

THIS AGREEMENT made as of the _____ day of _____, 2020
(the "Effective Date")

B E T W E E N:

THE CORPORATION OF THE CITY OF MARKHAM
(the "City")

- and -

DESTINATION MARKHAM CORPORATION
("DMC")

WHEREAS the City has implemented a 4% municipal accommodation tax ("MAT") in accordance with the *Municipal Act, 2001* and *Ontario Regulation 435/17 (Transient Accommodation Tax)*;

AND WHEREAS DMC is a municipal services corporation incorporated pursuant to the *Municipal Act, 2001* and *Ontario Regulation 599/06 (Municipal Services Corporations)* to be the Destination Management entity in Markham responsible and accountable for managing 50% of the revenue generated from the MAT;

AND WHEREAS the City and DMC seek to work towards developing and promoting Markham as a leading destination for tourism, leisure, sport and business travel;

AND WHEREAS the City and DMC seek to establish a framework governing certain aspects of their relationship in addition to the legal framework mandated by the *Municipal Act, 2001* and *Ontario Regulation 599/06 (Municipal Services Corporations)*;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein and subject to the terms and conditions hereinafter set out, the parties hereto hereby agree as follows:

1.0 DEFINITIONS

1.1 In this Agreement,

- (a) "**Agreement**" means this Agreement and all schedules attached hereto;
- (b) "**By-law No. 1**" means the corporate by-law of DMC attached hereto as SCHEDULE "A";
- (c) "**City**" means The Corporation of the City of Markham;
- (d) "**Council**" means the Mayor and members of Council of the City;
- (e) "**Council Resolution**" means a resolution of Council reached pursuant to the City's Procedural By-law;
- (f) "**Destination Management**" means the coordination of elements involved in the development and promotion of a tourism destination, including but not limited to marketing, promotion, strategic planning, experience and product development, tourism investment attraction, and workforce capacity initiatives;

- (g) “**DMC**” means Destination Markham Corporation;
- (h) “**DMC Board**” means the Board of Directors of DMC elected by the City as the sole Voting Member of DMC (as that term is defined in By-Law No.1);
- (i) “**MAT**” means the Municipal Accommodation Tax implemented by the City pursuant to *Ontario Regulation 435/17 (Transient Accommodation Tax)*.

2.0 **OBJECTIVES AND PRINCIPLES**

Key Tourism Objectives

- 2.1 The key tourism objectives of DMC will be to develop, market and promote Markham as a remarkable destination for visitors, including tourists, sport and festival attendees, meeting and conference delegates, and business travelers. In collaboration with the hotel industry, festival-event-conference-travel planners, attraction operators, cultural institutions, sports tourism promoters, entertainment and recreation providers, restaurants and related service businesses, and the City, DMC will research, develop and implement a targeted Destination Management strategy to grow and enhance Markham’s tourism economy.

Guiding Principles

- 2.2 DMC shall be guided by the following guiding principles:
 - (a) DMC will take a leadership role in promoting and marketing Markham as a leading destination for tourism, leisure and business travel with an emphasis on promoting overnight stays.
 - (b) DMC will take a leadership role in promoting developments and investments that increase and enhance Markham’s attractiveness as a tourism destination and as an economic sector generating employment and taxable assessment.
 - (c) DMC will be a supportive partner to the Markham Board of Trade, the Region of York tourism organizations, and other business, government and not for profit organizations in delivering programming that attracts greater spending and investments in Markham. In so doing, DMC will ensure that its work is complementary to work done by others.
 - (d) DMC will develop relationships with tourism stakeholders and other levels of government.
 - (e) DMC will develop and implement Destination Management strategies and activities that reflect Markham’s unique character, its cultural and built heritage, natural features, diverse ethnic communities, social and cultural traditions, recreational and sports assets, and business development opportunities.
 - (f) DMC will seek to leverage the transit and infrastructure investments made by the City, York Region and the Province of Ontario to build exciting tourism offerings and a sense of place in key areas such as Downtown Markham, local village cores, and other strategic areas.
 - (g) DMC will undertake its work based on an informed and objective decision-making process that is accountable and transparent, resulting in city-wide

benefits.

3.0 DESTINATION MARKHAM CORPORATION (DMC)

DMC Compliance with Applicable Law

- 3.1 DMC acknowledges that as a legal entity it is subject to the laws of Ontario and Canada.
- 3.2 DMC shall comply with all applicable law, including but not limited to:
- (a) the *Corporations Act* and regulations thereunder;
 - (b) the *Not-for-Profit Corporations Act, 2010* and regulations thereunder, upon its provisions coming into force;
 - (c) the *Municipal Act, 2001* and regulations thereunder; and
 - (d) employment legislation and regulations thereunder.

