

THIS OPERATING AGREEMENT made as of the ____ day of _____, 2025.

B E T W E E N:

CORPORATION OF THE TOWN OF NEWMARKET

(hereinafter the "**Town**")

- and -

**NEWMARKET TOURISM DEVELOPMENT
CORPORATION**

(hereinafter the "**NTDC**")

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

AND WHEREAS NTDC 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 Town is NTDC's sole Voting Member;

AND WHEREAS the Town and NTDC seek to work towards promoting and marketing Newmarket as a leading destination for tourism, overnight tourism, leisure and business travel;

AND WHEREAS the Town seeks to support NTDC in carrying out NTDC'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 Town and NTDC 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 Operating Agreement and all schedules attached hereto;
- (b) "**By-law No. 1**" means the corporate by-law attached hereto as Schedule "A", as it may be amended, restated or replaced from time to time;
- (c) "**Council**" means the Town's Mayor and Members of Council;

- (d) “**Council Resolution**” means a resolution of Council reached pursuant to the Town’s Procedural By-law;
- (e) “**MAT**” means the Municipal Accommodation Tax implemented by the Town pursuant to *Ontario Regulation 435/17 - Transient Accommodation Tax* being a regulation under the *Municipal Act, 2001*;
- (f) “**NTDC**” means Newmarket Tourism Development Corporation;
- (g) “**NTDC Board**” means the board of directors of NTDC;
- (h) “**Regulation**” means *Ontario Regulation 599/06 - Municipal Services Corporations* being a regulation under the *Municipal Act, 2001*;
- (i) “**Town**” means the Corporation of the Town of Newmarket;
- (j) “**Town Clerk**” means the duly appointed Clerk of the Town or their designate;
- (k) “**Town Treasurer**” means the duly appointed Director, Financial Services of the Town or their designate; and
- (l) “**Voting Member**” shall mean the Town in its capacity as the sole member of NTDC.

2.0 NEWMARKET TOURISM DEVELOPMENT CORPORATION (NTDC)

NTDC Compliance with all Applicable Law

- 2.1 NTDC 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 NTDC shall comply with all applicable law, including but not limited to:
 - (a) the *Not-for-Profit Corporations Act, 2010* and regulations thereunder;
 - (b) the *Municipal Act, 2001* and regulations thereunder; and
 - (c) employment legislation and regulations thereunder.

NTDC Corporate By-Law

- 2.3 NTDC 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, as it may be amended, restated, or replaced from time to time.
- 2.4 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

- 2.5 The Town as the Voting Member, will be responsible for selecting, electing and/or appointing directors on the NTDC Board and any officers in accordance with By-Law No. 1.

NTDC Corporate Governance Framework; NTDC Organization and Operations

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

3.0 GUIDING PRINCIPLES

- 3.1 NTDC shall be guided by the following guiding principles which function as guideposts in future decision-making throughout NTDC's lifecycle irrespective of any changes in leadership, goals, strategies and activities:
- (a) The NTDC will develop and implement tourism marketing strategies that reflect Newmarket's unique character, its cultural and built heritage, diverse communities, social and cultural traditions, recreational and sports assets and business development opportunities.
 - (b) The NTDC will take a leadership role in promoting and marketing Newmarket as a leading destination for tourism, leisure and business travel with a focus on promoting overnight stays;
 - (c) The NTDC will be a supportive partner of stakeholders and organizations including hotel operators, short-term rental operators, tourism venues and related service providers in Newmarket;

4.0 OBJECTIVES

- 4.1 NTDC shall strive to fulfil the following objectives while providing tourism promotion and tourism development services to the Town:

- (a) Assist in securing and executing the hosting and promotion of events that are deemed to be a regional, provincial, national and/or international draw;
- (b) Support the creation of tourism product development which brings new and innovative products, experiences and services to the market for tourists to enjoy;
- (c) Collect and disseminate information, including conducting targeted market research for purposes of identifying tourism and business travel opportunities in Newmarket

4.2 NTDC shall develop an implementation strategy and marketing plan within the initial two (2) year period of its existence in coordination with any Town plans and strategies, including but not limited to the Town's Community Brand Strategy.

