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## AGENDA

Virtual meeting via Zoom on **Tuesday, April 2, 2024 at 2:00 p.m.**

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- |   | Page #      |
|---|-------------|
| <b>1) Welcome and Agenda Approval</b><br><i>Motion: To accept the agenda as presented.</i>  |             |
| <b>2) Declaration of Conflict of Interest</b>   |             |
| <b>3) TPA approval</b><br><i>Motion: To accept the Municipal Accommodation Tax Financial Accountability Agreement and Memorandum of Understanding with the Town of Huntsville, dated April 2, 2024, as presented.</i> | <b>2-10</b> |
| <b>4) Next meetings and adjournment</b>   |             |
| a) Next meetings:<br>Tuesday, May 7, 2024 at 2:30 p.m., Muskoka Grand Luxury Lodge (84 Swallowdale Rd)<br>Tuesday, May 28, 2024 at 2:30 p.m., Hidden Valley Resort (1755 Hidden Valley Rd.)                           |             |
| b) Adjournment<br><i>Motion: To adjourn the meeting</i>   |             |

**Municipal Accommodation Tax Financial Accountability  
Agreement and Memorandum of Understanding**

("Agreement")

dated this 2<sup>nd</sup> day of April, 2024

**BETWEEN:**

The Corporation of the Town of Huntsville

("Town")

and the

Huntsville Municipal Accommodation Tax Association

("HMATA").

This Municipal Accommodation Tax Financial Accountability Agreement ("Agreement") dated this 2<sup>nd</sup> day of April, 2024 between The Corporation of the Town of Huntsville ("Town") and the Huntsville Municipal Accommodation Tax Association ("HMATA").

**WHEREAS** in a desire to strengthen the local economy, to achieve Council's objective of ensuring that the Town of Huntsville becomes the tourism destination of choice in Ontario, the Town has passed a by-law imposing a Municipal Accommodation Tax ("MAT") pursuant to section 400.1 of the *Municipal Act*, 2001.

**WHEREAS** O.Reg. 435/17 requires a municipality collecting a Municipal Accommodation Tax to make payments to an entity that meets the definition of eligible tourism entity defined in O.Reg 435/17;

**WHEREAS** the Town of Huntsville created the Huntsville Municipal Accommodation Tax Association in 2020 to act as its "eligible tourism entity" for a three (3) year pilot project basis;

**WHEREAS** on April 26, 2023, Council named the HMATA as the Destination Management Marketing Organization (DMMO) for the Town of Huntsville and the "eligible tourism entity" for an additional two-year pilot;

**AND WHEREAS** O. Reg. 435/17 requires a municipality and eligible tourism entity to enter into an agreement respecting financial accountability;

**NOW THEREFORE THE AGREEMENT WITNESSETH THAT** in consideration of the mutual covenants and agreements set forth, the parties covenant and agree, to and with each other, as follows:

**Definitions:**

"**HMATA**" means the Huntsville Municipal Accommodation Tax Association.

"**MAT**" means the Municipal Accommodation Tax, as defined in the Town's Municipal Accommodation Tax By-law 2019-122.

"**Fund**" means the MAT proceeds transferred by the Town to the Huntsville Municipal Accommodation Tax Association.

"**DMMO**" means Destination Management Marketing Organization.

**1. Eligible Tourism Entity**

- a. To assist in its goal of strengthening the local economy, Council is desirous of growing the tourism sector and ensuring the Town becomes the tourism destination of choice in Ontario. To assist with this endeavor, the Town participated in the creation of the HMATA, being a non-share capital corporation which the Town hereby appoints it to act as the Town's "eligible tourism entity" as defined in Ontario Regulation 435/17 for

a term of two years, ending December 31, 2025.

