

## Report to Corporate Services Committee

**To:** Chair and Members  
Corporate Services Committee

**From:** Tara Pollitt  
Deputy City Manager, Legal Services

**Subject:** Transfer of Part III and Part IX Prosecutions from the Province of Ontario, Ministry of the Attorney General to The Corporation of the City of London

**Date:** July 17, 2024

## Recommendation

That on the recommendation of the Deputy City Manager, Legal Services, the following actions be taken with respect to the transfer of Part III and Part IX prosecutions from the Province of Ontario, Ministry of the Attorney General:

- a) the proposed by-law, attached to the staff report dated July 17, 2024 as Appendix "A" **BE INTRODUCED** at the Municipal Council meeting to be held on July 23, 2024, to:
  - i) approve the Interim Transfer Agreement between His Majesty the King in Right of Ontario as Represented by the Attorney General and the Corporation of the City of London related to the transfer of responsibility for certain prosecutions under Parts III and IX of the *Provincial Offences Act* ("Agreement") attached as Schedule "A";
  - ii) delegate authority to the Deputy City Manager, Legal Services to approve any future amending agreements related to the Agreement; and
  - iii) authorize the Mayor and City Clerk to execute all agreements between the City and the Province, and any other documents as may be required from time to time related to the transfer of certain prosecutions commenced under Parts III and IX of the *Provincial Offences Act* from the Ministry of the Attorney General to the City of London, each in a form satisfactory to the Deputy City Manager, Legal Services.
- b) the Civic Administration **BE AUTHORIZED** to undertake all administrative acts that are necessary in connection with this matter; and
- c) this report **BE RECEIVED** for the consideration of Council.

## Executive Summary

The purpose of this report is to seek Council approval of the transfer of the Part III and Part IX charges from Province to the City.

The City is currently responsible for the administration of the local *Provincial Offences Court* and the prosecution of charges laid under Parts I and II of the *Provincial Offences Act* ("POA"). In 2017, the POA was amended to permit the Province to transfer responsibility of charges under Parts III and IX of the *Act* to municipalities.

The Ministry of the Attorney General has provided a draft Interim Transfer Agreement to the City, which has been reviewed and approved by Legal Services. Negotiations with the Province have been ongoing and Civic Administration are prepared to finalize the transfer, subject to Council approval.

## Linkage to the Corporate Strategic Plan

The following report supports the Strategic Plan through the strategic focus of a well-run City. The transfer of will improve the efficiency of the Provincial Offences Court and enhance customer services for the public.

## Analysis

### 1.0 Background Information

#### 1.1 Previous Reports Related to this Matter

None.

#### 1.2 Background

In 1997, the *Provincial Offences Act* was amended by the *Streamlining of Administration of Provincial Offences Act, 1997* (Bill 108) to permit the Attorney General and municipalities to enter into agreements authorizing the municipalities to conduct court administration and court support functions under the POA and conduct prosecutions of matters commenced under Parts I and II of the POA. Part I offences are simple offences for which a set fine ticket may be issued and typically involved *Highway Traffic Act* offences. Part II offences are parking related offences. In 2001, the City of London entered into a Memorandum of Understanding and a Local Side Agreement with the Province under which the City became responsible for all Part I and II prosecutions. The City also prosecutes certain Part III charges under municipal by-laws and some provincial statutes such as the *Building Code Act* and the *Fire Protection and Prevention Act*.

In 2017, the Province passed Bill 177, the *Stronger, Fairer Ontario Act* which enabled the Attorney General to enter into agreements with municipalities to transfer responsibility for certain prosecutions under Part III and Part IX of the POA. Part III offences are more serious charges such as driving under suspension or careless driving causing bodily harm or death; Part IX matters include hearings under the *Dog Owners' Liability Act*. While the roll out across the province has been gradual, all municipalities are expected to undertake the Part III transfers. It is considered beneficial to cooperate with the transfer and negotiate timing based on local concerns rather than wait until the transfer is potentially mandated by the Province.

### 2.0 Discussion and Considerations

#### 2.1 Benefits Arising from the Transfer

There may be benefits to the City arising from the transfer of Parts III and IX prosecutions, including:

- Enhanced delivery of court services to the community as Parts I and III matters can be scheduled in the same courtroom, on the same docket and prosecuted by the same prosecutor;
- A more streamlined process for defendants, agents, lawyers and witnesses by having only one prosecution office rather than two (currently there is one office for Provincial prosecutions and one office for municipal prosecutors);
- A simplified disclosure process, where police only have to deal with one office;
- Blended court schedules mean police court dates can be reduced;
- Improved use of judicial and court resources;
- The City will no longer have to pay for a prosecutor for Parts III and IX matters (the current cost is \$109/hr, but this rate has not been updated since 2004 and MAG is in the process of reassessing it).