5.0 TOWN ASSISTANCE TO NTDC

Financial Assistance

5.1 Subject to Council approval, the Town may provide financial assistance to NTDC. This is permitted under the Regulation. Section 15(1) of the Regulation confirms that notwithstanding restrictions in the *Municipal Act, 2001* on a municipality providing financial assistance to other corporations or commercial enterprises, there is an exception for the Town providing financial assistance to a wholly-owned corporation that is limited by its articles to providing services to the Town, which is the case with NTDC.

Human Resources

5.2 Pursuant to the Regulation, the Town may provide NTDC with the services of employees of or persons under contract with the Town:

- (a) from staff in any applicable departments including without limitation, Recreation and Culture, Economic Development, and Finance departments;
- (b) by Town staff establishing and supporting operations of any advisory committees established by NTDC; and
- (c) by Town staff establishing and supporting the operations of the Board of Directors.

Headquarters and Other Resources

5.3 The headquarters of NTDC shall be at 395 Mulock Drive, Newmarket, Ontario with respect to which the Town shall assist NTDC 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 below fair market value to minimize administration expenses, and to maximize strategy and program expenditures of NTDC.

Financial and Procurement Services

- 5.4 Financial and procurement services may also be provided by the Town to NTDC at or below fair market value.

Statement of Value

- 5.5 The Town Treasurer shall prepare a statement of the value of any grant to NTDC, or an estimate of the fair market value of any other assistance provided at less than fair market value to NTDC.

Service Agreement(s)

- 5.6 Assistance provided by the Town to NTDC may be provided pursuant to a service agreement or service agreements between the Town and NTDC as from time to time entered into by the Town and NTDC.

6.0 FINANCIAL MATTERS

NTDC Bank Account

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

NTDC Budget

- 6.3 The creation and management of an annual operating budget will be the responsibility of the NTDC Board for provision to the Town (through the Town Clerk for distribution to the Mayor and Members of Council) provided that each such budget shall be subject to the Town's approval.
- 6.4 As part of the Town's annual budget approval process, NTDC shall prepare and submit an annual budget for the next fiscal year to the Town Treasurer by no later than September 15th of the current budget year, unless otherwise specified by the Town Treasurer or designate, for consideration and approval by Council (with or without modifications).

- 6.5 Once approved by Council, the annual budget of NTDC may only be revised with the express consent of Council.

Audits

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

NTDC Business Plans

- 6.8 The creation and management of business plans will be the responsibility of the NTDC Board.
- 6.9 As part of the Town's annual budget approval process, the NTDC Board will provide Council (through the Town Clerk for distribution to the Mayor and Members of Council) by no later than March 31st of each year starting in 2026 with updates on progress in destination development and marketing.

NTDC Policies and Procedures

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

NTDC Revenue

- 6.11 NTDC will be funded from the proceeds of the MAT approved by Council on December 9, 2024. The amount of revenues to be shared shall be determined in accordance to the Regulation 435/17 and shall be authorized by the Town's Director, Financial Services.
- 6.12 Subject to Council approval and compliance with all applicable law, NTDC 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.

NTDC Debt

- 6.13 NTDC shall not incur indebtedness without Council approval.
- 6.14 NTDC shall not spend public funds unless said expenditures are included in the budget approved by Council.

NTDC Purchasing

- 6.15 In order to protect the public interest, NTDC shall purchase goods and services under the Town's purchasing policies.

Fiscal Year of NTDC

- 6.16 The fiscal year of NTDC shall terminate on the 31st day of December in each year. The first fiscal year of NTDC shall terminate on the 31st day of December, 2025.

Dissolution of NTDC

- 6.17 In the event of the dissolution of NTDC:
 - (a) the Town shall manage the wind-down process pursuant to applicable laws, regulations, and contracts, and the Town shall assume outstanding debt/liabilities and assets of NTDC; and
 - (b) after payment of all debts and liabilities, its remaining property shall be distributed and disposed of to the Corporation of the Town of Newmarket, as a municipal government and NTDC's sole Voting Member.

Certain Assistance Prohibited

- 6.18 Without exception, NTDC 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

- 6.19 NTDC shall have the general power to make grants to any person, group or body, including a fund, subject to any limitations imposed by the Town 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 NTDC may be registered with the Canadian Intellectual Property Office (CIPO) pursuant to the *Trademarks Act, Copyright Act*, and other applicable legislation.

