

**FINANCIAL ACCOUNTABILITY AND SERVICES**

**AGREEMENT THIS AGREEMENT** (the “**Agreement**”) is made as of the 8th day of July, 2019 **BETWEEN:**

**THE CORPORATION OF THE CITY OF CORNWALL,**  
a corporation existing under the laws of Ontario  
  
(the “**City**”)

**AND:**

**TOURISM DEVELOPMENT CORPORATION OF CORNWALL,**  
a corporation existing under the laws of Ontario  
  
(the “**Corporation**” and together with the City, the “**Parties**”, and each a “**Party**”).

**RECITALS:**

- A. The City imposes a tax in respect of the purchase of transient accommodation within its boundaries pursuant to Section 400.1 of the Municipal Act, 2001 (Ontario).
- B. The City is required to make one or more payments to one or more eligible tourism entities (as such term is defined under Ontario Regulation 435/17 (the “**Regulation**”)), the total of which is determined pursuant to the Regulation.
- C. The Corporation is an eligible tourism entity for the purposes of the Regulation which will receive one or more payments from the City.
- D. Pursuant to Section 6(1) of the Regulation, the City and the Corporation must enter into an agreement respecting reasonable financial accountability matters to ensure that any amounts paid to the Corporation are used for the exclusive purpose of promoting tourism, and such agreement may provide for other matters.
- E. The City has the capability and the capacity to provide certain management and administrative services to the Corporation, and the Corporation desires to retain the City to provide the said services.
- F. For the purposes of Section 6(1) of the Regulation, this Agreement sets forth reasonable accountability matters, formalizes the terms and conditions of the provision of management and administrative services by the City to the Corporation.

**NOW THEREFORE** in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

**ARTICLE 1  
FUNDS**

**1.1 Funding.**

- (a) The City will provide the payment referred to in Section 5(2) of the Regulation (the “**Funding**”) once every year into an account designated by the Corporation provided that the account resides at a Canadian financial institution and is in the name of the Corporation.
- (b) The Funding shall be limited to the amount which is fifty percent (50%) of the amount determined using the formula referred to in Section 5(4) of the Regulation.
- (c) Without limiting the foregoing, the City may, in its sole and absolute discretion, but no later than sixty (60) days prior to the end of the fiscal year of the Corporation, determine that a different percentage of the amount determined using the formula referred to in Section 5(4) of the Regulation will be paid to the Corporation.
- (d) The City is not responsible for any commitment or expenditure by the Corporation in excess of the Funding, nor does this Agreement commit the City to provide additional funding for the duration of this Agreement.

**1.2 Cornwall Tourism Development Fund**

The Funding, when delivered, shall:

- (a) be dealt with in accordance with the provisions of this Agreement; and
- (b) constitute the Cornwall Tourism Development Fund (“**CTDF**”).

**1.3 Promoting tourism in the City.**

- (a) “**promoting tourism in the City**” means developing, advertising, funding, sponsoring, or otherwise supporting, any tourism projects, events, assets or products, whether within the boundaries of the City or not, insofar as so doing directly or indirectly promotes and/or is beneficial to the growth of the City’s tourism sector, local innkeepers, restaurateurs, developers, commercially or publicly operated tourist attractions, festivals, social activities (e.g. entertainment, sports and recreation) and other commercial interests.
- (b) The Corporation acknowledges that the CTDF shall be used for the exclusive purpose of promoting tourism in the City. Without limiting the generality of the foregoing the Corporation shall:
  - (i) make publicly available information on the CTDF, including, but not limited to, eligibility requirements, guidelines, application form and process, etc.; and
  - (ii) accept a continuous intake of applications to the CTDF in accordance with the eligibility requirements developed by the Corporation from time to time.

**ARTICLE 2**  
**FINANCIAL ACCOUNTABILITY MATTERS**

**2.1 Obligations of the Corporation.**

- (a) For each fiscal year in which it receives the Funding, the Corporation shall plan for and maintain a balanced operating budget (the “**Annual Balanced Operating Budget**”) whereby the total expenses of the Corporation are less than or equal to the total revenue, from all sources, of the Corporation when using the Corporation’s consolidated income statements.
- (b) Without limiting the foregoing, the Corporation shall disburse at least 20 percent (20%) of the Funding in each year in which the Funding is received. The Corporation must inform the City of, and justify, any deviation from this requirement.

