

**THE CORPORATION
OF THE TOWN
OF NIAGARA-ON-THE-LAKE
BY-LAW NO. 5258-20**

A BY-LAW TO AUTHORIZE A SERVICES AGREEMENT BETWEEN
THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE
AND HONK MOBILE INC. (Parking Payment by Mobile Devices)

BE IT ENACTED AS A BY-LAW OF THE CORPORATION OF THE TOWN
OF NIAGARA-ON-THE-LAKE as follows:

1. THAT the Agreement dated the 30th day of March, 2020 between The Corporation of the Town of Niagara-on-the-Lake and Honk Mobile Inc. be and the same is hereby approved; and,
2. THAT the Lord Mayor and Town Clerk be authorized to affix their hands and the Corporate Seal; and,
3. THAT this by-law shall come into force and take effect immediately upon the passing thereof.

**READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 24TH DAY OF
AUGUST, 2020**

LORD MAYOR BETTY DISERO

TOWN CLERK PETER TODD

SERVICES AGREEMENT

THIS AGREEMENT (this “**Agreement**”) is made as of the 21 August 2020 by and between:

HONK MOBILE INC.
 (“**Honk**”)

-and-

THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE
 (“**Parking Operator**”)

- A. Parking Operator owns and/or operates one or more vehicle parking facilities (the “**Facilities**”).
- B. Honk owns proprietary software (the “**Honk Software**”) that allows Parking Operator and Honk to market, manage and promote the Facilities and for motor vehicle operators that have signed up with Honk (“**Parkers**”) to search, find, reserve and pay for parking at the Facilities.
- C. Parking Operator wishes Honk to enable payment for use of the Facilities and for Honk to market and promote the Facilities to Parkers.

Honk and Parking Operator agree as follows:

1. **Scope of Services**

- 1.1. Honk will be permitted to promote, sell and process payments for parking spaces at the Facilities through the Honk Software (the “**Services**”) in accordance with the prices and amounts determined by Parking Operator.
- 1.2. Honk will collect and manage all revenues and parking fees for those parking spaces in the Facilities sold through the Honk Software.
- 1.3. Honk will produce individual confirmation codes to ensure that each sale is unique and legitimate, and Honk will use commercially reasonable efforts to address all customer service issues surrounding the use of the Services at the Facilities.

2. **Fees**

- 2.1. Honk will charge the Parking Operator fees for the Services (“**Fees**”) as are more fully set out in Schedule “A”.

3. **Parking Operator Obligations**

- 3.1. Parking Operator will specify the prices, quantities and availability of the Facilities the Services.
- 3.2. Parking Operator may add or remove individual Facilities and may adjust the available number of spaces and prices for all spaces at the Facilities for any given day at any time using the Honk Software, provided that: (a) Parking Operator will not be permitted to reduce the available number of spaces for any given day to a number less than the number of spaces previously reserved by Honk customers for such day; and (b) Parking Operator will not be permitted to increase the price of spaces that have already been reserved by Honk customers for a given day.
- 3.3. Parking Operator will train employees of the Facilities how to handle reservations from the Honk Software.

4. **Terms of Service**

- 4.1. Use of the Honk Software

- 4.1.1. Parking Operator acknowledges that Parkers will use the Honk Software for parking at the Facilities. Each such Parker, as part of the process of signing up with Honk, will have consented to the Honk Terms of Use (www.honkmobile.com/terms) and Privacy Policy (www.honkmobile.com/privacy-policy).
- 4.1.2. The information, tools, resources and the functionality contained in or delivered by the Honk Software are designed to improve Parking Operator's administration of its Facilities, but are not without risk. Parking Operator acknowledges and accepts all responsibility for use of the Honk Software. Parking Operator also acknowledges that the Honk Software depends on the Internet which is not perfect and which does not operate without interruption. In the event that certain Facilities operated by Parking Operator are located underground or constructed or situated in such a way that telecommunications are impaired, Parking Operator recognizes that access to the Honk Software may be compromised.
- 4.2. Materials and Information Provided by Parking Operator
 - 4.2.1. Parking Operator represents that it has full ownership or has obtained all the proper licenses and/or permissions to use, display and publish all materials, information, data, personal information and other items provided to Honk pursuant to this Agreement (the "**Materials**").
 - 4.2.2. Honk will rely on the Materials when operating the Honk Software, and Parking Operator acknowledges that, to the extent any Materials are incorrect, the efficacy of the Honk Software will be diminished.

