

Report to Community and Protective Services Committee

To: Chair and Members
Community and Protective Services Committee

From: Cheryl Smith
Deputy City Manager, Neighbourhood and Community-Wide Services

Subject: The London Arts Council 2024-2027 Multi-Year Agreement

Date: January 29, 2024

Recommendation

That, on the recommendation of the Deputy City Manager, Neighbourhood and Community-Wide Services, the following actions be taken with respect to the London Arts Council 2024 – 2027 Multi-Year Agreement;

- a) the proposed by-law as appended to the staff report dated January 29, 2024, as Appendix “A” **BE INTRODUCED** at the Municipal Council meeting to be held on February 13, 2024;
- b) the 2024 – 2027 Multi-Year Purchase of Service Agreement with the London Arts Council **BE APPROVED**;
- c) the Mayor and City Clerk **BE AUTHORIZED** to execute the Purchase of Service Agreement;
- d) the Deputy City Manager, Neighbourhood and Community-Wide Services, or their written designates, **BE AUTHORIZED** to act as the City Representative for the purposes of the Purchase of Service Agreement;
- e) the Deputy City Manager, Neighbourhood and Community-Wide Services, or their written designates, **BE DELEGATED AUTHORITY** to amend the Purchase of Service Agreement with respect to the total maximum amount of the City’s contribution toward the Funded Activity under this Agreement as approved by Municipal Council; and
- f) that the London Arts Council 2024 – 2027 Multi-Year Purchase of Service Agreement report **BE RECEIVED**.

Executive Summary

The City of London has been purchasing arts and culture services from the London Arts Council (LAC) umbrella arts organization through a Multi-Year Agreement since 2001.

This report seeks Council approval to renew the London Arts Council 2024 – 2027 Purchase of Service Multi-Year Agreement, as the previous multi-year Agreement expired on December 31, 2023. It is proposed that the term of this new Agreement commence on January 1, 2024, and end on December 31, 2027. Funding for this Agreement is contained within the Arts, Culture, Advisory and Funding (Neighbourhood and Community-Wide Services) base budget.

Linkage to the Corporate Strategic Plan

Arts and Culture is aligned with the following strategic areas of focus in the City of London Strategic Plan 2023 – 2027:

Reconciliation, Equity, Accessibility, and Inclusion

- Establishment of new and strengthening current relationships with local First Nation and urban Indigenous communities and Indigenous-serving organizations; support Indigenous-led actions and initiatives that move the City of London and its agencies, boards, and commissions closer towards addressing injustices, and collective healing;
- Meaningful relationships and partnerships with equity-denied groups and with organizations led by, for, and with equity-denied communities; establish a city-wide Community of Practice to strengthen and support equity related initiatives and strategies;
- Equity-denied groups come to London and choose to stay in the community; support the community in attracting, integrating, and retaining new Londoners through education, celebration, employment, and other actions.

Wellbeing and Safety

- Londoners have a strong sense of belonging and place; create cultural opportunities that reflect the arts, heritage, and diversity of the community.
- Londoners have safe access to public spaces, services, and supports that increase wellbeing and quality of life; deliver programs and activities that foster improved physical, mental, and social wellbeing.

Economic Growth, Culture, and Prosperity

- Small and growing businesses, entrepreneurs and non-profits are supported to be successful; strengthen existing and introduce new partnerships and programs that support small and growing businesses, cultural and non-profit organizations, and entrepreneurs.
- London is a UNESCO City of Music and is recognized as a centre for arts, sport, and culture; implement the UNESCO four-year action plan. Use existing assets in creative ways, and evaluate opportunities for new assets, that support London's profile as a destination for arts, culture, sport, and recreation.
- Enhanced and increased creation and distribution of arts and culture activities, goods, and services; notably the film and music industries; support and promote festivals and events including the Forest City Film Festival.
- Londoners have more opportunities to engage in diverse arts and music events; provide professional development, mentorship, networking, and collaboration opportunities for individuals working in the arts and culture sector.
- Increased opportunities for performances or displays; nurture, incubate and provide more job opportunities for arts and culture talent. Provide more opportunities for artists and creators to perform and exhibit at diverse events and activations.
- More activities and events in the Core Area, offering diverse and inclusive experiences; provide arts, culture, music, sport and recreation events and activations for residents and visitors year-round.

Climate Action and Sustainable Growth

- Infrastructure is built, maintained, and secured to support future growth and protect the environment; continue to develop and maintain cultural assets in the community. Integrate arts and culture into public infrastructure.

Analysis

1.0 Background Information

The London Arts Council provides services to the City of London through this Multi-Year Purchase of Service Agreement. Together through this Agreement, Civic Administration and the LAC will continue to work toward implementing the arts and culture outcomes of

the City’s Strategic Plan, the London UNESCO City of Music Action Plan, and London’s Cultural Prosperity Plan.

The LAC is a not-for-profit charitable arts organization, dedicated to enhancing the quality of life and the vitality of London. It works towards this goal through nurturing the awareness of, involvement in, and commitment to excellence at all levels of art in London. Its focus is on those programs and services that provide information, education and training, consultation and collaboration, representation, and networking opportunities for the arts community, Londoners, and visitors to our community.