## 2.2 Concerns Regarding the Transfer

One area of concern is the existing file load and backlog. The Crown's office has expressed a commitment to attempt to reduce the file load to current matters and is taking steps to ensure files are organized. The agreement contemplates a 60-day rollout during which the transfer is to take place to allow for a smooth transition. The Crown is also committed to cleaning up old outstanding matters such as bench warrants.

The Crown retains carriage of certain Part III matters including charges against Young Persons, matters where criminal proceedings have been commenced out of the same circumstances, and proceedings under Christopher's Law (involving minors). The Crown may elect to retain carriage of catastrophic injuries and fatalities.

Disclosure for Part III files is typically more voluminous and required for every Part III file, not just when a trial is requested as in the case of Part I and II files. The need for additional administrative support was recognized during the multi-year budget process and an additional paralegal was hired. The City currently has three prosecutors handling the Parts I and II offences. It may be necessary to hire an additional prosecutor if existing staff are not able to handle the increased volume of cases.

## 3.0 Financial Impact/Considerations

No significant financial benefit is expected from the transfer; however, it is anticipated that service delivery will improve. The revenue from fines associated with Part III matters is already included in revenue received by POA Court Services so there is no additional revenue associated with this transfer. At this time there are no additional costs associated with the transfer.

The City is currently billed \$109/hr for Part III provincial prosecution services, with an annual expense of approximately \$45,000. The transfer will eliminate the existing budget expense for this hourly fee.

As noted above, disclosure requirements are more voluminous for Part III files. In anticipation of the transfer, budget case L-3 was included in the multi-year budget in order to hire a paralegal to assist with administrative tasks related to Parts III and IX prosecutions. It is anticipated that existing City prosecutors will conduct the prosecutions; however, depending on the volume of cases, it may be necessary to submit a budget case for additional prosecutor in the future.

## Conclusion

The transfer from the Province has potential benefits arising from a more efficient use of court resources. It is considered beneficial to cooperate with the Province to ensure there are reasonable timelines for the City, rather than waiting until the Province potentially mandates the transfer.

Staff are therefore recommending that the by-law approving the Interim Agreement, attached at **Appendix "A"** to this report, be approved.

**Prepared by and**

**Recommended By:**

**Tara Pollitt**

**Deputy City Manager, Legal Services**

## APPENDIX A

Bill No.  
2024

By-law No. A-

A by-law to authorize and approve the Interim Transfer Agreement between His Majesty the King in Right of Ontario as Represented by the Attorney General and the Corporation of the City of London related to the transfer of responsibility for certain prosecutions under Parts III and IX of the Provincial Offences Act and to delegate the authority to the Deputy City Manager, Legal Services to approve any future amending agreements related to 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 the City of London entered into a Memorandum of Understanding and a Local Side Agreement with the Province under which the City became responsible for all Part I and II prosecutions;

AND WHEREAS the Municipal Council deems it appropriate to enter into an agreement between His Majesty the King in Right of Ontario as Represented by the Attorney General and the Corporation of the City of London related to the transfer of responsibility for certain prosecutions under Parts III and IX of the Provincial Offences Act;

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

1. The Interim Transfer Agreement between His Majesty the King in Right of Ontario as Represented by the Attorney General and the Corporation of the City of London related to the transfer of responsibility for certain prosecutions under Parts III and IX of the Provincial Offences Act (“the Agreement”), substantially in the form attached as Schedule 1 to this bylaw, is hereby authorized and approved;
2. The Mayor and City Clerk are authorized to execute the Agreement approved under section 1 of this bylaw;
3. The Deputy City Manager, Legal Services is hereby authorized to approve any future amending agreements related to the Agreement;
4. The Mayor and Clerk are authorized to execute any schedules or amending agreements to the Agreement approved by the Deputy City Manager, Legal Services, pursuant to their authority under section 3 of this bylaw;
5. Civic Administration is delegated the authority to undertake all administrative actions required in connection with the Agreement, any future amending agreements or schedules.

6. This by-law comes into force and effect on July 23, 2024 subject to the provisions of PART VI.1 of the *Municipal Act, 2001*.

PASSED in Open Council on July 23, 2024 subject to the provisions of PART VI.1 of the *Municipal Act, 2001*.

