

THE CORPORATION OF THE CITY OF BELLEVILLE

BY-LAW NUMBER 2023-55

**A BY-LAW TO APPROVE AND AUTHORIZE THE EXECUTION OF A FINANCIAL ACCOUNTABILITY AND SERVICES AGREEMENT 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 Financial Accountability and Services Agreement 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 Financial Accountability and Services Agreement 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 27<sup>th</sup> day of **March 2023**.

Read a second time this 27<sup>th</sup> day of **March 2023**.

Read a third time and finally passed this 27<sup>th</sup> day of **March 2023**.

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NEIL R. ELLIS

MAYOR

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MATT MACDONALD

CITY CLERK

## FINANCIAL ACCOUNTABILITY AND SERVICES AGREEMENT

THIS AGREEMENT (the “Agreement”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 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 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 BQRMB is the eligible tourism entity for the purposes of the Regulation which will receive one or more payments from the City. The BQRMB is a marketing organization charged with marketing Belleville and the region to attract tourists and visitors to the City.
- D. On June 25, 2019, the Council for the City of Belleville approved the establishment of a MAT in the City of Belleville;
- E. Pursuant to Section 6(1) of the Regulation, the City and the BQRMB must enter into an agreement respecting reasonable financial accountability matters to ensure that any amounts paid to the BQRMB are used for the exclusive purpose of promoting tourism for the City of Belleville and such agreement may provide for other matters.
- F. This agreement shall reflect an annual fiscal year starting January 1<sup>st</sup> and ending December 31<sup>st</sup>. It is recognized that the BQRMB operates on a fiscal year starting April 1<sup>st</sup> and ending March 31<sup>st</sup>.
- G. **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 for 50% of the Municipal Accommodation Tax (MAT) referred to in Section 5(2) of the Regulation (the “**Funding**”) quarterly 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 proposed payment dates may be amended with the approval of both parties.
- (b) The Funding shall be determined in the sole discretion of the City, in compliance with Section 5(4) of the Regulation. For clarity, costs of the City related to the administrative expenses undertaken to facilitate and implement the MAT shall be deducted from the MAT revenue and shall be deducted prior to the determination of the amount available for distribution.
- (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.

### **1.2 Promoting tourism in the City**

“**Promoting tourism in the City**” means developing, advertising, funding, sponsoring, or otherwise supporting or promoting, any tourism 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 the growth of the City’s tourism sector, local innkeepers by increasing overnight stays, restaurateurs, developers, commercially or publicly operated tourist attractions, festivals, social activities (e.g. entertainment, sports and recreation) and other commercial interests.

## **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 MAT funds for consultation and input.
- (c) Unless otherwise agreed to in writing, annually, a minimum of 75% of the MAT funds received shall be spent by the BQRMB within their fiscal year.

- (d) The BQRMB covenants that 80% of the funds received under this agreement shall be used exclusively for promoting tourism in the City, with the remaining 20% of the funds to be used to promote the region when combined with matching funding from the other paying partners.

## **2.2 Obligations of the City of Belleville**

- (a) The City shall provide a list of participating accommodators and room numbers to the BQRMB.
- (b) The City will report quarterly to the BQRMB the earnings/occupancy that mirror the collection schedule from the City.
- (c) The City will provide on-going communication with the BQRMB on planned usage of MAT funds by the City 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 MAT 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 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 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 of an Eligible Accommodator received by the Parties specifically through MAT procedures from an Eligible Accommodator, such as pricing and cost 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 Eligible Accommodators and shall be kept by the City and BQRMB in separate segregated confidential files for each Eligible Accommodator. 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.

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.

### **(b) Rights on Termination**

On the termination of this Agreement, the BQRMB shall prepare a final audit report and transfer any unused MAT funds to the City. The City may authorize disbursements of the MAT funds at the City's discretion pursuant to Regulation 435/17 for commitments made



## **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.

*[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 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:  
Title: Board Chair

Per: \_\_\_\_\_  
Name: Dug Stevenson  
Title: Executive Director

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