

THE CORPORATION OF THE CITY OF BELLEVILLE

BY-LAW NUMBER 2023-122

A BY-LAW TO APPROVE AND AUTHORIZE THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CORPORATION OF THE CITY OF BELLEVILLE AND THE BAY OF QUINTE REGIONAL MARKETING BOARD

THE COUNCIL OF THE CORPORATION OF THE CITY OF BELLEVILLE ENACTS AS FOLLOWS:

1. THAT Council hereby approves and authorizes the execution of a Memorandum of Understanding between The Corporation of the City of Belleville and the Bay of Quinte Regional Marketing Board (a copy of which is attached as SCHEDULE "A").
2. THAT the Mayor and the Clerk are hereby authorized to execute the said memorandum of Understanding between The Corporation of the City of Belleville and the Bay of Quinte Regional Marketing Board, by and on behalf of The Corporation of the City of Belleville.
3. THAT the Clerk be and is hereby authorized to affix to the said Agreement the Corporate Seal of The Corporation of the City of Belleville.

THIS BY-LAW SHALL COME INTO FORCE AND TAKE EFFECT IMMEDIATELY ON AND AFTER THE PASSING THEREOF.

Read a first time this **26th** day of **June 2023**.

Read a second time this **26th** day of **June 2023**.

Read a third time and finally passed this **26th** day of **June 2023**.

NEIL R. ELLIS

MAYOR

MATT MACDONALD

CITY CLERK



A Memorandum of Understanding Respecting the partnership between

Bay of Quinte Regional Marketing Board

and

City of Belleville

Memorandum of Understanding

THIS AGREEMENT (the “Agreement”) is made as of the 23rd day of May, 2023

BETWEEN:

THE CORPORATION OF THE CITY OF BELLEVILLE,
(herein called the “City”)

AND:

THE BAY OF QUINTE REGIONAL MARKETING BOARD,
(herein called the “BQRMB”)

RECITALS

- (a) The Bay of Quinte Regional Marketing Board is a Destination Marketing and Management Organization with the mandate of marketing tourism and resident attraction on behalf of paying partners.
- (b) The Corporation of the City of Belleville pays a per capita amount to BQRMB for the purposes of marketing resident attraction.
- (c) This agreement shall reflect an annual fiscal year starting January 1st and ending December 31st. It is recognized that the BQRMB operates on a fiscal year starting April 1st and ending March 31st.
- (d) The term of this Agreement expires March 31, 2028 with the possibility of future renewals, amendments and extensions. It is noted that either party may terminate the Agreement with 180 days notice.
- (e) **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 of \$1.55 per capita annually, based on the latest population figures published by Statistics Canada, into an account designated by the BQRMB provided that the account resides at a Canadian financial institution and is in the name of the Organization. The City will provide the payment for resident attraction services in quarterly payments upon receipt of invoices from BQRMB in the months of April, July, October and January. The proposed payment dates may be amended with the approval of both parties.

- (b) The Population of the City of Belleville based on the 2021 Census Canada data has been recorded at 55,071. \$1.55 per capita = \$85,360.05. There will be no increase to this fee for the duration of the contract.
- (c) The City shall not be responsible for any commitment or expenditure by the BQRMB, nor does this Agreement commit the City to provide any specific quantum of funding or additional funding for the duration of this Agreement.

ARTICLE 2 - FINANCIAL ACCOUNTABILITY MATTERS

2.1 Obligations of the BQRMB

- (a) For each fiscal year in which it receives the Funding, the BQRMB shall plan for and maintain a balanced operating budget (the “**Annual Balanced Operating Budget**”) whereby the total expenses of the BQRMB are less than or equal to the total revenue, from all sources, of the BQRMB when using the BQRMB’s consolidated income statements.
- (b) The BQRMB will annually provide the City with a business plan/budget for the use of the per capita funds for consultation and input.
- (c) **Promoting Resident Attraction to the City**

“**Promoting resident attraction to the city**” means developing, advertising, funding, sponsoring or otherwise supporting or promoting any resident attraction projects, events, assets or products within the boundaries of The Corporation of the City of Belleville, insofar as so doing directly or indirectly promotes and/or is beneficial to attracting residents to the City.

2.2 Obligations of the City of Belleville

- (d) That Board representatives are to act in a governance role in the best interest of the Bay of Quinte Regional Marketing Board in accordance with the organization’s by-laws and policies and procedures.
- (e) That Board representatives are responsible for reporting back to their respective Council on matters of interest from BQRMB Board meetings.
- (f) To appoint one primary and one alternative representative as a Board member for the duration of the term.
- (g) To remit partnership funding in a timely matter according to the by-laws and provide a schedule of payment if staggered throughout the year.
- (h) To provide on-going communication with the BQRMB on relevant resident attraction projects planned and bring forward any opportunities for collaboration.

2.3 Reporting

- (a) No later than forty-five (45) days prior to the end of any fiscal year of the BQRMB, the BQRMB 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 BQRMB'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 per capita funds. This overview, where possible, shall include quantifiable/measurable results for each activity or initiative.