Josh Morgan  
Mayor

Michael Schulthess  
City Clerk

First Reading – July 23, 2024  
Second Reading – July 23, 2024  
Third Reading – July 23, 2024

**PARTS III AND IX OF PROVINCIAL OFFENCES ACT  
(ONTARIO)**

**INTERIM TRANSFER AGREEMENT**

**- between -**

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO  
as represented by the Attorney General**

**- and -**

**CORPORATION OF THE CITY OF LONDON**

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**PARTS III AND IX OF PROVINCIAL OFFENCES ACT (ONTARIO) INTERIM  
TRANSFER AGREEMENT**

**THIS PARTS III AND IX OF PROVINCIAL OFFENCES ACT (ONTARIO) INTERIM  
TRANSFER AGREEMENT (“Agreement”)** is made on the \_\_\_\_ day of \_\_\_\_\_,  
20\_\_,

**BETWEEN:**

**HIS MAJESTY THE KING IN RIGHT OF ONTARIO  
AS REPRESENTED BY THE ATTORNEY GENERAL**

(the “**Attorney General**”)

-and-

**CORPORATION OF THE CITY OF LONDON**

(the “**Municipal Partner**”)

**WHEREAS**, pursuant to the *Streamlining of Administration of Provincial Offences Act*, 1997, S.O. 1998, c.4, (Bill 108), the Attorney General and the Municipalities, as defined below, may enter into an agreement authorizing such municipalities, in general, to conduct court administration and court support functions under the POA, as defined below, and prosecutions of matters commenced under Parts I and II of the POA;

**AND WHEREAS**, the Attorney General and the Municipalities entered into memorandum of understandings and local side agreements whereby the Attorney General transferred to such municipalities, in general, court administration and court support functions under the POA and prosecutions of matters commenced under Parts I and II of the POA;

**AND WHEREAS**, such transfer was documented between the Attorney General and the Municipal Partner in the MOU, as defined below, and the LSA, as defined below;

**AND WHEREAS**, pursuant to the *Stronger, Fair Ontario Act (Budget Measures)*, 2017, S.O. c.34, Sched. 35, s.12, the Attorney General and the Municipalities may enter into an agreement authorizing such municipalities, in general, to conduct prosecutions commenced under the POA;

**AND WHEREAS**, the Attorney General, as part of its transfer project, intends to request amendments to the memorandum of understandings and the local side agreements in accordance with such documents from the Municipalities in order to

transfer certain prosecutions commenced under Parts III and IX of the POA prosecuted by the Criminal Law Division of the Ministry of the Attorney General to such municipalities;

**AND WHEREAS**, the Attorney General, as part of an interim transfer project, would like to transfer the prosecutions commenced under Parts III and IX of the POA prosecuted by the Criminal Law Division of the Ministry of the Attorney General to the Municipal Partner and the Municipal Partner, as a participant in such project, wishes to accept such transfer;

**NOW THEREFORE**, in consideration of the mutual covenants and obligations contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by the parties, the Attorney General and the Municipal Partner covenant and agree as follows:

## ARTICLE I – INTERPRETATION

**1.1 Definitions.** The following terms shall have the meanings ascribed to them below unless there is something in the context inconsistent therewith:

- (a) **“Agreement”** means this agreement, including all of the schedules, attached hereto, and all amendments made hereto in accordance with the provisions hereof as the same may be amended, restated and/or supplemented from time to time;
- (b) **“Attorney General”** means His Majesty the King in right of Ontario as represented by the Attorney General;
- (c) **“Crown”** means His Majesty the King in right of Ontario;
- (d) **“Crown Prosecution Manual”** means the document located at [www.ontario.ca/document/crown-prosecution-manual](http://www.ontario.ca/document/crown-prosecution-manual), as amended from time to time;
- (e) **“Effective Date”** means **[insert]**;
- (f) **“Expiry Date”** means two (2) years from the Effective Date;
- (g) **“Indemnified Parties”** means each of the following and their directors, officers, advisors, agents, appointees and employees: the Crown and the members of the Executive Council of Ontario;
- (h) **“Losses”** means liabilities, costs, damages, and expenses (including legal, expert, and consulting fees);
- (i) **“LSA”** means a local side agreement between the Attorney General and the Municipal Partner with an effective date of March 18, 2001;
- (j) **“MOU”** means a memorandum of understanding between the Attorney General and the Municipal Partner dated on the execution date by the Attorney General of March 18, 2001;

