

**THIS AGREEMENT** effective as of the 1<sup>st</sup> day of January, 2012.

**B E T W E E N:**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as  
represented by the Minister of Community Safety and  
Correctional Services**

**(the “Ministry”)**

**- and -**

**The Corporation of the City of London  
(the “Recipient”)**

**WHEREAS:**

- A.** The Ministry has established the Court Security Prisoner Transportation Program (the “Program”) to assist municipalities in offsetting their costs of providing court security and prisoner transportation services in their jurisdictions;

**AND WHEREAS:**

- B.** Pursuant to subsection 4(1) of the *Police Services Act*, the Recipient is required to provide adequate and effective police services in accordance with its needs.
- C.** Pursuant to subsection 5(1) of the *Police Services Act*, the Recipient has discharged its responsibility to provide police services by establishing the London Police Services the members of which are appointed by the London Police Service Board pursuant to subsection 31(1)(a) of the *Police Services Act*.
- D.** Pursuant to subsection 137(1) the London Police Services Board has the following responsibilities, with respect to premises where court proceedings are conducted in the City of London:
1. Ensuring the security of judges and of persons taking part in or attending proceedings.
  2. During the hours when judges and members of the public are normally present, ensuring the security of the premises.
  3. Ensuring the secure custody of persons in custody who are on or about the premises including persons taken into custody at proceedings.

4. Determining appropriate levels of security for the purposes of paragraphs 1, 2 and 3.
- E. Pursuant to section 39 of the *Police Services Act*, The London Police Services Board submits the operating and capital estimates to the Recipient and upon reviewing the estimates, the council for the Recipient establishes an overall budget for the London Police Services Board.
- F. The cost of court security and prisoner transportation provided by the London Police Services Board pursuant to subsection 137(1) of the *Police Services Act* are included in the estimates provided by the London Police Services Board and funded by the Recipient.
- G. The Ministry has agreed to provide funding to the Recipient to be used to fund the costs of court security and prisoner transportation provided by the London Police Services Board in accordance with its obligations under subsection 137(1) of the *Police Services Act*.
- H. Funding will be provided based on the municipality's relative share of the total provincial court security-related costs, as confirmed in the 2010 Court Security Information Survey.

**NOW THEREFORE** 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 this Agreement; they are for reference only and shall not affect the interpretation of this 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 this Agreement, the following terms shall have the following meanings:

“**Agreement**” means the Agreement entered into between the Ministry 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.

“**Expiry Date**” means December 31, 2014.

“**Effective Date**” means the date set out at the top of this 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 Period**” means: the period commencing on the Effective Date and ending on the Expiry Date.

“**Funding Year**” means any of Funding Years 1, 2 or 3.

“**Funding Year 1**” means January 1, 2012 through December 31, 2012.

“**Funding Year 2**” means January 1, 2013 through December 31, 2013.

“**Funding Year 3**” means January 1, 2014 through December 31, 2014.

“**Funds**” means the money the Ministry provides to the Recipient pursuant to this Agreement.

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

“**Maximum Funds**” means \$491,687.42 for Funding Year 1, \$983,374.85 for Funding Year 2 and \$1,475,062.27 for Funding Year 3.

“**Notice**” means any communication given or required to be given pursuant to this 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 Ministry considers it reasonable to extend that time.

“**Parties**” means the Ministry and the Recipient and “**Party**” means either one of them.

“**Program**” means the court security prisoner transportation program established by the Ministry.

“**Project**” means the undertaking described in Schedule “A”.

“**Project Completion Date**” means the date for completion of the Project, as set out in section 3.1.

“**Report**” means the report described in Schedule “C”.

“**Services**” means the court security and prisoner transportation services and activities eligible for funding, as set out in Schedule “B” as provided by the London Police Services Board in accordance with subsection 137(1) of the *Police Services Act*.

“**Timelines**” means the dates and times set out in Schedule “A”.

