

Bill No. 5
2024

By-law No.

A by-law to authorize a Purchase of Services Agreement between The Corporation of the City of London and the London Economic Development Corporation; and to authorize the Mayor and City Clerk to execute the Agreement.

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 London (the "Corporation") to enter into a Purchase of Services Agreement with the London Economic Development Corporation for the delivery of economic development services (the "Agreement");

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

AND WHEREAS section 23.1 of the *Municipal Act, 2001* provides that sections 9 and 10 of that Act authorize a municipality to delegate its powers and duties to a person;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Purchase of Services Agreement attached as Schedule "A1" to this by-law, being a Purchase of Services Agreement between the Corporation of the City of London and the London Economic Development Corporation for the delivery of economic development services is authorized and approved.
2. The Deputy City Manager, Planning and Economic Development, and their written designates, if any, are delegated the power to administer the Agreement attached as Schedule 'A1' to this by-law.
3. The Mayor and the City Clerk are authorized to execute the Purchase of Services Agreement authorized and approved under section 1 of this by-law.
4. This by-law shall come into force and effect on January 1st, 2024 subject to the provisions of PART VI.1 of the *Municipal Act, 2001*.

PASSED in Open Council December 19, 2023 subject to the provisions of PART VI.1 of the *Municipal Act, 2001*.

Josh Morgan
Mayor

Michael Schulthess
City Clerk

First reading – December 19, 2023
Second reading – December 19, 2023
Third reading – December 19, 2023

Schedule "A1"

PURCHASE OF SERVICES AGREEMENT

THIS AGREEMENT with effect as of the 1st day of January 2024

BETWEEN:

THE CORPORATION OF THE CITY OF LONDON
(the "Corporation")

- AND -

LONDON ECONOMIC DEVELOPMENT CORPORATION
(the "LEDC")

WHEREAS the LEDC was incorporated by Letters Patent as a corporation without share capital in 1998;

AND WHEREAS the objects for which LEDC was incorporated are set out in its Letters Patent, and include, for example, "To promote economic development with the co-operation and participation of the community by encouraging, facilitating and supporting community strategic planning and increasing municipal self-reliance, investment and job creation within the community"; "To identify and support existing and emerging London business clusters and skill bases"; "To identify businesses and services not currently existing in London and recruit them in order to provide local support and suppliers for existing business clusters";

NOW THEREFORE IN CONSIDERATION OF their respective covenants and agreements herein contained and subject to the terms and conditions herein set out, the Corporation and the LEDC covenant and agree each with the other as follows:

1. **Duration of Agreement.** The term of this Agreement (herein referred to as "the Term") commences on January 1, 2024, and continues until December 31, 2027, subject to renewal by agreement of both parties.
2. **Termination of 2020 Agreement.** The Purchase of Services Agreement between the Corporation and the LEDC, as amended, dated January 1, 2020, expressed to be in force until December 31, 2023, is terminated upon this Agreement coming into effect on January 1, 2024.
3. **Services Being Purchased and Provided.** The Corporation agrees to purchase from the LEDC and the LEDC agrees to provide to the Corporation the following broadly described economic development services and, in order to provide such services, the LEDC shall:
 - a. act as the primary economic development body on behalf of the Corporation;
 - b. attract new businesses and jobs to the city
 - i. Metrics include and may change from time to time at the request of the Corporation:
 1. number of investment missions, including regional investment promotions
 2. number of attraction files, including new businesses and jobs attracted
 3. number of site selection tours
 - ii. LEDC data to support the metrics as outlined in Council's Strategic Plan:
 1. number of jobs created,
 2. number of productions filmed in London,
 - c. support the retention and expansion of existing businesses in London
 - i. Metrics include and may change from time to time at the request of the Corporation:
 1. number of active retention and expansion files
 2. number of jobs retained
 3. number of companies worked with
 4. number of referrals made
 - d. develop and connect the workforce to meet the needs of businesses and job seekers
 - i. Metrics include and may change from time to time at the request of the Corporation:
 1. number of external job fairs, including number of companies participating, number of open positions, and an estimate of the number of job seekers in attendance
 2. number of employer and job seeking consultations

