

Bill No. 391
2014

By-law No. A.-_____

A By-law to approve the Ontario Funding Agreement for the development of the Start Up Your Business Initiative of the City of London with Her Majesty the Queen in Right of Ontario as represented by the Minister of Citizenship, Immigration and International Trade; and to authorize the Mayor and the City Clerk to execute the Agreement.

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 section 8 provides that the powers of a municipality shall be interpreted broadly so as to confer broad authority on the municipality to enable it to govern its affairs as it considers appropriate and to enhance its ability to respond to municipal issues;

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

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

AND WHEREAS section 22 of the *Municipal Act, 2001* provides that a municipality may provide a system that it would otherwise not have power to provide within the municipality if it does so in accordance with an agreement with the Province of Ontario under a program established and administered by the Province of Ontario;

AND 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;

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

1. The agreement to be entered into between The Corporation of the City of London and Her Majesty the Queen in Right of Ontario, for the provision of the Ontario Funding Agreement for the development of the Start Up Your Business Initiative, attached as Schedule "1" to this By-law, is approved.
2. The Mayor and the City Clerk are authorized to execute the agreement approved under section 1 above.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on September 2, 2014.

J. Baechler
Mayor

Catharine Saunders
City Clerk

First reading – September 2, 2014
Second reading – September 2, 2014
Third reading – September 2, 2014

ONTARIO FUNDING AGREEMENT

Case#: 2014-08-1-34863904

THE AGREEMENT effective as of the 1st day of September, 2014.

B E T W E E N:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
as represented by the Minister of Citizenship, Immigration and
International Trade

(the "Province")

- and -

THE CORPORATION OF THE CITY OF LONDON

(the "Recipient")

BACKGROUND:

The Province funds projects similar to the Project.

The Recipient has applied to the Province for funds to assist the Recipient in carrying out the Project and the Province wishes to provide such funds.

CONSIDERATION:

In consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Parties agree as follows:

ARTICLE 1
INTERPRETATION AND DEFINITIONS

1.1 **Interpretation.** For the purposes of interpretation:

- (a) words in the singular include the plural and vice-versa;
- (b) words in one gender include all genders;
- (c) the background and the headings do not form part of the Agreement; they are for reference only and shall not affect the interpretation of the Agreement;
- (d) any reference to dollars or currency shall be to Canadian dollars and currency;
and
- (e) "include", "includes" and "including" shall not denote an exhaustive list.

1.2 **Definitions.** In the Agreement, the following terms shall have the following meanings:

"Agreement" means this agreement entered into between the Province and the Recipient and includes all of the schedules listed in section 28.1 and any amending

agreement entered into pursuant to section 34.2.

"**BPSAA**" means the *Broader Public Sector Accountability Act, 2010* (Ontario), including any directives issued pursuant to that Act.

"**Budget**" means the budget attached to the Agreement as Schedule "B".

"**Effective Date**" means the date set out at the top of the Agreement.

"**Event of Default**" has the meaning ascribed to it in section 14.1.

"**Force Majeure**" has the meaning ascribed to it in Article 26.

"**Funding Year**" means:

- (a) in the case of the first Funding Year, the period commencing on the Effective Date and ending on the following March 31; and
- (b) in the case of Funding Years subsequent to the first Funding Year, the period commencing on April 1 following the end of the previous Funding Year and ending on the following March 31.

"**Funds**" means the money the Province provides to the Recipient pursuant to the Agreement.

"**Indemnified Parties**" means her Majesty the Queen in right of Ontario, her ministers, agents, appointees and employees.

"**Maximum Funds**" means **\$53,900.00**

"**Notice**" means any communication given or required to be given pursuant to the Agreement.

"**Notice Period**" means the period of time within which the Recipient is required to remedy an Event of Default, and includes any such period or periods of time by which the Province considers it reasonable to extend that time.

"**Parties**" means the Province and the Recipient.

