

<b>TO:</b>	<b>CHAIR AND MEMBERS STRATEGIC PRIORITIES AND POLICY COMMITTEE MEETING ON JUNE 25, 2018</b>
<b>FROM:</b>	<b>ANNA LISA BARBON MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER</b>
<b>SUBJECT:</b>	<b>MUNICIPAL ACCOMMODATION TAX – REQUIRED AGREEMENTS AND BY-LAWS</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer, the following actions be taken with respect to implementing the new Municipal Accommodation Tax:

- a) That the attached proposed by-law (Appendix A) **BE INTRODUCED** at the Municipal Council meeting on June 26, 2018, with respect to establishing a tax on the purchase of municipal accommodation in the City of London, entitled “A By-law to Impose a Municipal Accommodation Tax”;
- b) That the attached proposed by-law (Appendix B) **BE INTRODUCED** at the Municipal Council meeting on June 26, 2018 to:
  - i) Approve the Municipal Accommodation Tax Collection Agreement (Schedule 1) representing the agreement between the Corporation of the City of London and the Ontario Restaurant Hotel & Motel Association (ORHMA) for the collection of the Municipal Accommodation Tax in the City of London; and
  - ii) Authorize the Mayor and City Clerk to execute the agreement approved in b) i) above;
- c) That the attached proposed by-law (Appendix C) **BE INTRODUCED** at the Municipal Council meeting on June 26, 2018 to:
  - i) Approve the Municipal Accommodation Tax Financial Accountability Agreement (Schedule 1) substantially in the form attached and satisfactory to the City Solicitor, representing the agreement between the Corporation of the City of London and Tourism London regarding the use and monitoring of Tourism London’s share of revenue from the Municipal Accommodation Tax; and
  - ii) Authorize the Mayor and City Clerk to execute the agreement approved in c) i) above; and,
- d) That the attached proposed by-law (Appendix D) **BE INTRODUCED** at the Municipal Council meeting on June 26, 2018, with respect to establishing a reserve fund for the purposes of receiving and distributing the City of London’s share of revenue from the Municipal Accommodation Tax, entitled “A by-law to establish the Tourism Infrastructure Reserve Fund”.

<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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- Strategic Priorities & Policy Committee, May 7, 2018, Agenda Item #3.3, Municipal Accommodation Tax – Implementation
- Community & Protective Services Committee, May 1, 2018, Agenda Item #2.1, Short Term Accommodations
- Strategic Priorities & Policy Committee, January 29, 2018, Agenda Item #3, Transient Accommodation Tax

## BACKGROUND

On January 29, 2018, the Strategic Priorities & Policy Committee received a report on establishing a tax on the purchase of transient accommodation in the City of London. Council endorsed a 4% tax on transient accommodation and directed Civic Administration to report back with the necessary by-laws and agreements.

On May 7, 2018, the Strategic Priorities & Policy Committee received the follow up report on the Municipal Accommodation Tax (formerly “transient accommodation tax”), including key principles for the by-laws and agreements required to implement the program.

On May 8, 2018, Municipal Council resolved:

*That, on the recommendation of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer, the following actions be taken with respect to implementing the new Municipal Accommodation Tax (formerly “transient accommodation tax”):*

- a) a four percent (4%) Municipal Accommodation Tax (MAT) on the purchase price of transient accommodation in the City of London BE ADOPTED effective October 1, 2018;*
- b) the Civic Administration BE DIRECTED to bring back the required by-laws and agreements referenced in c) through f) below for approval by Municipal Council prior to implementation of the Municipal Accommodation Tax;*
- c) the key principles included in Appendix A to the staff report dated May 7, 2018, with respect to establishing a tax on the purchase of municipal accommodation in the City of London, BE ENDORSED; it being noted that these key principles will be included in the by-law;*
- d) the following staff recommendation BE REFERRED to the Civic Administration for report back at a future meeting of the Strategic Priorities and Policy Committee with respect to the implications of the proposed collection model on the provisions of The Corporation of the City of London’s Collective Agreement with CUPE Local 101:  
“the Civic Administration BE DIRECTED to negotiate an agreement with the Ontario Restaurant Hotel & Motel Association (ORHMA) for the collection of the Municipal Accommodation Tax in the City of London and that the key principles included in Appendix B to the staff report dated May 7, 2018 BE ENDORSED; it being noted that these key principles will be included in an agreement between The Corporation of the City of London and ORHMA;”*
- e) the key principles included in Appendix C to the staff report dated May 7, 2018, with respect to the use and monitoring of funds from the Municipal Accommodation Tax received by Tourism London, as the eligible tourism entity in the City of London, BE ENDORSED; it being noted that these key principles will be included in an agreement between the Corporation of the City of London and Tourism London; and*
- f) the key principles included in Appendix D to the staff report dated May 7, 2018, for the establishment of a new reserve fund for the purposes of receiving and distributing the City’s net 50% share of revenue from the Municipal Accommodation Tax, BE ENDORSED; it being noted that these key principles will be incorporated into a reserve fund by-law;*

### **Purpose of this Report**

The purpose of this report is to bring back the required by-laws and agreements based on the key principles endorsed for approval by Municipal Council to implement the Municipal Accommodation Tax in the City of London. Implementation requires the following by-laws and agreements:

1. A by-law to establish a Municipal Accommodation Tax (MAT).
2. An agreement between the City and the Ontario Restaurant Hotel & Motel Association (ORHMA) for them to act as the City’s agent to collect the MAT.
3. An agreement between the City and Tourism London regarding the use and monitoring of funds from the MAT revenues to be received by Tourism London.
4. A by-law to establish the Tourism Infrastructure Reserve Fund for the purposes of receiving and distributing the City’s share of MAT revenues.

## By-law to Establish a Municipal Accommodation Tax (MAT)

The authority to implement a Municipal Accommodation Tax is enabled by Provincial legislative amendments to the Municipal Act. Regulation 435/17 provides that a municipality may, by way of by-law, impose a tax with respect to the purchase of transient accommodation. The Municipal Act, 2001 provides that the by-law may provide for the tax rate but does not specify the percentage or flat amount of the Municipal Accommodation Tax. Further to the Council resolution on May 8, 2018, it is recommended that Committee and Council approve a draft by-law as included in **Appendix A** to establish a 4% Municipal Accommodation Tax (MAT) program in the City of London.

The Municipal Act 2001, also permits the by-law to provide for exemptions from the tax, penalties for failing to comply with the by-law, interest on the outstanding taxes or penalties, audit requirements, and enforcement measures as appropriate, for amounts remaining unpaid. Exemptions from the tax include the standard list as outlined in the Regulation as well as the inclusion of short-term rentals. Short-term rentals (bed & breakfasts and others often listed on internet platforms such as Airbnb, Homeaway, etc.) will initially be exempt from collecting the MAT but could become taxable in the future after further review.