3. number of activities to support connections of students to business
 4. number of activities to support connections of employers to employment and other training agencies
- e. continue working relationships with partner community organizations and city staff to support economic development initiatives in London, such as the Industrial Lands Development Strategy and the Core Area.
 - f. may provide funding with respect to Community Improvement Plans (CIP) under section 28 of the *Planning Act* and section 365.1 of the *Municipal Act, 2001* that focus on the enhancement of economic development opportunities within the Community Improvement Project Areas.
 - g. from January 1, 2024, to December 31, 2024, and thereafter annually, subject to budget approval, and only on the prior written annual request of the Deputy City Manager, Planning and Economic Development as directed by Council, on an annual basis, support the development and implementation of London's Film Strategy, focused on funding and advocacy, marketing and promotion, attraction, growth and retention, and workforce development.

4. Other Reporting and Liaison Requirements.

- a. The LEDC shall provide annual updates to Municipal Council and/or a Committee of Council, which include data on investments, labour force, trends and the overall state of the local economy, as well as the services and associated metrics as set out in Section 3.
- b. The LEDC shall prepare and submit to the Corporation's Deputy City Manager, Planning and Economic Development or written designate ("Deputy City Manager") the following:
 - i. Financial Statements: In a form and content satisfactory to the Corporation, the LEDC shall provide the following financial statements to the Corporation, on or before the dates set out below, or on such other date as agreed to in writing by the Corporation:
 1. Audited Financial Statement – due on or before March 31st annually. The Audited Financial Statement shall be signed by the LEDC's auditor.
 - ii. Consolidated By-laws: If requested by the Deputy City Manager, Planning and Economic Development, the LEDC shall provide a consolidation of its by-laws or Board confirmation that by-laws are consolidated, to the Corporation on or before the end of the first year of the Agreement, or on such other date as agreed to in writing by the Corporation.
- c. As required by the Deputy City Manager, Planning and Economic Development, the LEDC President and Chief Executive Officer shall participate in joint meetings at the request of the Deputy City Manager with:
 - i. the Deputy City Manager, Planning and Economic Development;
 - ii. the London Community Small Business Centre's Executive Director; and
 - iii. the TechAlliance of Southwestern Ontario's Chief Executive Officer.
- d. The LEDC shall prepare and submit strategies, metrics, and targets by such date and in such form as the Corporation may prescribe to support Municipal Council's Strategic Plan.
- e. The LEDC shall prepare and submit budget documents and annual business plans at the request of the Corporation by such date and in such form as the Corporation may prescribe.
- f. For the purpose of discussing with the Corporation and keeping it informed on a timely basis of the success of the LEDC in providing the services set out in this Agreement and to maintain good working relationships, the LEDC and the Corporation shall maintain ongoing liaison as follows:
 - i. the primary mechanism for providing updates to the Mayor and Deputy City Manager, Planning and Economic Development will be through the regular attendance of the Mayor, and the Deputy City Manager at the LEDC Board of Directors meetings; and
 - ii. the President and Chief Executive Officer of the LEDC shall meet regularly with the Corporation's Deputy City Manager, Planning and Economic Development or designate (and from time to time with the Deputy City

the Deputy City Manager, Planning and Economic Development as directed by Council, for the services in section 3(g);

and payments under subsections 9 a) and 9 b) are subject to the below and the parameters contained in Sections 3 and 4:

- i. the actual amount paid by the Corporation to the LEDC for services rendered during the period is subject to Municipal Council's approval of the Corporation's budget;
 - ii. one-twelfth of the amount mentioned thereafter, or such other proportion as may be agreed upon, shall be paid monthly based on an invoice for payment submitted by the LEDC to the Corporation containing such particulars or accompanied by such supporting information as the Corporation may require;
 - iii. amounts paid by the Corporation shall be for the services specifically purchased by the Corporation consistent with the Corporation's Strategic Plan and/or Multi-Year Budget;
 - iv. the amounts mentioned above shall be adjusted to reflect the addition, elimination, transfer or variance to the economic development services agreed upon from time to time by the Corporation and the LEDC; and"
 - v. LEDC shall make reasonable best efforts to leverage funding through other sources of funding available through other levels of government and other funding opportunities, for example, Skills Development Fund.
10. **Refund of Payment.** The LEDC shall refund to the Corporation any amount requested by the Corporation should the Corporation, during its inspection of monthly invoices or audited financial statements, determine that any payment by the Corporation to the LEDC has been used by the LEDC for any purpose other than that for which the payment was made.
11. **Illegality.** The LEDC shall forthwith refund any payment by the Corporation to the LEDC upon demand by the Corporation in the event that the Corporation is at any time adjudged by a court to have assisted directly or indirectly any commercial enterprise by reason of the payment being a bonus in aid thereof contrary to the *Municipal Act, 2001*.
12. **Code of Conduct.** The LEDC shall adopt a Code of Conduct similar to the Code of Conduct for Members of the Municipal Council.
13. **Governance.** The LEDC agrees and undertakes to do the following:
 - a. maintain the Mayor as a member of the LEDC's Nominating Committee (at the discretion of the Mayor);
 - b. give notice of, and invite the Corporation's Deputy City Manager, Planning and Economic Development to attend, meetings of the LEDC's Board of Directors;
 - c. ensure that a review of the LEDC's President and Chief Executive Officer's performance is conducted annually by the Board of Directors of the LEDC, and that the view of the Corporation is sought in the preparation of such performance review.
14. **Prospective Directors.** The LEDC's Board of Directors shall ensure that its Nominating Committee guidelines include seeking out representatives of the London business and educational communities who are committed to the growth and wealth creation of the community and who can provide non-conflicted guidance to the board and management of the LEDC.
15. **LEDC's Human Resources.** The LEDC shall be the direct employer of its own human resources, with an organizational structure, staff complement, and salaries and benefits determined by the LEDC.
16. **LEDC's Corporate Services.** The LEDC shall be responsible for its own corporate services such as, but not limited to, payroll and benefits administration, banking, accounting and financial management, legal, purchasing, printing, computers and office technology, human resource management, mail/courier, office space, furniture, fixtures and supplies. The Corporation is prepared to provide any of these services to the LEDC at the LEDC's expense.
17. **Registered Mark License Agreement.** The Registered Mark License Agreement dated January 28th, 1999 between the Corporation and the LEDC, which gives the LEDC a non-exclusive, non-assignable License to use the Corporation's registered tree logo is continued for the term of this Agreement.
18. **Release by the LEDC.** The LEDC on behalf of itself, its officers and employees releases the Corporation, its officers, councilors, and employees and their respective heirs, executors,

administrators, successors and assigns (herein called the "Corporation and its Representatives") 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 every nature whatsoever which the LEDC, its officers and employees may now have or hereafter can, shall or may have against the Corporation and its Representatives arising from or pertaining to the making or refunding of the Fee as the case may be.