1.1 Previous Reports Related to this Matter:

- London Arts Council Annual Agreement, 2001
- [Key Cultural Prosperity Plan Initiatives Funded by the Culture Office in 2013](#) (IEPC: June 24, 2013)
- [Key Cultural Prosperity Plan Initiatives to be Funded by the Culture Office in 2014](#) (IEPC: April 14, 2014)
- [The London Arts Council Agreement Renewal](#) (SPPC: May 11, 2015)
- [The London Arts Council Agreement 2019 – 2023](#) (CPSC: March 19, 2019)

2.0 Key Issues and Considerations

2.1. London Arts Council Proposed Agreement Updates

The following updates from the previous Agreement have been made to this proposed LAC (2024 – 2027) Purchase of Service Agreement:

Proposed Update	Rationale Summary
<p><u>Term of Agreement:</u> Clause 3.1 This Agreement shall commence on January 1, 2024, and end on December 31, 2027.</p>	<p>Housekeeping update of the term of the Agreement.</p>
<p><u>Obligations of LAC:</u> LAC agrees to provide the following services:</p> <p>Clause (c) operating and administrating arts wellness programming and activities that foster improved wellbeing and enhance quality of life;</p> <p>Clause (e) operating, maintaining, and managing content on the Indigenous London Arts Website www.indigenouslondonarts.ca for the purpose of honouring, promoting, and sharing Indigenous arts, culture, and history through programs, projects, and initiatives delivered and administered by LAC and the City.</p>	<p>Additional Services added using existing funding.</p>
<p><u>Marketing, Promotion and Communication Requirements:</u> Clause 4.3 (b) LAC shall utilize social media, LHC website, paid advertisement, and community information sessions to advertise and market the Community Arts Investment Program (CAIP) to the community.</p>	<p>Recommendation from the November 1, 2023, MNP Internal Auditors “Community Arts Investment Program Value for Money (VFM) Audit”.</p>
<p><u>Payment of Fees for Services:</u> 5.1 (a) subject to City of London budget approval, beginning in 2024, and thereafter</p>	<p>Housekeeping updates:</p>

Proposed Update	Rationale Summary
<p>annually during the term of this Agreement, a portion of the Fee in the amount of \$173,798 shall be adjusted by the percentage change over 12 months in the December All-Items Consumer Price Index (CPI) for Canada, (Table 326-0020 all items, 2002 = 100).</p> <p>5.1 (b) subject to City of London budget approval, in each year during the term of this Agreement, the Fee shall be paid in two installments with 95% paid on or before March 30 and 5% paid on receipt of the previous year's Annual Report by October 31st as required in accordance with section 6.6.</p>	<ul style="list-style-type: none"> • Entire fee amount has been adjusted by the % change of the CPI over the term of the Agreement. • The Annual Report receipt date has been amended from July 15th to the October 31st.
<p><u>Operation and Administration of CAIP:</u></p> <p>Clause 5.3 a (v) The approval of "Assessor Expression of Interest Forms" submitted by interested applicants by the LAC Executive Director shall be documented and included in the annual LAC CAIP process documentation prior to new Assessment Panel members being selected.</p> <p>The LAC will have each member of the Assessment Panel sign the "Confidentiality and Non-Disclosure Agreement ("NDA") Form and Conflict of Interest Form" included with the CAIP Assessors Guide and include copies of this blank form in the annual LAC CAIP process documentation.</p> <p>The LAC CAIP processes and procedures shall be documented within the LAC CAIP Policy and Procedural Manual that will outline the detailed steps of each process and the responsibilities of staff. This information will be communicated and accessible to relevant staff.</p> <ul style="list-style-type: none"> • The following key CAIP Community Assessment Panel processes: <ul style="list-style-type: none"> ○ Assessor selection and approval process. ○ Conflict of interest check/declaration and non-disclosure and confidentiality agreement processes. ○ Process for documenting the Assessor Panel discussion and conclusion. ○ Process for developing and approving the annual CAIP communications plan including timeline. 	<p>Recommendations from the November 1, 2023, MNP Internal Auditors "Community Arts Investment Program Value for Money (VFM) Audit".</p>
<p>5.3 a (vi) establish within its organization an Assessment Panel to review London Arts Live (LAL) applications, auditions, and interviews. Each member of the Assessment Panel must complete a separate "Expression of Interest Form" and be approved by the Executive Director of the LAC.</p>	<p>Recommendations from the November 1, 2023, MNP Internal Auditors "Community Arts Investment Program Value for Money (VFM) Audit".</p>

Proposed Update	Rationale Summary
<p>The LAC will have each member of the Assessment Panel sign the “Confidentiality and Non-Disclosure Agreement (“NDA”) Form and Conflict of Interest Form”, which will be approved by the Executive Director of the LAC before selected to serve on the LAL Assessment Panel.</p> <p>The LAC London Arts Live Program shall include the use of an overall scoring process for assessment and selection of artists to be used by the LAL assessment panel.</p> <p>The LAC measures the overall success of the LAL program that includes:</p> <ul style="list-style-type: none"> • the number of artists performing (including the number of equity-denied artists) • the number of activations that take place (per geographic location and per artistic discipline). • the number of community partnerships • community/partner feedback related to individual artist performances. 	
<p>5.4 LAC shall use the Fee and shall distribute the funds provided to it for allocation under the CAIP without any actual potential or perceived conflict of interest. For the purposes of this section, a conflict of interest includes any circumstances where</p> <p>(a) LAC;</p> <p>(b) any person;</p> <p>(c) or any organization who has the capacity to influence the CAIP assessment panel decisions, has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the CAIP Assessment Panel’s objective, unbiased and impartial judgement relating to the use of the Fee/Funds provided to it for allocation under the CAIP.</p>	<p>Housekeeping update that clarifies that the CAIP assessment panel makes the CAIP successful application decisions, not the LAC who administers and distributes the funds for the CAIP program.</p>
<p><u>Records and Reporting Clause 6.6 Annual Report.</u> For each year of the Term of this Agreement, LAC shall, on or before October 31st, or on such other date as agreed to in writing by the Culture Manager, provide to the Culture Manager the previous year’s annual report approved by the LAC Board of Directors in a form satisfactory to the Culture Manager which shall include:</p>	<p>Housekeeping update that modifies the submission date of the Annual Report to October 31 from July 15.</p>

Proposed Update	Rationale Summary
<p>(a) Community Arts Investment Program (CAIP):</p> <p>Clause 6.6 (iv) Standardized recipient and assessor surveys shall be conducted annually to obtain feedback regarding their participation with the CAIP and to help identify opportunities for improvement. The surveys may ask questions regarding the following: Process satisfaction; Process improvement opportunities; Likelihood of involvement with the CAIP again and of a referral; How they heard about the CAIP.</p> <p>6.6 (v) a descriptive multi-year trend report shall be provided by September 30th of the following year of the end of the 4-year term of this Agreement on the analysis of the trends and overall impacts of the CAIP program and process on arts for London. which includes an analysis of evaluation forms received from CAIP recipients during the term of this Agreement.</p>	<p>Recommendation from the November 1, 2023, MNP Internal Auditors “Community Arts Investment Program Value for Money (VFM) Audit”.</p> <p>Housekeeping update to provide a trend report by September 30 of the following year after the end of the Agreement.</p>
<p><u>Insurance and Indemnity:</u> Clause 8.1 Throughout the term of this Agreement, LAC shall maintain general liability insurance on an occurrence basis for an amount of not less than Five Million Dollars (\$5,000,000) ...</p>	<p>Housekeeping update that raises the comprehensive general liability insurance from \$2M to \$5M.</p>

3.0 Financial Impact/Considerations

3.1 Annual Operating Funding from the City of London

Funding for this Agreement is contained within the Arts, Culture, Advisory and Funding (Neighbourhood and Community-Wide Services) base budget.

The LAC continues to receive \$173,798 in operating funding from the City of London annual base operating budget, subject to City of London budget approval which includes:

- (a) operating and administering the Community Arts Investment Program (CAIP) in accordance with the policies and procedures as approved by City Council from time to time for such program (“CAIP Policy”);
- (b) assisting the City with the acquisition and de-accession of public art as outlined in the City’s Public Art and Monuments Policy;
- (c) operating and administering arts wellness programming and activities that foster improved wellbeing and enhance quality of life;
- (d) operating, maintaining, and managing content on, the London Arts Website www.londonarts.ca for the purpose of promoting arts programs delivered and administered by LAC and the City;
- (e) operating, maintaining, and managing content on the Indigenous London Arts Website www.indigenousslondonarts.ca for the purpose of honouring, promoting,

and sharing Indigenous arts, culture, and history through programs, projects, and initiatives delivered and administered by LAC and the City;

- (f) promoting and showcasing the local arts through various opportunities throughout year;
- (g) consulting and meeting with the Culture Manager on an ongoing basis concerning LAC's arts initiatives;
- (h) participating with the City on the ongoing development and implementation of London's Cultural Prosperity Plan, London UNESCO City of Music Action Plan, and the City's Strategic Plan as it relates to Arts and Culture;
- (i) at the Culture Manager's request, attending a Standing Committee meeting to answer questions regarding the status of the implementation of London's Cultural Prosperity Plan and the City's Strategic Plan as it relates to Arts and Culture; and
- (j) providing advice and recommendations to and consult with the City on cultural matters as may be requested by the Culture Manager including without limitation to matters related to:
 - National and international findings, data, trends, and practices of the arts sector
 - Arts strategies, policies, and guidelines
 - Arts program development, implementation, and evaluation
 - Sector development, talent attraction, and retention
 - Audience development and tourism attraction through arts and culture
 - Inclusive and healthy community building through arts and culture
 - Truth and Reconciliation, Equity, Diversity, and Inclusion through arts and culture
 - Sustainable urban growth through arts and culture

Conclusion

Together through this proposed updated Purchase of Service Multi-Year Agreement Culture Services and the LAC will work toward implementing the arts and culture outcomes of the City's Strategic Plan including London's Cultural Prosperity Plan, the London UNESCO City of Music Action Plan, and the London Plan Section 8 (Culturally Rich and Diverse City). This Agreement with the LAC furthers the opportunity to share services and supports between the City and its partners, through shared multi-year service agreements.

This Purchase of Service Agreement has been reviewed with the assistance of Legal Services, Finance Supports, and Risk Management.

Prepared by: Robin Armistead, Manager, Culture Services

Recommended by: Cheryl Smith, Deputy City Manager, Neighbourhood and Community-Wide Services

cc: Eunju Yi, Executive Director, London Arts Council

Appendix A: London Arts Council 2024 - 2027 Multi-Year Purchase of Service By-law

Bill No.
2024

By-law No.

A By-law to approve the Purchase of Service Agreement between London Arts Council and the Corporation of the City of London; and to authorize the Mayor and City Clerk to execute the Agreement.

WHEREAS subsection 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

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

1. The Agreement attached as Schedule “A” to this by-law between The Corporation of the City of London and the London Arts Council (the Purchase of Service Agreement”) setting out the terms and conditions of the City’s grant of funds to the London Arts Council is approved.
2. The Mayor and Clerk are authorized to execute the Purchase of Service Agreement approved under section 1 of this by-law.
3. The Deputy City Manager, Neighbourhood and Community-Wide Services, or their written designate, is delegated the authority to act as the City Representative for the purposes of the Purchase of Service Agreement.
4. The Deputy City Manager, Neighbourhood and Community-Wide Services, or their written designate, is delegated the authority to amend the Purchase of Service Agreement with respect to the total maximum amount of the City’s contribution towards the Funded Activity under the Purchase of Service Agreement.
5. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council February 13, 2024

Josh Morgan
Mayor

Michael Schulthess
City Clerk

First reading -
Second reading -
Third reading –

Schedule 1

THIS PURCHASE OF SERVICE AGREEMENT with effect as of January 1, 2024.

BETWEEN:

LONDON ARTS COUNCIL
(hereinafter referred to as LAC)
OF THE FIRST PART

AND

THE CORPORATION OF THE CITY OF LONDON
(hereinafter referred to as the City)
OF THE SECOND PART

WHEREAS the City may provide any service or thing that the municipality considers necessary or desirable for the public pursuant to subsection 10(1) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended;

AND WHEREAS the City may pass by-laws respecting matters of: “5. Economic, social and environmental well-being of the municipality”; and “7. Services and things that the municipality is authorized to provide under subsection (1)” pursuant to subsection 10(2) of the *Municipal Act, 2001*, as amended;

AND WHEREAS the City has the capacity, rights, powers and privileges of a natural person for the purposes of exercising its authority pursuant to the provisions of section 9 of the *Municipal Act, 2001*, as amended;

The London Arts Council is an arm’s length, umbrella, not-for-profit arts organization incorporated provincially under the Ontario Corporations Act in 1995. The London Arts Council is governed by the Board of Directors, and its by-laws help govern the organization’s internal business. As a Canada Revenue Agency registered charity, the organization maintains its charitable status by observing the general requirements under the Income Tax Act.

LAC works with public, private, and community partners to build and sustain Londoners’ awareness of, involvement in, and support for all artistic disciplines across the city, provide paid opportunities for professional artists, and support arts organizations in London through programs and services that provide information, education and training, consultation and collaboration, representation and networking opportunities for the arts community, Londoners, and visitors to the City of London;

AND WHEREAS the City wishes to retain the services of LAC to provide services including the administration of City funding for the Community Arts Investment Program (CAIP) and specified arts services as set out in this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants herein contained, the parties hereto covenant and agree with the other as follows:

PART 1 – DEFINITIONS

1.1 In this Agreement the following terms shall have the following meanings:

- (a) “Services” means the services as set out in part 4 of this Agreement;
- (b) “City Treasurer” means the City’s Treasurer appointed under the *Municipal Act, 2001* or any person delegated by him or her for the purposes of this Agreement.

PART 2 – REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 General. LAC represents, warrants, and covenants that:

- (a) It is, and shall continue to be for the term of this Agreement, a validly existing legal entity with full power to fulfill its obligations under this Agreement;
- (b) It has, and shall continue to have for the term of this Agreement, the experience and expertise necessary to accept and apply the Fee/Funds toward its costs for the Services; and
- (c) It is and shall continue to be for the term of this Agreement, in compliance with all federal and provincial laws and regulations, all municipal by-laws, and any other orders, rules and by-laws related to any aspect of the Fee/Funds.

2.2 Execution of Agreement. LAC represents and warrants that:

- (a) It has the full power and authority to enter into this Agreement; and
- (b) It has taken all necessary actions to authorize the execution of this Agreement.

2.3 Governance. LAC represents, warrants, and covenants that it has and shall maintain, in writing for the period during which this Agreement is in effect:

- (a) A code of conduct and ethical responsibilities for all persons at all levels of LAC's organization;
- (b) Procedures to ensure the ongoing effective functioning of LAC;
- (c) Decision-making mechanisms for LAC;
- (d) Procedures to enable LAC to manage the Fee/Funds prudently and effectively;
- (e) Procedures to enable the preparation and delivery of all reports required pursuant to this Agreement; and
- (f) Procedures to enable LAC to deal with such other matters as LAC considers necessary to ensure that LAC carries out its obligations under this Agreement.

2.4 Supporting Documentation. Upon request, LAC shall provide the City with proof of the matters referred to in this section.

PART 3 – TERM

3.1 This Agreement shall commence on January 1, 2024, and end on December 31, 2027, unless terminated earlier pursuant to the termination provisions in this Agreement.

PART 4 - OBLIGATIONS OF LAC

4.1 LAC agrees to provide the following services (the "Services"):

- (a) operating and administering the Community Arts Investment Program (CAIP) in accordance with the City of London Community Arts Investment Policy as approved by City Council;
- (b) assisting the City with the acquisition and de-accession of public art as outlined in the City's Public Art and Monuments Policy;
- (c) operating and administering arts wellness programming and activities that foster improved wellbeing and enhance quality of life;

- (d) operating, maintaining, and managing content on, the London Arts Website www.londonarts.ca for the purpose of promoting arts programs delivered and administered by LAC and the City;
- (e) operating, maintaining, and managing content on the Indigenous London Arts Website www.indigenousslondonarts.ca for the purpose of honouring, promoting, and sharing Indigenous arts, culture, and history through programs, projects, and initiatives delivered and administered by LAC and the City;
- (f) promoting and showcasing the local arts through various opportunities throughout year;
- (g) consulting and meeting with the Culture Manager on an ongoing basis concerning LAC's arts initiatives;
- (h) participating with the City on the ongoing development and implementation of London's Cultural Prosperity Plan, the London UNESCO City of Music Action Plan, and the City's Strategic Plan as it relates to Arts and Culture;
- (i) at the Culture Manager's request, attending a Standing Committee meeting to answer questions regarding the status of the implementation of London's Cultural Prosperity Plan and the City's Strategic Plan as it relates to Arts and Culture; and
- (j) providing advice and recommendations to and consult with the City on cultural matters as may be requested by the Culture Manager including without limitation to matters related to:
 - National and international findings, data, trends, and practices of the arts sector
 - Arts strategies, policies, and guidelines
 - Arts program development, implementation, and evaluation
 - Sector development, talent attraction, and retention
 - Audience development and tourism attraction through arts and culture
 - Inclusive and healthy community building through arts and culture
 - Truth and Reconciliation, Equity, Diversity, and Inclusion through arts and culture
 - Sustainable urban growth through arts and culture

4.2 The City and LAC may agree in writing from time to time to add, or vary the Services supplied by the LAC to the City under this Agreement recognizing that the Fee paid by the City to the LAC may be adjusted to reflect such changes.

4.3 Marketing, Promotion and Communication Requirements.

- (a) LAC shall acknowledge, in a form and manner as authorized by the Culture Manager, the support of the City in all marketing and promotional materials (including but not limited to specific programs funded by the City on www.londonarts.ca, www.indigenousslondonarts.ca, social media, flyers, posters, programs, banners related to the Services provided by it under this Agreement.
- (b) LAC shall utilize social media, LAC websites, paid advertisement, and community information sessions to advertise and market the Community Arts Investment Program (CAIP) to the community.
- (c) LAC shall require all recipients of funding as a condition of granting funds under the Community Arts Investment Program (CAIP) to use the City's logo, in a manner as authorized by the Director of Strategic Communications and Community Engagement,

in their marketing and promotional materials related to the project, program or activity for which the CAIP funding was provided.

PART 5 - PAYMENT OF FEES FOR SERVICES AND FUNDING FOR CAIP GRANTS

5.1 For the Services, and subject to City budget approval, the City agrees to pay LAC a fee (“the Fee”) of ONE HUNDRED AND SEVENTY-THREE THOUSAND, SEVEN HUNDRED AND NINETY-EIGHT DOLLARS (\$173,798.00) for each year of this Agreement subject to the following:

- (a) subject to City of London budget approval, beginning in 2024, and thereafter annually during the term of this Agreement, the Fee in the amount of ONE HUNDRED AND SEVENTY-THREE THOUSAND, SEVEN HUNDRED AND NINETY-EIGHT DOLLARS (\$173,798.00) shall be adjusted by the percentage change over 12 months in the December All-Items Consumer Price Index for Canada, (Table 326-0020 all items, 2002 = 100);
- (b) subject to City of London budget approval, in each year during the term of this Agreement, the Fee shall be paid in two installments with 95% paid on or before March 30 and 5% paid on receipt of the previous year’s Annual Report by October 31st, or on such other date as agreed to in writing by the Culture Manager as required in accordance with section 6.6;
- (c) LAC shall use the Fee for the purpose of providing the Services;
- (d) the City may, in its sole discretion and in addition to any other remedy available to it, withhold any payment due to LAC under this Agreement;
- (e) if LAC has failed to submit when due any report required by the City under this Agreement;
 - (i) pending the completion of an audit of LAC’s books and records, should the City decide to undertake such an audit;
 - (ii) if LAC is not in compliance with any applicable laws, regulations, by-laws, Council Policies, and if applicable the Vulnerable Populations requirements;
 - (iii) in the event that an audit of LAC’s books and records indicates mismanagement or misuse of funds, in the opinion of the City Treasurer; and
 - (iv) if LAC has not provided the insurance certificate as required under this Agreement;
- (f) the Fees shall be adjusted to reflect the addition, or variance to the Services agreed upon in writing from time to time by the City and LAC.

5.3 Operation and administration of the Community Arts Investment Program (CAIP)

- (a) LAC agrees that it shall;
 - (i) operate and administer the Community Arts Investment Program (CAIP) in accordance with the CAIP Policy;
 - (ii) establish and maintain a separate bank account to be used solely for the purpose of holding funds provided to it by the City for grants to be made under the Community Arts Investment Program (CAIP);
 - (iii) deposit and hold all funds provided to it by the City for grants to be made under the Community Arts Investment Program (CAIP) into such account;

- (iv) withdraw funds from such account only for the purpose of funding a program approved by the LAC under the Community Arts Investment Program (CAIP); and
- (v) establish within its organization a volunteer (CAIP) Community Assessment Panel to review applications for the purpose of allocation of the CAIP funding. The approval of “Assessor Expression of Interest Forms” submitted by interested applicants by the LAC Executive Director shall be documented and included in the annual LAC CAIP process documentation prior to new Assessment Panel members being selected.

The LAC will have each member of the Assessment Panel sign the “Confidentiality and Non-Disclosure Agreement (“NDA”) Form and Conflict of Interest Form” included with the CAIP Assessors Guide and include copies of this blank form in the annual LAC CAIP process documentation.

The decisions of the (CAIP) Assessment Panel shall be final and not subject to being changed by LAC Board Members, LAC staff, City Council, or Civic Administration.

The LAC CAIP processes and procedures shall be documented within the LAC CAIP Policy and Procedural Manual that will outline the detailed steps of each process and the responsibilities of staff. This information will be communicated and accessible to relevant staff.

- The following key CAIP Assessment Panel processes will be included:
 - Assessor selection and approval process;
 - Conflict of interest check/declaration and non-disclosure and confidentiality agreement processes;
 - Process for documenting the Assessment Panel discussion and conclusion
 - Process for developing and approving the annual CAIP communications plan and timeline.

- (vi) establish within its organization an Assessment Panel to review London Arts Live (LAL) applications, auditions, and interviews. Each member of the Assessment Panel must complete a separate “Expression of Interest Form” and be approved by the Executive Director of the LAC.

The LAC will have each member of the Assessment Panel sign the “Confidentiality and Non-Disclosure Agreement (“NDA”) Form and Conflict of Interest Form”, which will be approved by the Executive Director of the LAC before selected to serve on the LAL Assessment Panel.

The LAC London Arts Live Program shall include the use of an overall scoring process for assessment and selection of artists to be used by the LAL assessment panel.

The LAC measures the overall success of the LAL program that includes:

- the number of artists performing (including the number of equity-denied artists)
- the number of activations that take place (per geographic location and per artistic discipline).
- the number of community partnerships
- Community/partner feedback related to individual artist performances.

- (b) LAC agrees that it shall consult with the Culture Manager about changes proposed by it to the CAIP Program.

- (c) LAC acknowledges and agrees:
- (i) that the funds provided to it by the City for grants to be made under the Community Arts Investment Program (CAIP) are subject to the approval by City Council, in its sole discretion, for the fiscal year in which the payment is to be made.
 - (ii) that if the City Council terminates or reduces the amount of total funding for grants allocated to the program the City is not obligated to make any such payment to the LAC and LAC shall not hold the City liable for any termination or reduction of the funding.
- (d) The parties agree that if the funding for grants allocated to the program is terminated or reduced, they shall attempt in good faith to negotiate an amendment to the Fee and if an agreement cannot be reached that is satisfactory to both parties, either party may terminate this Agreement in accordance with the termination provisions of this Agreement.

5.4 LAC shall use the Fee and shall distribute the funds provided to it for allocation under the CAIP without any actual potential or perceived conflict of interest. For the purposes of this section, a conflict of interest includes any circumstances where

- (a) LAC;
- (b) any person;
- (c) or any organization who has the capacity to influence the CAIP assessment panel decisions, has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the CAIP Assessment Panel's objective, unbiased and impartial judgement relating to the use of the Fee/Funds provided to it for allocation under the CAIP.

PART 6 – RECORDS & REPORTING

6.1 Records. LAC shall keep and maintain during the term of this Agreement and for a period of seven (7) years following expiration or termination of this Agreement:

- (a) all financial records in accordance with generally accepted accounting principles related to all of its operations and the Services; and
- (b) all non-financial documents and records relating to the Services.

6.2 In the event that the LAC ceases operation, LAC shall not dispose of any records related to the Services without the prior written consent of the Culture Manager and shall immediately return all records to the City upon request.

6.3 The City Treasurer or an auditor identified by the City Treasurer may, at the City's expense, upon 5 business days' notice to LAC and during normal business hours, enter upon the LAC's premises to review LAC's records under section 6.1, and for these purposes, the City Treasurer or an auditor identified by the City Treasurer may take one or more of the following actions:

- (a) inspect and copy the records and documents referred to in section 6.1;
- (b) remove any copies made pursuant to this section from LAC's premises; and
- (d) conduct any type of audit or investigation of the LAC in respect to any of its obligations under this Agreement.

6.4 LAC agrees that during any inspection, audit or investigation conducted under section 6.3 it shall cooperate fully with the City Treasurer or an auditor identified by the

City Treasurer and shall make available all facilities, physical and otherwise, for such inspection, audit or investigation and shall furnish the City Treasurer and its auditor with all such information as it or they, may from time to time require.

6.5 Financial Reporting. LAC shall file with the City, no later than July 15th in each year, financial statements and an auditor's report for the immediately preceding year, fairly representing the financial position of the LAC and the results of its operations for the period under review in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period.

6.6 Annual Report. For each year of the Term of this Agreement, LAC shall, on or before October 31st each year, or on such other date as agreed to in writing by the Culture Manager, provide to the Culture Manager the previous year's annual report approved by the LAC Board of Directors in a form satisfactory to the Culture Manager which shall include.

(a) Community Arts Investment Program (CAIP):

- (i) a listing of annual CAIP recipients receiving funding;
- (ii) a list of any unallocated funds that shall remain to be allocated as part of the CAIP allocation process for the term of this Agreement;
- (iii) a report on conflict of interest or formal complaints which were raised during the timeframe being reported;
- (iv) Standardized recipient and assessor surveys shall be conducted annually to obtain feedback regarding their participation with the CAIP and to help identify opportunities for improvement. The surveys may ask questions regarding the following: Process satisfaction; Process improvement opportunities; Likelihood of involvement with the CAIP again and of a referral; How they heard about the CAIP.
- (v) a descriptive multi-year trend report shall be provided by September 30th of the following year of the end of the 4-year term of this Agreement on the analysis of the trends and overall impacts of the CAIP program and process on arts for London. which includes an analysis of evaluation forms received from CAIP recipients during the term of this Agreement.

(b) An annual descriptive report, including measures about the programs that the LAC operates, which relate to the impact and alignment with the implementation the City's Strategic Plan as it relates to strategies for arts and culture including London's Cultural Prosperity Plan and the London UNESCO City of Music Action Plan.

PART 7 – COMPLIANCE WITH LEGISLATION

7.1 LAC agrees that it shall during the term of this Agreement be in compliance with all federal and provincial laws and regulations, all municipal by-laws and any other applicable orders, rules and by-laws.

7.2 LAC shall operate independently of the City and is not the agent or servant of the City for any purpose.

7.3 LAC acknowledges and agrees this Agreement is in no way deemed or construed to be an Agreement of Employment. Specifically, the parties agree that it is not intended by this Agreement that LAC or its employees, are to be employees of or have an employment relationship of any kind with the City or are in any way entitled to employment benefits of any kind whatsoever from the City, including but not limited to private programs or coverages, and statutory programs and coverages, whether under employment statutes, worker's compensation plans, unemployment/employment schemes, health plan contributions, or otherwise ("Employment Benefits"). LAC further acknowledges and agrees that it is the sole and exclusive responsibility of LAC to make

its own determination as to its status under the *Employment Standards Act*, 2000, S.O. 2000, c. 41; the *Income Tax Act*, R.S.C. 1985 c.1 (1st Supp); the *Canada Pension Act*, R.S.C. 1985, c.C-8; the *Employment Insurance Act*, S.O. 1996,c.23; the *Workplace Safety and Insurance Act*, 1997 S.O. 1997, c.26(Schedule "A"); the *Occupational Health and Safety Act*, R.S.O. 1990, c.o.1; the *Pay Equity Act*, R. S. O. 1990, c.P.7; or the *Health Insurance Act*, R.S.O. 1990, c.H.6; all as amended from time to time, and any legislation in substitution therefore and, in particular, to comply with the provisions of any of the aforesaid Acts, and to make any payments required thereunder.

7.4 LAC shall ensure that all its employees, agents, volunteers, or others for whom the LAC is legally responsible receive training regarding the provision of the Services contemplated herein to persons with disabilities in accordance with Section 6 of Ontario Regulation 429/07 (the "Regulation") made under the *Accessibility for Ontarians with Disabilities Act*, 2005, as amended the "Act"). LAC shall ensure that such training includes, without limitation, a review of the purposes of the Act and the requirements of the Regulation, as well as instruction regarding all matters set out in Section 6 of the Regulation. LAC shall submit to the City, as required from time to time, documentation describing its customer service training policies, practices and procedures, and a summary of its training program, together with a record of the dates on which training was provided and a list of the employees, agents volunteers or others who received such training. The City reserves the right to require LAC to amend its training policies to meet the requirements of the Act and the Regulation.

7.5 In accordance with the *Municipal Freedom of Information and Protection of Privacy Act*, LAC, its directors, officers, employees, agents and volunteers shall hold confidential and shall not disclose or release to any person at any time during or following the term of this Agreement, except where required by law, or as required under this Agreement, any information or document without obtaining the written consent of the individual/organization concerned prior to the release or disclosure of such information or document and shall comply with the requirements regarding personal Information and confidentiality as contained in **Schedule "A"** attached hereto and forming part of this Agreement.

7.6 When collecting personal information under this Agreement, LAC shall use only the forms approved by the City for that purpose.

PART 8 - INSURANCE AND INDEMNITY

8.1 Throughout the term of this Agreement, LAC shall maintain general liability insurance on an occurrence basis for an amount of not less than Five Million Dollars (\$5,000,000.00) and shall include the City as an additional insured with respect to LAC's operations, acts and omissions relating to its obligations under this Agreement, such policy to include non-owned automobile liability, personal liability, personal injury, broad form property damage, contractual liability, owners' and contractor's protective products and completed operations, contingent employers liability, cross liability and severability of interest clauses. LAC shall submit, on an annual basis in advance of expiry, a completed standard Insurance Certificate (Form #0788), which provides for a minimum of thirty (30) days' notice in advance of cancellation of such insurance.

8.2 LAC shall submit, on an annual basis, a comprehensive (3D) Dishonesty, Disappearance and Destruction Blanket Position Policy or equivalent Fidelity Bond in the amount of One Hundred Thousand Dollars (\$100,000). The City shall be shown on the policy as a named Obligee, with respect to incidents arising from work performed under this Agreement.

8.3 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; and any failure by LAC to satisfactorily meet these conditions relating to insurance shall be deemed a breach of this Agreement by LAC.

8.4 LAC undertakes and agrees to defend and indemnify the City and hold the City harmless from and against all claims, demands, suits, losses, costs, damages and expenses that the City may sustain or incur by reason of:

(a) any breach of this Agreement, including but not limited to damage to any and all persons or property, all fines or penalties or loss or misuse of funds, by LAC, its employees or persons for whom it is at law responsible;

(b) any claim or finding that LAC, its employees or persons for whom LAC is at law responsible are employees of, or are in any employment relationship with, the City or are entitled to any Employment Benefits of any kind; or any liability on the part of the City, under the *Income Tax Act* (Canada) or any other statute (including, without limitation, any Employment Benefits statute), to make contributions, withhold or remit any monies or make any deductions from payments, or to pay any related interest or penalties, in connection with the performance of Services or otherwise in connection with this Agreement; and

(c) LAC further agrees, in accordance with section 10.9, this indemnification shall survive the expiration and termination of this Agreement for claims arising from or out of incidents occurring during the term of this Agreement.

PART 9 - DEFAULT AND TERMINATION

9.1 Events of Default. The following constitute events of default, the proof of which to the contrary lies upon LAC:

(a) LAC 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 LAC or it is dissolved;

(c) LAC ceases actual bona fide operation for a period of thirty (30) days;

(d) LAC has knowingly submitted false or misleading information to the City; or

(e) LAC is in breach of the performance of, or compliance with, any term, condition or obligation on its part to be observed or performed under this Agreement.

9.2 Remedies on Default/Termination on Default. If an event of default occurs, the City may, at any time, take one or more of the following actions in addition to any other remedy that may be available to it:

(a) initiate any action the City considers necessary in order to facilitate the provision of the Services, the successful application of the Fee for the Services or for the allocation of the funding provided under the Community Arts Investment Program (CAIP);

(b) provide the LAC with an opportunity to remedy the event of default;

(c) suspend the payment of the Fee for such period as the City determines appropriate;

(d) reduce the amount of the Fee;

(e) demand the repayment of any of the Fee or funds provided to it for allocation under the Community Arts Investment Program (CAIP) remaining in the possession or under the control of the LAC;

(f) demand the repayment of any amount equal to any of the Fee LAC used, but did not use in accordance with this Agreement:

(g) demand the repayment of any amount equal to any of the funds disbursed under the Community Arts Investment Program (CAIP) that were not used, allocated or disbursed in accordance with this Agreement;

(h) demand the repayment of any amount equal to any of the Fee the City provided to LAC;

(i) demand the repayment of any amount equal to the funds provide by the City to LAC for allocation under the Community Arts Investment Program (CAIP); or

(j) terminate this Agreement at any time, including immediately, upon giving Notice to LAC.

9.3 LAC Not Remediying. If under section 9.2 the City has provided LAC with an opportunity to remedy the event of default and LAC does not remedy the event of default within the time specified by the City in the notice, the City may in its sole discretion extend the notice period or initiate any one or more of the actions provided in section 9.2.

9.4 Obligation to return Fee and CAIP funds to the City. If the City has demanded any repayment under section 9.2, LAC agrees that it shall forthwith remit such repayment to the City.

9.5 This Agreement may be terminated at any time by either party providing 60 days' notice in writing to the other, or by the City and LAC agreeing in writing at any time to the termination of this Agreement.

9.6 Upon receipt or rendering of notice that this Agreement is ending, LAC shall perform no further services other than those reasonably necessary to close out its services and report to the City.

9.7 On termination or expiration of this Agreement, LAC shall return any unused portion of the Fee and any funds provided to it by the City for grants to be made under the Community Arts Investment Program (CAIP) that have not been allocated under the program.

PART 10 - GENERAL

10.1 The parties agree that each of them shall, upon reasonable request of the other, do or cause to be done all further lawful acts, deeds, and assurances whatever for the better performance of the terms and conditions of this Agreement.

10.2 If any part of this Agreement is rendered invalid, the remainder of the Agreement continues to apply.

10.3 This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, arrangement (interim or otherwise), letters of intent, understandings, negotiations, and discussions, whether oral or written, of the parties pertaining to such subject matter.

10.4 No subsequent alteration, amendment, change or addition to this Agreement shall be binding on the City or LAC unless in writing signed by each of them.

10.5 LAC shall not assign this Agreement without the prior written consent of the City which consent may be withheld for any reason in the City's sole discretion.

10.6 This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors or assigns.

10.7 Under this Agreement, any notices required under this Agreement shall be in writing and shall be delivered by postage-prepaid mail, personal delivery, or recognized

courier and shall be addressed to the other party for whom it is intended 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 delivered by postage prepaid mail, three (3) days after the party mails it.

Any notices under this Agreement shall be sent to the City and LAC as follows:

- (a) The Corporation of the City of London
300 Dufferin Ave., 3rd floor
P.O. Box 5035
London. ON N6A 4L9
Attention: City Clerk
- (b) London Arts Council
267 Dundas St.
London, ON, N6A 1H2
Attention: Executive Director

10.8 This Agreement shall be governed and interpreted in accordance with the laws of Ontario and Canada applicable to this Agreement and shall be treated in all respects as an Ontario contract. LAC and the City specifically submit to the exclusive jurisdiction of the courts of Ontario and Canada.

10.9 The following provisions and any applicable cross-referenced provisions and schedules shall continue in full force and effect for a period of seven (7) years from the date of expiry or other termination of this Agreement: Part 1 and any other applicable definitions; section 4.3; Part 6; paragraphs (e) (g) (h) and (i) of section 9.2; section 9.4; section 9.6; section 9.7 and Part 10. Section 8.4 and any applicable cross-referenced provisions and schedules shall continue in full force and effect for a period of two (2) years from the date of expiry or other termination of this Agreement.

10.10 LAC acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their corporate seals attested to by the hands of their respective authorized signing officers.

**THE CORPORATION OF THE
CITY OF LONDON**

LONDON ARTS COUNCIL

Josh Morgan, Mayor

Eunju Yi, Executive Director

Michael Schulthess, City Clerk

*I have authority to bind the Corporation

SCHEDULE “A”

Municipal Freedom of Information and Protection of Privacy

1. In this Schedule:

- (a) “City Information” means General Information and Personal Information:
 - (i) provided by the City to the London Arts Council in relation to this Agreement;
 - (ii) collected by the London Arts Council in relation to this Agreement; or
 - (iii) derived by the London Arts Council from the General Information and Personal Information provided under subsection 1(a)(i) or collected under subsection 1(a)(ii);
- (b) “London Arts Council Information” means General Information and Personal Information, except City Information, provided by the London Arts Council to the City in relation to this Agreement;
- (c) “General Information” means recorded information that is not Personal Information; and
- (d) “Personal Information” means recorded information about an identifiable individual, including,
 - (i) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
 - (ii) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
 - (iii) any identifying number, symbol or other particular assigned to the individual,
 - (iv) the address, telephone number, fingerprints or blood type of the individual,
 - (v) the personal opinions or views of the individual except if they relate to another individual,
 - (vi) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
 - (vii) the views or opinions of another individual about the individual, and
 - (viii) the individual’s name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

2. All City Information shall remain the sole property of the City and any part of it or all of it shall be given by the London Arts Council to the City within 5 business days of:

- (a) the City’s written request; or
- (b) the termination or expiry of this Agreement.

3. Except in accordance with this Agreement, the London Arts Council shall, when collecting City Information that is Personal Information:

- (a) limit its collection of the information to that which is necessary for it to comply with this Agreement;
 - (b) make its best efforts to collect the information directly from the individual to whom the information relates by fair and lawful means; and
 - (c) identify the purpose for which the information is collected to the individual at or before the time of collection.
4. The London Arts Council shall retain all City Information in a manner that protects its security and confidentiality and shall not disclose City information to any of its personnel not having a need to know such information in relation to the performance of this Agreement.
5. Except:
- (a) with the consent of the individual; or
 - (b) in accordance with this Agreement, the London Arts Council shall not use City Information that is Personal Information for purposes other than that for which it was collected.
6. Except for law enforcement purposes and in accordance with this Agreement, the London Arts Council shall not disclose City Information in any manner whatsoever without the prior approval in writing of the City.
7. The London Arts Council shall not destroy any City Information.
8. Subject to all applicable legislation, including the *Municipal Freedom of Information and Protection of Privacy Act*, the City may disclose:
- (a) any part of or all London Arts Council Information; or
 - (b) any part or all of this Agreement.