- (k) “**Municipalities**” means, collectively, all of the municipalities of the Province of Ontario who have entered into a memorandum of understanding and a local side agreement for purposes of the transfer of, in general, court administration and court support functions under the POA and prosecutions of matters commenced under Parts I and II of the POA;
- (l) “**Municipal Partner**” means Corporation of the City of London;
- (m) “**POA**” means the *Provincial Offences Act* (Ontario);
- (n) “**Proceedings**” mean any action, claim, demand, lawsuit, or other proceeding;
- (o) “**Term**” means the period commencing on the Effective Date and ending on Expiry Date unless the Term is extended or otherwise terminated pursuant to this Agreement;
- (p) “**Transfer Agreement**” means, collectively, the MOU and the LSA;
- (q) “**Transferred Property**” means any and all property relating to the Transferred Prosecutions including, but not limited to, systems, records, data, information, and materials in the possession or control of, or owned by, the Municipal Partner unless such property has been purchased by the Municipal Partner and has not been agreed to be transferred to the Attorney General;
- (r) “**Transferred Prosecutions**” has the meaning ascribed to it in Section 2.2(a) hereof; and
- (s) “**WSIA**” means the *Workplace Safety and Insurance Act, 1997* (Ontario).

**1.2 Currency.** Any reference to currency is to Canadian currency and any amount disbursed, paid, or calculated is to be disbursed, paid or calculated in Canadian currency.

**1.3 Statute and Regulation.** Any reference to a statute is to such statute and to the regulations made pursuant to such statute as such statute and regulations may at any time be amended or modified and in effect and to any statute or regulations that may be passed that have the effect of supplementing or superseding such statute or regulations.

**1.4 Singular/Plural and Gender Terms.** Each definition in this Agreement using a singular capitalized term or other word or phrase also shall apply to the plural form and such term, word or phrase and vice versa, and all references to the masculine gender shall include reference to the feminine or neuter gender, and vice versa, in each case as the context may permit or require.

**1.5 Pronouns.** Each use in this Agreement of neuter pronoun shall be deemed to include the masculine and feminine variations thereof and vice versa and a singular pronoun shall be deemed to include a reference to the plural variation thereof, and vice versa, in each case and the context may permit or require.

- 1.6 **Sections and Other Headings**. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.
- 1.7 **Paramountcy**. The parties hereto agree that this Agreement shall be read, to the extent possible, as an addition to and not to derogate from the Transfer Agreement and shall only supersede the specific terms and conditions of the Transfer Agreement to the extent of a conflict or an inconsistency in the circumstances. All other terms and conditions of the Transfer Agreement shall remain in full force and effect, unaffected and unaltered by this Agreement.

## **ARTICLE II –INTERIM TRANSFER OF PARTS III AND IX OF THE POA**

- 2.1 **General**. The parties hereto acknowledge and agree that this Agreement shall only apply to the prosecutions prosecuted by the Criminal Law Division of the Ministry of the Attorney General under Parts III and IX of the POA.
- 2.2 **Parts III and IX of the POA Interim Transfer**. On the Effective Date, the Attorney General shall:
- (a) transfer to the Municipal Partner and the Municipal Partner shall accept the following:
    - (i) the prosecutions of matters designated as contraventions under the *Contraventions Act* (Canada) and commenced under Parts III and IX of the POA;
    - (ii) prosecution of proceedings commenced under Parts III and IX of the POA;
    - (iii) the conduct of appeals of proceedings commenced under Parts III and IX of the POA where the Attorney General transferred the prosecution of the proceeding to the Municipal Partner,but such transfer excludes the following:
    - (iv) the prosecution of matters under Parts III and IX of the POA as against a Young Person, as defined under Part VI of the POA;
    - (v) any matter under Parts III and IX of the POA where criminal proceedings have also been commenced arising out of the same circumstances;
    - (vi) any proceeding under *Christopher's Law (Sex Offender Registry), 2000* (Ontario);
    - (vii) any proceeding stated in the Crown Prosecution Manual, as amended from time to time, being retained by the Attorney General;
    - (viii) any and all:

- (A) applications for leave to the Court of Appeal; and
  - (B) appeals to the Court of Appeal,
- for matters with respect to Parts III and IX of the POA, which have been prosecuted by the Attorney General at trial;
- (ix) any and all appeals to the Ontario Court of Justice where:
    - (A) the appeal hearing is scheduled to begin within sixty (60) days after the Effective Date;
    - (B) the appeal hearing began before the Effective Date; or
    - (C) the Attorney General is an appellant in a matter in which it has prosecuted such matter at trial,
 for matters with respect to Parts III and IX of the POA; and
  - (x) any and all Part IX of the POA proceedings where:
    - (A) the hearing is scheduled to begin within sixty (60) days after the Effective Date; or
    - (B) the hearing began before the Effective Date; but the order or disposition is not complete,

(collectively, the “**Transferred Prosecutions**”); and

- (b) deliver to the Municipal Partner:
  - (i) a list of the Transferred Prosecutions;
  - (ii) the original records and files of the Transferred Prosecutions; and
  - (iii) a list of all open files that will be retained by the Attorney General.

