

THIS MEMORANDUM OF AGREEMENT made as of the 13th day of January, 2020.

B E T W E E N:

THE CORPORATION OF THE CITY OF VAUGHAN

(hereinafter the "**City**")

- and -

TOURISM VAUGHAN CORPORATION

(hereinafter the "**TVC**")

WHEREAS the Corporation of the City of Vaughan (hereinafter the "**City**") is a municipal corporation duly incorporated under the laws of the Province of Ontario;

AND WHEREAS TVC is a municipal services corporation incorporated pursuant to *Ontario Regulation 599/06 - Municipal Services Corporations* (hereinafter the "**Regulation**") being a regulation under the *Municipal Act, 2001*;

AND WHEREAS the City is TVC's sole Voting Member (as that term is defined in TVC's By-law No. 1);

AND WHEREAS the City and TVC seek to work towards promoting and marketing Vaughan as a leading destination for tourism, leisure and business travel;

AND WHEREAS the City seeks to support TVC in carrying out TVC's mandate in accordance with this Agreement, including without limitation the guiding principles set out in Article 3, and in accordance with applicable law;

AND WHEREAS the City and TVC seek to establish a framework governing certain aspects of their relationship in addition to the legal framework mandated by the *Municipal Act, 2001*, and the Regulation;

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 Memorandum of Agreement and all schedules attached hereto;

- (b) “**By-law No. 1**” means the corporate by-law attached hereto as SCHEDULE “A”;
- (c) “**City**” means The Corporation of the City of Vaughan;
- (d) “**City Clerk**” means the duly appointed Clerk of the City or his or her designate;
- (e) “**City Council Directors**” means Councillors appointed by Council to sit as directors on the TVC Board;
- (f) “**City Treasurer**” means the duly appointed Treasurer of the City or his or her designate;
- (g) “**Council**” means the City’s Mayor and Members of Council;
- (h) “**Council Resolution**” means a resolution of Council reached pursuant to the City’s Procedural By-law;
- (i) “**MAT**” means the Municipal Accommodation Tax implemented by the City pursuant to *Ontario Regulation 435/17 - Transient Accommodation Tax* being a regulation under the *Municipal Act, 2001*;
- (j) “**Regulation**” means *Ontario Regulation 599/06 - Municipal Services Corporations* being a regulation under the *Municipal Act, 2001*;
- (k) “**TVC**” means Tourism Vaughan Corporation;
- (l) “**TVC Board**” means the board of directors of TVC; and
- (m) “**Voting Member**” shall have the meaning ascribed to that term in By-law No. 1.

2.0 **TOURISM VAUGHAN CORPORATION (TVC)**

TVC Compliance with all Applicable Law

- 2.1 TVC acknowledges that as a legal entity it is subject to the laws of Ontario and Canada and that it has an array of legal duties, responsibilities and obligations.
- 2.2 TVC shall comply with all applicable law, including but not limited to:
 - (a) the *Corporations Act* and regulations thereunder;
 - (b) the *Municipal Act, 2001* and regulations thereunder; and
 - (c) employment legislation and regulations thereunder.

- 2.3 TVC acknowledges it has been advised by the City to obtain legal advice regarding this Agreement prior to executing the Agreement. TVC further acknowledges that it has not relied upon the City or its lawyer(s) for legal advice.

TVC Corporate By-Law

- 2.4 TVC shall pass By-Law No. 1 in the form attached hereto as SCHEDULE "A" and shall operate and govern itself according to By-Law No. 1.
- 2.5 By-Law No. 1 may only be amended or revoked in whole or in part with the express written consent of Council.

Directors and Officers

- 2.6 The City as the Voting Member, will be responsible for selecting, electing and appointing the TVC Board and any officers in accordance with By-Law No. 1.

City Council Directors

- 2.7 In the event that By-Law No. 1 is amended to provide for a specific number of City Council Directors:
- (a) Council shall appoint the required number of City Council Directors to the TVC Board within sixty (60) days after a municipal election; and
 - (b) City Council Directors shall be appointed to the TVC Board for the full term of Council.

TVC Corporate Governance Framework; TVC Organization and Operations

- 2.8 In the event that the City establishes a corporate governance framework for decision-making, strategic planning, budget and business plans, and corporate policies, TVC agrees to abide by and implement same, including abiding by and implementing provisions that restrict the TVC Board's scope of authority to the extent desired by Council.
- 2.9 Subject to Section 2.7 and Article 3.0, TVC shall prepare and update a manual setting out the formal organizational structure and operating procedures of TVC which shall address the following:
- (a) the distinct legal status of TVC;
 - (b) the organizational structure of TVC; and
 - (c) the legal obligations of TVC.
- 2.10 A copy of TVC's organizational structure and operating procedures manual shall be circulated to all of TVC's staff, directors, officers, advisors, and committee members, and to the City as required by the City.