7.2 The Town may register and own official marks related to NTDC and consent to the use of these marks by NTDC through a licensing agreement or other similar document.

8.0 PUBLIC ACCOUNTABILITY AND REPORTING

NTDC Reporting to Town

8.1 NTDC shall submit to Council an annual report including:

- (a) results of operations including information regarding major business development activities and accomplishments; and
- (b) financial statements prepared in a form acceptable to the Town Treasurer.

8.2 NTDC shall make available all corporate finance-related documents, information, and electronic files to the Town Treasurer or their designate.

Open Meetings

8.3 The NTDC 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 NTDC Board and its committees may be posted on the Town's website.

Third Parties

8.4 NTDC shall not indicate to third parties that it represents the interest, positions, resolutions or perspectives of Council or the Town, unless expressly authorized in writing by the Town to do so.

8.5 This Agreement does not create a partnership or joint venture between the Town and NTDC.

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

8.7 NTDC 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) NTDC has been dissolved; or
- (b) the Town terminates this Agreement; or
- (c) the parties mutually agree in writing to terminate this Agreement.

- 9.3 The Town, 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 NTDC Board. Where the Town terminates the Agreement under this clause the Town shall work with NTDC to ensure that financial commitments made by NTDC pursuant to the annual budget approved by Council are properly addressed.
- 9.4 The Town may terminate this Agreement by Council Resolution, upon providing notice to NTDC of a material breach by NTDC of the obligations, terms or conditions of this Agreement, and upon following NTDC 30 days (or such reasonable time in relation to the type of breach) to remedy the breach.
- 9.5 If NTDC breaches the terms of this Agreement, or if it is otherwise terminated, upon written request from the Town Treasurer, any unspent other monies (including without limitation, any monies in NTDC's bank account) from the Town shall be immediately due and payable in full to the Town, and other Town assets shall also be returned to the Town.

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 NTDC 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 NTDC Board in the case of notice to NTDC, or to the Town Clerk in the case of notice to the Town.
- 10.8 For the purpose of notification, contact particulars are:

Corporation of the Town of Newmarket
395 Mulock Drive
Newmarket, ON L3Y 4X7
Attention: Town Clerk

Newmarket Tourism Development Corporation
395 Mulock Drive
Newmarket, ON L3Y 4X7
Attention: Chair of the Board

Insurance and Indemnification

- 10.9 NTDC shall obtain directors and officers liability insurance for all directors and officers, including Town Council Directors, unless the Town waives this requirement where insurance coverage is already provided for.
- 10.10 NTDC shall obtain Crime Insurance for all staff of NTDC, unless the Town waives this requirement where insurance coverage is already provided for.
- 10.11 NTDC shall indemnify each Director or Officer or former Director or Officer of NTDC or an individual who acts or acted at NTDC's request as a director or Officer, or in a similar capacity, of another entity from and against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other action or proceeding in which the individual is involved because of that association with NTDC or with such other entity, provided that NTDC shall not indemnify any such individual unless:
- (a) the individual acted honestly and in good faith with a view to NTDC's best interests or other entity for which the individual acts or acted at NTDC's request as a director or officer, or in a similar capacity, as the case may be; and
 - (b) if the matter is a criminal or administrative proceeding that is enforceable by a monetary penalty, the individual had reasonable grounds for believing that their conduct was lawful.
- 10.12 NTDC hereby further indemnifies the Town and Council against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the Town in respect of any civil, criminal or administrative action or proceeding to which the Town 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 NTDC are deemed to be members for the purposes of the *Municipal Conflict of Interest Act*. NTDC 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 NTDC

- 10.16 Pursuant to section 16 of the Regulation, the Town agrees that NTDC may operate within the boundaries of the Town.

IN WITNESS WHEREOF the parties have shown their agreement by affixing hereto the signatures of their duly authorized signing officers.

**NEWMARKET TOURISM
DEVELOPMENT CORPORATION**

Name:
Position:

Name:
Position:

We have the authority to bind the Corporation

**CORPORATION OF THE TOWN OF
NEWMARKET**

Name:

Position:

Name:

Position: