

**THIS AGREEMENT MADE EFFECTIVE** on this \_\_\_\_ day of \_\_\_\_\_, 2018

**BETWEEN:**

**THE CORPORATION OF THE Town of Fort Frances**

(Henceforth identified as the "Town")

-and-

**The Rainy River Future Development Corporation**

(Henceforth identified as the "RRFDC")

(The Town and RRFDC shall each be referred to as a "Party"  
and shall be referred to together as the "Parties")

**RECITALS:**

- a. The Town adopted By-law INSERT he "By-law") to implement a Municipal Accommodation Tax (the "MAT") to generate funds to support tourism promotion and development that is intended to come into force as of January 1, 2019 and is to be assessed on certain types of transient accommodations sold within the Town of Fort Frances;
- b. The enabling legislation for the adoption of the By-law required that 50% of the net proceeds generated from the MAT be paid to an eligible not-for-profit tourism to be used for the exclusive purpose of tourism promotion and development;
- c. The By-law required that the Town negotiate and execute an agreement with the RRFDC who will act as the designated partner for the management of half of the net proceeds to be generated through the implementation of the MAT for the exclusive purpose of tourism promotion and development;
- d. RRFDC has as a core mandate the furthering of the development of tourism in and for the Town of Fort Frances;
- f. The Parties are now desirous of entering into this Agreement to allow the RRFDC to accept certain responsibility relative to tourism promotion and development that were previously the responsibility of the RRFDC by contract to the Town and reflect the additional responsibilities to be undertaken by TOWN and provide a framework for the designation of RRFDC as the eligible not-for-profit tourism RRFDC to which 50% of the net proceeds generated from the MAT will be paid.

## **ARTICLE 1.0: Municipal Accommodation Tax**

1.01 The Town is solely responsible for the collection and general administration of the MAT including all activities related to the collection, accounting, reporting, auditing, budgeting, legal, reconciliation of accounts, and any other general requirements such as participant engagement and general communication with participants.

1.02 The Town shall keep an amount consisting of 50 per cent of the amount determined using the formula,  $A - B$

in which,

“A” is the revenue from the tax received by the TOWN in respect of the fiscal year, and

“B” is the TOWN’s reasonable costs of collecting and administering the tax that are attributable to the fiscal year.

in a dedicated cost centre (henceforth identified as the “MAT Funding”) for the purpose of quarterly remittance to eligible tourism entities.

## **ARTICLE 2.0: Eligible Tourism Entity**

2.01 The RRFDC having obtained and maintaining such permits and approvals as re required by government and other authorities for the RRFDC to operate its business and meet its obligations under the agreement, the TOWN shall designate the RRFDC as an eligible tourism entity for the purpose of receiving and managing the MAT Funding.

2.02 The Parties understand that the relationship between them is that of independent contractors and this agreement shall not establish any relationship of partnership, joint venture, employment, franchise or agency between them. The RRFDC shall not hold itself out as partner, joint venturer, employee, franchisee, or agent of the TOWN and neither Party shall have the authority to bind the other, or incur obligations on the other party's behalf, without the other party's prior written consent.

## **ARTICLE 3.0: MAT Funding**

3.01 The TOWN will transfer the MAT funding to the RRFDC on a quarterly basis by the end of the month following the quarter.

3.02 The Parties understand that the MAT Funding made available to the RRFDC under this agreement is conditional upon the maintenance of the MAT and that, if the MAT does not generate the anticipated level of funding, the Town will not be obligated to make any additional payments to the RRFDC.

3.03 The RRFDC shall keep all MAT funding received from the TOWN segregated and funds should be used for the exclusive purpose of tourism promotion and development within the Town of Fort Frances or that benefits the Town of Fort Frances.

#### **ARTICLE 4.0: Use of MAT Funding**

4.01 The MAT Funding received by the RRFDC shall be used exclusively for purposes related to investments for tourism promotion and development in the Town of Fort Frances or that benefits the Town of Fort Frances.

4.02 The RRFDC board, or any of their delegated committees as determined by the RRFDC board, shall have exclusive responsibility for determining the use of MAT Funding within the scope of authorized projects.

4.03 The RRFDC shall establish a tourism advisory board whose mandate will be to recommend appropriate investment strategies for the use of the MAT Funding received by the RRFDC. The RRFDC will seek advice from the TOWN on key stakeholders and utilize the Town's brand materials

4.04 The RRFDC will incorporate all rebates, credits, refunds and interest income that it receives from the use of the MAT Funding into the component of its budget that is related to tourism promotion and development within the Town of Fort Frances in accordance with Canadian Public Sector Accounting Standards.