The recommended by-law is included in **Appendix A**. Key items in the by-law include:

- Application – A 4% Municipal Accommodation Tax (MAT) will be applied on the purchase price of the Transient Accommodation in the City of London.
- Exemptions – The following parties are exempt from MAT:
  - a) The Crown and every authority, board, commission, corporation, etc. under the authority of the Lieutenant Governor;
  - b) Every board under the *Education Act*;
  - c) Every university in Ontario and every college of applied arts and technology and post-secondary institution in Ontario whether or not affiliated with a university.
  - d) Every hospital under the *Public Hospitals Act* or the *Private Hospitals Act*;
  - e) Every long-term care home;
  - f) Every treatment centre that receives aid from the Province;
  - g) Every house of refuge, or lodging for the reformation of offenders;
  - h) Every charitable, non-profit philanthropic corporation acting as a shelter the poor or for emergency;
  - i) Every hotel or motel room used by the City for shelter accommodation;
  - j) Every tent or trailer sites supplied by a campground, tourist camp, or trailer park;
  - k) Every accommodation supplied by employers to their employees in premises operated by the employer;
  - l) Every hospitality room that does not contain a bed and is used for displaying merchandise, holding meetings, holding hearings, or entertaining; and
  - m) Short-term rentals, including bed & breakfast accommodations and entities listing on internet platforms such as Airbnb and Vacation Rentals by Owner (VRBO).
- Collection – Providers of transient accommodation shall collect the MAT fees from the purchaser at the time of purchase and shall remit the collections, with a defined monthly statement, to the tax collection agent designated by the City.
- Refunds – The City of the City's agent shall issue a refund for an amount wrongly paid.
- Tax Collection Agent – The tax collection agent shall be the Ontario Restaurant Hotel & Motel Association (ORHMA)
- Interest, Fees and Liens – Penalties and interest are applicable on outstanding MAT fees owing by providers of transient accommodation and may be transferred to the property owner's property taxes.
- Audit and Inspections – Providers of transient accommodation are subject to audit by the City or the City's agent.
- Offences and Penalties – Every person who contravenes the MAT by-law is guilty of an offence.

## **Agreement between the City and the Ontario Restaurant Hotel & Motel Association (ORHMA)**

Civic Administration recommends that the Ontario Restaurant Hotel & Motel Association (ORHMA) be appointed to act as the agent for the collection of MAT funds on behalf of the City of London. The primary rationale for recommending ORHMA as the City's collection agent is to take advantage of their experience and financial systems from collection within the Province of the voluntary Destination Marketing Program fees that it previously had collected from participating hotels. A key factor in the decision is the ability to implement the tax in 2018 so as to maximize revenue collection given their existing collection pathways, forms and reporting mechanisms, and their existing database of hotels which is far more efficient and at less cost than if the City were required to develop and implement its own systems to collect the tax. A listing of the reasons that Civic Administration recommends ORHMA are listed below:

- ORHMA has established collection procedures, forms, systems, reporting mechanisms and an existing database of participating hotels for administering MAT.
- ORHMA will be subject to an annual audit included in their proposed fee.
- This is consistent with the approach taken by other municipalities such as Ottawa, Toronto and Niagara.
- ORHMA has experience collecting similar taxes in these other municipalities.
- ORHMA already has a relationship with the accommodation providers in London.
- This will be the most cost effective solution. The cost of an agreement with ORHMA would be much less than if the City was to develop and implement its own collection system.
- This will provide for an ease of implementation by October 1, 2018.

After a one-time set-up fee of \$20,000, the annual fee proposed in the agreement is 1.0% of revenues. Annual revenues are estimated between \$2 million and \$4 million, leading to an estimated annual fee between \$20,000 and \$40,000.

Developing an in-house collection system at the City would take at least two years, delaying the implementation of the program and foregoing \$4 million to \$8 million in revenue. The cost to develop and maintain an in-house system at the City has not been developed, but the City of Toronto did review this option. Their estimate was \$1.0 million in the first year, including set-up costs. Ongoing annual costs were estimated at \$870,000 in-house versus \$587,000 if administered by the Greater Toronto Hotel Association.

The request in the resolution to report back on implications of the proposed collection model on the provisions of the City's collective agreement with CUPE Local 101 is a matter for confidential session.

The recommended agreement with ORHMA for the collection of the MAT in the City of London is included in **Appendix B**. The key items include:

- Services – ORHMA will collect the MAT on behalf of the City utilizing the ORHMA's existing network. ORHMA will require providers of transient accommodation to remit the MAT on a monthly basis in accordance with the City's by-law. ORHMA will remit the MAT collected on the City's behalf to the City on a monthly basis with monthly report defined by the City. The City shall be responsible for remitting applicable MAT revenue to the appropriate eligible tourism entity and for remittances of any applicable taxes.
- Privacy and Confidentiality – ORHMA will at all times comply with MFIPPA requirements; shall treat all information, documents and records as confidential and shall ensure that all necessary steps are taken to protect such records.
- Financial Reconciliation – MAT collected by ORHMA will be held separately from ORHMA's revenues and expenditures and will perform financial reconciliation of amounts collected.
- Refunds – The City shall be responsible for the administration, approval and issuance of any refunds collected under MAT.
- Reporting – ORHMA will provide the City with monthly and annual reports related to the MAT including reconciliation, refunds, verification and auditing, prepared using ORHMA's accounting software or systems.

- Liability – ORHMA agrees to assume liability for its failure to report, and/or remit the correct amount collected of the MAT.
- Audit Requirements – ORHMA shall engage an auditor to review their financial operations with respect to MAT collected on behalf of the City and submit the findings to the City. The City reserves the right to hire an independent auditor for the same financial operations.
- Fees – A one-time fee of \$20,000 and a quarterly fee of 1% percentage of the monthly remittances. These fees shall include labour, profit, materials, equipment, etc. associated with providing ORHMA's services.
- Indemnity, Insurance, etc. – The agreement includes standard clauses on indemnity, insurance, event and remedies of default, waiver, assignment, successors and assigns, severability, governing law and termination, as provided by the City's Legal and Risk divisions.
- Term – The term of the agreement is four years with renewal options for two additional one year periods.

### **Agreement between the City and Tourism London Regarding the Distribution and Use of Municipal Accommodation Tax Revenues**

Provincial Regulation requires that at least 50% from the tax less the municipalities' reasonable costs of collecting and administering the tax must be shared with an "eligible tourism entity" with the exclusive mandate to promote tourism in the municipality. Tourism London is designated as the eligible tourism entity in the City of London.

