

BY-LAW NO. 1

being a by-law relating generally to the conduct of the activities and affairs of **Destination Markham Corporation**

BE IT ENACTED AND IT IS HEREBY ENACTED as a by-law of **Destination Markham Corporation** (hereinafter called "DMC") that:

APPLICABLE LAW

1. The activities and affairs of DMC shall conform with all applicable law, including but not limited to the *Corporations Act* (Ontario), the *Not-for-Profit Corporations Act* (Ontario) upon its provisions coming into force, the *Municipal Act* (Ontario) and *Ontario Regulation 599/06* (Municipal Services Corporations).

INTERPRETATION

2. **Defined Terms.** The following terms shall have the meanings set out after them:

- (a) **"Board of Directors"** or **"Board"** means the Board of Directors of DMC;
- (b) **"City"** means The Corporation of the City of Markham;
- (c) **"Council"** means the Mayor and members of Council of the City;
- (d) **"Council Resolution"** means a resolution of Council reached pursuant to the City's Procedural By-law;
- (e) **"Director"** means an individual occupying the position of Director on the Board of Directors of DMC;
- (f) **"Members"** means the Voting Members and Non-Voting Members of DMC, as described in Section 5; and
- (g) **"Voting Member"** means the City, as the sole Voting Member of DMC.

OFFICE

3. The head / registered office of DMC shall be in Markham, Ontario, and at such place therein as the Board of Directors may from time to time determine.

SEAL

4. DMC may have a corporate seal in the form approved from time to time by the Board of Directors. If a corporate seal is approved by the Board of Directors, the Secretary of DMC shall be the custodian of the corporate seal.

MEMBERS OF DMC

5. **Members.** There shall be the following classes of Members of DMC:

- (a) **Voting Member.** The City shall be the sole Voting Member of DMC. The Voting Member shall be entitled to notice of, to attend, and to vote at the annual or any special general Members' meeting.
- (b) **Non-Voting Members:** The Non-Voting Members of DMC shall be the applicants for the incorporation of DMC. The membership of each Non-Voting Member shall terminate upon passage of this by-law by the initial Board of Directors and its confirmation and approval by the Voting Member.

6. **Voting Member's Decisions and Actions.** Any reference in this by-law to a decision, determination or election made or vote exercised or action taken by the Voting Member shall reflect the decision of Council as memorialized in a Council Resolution.

MEMBERS' MEETINGS

7. **Meetings.** The annual or any special general Members' meeting shall be held on a day and at a place within Ontario fixed by the Board of Directors.

8. **Signed Resolutions and By-Laws in Lieu of Members' Meetings.** Any resolution signed by the Voting Member is as valid and effective as if passed at a Members' meeting duly called, constituted and held for that purpose. Any by-law passed at any time may, in lieu of confirmation at a general meeting, be confirmed in writing by the Voting Member.

9. **Agenda.** At every annual Members' meeting, in addition to any other business that may be transacted, the report of the Board of Directors, the financial statements and the report of the auditor shall be presented. The Voting Member may consider and transact any business either special or general without any notice thereof at any Members' meeting. The Voting Member shall have the power to call at any time a special general Members' meeting.

10. **Notice.** Notice of any annual or special Members' meeting shall be given to the Voting Member and to the auditor of DMC in the manner specified in the corporate statute governing DMC. Notice of any meeting where special business will be transacted must contain sufficient information to permit the Voting Member to form a reasoned judgment on the decision to be taken.

11. **Error or Omission in Notice.** No error or omission in giving notice of any annual or general Members' meeting, or any adjourned meeting, shall invalidate such meeting or make void

any proceedings taken thereat, and the Voting Member may at any time waive notice of such meeting and may ratify, approve and confirm any or all proceedings taken or had thereat.

12. **Adjournment.** Any Members' meetings may be adjourned to any time and from time to time, and such business may be transacted at such adjourned meeting as might have been transacted at the original meeting from which such adjournment took place. No notice shall be required of any such adjournment. Such adjournment may be made notwithstanding that no quorum is present.

13. **Quorum and Voting.** A quorum for the transaction of business at any Members' meeting shall consist of the Voting Member. At all Members' meetings, every question shall be decided by the vote of the Voting Member.

DIRECTORS

14. **Duties.** The activities and affairs of DMC shall be managed by the Board of Directors. The Board of Directors may exercise all such powers and do all such acts and things as may be exercised or done by DMC that are not by this by-law or by statute expressly directed or required to be done in some other manner.

15. **Number.** The Board of Directors shall consist of twelve (12) Directors, comprised of eight (8) individuals to serve as independent Directors, and four (4) members of Council to serve as non-independent Directors.

