

CORPORATION OF THE VILLAGE OF POINT EDWARD

BY-LAW 44 of 2019

**Being a By-Law to Authorize the Execution of an Agreement for the
purpose of Collecting a Municipal Accommodation Tax (MAT)
between**

**The Village of Point Edward and the Ontario Restaurant Hotel & Motel
Association (ORHMA)**

WHEREAS the Village of Point Edward has passed a By-Law imposing a Municipal Accommodation Tax (MAT) pursuant to section 400.1 of the Municipal Act, 2001; and

WHEREAS the Village deems it desirable to retain ORHMA to act as the collecting agent for the MAT; and

WHEREAS it is deemed expedient to execute an agreement between the Ontario Restaurant Hotel & Motel Association and the Village of Point Edward for the purpose of collection the MAT;

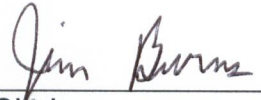
**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE VILLAGE
OF POINT EDWARD ENACTS AS FOLLOWS:**

1. That the Mayor and Clerk are hereby authorized to execute an agreement between the Ontario Restaurant Hotel & Motel Association and the Village of Point Edward as per the attached Schedule A.
2. That the Clerk is hereby authorized to make whatever minor changes to the agreement as may be necessary and reasonable in the circumstances.
3. That this by-law shall come into force and take effect on and from the date it is finally passed by Council.

Read a first and taken as read a second and third time and finally passed this 22nd day of October, 2019.



Mayor – Bev Hand



Clerk
Jim Burns

Municipal Accommodation Tax Collection Agreement

This Municipal Accommodation Tax Collection Agreement ("Agreement") dated this 22nd day of October, 2019 between the Village of Point Edward ("Village") and the Ontario Restaurant Hotel & Motel Association ("ORHMA").

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

WHEREAS the Village 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 Village of Point Edward'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 Village utilizing the ORHMA's existing network on the date specified in the Village's Municipal Accommodation Tax By-law.
2. Providers must remit the MAT to the ORHMA by one of the following methods: electronic transfer, certified cheque or by any other method proposed by the ORHMA and deemed acceptable by the Village Treasurer.
3. ORHMA will require Providers of Transient Accommodation to remit the MAT in accordance with the Village'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 20 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 Village, 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 Village Treasurer or designate without exception.

6. The Village 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 Village's behalf to the Village 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 Village of any unpaid Provider amounts over 90 days.
10. ORHMA will submit a monthly report to the Village 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 Village Treasurer.
11. The Village shall be responsible for remitting any amounts of the MAT collected by the ORHMA to the appropriate eligible tourism entity.
12. The Village 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 Village'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 Village, 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 Village'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 Village. ORHMA shall ensure that the written agreement with any third party include a confidentiality clause that satisfies its obligations to the Village with respect to the confidentiality of any information it acquires through its services to the Village.

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 Village of Point Edward liability account(s) until a payment is created and the funds are remitted to the Village.
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 Village in a timely basis.
21. ORHMA will perform a payment transfer to the Village (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 Village's designated account(s).

Refunds

22. The Village 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 Village.
24. The Village shall be responsible for the documentation of any refunds and any adjustments flowing from such refunds.

Reporting

25. The ORHMA will provide the Village with monthly reports and an annual report to support various Village 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 Village in a format compatible with the Village's electronic systems.
27. The following reports will be produced by the ORHMA and made available electronically to the Village.

- **Monthly Reconciliation Report:**

Detailed reconciliation report identifying the number of transactions and MAT revenue collected by the ORHMA and submitted to the Village. 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 Village.

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 Village shall impose such penalties for such failure as the Village Treasurer may determine to be appropriate. ORHMA shall not be liable to the Village for any unremitted MAT funds owed by providers that remain unpaid. ORHMA will collaborate with the Village to pursue collection methods as directed by the Village Treasurer, to collect any funds that remain unpaid.

Audit Requirements

29. ORHMA shall engage an auditor to undertake an audit concerning ORHMA's MAT financial operations with respect to MAT collected on behalf of the Village of Point Edward. 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 Village 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 Village of Point Edward.
32. In all instances, the Village 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 Village of Point Edward liability account, and/or the compliance of providers subject to the MAT with the Village'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 \$3,000 plus HST; and
 - (2) Quarterly fee in the amount of **1(one)** percentage of the monthly remittances to the Village.
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 Village (as deemed required by the Village), insurance costs, disbursements and any/all other operational costs and fees associated with the services. The Village 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 Village.
35. Any additional fees or expenses must be pre-authorized in writing by the Village Treasurer before the ORHMA undertakes any additional work.

36. The Village 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 Village for its quarterly fee as set out above, on a quarterly basis, using forms designed for this purpose.
38. The Village shall pay the amount of the invoice within 30 days of receiving ORHMA's invoice.

Indemnity

39. ORHMA shall indemnify and hold the Village 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 Village 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 Village 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 Village.
 - 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 Village 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 Village 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 Village in writing at least thirty (30) days prior to the date of cancellation or expiry. Evidence of such insurance shall be delivered to the Village 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 Village reserves the right to request such higher limits of insurance or other types of

policies appropriate to this agreement as the Village may reasonably require from time to time.

Event of Default

41. The Village 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 Village 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 Village 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 Village 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 Village shall not prevent the Village 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 enure 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 Village'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.

IN WITNESS WHEREOF the Village and ORHMA have hereunto affixed their respective corporate seals, attested by the hands of their respective officers duly authorized in that behalf.

THE VILLAGE OF POINT EDWARD

Per: _____

Mayor, Bev Hand

Per: _____

Chief Administrative Officer, Jim Burns

ONTARIO RESTAURANT HOTEL & MOTEL ASSOCIATION

Per: _____

Per: _____