**2.3 Right to Intervene.** Notwithstanding anything else in this Agreement, the Attorney General maintains the right to intervene in any of the Transferred Prosecutions and shall be responsible for any and all costs from such intervention.

### **ARTICLE III – COSTS**

**3.1 Costs.** The Municipal Partner shall not remit to the Minister of Finance any amount owing pursuant to Section 165(5)(c) of the POA for costs incurred by the Attorney General for matters under Sections 2.2(a)(iv) to (x) hereof; and (b) Sections 173(2)1 and 173(2)2 of the POA.

## **ARTICLE IV – COVENANTS**

**4.1 The Municipal Partner's Covenants.** The Municipal Partner covenants and agrees, at all times during the Term, that it shall:

- (a) provide full and timely disclosure to defendants in accordance with the law;
- (b) make efforts to advise the family members and other interested parties of significant developments throughout the proceedings in cases that involve a fatality in accordance with the Crown Prosecution Manual;
- (c) only proceed to prosecute a charge where there is a reasonable prospect of conviction and it is in the public interest to do so in accordance with the Crown Prosecution Manual;
- (d) screen all private prosecutions for reasonable prospect of conviction and, when necessary, assume the conduct of the proceedings in order to ensure that they are pursued in the interests of the administration of justice; and
- (e) maintain a reporting protocol to notify the Crown Attorney and the Attorney General of any matter that appears likely to raise a substantive legal issue at trial or appeal, including:
  - (i) an application for judicial review or prerogative writ sought in relation to a prosecution transferred;
  - (ii) any thing that may affect the administration, constitutional validity, or enforceability of a statute or regulation;
  - (iii) any matter where there could be a substantial public interest in its outcome including, but not limited to, where leave to appeal to the Court of Appeal has been granted; and
  - (iv) the anticipated withdrawal or stay of any matter involving a death while using a vehicle, a motorized snow vehicle, or an off-road vehicle under a provincial act;
- (f) as required by the Attorney General, make reasonable efforts to provide workspace for the Attorney General;
- (g) upon request, grant access to its available courtroom technology for such time as required by the Attorney General;
- (h) once informed, adhere to any and all of the Attorney General's intervention policies with respect to the Transferred Prosecutions;
- (i) adhere to all applicable laws;
- (j) provide, at a minimum, the same services and level of service delivery as were provided by the Attorney General with respect to the Transferred Prosecutions; and
- (k) as expeditiously as possible, bring to the attention of the Attorney General any and all matters that may be significant or contentious including, but not limited

to, alleged prosecutorial impropriety, misconduct, and constitutional challenges.

**4.2 The Attorney General's Covenants.** The Attorney General covenants and agrees, at all times during the Term, that it shall:

- (a) as required by the Municipal Partner, make reasonable efforts to provide workspace for the Municipal Partner; and
- (b) upon request, grant access to its available courtroom technology for such time as required by the Municipal Partner.

## **ARTICLE V – INDEMNITY AND INSURANCE**

**5.1 Indemnity from the Municipal Partner.** The Municipal Partner shall indemnify and hold harmless the Indemnified Parties from and against all Losses and Proceedings, by whomever made, sustained, incurred, brought or prosecuted, arising out of, or in connection with anything done or omitted to be done by the Municipal Partner or the Municipal Partner's personnel in the course of the performance of the Municipal Partner's obligations under this Agreement or otherwise in connection with this Agreement.