"**Party**" means either the Province or the Recipient.

"**Project**" means the undertaking described in Schedule "A".

"**Reports**" means the reports described in Schedule "D".

"**Timelines**" means the Project schedule set out in Schedule "A".

ARTICLE 2 REPRESENTATIONS, WARRANTIES AND COVENANTS

2.1 **General.** The Recipient represents, warrants and covenants that:

- (a) it is, and shall continue to be for the term of the Agreement, a validly existing legal entity with full power to fulfill its obligations under the Agreement;
- (b) it has, and shall continue to have for the term of the Agreement, the experience and expertise necessary to carry out the Project; and
- (c) unless otherwise provided for in the Agreement, any information the Recipient provided to the Province in support of its request for funds (including information relating to any eligibility requirements) was true and complete at the time the Recipient provided it and shall continue to be true and complete for the term of the Agreement.

2.2 Execution of Agreement. The Recipient represents and warrants that:

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

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

- (a) a code of conduct and ethical responsibilities for all persons at all levels of the Recipient's organization;
- (b) procedures to ensure the ongoing effective functioning of the Recipient;
- (c) decision-making mechanisms;
- (d) procedures to provide for the prudent and effective management of the Funds;
- (e) procedures to enable the successful completion of the Project;
- (f) procedures to enable the timely identification of risks to the completion of the Project and strategies to address the identified risks;
- (g) procedures to enable the preparation and delivery of all Reports required pursuant to Article 7; and
- (h) procedures to deal with such other matters as the Recipient considers necessary to ensure that the Recipient carries out its obligations under the Agreement.

2.4 Supporting Documentation. Upon request, the Recipient shall provide the Province with proof of the matters referred to in this Article 2.

ARTICLE 3 TERM OF THE AGREEMENT

3.1 Term. The term of the Agreement shall commence on the Effective Date and shall expire on **July 31, 2015** unless terminated earlier pursuant to Article 12, Article 13 or Article 14.

ARTICLE 4
FUNDS AND CARRYING OUT THE PROJECT

4.1 Funds Provided. The Province shall:

- (a) provide the Recipient up to the Maximum Funds for the purpose of carrying out the Project;
- (b) provide the Funds to the Recipient in accordance with the payment schedule attached to the Agreement as Schedule "C"; and
- (c) deposit the Funds into an account designated by the Recipient provided that the account:
 - (i) resides at a Canadian financial institution; and
 - (ii) is in the name of the Recipient.

4.2 Limitation on Payment of Funds. Despite section 4.1:

- (a) the Province is not obligated to provide any Funds to the Recipient until the Recipient provides the insurance certificate or other proof as provided for in section 11.2;
- (b) the Province is not obligated to provide instalments of Funds until it is satisfied with the progress of the Project;
- (c) the Province may adjust the amount of Funds it provides to the Recipient in any Funding Year based upon the Province's assessment of the information provided by the Recipient pursuant to section 7.1; and
- (d) if, pursuant to the provisions of the *Financial Administration Act* (Ontario), the Province does not receive the necessary appropriation from the Ontario Legislature for payment under the Agreement, the Province is not obligated to make any such payment, and, as a consequence, the Province may:
 - (i) reduce the amount of the Funds and, in consultation with the Recipient, change the Project; or
 - (ii) terminate the Agreement pursuant to section 13.1.

4.3 Use of Funds and Project. The Recipient shall:

- (a) carry out the Project:
 - (i) in accordance with the terms and conditions of the Agreement; and
 - (ii) 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 Project;