5.05 The RRFDC will use reasonable estimates of anticipated rebates, credits and refunds in its budgeting process. The RRFDC will use any rebates, credits, refunds and interest income that it receives from the use of the MAT Funding to provide services related to tourism promotion and development in the Town of Fort Frances.

4.06 The TOWN shall not be responsible for any commitments or expenditures that the RRFDC makes that are in excess of the MAT Funding available under this agreement, nor does this agreement commit the TOWN to provide additional funds to the RRFDC during or beyond the term of this agreement.

#### **ARTICLE 5.0: Audit Provisions**

5.01 The RRFDC shall retain:

- a. all records related to the RRFDC's performance of its obligations under this agreement for a period of at least seven years after this agreement ceases to be in effect, whether due to expiry or otherwise. The RRFDC's obligations under this section will survive if this agreement ceases to be in effect, whether due to expiry or otherwise.
- b. all financial records, invoices and other financially-related documents relating to the MAT Funding or otherwise to the services in a manner consistent with international financial reporting standards as advised by the RRFDC's auditor; and

- c. all non-financial documents and records relating to the MAT Funding or otherwise to the services in a manner consistent with all applicable laws.

5.02 The RRFDC will provide to the TOWN, in the form and within the time specified by the TOWN, the Reports that the TOWN requires for the purposes of exercising its powers and duties under this agreement or for the purposes that are prescribed under any applicable laws. For certainty, nothing in this section or in this agreement restricts or otherwise limits the TOWN's right to access or to require access to information relative to the uses of MAT Funding that are made in accordance with applicable laws.

5.03 The TOWN may audit all financial and related records associated with this agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the RRFDC as being related to tourism promotion and development.

5.04 The RRFDC shall at all times during the term of the agreement and for a period of seven (7) years after the end of the agreement, keep and maintain records of the work performed pursuant to this agreement including proper records of quotations, contracts, correspondence, invoices, vouchers, timesheets, and other documents that support actions taken by the RRFDC.

5.05 The RRFDC shall, at its own expense, make such records (including copies and extracts of records as required) available for inspection and audit by the TOWN at all reasonable times and without prior notice.

5.06 The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between the RRFDC and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfilment of the TOWN's obligations to the TOWN under this agreement.

5.07 Costs of any audits conducted under the authority of this agreement and not addressed elsewhere will be borne by the TOWN unless the audit identifies findings that would constitute a material breach of the agreement with the RRFDC. The RRFDC shall reimburse the TOWN for the total costs of any audit that identifies a material breach of this agreement by the RRFDC.

5.08 This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the TOWN may have by Federal, Provincial, or Municipal law, whether those rights, powers, or obligations are express or implied.

## **ARTICLE 6.0: Net Income and Investment of Operating Surplus**

6.01 The RRFDC will be entitled to retain any net income or operating surplus of income over expenses earned in a funding year, subject to any in-year or year-end adjustments to MAT Funding.

6.02 Any net income or operating surplus retained by the RRFDC shall be invested with consideration of risk and at the most favourable rate of interest available to it at the time, while ensuring that its liquidity requirements are being met and, when exercising its discretion to invest, the RRFDC shall take into consideration the following priorities:

- a. the need to preserve capital;
- b. liquidity; and,
- c. the return of investment.

## **ARTICLE 7: Event of Default**

7.01 The TOWN may note the RRFDC to be in default of this agreement where:

- a. the RRFDC fails to apply the MAT Funding for purposes related to tourism promotion and development within the Town of Fort Frances;
- b. The TOWN fails to comply with any other provisions or requirements under this Agreement; or,
- c. The TOWN decides to suspend or cease all its activities in relation to the permitted uses for the MAT Funding.

7.02 Where the RRFDC is found to be in breach of this agreement, the TOWN may provide notice in writing to the RRFDC providing details about the breach and specifying a period within which the breach must be rectified (the "Notice").

7.03 Where the RRFDC disputes any matter set out in the Notice, the Parties will discuss the circumstances that resulted in the Notice and the RRFDC may make representations to the TOWN about the matters set out in the Notice within 14 days of receiving the Notice.

7.04 In making a determination about the matters set out in the Notice, the TOWN will act reasonably and will consider the impact, if any, that a recovery of MAT Funding will have on the RRFDC's ability to meet its obligations under this agreement and will take into consideration the representations made by the RRFDC about the matters set out in the Notice and the TOWN will advise the RRFDC of its decision in writing.