19. **Indemnification by the LEDC.** The LEDC shall indemnify and save harmless the Corporation and its Representatives 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 attributed to anything done or omitted to be done by the LEDC, its directors, officers, employees or agents arising from or pertaining to the receipt, disposition or refunding of the Fee by the LEDC, as the case may be.
20. **Indemnification by Corporation.** The Corporation shall indemnify and save harmless the LEDC, its directors, officers, employees and agents, and their respective heirs, executors, administrators, successors and assigns from and against all claims, demands, losses, costs, damages, actions, suits or other proceedings by whomsoever made, sustained, brought or prosecuted in any manner or attributable to anything done or omitted to be done by the Corporation, its officers, employees or agents, arising from or pertaining to the late payment or nonpayment of any installment of the Fee except where such late payment or nonpayment is permitted by this Agreement.
21. **Insurance by the LEDC.** Throughout the term of this Agreement, LEDC agrees to obtain and maintain at its sole expense:
- (a) Directors' and Officers' Liability Insurance in an amount not less than \$1,000,000.,
 - (b) Crime/Fidelity Insurance including "employee dishonesty" coverage in the amount of \$100,000. The City shall be shown on this policy as a Named Obligee with respect to incidents arising from services performed under this Agreement.
 - (c) the City reserves the right to request such higher limits of insurance or other types of policies appropriate to this Agreement as it may reasonably require from time to time; failure to satisfactorily meet these conditions relating to insurance shall be deemed a breach of this Agreement.
 - (d) LEDC will submit on an annual basis upon request evidence of the insurance in (a) and (b) which provides for a minimum of thirty days (30) notice in advance of cancellation or non-renewal of such insurance.
22. **Financial Records.** The LEDC 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 (4) years.
23. **Inspection of Financial Records and Documents.** If the Corporation has reasonable grounds for believing that any amount included in any preceding installment of a Fee of any year has not been expended in accordance with this Agreement, the LEDC shall, upon reasonable notice from the Corporation, make available at all reasonable times and without expense to the Corporation all such documents, contracts, records, claims and accounts for inspection and audit by Corporation or its auditors as the Corporation may deem necessary to determine whether such is the case.
24. **Provision of Information.** Upon written request from the Corporation, the LEDC shall provide the Corporation, without expense to it, any information which is available to the LEDC with respect to its Strategic Plan or financial statements and which it is able to provide without breaching any applicable law.
25. **Events of Default.** The following constitute events of default, the proof of which to the contrary lies upon the LEDC:
- a. the LEDC 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 winding up or for the dissolution of the LEDC or it is dissolved;
 - c. the LEDC ceases actual bona fide operation for a period of thirty (30) days;

- d. the LEDC has knowingly submitted false or misleading information to the Corporation; or
- e. the LEDC is in breach of the performance of, or compliance with, any term, condition or obligation on its part to be observed or performed hereunder.

26. Remedies on Default.

If,

- a. an event of default specified in subclause 25 (a), (b), (c) or (d) occurs; or
- b. an event of default specified in subclause 25 (e) occurs and is not remedied within ten (10) business days after receipt by the LEDC of notice of default, or a plan satisfactory to the Corporation to remedy such an event of default is not implemented within such period and fully and diligently carried out thereafter,

the Corporation may exercise either or both of the following remedies, in addition to any other remedies otherwise available, namely;

- c. terminate forthwith any obligation by the Corporation to pay the Fee or to continue to pay any instalment, including any unpaid installment outstanding prior to the date of such termination; and
- d. require the LEDC to repay all or part of the unspent Fee forthwith to the Corporation.

27. Interim Suspension of Payment. In the event that the Corporation gives the LEDC notice of default and no plan satisfactory to the Corporation to remedy such an event of default is implemented within such period and being fully and diligently carried out as provided in paragraph 26 (b), the Corporation shall have no obligation to make any further payments under this Agreement prior to the end of the period given to the LEDC to remedy the event of default.

28. Waiver of Breaches. 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.

29. Termination. This Agreement and the Registered Mark License Agreement made between the Corporation and the LEDC dated January 28, 1999, shall, at the Corporation's option, (with the exception of paragraphs (d), (e) and (f) below in which case this Agreement shall terminate on the date determined in accordance with paragraphs (d), (e) and (f) as applicable) terminate prior to December 31, 2027 or prior to the expiration of any renewal of this Agreement, upon the happening of one of the following events, whichever occurs first:

- a. an event of default specified in subclause 25 (a), (b), (c) or (d);
- b. an event of default specified in subclause 25 (e) that is not remedied within ten business days of receipt by the LEDC of notice of default, or a plan satisfactory to the Corporation to remedy such an event of default is not implemented within such period and fully and diligently carried out thereafter as provided in subclause 26 (b);
- c. the enabling statutory authority or the required approvals under which the Corporation has entered into this Agreement being repealed or rescinded so as to substantially limit or deprive the Corporation of the authority to confer any of the rights or assume any of the obligations granted or assumed hereunder, and the Corporation being unable with reasonable diligence within a period of two (2) years to obtain private legislation to remedy the deficiency of authority;
- d. notice of termination being given to the Corporation by the LEDC stipulating the date of termination, (which date shall be no less than ten days from the date of such notice) on the ground that, despite negotiations in good faith between and reasonable efforts by the LEDC and the Corporation to settle the amount of the Fee or the amount appropriated by the Corporation in its sole discretion for the LEDC is insufficient to enable the LEDC in any substantial way to perform its responsibilities under this Agreement;
- e. the Corporation giving the LEDC six months' written notice of its intent to terminate this Agreement; or
- f. the Corporation and the LEDC agreeing in writing at any time to the termination of