- (b) use the Funds only for the purpose of carrying out the Project; and
 - (c) spend the Funds only in accordance with the Budget.
- 4.4 **No Changes.** The Recipient shall not make any changes to the Project, the Timelines and/or the Budget without the prior written consent of the Province.
- 4.5 **Interest Bearing Account.** If the Province provides Funds to the Recipient prior to the Recipient's immediate need for the Funds, the Recipient shall place the Funds in an interest bearing account in the name of the Recipient at a Canadian financial institution.
- 4.6 **Interest.** If the Recipient earns any interest on the Funds:
- (a) the Province may deduct an amount equal to the interest from any further instalments of Funds; or
 - (b) the Recipient shall pay an amount equal to the interest to the Province as directed by the Province.
- 4.7 **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement shall not exceed the Maximum Funds.
- 4.8 **Rebates, Credits and Refunds.** The Recipient acknowledges that the amount of Funds available to it pursuant to the Agreement is based on the actual costs to the Recipient, less any costs (including taxes) for which the Recipient has received, will receive, or is eligible to receive, a rebate, credit or refund.

ARTICLE 5 ACQUISITION OF GOODS AND SERVICES, AND DISPOSAL OF ASSETS

- 5.1 **Acquisition.** Subject to section 32.1, if the Recipient acquires supplies, equipment or services with the Funds:
- (a) it shall do so through a process that promotes the best value for money; and
 - (b) if the estimated cost of the supplies, equipment or services exceeds \$5,000, the Recipient shall obtain at least three written quotes unless:
 - (i) the supplies, equipment or services the Recipient is purchasing is specialized and is not readily available; or
 - (ii) the Recipient has previously researched the market for a similar purchase and knows prevailing market costs for the equipment, services or supplies.
- 5.2 **Disposal.** The Recipient shall not, without the Province's prior written consent, sell, lease or otherwise dispose of any asset purchased with the Funds or for which Funds were provided, the cost of which exceeded \$1,000 at the time of purchase.

ARTICLE 6 CONFLICT OF INTEREST

- 6.1 **No Conflict of Interest.** The Recipient shall carry out the Project and use the Funds without an actual, potential or perceived conflict of interest.
- 6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where:
- (a) the Recipient; or
 - (b) any person who has the capacity to influence the Recipient's decisions,
- has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project and the use of the Funds.
- 6.3 **Disclosure to Province.** The Recipient shall:
- (a) disclose to the Province, without delay, any situation that a reasonable person would interpret as either an actual, potential or perceived conflict of interest; and
 - (b) comply with any terms and conditions that the Province may prescribe as a result of the disclosure.

ARTICLE 7 REPORTING, ACCOUNTING AND REVIEW

- 7.1 **Preparation and Submission.** The Recipient shall:
- (a) submit to the Province at the address provided in section 18.1, all Reports in accordance with the timelines and content requirements set out in Schedule "D", or in a form as specified by the Province from time to time;
 - (b) submit to the Province at the address provided in section 18.1, any other reports as may be requested by the Province in accordance with the timelines and content requirements specified by the Province;
 - (c) ensure that all Reports and other reports are completed to the satisfaction of the Province; and
 - (d) ensure that all Reports and other reports are signed on behalf of the Recipient by an authorized signing officer.
- 7.2 **Record Maintenance.** The Recipient shall keep and maintain:
- (a) all financial records (including invoices) relating to the Funds or otherwise to the Project in a manner consistent with generally accepted accounting principles; and
 - (b) all non-financial documents and records relating to the Funds or otherwise to the Project.

- 7.3 **Inspection.** The Province, its authorized representatives or an independent auditor identified by the Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, enter upon the Recipient's premises to review the progress of the Project and the Recipient's expenditure of the Funds and, for these purposes, the Province, its authorized representatives or an independent auditor identified by the Province may:
- (a) inspect and copy the records and documents referred to in section 7.2; and
 - (b) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds and/or the Project.
- 7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient shall disclose any information requested by the Province, its authorized representatives or an independent auditor identified by the Province, and shall do so in a form requested by the Province, its authorized representatives or an independent auditor identified by the Province, as the case may be.
- 7.5 **No Control of Records.** No provision of the Agreement shall be construed so as to give the Province any control whatsoever over the Recipient's records.
- 7.6 **Auditor General.** For greater certainty, the Province's rights under this Article are in addition to any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