DMC Corporate Governance Framework; DMC Organization and Operations

- 3.3 The City may establish a corporate governance framework for decision-making, strategic planning, budget and business plans, and corporate policies for DMC.
- 3.4 DMC shall operate and govern itself in accordance with By-Law No. 1 (attached hereto as Schedule “A”). By-Law No. 1 may only be amended or revoked in whole or in part with the approval of the City as the sole Voting Member of DMC (as that term is defined in By-Law No.1).
- 3.5 DMC shall develop corporate policies and procedures for approval by the City, or shall adopt the City’s corporate policies and procedures, within twelve (12) months of the Effective Date.
- 3.6 Section 21(2) of *Ontario Regulation 599/06 (Municipal Services Corporations)* provides that DMC shall be deemed to be a local board for the purposes of subsection 270(2) of the *Municipal Act, 2001*, which requires DMC to adopt and maintain policies with respect to the following matters:
- (a) sale and other disposition of land;
 - (b) hiring of employees; and
 - (c) procurement of goods and services.
- 3.7 Any reference in this by-law to a decision, determination or election made or vote exercised or action taken by the City shall reflect the consensus of Council as memorialized in a Council Resolution.

4.0 DESTINATION MANAGEMENT STRATEGY AND BUSINESS PLAN

- 4.1 The DMC Board shall develop a business and strategic plan and annual operating budget, within twelve (12) months of the Effective Date, for approval by the City.

5.0 CITY ASSISTANCE TO DMC

Financial Assistance

- 5.1 Subject to Council approval, the City may provide financial assistance to DMC as permitted by the *Municipal Act, 2001* and the regulations thereunder.

Headquarters and Other Resources

- 5.2 The initial headquarters of DMC shall be at the City of Markham Civic Centre located at 101 Town Centre Blvd, Markham, Ontario, with respect to which the City may assist DMC with

office space, information technology, utilities, meeting rooms, and use of equipment such as photo-copiers at or below fair market value to minimize administration expenses, and to maximize strategy and program expenditures of DMC.

Human Resources

- 5.3** Pursuant to *Ontario Regulation 599/06 (Municipal Services Corporations)*, the City may provide DMC with the services of employees of or persons under contract with the City at or below fair market value.

Financial and Procurement Services

- 5.4** The City may provide financial and procurement services to DMC at or below fair market value.

Statement of Value

- 5.5** The City Treasurer shall prepare a statement of the value of any grant to DMC, or an estimate of the fair market value of any assistance provided at less than fair market value to DMC.

6.0 FINANCIAL MATTERS

DMC Bank Account

- 6.1** The City Treasurer shall open a corporate bank account(s) for DMC and facilitate all payment transactions and deposits. The DMC Treasurer shall sign-off on invoices to be paid and/or request the City Treasurer to produce cheques, payments or deposits, and such other financial transactions as required and as directed by the DMC Board.
- 6.2** The DMC Treasurer and Secretary, and/or such other persons identified by the DMC Board from time to time, shall be signing officers of DMC with respect to banking or financial matters.

DMC Budget

- 6.3** The creation and management of an annual operating budget will be the responsibility of the DMC Board for provision to the City, and will be subject to the City's approval.
- 6.4** As part of the City's annual budget approval process, DMC shall prepare and submit an annual budget for the next fiscal year to the City Treasurer by no later than March 31st of the budget year, for consideration and approval by the City (with or without modifications).
- 6.5** Once approved by Council, the annual budget of DMC may only be revised with the approval of the City.

Audits

- 6.6** The external auditor for the City shall be the external auditor for DMC (at DMC's sole cost and expense), and shall have all of the rights and powers of an auditor provided under the *Municipal Act, 2001*.
- 6.7** DMC shall be subject to audit by the City (or its authorized representatives / consultants) as required by the City for any purpose including to ensure that amounts paid to DMC by the City are used for the exclusive purpose of Destination Management.

DMC Business Plans

- 6.8** The creation and management of business plans will be the responsibility of the DMC Board.
- 6.9** As part of the City's annual budget approval process, the DMC Board will provide the City, by no later than March 31st of each year, with a multi-year business plan (3-5 year time frame).
- 6.10** Each business plan will include the following:
- (a) the strategic objectives, priorities and business objectives;
 - (b) revenue and expenditures anticipated in the coming year;
 - (c) performance metrics for monitoring progress and accomplishments;
 - (d) an operating budget for DMC for the next financial year.

DMC Revenue

- 6.11** DMC will be funded from the proceeds of the MAT approved by Council commencing on January 1, 2019. The amount of revenues to be shared shall be determined in accordance with *Ontario Regulation 435/17 (Transient Accommodation Tax)* and shall be authorized by the City Treasurer (and remitted to DMC on a quarterly basis).
- 6.12** Subject to Council approval and compliance with all applicable law, DMC may also generate revenue from the following sources:
- (a) corporate sponsorship;
 - (b) donations;
 - (c) project-based or general marketing relationships with other organizations;
 - (d) government grants and loans;
 - (e) revenue generating projects;
 - (f) investment income;
 - (g) joint ventures or partnerships; and
 - (h) other means or sources.

DMC Debt

- 6.13** DMC shall not incur indebtedness without the City's approval.
- 6.14** DMC shall not spend funds unless said expenditures are included in the annual operating budget approved by the City.

Fiscal Year of DMC

- 6.15** The fiscal year of DMC shall terminate on the 31st day of December in each year.

Dissolution of DMC

- 6.16** In the event of the dissolution of DMC:
- (a) the City shall manage the wind-down process pursuant to applicable laws, regulations, and contracts, and the City shall assume the outstanding debt/liabilities and assets of DMC; and
 - (b) after payment of all debts and liabilities, its remaining property shall be distributed and disposed of to the City, as a municipal government and DMC's sole Voting Member (as that term is defined in By-law No. 1).

Certain Assistance Prohibited

- 6.17** Without exception, DMC shall not have the power to assist directly or indirectly any manufacturing business or other industrial or commercial enterprise through the granting of bonuses for that purpose, as per Section 106 of the *Municipal Act, 2001*.

General Power to Make Grants

- 6.18** DMC shall have the general power to make grants to any person, group or body, including a fund, subject to any limitations imposed by the City from time to time and subject to Section 107 of the *Municipal Act, 2001*.

Financial Authority of DMC Board

- 6.19** The DMC Board shall not make any grants, purchase any goods, expend any funds or enter into any agreement or contract on behalf of DMC which is of a value of \$50,000.00 or greater without the prior written approval of the City. No grant, contract, expenditure of funds or purchase of goods shall be divided into one or more grants, contracts or purchases so as to avoid the requirements of this Section 6.19. Where a series of grants, contracts or purchases which pertain to the same subject matter with the same person in any twelve (12) month period combine to equal the limits set out herein, the series of grants, contracts or purchases shall be deemed to be a single grant, contract or purchase for the purposes of this Agreement.

Signing Authority

- 6.20** The DMC Chair, Treasurer and the Secretary, and/or such other persons approved by the DMC Board from time to time, shall be signing officers of DMC. All invoices, payments or related matters must be approved and authorized as follows;
- a) All invoices less than \$5,000 must be authorized by the DMC Treasurer;
 - b) All invoices greater than \$5,000 must be authorized by both the DMC Treasurer and any Director with signing authority.

7.0 INTELLECTUAL PROPERTY (IP) ASSETS

- 7.1** Subject to Section 7.2, trademarks, copyrights and other IP rights related to DMC shall be registered with the Canadian Intellectual Property Office (CIPO) pursuant to the *Trade- marks Act, 1985, Copyright Act, 1985* and other applicable legislation.
- 7.2** The City may register and own official marks related to DMC and consent to the use of these marks by DMC through a licensing agreement or other similar document.

8.0 PUBLIC ACCOUNTABILITY AND REPORTING

DMC Reporting to City

- 8.1** DMC shall submit to the City an annual report including:
- (a) results of operations including information regarding major business development activities and accomplishments; and
 - (b) audited financial statements prepared in a form acceptable to the City Treasurer.
- 8.2** DMC shall report to Council through the General Committee, or such other committee as directed by Council.
- 8.3** DMC shall make available all corporate finance related documents, information, and electronic

files to the City Treasurer or his other designate.

Third Parties

- 8.4** DMC shall not indicate to third parties that it represents the interest, positions, resolutions or perspectives of Council or the City, unless expressly authorized in writing by the City to do so.
- 8.5** This Agreement does not create a partnership or joint venture between the City and DMC.
- 8.6** In the event DMC seeks to formally communicate with any level of government or regulatory body with respect to a matter that may impact the City, DMC shall provide the City with advance notice of such communication.
- 8.7** DMC shall identify proposed financial partners in its annual report and budget proposal to the City.

9.0 TERM AND TERMINATION

- 9.1** This Agreement is effective as of the Effective Date.
- 9.2** This Agreement shall be in effect until such time as:
- (a) DMC has been dissolved; or
 - (b) the City terminates this Agreement; or
 - (c) the parties mutually agree in writing to terminate this Agreement.
- 9.3** The City, at its discretion and acting reasonably, may upon one-hundred and eighty (180) days' notice terminate this Agreement by Council Resolution and written notice to the Chair of the DMC Board. Where the City terminates the Agreement under this clause, the City shall work with DMC to ensure that financial commitments made by DMC pursuant to the annual budget approved by the City are properly addressed.
- 9.4** The City may terminate this Agreement by Council Resolution, upon providing notice to DMC of a material breach by DMC of the obligations, terms or conditions of this Agreement, and upon allowing DMC 30 days (or such reasonable time in relation to the type of breach) to remedy the breach.
- 9.5** If DMC breaches the terms of this Agreement, or if it is otherwise terminated, upon written request from the City Treasurer, any unspent monies (including without limitation, any monies in DMC's bank account) from the City shall be immediately due and payable in full to the City, and other City assets shall be returned to the City.

10.0 GENERAL PROVISIONS

- 10.1** The laws of the Province of Ontario shall govern the validity and interpretation of this Agreement.
- 10.2** In the event any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions of the Agreement will not be affected and shall continue in full force and effect.
- 10.3** DMC shall not assign this Agreement in whole or in part without the express written consent of the City.
- 10.4** Any schedules to this Agreement shall have the same force and effect as if the information

contained therein was in the body of the Agreement.

Amendments

- 10.5** This Agreement shall not be varied, altered, amended or supplemented except as agreed upon by the parties in writing.
- 10.6** No waiver of a breach by a party under this Agreement shall constitute an amendment or consent to or waiver of any other different or subsequent breach.

Notice

- 10.7** Any notice, invoice or other communication required or permitted to be given by this Agreement shall be in writing and shall be effectively given if (i) delivered personally; or (ii) sent by prepaid courier services; or (iii) sent by facsimile or other similar means of electronic communication to the Chair of the DMC Board in the case of notice to DMC, or to the City Clerk in the case of notice to the City.
- 10.8** For the purpose of notification, contact particulars are:

The Corporation of the City of Markham
101 Town Centre Blvd.
Markham, ON
L3R 9W3
Attention: City Clerk

Destination Markham Corporation
The Corporation of the City of Markham
101 Town Centre Blvd.
Markham, ON
L3R 9W3
Attention: Chair of DMC Board

Insurance and Indemnification

- 10.9** DMC shall purchase and maintain in force, at its own expense (including the payment of all deductibles) and for the Term of this Agreement, the following policies of insurance underwritten by insurers licensed to conduct business in the Province of Ontario:
- (a) Commercial General Liability Insurance (satisfactory to the City). The policy shall include coverage for Bodily Injury, Property Damage with a minimum amount of \$5,000,000.00 for each occurrence, and include:
 - (i) an endorsement certifying that the City is included as an additional insured;
 - (ii) a cross liability clause endorsement; and
 - (iii) Non-owned automobile coverage including contractual non-owned coverage.
 - (b) DMC shall obtain directors and officers liability insurance for all Directors and officers, including City Council Directors, with a minimum amount of \$5,000,000.00 for each occurrence.
 - (c) DMC shall obtain a comprehensive Crime Insurance for all staff, Directors and officers of DMC, including employee dishonesty/fidelity coverage, broad form loss of money (inside and outside premises), money order & counterfeit paper currency, depositors forgery, professional fees and audit expenses, and computer fraud or funds transfer fraud coverages, with limits of no less than \$2,000,000.00 per occurrence.

10.10 DMC shall indemnify any person on the DMC Board or who is an officer of DMC, from and against:

- (a) all costs, charges and expenses whatsoever which such person may sustain or incur in or about any action, suit or proceeding which is brought, commenced or prosecuted against such person, for or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by such person, in or about the good faith execution of the duties of office;
- (b) all other costs, charges and expenses which such person may sustain or incur in or about or in relation to the affairs thereof, except such costs, charges or expenses as are occasioned by such person's own willful neglect or default or conduct outside the course and scope of his or her duties as a Director or officer of DMC.

10.11 DMC hereby further indemnifies the City and Council against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the City in respect of any civil, criminal or administrative action or proceeding to which the City is made a party by reason of this Agreement.

Dispute Resolution

10.12 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 the same through consultation and negotiation in good faith prior to commencing legal action. Where the parties consent to do so, they may elect to engage in formal arbitration.

Municipal Conflict of Interest Act

10.13 Directors and officers of DMC are deemed to be members for the purposes of the *Municipal Conflict of Interest Act*. DMC is deemed to be a local board for certain limited purposes, including the purposes of the *Municipal Conflict of Interest Act*.

Municipal Freedom of Information and Protection of Privacy Act

10.14 Furthermore, DMC is deemed to be an institution for the purposes of the *Municipal Freedom of Information and Protection of Privacy Act*.

Territorial Operation of DMC

10.15 Pursuant to Section 16 of *Ontario Regulation 599/06 (Municipal Services Corporations)*, the City agrees that DMC may operate within the boundaries of the City of Markham.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

DESTINATION MARKHAM CORPORATION

Name: Joel Lustig
Position: President / Director

Name: Claudia Storto
Position: Secretary / Director

Name: Christina Kakaflikas
Position: Director

THE CORPORATION OF THE CITY OF MARKHAM

Frank Scarpitti, Mayor

Kimberley Kitteringham, City Clerk

SCHEDULE "A"
BY-LAW NO.1