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

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 Acting 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 Acting City Clerk are authorized to execute the Agreement authorized and approved under section 1 of this by-law.

3. This by-law shall come into force and effect on the day it is passed.

_____
Mayor

_____
Acting City Clerk

Schedule 1

Municipal Accommodation Tax Financial Accountability Agreement

This Municipal Accommodation Tax Financial Accountability Agreement (the "Agreement") dated this _____ of August, 2022 between The Corporation of the City of Port Colborne (the "City") and Niagara's South Coast Tourism Association (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*.

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

WHEREAS the objective of Niagara's South Coast Tourism Association is to promote the City of Port Colborne as a tourism destination.

WHEREAS O. Reg. 435/17 requires a municipality and eligible tourism entity to enter into an agreement respecting reasonable 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
"MAT" means the Municipal Accommodation Tax, as defined in the Municipal Accommodation Tax By-law.

MAT
1. Fifty percent (50%) of the net proceeds of the MAT shall be deposited into a fund (the "Fund") controlled by the NSCTA.

Use of the Monies in the Fund
2. The monies in the Fund shall be used by the NSCTA for the promotion of tourism and the development of tourism products in the City of Port Colborne.

Management
3. Members of the NSCTA Board shall oversee the following:

   (1) The collection, disbursement and accounting of the Fund in consultation with City administration.

   (2) The review and approval of all expenditures from the Fund.

(3) The preparation of an annual report to the Board on expenditures from the Fund.

(4) The development of a funding allocation plan in support of the NSCTA's strategic marketing plan.

(5) The preparation of an annual report to City administration on expenditures and initiatives that have received monies from the Fund.

(6) The hiring of professionals (e.g., auditors, lawyers) as required to assist in the management of the Fund.

(7) The establishment and endorsement of priorities to generate incremental business and approve the application of funds.

NSCTA Board

4. The NSCTA Board will provide an annual audited statement of the Fund to the City as part of the audited financial statements submitted annually by the NSCTA to the City.

Indemnification

5. 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 willful 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 under this Agreement.

Release

6. The NSCTA on behalf of itself, its officers and employees releases the City, 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 NSCTA, its officers and employees may now have or hereafter can, shall or may have against the City and its representative arising from or pertaining to the making or refunding of the monies payable under this Agreement.

Financial Records

7. The NSCTA 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 four years for the Fund.

Inspection of Financial Records and Documents

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.

Provision of Information

9. 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 financial statements.

Distribution of the Monies from the Fund to Other Tourism Related Entities

10. If the NSCTA establishes relationships with other tourism related entities in the City of Port Colborne, the NSCTA Board must determine prior to distribution that any approved funds will be used for the promotion and development of tourism in the City of Port Colborne.

11. The NSCTA Board will enter into an agreement to ensure reasonable financial accountability with each tourism related entity that receives money from the Fund.

Return of Payments

12. 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.

Default

13. The following constitute events of default, the proof of which to the contrary lies upon the NSCTA:

    (1) 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;

    (2) An order is made or resolution passed for the winding up or for the surrender of the charter of the NSCTA, it forfeits its charter, or it is dissolved;

    (3) The NSCTA ceases actual *bona fide* operation for a period of 30 days;

    (4) The NSCTA has knowingly submitted false or misleading information to the City; and

    (5) The NSCTA is in breach of the performance of, or compliance with, any term, condition or obligation on its part to be observed or performed hereunder.

Remedies on Default

14. If,

(1) An event of default as specified in sub articles 13(1), (2), (3), or (4) occurs; or

(2) An event of default specified in sub article 13(5) occurs and 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 payments under this Agreement; and

(ii) Require the NSCTA to pay all or part of the payment at issue forthwith to the City.

Interim of Suspension of Payment

15. In the event that the City gives the NSCTA notice of default, the City shall have no obligation to make any further payments under this Agreement prior to the end of the period given to the NSCTA to remedy the event of default.

Waiver of Breach

16. 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.

Termination

17. This Agreement shall terminate upon the happening of one of the following events, whichever occurs first:

(1) An event of default as specified in sub articles 13(1), (2), (3), or (4) occurs;

(2) Notice of termination is given to the NSCTA by the City for the failure of the NSCTA to remedy, pursuant to article 14, an event of default specified in sub article 13(5);

(3) The enabling statutory authority for the Municipal Accommodation Tax is repealed or rescinded so as to substantially limit or deprive the City of the ability to collect the Municipal Accommodation Tax;

(4) The City and the NSCTA agree in writing at any time to the termination of this Agreement;

(5) The City gives the NSCTA 90 days' notice of the City's intention to terminate this Agreement; and

(6) Upon termination of this Agreement, the Fund balance, less legal and binding commitments will revert back to the City for distribution to another tourism related entity.

Severability of Provisions

18. 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.

Relationship

19. Nothing in this Agreement shall constitute the NSCTA a local board of the City, or constitute the City and the NSCTA general partners or joint ventures, 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.

Confidentiality

20. 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

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

Duration of Agreement

22. This Agreement commences on the date hereof and

(1) Continues in full force and effect for a period of two (2) years, subject to earlier termination of this Agreement as provided herein, and

(2) At the end of such two (2) year period, if this Agreement has not been terminated prior thereto, continues in full force and effect thereafter from year to year, subject to termination during any such year as provided herein.

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

Per: _____

NIAGARA'S SOUTH COAST TOURISM ASSOCIATION

Per: _____