5. Accounting

Honk will keep complete and accurate records of all financial transactions relating to its performance under this Agreement. Accounting periods will be on a monthly basis. All amounts due to Parking Operator will be paid within twenty (20) days after the close of each monthly accounting period, accompanied by the appropriate report of income and expenses. Honk will provide to Parking Operator copies of all financial transactions upon request, and will comply with all reasonable requests for clarification in order to validate the information provided.

6. Intellectual Property Rights

Parking Operator does not have the right to, and will not, reverse engineer, recreate, copy, license, sublicense, create derivative software or other derivative works from, sell, rent, lease, loan, distribute, transfer, operate a service bureau using, or otherwise deal with the Honk Software or any part thereof. It may use the Honk Software only for administration of the Facilities. Honk owns and will own all intellectual property rights in the Honk Software.

7. Limitation of Liability

- 7.1. Due to the imperfect nature of the Internet and software generally, Honk does not represent or warrant that the use of the Honk Software will always be uninterrupted or error-free.
- 7.2. Honk's liability to Parking Operator and any third party for losses, damages, costs and expenses, whether in strict liability, negligence, contract, or otherwise in respect of this Agreement and the Honk Software, on the basis of any legal theory whatsoever, will be limited to direct damages actually incurred by Parking Operator, to a maximum of the amount paid by Parking Operator to Honk in the particular calendar month in which the Honk Software has been provided.
- 7.3. Neither party will be liable to the other party for any lost profits, indirect, contingent, consequential, incidental, special, aggravated, punitive, exemplary, or other such similar damages whatsoever, even if the responsible party foresaw, knew or should have known of the possibility of such damages.

8. Term and Termination

- 8.1. The term of this Agreement will be for five (5) years and will automatically renew for successive one (1) year terms unless terminated in accordance with this Section 8.
- 8.2. Termination
 - 8.2.1. Parking Operator may terminate this Agreement immediately upon a default by Honk.
 - 8.2.2. Honk may terminate this Agreement immediately upon a default by Parking Operator.
 - 8.2.3. Either Party may terminate this Agreement for convenience by providing the other party with 30 days' prior written notice or such shorter period as may be mutually agreed upon.
- 8.3. Any notice of intention to terminate this Agreement must be by written notice from the terminating party to the other party setting out, as the case may be, the default or other cause that has given rise to the right of termination.
- 8.4. Upon termination, the right of Parking Operator to access or use the Honk Software immediately ceases. Honk will continue to have the right, notwithstanding such termination, to carry on its business using the information obtained through operation of the Honk Software. Neither party will have a right of action against the other merely by reason of a termination of this Agreement.

9. Notices

All notices, requests, approvals, consents and other communications required or permitted under this Agreement will be addressed as follows:

<p>if to Honk:</p> <p style="text-align: center;">Honk Mobile Inc. 90 Eglinton Ave. E., Suite 600 Toronto, ON M4P 2Y3</p> <p>Email: notices@honkmobile.com</p>	<p>if to Parking Operator:</p> <p style="text-align: center;">The Corporation of the Town of Niagara-On-The-Lake 1593 Four Mile Creek Road, PO Box 100, Virgil, ON L0S 1T0</p>
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and will be sent by courier or by email transmission (confirmation of sending to be retained by sender) and the party sending such notice will email to confirm receipt.

10. Force Majeure

Neither Honk nor Parking Operator will be held liable for any delay or omission in performance of their duties under this Agreement due to causes beyond their reasonable control, including without limitation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, or riots.

11. Indemnification

Honk agrees to promptly notify Parking Operator of any civil or criminal actions filed against Honk or of any notice of violation from any federal or provincial agency, or of any claim as it relates to the Services provided. Parking Operator, upon receipt of such notice, will have the right at its election to defend any and all actions or suits or to join in defense.

12. Capacity

Parking Operator represents and warrants that it has obtained or will obtain all licenses and permits necessary to enter into this Agreement to and operate the Facilities as parking facilities.