7.05 Where the breach is not rectified within the time specified in the Notice, the TOWN may terminate this agreement immediately without further notice to the RRFDC and the RRFDC shall repay any of the MAT Funding not spent or applied towards the purpose of tourism promotion and development within the Town of Fort Frances within the time specified by the Town.

7.06 MAT Funding recoveries, if any, will occur in accordance with the timing set out in the TOWN's decision. No recovery of MAT Funding will be implemented earlier than 30 Days after the delivery of the Town's decision on the matters set out in the Notice.

7.07 If the TOWN requests a re-payment by the RRFDC of any MAT Funding in accordance with this agreement, the amount shall be deemed to be a debt owing to the TOWN by the RRFDC.

7.08 The TOWN may adjust future MAT Funding or other funding instalments payable to the RRFDC to recover any amounts owed or may, at its discretion, direct the RRFDC to pay the amount owing to the TOWN. The RRFDC will promptly comply with any such direction.

7.09 The TOWN may charge the RRFDC a prescribed rate of interest on any amount owing by the RRFDC that is reflective of the current interest rate charged by the TOWN on accounts receivable.

#### **ARTICLE 8: Protection of Personal Information**

8.01 The Parties are aware, and accept, that the provision of this financial support to the RRFDC is a matter of public record.

8.02 Where applicable, the RRFDC shall ensure that any personal information, data, or confidential information belonging to the TOWN which is provided to or hosted by the RRFDC, or to which the RRFDC obtains access in the course of this agreement, remains in Canada unless its removal is expressly permitted in writing by the TOWN.

8.03 The RRFDC shall comply with all laws pertaining to the protection of privacy and personal information to which the RRFDC is subject and, where the TOWN is subject to a request for the disclosure of any record of information created as a result of this agreement (the "Records"), the RRFDC shall provide the TOWN with information, cooperation and assistance, as may be requested by the TOWN, in order to enable the TOWN to comply with any legal requirements to which the TOWN is subject under any laws including the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56 ("MFIPPA"), the Personal Health Information Protection Act, 2004, S.O. 2004, c. 3 ("PHIPA"), the Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5 ("PIPEDA"), the regulations and common law pertaining to protection of privacy and personal information which is required to be protected including those pertaining to the protection of personal, healthcare, or insurance information.

8.04 The TOWN and the RRFDC acknowledge and agree that the TOWN has a greater interest in all Records and, where the RRFDC has been instructed by the TOWN not to make the Records or any part thereof available to the public, and the RRFDC receives a request under MFIPPA, PHIPA, PIPEDA, or any other legislation, as the case may be, for access to such Records, the RRFDC will transfer the request and return the Records to the TOWN pursuant to the transfer provisions of section 18 of MFIPPA.

8.05 The RRFDC will not purge or otherwise destroy any Records belonging to the TOWN unless instructed to do so by the TOWN. The TOWN may, from time to time, request that the RRFDC purge specified Records. Upon receipt of such a request the RRFDC will supply the TOWN with a copy of the specified Records in a suitable format and on a suitable medium. After receipt of these Records by the TOWN, the RRFDC will destroy all copies of the Records in their possession and shall provide written confirmation of the destruction to the RRFDC.

ARTICLE 9.0: Miscellaneous

9.01 The RRFDC shall not transfer or assign any of the rights and obligations under this agreement without the prior written approval of the TOWN.

9.02 This agreement constitutes the entire agreement between the Parties and supersedes any previous agreement or understandings between them.

9.03 This agreement cannot be amended unless the amendment is in writing and signed by the Parties.

9.04 When this agreement ceases to be in effect, whether due to expiry or otherwise, the RRFDC will provide to the TOWN all such reports as the TOWN may reasonably request relating to, or as a result of, this agreement ceasing to be in effect.

9.051 RRFDC shall grant to the TOWN, at no cost, a perpetual right to use and reproduce any materials produced as a result of the MAT Funding ("the Material").

The undersigned have read, fully understands and agree to be bound by this agreement and the terms and conditions contained herein.

**THE CORPORATION OF THE TOWN OF FORT  
FRANCES**

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Per:

(I have authority to bind the Corporation)

**THE RAINY RIVER FUTURE DEVELOPMENT  
CORPORATION**

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Per:

(I have authority to bind the Corporation)

