financial accountability;

**AND WHEREAS** the MAT will be used by the Town and Tourism NOTL to mutually develop a long-term vision for tourism that is consistent with the strategic priorities for tourism, identified by the Town's council in its Tourism Strategy and by the business community within the Town, as represented by Tourism NOTL's Strategic and Tactical Marketing Plan. The long-term vision for tourism is intended to define the impact, opportunities, business trends, and long-term vision for growing the tourism sector within the Municipality and ensure that the plan aligns with both existing strengths and future tourism opportunities.

**IN CONSIDERATION** of the mutual covenants and agreements set forth, the parties covenant and agree, to and with each other, as follows:

## **FUNDING**

1.01 50% of the total MAT collected by the Town from Transient Accommodation will be disbursed to Tourism NOTL for marketing and destination development (the "Funding") after general administrative costs have been deducted. These include but are not limited to, general expenses to administer the program, such as direct staff salaries or payments made to third parties to administer collection, software, mailing and postage, and auditing of program participants.

1.02 All MAT proceeds disbursed by the Town to Tourism NOTL shall be deposited into a fund controlled by Tourism NOTL (the "Fund"). Any distribution of monies from the Fund will be done only in accordance with this Agreement. Both parties agree that the Town will remit Tourism NOTL's portion of the MAT at the start of each quarter.

1.03 The Town shall not be responsible for any commitment or expenditure by Tourism NOTL, nor does this Agreement commit the Town to provide any specific quantum of funding or additional funding for the duration of this Agreement.

## **ELIGIBLE TOURISM ENTITY**

2.01 To assist in its goal of strengthening and growing the tourism industry in a sustainable manner in the Municipality, the Town's Council is desirous of maintaining the Town's premiere reputation as a destination of choice. To assist in this endeavour, the Town recognizes Tourism NOTL as the Town's de facto Eligible Tourism Entity.

## **RELATIONSHIP BETWEEN THE PARTIES**

3.01 To achieve the goal of ensuring the sustainable growth of tourism within the Town, a collaborative relationship is required between the parties to this Agreement. To ensure the parties' respective priorities are aligned, and for the optimal use of resources, the parties agree that:

- (a) A separate Memorandum of Understanding and Service Agreement shall be developed for services between the Town and the Niagara-on-the-Lake Chamber of Commerce, Visitor & Convention Bureau Inc. and/or Tourism NOTL;
- (b) In addition to Tourism NOTL's annual presentation to the Town's Council, the parties shall meet at least once a year, at a mutually agreeable time to review Tourism NOTL's annual work plan for the next calendar year and assess its alignment with the Town's Tourism Strategy.

## **STRATEGY, OBJECTIVES, AND OUTCOMES**

4.01 To assist with the sustainable growth of the tourism sector of the local economy within the Municipality, Tourism NOTL shall create and maintain a Strategic and Tactical Marketing Plan. This plan will be reviewed and updated at 5-year intervals to ensure it continues to align with the Town's Tourism Strategy.

4.02 The Fund shall be used in the pursuit of the following objectives and outcomes:

- (a) Achieving the objectives outlined in the Strategic and Tactical Marketing Plan;
- (b) Increase visitation by the target markets outlined in the Strategic and Tactical Marketing Plan;
- (c) Marketing the Municipality to enhance its national and international profile; and
- (d) Support tourism product development and industry growth in the Municipality.

#### **FINANCIAL ACCOUNTABILITY**

5.01 In its capacity as an Eligible Tourism Entity, Tourism NOTL shall:

- (a) Maintain, update, and operate in accordance with its incorporation by-laws and governance policies;
- (b) Prepare an annual workplan which establishes priorities and deliverables which are aligned with the Strategic and Tactical Marketing Plan and an associated operating budget;
- (c) Review and approve all expenditures from the Fund; and
- (d) Hire professionals (i.e., auditors, lawyers) as required to assist in the administration and management of its Fund.

5.02 No later than 90 days following the end of each fiscal year, Tourism NOTL shall prepare and present an annual report to the Town's council respecting expenditures and initiatives that have received monies from the Fund. At a minimum, the annual report shall provide a review of project/ program/ business plan accomplishments based on Key Performance Indicators (KPI's) as determined by Tourism NOTL and an overview of the workplan for the upcoming year(s).

5.03 Tourism NOTL shall keep separate financial records for the Fund and shall retain and preserve all documents, contracts, records, claims, and accounts that relate thereto for a period of seven (7) years for the Fund.

5.04 Tourism NOTL shall undertake an annual audit for the Fund conducted by a certified public accountant.

#### **INDEMNIFICATION**

6.01 Tourism NOTL shall indemnify and save harmless the Town, its officers, employees, and agents from and against all claims, demands, losses, costs, damages, actions, suits, or other proceedings by whomsoever made, sustained brought or prosecuted, in any manner arising from an wilful or negligent act, or attributable to anything done or omitted to be done by Tourism NOTL, its directors, officers, employees, or agents arising from or pertaining to the receipt, disposition or refunding of the monies payable to it under this Agreement.