ARTICLE 8 CREDIT

- 8.1 **Acknowledge Support.** Unless otherwise directed by the Province, the Recipient shall, in a form approved by the Province, acknowledge the support of the Province in any publication of any kind, written or oral, relating to the Project.
- 8.2 **Publication.** The Recipient shall indicate, in any of its publications, of any kind, written or oral, relating to the Project, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

ARTICLE 9 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- 9.1 **FIPPA.** The Recipient acknowledges that the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

ARTICLE 10 INDEMNITY

- 10.1 **Indemnification.** The Recipient hereby agrees to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, by whomever made, sustained, incurred,

brought or prosecuted, in any way arising out of or in connection with the Project or otherwise in connection with the Agreement, unless solely caused by the negligence or wilful misconduct of the Province.

ARTICLE 11 INSURANCE

- 11.1 **Recipient's Insurance.** The Recipient represents and warrants that it has, and shall maintain for the term of the Agreement, 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 carrying out a project similar to the Project would maintain, including 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 two million dollars (\$2,000,000) per occurrence. The policy shall include the following:
- (a) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;
 - (b) a cross-liability clause;
 - (c) contractual liability coverage; and
 - (d) a 30 day written notice of cancellation, termination or material change.
- 11.2 **Proof of Insurance.** The Recipient shall provide the Province with certificates of insurance, or other proof as may be requested by the Province, that confirms the insurance coverage as provided for in section 11.1. Upon the request of the Province, the Recipient shall make available to the Province a copy of each insurance policy.

ARTICLE 12 TERMINATION ON NOTICE

- 12.1 **Termination on Notice.** The Province may terminate the Agreement at any time upon giving at least 30 days Notice to the Recipient.
- 12.2 **Consequences of Termination on Notice by the Province.** If the Province terminates the Agreement pursuant to section 12.1, the Province may:
- (a) cancel all further instalments of Funds;
 - (b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and/or
 - (c) determine the reasonable costs for the Recipient to wind down the Project, and:
 - (i) permit the Recipient to offset the costs determined pursuant to section 12.2(c), against the amount owing pursuant to section 12.2(b); and/or

- (ii) subject to section 4.7, provide Funds to the Recipient to cover the costs determined pursuant to section 12.2(c).

**ARTICLE 13
TERMINATION WHERE NO APPROPRIATION**

- 13.1 **Termination Where No Appropriation.** If, as provided for in section 4.2(d), the Province does not receive the necessary appropriation from the Ontario Legislature for any payment the Province is to make pursuant to the Agreement, the Province may terminate the Agreement immediately by giving Notice to the Recipient.
- 13.2 **Consequences of Termination Where No Appropriation.** If the Province terminates the Agreement pursuant to section 13.1, the Province may:
- (a) cancel all further instalments of Funds;
 - (b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and/or
 - (c) determine the reasonable costs for the Recipient to wind down the Project and permit the Recipient to offset such costs against the amount owing pursuant to section 13.2(b)..
- 13.3 **No Additional Funds.** For purposes of clarity, if the costs determined pursuant to section 13.2(c) exceed the Funds remaining in the possession or under the control of the Recipient, the Province shall not provide additional Funds to the Recipient.

**ARTICLE 14
EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT**

- 14.1 **Events of Default.** Each of the following events shall constitute an Event of Default:
- (a) in the opinion of the Province, the Recipient breaches any representation, warranty, covenant or other material term of the Agreement, including failing to do any of the following in accordance with the terms and conditions of the Agreement:
 - (i) carry out the Project;
 - (ii) use or spend Funds; and/or
 - (iii) provide, in accordance with section 7.1, Reports or such other reports as may have been requested pursuant to section 7.1(b);
 - (b) the Recipient's operations, or its organizational structure, changes such that it no longer meets one or more of the applicable eligibility requirements of the program under which the Province provides the Funds;
 - (c) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver;

- (d) the Recipient ceases to operate; and
- (e) an event of Force Majeure that continues for a period of 60 days or more.