## **ARTICLE 2 -- REPRESENTATIONS, WARRANTIES AND COVENANTS**

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

- (a) it is a validly existing legal entity with full power to fulfill its obligations under this Agreement;
- (b) it has the experience and expertise necessary to accept and apply the Funds toward its costs for the Services; and
- (c) unless otherwise provided for in the Agreement, any information the Recipient provided to the Ministry in support the Funding was true and complete at the time the Recipient provided it.

- 2.2 **Execution of Agreement.** The Recipient 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.** The Recipient represents, warrants and covenants that upon execution and for the period during which this Agreement is in effect, it has:
- (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 preparation and delivery of all Reports required pursuant to Article 7; and
  - (f) procedures to deal with such other matters as the Recipient considers necessary to ensure that the Recipient carries out its obligations under this Agreement.
- 2.4 **Supporting Documentation.** Upon request, the Recipient shall provide the Ministry with proof of the matters referred to in this Article 2.

### **ARTICLE 3 -- TERM OF THIS AGREEMENT**

- 3.1 **Term.** The term of this Agreement shall commence on the Effective Date and shall expire on the Expiry Date of December 31 2014, unless terminated earlier pursuant to Articles 12, 13 or 14.

## ARTICLE 4 -- FUNDS AND CARRYING OUT THE PROJECT

4.1 **Funds Provided.** The Ministry shall:

- (a) provide the Recipient Funds up to the Maximum Funds for the purpose of funding the Services;
- (b) provide the Funds directly to the Recipient through transfer payments in accordance with the payment schedule attached to this Agreement as Schedule “A”; 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 Ministry 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 Ministry may adjust the amount of Funds it provides to the Recipient in any Funding Year based upon the Ministry’s assessment of the information provided by the Recipient pursuant to section 7.1; and
- (c) if the Recipient identifies that the Funds for the Funding Year are not expected to be used for funding the Services , the Ministry may reallocate such portion of the Funds that are not being used for funding the Services to other municipalities; and
- (d) if, pursuant to the provisions of the Financial Administration Act (Ontario), the Ministry does not receive the necessary appropriation from the Ontario Legislature for payment under this Agreement, the Ministry is not obligated to make any such payment, and, as a consequence, the Ministry may:
  - (i) reduce the amount of the Funds and, or
  - (ii) terminate this Agreement pursuant to section 13.1.

- 4.3 ***Use of Funds and Services.*** The Recipient shall:
- (a) use the Funds only for the purpose of funding the Services.
- 4.4 ***No Changes.*** The Recipient shall not make any changes to the Project, the Timelines and/or the Funds without the prior written consent of the Ministry.
- 4.5 ***Interest Bearing Account.*** If the Ministry 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 Ministry 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 Ministry as directed by the Ministry.
- 4.7 ***Maximum Funds.*** The Recipient acknowledges that the Funds available to it pursuant to this 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 this 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

- 5.1 ***Acquisition.*** Subject to section 31.1, if the Recipient acquires supplies, equipment or services with the Funds, it shall do so through a process that promotes the best value for money.

## ARTICLE 6 -- CONFLICT OF INTEREST

- 6.1 ***No Conflict of Interest.*** The Recipient shall 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 Ministry.*** The Recipient shall:

- (a) disclose to the Ministry, without delay, any situation that a reasonable person would interpret as either an actual, potential or perceived conflict of interest; and