#### **TERM, DEFAULT AND TERMINATION**

7.01 This Agreement shall be for an initial term of Five (5) years from the date of execution by the Parties. Any renewal term of this Agreement shall be on mutual consent of the Parties.

7.02 All parties may terminate the agreement immediately in the event that the enabling statutory authority for the MAT is repealed or rescinded as to substantially limit or deprive the Town of the ability to collect the MAT.

7.03 Any party may terminate this Agreement in the event of default by the other party, as defined at 7.03, provided such default has not been remedied within thirty (30) days of receipt of written notice of default.

7.04 The following constitute default under the terms of this Agreement, the disproof of which lies upon Tourism NOTL:

- (a) Tourism NOTL becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute from time to time being enforced relating to bankrupt or insolvent debtors;
- (b) An order is made, or resolution passed for the winding up or for the surrender of Tourism NOTL, or it is dissolved;
- (c) Tourism NOTL ceases actual bona fide operation for a period of sixty (60) days;
- (d) Tourism NOTL has knowingly submitted false and misleading information to the Town;  
or
- (e) Tourism NOTL is in breach of the performance of, or compliance with the terms, conditions, and obligations of this Agreement

7.05 The Town shall have the option to terminate this Agreement in its sole discretion at any time upon giving written notice to Tourism NOTL not less than ninety (90) days prior to the termination date.

7.06 On the termination of this Agreement, or upon any termination of the Town's obligation to provide the Funding, Tourism NOTL shall prepare interim financial statements, ending as of the date of expiry or termination of the Agreement.

7.07 On the termination of this agreement, any unspent Funding received by Tourism NOTL shall be returned to the Town.

## **DISPUTE RESOLUTION**

8.01 If there is any difference of opinion with respect to the interpretation, application, administration, alleged breach, requirements, procedures, rights, or responsibilities with respect to this Agreement, the parties shall use their best efforts to resolve, mediate, and settle same through consultation and negotiation in good faith prior to commencing legal action.

8.02 Where the parties consent to do so, they may elect to engage in formal arbitration to resolve any dispute which has arisen in respect to this Agreement.

## **SUSPENSION OF PAYMENT**

9.01 In the event that the Town gives Tourism NOTL notice of Default, the Town shall have no obligation to make further payments under this Agreement following the end of the notice period given to Tourism NOTL to remedy the event of default.

## **WAIVER OF BREACH**

10.01 In the event of a breach of any provision of this Agreement by one party, no action or failure to act by the other party shall constitute a waiver of any right or duty afforded by that party under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any such breach, except as may be specifically agreed in writing.

## **CONFIDENTIALITY**

11.01 For the purposes of the Municipal Freedom of Information and Protection of Privacy Act, the Town's access to information hereunder is subject to Tourism NOTL's assertion at all material times that all such documents, contracts, records, claims, and accounts are supplied to the Town in confidence.

11.02 "Confidential Information" means any confidential or proprietary information disclosed by one Party to the other Party in connection with this Agreement in electronic, written or any other tangible form, including any information disclosed orally, visually or by observation. For the purposes of this Agreement all information disclosed by one Party to the other Party in connection with this Agreement shall be deemed to be Confidential Information, provided that Confidential Information does not include information:

- (a) independently developed by the receiving Party without reference to the Confidential Information of the disclosing Party;
- (b) received from a third party without breach of any obligation of confidentiality;
- (c) in the public domain at the time of its disclosure or that later becomes publicly available;
- or
- (d) to the extent that such information is required to be disclosed by applicable law.

11.03 Each Party shall maintain the confidentiality of Confidential Information received from the other Party and shall not disclose such Confidential Information without such other Party's consent. The receiving Party shall treat the Confidential Information of the disclosing Party with the same degree of care as the receiving Party's own Confidential Information but in no event with less than a reasonable degree of care.

## **ASSIGNMENT**

12.01 Tourism NOTL shall not assign any part of its rights or obligations under this Agreement to a third party without the Town's prior written consent.



**ENTIRE AGREEMENT**

16.01 This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, between the parties with respect to the subject matter of this Agreement.

**BINDING EFFECT**

17.01 This agreement shall ensure the benefit of and be binding upon the parties and their respective successors and (where permitted) assigns.

**IN WITNESS WHEREOF** the parties have hereunto affixed their respective corporate seals, attested by the hands of their respective officers duly authorized in that behalf.

**THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE**

\_\_\_\_\_  
Mayor, Gary Zalepa

\_\_\_\_\_  
Clerk, Victoria Steele

**TOURISM NIAGARA-ON-THE-LAKE**

\_\_\_\_\_  
Chair, Andrew Niven

\_\_\_\_\_  
President & CEO, Minerva Ward