Limits on the use of MAT revenues by Tourism London are included in the agreement, as discussed below. In the past, Tourism London has requested funding from the City for bid fees to secure events and conventions in London. The City has provided funding for these bid fees from taxpayer supported contingency reserves. MAT funds would allow Tourism London to be provide bid fees without additional funding from the City, and be more competitive in the process.

Ontario Regulation requires that the City of London and the Tourism London enter into an agreement regarding, but not limited to, reasonable financial accountability matters in order to ensure that amounts paid to Tourism London are used for the exclusive purpose of promoting Tourism. The recommended agreement with Tourism London regarding the distribution and use of MAT funds is included in **Appendix C**. The key items in the agreement include:

- Proceeds – 50% of the net proceeds from MAT shall be deposited into a fund controlled to Tourism London (the "Fund").
- Use of Monies in the Fund – The Fund shall be used by Tourism London for:
  - Expansion opportunities for Tourism London's three business units: Sports, Conventions and Leisure Travel (Culture & Entertainment)
  - To pursue objectives to increase visitations, enhance London's profile, support product development and industry growth, fund bid requirements for major events, and become more competitive with other cities in Canada.
- Distribution of Funds to Other Tourism Related Entities – Tourism London shall establish relationships and agreements and distribute funds to other tourism related entities in the City for the promotion and development of tourism.
- Management Committee – A Management Committee consisting of members of the Tourism London Board shall oversee the following:
  - i. Collection, disbursement and accounting of the Fund in consultation with City administration.
  - ii. Review and approval of all expenditures from the Fund.
  - iii. Preparation a quarterly report to the Board on expenditures from the Fund.
  - iv. Development of a funding allocation plan in support of Tourism London's strategic marketing plan.
  - v. Preparation of an annual report to City administration and Tourism London members on expenditures and initiatives that have received monies from the Fund.

- vi. Hiring of professionals (e.g. auditors, lawyers) as required to assist in the management of the Fund.
  - vii. Endorsement and establishment of priorities to generate incremental business and approve the application of funds.
  - viii. Establishment of geographic priorities.
- Tourism London Board – Tourism London Board will provide an annual audited statement of the Fund to the City.
  - Indemnity, Release, etc. – The agreement includes standard clauses on indemnification, release, event and remedies of default, waiver of breach, suspension of payment, termination, severability of provisions, relationship, confidentiality and assignment, as provided by the City’s Legal and Risk divisions.
  - Financial Records – Tourism London shall keep separate financial records for the Fund and make available to the City for inspection upon reasonable notice.
  - Return of Payments – If the City determines any funds have been used for a purpose not specified in the agreement, Tourism London shall remit the amount back to the Fund.
  - Duration of Agreement – The agreement is for two years but will continue from year to year unless terminated.

### **Tourism Infrastructure Reserve Fund By-law**

The remaining 50% of net annual MAT revenues is retained by the City of London. The use of these revenues is unrestricted. Historically, the taxpayer supported budget has funded improvements to tourism infrastructure such as the London Convention Centre and Budweiser Gardens. In the future, MAT revenues retained by the City will be available to fund new and improved tourism infrastructure that will generate additional economic impact for London without impacting the City’s tax levy. Examples include:

- Incremental capital to “upsized” or enhance a recreational facility to make that facility viable for hosting a major event. Additional investment ideas include developing an outdoor pickleball complex to allow for the hosting of regional and provincial events; adding artificial turf to soccer and baseball facilities to allow for early and late season regional and provincial tournaments; and, enhancing the seating, dressing room, foyer capacity at the next planned arena to support a variety of provincial ice sport events like synchronized skating.
- Act as a catalyst to leverage private sector and government capital investment to support initiatives that encourage tourism infrastructure development.
- Fund arts and culture infrastructure investments that also promote tourism.
- Fund “way-finding” infrastructure to guide visitors to the City to tourism destinations.

Civic Administration recommends that a Tourism Infrastructure Reserve Fund (TIRF) be established to accumulate the MAT revenues retained by the City. The recommended reserve fund by-law for the TIRF is included in **Appendix D**.

Annual allocations from the TIRF would be approved in the City’s capital budget. There is no actual experience with revenues to be generated from the MAT program but estimates for the City’s portion range from \$1 million to \$2 million annually. With an implementation of October 1, 2018, revenues in 2018 will be limited and a full year’s revenues will not be experienced until September 2019. Civic Administration recommends that the first appropriations for capital projects using MAT revenues in the TIRF be approved with the next multi-year budget for 2020 to 2023. Civic Administration expects that the revenues generated from the MAT will offset costs that have traditionally been paid for from tax supported funding resulting in a benefit to the ratepayer.

### **Financial Implications**

A range of estimated revenues from the MAT program are shown in Table 1. Estimates on the low and high occupancy rates, available rooms and average daily rates were provided by Tourism London and the London Chapter of OHRMA. The low occupancy assumption generates gross MAT revenues of approximately \$3 million and the high occupancy assumption generates revenues of approximately \$3.7 million.

**Table 1****Municipal Accommodation Tax (MAT) - Gross Revenue Estimate**

	Occupancy Rate	
	56% (Low)	70% (High)
Number of Rooms in London	3,175	3,175
Available Rooms in London Annually	1,158,875	1,158,875
Night Rooms Sold Annually	648,970	811,213
Average Daily Rate	\$115	\$115
Total Room Revenues	\$74,631,550	\$93,289,438
Estimated Gross MAT Revenue (4%)	\$2,985,262	\$3,731,578

*Information provided by Tourism London and the London Region Chapter of the Ontario Restaurant, Hotel and Motel Association (ORHMA)*

Using the data in Table 1, an estimate of the net MAT revenues for Tourism London and the City, are presented in Table 2. Revenues in 2018 are prorated to recognize the October start date and only three months of collections. A full year of collections is estimated to result in net revenues for both Tourism London and the City of approximately \$1.5 million with low level of occupancy and \$1.8 million with high occupancy.

**Table 2****Municipal Accommodation Tax (MAT) - Net Revenue Estimates**

	2018 (Prorated) <sup>(1)</sup>		2019 (Annual)	
	Occupancy Rate		Occupancy Rate	
	56% (Low)	70% (High)	56% (Low)	70% (High)
Estimated Gross MAT Revenue (4%) <sup>(2)</sup>	\$746,316	\$932,894	\$2,985,262	\$3,731,578
Payment to ORHMA - 1% fee	\$7,463	\$9,329	\$29,853	\$37,316
Payment to ORHMA - one-time fee	\$20,000	\$20,000	\$0	\$0
Estimated Audit Costs <sup>(3)</sup>	\$0	\$0	\$7,000	\$7,000
Net Revenue before Distribution	\$718,852	\$903,565	\$2,948,409	\$3,687,262
<b>Payment to Tourism London (50%)</b>	<b>\$359,426</b>	<b>\$451,783</b>	<b>\$1,474,205</b>	<b>\$1,843,631</b>
<b>Net Revenue to City of London (50%)</b>	<b>\$359,426</b>	<b>\$451,783</b>	<b>\$1,474,205</b>	<b>\$1,843,631</b>

(1) based on October 1 implementation date

(2) from Table 1

(3) for audits of local providers, using local audit firms, at the discretion of the City

There will be additional administrative tasks for the City to manage the MAT program including communication with ORHMA and Tourism London, reconciliation of payments, issuing refunds, and reviewing monthly and annual statements and report. At this time, Civic Administration believes these tasks can be absorbed within existing City staff. However, the time commitment for these tasks will be monitored and if additional staff are required, the cost of any additional staff required to support the implementation of the MAT would be funded from the gross MAT revenues before determination of the net revenues for distribution to Tourism London and the City.