3.0 GUIDING PRINCIPLES

3.1 TVC shall be guided by the following guiding principles which function as guideposts in future decision-making throughout TVC's lifecycle irrespective of any changes in leadership, goals, strategies and activities:

- (a) TVC will take a **leadership role** in promoting and marketing Vaughan as a leading destination for tourism, leisure and business travel with an emphasis on promoting overnight stays.
- (b) TVC will be a **supportive partner** to the Vaughan Chamber of Commerce, Regional Tourism Organization(s), and other business, government and not for profit organizations in delivering programming that attracts greater spending and investments in Vaughan. In so doing, TVC will ensure that its **work is complementary** to work done by others.
- (c) Existing hotel operators, tourism venues and affiliated service providers have tremendous insight and expertise, and they should have a **seat at the table**.
- (d) TVC will undertake its work based on objective decision-making process that is **accountable and transparent**, resulting in **city-wide benefits**.
- (e) TVC will develop and implement tourism marketing strategies that reflect **Vaughan's unique character**, its cultural and built heritage, diverse ethnic communities, social and cultural traditions, recreational and sports assets, and business development opportunities.
- (f) TVC 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 the Vaughan Metropolitan Centre, local village cores, and industrial-commercial areas.

4.0 BRANDING STRATEGY AND MARKETING PLAN

4.1 TVC shall develop a branding strategy and marketing plan within the initial two (2) year period of its existence.

5.0 CITY ASSISTANCE TO TVC

Financial Assistance

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

Human Resources

- 5.2 Pursuant to the Regulation, the City may provide TVC with the services of employees of or persons under contract with the City. In accordance with the City's 2019 Budget as approved by Council on February 20, 2019, initially TVC shall receive assistance from two (2) full-time City staff positions comprised of a Manager of Tourism, Arts and Cultural Development, and a Tourism Development Officer to assist the TVC Board in managing and operating TVC.

Headquarters and Other Resources

- 5.3 The initial headquarters of TVC shall be at Vaughan City Hall located at 2141 Major Mackenzie Drive West, Vaughan, Ontario with respect to which the City shall assist TVC with office space, information technology, utilities, meeting rooms, use of equipment such as photo-copiers, communication/graphic design services, data/analytics, and small business counselling services at or below fair market value to minimize administration expenses, and to maximize strategy and program expenditures of TVC.

Financial and Procurement Services

- 5.4 Financial and procurement services may also be provided by the City to TVC 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 TVC, or an estimate of the fair market value of any other assistance provided at less than fair market value to TVC.

6.0 FINANCIAL MATTERS

TVC Bank Account

- 6.1 The City Treasurer (or designate as identified by the City Treasurer from time to time) shall open and administer a corporate bank account(s) for TVC, including making deposits, transfers and issuing cheques as required and as directed by TVC.
- 6.2 The City Treasurer (or designate as identified by the City Treasurer from time to time) and the City Deputy Treasurer (or designate as identified by the City Deputy Treasurer from time to time) and/or such other persons identified by the TVC Board and approved by the City from time to time shall be signing officers of TVC with respect to banking matters.

TVC Budget

- 6.3 The creation and management of an annual operating budget will be the responsibility of the TVC Board for provision to the City (through the City Clerk for distribution to the Mayor and Members of Council) provided that each such budget shall be subject to the City's approval.

- 6.4 As part of the City's annual budget approval process, TVC 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 Council (with or without modifications).
- 6.5 Once approved by Council, the annual budget of TVC may only be revised with the express consent of Council.

Audits

- 6.6 The external auditor for the City shall be the external auditor for TVC, and shall have all of the rights and powers of an auditor provided under the *Municipal Act, 2001*.
- 6.7 TVC shall be subject to audit by the City's Internal Auditor (or designate as identified by the City's Internal Auditor from time to time), as required by the City for any purpose including to ensure that amounts paid to TVC by the City are used for the exclusive purpose of promoting tourism.

TVC Business Plans

- 6.8 The creation and management of business plans will be the responsibility of the TVC Board.
- 6.9 As part of the City's annual budget approval process, the TVC Board will provide Council (through the City Clerk for distribution to the Mayor and Members of Council) by no later than March 31st of each year with a multi-year business plan.
- 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 TVC for the next financial year.

TVC Policies and Procedures

- 6.11 The TVC Board shall prepare corporate policies and procedures or adopt the City's policies and procedures. TVC shall maintain a log of such documents and make them available to the TVC Board, to TVC staff, to the City, and to the public.