this Agreement.

30. **Benefit.** No member of the Municipal Council shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.
31. **Confidentiality.** For the purposes of the *Municipal Freedom of Information and Protection of Privacy Act*, the Corporation's access to information hereunder is subject to the LEDC's assertion at all material times that all such documents, contracts, records, claims, and accounts are supplied to the Corporation in confidence, recognizing that their disclosure could reasonably be expected to be injurious to the economic and other interests of the LEDC, or prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of the LEDC, and the Corporation shall not disclose any such information without the LEDC's consent.
32. **Deemed Amendment of Agreement.** In the event that the enabling statutory authority or the required approvals under which the Corporation has entered into this Agreement are subsequently amended or altered, but not so substantially as to limit or deprive the Corporation of the authority to confer any of the rights or assume any of the obligations hereunder, this Agreement shall be deemed to be amended or altered in accordance therewith. If however, the amendment or alteration to the enabling statutory authority or the required approvals do substantially limit or deprive the Corporation's authority, the Corporation and the LEDC shall forthwith enter into discussions with respect to the amendment or termination of this Agreement, and, if no such discussions are held within a reasonable period of time or such discussions do not result in an amendment of this Agreement, this Agreement shall be deemed to be terminated.
33. **Further Documents.** The LEDC and the Corporation shall, from time to time, execute and deliver all further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.
34. **Notice.** Where in this Agreement any notice, request, direction or other communication is required to be given or made by either party, it shall be in writing and is effective if delivered in person or by recognized courier or sent by facsimile transmission addressed to the other party for whom it is intended at the following addresses, and any notice shall be deemed to have been given:
- a. if delivered personally or by recognized courier on the date of such delivery; or
 - b. if by facsimile transmission, when transmitted (if received before 4:30 pm local time at the recipient's office or failing which on the next business day).

Any notices intended for the Corporation shall be delivered and addressed to:

City Clerk
The Corporation of the City of London
3rd Floor, 300 Dufferin Avenue PO Box 5035
London Ontario N6A 4L9
Facsimile: (519) 661-4892

Any notices intended for the LEDC shall be delivered and addressed to:

President and Chief Executive Officer
London Economic Development Corporation
Suite 701
380 Wellington Street London Ontario N6A 585
Facsimile: (519) 661-5331

The address or facsimile number of either party may be changed by notice in the manner set out above.

35. **Assignment.** Neither party shall assign all or any portion of its rights or obligations under this Agreement to a third party without the other party's prior written consent.
36. **Supplementary or Additional Agreements.** If at any time during the continuance of this Agreement, the parties shall deem it necessary or advisable to make any alteration or addition to this Agreement, they may do so by means of a written agreement between them which shall be supplemental or additional hereto and form part hereof.
37. **Headings for Convenience.** Descriptive headings are inserted solely for convenience of reference, do not form part of this Agreement, and are not to be used as an aid in the interpretation of this Agreement.

38. **Severability of Provisions.** If any of the provisions of this Agreement shall be illegal or invalid, such illegality or invalidity shall 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.

IN WITNESS WHEREOF the Corporation and the LEDC 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 LONDON

Mayor (Josh Morgan)

City Clerk (Michael Schulthess)

LONDON ECONOMIC DEVELOPMENT CORPORATION

(Signature)

(Print Name)

(Print Title)

I/We have authority to bind the Corporation

(Signature)

(Print Name)

(Print Title)

I/We have authority to bind the Corporation