This report was completed with the assistance of Michelle Butlin, City Solicitor's Office and John Millson, Business Administration, Finance & Corporate Services.

<b>CONCLUSION</b>
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This report presents the required by-laws and agreements for approval by Municipal Council to implement the Municipal Accommodation Tax in the City of London.

The financial implications of the MAT program are presented in the report. A range of estimated revenues based on low and high occupancy rates was provided by Tourism London and the London Chapter of OHRMA, generating gross MAT revenues between \$3 million and \$3.7 million. After fees and costs to run the MAT program, net revenues ranging from \$1.5 million to \$1.8 million would be available for each of Tourism London and the City.

<b>PREPARED BY:</b>	<b>RECOMMENDED BY:</b>
<b>ALAN DUNBAR, CPA, CGA MANAGER, FINANCIAL PLANNING &amp; POLICY</b>	<b>ANNA LISA BARBON, CPA, CGA MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER</b>
<b>CONCURRED BY:</b>	
<b>MARTIN HAYWARD, CPA, CGA CITY MANAGER</b>	

**Attachments:**

- Appendix A:** By-law to Establish a Municipal Accommodation Tax (MAT)
- Appendix B:** By-law to Authorize an Agreement between the City and the Ontario Restaurant Hotel & Motel Association (ORHMA)
- Appendix C:** By-law to Authorize an Agreement between the City and Tourism London Regarding the Distribution and Use of Municipal Accommodation Tax Revenues
- Appendix D:** Tourism Infrastructure Reserve Fund By-law



## APPENDIX A

### By-law to Establish a Municipal Accommodation Tax (MAT)

Bill No.  
2018

By-law No.

A By-law to impose a Municipal Accommodation  
Tax

WHEREAS section 400.1 of the Municipal Act provides that a municipality may pass a by-law imposing a transient accommodation tax;

WHEREAS Ontario Regulation 435/17 provides regulations in respect of the imposition of a transient accommodation tax;

WHEREAS section 23.2 of the *Municipal Act*, 2001 permits a municipality to delegate certain legislative and quasi-judicial powers;

AND WHEREAS at its meeting of \_\_\_\_\_, Council approved the establishment of the transient accommodation tax to be imposed on the purchase of accommodations of short duration within the City of London, which will generate revenue to be shared with designated non-profit entities to promote local tourism;

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

#### 1. DEFINITIONS

“Ancillary Charges” means charges related to the purchase of Transient Accommodation including, but not limited to the purchase of food, room service, mini bar products, internet, movie rentals, and phone charges.

“City” means The Corporation of the City of London.

“Council” means the Municipal Council of The Corporation of the City of London.

“Municipal Accommodation Tax” or “MAT” means the tax imposed under this By-law.

“Purchaser” means the person who makes payment in consideration for Transient Accommodation.

“Provider” means a person who receives payment in consideration for Transient Accommodation and includes agents, hosts or others who sell, offer for sale or otherwise provides Transient Accommodation; where the Provider cannot easily be determined, the owner of a property providing accommodation is deemed to be the provider of Transient Accommodation.

“Transient Accommodation” means the purchase of accommodation in a hotel, motel, inn, resort, and hostel.

#### 2. APPLICATION

2.1 A Purchaser of Transient Accommodation shall pay, at the time of purchase, a Municipal Accommodation Tax in the amount of four (4) percent of the purchase price of the Transient Accommodation provided for a continuous period of less than 30 nights.

2.2 The Municipal Accommodation Tax will not apply to Ancillary Charges that are itemized separately on the Purchaser’s receipt.

2.3 Where the Provider of Transient Accommodation fails to separately itemize Ancillary Charges, the Municipal Accommodation Tax will apply to the total amount of the purchase price.

### **3. EXEMPTIONS**

3.1 The Municipal Accommodation Tax imposed under this By-law does not apply to:

- a) The Crown, every agency of the Crown in right of Ontario and every authority, board, commission, corporation, office or organization of persons a majority of whose directors, members or officers are appointed or chosen by or under the authority of the Lieutenant Governor in Council or a member of the Executive Council;
- b) Every board as defined in subsection 1(1) of the *Education Act*;
- c) Every university in Ontario and every college of applied arts and technology and post-secondary institution in Ontario whether or not affiliated with a university.
- d) Every hospital referred to in the list of hospitals and their grades and classifications maintained by the Minister of Health and Long-Term Care under the *Public Hospitals Act* and every private hospital operated under the authority of a licence issued under the *Private Hospitals Act*;
- e) Every long-term care home as defined in subsection 2(1) of the Long-Term Care Homes Act, 2007;
- f) Every treatment centre that receives provincial aid under the Ministry of Community and Social Services Act;
- g) Every house of refuge, or lodging for the reformation of offenders;
- h) Every charitable, non-profit philanthropic corporation organized as shelters for the relief of the poor or for emergency;
- i) Every hotel or motel room used by the City or its agents for shelter accommodation purposes;
- j) Every tent or trailer sites supplied by a campground, tourist camp, or trailer park;
- k) Every accommodation supplied by employers to their employees in premises operated by the employer;
- l) Every hospitality room in an establishment that does not contain a bed and is used for displaying merchandise, holding meetings, holding hearings, or entertaining; and
- m) Short-term rentals, including bed & breakfast accommodations and entities listing on internet platforms such as Airbnb and Vacation Rentals by Owner (VRBO).

### **4. TAX COLLECTED BY PROVIDER**

4.1 Providers of Transient Accommodation shall list the Municipal Accommodation Tax as a separate item on the Purchaser's receipt or invoice and identify such tax as "Municipal Accommodation Tax".

4.2 Providers of Transient Accommodation shall collect the Municipal Accommodation Tax from the Purchaser at the time of purchase.

