

The Corporation of the City of Port Colborne

By-law No. _____

Being a by-law to authorize an Agreement between The Corporation of the City of Port Colborne and Niagara's South Coast Tourism Association and to repeal By-law 7016/54/22

WHEREAS subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001*, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS it is deemed expedient for The Corporation of the City of Port Colborne (the "City") to enter into an Agreement with Niagara's South Coast Tourism Association regarding the distribution and use of funding generated from the Municipal Accommodation Tax (the "Agreement");

AND WHEREAS it is appropriate to authorize the Mayor and City Clerk to execute the Agreement on behalf of the City.

Now, therefore, the Council of The Corporation of the City of Port Colborne enacts as follows:

1. The Agreement attached as Schedule "1" to this by-law, being an agreement between the City and Niagara's South Coast Tourism Association is hereby authorized and approved.
2. The Mayor and City Clerk are authorized to execute the Agreement authorized and approved under this by-law.
3. That this by-law shall come into force and effect on the day it is passed.
4. That By-law 7016/54/22 is hereby repealed as of the date and time of this by-law coming into effect.

William C. Steele
Mayor

Charlotte Madden
City Clerk

Schedule 1

Municipal Accommodation Tax Financial Accountability Agreement

This Agreement (the “Agreement”) dated this ____ day of November 2024

BETWEEN

THE CORPORATION OF THE CITY OF PORT COLBORNE
(hereinafter the “City”)

- and -

NIAGARA’S SOUTH COAST TOURISM ASSOCIATION
(hereinafter the “NSCTA”)

WHEREAS the City has passed a by-law imposing a Municipal Accommodation Tax (the “MAT”) pursuant to section 400.1 of the *Municipal Act, 2001* (the “Act”);

AND WHEREAS O. Reg. 435/17 under the Act requires a municipality collecting a Municipal Accommodation Tax to make payments to an eligible tourism entity;

AND WHEREAS Niagara’s South Coast Tourism Association meets the definition of an eligible tourism entity in O. Reg. 435/17 and whose mandate is to promote tourism in the City of Port Colborne;

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

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

Definitions

When used in this Agreement, the following terms will have the meanings ascribed to them below:

(a) **“Parties”** means The Corporation of the City of Port Colborne and Niagara’s South Coast Tourism Association.

Funding

1. Fifty percent (50%) of the net proceeds of the MAT collected by the City shall be deposited into a fund (the “Fund”) controlled by the NSCTA.
2. The monies in the Fund shall be used by the NSCTA for marketing, destination development, tourism product development, and tourism growth initiatives.

3. The City will not be obligated to provide additional funding to the NSCTA for the duration of this Agreement.

Relationship

4. The City recognizes the NSCTA as the City's eligible tourism entity. Nothing in this Agreement shall constitute the NSCTA a local board of the City, or constitute either the City or the NSCTA the agent of the other, or be deemed to authorize the City or the NSCTA to contract for or incur any obligation on behalf of the other.

Financial Accountability

5. The NSCTA shall keep separate financial records for the Fund and shall retain and preserve all documents, contracts, records, claims, and accounts that relate thereto for the Fund for a period of seven (7) years.
6. The NSCTA Board of Directors shall oversee the following:
 - (a) The collection, disbursement, and accounting of the monies in the Fund in consultation with City administration;
 - (b) The review and approval of all expenditures from the Fund;
 - (c) The preparation of an annual report to the Board on expenditures from the Fund;
 - (d) The preparation of an annual report to City administration on expenditures from the Fund;
 - (e) The hiring of professionals (e.g., auditors, lawyers) as required to assist in the management of the Fund; and
 - (f) The submission of annual audited financial statements to the City.
7. Upon written request from the City, the NSCTA shall provide the City, without expense to it, any information which is available to the NSCTA with respect to its annual budget or audited financial statements.
8. If the City has reasonable grounds for believing that any amount included in any preceding payment has not been expended in accordance with this Agreement, the NSCTA shall, upon reasonable notice from the City, make available at all reasonable times, and without expense to the City, all such documents, contracts, records, claims, and accounts for inspection and audit by the City or its auditors. If the City, during its inspection or audit of any of such documents, contracts, records, claims, and accounts determines that any payment made by the City to the Fund has been used by the NSCTA for any purpose other than specified in the herein Agreement,

the NSCTA, shall immediately upon request from the City, remit the amounts requested back to the Fund.