16. **Election.** The Directors shall be elected by the Voting Member.

17. **Term of Office.** The Mayor and members of Council shall be elected for the term of Council. Directors (other than the Mayor and members of Council) shall be elected for a term of office of four (4) years, provided that such Directors shall continue in office until their successors are elected. Directors shall be eligible for re-election.

Directors (other than the Mayor and members of Council) may be elected (and retire) in rotation, but in that case no Director shall be elected for a term of more than five (5) years and at least three (3) Directors shall retire from office in each year.

18. **Quorum.** A majority of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. Notwithstanding vacancies in the Board of Directors, the remaining Directors may exercise all the powers of the Board of Directors so long as a quorum of the Board of Directors remains in office.

19. **Qualification.** A person may, with his or her consent in writing, be a Director of DMC even though the person is not a member of DMC. The office of a Director shall be vacated immediately:

- (a) if the Director resigns office by written notice to DMC, which resignation shall be effective at the time it is received by DMC or at the time specified in the resignation, whichever is later;

- (b) if the Director dies or becomes bankrupt;
 - (c) if the Director is found to be incapable of managing property by a court or under Ontario law; or
 - (d) if the Voting Member removes the Director before the expiration of the Director's term of office.
20. **Resignation.** A Director may resign the office of Director by notice in writing to DMC.
21. **Vacancies.** Any vacancy occurring on the Board of Directors may be filled for the remainder of the term of office of such Director by the Voting Member.
22. **Removal of Directors.** The Voting Member may remove any Director before the expiration of the term of office, and may fill the vacancy of a position of Director caused by any reason for the remainder of such term.
23. **Meetings of Directors.** The Board of Directors may appoint a day or days in any month or months for regular meetings of the Board of Directors, at a place or hour to be named by the Board of Directors. There shall be at least four (4) Board of Directors meetings annually. In addition to scheduled meetings of the Board of Directors, the Chair of the Board or any two (2) Directors may at any time call a special meeting of the Board of Directors in order to address a matter of an urgent nature. Notice of such meeting shall be delivered, conveyed by telephone or transmitted by e-mail to each Director not less than twenty-four (24) hours before the meeting is to take place, or shall be mailed to each Director not less than forty-eight (48) hours before the meeting is to take place. No error or omission in giving such notice for a meeting of Directors shall invalidate such meeting or invalidate or make void any proceedings taken or had at such meeting and any Director may at any time waive notice of any such meeting and any Director may ratify and approve of any or all proceedings taken or had thereat.
- The City's Chief Administrative Officer, Commissioner, Development Services, and Director, Economic Growth, Culture & Entrepreneurship (and/or their designates) shall be entitled to receive all notices of meetings of the Board of Directors, and shall be entitled to attend (all or a portion of) a meeting of the Board of Directors at the invitation of the Chair of the Board, but shall not be entitled to vote thereat.
24. **Signed By-Laws and Resolutions in Lieu of Meeting of the Board of Directors.** Any by-law or resolution signed by all the Directors is as valid and effective as if passed at a meeting of the Board of Directors duly called, constituted and held for that purpose.
25. **Voting.** Questions arising at any meeting of the Board of Directors shall be decided by a majority of votes. In case of any equality of votes, the Chair of the meeting shall not have a second or casting vote. All votes at any such meeting shall be taken by ballot if so demanded by any Director present, but, if no demand be made, the vote shall be taken in the usual way, by assent or dissent. A declaration by the Chair of the meeting that a resolution has been carried and an entry to that effect in the minutes shall be proof of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

26. **Remuneration of Directors.** The Directors of DMC shall serve without remuneration, and no Director shall directly or indirectly receive any profit from the position as such; provided that a Director may be paid reasonable expenses incurred in the performance of the duties as a Director.

27. **Indemnity of Directors and Officers.** Subject to the provisions of the corporate statute governing DMC, every Director or officer of DMC and the heirs, executors and administrators and, estate and effects, respectively of such Director or officer shall from time to time and at all times, be indemnified and saved harmless out of the funds of DMC from and against:

- (a) all costs, charges and expenses whatsoever which such Director or officer 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 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 wilful neglect or default.

28. **Protection of Directors and Officers.**

- (a) No Director or officer of DMC shall be liable for the acts, receipts, neglects or defaults of any other Director or officer or employee, or for joining in any receipt or other act for conformity, or for any loss, damage or expense happening to DMC through the insufficiency or deficiency of title to any property acquired by order of the Board of Directors for or on behalf of DMC or for the insufficiency or deficiency of any security in or upon which any of the moneys of DMC shall be invested or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, firm or DMC with whom any moneys, securities or effects of DMC shall be deposited, or for any loss, conversion, misapplication or misappropriation of or damage resulting from any dealings with any moneys, securities or other assets belonging to DMC or for any loss occasioned by any error of judgment or oversight on such person's part or for any other loss, damage or misfortune whatever which may happen in the execution of the duties of the office or in relation thereto unless the same shall happen by or through such person's own wilful neglect or default or conduct outside the course and scope of his or her duties as a Director or officer of DMC.
- (b) The Directors may rely upon the accuracy of any statement or report prepared by DMC's auditor, and shall not be responsible or held liable for any loss or damage resulting from any actions based upon such statement or report.

29. **Business Plans and Budgets.** Subject to Section 46 (Governance Framework) and any agreement with the Voting Member, the creation and management of business plans and an annual operating budget will be the responsibility of the Board of Directors for provision to and approval by the Voting Member.

30. **Policies and Procedures.** Subject to Section 46 (Governance Framework) and any agreement with the Voting Member, the Board of Directors shall prepare corporate policies and procedures or adopt the Voting Member's policies and procedures.

COMMITTEES AND ADVISORS

31. **Committees.** The Board of Directors may appoint such committees as it, from time to time, considers advisable.

32. No committee shall have the power to act for or on behalf of DMC or otherwise commit or bind DMC to any course of action. Committees shall only have the power to make recommendations to the Board of Directors, or to the Voting Member, as the Board may, from time to time, direct. Members of committees need not be members of the Board of Directors. The chair of each committee shall submit to the Board of Directors such reports as the Board may, from time to time, request, but, in any event, each chair shall submit an annual report to the Board of Directors. at such time as the Board may, from time to time, determine.

33. **Advisors.** The Board of Directors may from time to time retain advisors to serve DMC, with such duties and for such terms, as the Board deems advisable.

OFFICERS

34. **Appointment.** The Board of Directors shall annually, or more often as may be required, elect from among themselves a Chair of the Board (who shall be the President for the purposes of the *Corporations Act*), a Secretary, and a Treasurer. The Board of Directors may appoint such other officers as the Board may from time to time determine.

35. **Vacancy.** A vacancy occurring from time to time in these offices may be filled by the Board of Directors. One person may hold more than one office except that of the Chair of the Board and Secretary, and any person who holds both the office of Secretary and Treasurer, may be known as the Secretary-Treasurer.

36. **Chair of the Board.** The Chair of the Board shall, when present, preside at all meetings of the Board of Directors. The Chair of the Board and the Secretary (or other officer appointed by the Board of Directors for the purpose), shall sign all by-laws. The Chair of the Board shall perform such other duties as may from time to time be determined by the Board. During the absence or inability of the Chair of the Board, the Chair of the Board's powers and duties may be exercised by the Vice-Chair of the Board (if applicable), or such other Director as the Board may from time to time appoint for the purpose.

37. **Secretary.** The Secretary shall give or cause to be given all meeting notices required to be given to Members, Directors and the auditor, shall attend all meetings of the Board of Directors and all Members' meetings, and shall enter or cause to be entered in books kept for that purpose minutes of all proceedings at such meetings, shall be the custodian of all books, papers, records, documents and other instruments belonging to DMC, and shall perform such other duties as may from time to time be prescribed by the Board of Directors.

38. **Treasurer.** Subject to any agreement with the Voting Member, the Treasurer shall keep full and accurate accounts of all receipts and disbursements of DMC in proper books of account and shall deposit all moneys or other valuable effects in the name and to the credit of DMC in such bank or banks as may from time to time be designated by the Board of Directors, shall disburse the funds of DMC under the direction of the Board of Directors, and shall render to the Board of Directors at the regular meetings thereof whenever required an account of all of transactions as Treasurer, and of the financial position of DMC and shall also perform such other duties as may from time to time be determine by the Board.

39. **Other Officers.** The duties of all other officers shall be such as the terms of their appointment call for, or the Board requires of them. Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by such assistant, unless the Board otherwise directs.

40. **Variation of Duties.** The Board, may from time to time, vary, add to or limit the powers and duties of any officer or officers.

41. **Term of Office.** The term of office of each officer shall be such as the terms of their appointment provide, provided that the Board may remove any officer and elect or appoint a successor to serve for the remainder of the term.

42. **Remuneration.** Officers shall serve without remuneration and officers shall not directly or indirectly receive any profit from their positions as such; provided that officers may be reimbursed for reasonable expenses incurred by them in the performance of their duties.

CONFLICTS OF INTEREST – DIRECTORS, OFFICERS AND ADVISORS

43. **Municipal Conflict of Interest Act.** The Directors and officers of DMC shall be deemed to be “members” for the purposes of the *Municipal Conflict of Interest Act* (Ontario), or any successor or replacement legislation.

44. **Conflicts of Interest.**

- (a) A Director, officer or advisor who has a real or perceived direct or indirect interest in a contract, act, transaction, or proposal with DMC, whether direct or indirect, shall disclose their interest to the Board of Directors in accordance with the provisions of the corporate statute governing DMC.
- (b) Where a Director has disclosed a conflict of interest with DMC the Director shall not debate or vote on the matter that is the subject of the conflict.
- (c) Where an officer or advisor has disclosed a conflict of interest with DMC the officer or advisor shall not advise on the matter that is the subject of the conflict.
- (d) Subject to compliance with the law, and subject to compliance with the conflict of interest provisions in this by-law, no contract or arrangement entered into by or on behalf of DMC in which a Director is directly or indirectly interested shall be

voided or voidable, and no Director shall be liable to account to DMC or its Members or creditors for any profit realized from any contract or arrangement by reason of any fiduciary relationship.

- (e) Where a Director has failed to comply with the conflict of interest provisions of this by-law and where a contract or arrangement has been entered into with DMC, the contract may be deemed to be voided or voidable and the Director may be liable to account to DMC or its Members or creditors for any profit realized from the contract or arrangement by reason of a fiduciary relationship.
- (f) The Board of Directors in its discretion may submit any contract, act, transaction, or proposal with DMC for approval or ratification by the Voting Member and, subject to the provisions of the corporate statute governing DMC, any such contract, act, transaction, or proposal that shall be approved or ratified or confirmed by the Voting Member shall be valid and binding upon DMC.
- (g) A Director, officer or advisor of DMC who has a real or perceived direct or indirect interest in a contract, act, transaction or proposal with the City shall disclose this to the Board of Directors. When any City employee or any individual appointed by the City who is carrying out his or her duties with respect to City business or with respect to DMC in the capacity as a Director or officer of DMC, such City employee or individual appointed by the City shall not be deemed to have a conflict of interest.
- (h) Where a Director, officer or advisor has disclosed a conflict of interest with the City the person shall not debate, vote or advise DMC on the matter, nor shall the Director, officer or advisor lobby, advise or make recommendations to Council on the matter that is the subject of the conflict.

AUDITOR AND AUDITS

45. **Auditor.** The Auditor for the City (or designate) shall be the auditor for DMC, and shall have all of the rights and powers of an auditor provided under the *Municipal Act* (Ontario).

GOVERNANCE FRAMEWORK

46. **Governance Framework.** The Voting Member may establish a corporate governance framework for decision-making, strategic planning, budget and business plans, and corporate policies for DMC.

EXECUTION OF DOCUMENTS

47. **Execution.** Subject to Section 46 (Governance Framework) or any agreement with the Voting Member, the Board of Directors shall establish a policy regarding authority to sign, in the name and on behalf of DMC, all instruments in writing, and any instruments in writing so signed shall be binding upon DMC without any further authorization or formality.

BORROWING

48. **Borrowing.** Subject to the limitations (if any) set out in the corporate statute governing DMC, this by-law, or any agreement with the Voting Member, and only with the approval of the Voting Member, the Board of Directors may:

- (a) borrow money on the credit of DMC;
- (b) issue, sell or pledge securities of DMC; or
- (c) charge, mortgage, hypothecate or pledge all or any of the real or personal property of DMC including book debts, rights, powers, franchises and undertakings, to secure any securities or any money borrowed or other debt or any other obligation or liability of DMC.

BANKING

49. **Accounts.** Subject to any agreement with the Voting Member, the City Treasurer shall open a corporate bank account(s) for DMC and facilitate all payment transactions and deposits. The Treasurer of DMC 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 of Directors.

50. **Signing Authority.** The Chair, the Treasurer and the Secretary, and/or such other persons approved by the Board of Directors from time to time, shall be signing officers of DMC with respect to banking matters.

BOOKS AND RECORDS

51. **Books and Records.** The Directors shall see that all necessary books and records of DMC, required by this by-law any applicable law, are regularly and properly kept.

FISCAL YEAR

52. **Fiscal Year.** The fiscal year of DMC shall terminate on the 31st day of December in each year.

DISSOLUTION

53. **Dissolution.** Upon the dissolution of DMC, after the payment of all the debts and liabilities of DMC, its remaining property shall be distributed and disposed of to the City, as a municipal government and the Voting Member.

ENACTED this _____ day of _____, 2020.

Chair of the Board of Directors

Secretary