4.3 Providers of Transient Accommodation shall, on a monthly basis within 15 days of the end of each calendar month for the month prior, remit the Municipal Accommodation Tax to the tax collection agent designated by the City in a manner the City Treasurer deems acceptable

4.4 Providers of Transient Accommodation shall, on a monthly basis within 15 days of the end of each calendar month for the month prior, provide a monthly statement in the form required by the tax collection agent; these monthly statements shall include:

- i. The number of rooms sold;
- ii. The purchase prices of the rooms sold;
- iii. The number of rooms that were exempt under the by-law and proof the Provider relied on; and
- iv. The Municipal Accommodation Tax Collected.

4.5 Providers of Transient Accommodation shall provide any information as required by the City Treasurer for the purposes of enforcing this by-law.

## **5.0 REFUNDS**

- 5.1 Where a Purchaser has paid an amount that is not payable, the City Treasurer or the City's agent, may upon receipt of satisfactory evidence, make a determination that the amount was wrongly paid, and if such a determination is made, the City or its agent shall refund or credit all or part of the amount, but no refund shall be made unless an application is made within twenty-four (24) months after the payment date.
- 5.2 Where a Provider of Transient Accommodation remits a surplus in error, the City or its agent, may upon receipt of satisfactory evidence, make a determination that an amount was wrongly paid, and if such a determination is made, the City or its agent, shall refund all or part of the amount, but no refund shall be made unless an application for such a refund is made within twenty-four (24) months after the date of remittance.
- 5.3 Where a person has applied for a refund and the person's claim is in whole or in part refused, the City or its agent shall provide a statement of disallowance in such form as determined by the City or its agent, and the statement shall specify the amount of disallowance and the reasons for the disallowance.

## **6.0 TAX COLLECTION AGENT**

- 6.1 The tax collection agent shall be the Ontario Restaurant Hotel & Motel Association ("ORHMA").
- 6.2 The City Manager, in consultation with the City Solicitor, may designate additional tax collection agents for the City and enter into agreements with designated tax collection agents.
- 6.3 The tax collection agent(s) shall collect and administer the Municipal Accommodation Tax as an agent for the City in accordance with the agreement between the City and the tax collector(s) and this by-law.

## **7.0 INTEREST, FEES AND LIENS**

- 7.1 Penalties and interest at a monthly rate of interest applicable to overdue property taxes shall apply to any outstanding Municipal Accommodation Tax and shall be payable monthly by the Providers of Transient Accommodation on the amount of any tax payable or remittable from the business day following the date on which the Municipal Accommodation Tax was payable or its remittance was due up to and including the date on which such tax is paid or remitted in full.
- 7.2 All Municipal Accommodation Tax penalties and interest that are past due shall be deemed by the City Treasurer to be in arrears, and shall be transferred to the City's tax collectors' roll for any real property in the City of London to be collected in the same manner as municipal property taxes and shall constitute a lien upon the lands.
- 7.3 A fee, as prescribed by the Fees & Charges By-law A-52, shall be charged in respect of all remittances made by cheque that are not honoured by the financial situation upon which it is drawn.

## **8.0 AUDIT AND INSPECTIONS**

- 8.1 Every Provider shall keep, for no less than three (3) years, books of account, records, and documents sufficient to furnish the City or its designated tax collection agent(s) with the necessary particulars of:
- i. sales of accommodation;
  - ii. amount of the Municipal Accommodation Tax collected; and
  - iii. the remittances made to the tax collection agent.
- 8.2 The City Treasurer or designate or the City's designated tax collection agent may inspect and audit all books, documents, transactions, and accounts of Providers and require

Providers to produce copies of any document or records required for the purpose of administering and enforcing this by-law.

8.3 Every Provider shall furnish upon the demand of the City Treasurer or the City's designated tax collection agent for reasonable inspection, copies of any books, documents, transactions, accounts or records required for the purposes of the administration and enforcement of this by-law.

## **9.0 OFFENCES AND PENALTIES**

9.1 Every person who contravenes any provision of this by-law is guilty of an offence.

9.2 Every director or officer of a corporation who knowingly concurs in the contravention of any provision of this by-law is guilty of an offence.

9.3 Every person convicted of an offence under this by-law is liable to a minimum fine of \$500 and a maximum fine of \$100,000 as provided for in subsection 429(3) of paragraph 1 of the *Municipal Act, 2001*.

9.4 Every person convicted of an offence under this by-law is liable, for each day the offence continues, to a minimum fine of \$500 and a maximum fine of \$100,000 as provided for in subsection 429(3) paragraph 2 of the *Municipal Act, 2001*. The total of all the daily fines for a continuing offence is not limited to \$100,000.

9.5 The Superior Court of Justice or any court of competent jurisdiction may, in addition to any penalty imposed on a person convicted of an offence under this by-law issue an order:

- a) Prohibiting the continuation or repetition of the offence by the person convicted; or
- b) Requiring the person convicted to correct the contravention in a manner prescribed by the court.

## **10. ADMINISTRATION**

10.0 The administration of this by-law is delegated to the City Treasurer.

## **11.0 GENERAL**

11.1 This by-law shall come into force and effect on October 1, 2018.

ENACTED AND PASSED in Open Council , 2018

Matt Brown  
Mayor

Cathy Saunders  
City Clerk

## APPENDIX B

### By-law to Authorize an Agreement between the City and the Ontario Restaurant Hotel & Motel Association (ORHMA)

Bill No.

By-law No.

A By-law to authorize an Agreement between the Corporation of the City of London and the Ontario Restaurant Hotel & Motel Association (ORHMA); 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 "City") to enter into an Agreement with the Ontario Restaurant Hotel & Motel Association, (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 Municipal Council of The Corporation of the City of London enacts as follows:

1. The Agreement attached as Schedule "1" to this By-law, being an Agreement between the City and the Ontario Restaurant Hotel & Motel Association is hereby AUTHORIZED AND APPROVED.
2. The Mayor and 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.

PASSED in Open Council , 2018

Matt Brown  
Mayor

Cathy Saunders  
City Clerk

## Schedule 1

### Municipal Accommodation Tax Collection Agreement

This Municipal Accommodation Tax Collection Agreement (“Agreement”) dated this \_\_\_\_ day , 2018 between The Corporation of the City of London (“City”) and the Ontario Restaurant Hotel & Motel Association (“ORHMA”).

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

WHEREAS the City deems it desirable to retain ORHMA to act as its collecting agent for the MAT.

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

“Municipal Accommodation Tax” or “MAT” means the tax imposed under the City of London’s Municipal Accommodation Tax By-law. .

“Provider” means a person who receives payment in consideration for Transient Accommodation and includes agents, hosts or others who sell, offer for sale or otherwise provides Transient Accommodation; where the Provider cannot easily be determined, the owner of a property providing accommodation is deemed to be the provider of Transient Accommodation.

“Transient Accommodation” means the purchase of accommodation in a hotel, motel, inn, resort and hostel.