**5.2 Municipal Partner's Insurance.** The Municipal Partner hereby agrees to put in effect and maintain insurance for the Term, at its own cost and expense, with insurers having a secure A.M. Best rating of B + or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person in the business of the Municipal Partner would maintain including, but not limited to, the following:

- (a) commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than Five Million Dollars (\$5,000,000) per occurrence, Five Million Dollars (\$5,000,000) products and completed operations aggregate. The policy is to include the following:
  - (i) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Municipal Partner's obligations under, or otherwise in connection with, this Agreement;
  - (ii) contractual liability coverage;
  - (iii) cross-liability clause;
  - (iv) employers liability coverage (or compliance with the section below entitled "Proof of WSIA Coverage" is required);

- (v) thirty (30) day written notice of cancellation, termination or material change;
  - (vi) tenants legal liability coverage (if applicable and with applicable sub-limits); and
- (b) errors & omissions liability insurance, insuring liability for errors and omissions in the performance or failure to perform the services contemplated in this Agreement, in the amount of not less than Five Million Dollars (\$5,000,000) per claim and in the annual aggregate.

**5.3 Proof of Insurance.** The Municipal Partner shall provide the Attorney General with certificates of insurance, or other proof as may be requested by the Attorney General, that confirms the insurance coverage as provided for in Section 5.2, hereof and renewal replacements on or before the expiry of any such insurance. Upon the request of the Attorney General, a copy of each insurance policy shall be made available to it. The Municipal Partner shall ensure that each of its subcontractors obtains all the necessary and appropriate insurance that a prudent person in the business of the subcontractor would maintain and that the Indemnified Parties are named as additional insureds with respect to any liability arising in the course of performance of the subcontractor's obligations under the subcontract for the provision of the Transferred Prosecutions.

**5.4 Proof of WSIA Coverage.** If the Municipal Partner is subject to the WSIA, it shall submit a valid clearance certificate of WSIA coverage to the Attorney General prior to the execution of this Agreement by the Attorney General. In addition, the Municipal Partner shall, from time to time at the request of the Attorney General, provide additional WSIA clearance certificates. The Municipal Partner covenants and agrees to pay when due, and to ensure that each of its subcontractors pays when due, all amounts required to be paid by it or its subcontractors, from time to time during the Term, under the WSIA, failing which the Attorney General shall have the right, in addition to and not in substitution for any other right it may have pursuant to this Agreement or otherwise at law or in equity, to pay to the Workplace Safety and Insurance Board any amount due pursuant to the WSIA and unpaid by the Municipal Partner or its subcontractors and to deduct such amount from any amount due and owing from time to time to the Municipal Partner pursuant to this Agreement together with all costs incurred by the Attorney General in connection therewith.

**5.5 Municipal Partner Participation in Proceedings.** The Municipal Partner shall, at its expense, to the extent requested by the Attorney General, participate in or conduct the defence of any Proceeding against any Indemnified Parties referred to in this Article and any negotiations for their settlement. The Attorney General may elect to participate in or conduct the defence of any such Proceeding by notifying the Municipal Partner in writing of such election without prejudice to any other rights or remedies of the Attorney General under this Agreement, Agreement, at law or in equity. Each party participating in the defence shall do so by actively participating

with the other's counsel. The Municipal Partner shall not enter into any settlement unless it has obtained the prior written approval of the Attorney General. If the Municipal Partner is requested by the Attorney General to participate in or conduct the defence of any such Proceeding, the Attorney General agrees to co-operate with and assist the Municipal Partner to the fullest extent possible in the Proceedings and any related settlement negotiations. If the Attorney General conducts the defence of any such Proceedings, the Municipal Partner agrees to co-operate with and assist the Attorney General to the fullest extent possible in the Proceedings and any related settlement negotiations.

- 5.6 Indemnity from the Attorney General.** Save and except for the indemnification by Ontario in favour of the Municipal Partner as provided for in section 15.2 of the MOU, the wording, scope, effect, and consequence of which shall apply, *mutatis mutandis*, to the provisions and obligations within this Agreement, including but not limited to, those in relation to the Transferred Prosecutions as contemplated hereunder, any express or implied reference in any other document (including subcontracts) as related to the Transferred Prosecutions as contemplated hereunder or to the Attorney General providing any other indemnity or other form of indebtedness or contingent liability that would otherwise directly or indirectly increase the indebtedness or contingent liabilities of the Crown, whether at the time of execution of this Agreement or at any time during its Term, shall be void and of no legal effect.