- (b) No later than one hundred and twenty (120) days following the end of any fiscal year of the BQRMB, the BQRMB 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 BQRMB's performance in light of its business plan;
 - (ii) a discussion of goals achieved and actions to be taken if not achieved;
 - (iii) the BQRMB's audited financial statements (timing subject to auditors availability and City's timely cooperation) ; and
 - (iv) an officer's certificate, made by the Executive Director of the BQRMB 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 0 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 BQRMB receives Funding and at least bi-annually, the BQRMB shall report to staff as necessary to keep the City appropriately informed of the performance by the BQRMB of its obligations under this Agreement, its activities and its obligations to plan for and maintain an Annual Balanced Operating Budget.

- (d) The BQRMB shall ensure that all reports are in a form satisfactory to City staff, are complete, accurate and signed on behalf of the BQRMB by an authorized signing officer.

- (e) If this Agreement ceases to be in effect, for any reason whatsoever, the BQRMB 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.

- (f) Should the BQRMB cease to exist for any reason, all products, assets, work or other valuable items pertaining to Belleville shall become the property of the City and shall be disbursed to the City prior to the closure of the office.
- (g) The City shall have the right to use all work product or assets produced by the BQRMB (ie. Photos, content, etc.) provided such use does not diminish the purpose for which it was created or purchased, except where a contract limits the rights and use of the product.

2.4 Document Retention and Record Maintenance.

The BQRMB shall 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;

ARTICLE 3 - INDEMNITY

3.1 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 BQRMB or any of its directors, officers, employees, independent contractors, subcontractors, agents, successors and assigns and other representatives of the BQRMB (collectively, the “**BQRMB’s Representatives**”) for costs, losses, claims, liabilities and damages caused arising out of or in any way related to this Agreement, unless caused by the negligence or wilful misconduct of the Indemnified Parties.

3.2 Same

For greater certainty and without limiting Section 3.1, the City shall not be liable for how the BQRMB carries out its operations.

Indemnification

The BQRMB 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 BQRMB or the BQRMB’s Representatives in the course of performance of the BQRMB’s obligations under, or otherwise in connection with, this Agreement, unless caused by the negligence or wilful misconduct of an Indemnified Party.

ARTICLE 4 - INSURANCE

4.1 Required Insurance

The BQRMB shall maintain certain insurance policies (Commercial General Liability Insurance, Directors and Officers Liability Insurance, etc.) as may be satisfactory to the City from time to time.

ARTICLE 5 - GENERAL

5.1 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.
- (c) Any confidential business information shall be kept confidential by the Parties and shall be used only for the purposes of this Agreement. Any such confidential business information shall not be shared with other individuals or organizations and shall be kept by the City and BQRMB in separate segregated confidential files. The City is subject to the Municipal Freedom of Information and Protection of Privacy Act; information held by or on behalf of the City shall be administered in accordance with the Act.
- (d) No party to this Agreement may assign this Agreement without the prior written consent of all of the other parties.
- (e) This Agreement shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the parties hereto.

5.2 No Joint Venture

The Parties acknowledge and agree that no employment, agency, partnership or joint venture relationship is intended to be created between the BQRMB and the City or the BQRMB and the City's personnel by this Agreement or by the provision of the funds set out herein. The BQRMB shall not act or attempt to act, or represent itself, directly or by implication, as an employee, partner, agent, or a joint venturer of the City.

5.3 Termination

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

- (a) This Agreement may be terminated by BQRMB or the City upon a minimum of one hundred and eighty (180) days written-notice to all parties to this Agreement.
- (b) Any party may terminate this Agreement in the event of default by the other party, provided such default has not been remedied within thirty (30) days of receipt of written notice of default.
- (c) All parties may terminate the agreement immediately in the event of insolvency or bankruptcy of another party and the ownership of all Belleville related assets will transfer to the City.
- (d) On the termination of this Agreement, the BQRMB shall prepare a final audit report and transfer any unused per capita funds to the City. The City may authorize disbursements of the per capita funds at the City's discretion for commitments made by the BQRMB in association with the per capita funds up to the date of termination, but shall not be obligated to do so.

5.4 Notices

Any notice, payment or other communication required or permitted to be given under this Agreement shall be in writing and shall be sufficiently given if delivered in person or by mailing by prepaid registered post, or by email. All such notices shall be deemed to have been delivered to and received by the addressee: (a) on the date of receipt if delivered in person or by prepaid registered post; or (b) received on the date of its transmission, if delivered by e-mail, provided that if such day is not a business day or it is received after the end of normal business hours on the date of its transmission then it shall be deemed to have been given and received at the opening of business in the office of the addressee on the first business day next following the transmission thereof if delivered by e-mail.

- (a) If to the City:
City Clerk
169 Front Street
Belleville, ON K8N 2Y8
- (b) If to the BQRMB:
Executive Director
11 Bay Bridge Road, Suite 114
Belleville, ON K8P 3P6

5.5 Amendment in Writing

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

5.6 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.

5.7 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.

5.8 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.

5.9 Schedules

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

5.10 Assignment

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

5.11 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.

5.12 Enurement

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

5.13 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.

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

**THE CORPORATION OF THE CITY
OF BELLEVILLE**

Per: _____
Name: Neil Ellis
Title: Mayor

Per: _____
Name: Matt MacDonald
Title: City Clerk

We have authority to bind the Corporation

BAY OF QUINTE REGIONAL MARKETING BOARD

Per: _____
Name: Blair Gamble
Title: Board Chair

Per: _____
Name: Dug Stevenson
Title: Executive Director

*We have authority to bind the Bay of Quinte
Regional Marketing Board (BQRMB)*