#### Services

1. ORHMA will collect the MAT on behalf of the City utilizing the ORHMA’s existing network on the date specified in the City’s Municipal Accommodation Tax By-law.
2. Providers must remit the MAT to the ORHMA by one of the following methods: electronic transfer, cash, certified cheque or by any other method proposed by the ORHMA and deemed acceptable by the City Treasurer.
3. ORHMA will require Providers of Transient Accommodation to remit the MAT in accordance with the City’s By-law, and may include other requirements and forms established and maintained by the ORHMA.
4. Providers will make remittances of the MAT on a monthly basis to the ORHMA, within 15 days of the end of each calendar month for the month prior.
5. The ORHMA will distribute information, notifications and communication materials to Providers of Transient Accommodation, by mail or in electronic format. All such materials and communications will be developed by the City, and/or jointly with the ORHMA, as it concerns the collection of the MAT. All communications and materials distributed under the MAT program must be approved in advance by the City Treasurer or designate without exception.
6. The City may issue its own mailed or electronically transmitted communications, correspondence or other notifications as deemed necessary under the program for its own purpose.
7. ORHMA will remit the MAT collected on the City’s behalf to the City on a monthly basis within 30 days of the end of each calendar month for the prior month.
8. ORHMA will be responsible to collect any unpaid MAT remittances, penalties, and applicable interest for a period of 90 days on overdue accounts.
9. ORHMA will advise the City of any unpaid Provider amounts over 90 days.

10. ORHMA will submit a monthly report to the City with each remittance indicating:
  - a. the average number of rooms available for taxable (MAT) occupancy at each Provider;
  - b. the average daily rate;
  - c. the total room charges for the month;
  - d. the total MAT collected and remitted;
  - e. an aging report of overdue accounts;
  - f. the number of rooms that were exempt under the by-law; and
  - g. any further details relating to the MAT as required by the City Treasurer.
11. The City shall be responsible for remitting any amounts of the MAT collected by the ORHMA to the appropriate eligible tourism entity.
12. The City shall be responsible for remittances of any applicable tax (e.g. HST) or any other payments associated with amounts collected under the MAT.

### **Privacy and Confidentiality**

13. ORHMA acknowledges and agrees that in providing services under this Agreement it may acquire proprietary, confidential, personal and/or private knowledge and information of the City's operations, employees and other confidential documents and information.
14. ORHMA will at all times comply with the requirements set out in the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56 ("MFIPPA") with respect to the use, maintenance, retention and collection of personal information, documents and records, communicated to and acquired, collected and created by it under this Agreement which in all cases shall be treated in accordance with MFIPPA.
15. ORHMA shall treat all information, documents and records communicated to and acquired, collected and created by it in the course of providing the services as confidential and shall not release or disclose the same to any person at any time during or following this Agreement without the express prior written consent of City, except as required by law and subject to MFIPPA and the Municipal Act.
16. ORHMA shall ensure that all necessary steps are taken to protect all confidential information, documents and records by making all necessary security arrangements against any and all risk including without limitation to unauthorized access, use, disclosure, publication or dissemination or destruction and to ensure that the said information, documents and records do not fall into the possession of unauthorized persons, in accordance with MFIPPA.
17. Should ORHMA retain the services of any third party, it shall ensure that the third party enters into a written agreement that satisfies both ORHMA and the City's obligations under MFIPPA with respect to the use, security, maintenance, retention and collection of any information it acquires through its services to ORHMA or the City. ORHMA shall ensure that the written agreement with any third party include a confidentiality clause that satisfies its obligations to City with respect to the confidentiality of any information it acquires through its services to City

### **Financial Reconciliation**

18. The MAT collected by the ORHMA will be held separately from the ORHMA's revenues and expenditures, and deposited into a designated City of London liability account(s) until a payment is created and the funds are remitted to the City.
19. ORHMA will perform daily financial reconciliation of amounts collected.
20. ORHMA will investigate any financial anomalies, rectify any financial anomalies and report any financial anomalies to the City in a timely basis.
21. ORHMA will perform a payment transfer to the City (all payments of MAT, penalties, interest on late payments, etc.) on a monthly basis within 30 days of the end of each calendar month for the prior month, via cheque/electronic funds transfer, to the City's designated account(s).

## **Refunds**

22. The City shall be responsible for the administration, approval and issuance of any refunds collected under MAT.
23. Refunds of amounts where necessary will be paid by the City.
24. The City shall be responsible for the documentation of any refunds and any adjustments flowing from such refunds.

## **Reporting**

25. The ORHMA will provide the City with monthly reports and an annual report to support various City functions related to the MAT including reconciliation, refunds, verification and auditing.
26. Reports shall be prepared using the ORHMA's accounting software or systems and provided to the City in a format compatible with the City's electronic systems.
27. The following reports will be produced by the ORHMA and made available electronically to the City.
  - **Monthly Reconciliation Report:**  
Detailed reconciliation report identifying the number of transactions and MAT revenue collected by the ORHMA and submitted to the City. The report will contain information to substantiate amounts collected, including name and identifier of taxable entity, summary of room revenues, applicable exemptions or deductions, guest refunds, adjustments, MAT payable and total amount due etc.
  - **Audit Reports**  
All audit findings, reports and summaries shall be provided, unaltered and completely, to the City.

## **Liability**

28. The ORHMA agrees to assume liability for its failure to report, and/or remit the correct amount collected of the MAT, and the City shall impose such penalties for such failure as the City Treasurer may determine to be appropriate. ORHMA shall not be liable to the City for any unremitted MAT funds owed by providers that remain unpaid. ORHMA will collaborate with the City to pursue collection methods as directed by the City Treasurer, to collect any funds that remain unpaid.

## **Audit Requirements**

29. ORHMA shall engage an auditor to undertake an concerning ORHMA's MAT financial operations with respect to MAT collected on behalf of the City of London. The audit shall be undertaken annually following ORHMA's year end. The costs of conducting the audit shall be at ORHMA's expense.
30. All audit findings, reports, and summaries shall be provided, unaltered and complete, to the City within 10 days of receipt by the ORHMA.
31. Any independent audits of the individual providers subject to the MAT, will be at the discretion and cost to the City of London.
32. In all instances, the City reserves the right to engage an independent auditor for its purposes, to audit, without limitation, the ORHMA's operations as they concern the MAT, the collection of the MAT by the ORHMA, the designated City of London liability account, and/or the compliance of providers subject to the MAT with the City's Municipal Accommodation Tax By-law.

## **Fees**

33. ORHMA agrees that its fee for services under this Agreement shall not exceed:
  - (1) A one-time fee of \$20,000 plus HST; and
  - (2) Quarterly fee in the amount of 1(one) percentage of the monthly remittances to the City.



34. The above fees shall include labour, profit, other overhead, materials, equipment, licences, analysis, travel, accommodations, communication, compliance with audit requirements under this agreement, transportation and delivery costs ( courier, long distance charges), staff time, meetings with the City ( as deemed required by the City), insurance costs, disbursements and any/all other operational costs and fees associated with the services. The City shall not be responsible for any additional costs. Labour or direct expenses incurred by the ORHMA over and above this amount shall not be charged to the City.
35. Any additional fees or expenses must be pre-authorized in writing by the City Treasurer before the ORHMA undertakes any additional work.
36. The City will reimburse the ORHMA for approved disbursements made as required in order to undertake its responsibilities, at the ORHMA's cost, with no mark-up. The total amount to be paid for disbursements is included in the total amount above.
37. ORHMA will invoice the City for its quarterly fee as set out above, on a quarterly basis, using forms designed for this purpose.
38. The City shall pay the amount of the invoice within 30 days of receiving ORHMA's invoice.

### **Indemnity**

39. ORHMA shall indemnify and hold the City harmless from and against all liability, claims, demands, losses, costs, damages, suits and proceedings, including legal fees, occasioned wholly or in part by any negligence or acts or omission by ORHMA, its officers, agents, employees or other for whom it is responsible in law, arising out of its obligations under this agreement.

### **Insurance**

40. Throughout the term of this agreement, ORHMA shall obtain and maintain the coverage shown below and shall provide that the following insurance will not be cancelled or permitted to lapse unless the insurer notifies the City in writing at least thirty (30) days prior to the date of cancellation or expiry:
  - a) Third party general liability insurance covering all claims for negligence, nuisance, property damage and bodily injury, including death, arising out of the use of the premises by ORHMA. Such policy shall include the City as an additional insured with respect to this Agreement and be in an amount not less than two million (\$2,000,000.00) dollars including personal injury liability, broad form property damage liability, contractual liability, owners and contractors protective liability, non-owned automobile liability, contingent employer's liability, and shall contain a severability of interests clause and cross liability clauses.
  - b) Standard all risk property insurance covering the property of ORHMA including leasehold improvements, in an amount not less than the full replacement cost value with a deductible of no more than \$2,500.00; such policy shall include a waiver of subrogation in favour of the City.
  - c) Standard all risk tenants legal liability insurance covering the Premises in an amount not less than one million (\$1,000,000.00) and such other liability insurance extensions as may be required by the City from time to time.
  - d) ORHMA shall not do, omit to do, or permit to be done or omitted to be done on or at the Premises anything that may increase premiums or void coverage under the property insurance policies carried by the City on the Premises described in this agreement.
  - e) The insurance described in a) through c) above will not be cancelled or permitted to lapse unless the insurer notifies the City in writing at least thirty (30) days prior to the date of cancellation or expiry. Evidence of such insurance shall be delivered to the City promptly at inception of this agreement and thereafter prior to the insurance renewal date. Failure to satisfactorily meet these conditions relating to insurance shall be deemed a breach of this agreement.
  - f) The City reserves the right to request such higher limits of insurance or other types of policies appropriate to this agreement as the City may reasonably require from time to time.

### **Event of Default**

41. The City may declare in writing that an event of default has occurred when ORHMA has not complied with any obligation or term in this Agreement. Each and every one of the following events is an "Event of Default"

- (1) The failure to comply with an obligation or term in this Agreement.
- (2) The failure to deliver a report required in this Agreement;
- (3) The failure to make a remittance to the City in accordance with the terms of the Agreement;
- (4) The failure to complete an internal audit as required in this Agreement.

### **Remedies on Default**

42. If the City has declared that an Event of Default has occurred under section 40, after thirty (30) calendar days from ORHMA's receipt of the notice of an Event of Default, it may immediately terminate or suspend its obligations under this Agreement if the Event of Default has not been cured to its satisfaction.

### **Waiver**

43. The failure by the City to exercise a remedy it is entitled to exercise under this Agreement shall not be construed to be a waiver of such right and, furthermore, partial or limited exercise of a right conferred upon the City shall not prevent the City in any way from later exercising any other right or remedy under this Agreement or other applicable law.

### **Assignment**

44. Neither party may assign this Agreement without the prior consent in writing of the other.

### **Successors and Assigns**

45. This Agreement shall ensure to the benefit of and be binding upon the successors and assigns of the parties hereto.

### **Severability**

46. If any provision or portion of any provision in this Agreement shall be held by a Court of competent jurisdiction to be unenforceable, invalid or illegal, such provision or such portion of the provision shall be severable, but all other terms and conditions of this Agreement will continue to be valid, binding and enforceable.

### **Governing Law**

47. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and laws of Canada applicable in Ontario.

### **Headings**

48. The headings in this Agreement are for convenience and reference only and shall not form part of this Agreement.

### **Time of the Essence**

49. Time shall be of the essence in the performance of obligations pursuant to this Agreement.

### **Term**

50. This Agreement commences on the effective date of the City's Municipal Accommodation Tax by-law and continues in full force and effect for four (4) years. Upon the expiry of the four (4) year term, the parties may agree to renew the contract for a further two (2) one-year periods.

### **Termination**

51. Either party may terminate this Agreement without cause by providing not less than 120 days' written notice of its intention to terminate.

## APPENDIX C

### By-law to Authorize an Agreement between the City and Tourism London Regarding the Distribution and Use of Municipal Accommodation Tax Revenues

Bill No.

By-law No.

A By-law to authorize an Agreement between the Corporation of the City of London and Tourism London; 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 "City") to enter into an Agreement with the Tourism London 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 Municipal Council of The Corporation of the City of London enacts as follows:

1. The Agreement attached as Schedule "1" to this By-law, being an Agreement between the City and Tourism London is hereby AUTHORIZED AND APPROVED.
2. The Mayor and 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.

PASSED in Open Council , 2018

Matt Brown  
Mayor

Cathy Saunders  
City Clerk

## Schedule 1

### **Municipal Accommodation Tax Financial Accountability Agreement**

This Municipal Accommodation Tax Financial Accountability Agreement (“Agreement”) dated this \_\_\_\_ day , 2018 between The Corporation of the City of London (“City”) and Tourism London.

WHEREAS the City has passed a by-law imposing a Municipal Accommodation Tax (“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 Tourism London is to promote the City of London as the tourism and meeting destination of choice.

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 Municipal Accommodation Tax shall be deposited into a fund controlled by Tourism London (the “Fund”).

#### **Use of the Monies in the Fund**

2. The monies in the Fund shall be used by Tourism London for:
  - a. Expansion opportunities for Tourism London’s three business units: Sports, Conventions and Leisure Travel (Culture & Entertainment);
  - b. The pursuit of the following objectives and outcomes:
    - i. increase visitations to the City of London;
    - ii. enhance London’s national and international profile;
    - iii. support product development and industry growth;
    - iv. fund bid requirements for major events without additional funding from the City of London; and
    - v. to become more competitive with other provincial and national cities in Canada.

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

3. Tourism London shall establish relationships with other tourism related entities in the City of London for the promotion of tourism in the City of London.
4. The Tourism London Board will determine the distribution of funds from the Fund to other tourism related entities.
5. The Tourism London Board must approve the associated business and strategic marketing plans of these entities in the City prior to distribution of any funds to ensure that the funds will be used for the promotion and development of tourism in the City of London.
6. The Tourism London Board will enter into an agreement to ensure reasonable financial accountability with each tourism related entity that receives money from the Fund.

### **Management Committee**

7. A Management Committee consisting of members of the Tourism London Board shall oversee the following:
  - i. The collection, disbursement and accounting of the Fund in consultation with City administration.
  - ii. The review and approval of all expenditures from the Fund.
  - iii. The preparation a quarterly report to the Board on expenditures from the Fund.
  - iv. The development of a funding allocation plan in support of Tourism London's strategic marketing plan.
  - v. The preparation of an annual report to City administration and Tourism London members on expenditures and initiatives that have received monies from the Fund.
  - vi. The hiring of professionals (e.g. auditors, lawyers) as required to assist in the management of the Fund.
  - vii. The endorsement and establishment of priorities to generate incremental business and approve the application of funds.
  - viii. The establishment of geographic priorities.

### **Tourism London Board**

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

### **Indemnification**

9. Tourism London 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 Tourism London, its directors, officers, employees or agents arising from or pertaining to the receipt, disposition or refunding of the monies payable under this Agreement.

### **Release**

10. Tourism London on behalf of itself, its officers and employees releases the City, its officers and employees and their respective heirs, executors, administrators, 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 Tourism London, its officers and employees may now have or hereafter can, shall or may have against the Corporation and its representative arising from or pertaining to the making or refunding of the monies payable under this agreement.

### **Financial Records**

11. Tourism London 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**

12. 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, Tourism London 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**

13. Upon written request from the City, Tourism London shall provide the City, without expense to it, any information which is available to Tourism London with respect to its annual budget or financial statements.

### **Return of Payments**

14. 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 Tourism London for any purpose other than specified in the herein agreement, Tourism London, shall immediately upon request from the City, remit the amounts requested back to the Fund.

### **Default**

15. The following constitute events of default, the proof of which to the contrary lies upon Tourism London:

- (1) Tourism London 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 Tourism London, it forfeits its charter, or it is dissolved;
- (3) Tourism London ceases actual *bona fide* operation for a period of 30 days;
- (4) Tourism London has knowingly submitted false or misleading information to the City; and
- (5) Tourism London 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**

16. If,

- (1) An event of default as specified in sub articles 15(1), (2), (3), or (4) occurs; or
- (2) An event of default specified in sub article 15(5) occurs and is not remedied within 10 business days after receipt by Tourism London 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 Tourism London to pay all or part of the payment at issue forthwith to the City.

### **Interim of Suspension of Payment**

17. In the event that the City gives Tourism London 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 Tourism London to remedy the event of default.

### **Waiver of Breach**

18. 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**

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

- (1) An event of default of sub article 15(1), (2), (3), or (4) occurs;
- (2) Notice of termination is given to Tourism London by the City for the failure of Tourism London to remedy, pursuant to article 16, an event of default specified in sub article 15(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 Tourism London agree in writing at any time to the termination of this agreement.
- (5) The City gives Tourism London 90 days' notice of its intention to terminate this agreement.
- (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**

20. 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**

21. Nothing in this agreement shall constitute Tourism London a local board of the City, or constitute the City and Tourism London general partners or joint ventures, or constitute either the City or Tourism London the agent of the other, or be deemed to authorize the City or Tourism London to contract for or incur any obligation on behalf of the other.

**Confidentiality**

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

**Assignment**

23. Tourism London 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**

24. 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 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 Tourism London 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**

Per: \_\_\_\_\_

**TOURISM LONDON**

Per: \_\_\_\_\_

## APPENDIX D

### Tourism Infrastructure Reserve Fund By-law

Bill No.

2018

By-law No. A.

A by-law to establish the Tourism Infrastructure Reserve Fund.

WHEREAS section 9 of the Municipal Act, 2001, as amended, provides that a municipality has all of the rights, powers and privileges of a natural person;

AND WHEREAS subsection 10(1) of the Municipal Act, 2001, as amended, provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the Municipal Act, 2001, as amended, provides that a municipality may pass by-laws respecting the financial management of the municipality (paragraph 3) and services or things that the municipality is authorized to provide under subsection 10(1) (paragraph 7);

AND WHEREAS Section 417 of the Municipal Act, 2001, as amended, provides that a municipality may establish a reserve fund for any purpose for which it has authority to spend funds;

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

1. A reserve fund is hereby established to be known as the "Tourism Infrastructure Reserve Fund" (hereinafter called the "Fund").
2. The monies standing in the Fund shall be used by The Corporation of the City of London (the "Corporation") to fund initiatives/projects that support tourism, including but not limited to the following:
  - a. Fund tourism related infrastructure projects;
  - b. Finance new projects and improve venue capacity and sustainability in order to strengthen London's ability to attract major tourism related events; and
  - c. Leverage private sector and government capital investment to support initiatives that encourage tourism infrastructure development.
3. Before any monies are expended from the Fund for the purposes outlined in section 2 of this by-law, the approval of the Municipal Council shall be given through the capital budget process or by presentation of a report through the appropriate Standing Committee.
4. The Managing Director, Corporate Services and City Treasurer, Chief Financial Officer or designate shall deposit in the Fund the following:
  - a. 50% of the proceeds from the Municipal Accommodation Tax, net of reasonable costs of collecting and administering the tax; and
  - b. Any other funds received or designated for this purpose.



5. The Managing Director, Corporate Services and City Treasurer, Chief Financial Officer or designate may invest the monies standing in the Fund in such securities as are permitted under subsection 418(1) of the Municipal Act, 2001, as amended, and in so doing, may consolidate the monies standing in the Fund with other funds that the Corporation may hold from time to time provided that any earnings derived from the monies standing in the Fund shall accrue to and form part of the Fund.
6. Notwithstanding that provision may not be made by the Municipal Council in the estimates of the current or any subsequent year for contributions to the Fund, it shall continue and be maintained, and the Municipal Council shall always be taken as considering the Fund as necessary so long as this by-law continues in force.
7. This by-law comes into force on the day it is passed.

ENACTED AND PASSED in Open Council on \_\_\_\_\_, 2018.

Matt Brown  
Mayor

Catharine Saunders  
City Clerk