## ARTICLE VI – TERMINATION AND EXPIRY

- 6.1 Termination for Cause.** The Attorney General may immediately terminate this Agreement upon giving notice to the Municipal Partner where there is a breach of this Agreement and such right of termination is in addition to all other rights of termination available at law, or events of termination by operation of law.
- 6.2 Dispute Resolution by Rectification Notice.** Subject to the above section, where the Municipal Partner fails to comply with any of its obligations under this Agreement, the Attorney General may issue a rectification notice to the Municipal Partner setting out the manner and timeframe for rectification. Within seven (7) business days of receipt of that notice, the Municipal Partner shall either: (a) comply with that rectification notice; or (b) provide a rectification plan satisfactory to the Attorney General. If the Municipal Partner fails to either comply with that rectification notice or provide a satisfactory rectification plan, the Attorney General may immediately terminate this Agreement. Where the Municipal Partner has been given a prior rectification notice, the same subsequent type of non-compliance by the Municipal Partner shall allow the Attorney General to immediately terminate this Agreement.
- 6.3 Termination on Notice.** The Attorney General reserves the right to terminate this Agreement, without cause, upon ninety (90) days prior notice to the Municipal Partner.

- 6.4 Municipal Partner's Obligations on Termination.** On termination of this Agreement, the Municipal Partner shall, in addition to its other obligations under this Agreement and the applicable laws:
- (a) at the request of the Attorney General, complete the Transferred Prosecutions that are set for sixty (60) days after the termination of this Agreement;
  - (b) provide access and transfer ownership, to the Attorney General, of the Transferred Property;
  - (c) provide the Attorney General with a report detailing a list of the Transferred Prosecutions that are being transferred to the Attorney General;
  - (d) execute such documentation as may be required by the Attorney General to give effect to the termination of this Agreement;
  - (e) comply with any other instructions provided by the Attorney General, including but not limited to, instructions for facilitating the transfer of its obligations to another person;
  - (f) keep the Attorney General informed of any and all matters that are necessary for the Attorney General to ensure the effective ongoing administration of justice during the termination period; and
  - (g) carry out a financial accounting and shall pay to Attorney General any monies owing to the Attorney General, including the Ministry of Finance.
- 6.5 Termination in Addition to Other Rights.** The express rights of termination in this Agreement are in addition to and shall in no way limit any rights or remedies of the Attorney General under this Agreement, at law or in equity.
- 6.6 Attorney General's Rights and Remedies and Municipal Partner's Obligations Not Limited to Agreement.** The express rights and remedies of the Attorney General and obligations of the Municipal Partner set out in this Agreement are in addition to and shall not limit any other rights and remedies available to the Attorney General, or any other obligations of the Municipal Partner at law or in equity.
- 6.7 Municipal Partner's Rights on Termination.** On termination of this Agreement, the Attorney General shall permit the Municipal Partner access to the Transferred Property including, the right to make and keep copies of documents; provided that, the Municipal Partner is named or otherwise becomes a party to any legal proceedings, or is placed on notice that it will be named as a party to a legal proceedings, arising from or in connection with the performance by the Municipal Partner of the Transferred Prosecutions.
- 6.8 Expiry of Agreement.** This Agreement shall expire on the Expiry Date.
- 6.9 Municipal Partner's Responsibility on Expiry.** On the Expiry Date, the Municipal Partner shall, in addition to its other obligations under this Agreement and the applicable laws:

- (a) at the request of the Attorney General, complete the Transferred Prosecutions that are set for sixty (60) days after the Expiry Date;
- (b) provide access and transfer ownership, to the Attorney General, of the Transferred Property;
- (c) provide the Attorney General with a report detailing a list of the Transferred Prosecutions that are being transferred to the Attorney General;
- (d) execute such documentation as may be required by the Attorney General to give effect to the expiry of this Agreement;
- (e) comply with any other instructions provided by the Attorney General, including but not limited to, instructions for facilitating the transfer of its obligations to another person;
- (f) keep the Attorney General informed of any and all matters that are necessary for the Attorney General to ensure the effective ongoing administration of justice; and
- (g) carry out a financial accounting and shall pay to Attorney General any monies owing to the Attorney General, including the Ministry of Finance.

#### **ARTICLE VII – NOTICE**

**7.1 Notices.** Any demand, approval, consent, notice or communication to be made or given hereunder shall be in writing and may be made or given by personal delivery, courier or mailed by first class registered mail, prepaid postage or by facsimile transmission, or other verifiable electronic means of communication addressed to the respective parties as follows:

- (a) To the Attorney General:

Ministry of Attorney General  
Criminal Law Division  
720 Bay St., 9<sup>th</sup> Floor  
Toronto, ON M7A 2S9

Attention: Majid Juma, Director, Strategic Operations and Management  
Centre (SOMC)

Telephone No.: 647-298-5776  
E-mail: majid.juma@ontario.ca

- (b) To the Municipal Partner:

Corporation of the City of London  
**[insert address]**

Attention: [insert]

Telephone No.: [insert]