9. If the NSCTA establishes a funding relationship with other tourism related entities in the City of Port Colborne, the NSCTA Board will enter into an agreement with each tourism related entity that receives money from the Fund to ensure reasonable financial accountability.

Indemnification

10. The NSCTA shall indemnify and save harmless the City, its officers, employees and agents 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 wilful or negligent act, or attributable to anything done or omitted to be done by the NSCTA, its directors, officers, employees or agents arising from or pertaining to the receipt, disposition or refunding of the monies payable to it under this Agreement.

Term, Default and Termination

11. This Agreement shall be for a term of five (5) years from the date of execution by the Parties. The Agreement shall be automatically renewed on its expiration for additional five (5) year terms unless either party gives written notice to the other party that the Agreement will not be renewed prior to the commencement of the last year of the initial term or any renewal term.
12. All Parties may terminate this Agreement immediately in the event that the enabling statutory authority for the MAT is repealed or rescinded as to substantially limit or deprive the City of the ability to collect the MAT.
13. Any party may terminate this Agreement in the event of default by the other party, as specified in section 14, provided such default has not been remedied within sixty (60) days of receipt of written notice of default.
14. The following constitutes default under the terms of this Agreement, the disproof of which lies upon the NSCTA:
 - (a) The NSCTA 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;
 - (b) An order is made or resolution passed for the winding up or surrender of the NSCTA, or it is dissolved;
 - (c) The NSCTA ceases actual bona fide operation for a period of one year;

- (d) The NSCTA has knowingly submitted false and misleading information to the City; or
 - (e) The NSCTA is in breach of performance of, or compliance with, the terms, conditions, and obligations of this Agreement.
15. If an event of default as specified in section 14 occurs, or is not remedied within 10 business days after receipt by the NSCTA of notice of default, or a plan satisfactory to the City to remedy such event of default is not implemented within such period and fully and diligently carried out, the City may exercise either or both of the following remedies, in addition to any remedies otherwise available in this Agreement or at law, namely:
- (i) Terminate forthwith any obligation by the City to make further payments under this Agreement; and
 - (ii) Require the NSCTA to pay all or part of the payment at issue forthwith to the City.
16. The City shall have the option to terminate this Agreement in its sole discretion at any time upon giving written notice to the NSCTA not less than one year prior to the termination date.
17. On the termination of this Agreement, or upon any termination of the City's obligation to provide monies to the Fund, the NSCTA shall return any unspent monies in the Fund to the City.

Dispute Resolution

18. 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 through consultation and negotiation in good faith prior to commencing legal action.
19. Where the Parties consent to do so, they may elect to engage in formal arbitration to resolve any dispute which has arisen in respect of this Agreement.

Waiver of Breach

20. 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.

Confidentiality

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

Assignment

22. The NSCTA shall not assign any part of its rights or obligations under this Agreement to a third party without the City's prior written consent.

Amendments to Agreement

23. No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by both the City and the NSCTA.
24. In the event that a party proposes an amendment to this Agreement, they shall provide written notice in accordance with this Agreement, giving the other party 90 days to respond. In the event that an Agreement to amend or modify this Agreement is reached between the Parties, such amendment may only be made by written agreement signed by both Parties hereto.

Governing Law

25. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the Parties irrevocably submit to the exclusive jurisdiction of the courts of the Province of Ontario.

Severability of Provisions

26. 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.

Entire Agreement

27. This Agreement constitutes the entire agreement between the Parties and supersedes any prior agreements, understandings, negotiations, and discussions, whether oral or written, between the Parties with respect to the subject matter of this Agreement.

Binding Effect

28. This Agreement shall ensure the benefit of and be binding upon the Parties and their respective successors and (where permitted) assigns.

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

THE CORPORATION OF THE CITY OF PORT COLBORNE

Mayor William C. Steele

Charlotte Madden, City Clerk

NIAGARA'S SOUTH COAST TOURISM ASSOCIATION

Scott Luey, Chair

Bryan Boles, Treasurer