TVC Revenue

- 6.12 TVC will be funded from the proceeds of the MAT approved by Council effective on April 1, 2019. The amount of revenues to be shared shall be determined in accordance to the Regulation 435/17 and shall be authorized by the City Treasurer.

6.13 Subject to Council approval and compliance with all applicable law, TVC 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.

TVC Debt

6.14 TVC shall not incur indebtedness without Council approval.

6.15 TVC shall not spend public funds unless said expenditures are included in the budget approved by Council.

TVC Purchasing

6.16 In order to protect the public interest, TVC shall prepare a corporate policy with respect to the purchasing of goods and services, and in doing so shall have regard to City purchasing policies.

Fiscal Year of TVC

6.17 The fiscal year of TVC shall terminate on the 31st day of December in each year. The first fiscal year of TVC shall terminate on the 31st day of December, 2019.

Dissolution of TVC

6.18 In the event of the dissolution of TVC:

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

Certain Assistance Prohibited

- 6.19 Without exception, TVC 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.

General Power to Make Grants

- 6.20 TVC 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*.

7.0 INTELLECTUAL PROPERTY (IP) ASSETS

- 7.1 Subject to Section 7.2, trademarks, copyrights and other IP rights related to TVC 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 TVC and consent to the use of these marks by TVC through a licensing agreement or other similar document.

8.0 PUBLIC ACCOUNTABILITY AND REPORTING

TVC Reporting to City

- 8.1 TVC shall submit to Council 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 TVC shall report to Council through the Committee of the Whole or such other committee as directed by Council.
- 8.3 TVC shall report to Council or committee at the call of the Mayor or Chair of the Committee of the Whole.
- 8.4 TVC shall make available all corporate finance related documents, information, and electronic files to the City Treasurer or his or her designate.

Open Meetings

- 8.5 The TVC Board shall conduct regular and open meetings, including an Annual General Meeting, pursuant to By-law No. 1. An annual calendar of meeting dates of the TVC Board and its committees may be posted on the City's website.

Third Parties

8.6 TVC 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.

8.7 This Agreement does not create a partnership or joint venture between the City and TVC.

8.8 In the event TVC seeks to formally communicate with any level of government or regulatory body with respect to a matter that may impact the City, TVC shall seek to provide the City with advance notice of such communication.

8.9 TVC shall identify proposed financial partners in its annual report and budget proposal to Council.

9.0 TERM AND TERMINATION

9.1 This Agreement is effective from the date first set out above.

9.2 This Agreement shall be in effect until such time as:

(a) TVC 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 TVC Board. Where the City terminates the Agreement under this clause the City shall work with TVC to ensure that financial commitments made by TVC pursuant to the annual budget approved by Council are properly addressed.

9.4 The City may terminate this Agreement by Council Resolution, upon providing notice to TVC of a material breach by TVC of the obligations, terms or conditions of this Agreement, and upon following TVC 30 days (or such reasonable time in relation to the type of breach) to remedy the breach.

9.5 If TVC breaches the terms of this Agreement, or if it is otherwise terminated, upon written request from the City Treasurer, any unspent other monies (including without limitation, any monies in TVC's bank account) from the City shall be immediately due and payable in full to the City, and other City assets shall also 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 TVC shall not assign this Agreement in whole or in part without the express written consent of Council.
- 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 TVC Board in the case of notice to TVC, 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 Vaughan
2141 Major Mackenzie Drive
Vaughan, ON L6A 1T1
Attention: City Clerk

Tourism Vaughan Corporation
2141 Major Mackenzie Drive
Vaughan, ON, L6A 1T1
Attention: Tim Simmonds, Chair of TVC Board

Insurance and Indemnification

- 10.9 TVC shall obtain directors and officers liability insurance for all directors and officers, including City Council Directors.
- 10.10 TVC shall obtain Crime Insurance for all staff of TVC.
- 10.11 TVC shall indemnify any person on the TVC Board or who is an officer of TVC, 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 wilful neglect or default or conduct outside the course and scope of his or her duties as a director or officer of TVC.

10.12 TVC 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

10.13 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

10.14 Directors and officers of TVC are deemed to be members for the purposes of the *Municipal Conflict of Interest Act*. TVC 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

10.15 Furthermore, the wholly-owned Corporation is deemed to be an institution for the purposes of the *Municipal Freedom of Information and Protection of Privacy Act*.

Territorial Operation of TVC

10.16 Pursuant to section 16 of the Regulation, the City agrees that TVC may operate within the boundaries of the City.