13. Confidentiality

Parking Operator and Honk agree to treat all information furnished, or to be furnished, by or on behalf of the other Party and information analyses, summaries and other work product derived from such information (collectively, the “**Information**”) in accordance with the provisions of this section 9 and to take, or abstain from taking, all actions set forth herein. The Information will be used solely in connection with the consummation of this Agreement between Honk and Parking Operator and the operation of the Program, and will be kept confidential by Parking Operator and Honk and each Party’s officers, directors, employees, representatives, agents and advisors; provided, however, that (a) any of such Information may be disclosed to officers, directors, employees, representatives, agents and advisors who need to know such information to execute this Agreement and/or effectively operate the Program (so long as such persons only use or disclose such Information in the manner permitted in this Section), and (b) such information may be disclosed to the extent required by law, and (c) upon the request of one Party, the other Party will destroy or return to all material containing or reflecting the Information.

14. Severability

Whenever possible, each provision of this Agreement will be interpreted and construed to be valid under applicable law, but if any provision of the Agreement is found to violate applicable law, the violating provision will be ineffective only to the extent that it violates the law, without invalidating the remainder of the section containing the violating provision or any other provisions or sections of this Agreement.

15. Choice of Law

The Agreement will be governed and interpreted based on the laws of the Province of Ontario.

16. Survivability

Sections 13, 14, and 15 of this Agreement and this section 16 will survive the termination of this Agreement.

17. Assignment

Neither Party may assign or delegate this Agreement, in whole or in part, to any third Party without the written consent of the other Party, except that either Party may assign this Agreement to a successor in interest in connection with a merger, acquisition, or sale of all or substantially all of such Party's business or assets to which this Agreement pertains. This does not apply to assignment to an affiliate, parent, sister company or subsidiary of Parking Operator. Any attempted assignment in violation of the foregoing is void.

18. Entire Agreement

This Agreement represents the full and complete understanding of the Parties and supersedes any and all prior agreements.

[Remainder of this page intentionally left blank]

SERVICES AGREEMENT SIGNATURE PAGE

HONK MOBILE INC.

**THE CORPORATION OF THE TOWN OF
NIAGARA-ON-THE-LAKE**

Per: _____

Per: _____

Name: _____

Name: _____

Title: _____

Title: _____

Per: _____

Name: _____

Title: _____

We have the authority to bind the
Corporation

[Remainder of this page intentionally left blank]

SCHEDULE A – FEES¹

On-Demand Transaction Fees	Daily Transient \$0.25 Monthly Permits \$2.50
HonkTAP Fees	Production & Fabrication (per unit) \$250.00* Service, Maintenance & Support (per unit per month) \$25.00 *Waived until August 31, 2020 – Covid Initiative
Integration Fees	Per Integration \$1500
Credit Card Processing Fees	Visa & MasterCard 2.99% American Express 3.99% Other 3.99% PayPal 2.90% + \$0.30
Payment to Parking Operator	<p>Parking Operator will receive the Net Receipts of each transaction, defined as all sums collected by Honk, less: (i) On-Demand Transaction Fees; (ii) Advance Reservation Fees; (iii) HonkTAP Fees; (iv) Credit Card Processing Fees; and (v) all refunds, discounts, chargebacks, chargeback fees or allowances made by either Honk or Parking Operator. Honk will deposit the Net Receipts to a bank account designated by Parking Operator (as identified on Schedule B – Direct Deposit Agreement), on a on a monthly basis, within 20 days after the end of the calendar month.</p> <p>Parking Operator is solely responsible for the collection and remittance to the appropriate authority of any applicable taxes due from the Net Receipts received under this Agreement.</p>

¹ All Fees are net of taxes & shipping costs.

SCHEDULE B - DIRECT DEPOSIT AGREEMENT

Authorization Agreement

I hereby authorize _____ to initiate automatic deposits or withdrawals to my account in respect of its Fees at the financial institution named below.

Account Information

Name of Financial Institution: _____

Transit Number _____

Institution Number: _____

Account Number: _____

Signature

Authorized Signature (Primary): _____ Date: _____

Authorized Signature (Joint): _____ Date: _____

Please attach a voided cheque or deposit slip along with this form