E-mail: [insert]

or to such other address or facsimile number as any party may from time to time designate in accordance with this Section. Any communication made by personal delivery or by courier shall be conclusively deemed to have been given and received on the day of actual delivery thereof or if such day is not a Business Day, on the first (1<sup>st</sup>) Business Day thereafter. Any communication made or given by facsimile on a Business Day before 4:00 p.m. shall be conclusively deemed to have been given and received on such Business Day and otherwise shall be conclusively deemed to have been given and received on the first (1<sup>st</sup>) Business Day following the transmittal thereof. Any communication that is mailed shall be conclusively deemed to have been given and received on the fifth (5<sup>th</sup>) Business Day following the date of mailing but if, at the time of mailing or within five (5) Business Days thereafter, there is or occurs a labour dispute or other event that might reasonably be expected to disrupt delivery of documents by mail, any communication shall be delivered or transmitted by any other means provided for in this Section.

## ARTICLE VIII – MISCELLANEOUS

- 8.1 Entire Agreement.** This Agreement, including all documents contemplated hereby, constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior negotiations, undertakings, representations and understandings. No agreement purporting to amend or modify this Agreement or any document or paper relating thereto or connected herewith is valid and binding unless it is in writing and signed and accepted in writing by the Attorney General and the Municipal Partner.
- 8.2 Assignment.** The Municipal Partner may not assign this Agreement or any of the benefits or obligations hereunder to any person, without the prior written consent of the Attorney General. The Attorney General will have the right at any time to assign this Agreement and any of its rights and obligations hereunder to any person.
- 8.3 Waiver.** The failure or delay by a party in exercising any right or privilege with respect to the non-compliance with any provisions of this Agreement, and any course of action on the part of such party, shall not operate as a waiver of any rights of the party unless made in writing by such party. Any waiver by a party shall be effective only in the specific instance and for the purpose for which it is given and shall not constitute a waiver of any other rights and remedies of such party with respect to any other or future non-compliance.

- 8.4 Severability.** Each provision of this Agreement is intended to be severable. If any provision hereof is illegal or invalid, such illegality or invalidity shall not affect the validity of the remainder hereof.
- 8.5 Further Assurances.** Each party will at any time and from time to time, upon the request of the other party, execute and deliver such further documents and do such further acts and things as the other party may reasonably request in order to evidence, carry out and give full effect to the terms, conditions, intent, and meaning of this Agreement.
- 8.6 Enurement.** This Agreement shall enure to the benefit of and be binding upon the parties and their successors and their permitted assigns.
- 8.7 Survival.** Sections 5.1, 5.5, 6.4, 6.9, and 8.7 shall survive any termination, expiration, or cancellation of this Agreement.
- 8.8 Counterparts and Execution by Facsimile and Electronic Mail.** This Agreement may be executed in one or more counterparts each of which when so executed shall be deemed to be an original and such counterparts together shall constitute but one and the same instrument. Delivery of an executed copy of a signature page to this Agreement by facsimile transmission or electronic mail shall be effective as delivery of a manually executed copy of this Agreement and each party hereto undertakes to provide each other party hereto with a copy of this Agreement bearing original signatures forthwith upon demand.
- 8.9 Non-Agent.** The Municipal Partner shall have no power or authority to bind the Attorney General or to assume or create any obligation or responsibility, express or implied, on behalf of the Attorney General. The Municipal Partner shall not hold itself out as an agent, partner, or employee of the Attorney General. Nothing in this Agreement shall have the effect of creating an employment, partnership or agency relationship between the Attorney General and the Municipal Partner or constitute an appointment under the *Public Service of Ontario Act, 2006*, (Ontario).
- 8.10 Confidentiality.** The parties acknowledge that personal information, as defined under the *Freedom of Information and Protection of Privacy Act* (Ontario) and the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario), will be disclosed and exchanged between the parties hereto and that such disclosure and exchange is authorized under the such acts.
- 8.11 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

***[The remainder of this page is intentionally left blank; Signature page to follow.]***

**IN WITNESS HEREOF**, each of the parties hereto has caused this Agreement to be executed as of the date first written above.

**HIS MAJESTY THE KING IN RIGHT OF  
ONTARIO AS REPRESENTED BY THE  
ATTORNEY GENERAL**

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Randy Schwartz,  
Assistant Deputy Attorney General,  
Criminal Law Division

**CORPORATION OF THE CITY OF LONDON**

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Name:  
Title

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Name:  
Title

I/We have the authority to bind the corporation.