14.2 Consequences of Events of Default and Corrective Action. If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

- (a) initiate any action the Province considers necessary in order to facilitate the successful continuation or completion of the Project;
- (b) provide the Recipient with an opportunity to remedy the Event of Default;
- (c) suspend the payment of Funds for such period as the Province determines appropriate;
- (d) reduce the amount of the Funds;
- (e) cancel all further instalments of Funds;
- (f) demand the repayment of any Funds remaining in the possession or under the control of the Recipient;
- (g) demand the repayment of an amount equal to any Funds the Recipient used, but did not use in accordance with the Agreement;
- (h) demand the repayment of an amount equal to any Funds the Province provided to the Recipient; and/or
- (i) terminate the Agreement at any time, including immediately, upon giving Notice to the Recipient.

14.3 Opportunity to Remedy. If, in accordance with section 14.2(b), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province shall provide Notice to the Recipient of:

- (a) the particulars of the Event of Default; and
- (b) the Notice Period.

14.4 Recipient not Remediating. If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 14.2(b), and:

- (a) the Recipient does not remedy the Event of Default within the Notice Period;
- (b) it becomes apparent to the Province that the Recipient cannot completely remedy the Event of Default within the Notice Period; or
- (c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Province,

the Province may extend the Notice Period, or initiate any one or more of the actions provided for in sections 14.2(a), (c), (d), (e), (f), (g), (h) and (i).

- 14.5 **When Termination Effective.** Termination under this Article shall take effect as set out in the Notice.

ARTICLE 15 FUNDS AT THE END OF A FUNDING YEAR

- 15.1 **Funds at the End of a Funding Year.** Without limiting any rights of the Province under Article 14, if the Recipient has not spent all of the Funds allocated for the Funding Year as provided for in the Budget, the Province may:

- (a) demand the return of the unspent Funds; or
- (b) adjust the amount of any further instalments of Funds accordingly.

ARTICLE 16 FUNDS UPON EXPIRY

- 16.1 **Funds Upon Expiry.** The Recipient shall, upon expiry of the Agreement, return to the Province any Funds remaining in its possession or under its control.

ARTICLE 17 REPAYMENT

- 17.1 **Debt Due.** If:

- (a) the Province demands the payment of any Funds or any other money from the Recipient; or
- (b) the Recipient owes any Funds or any other money to the Province, whether or not their return or repayment has been demanded by the Province,

such Funds or other money shall be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient shall pay or return the amount to the Province immediately, unless the Province directs otherwise.

- 17.2 **Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

- 17.3 **Payment of Money to Province.** The Recipient shall pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and mailed to the Province at the address provided in section 18.1.

ARTICLE 18 NOTICE

- 18.1 **Notice in Writing and Addressed.** Notice shall be in writing and shall be delivered by email, postage-prepaid mail, personal delivery or fax, and shall be addressed to the

Province and the Recipient respectively as set out below, or as either Party later designates to the other by Notice:

To the Province:

Ministry of Citizenship, Immigration and
International Trade

Attention:

Erik Girard
Senior Program Consultant (A)
Immigration Policy Branch
400 University Avenue, 3rd Floor
Toronto, Ontario M7A 2R9

Tel: 416-327-8074
Email: erik.girard@ontario.ca

To the Recipient:

The Corporation of the City of London

Attention:

Grant Hopcroft
Director, Intergovernmental and Community
Liaison
City of London
300 Dufferin Avenue, 11th Floor
London, Ontario N6A 4L9

Tel: 519-661-2500 ext. 0939
Email: ghopcrof@london.ca

18.2 **Notice Given.** Notice shall be deemed to have been received:

- (a) in the case of postage-prepaid mail, seven days after a Party mails the Notice; or
- (b) in the case of email, personal delivery or fax, at the time the other Party receives the Notice.

18.3 **Postal Disruption.** Despite section 18.2(a), in the event of a postal disruption:

- (a) Notice by postage-prepaid mail shall not be deemed to be received; and
- (b) the Party giving Notice shall provide Notice by email, personal delivery or by fax.

**ARTICLE 19
CONSENT BY PROVINCE**

19.1 **Consent.** The Province may impose any terms and/or conditions on any consent the Province may grant pursuant to the Agreement.

**ARTICLE 20
SEVERABILITY OF PROVISIONS**

20.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision shall be deemed to be severed.

**ARTICLE 21
WAIVER**

21.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written

waiver in accordance with the Notice provisions in Article 18. Any waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply.

ARTICLE 22 INDEPENDENT PARTIES

- 22.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Province, and the Recipient shall not take any actions that could establish or imply such a relationship.

ARTICLE 23 ASSIGNMENT OF AGREEMENT OR FUNDS

- 23.1 **No Assignment.** The Recipient shall not assign any part of the Agreement or the Funds without the prior written consent of the Province.
- 23.2 **Agreement to Extend.** All rights and obligations contained in the Agreement shall extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

ARTICLE 24 GOVERNING LAW

- 24.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement shall be conducted in Ontario.

ARTICLE 25 FURTHER ASSURANCES

- 25.1 **Agreement into Effect.** The Recipient shall do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

ARTICLE 26 CIRCUMSTANCES BEYOND THE CONTROL OF EITHER PARTY

- 26.1 **Force Majeure Means.** Subject to section 26.3, Force Majeure means an event that:
- (a) is beyond the reasonable control of a Party; and
 - (b) makes a Party's performance of its obligations under the Agreement impossible, or so impracticable as reasonably to be considered impossible in the circumstances.
- 26.2 **Force Majeure Includes.** Force Majeure includes:
- (a) infectious diseases, war, riots and civil disorder;

- (b) storm, flood, earthquake and other severely adverse weather conditions;
- (c) lawful act by a public authority; and
- (d) strikes, lockouts and other labour actions,

if such events meet the test set out in section 26.1.

26.3 Force Majeure Shall Not Include. Force Majeure shall not include:

- (a) any event that is caused by the negligence or intentional action of a Party or such Party's agents or employees; or
- (b) any event that a diligent Party could reasonably have been expected to:
 - (i) take into account at the time of the execution of the Agreement; and
 - (ii) avoid or overcome in the carrying out of its obligations under the Agreement.

26.4 Failure to Fulfil Obligations. Subject to section 14.1(e), the failure of either Party to fulfil any of its obligations under the Agreement shall not be considered to be a breach of, or Event of Default under, the Agreement to the extent that such failure to fulfill the obligation arose from an event of Force Majeure, if the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of the Agreement.

ARTICLE 27 SURVIVAL

27.1 Survival. The provisions in Article 1, any other applicable definitions, sections 4.6(b), 5.2, 7.1 (to the extent that the Recipient has not provided the Reports or other reports as may be requested by the Province to the satisfaction of the Province), 7.2, 7.3, 7.4, 7.5, 7.6, Articles 8 and 10, sections 12.2, 13.2, 13.3, 14.1, 14.2(d), (e), (f), (g) and (h), Articles 16, 17, 18, 20, 24, 27, 28, 30, 31 and 34, and all applicable cross-referenced provisions and schedules shall continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement.

ARTICLE 28 SCHEDULES

28.1 Schedules. The Agreement includes the following schedules:

- (a) Schedule "A" - Project Description and Timelines;
- (b) Schedule "B" - Budget;
- (c) Schedule "C" - Payment; and
- (d) Schedule "D" - Reports.

**ARTICLE 29
COUNTERPARTS**

- 29.1 **Counterparts.** The Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**ARTICLE 30
JOINT AND SEVERAL LIABILITY**

- 30.1 **Joint and Several Liability.** Where the Recipient is comprised of more than one entity, all such entities shall be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

**ARTICLE 31
RIGHTS AND REMEDIES CUMULATIVE**

- 31.1 **Rights and Remedies Cumulative.** The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

**ARTICLE 32
BPSAA**

- 32.1 **BPSAA.** For the purposes of clarity, if the Recipient is subject to the BPSAA and there is a conflict between any of the requirements of the Agreement and the requirements of the BPSAA, the BPSAA shall prevail.

**ARTICLE 33
FAILURE TO COMPLY WITH OTHER AGREEMENTS**

- 33.1 **Other Agreements.** If the Recipient:
- (a) has failed to comply (a "Failure") with any term, condition or obligation under any other agreement with Her Majesty the Queen in right of Ontario or a Crown agency;
 - (b) has been provided with notice of such Failure in accordance with the requirements of such other agreement;
 - (c) has, if applicable, failed to rectify such Failure in accordance with the requirements of such other agreement; and
 - (d) such Failure is continuing,

the Province may suspend the payment of Funds for such period as the Province determines appropriate.

**ARTICLE 34
ENTIRE AGREEMENT**

SCHEDULE "A"

PROJECT DESCRIPTION AND TIMELINES

Background:

In support of "A New Direction: Ontario's Immigration Strategy", the Province launched the Municipal Fund – Innovative Immigration Initiatives program in order to support the development of innovative project ideas that address immigration and local economic development objectives of Ontario municipal governments.

Project Objectives:

The objective of the *Start-Up Your Business in London, Ontario* project is to increase the number of immigrant entrepreneurs in London by encouraging them to move to, and invest in, the community. The activities of the project will produce resources that provide information about local supports available for immigrant entrepreneurs, and about business initiation processes.

Project Description:

The *Start-Up Your Business in London, Ontario* project will achieve its objectives through the following activities:

- The development of a video which promotes the benefits and available supports for immigrant entrepreneurs to establish their businesses in London, Ontario.
 - There will be versions in five target market languages as sub-titles.
- The development of an on-line resource guide to encourage immigrant entrepreneurs to consider London, Ontario as a destination to live and start a business.
 - The resource guide, subject to advisory group and key informant input, will have two dimensions – the benefits of choosing London to start and grow a business venture, and the key steps in business initiation to help immigrant entrepreneurs get started.

The multilingual video and resource guide will be:

- Featured on the London and Middlesex Immigration Portal and the website of the London Economic Development Corporation (LEDC).
- Presented to approximately 1,500 international students annually as part of sessions, held at Fanshawe College and Western University, which also promote the Opportunities Ontario: Provincial Nominee Program.
 - While the primary audience for the resources is immigrant entrepreneurs, international students and/or their families are also potential immigrant entrepreneurs, and will be targeted as well.
- Shared with companies that are recruiting overseas, Western University, its three affiliated University Colleges, Fanshawe College and Collège Boréal, local school boards and international language schools, as well as various business associations,

including the London Chamber of Commerce which is conducting overseas trade missions.

- Presented at local annual events such as the *Student2Business* Networking Conference on March 11, 2015, which will have 500 students and 250 company representatives in attendance at the London Convention Centre.
- Introduced by LEDC to its contracted representatives in several countries, and used in company presentations and trade fairs internationally. LEDC has a strong social media presence which will schedule relevant and reinforcing communications in support of this outreach.

Project Governance and Partnership(s)

The project will be led by the City of London with an advisory committee drawn from the following groups: LEDC, Western University, Fanshawe College, Collège Boréal, TechAlliance, London and Middlesex Immigrant Employment Council (LMIEC), Small Business Centre, the London Chamber of Commerce, and the Elgin-Middlesex Workforce Planning and Development Board.

LEDC will be an active partner in this project.

Sustainability Plan

The products created through this project will be used for years to come during regular presentations to the annual events and networks of communication which will be identified by the advisory committee. The video specifications will endeavour to depict features and aspects that reduce the probability of stale-dating and ensure that it can be relevant for at least five years.

The video will be made available for viewing on various YouTube sites including that of LEDC, the London and Middlesex Immigration Portal, and those of partner organizations. Posting the video to YouTube will allow for the monitoring of statistics on the viewing of the different language versions of the video.

The resource guide will be accessible through several websites including the London and Middlesex Immigration Portal and will be produced in a format that facilitates updating. Print versions will be produced only for specific events – ensuring that the latest version is distributed. The advisory group meets quarterly and will be tasked with ensuring the resource guide is up-to-date.

The Recipient will document the project work and process so that it could be replicated and used by others. The Recipient will also be available to meet with and/or discuss the project model with other interested municipalities.

Outcomes & Performance Measures

Success of the project will be measured in the following ways:

- A target number of at least ten supported applications for the Start-up visa program in London within the first six months after the Network Development phase of the project, building upon that success in years to follow;
- Increased numbers of immigrant entrepreneurs who interact with the supports available in London such as the Small Business Centre.
- Increased numbers of enquiries concerning immigrant entrepreneurship through the London Economic Development Corporation and enquiries and/or visits to its website.
- Increased numbers of enquiries and/or visits concerning immigrant entrepreneurship through the London and Middlesex Immigration Portal.

Detailed Tasks and Timelines

Project Component	Activity	Timeline	Lead	Milestone/Deliverable
Video	Convene Task Group	Sept. 2014	City of London	Established Task Force with terms of reference
	Decide on objectives for project; establish target audiences	Sept. 2014	Task Force	Request for proposals for video companies
	Issue Request for proposals	Nov. 2014	City of London	Select video company
	Filming/ production/ photography	Mar.-May 2015	LEDC	Final English video
	Translation for captioning/ sub-titles	June 2015	City of London	Final product for loading on websites
Resource Guide	Issue Request for proposal	Nov. 2014	City of London	Request for proposals for consultants
	Production of guide	Dec.2014 - Feb. 2015	Consultant	Final guide (English)
	Add to websites	Mar.-June 2015	City of London, LEDC	Videos available for viewing on YouTube sites
Documentation	Provide detailed report on process for our work	July 2015	City of London, LEDC	Submit report to MCIIT

SCHEDULE "B"

BUDGET

Component	Budget
Video production & development, including translation and captioning (Contractor to be retained through an RFP process run by the Recipient, in accordance with Article 5 of this funding agreement)	\$40,000
Resource guide development, writing (Contractor to be retained through an RFP process run by the Recipient, in accordance with Article 5 of this funding agreement)	\$6,000
Audit	\$3,000
Subtotal	\$49,000
Administration (10%)	\$4,900
Total	\$53,900

SCHEDULE "C"

PAYMENTS

PAYMENT DATE OR MILESTONE	AMOUNT
Upon both parties signing the Agreement	\$45,815
Upon the Province's approval of the Final Report	\$8,085
TOTAL:	\$53,900

SCHEDULE "D"

REPORTS

Name of Report	Due Date
1. Interim Report	January 30, 2015
2. Final Report	July 17, 2015

Report Details

Each Report will include the following items:

- (a) a update on the status and progress of the Project;
- (b) an indication of whether the objectives of the Project are being / were met;
- (c) a description of how the success of the Project is being / was measured;
- (d) a description of the level of community participation and response;
- (e) details of how the Province's support has been acknowledged;
- (f) an unaudited statement which accounts for Project revenue and expenditures;
- (g) in the case of the final report, an audited financial statement which accounts for Project revenue and expenditures, if audited statements are normally prepared by the Recipient; otherwise, a review engagement report which accounts for Project revenue and expenditures prepared by an accredited accountant external to the Recipient; and
- (h) any other details that may be requested by the Province.