## **2. MAT Proceeds**

- a. The parties agree that with respect to the MAT amount collected, prior to the disbursements of the MAT amount to the HMATA, the following amounts (the “**MAT Deductions**”) shall be deducted from the MAT amount collected by the Town:
  - i. The Town’s collection and administration fees related to the collection of the MAT, in accordance with OReg 435/17 will be deducted, and which amounts shall be disclosed annually;
  - ii. Any amounts payable to the Huntsville/Lake of Bays Chamber of Commerce, in payment for Tourism Marketing services pursuant to the Memorandum of Understanding between the Chamber and the Town, if applicable; and
  - iii. Any legal costs incurred by the Town which are related to the MAT program, including but not limited to the costs of collecting MAT proceeds.
- b. The parties agree that following the payment of the MAT Deductions to the appropriate entity, sixty-two percent (62%) of the net balance of the MAT proceeds will be disbursed to the HMATA, and such funds shall be used for the purpose of Destination Management and Marketing of Huntsville as the destination of choice in Ontario. The remaining thirty-eight percent (38%) of the net balance of the MAT proceeds shall be retained by the Town and used as per the Town’s Municipal Accommodation Tax Budget Principles policy.
- c. All MAT proceeds disbursed by the Town to the HMATA shall be deposited into a fund controlled by the HMATA (the “Fund”). Any distribution of monies from the HMATA’s Fund will be done only in accordance with this Agreement. Both parties agree that the Town will remit the Association’s portion of the funds collected within 60 days of the end of each quarter.
- d. MAT amounts collected are defined as funds that have been actually received from providers in total or installments. No interest will be earned by the HMATA on MAT amounts that are owing but not yet paid by the provider.

## **3. Transparency and Accountability of HMATA Strategy, Objectives and Outcomes**

- a. To assist with the growth of the tourism sector of the Town’s local economy and to ensure the Town becomes the tourism destination of choice in Ontario, the parties agree that the HMATA shall prepare and implement a Strategic Plan and a biennial business plan, with reporting on the business plan to occur annually.
- b. The Fund shall be used in the pursuit of the following and related objectives and outcomes:
  - i. Achieving the objectives identified in the HMATA’s Strategic Plan;
  - ii. Increasing visitations to the Town;
  - iii. Enhancing the Town’s profile with prospective visitors;
  - iv. Supporting Tourism product development and industry growth in the Town;
  - v. Funding bid requirements for major events without additional funding from the Town;
  - vi. Becoming more competitive with other municipalities across Canada; and
  - vii. Where applicable, supporting Tourism and Economic Development priorities that are set by the Town of Huntsville.

## **4. Relationship Between the Parties and Obligations of the HMATA**

- a. As the Town's "eligible tourism entity", it is understood that the HMATA shall:
- i. Maintain, update, and operate in accordance with its incorporation by-laws, as well as governance policies;
  - ii. Prepare a biennial business plan which shall establish and set out:
    1. HMATA priorities and objectives which are linked to its strategic plan, strategic priorities, and an associated operating budget,
    2. A long-term vision for the Town's tourism sector that considers and aligns with the Town's Strategic Plan and Economic Development Strategy, and
    3. The priorities, objectives, and metrics to be used in growing Huntsville's Tourism Sector and ensuring the Town becomes the tourism destination of choice in Ontario;
  - iii. Amend and update the Strategic Plan as necessary;
  - iv. Provide a copy of the Strategic Plan to the Town, as well as any modifications or amendments to the Strategic Plan enacted from time to time;
  - v. Allocate in HMATA's operating budget a percentage for destination awareness and reputation tactics such as media relations, digital marketing, and print marketing that focus on raising Huntsville's profile with prospective visitors.
  - vi. Review and approve all expenditures from the Fund;
  - vii. Hire professionals (e.g. auditors, lawyers) as required to assist in the administration and management of its operations and Fund;
  - viii. Create and implement an advisory panel of local organization stakeholders in the arts, sport, recreation, and heritage sectors, with terms of reference to include who is represented and how the panel is engaged/consulted, within 6 months of the signing of this agreement;
  - ix. Prepare and present an annual report to Town Council respecting expenditures and initiatives that have received monies from the Fund. The report, at a minimum, shall address the following:
    1. A review of project/program/business plan accomplishments based on metrics as determined by the HMATA;
    2. Identification of partnerships with other tourism-related entities/businesses/agencies and any disbursements to such entities from the Fund;
    3. An overview of business plan for the upcoming and future year(s); and
    4. The annual financial statements of HMATA, prepared as required by the Ontario Not-For Profit Corporations Act ("ONCA"). Financial statements will be provided to the Town within 90 days of the HMATA's year end. At the Town's option, the HMATA may be required in any given year, to have audited financial statements prepared, either in addition to or as required under ONCA, within 90 days of the HMATA's fiscal year end.
  - x. Post agendas, minutes, and any application forms and results on the HMATA website;
  - xi. Modify HMATA By-law No.1 to ensure that the interests of Huntsville are represented by requiring board members that are members of the Huntsville/Lake of Bays Chamber of Commerce and Huntsville/Lake of Bays Accommodation and Restaurant Association to own or operate businesses within Huntsville's geographic boundary, within six (6) months of the signing of this agreement;
  - xii. Adopt a procedural by-law within three (3) months of the signing of this agreement;
  - xiii. Use and display HMATA-funded items only within the Town's geographic

boundaries, unless it is to benefit/redirect tourism to Huntsville;

- xiv. Incorporate the established community-wide brand approved by Council for all external (consumer-facing) marketing as the Town's designated Destination Management Marketing Organization (DMMO);
  - xv. Provide access to all creative and marketing assets including video, print, signage, digital, social, and website, and further that all creative and marketing assets developed under the DMMO remain the property of the Town of Huntsville upon the dissolution of HMATA and/or non-renewal of the pilot project;
  - xvi. Share economic development content from Town staff on the DMMO website that fits under the tourism landscapes as appropriate; and
  - xvii. Consider any other items as requested by Huntsville Town Council.
- b. To achieve the goal of ensuring the Town becomes the tourism destination of choice in Ontario, a collaborative relationship is required between the parties to this agreement. To ensure that priorities are aligned and ensure optimal use of resources the parties agree that:
- i. The Town shall continue to support the Huntsville/Lake of Bays Chamber of Commerce for the operation of a Visitor Information Centre for 2024. These fees will come from the Town's retained 38% of MAT Revenue, subject to budget approval;
  - ii. The parties shall meet annually at a mutually agreeable time near the HMATA's year end, to review the HMATA's business plan, its activities since the last meeting, and its progress related to the strategic plan for the upcoming year, with an interim update by both parties halfway through the HMATA's fiscal year;
  - iii. During each bi-annual meeting, the Town will present its economic development-related plans/projects and MAT-funded projects and activities for the upcoming year;
  - iv. The Town's contribution of sixty-two (62%) of the MAT proceeds to the HMATA shall be considered as the Town's contribution to any future projects the HMATA funds and/or is a partner in. All future HMATA agreements with organizations or businesses receiving money from the Fund shall contain the following language, or similar wording to this effect, "In entering into this agreement the recipient of funds agrees that it shall not approach the Town of Huntsville for additional funding or in-kind requests for this event, project, or program. In the event an approach is made, whether or not funding is received from the Town, any funding received, or to be received, from the HMATA becomes void and shall immediately be re-paid to the HMATA."

#### **5. Distribution of Fund Monies for Tourism Activities**

- a. It is expected that the HMATA will establish relationships with other tourism-related entities to work toward the goal of Huntsville being the tourism destination of choice in Ontario.
- b. It is acknowledged and agreed that as the eligible tourism entity of the Town, the HMATA shall be responsible for the distribution of amounts from the Fund for other tourism-related activities based on a percentage of HMATA's annual budget. HMATA acknowledges that the Town shall have no obligation to fund or support other tourism-related partners or businesses other than through the Town's collection of the MAT in support of HMATA.
- c. The HMATA shall establish an open and transparent application and evaluation process within three (3) months of the signing of this agreement, which organizations seeking support for tourism-related activities may access for funding assistance for promoting and developing tourism in the Town.
- d. As part of its evaluation of applications for funding assistance, the Board of the HMATA

must consider and be satisfied that the associated business and strategic marketing plans which underpin the projects/programs have a reasonable likelihood of success in the promotion and development tourism in the Town.

- e. Where the HMATA approves a funding application of a tourism-related activity, it will enter into a Service Agreement with the applicant, based on reasonable key performance indicators, in order to ensure reasonable financial accountability.

## 6. Indemnification

- a. The HMATA shall indemnify and save harmless the Town, its officers, employees, Members of Council, and agents ("Indemnified Parties") from and against all claims, demands, losses, costs, damages, actions, suits, or other proceedings by whomsoever made, sustained, brought, or prosecuted, in any manner arising from any willful or negligent act, or attributable to anything done or omitted to be done by the HMATA, its directors, officers, employees, or agents, arising directly or indirectly as a result of entering into this contract and any operations connected therewith, save and except for the negligence or willful misconduct of the Indemnified Parties. Without limiting the foregoing, it is understood and agreed that this indemnity shall include legal and investigation expenses incurred in defending any claim by the Indemnified Parties in connection to this contract. Further, it is understood and agreed that the HMATA shall immediately reimburse the Indemnified Parties for any and all such amounts upon demand.

## 7. Release

- a. The HMATA on behalf of itself, its officers, and employees releases the Town, its officers and employees, and their respective heirs, executors, administrators, and successors from and against all claims, actions, causes of action, suits, debts, dues, accounts, contracts, demands, costs, expenses, damages, liabilities, or other obligations whatsoever and from and against all liabilities, losses, damages, costs, charges, court costs, legal fees on a solicitor and its own client basis, and other expenses of any nature whatsoever which the HMATA, its officers and employees may now have or hereafter can, shall, or may have against the Corporation and its representative arising from or pertaining to the making or refunding of the monies payable under this agreement, save and except for the Town's performance of its obligations in connection with this agreement.

## 8. Financial Records

- a. The HMATA shall keep separate financial records for all amounts incurred, claimed, paid, and received and shall retain and preserve all documents, contracts, records, claims, and accounts that relate thereto for a period of seven years for the Fund.

## 9. Inspection of Financial Records and Documents

- a. If the Town has reasonable grounds for believing that any amount included in any preceding payment has not been expended in accordance with this agreement, the HMATA shall, upon reasonable notice from the Town, make available at all reasonable times, and without expense to the Town, all such documents, contracts, records, claims, and accounts for inspection and audit by the Town or its auditors.

## 10. Provision of Information

- a. Upon written request from the Town, the HMATA shall provide the Town, without expense to the Town, any information which is available to the HMATA with respect to its annual budget or financial statements.

## 11. Return or Withholding of Payments

- a. If the Town, during its inspection or audit of any such documents, contracts, records, claims, and accounts determines that any payment made by the Town to the Fund has been used by the HMATA for any purpose other than specified in the herein

**Commented [DH1]:** From solicitor:

This does broaden the wording a bit, but I think it's generally consistent with the prior intent. Here are the ways it broadens your liability:

- your indemnity now includes Members of Council
- rather than just relating to HMATA in relation to receiving/depositing/refunding monies under the agreement, it now applies to all losses relating to entering into the contract and operations of HMATA.
- it still excludes willful misconduct and negligence on the part of the Town and its agents (good)
- your liability now includes the Town's legal and investigation expenses relating to such claims
- that reimbursement would be immediate.

I don't think that any of this is egregious, but you'd definitely want that liability insurance in place.

agreement, HMATA shall, immediately upon request from the Town, remit such amounts requested back to the Fund and provide evidence of same to the Town within two weeks of the initial request from the Town. Should HMATA fail to do so, the Town may withhold any future payments of the MAT otherwise payable to HMATA, until such a time as the appropriate amount has been returned to the Fund.

- b. If the Town deems administration deliverables to be unsatisfactory, any further payments of the MAT otherwise payable to the HMATA may be withheld by the Town until such time as items are delivered to the satisfaction of the Town, acting reasonably.
- c. There will be no interest earned by the HMATA and payable by the Town on any fund withheld for any period of time for the reasons noted above.

## 12. Default

- a. Each of the following constitute an event of default under the terms of this agreement, the proof of which to the contrary at all times lies upon the HMATA:
  - i. HMATA becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute from time to time being enforced relating to bankrupt or insolvent debtors;
  - ii. An order is made, or resolution passed for the winding up or for the surrender of the charter of the HMATA, it forfeits its charter, or it is dissolved;
  - iii. HMATA ceases actual *bona fide* operation for a period of 30 consecutive days;
  - iv. HMATA has knowingly submitted false or misleading information to the Town; and
  - v. HMATA is in breach of the performance of, or compliance with, any term, condition, or obligation on its part to be observed or performed pursuant to this agreement, including the enactment and adherence to a Strategic Plan.

## 13. Remedies on Default

- a. If,
  - i. an event of default as specified in Article 12 occurs; or
  - ii. an event of default specified in Article 12 occurs and is not remedied within 10 business days (the "Default Rectification Period") after receipt by the HMATA of notice of default, or a plan satisfactory to the Town to remedy such event of default is not implemented within such period and fully and diligently carried out,

then, the Town may exercise the following remedies, in addition to any remedies otherwise available in this agreement or at law, namely:

- i. Terminate this Agreement and any further obligation of the Town to transfer MAT payments collected;
- ii. Direct any MAT payments collected by the Town to an alternative eligible tourist entity;
- iii. Immediately demand the return of any MAT funds controlled by the HMATA at the time of default back to the Town or direct the transfer the funds to an alternative eligible tourist entity confirmed in writing by the Town;
- iv. Any assets owned by the HMATA purchased with MAT funds be transferred to the Town; and/or
- v. Require HMATA to pay all or part of the amount at issue forthwith to the Town.

#### **14. Interim of Suspension of Payment**

- a. In the event that the Town gives HMATA notice of default, the Town shall have no obligation to make any further payments under this agreement until HMATA has provided sufficient evidence, as determined by the Town acting in its sole discretion, that HMATA is compliant with the terms of this Agreement within the Default Rectification Period.