comply with any terms and conditions that the Ministry 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 Ministry at the address provided in section 18.1, Reports, in accordance with the Timelines and requirements set out in Schedule A.
- (b) submit to the Ministry at the address provided in section 18.1, any other reports as may be requested by the Ministry in accordance with the Timelines and content requirements specified by the Ministry;
- (c) ensure that all Reports and other reports are completed to the satisfaction of the Ministry acting reasonably; and
- (d) ensure that all 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 in a manner consistent with generally accepted accounting principles; and
  - (b) all non-financial documents and records relating to the Funds.
- 7.3 **Inspection.** The Ministry, its authorized representatives or an independent auditor identified by the Ministry 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 Recipient's expenditure of the Funds and, for these purposes, the Ministry, its authorized representatives or an independent auditor identified by the Ministry 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.
- 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 Ministry, its authorized representatives or an independent auditor identified by the Ministry, and shall do so in a form requested by the Ministry, its authorized representatives or an independent auditor identified by the Ministry, as the case may be.
- 7.5 **No Control of Records.** No provision of this Agreement shall be construed so as to give the Ministry any control whatsoever over the Recipient's records.

## ARTICLE 8 – CREDIT AND PUBLICITY

- 8.1 **Acknowledge Support.** Unless otherwise directed by the Ministry, the Recipient shall, in a form approved by the Ministry, acknowledge the support of the Ministry in any publication of any kind, written or oral, relating to the Project, including for greater certainty, press releases, published reports, radio and television programs and public meetings, using the following standard:

***“This Project has been made possible by a grant from the Ministry of Community Safety and Correctional Services.”***

- 8.2 **Prior Written Approval.** The Recipient agrees to obtain prior written approval from the Ministry before using any Government of Ontario or Ministry logo or symbol in any communications including press releases, published reports, television programs, public or private meetings, or in any other type of promotional material, relating to the Project or this Agreement.
- 8.3 **Publication.** The Recipient shall indicate, in any of its publications, of any kind, relating to the Funds, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Ministry.

#### ARTICLE 9 -- FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- 9.1 **FIPPA.** The Recipient acknowledges that the Ministry is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Ministry in connection with the Funds or otherwise in connection with this Agreement may be subject to disclosure in accordance with that Act.
- 9.2 **MFIPPA.** The Ministry acknowledges that the Recipient is bound by the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Recipient in connection with the Funds or otherwise in connection with this 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 this Agreement, unless solely caused by the negligence or wilful misconduct of the Ministry.

## ARTICLE 11 -- INSURANCE

- 11.1 **Recipient's Insurance.** The Recipient represents and warrants that it has, and shall maintain for the term of this 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 obligations similar to the obligations of the Recipient under 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 five million dollars (\$5,000,000) 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, this 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 Ministry with certificates of insurance, or other proof as may be requested by the Ministry, that confirms the insurance coverage as provided for in section 11.1. Upon the request of the Ministry, the Recipient shall make available to the Ministry a copy of each insurance policy.

## ARTICLE 12 -- TERMINATION ON NOTICE

- 12.1 **Termination on Notice.** The Ministry may terminate the Agreement at any time upon giving at least sixty (60) days Notice to the Recipient.
- 12.2 **Consequences of Termination on Notice by the Ministry.** If the Ministry terminates the Agreement pursuant to section 12.1, the Ministry 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 Ministry does not receive the necessary appropriation from the Ontario Legislature for any payment the Ministry is to make pursuant to this Agreement, the Ministry may terminate this Agreement immediately by giving Notice to the Recipient.
- 13.2 **Consequences of Termination Where No Appropriation.** If the Ministry terminates this Agreement pursuant to section 13.1, the Ministry 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 fund the Services to the date of termination 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 Ministry 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 Ministry, the Recipient breaches any representation, warranty, covenant or other material term of this Agreement, including failing to do any of the following in accordance with the terms and conditions of this Agreement:
  - (i) use or spend Funds; and/or
  - (ii) provide, in accordance with section 7.1, Reports or such other reports as may have been requested pursuant to section 7.1(b);
- (b) 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 Ministry may, at any time, take one or more of the following actions:

- (a) initiate any action the Ministry considers necessary in order to facilitate the successful application of the Funds for the Services;
- (b) provide the Recipient with an opportunity to remedy the Event of Default;
- (c) suspend the payment of Funds for such period as the Ministry determines appropriate;
- (d) reduce the amount of the Funds;
- (e) cancel all further installments 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 this Agreement;
- (h) demand the repayment of an amount equal to any Funds the Ministry provided to the Recipient; and/or
- (i) terminate this 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 Ministry provides the Recipient with an opportunity to remedy the Event of Default, the Ministry 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 Ministry 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 Ministry 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 Ministry,

the Ministry 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 Ministry under Article 14, if the Recipient has not spent all of the Funds allocated for the Funding Year, the Ministry 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 this Agreement, return to the Ministry any Funds remaining in its possession or under its control.