**2.2 Reporting.**

- (a) No later than thirty (30) days prior to the end of any fiscal year of the Corporation, the Corporation shall produce an annual public business plan in respect of the following fiscal year, in a form satisfactory to the City, which contains at minimum the following information:
  - (i) the Corporation’s strategic directions; and
  - (ii) an overview of the current and future programs and key activities, including, but not limited to, the use of the CTDF.
- (b) No later than ninety (90) days following the end of any fiscal year of the Corporation, the Corporation shall produce an annual public report, in respect of such fiscal year, in a form satisfactory to the City, which contains at minimum the following information:
  - (i) an analysis of the Corporation’s performance in light of its business plan;
  - (ii) a discussion of goals achieved and actions to be taken if not achieved;
  - (iii) the Corporation’s audited financial statements; and
  - (iv) an officer’s certificate, made by the chief executive officer of the Corporation and approved by its board, attesting to:
    - (A) the completion and accuracy of any and all reports submitted to the City throughout the fiscal year;
    - (B) compliance with the requirements set forth in Section 2.1 of this Agreement; and
    - (C) any further requirement that the City may specify from time to time.

- (c) Periodically throughout any year in which the Corporation receives Funding and at least once each year, the Corporation shall submit to the City such reports as are necessary to keep the City appropriately informed of the performance by the Corporation of its obligations under this Agreement, including, but not limited to, the use of the CTDF, its activities and its obligations to plan for and maintain an Annual Balanced Operating Budget.
- (d) The Corporation shall ensure that all reports are in a form satisfactory to the City, are complete, accurate and signed on behalf of the Corporation by an authorized signing officer.
- (e) Without limiting the foregoing, the Corporation shall respond to any City written inquiries respecting the use of the CTDF and the obligation of the Corporation to plan for and maintain an Annual Balanced Operating Budget in a timely manner and in any event, within thirty (30) days of such written inquiries.
- (f) If this Agreement ceases to be in effect, for any reason whatsoever, the Corporation shall provide to the City all such reports or information as the City may request in relation to, or as a result of, this Agreement ceasing to be in effect.

### **2.3 Document Retention and Record Maintenance.**

The Corporation shall:

- (a) retain all records related to the performance of its obligations under this Agreement for a period of seven (7) years after this Agreement ceases to be in effect for any reason whatsoever;
- (b) keep all financial records, invoices and other financially related-documents relating to the CTDF and any disbursements thereof; and
- (c) keep all non-financial documents and records relating to the CTDF in a manner consistent with applicable law.

## **ARTICLE 3 SERVICES**

### **3.1 Services.**

- (a) Subject to the terms and conditions described herein, the City shall make available to the Corporation the management, administrative and other support services, as well as any related personnel, assets or facilities (collectively, the “**Services**”), identified in Exhibit A hereto.
- (b) Notwithstanding anything to the contrary in this Agreement, Exhibit A may be amended by the City from time to time, in its sole and absolute discretion, upon thirty (30) days’ written notice sent to the Corporation.

**3.2 Service Fee.**

- (a) The Parties acknowledge and agree that the Services, as a general expectation, will be provided free of charge.
- (b) In appropriate circumstances as mutually agreed by the Parties, the Corporation may reimburse the City for actual out-of-pocket costs incurred by the City for the benefit of the Corporation.

**ARTICLE 4  
INDEMNITY**

**4.1 Limitation of Liability.**

The City and its employees, elected officials, officers, independent contractors, subcontractors, trustees, servants, agents, successors and assigns (collectively, and together with the City, the “**Indemnified Parties**”) shall not be liable to the Corporation or any of its directors, officers, employees, independent contractors, subcontractors, agents, successors and assigns and other representatives of the Corporation (collectively, the “**Corporation’s Representatives**”) for costs, losses, claims, liabilities and damages howsoever caused arising out of or in any way related to this Agreement, unless caused by the negligence or wilful misconduct of the Indemnified Parties.

**4.2 Same.**

For greater certainty and without limiting Section 4.1, the City shall not be liable for how the Corporation carries out its operations or use or disburse the CTFD to third parties in accordance with this Agreement.

**4.3 Indemnification.**

The Corporation will indemnify and hold harmless at all times the Indemnified Parties from and against any and all losses, liabilities, damages, costs, expenses, fines, penalties, legal actions, causes of actions and demands for damages, judgements, orders and any other type of claims, including, but not limited to, the reasonable costs of defense, legal fees and consultant fees, by whomever made, sustained, brought or prosecuted in any way based upon, occasioned by or attributable to anything done or omitted to be done by the Corporation or the Corporation’s Representatives in the course of performance of the Corporation’s obligations under, or otherwise in connection with, this Agreement, unless caused by the negligence or wilful misconduct of an Indemnified Party.

**ARTICLE 5  
INSURANCE**

**5.1 Required Insurance.**

The Corporation will maintain the necessary and appropriate insurance (Commercial General Liability Insurance, Directors and Officers Liability Insurance, etc.).