#### **15. Waiver of Breach**

- a. In the event of a breach of any provision of this agreement by one party, no action or failure to act by the other party shall constitute a waiver of any right or duty afforded by that party under this agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any such breach, except as may be specifically agreed to in writing.

#### **16. Termination**

- a. This agreement shall terminate on December 31, 2025, or at the option of the Town in the event any of the following occurs:
  - i. At the expiration of the Default Rectification Period outlined in Article 13;
  - ii. The enabling statutory authority for the Municipal Accommodation Tax is repealed or rescinded so as to substantially limit or deprive the Town of the ability to collect the Municipal Accommodation Tax;
  - iii. The Town and the HMATA agree in writing at any time to the termination of this Agreement; or
  - iv. The Town gives the HMATA 90 days' notice of its intention to terminate this Agreement.
- b. Upon termination of this Agreement, the Fund balance, less legal and binding commitments, along with the organization's assets, will revert back to the Town for distribution by the Town for tourism-related initiatives.

#### **17. Severability of Provisions**

- a. If any of the provisions of this agreement shall be found to be illegal or invalid, such illegality or invalidity does not render the whole agreement illegal or invalid, but the agreement shall be construed as if it did not contain the illegal or invalid provision or provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.

#### **18. Relationship**

- a. Nothing in this agreement shall constitute the HMATA a local board of the Town, or constitute the Town and the HMATA general partners or joint ventures, or constitute either the Town or the HMATA the agent of the other, or be deemed to authorize the Town or the HMATA to contract for or incur any obligation on behalf of the other.

#### **19. Confidentiality**

- a. For the purposes of the *Municipal Freedom of Information and Protection of Privacy Act*, the Town's access to information hereunder is subject to the HMATA's assertion at all material times that all such documents, contracts, records, claims, and accounts are supplied to the Town in confidence.

#### **20. Assignment**

- a. The HMATA shall not assign all or any part of its rights or obligations under this agreement to a third party without the Town's written consent.



**21. Duration and Renewal of Agreement**

- a. This agreement commences on the date hereof and:
  - i. Continues in full force and effect until December 31, 2025, subject to earlier termination of this agreement as provided herein; and
  - ii. Both Parties agree in writing to convene six (6) months prior to the termination of this agreement to discuss the extension of this agreement.

**22. Amendment to Agreement**

- a. In the event that the Town desires or proposes an amendment to this Agreement, the Town shall provide written notice to the HMATA in accordance with this Agreement. The Town shall require a response from the aforementioned within ten (10) business days. In the event that the HMATA desires to propose an amendment to this Agreement, it shall provide Notice to the Town and the Town shall be subject to the same response time as set out above. In the event that an Agreement to amend or modify this Agreement is reached between the Town and the HMATA, such amendment may only be made by written agreement (reviewed and approved by legal counsel for both parties, as determined by each party), and signed by all parties hereto. If neither party can come to terms on the proposed amendment, it does not constitute cause to terminate this agreement.

**23. Notice**

- a. If any notice is required to be given by the Town to the HMATA with respect to this Agreement, such notice shall be mailed, delivered, emailed to:

HMATA  
xxxxxx  
Huntsville, ON P1H xxx  
info@huntsvillemat.com

or such other address of which the HMATA has notified the Town, in writing, and any such notice mailed, delivered, or sent by facsimile transmission shall be deemed good and sufficient notice under the terms of this Agreement.

- b. If any notice is required to be given by the HMATA to the Town with respect to this Agreement, shall be mailed, delivered, emailed, or sent by facsimile transmission to:

The Corporation of the Town of Huntsville  
37 Main Street East  
Huntsville, ON P1H 1A1  
Attention: Economic Development Officer  
Fax: (705) 788-5153  
Email: lauren.macdermid@huntsville.ca

or such other address of which the Town has notified the HMATA, in writing, and any such notice mailed, delivered, emailed, or sent by facsimile transmission shall be deemed good and sufficient notice under the terms of this Agreement.

IN WITNESS WHEREOF the Town and the HMATA have hereunto affixed their respective corporate seals, attested by the hands of their respective officers duly authorized in that behalf.

**THE CORPORATION OF THE TOWN OF HUNTSVILLE**

Per: \_\_\_\_\_

Mayor, Nancy Alcock

Per: \_\_\_\_\_

Clerk, Tanya Calleja

**THE HUNTSVILLE MUNICIPAL ACCOMMODATION TAX ASSOCIATION**

Per: \_\_\_\_\_

Chair, Jeff Suddaby

Per: \_\_\_\_\_

Vice Chair, Scott Morrison