**ARTICLE 17 -- REPAYMENT**

- 17.1 **Debt Due.** If under the terms of this Agreement:
- (a) the Ministry 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 Ministry, whether or not their return or repayment has been demanded by the Ministry,

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

- 17.2 **Interest Rate.** The Ministry 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 Ministry.** The Recipient shall pay any money owing to the Ministry by cheque payable to the “Ontario Minister of Finance” and mailed to the Ministry at the address provided in section 18.1.

**ARTICLE 18 -- NOTICE**

- 18.1 **Notice in Writing.** Notices and communications shall be in writing and shall be delivered by email, postage-prepaid mail, personal delivery or fax, and shall be addressed to the Ministry Contact and the Recipient, respectively, as set out below, or as either Party later designates to the other by Notice:

<p><b>To the Ministry:</b></p> <p>External Relations Branch Public Safety Division Ministry of Community Safety and Correctional Services 12th Floor, 25 Grosvenor Street Toronto ON M7A 2H3</p> <p><b>Attention:</b> Mr. Oscar Mosquera Manager, Program Development Section</p> <p><b>Fax:</b> 416-314-3092 <b>E-mail:</b> Oscar.Mosquera@ontario.ca</p>	<p><b>To the Recipient:</b></p> <p>The Corporation of the City of London City Hall, 300 Dufferin Avenue PO Box 5035 London ON N6A 4L9</p> <p><b>Attention:</b> City Clerk</p> <p><b>Fax:</b> 519-661-4892</p>
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- 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 MINISTRY

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

#### ARTICLE 20 -- SEVERABILITY OF PROVISIONS

- 20.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this 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 this 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 Ministry, 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 this without the prior written consent of the Ministry.
- 23.2 **Agreement to Extend.** All rights and obligations contained in this Agreement shall extend to and be binding on the Parties' successors and permitted assigns.

## ARTICLE 24 -- GOVERNING LAW

- 24.1 **Governing Law.** This Agreement and the rights, obligations and relations of the Parties shall be governed by and construed in accordance with the laws of the Ministry of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with this Agreement shall be conducted in Ontario.
- 24.2 **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 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 this Agreement to their full extent.

## ARTICLE 26 -- CIRCUMSTANCES BEYOND THE CONTROL OF EITHER PARTY

- 26.1 **Force Majeure.** 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 this 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 this Agreement; and
  - (ii) avoid or overcome in the carrying out of its obligations under this 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 this Agreement shall not be considered to be a breach of, or Event of Default under, this 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 this Agreement.

## ARTICLE 27 -- SURVIVAL

27.1 **Survival.** The provisions in Article 1, any other applicable definitions, sections 4.6(b), 7.1 (to the extent that the Recipient has not provided the Reports, respecting the Reports required after the Funding Period in accordance with the Due Dates set out in Schedule A, or other reports as may be requested by the Ministry to the satisfaction of the Ministry), 7.2, 7.3, 7.4, 7.5, 7.6, Articles 8 and 10, sections 13.2, 13.3, 14.1, 14.2(d), (e), (f), (g) and (h), Articles 16, 17, 18, 20, 24, 27, 28, 29, 30, 31 and 32, 33 and 34, 35 Schedule A, 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 this Agreement.