**ARTICLE 6  
GENERAL**

**6.1 Confidentiality.**

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

**6.2 Independent Contractors.**

The Parties acknowledge and agree that the Contractor is an independent contractor to the Corporation. The Parties acknowledge and agree that no employment, partnership or joint venture relationship is intended to be created between the Corporation and the Contractor or the Corporation and the Contractor’s personnel by this Agreement or by the provision of the Services. The Contractor shall not act or attempt to act, or represent itself, directly or by implication, as an employee, a partner, or a joint venturer of the Corporation.

**6.3 Termination.**

The City shall have the right at its option to terminate this Agreement:

- (a) by giving forty-eight (48) hours’ prior written notice thereof to the Corporation in the event that the Corporation has failed, without mitigating circumstances, to meet the requirements of this Agreement, or has wilfully breached or failed to observe any substantial provision of this Agreement (each, a “**Breach**”) and has failed to remedy such Breach upon the expiry of a fifteen (15) days’ written notice from the City of such Breach, or upon such longer period of time as the City may reasonably provide the Corporation to remedy the Breach,

provided that the Corporation has commenced to remedy the Breach and is actively and diligently taking appropriate measures to do so; or

(b) by giving thirty (30) days' written notice thereof to the Corporation without cause.

#### **6.4 Notice.**

Each Party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a **"Notice"**) in writing and addressed to the other Party at its address set out below (or to any other address that the receiving Party may designate from time to time in accordance with this section). Each Party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), facsimile or email of a PDF document (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is conclusively deemed effective only (a) if sent by personal delivery or by courier (all fees prepaid) on the date of actual receipt by the receiving party; if sent by facsimile or email of a PDF document on the date of transmission if a Business Day or if not a Business Day or after 5:00 p.m. on the date of transmission, on the next following Business Day; or if sent by certified or registered mail (postage prepaid) on the 5th day after the mailing thereof; and (b) if the party giving the Notice has complied with the requirements of this Section.

(a) If to the City:    Division Manager, Economic Development  
100 Water Street East, Box 877  
Cornwall, ON K6H 5T9

Attention: Bob Peters  
F: 613-933-0745  
Email: bpeters@cornwall.ca

(b) If to the Corporation:    100 Water Street East, Suite 104  
Cornwall, ON K6H 6G4

Attention: Tim Mills, Chair  
C: 613-551-0984  
Email: millstim0531@gmail.com

#### **6.5 Amendment in Writing.**

No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by both Parties.

#### **6.6 Severability.**

If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be impaired or affected thereby. Each of the terms contained in this Agreement is a separate and distinct term.

**6.7 Survival.**

All the Parties' rights or obligations set out in this Agreement, which by the nature of the rights or obligations might reasonably be expected to survive, will survive the termination of this Agreement.

**6.8 Entire Agreement.**

This Agreement represents the entire agreement of the Parties and the full and final understanding between the Parties, and supersedes any and all previous understandings, commitments and agreements, oral or written with respect to the subject matter hereof.

**6.9 Schedules.**

Schedules and other documents attached to or referred to in this Agreement are an integral part of this Agreement.

**6.10 Assignment.**

This Agreement may not be assigned by either Party without the prior written consent of the other Party.

**6.11 Governing Law.**

This Agreement shall be interpreted and governed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

**6.12 Enurement.**

This Agreement shall enure to the benefit of and be binding upon the Parties' successors and permitted assigns.

**6.13 Counterparts.**


This Agreement may be executed in any number of counterparts, each of which is deemed an original, and all of which taken together constitute one and the same agreement. Each counterpart may be delivered by facsimile, e-mail attachment (of a PDF document), or other electronic means, which shall be as effective as hand delivery of the original executed counterpart.


*[Signature Page Follows]*



IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

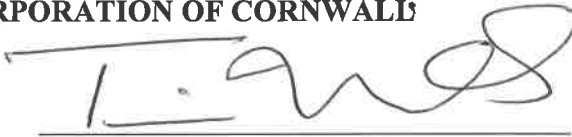
**THE CORPORATION OF THE CITY  
OF CORNWALL**

Per:   
Name: Bernadette Clement  
Title: Mayor

Per:   
Name: Manon Levesque  
Title: City Clerk

*We have authority to bind the corporation*

**TOURISM DEVELOPMENT  
CORPORATION OF CORNWALL**

Per:   
Name: Tim Mills  
Title: Chair

*I have authority to bind the corporation*

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**EXHIBIT A**  
**SERVICES**

1. The City shall provide the Corporation with the services of City staff members, as assigned by the City from time to time, for the Corporation to achieve its purposes.
2. The City shall provide meeting space for the meeting of the Corporation's board of directors.
3. The City shall provide the Corporation with general administrative and support services, which may include the following:
  - (a) communications and marketing;
  - (b) office and clerical support;
  - (c) receiving and processing of official correspondence; and
  - (d) such other management, administration or consulting services as may be agreed to by the Parties.