## ARTICLE 28 -- SCHEDULES

28.1 **Schedules.** This Agreement includes the following schedules:

- (a) Schedule "A" – Terms of Reference;
- (b) Schedule "B" – Court Security and Prisoner Transportation Services and Activities Eligible for Funding
- (c) Schedule "C" – Annual Financial Report;

## ARTICLE 29 -- FURTHER FUNDS

29.1 **Further Funds.** It is agreed and understood that the provision of the Funds in no way commits or obligates the Ministry to provide other or additional payments now or in the future.

## ARTICLE 30 -- MANAGEMENT BOARD/TREASURY BOARD APPROVAL

30.1 **Management Board Approval.** This Agreement may be subject to approval by the Management Board/Treasury Board Secretariat of the Government of Ontario.

## ARTICLE 31 -- JOINT AND SEVERAL LIABILITY

31.1 **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 Ministry for the fulfillment of the obligations of the Recipient under this Agreement.

## ARTICLE 32 -- RIGHTS AND REMEDIES CUMULATIVE

- 32.1 ***Rights and Remedies Cumulative.*** The rights and remedies of the Ministry under this 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 33 -- ENTIRE AGREEMENT

- 33.1 ***Entire Agreement.*** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter contained in this Agreement and supersedes all prior oral or written representations and agreements.
- 33.2 ***Modification of Agreement.*** This Agreement may only be amended by a written agreement duly executed by the Parties.

## Article 34 -- FAILURE TO COMPLY WITH OTHER AGREEMENTS

- 34.1 ***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 Ministry may suspend the payment of Funds for such period as the Ministry determines appropriate.

**THE PARTIES HAVE EXECUTED THIS AGREEMENT ON THE DATES SET OUT BELOW.**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as represented by the Minister of Community Safety and Correctional Services**  
per:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name:  
Position:  
*Pursuant to Delegated Authority*

**The Corporation of the City of London**  
per:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Joe Fontana  
Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Catharine Saunders  
City Clerk

SCHEDULE "A"

TERMS OF REFERENCE

1) **PROJECT DESCRIPTION**

The Ministry has established the Program to provide Funds to assist municipalities in offsetting their costs of providing court security and prisoner transportation services in their jurisdictions.

Funding will be provided based on each municipality's relative share of the total provincial court security-related costs, as confirmed in the 2010 Court Security Information Survey.

2) **PAYMENT AND REPORTING SCHEDULE**

**Funding Year 1 – January 1, 2012 to December 31, 2012:**

- A. First instalment: \$122,921.86 will be paid on receipt of the executed Agreement.
- B. Second instalment: \$368,765.56 will be paid to the Recipient in April, by the end of the month.

**Funding Year 2 – January 1, 2013 to December 31, 2013:**

- A. First instalment: \$245,843.71 will be paid to the Recipient in January, by the end of the month.
- B. Second instalment: \$737,531.14 will be paid to the Recipient following the Ministry's approval of Schedule C for Funding Year 1 – which must be received by the Ministry by April 15, 2013.

**Funding Year 3 – January 1, 2014 to December 31, 2014:**

- A. First instalment: \$368,765.57 will be paid to the Recipient in January, by the end of the month.
- B. Second instalment: \$1,106,296.70 will be paid to the Recipient following the Ministry's approval of Schedule C for Funding Year 2 – which must be received by the Ministry by April 15, 2014.
- C. The Recipient must submit Schedule C for Funding Year 3 to the Ministry by April 15, 2015.

## SCHEDULE "B"

### SERVICES AND ACTIVITIES ELIGIBLE FOR FUNDING

#### **A. COURT SECURITY includes:**

1. Facility Perimeter Security  
Costs associated with external and/or internal police presence during regular or non-regular hours to secure the perimeter of the facility, to respond to a specific threat or for high-profile matters.
2. Courtroom Security  
Costs associated with the presence of police staff in the courtroom to ensure the safety and security of the proceedings and attendees.
3. General Courthouse Security Presence  
Costs associated with the use of screening stations staffed by police services to screen all public visitors to the courthouse, including the use of magnetometers and x-ray machines, and police staff assigned to perform roving patrols of the court facility.
4. Prisoner Movement in Courthouse  
Costs associated with monitoring the movement of prisoners between holding cells and other areas within the courthouse.
5. Prisoner Guarding in Holding Cells  
Costs associated with guarding and monitoring of prisoners brought to court for trial and held in courthouse holding cells (where applicable).
6. Prisoner Feeding  
Costs associated with the provision of meals to prisoners required while in the custody of local police services for the purpose of attending court.

#### **B. PRISONER TRANSPORTATION includes:**

1. Prisoner Transport  
Costs associated with the movement of prisoners between correctional institutions and court locations for the purposes of attending trial.
2. Prisoner Transport - Youth  
Costs associated with the movement of custodial minors (i.e. 12-17 years old) between correctional and/or custodial facilities and court locations for the purposes of attending trial.

**\*PRISONER includes:** Persons being held in custody as a result of provincial or federal offence proceedings, including persons under immigration detention.

**C. TRAINING, EQUIPMENT AND RECRUITING includes:**

1. Training that is relevant to court security and prisoner transportation only.
2. Equipment that is unique to the member's deployment within court security and prisoner transportation and does not include equipment that would be utilized if the member was deployed in any other capacity within the police service.
3. Recruiting that is relevant to the staffing of court security and prisoner transportation only. Costs may include advertising for applicants, physical fitness and/or psychological testing, applicant screening, interviews or any other related human resources expense.

***COURT SECURITY AND PRISONER TRANSPORTATION do NOT include:***

1. Court Administration

Costs associated with performing court administrative duties including the scheduling of staff for daily deployment, the service of legal documents, the preparation/maintenance of Crown Brief materials, the entry of data into court information systems, preparing or swearing/affirming legal documentation, scheduling of court appearances or other duties of a related nature.



**SCHEDULE "C"**

**ANNUAL FINANCIAL REPORT**

<b>REPORTING MUNICIPALITY:</b>			
<b>CONTACT INFORMATION:</b>			
Salutation:	First Name:	Last Name:	Title:
Tel:	Ext:	Fax:	Email:
Address:			
City:		Postal Code:	
<b>LOCAL POLICE SERVICE:</b>			
Name of Municipal or Regional Police Service or OPP Detachment:			
<b>ANNUAL EXPENDITURE SUMMARY:</b>			
<i>PLEASE REVIEW THE ATTACHED GUIDELINES BEFORE COMPLETING THE FOLLOWING SECTION. THE GUIDELINES WILL PROVIDE DETAILS ON SERVICES AND ACTIVITIES ELIGIBLE FOR FUNDING.</i>			
Funding Year _ Allocation (January 1, 201_ to December 31, 201_):			
<b>COURT SECURITY COSTS</b>			
a) Total gross annual court security costs:			
b) Total annual payments provided to other municipalities for court security:			
c) Total annual payments received from other municipalities for court security:			
d) Total annual payments received from other funding sources for court security:			
<b>e) Total net annual court security costs (a + b - c - d):</b>			
<b>PRISONER TRANSPORTATION COSTS</b>			
f) Total gross annual prisoner transportation costs:			
g) Total annual payments provided to other municipalities for prisoner transportation:			
h) Total annual payments received from other municipalities for prisoner transportation:			
i) Total annual payments received from other funding sources for prisoner transportation:			
<b>j) Total net annual prisoner transportation costs (f + g - h - i):</b>			
<b>Total Net Annual Court Security and Prisoner Transportation Costs (e + j):</b>			
Variance (Allocation - Total Net Annual Costs):			
<b>SIGNATURE OF AUTHORIZED OFFICIAL:</b>			
<i>I, hereby certify that the information provided in the Annual Financial Report is true and correct and is in agreement with the books and records of the municipality and its consolidated entities.</i>			
Title:	Print Name:		
Signature:	Date:		