

Bill No. 262
2016

By-law No. A.-_____

A by-law to authorize and approve the Healthy Kids Community Challenge template Project Funding Agreement and to authorize the Managing Director, Neighbourhood, Children and Fire Services and the Manager, West Area Recreation Services to authorize and execute Project Funding Agreements.

WHEREAS section 2 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that municipalities are created by the Province of Ontario to be responsible and accountable governments with respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for the purpose of providing good government with respect to those matters;

AND WHEREAS subsection 5(3) of the *Municipal Act, 2001* 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 section 10 of the *Municipal Act, 2001* provides that (1) a municipality may provide any service or thing that the municipality considers necessary or desirable for the public, and (2) that a municipality may pass by-laws respecting: 5. Economic, social and environmental well-being of the municipality; 6. Health, safety and well-being of persons; 7. Services and things the municipality is authorized to provide under subsection (1); 8. Protection of persons and property;

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 The Corporation of the City of London (the "City") has entered into a Transfer Payment Agreement with Her Majesty the Queen in right of Ontario (the "Province") effective April 1st, 2015 for Provincial funds to assist the City to carry out a Healthy Kids Community Challenge project;

AND WHEREAS sections 9 and 10 and 23.1 through 23.5 of the *Municipal Act, 2001* authorize a municipality to delegate its powers and duties under this or any other Act to a person or body;

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

1. The template Project Funding Agreement attached as Schedule 1 to this by-law, to be entered into between the City and various entities to undertake various community-based Projects as part of the Healthy Kids Community Challenge Project, is authorized and approved.
2. The Managing Director of Neighbourhood, Children and Fire Services, and his or her written designates, and the Manager, West Area Recreation Services, are severally delegated the authority to insert the following details into the template Project Funding Agreement approved under section 1 above:
 - (a) the effective date of the agreement;
 - (b) the legal name for the Recipient;
 - (c) the Maximum Funds in section 1.1 of the agreement;
 - (d) the Term of the agreement in section 3.1 of the agreement; and
 - (e) Schedules A, B, C and D.

3. The Managing Director of Neighbourhood, Children and Fire Services, and his or her written designates, and the Manager, West Area Recreation Services, are severally delegated the authority to authorize and approve the entering into of Project Funding Agreements using the template as well as such further and other documents that may be required in furtherance of the Project Funding Agreements that:

- (a) are consistent with the requirements contained in the template Project Funding Agreement authorized and approved in section 1 above;
- (b) do not require additional funding or are provided for in the City's current budget; and
- (c) do not increase the indebtedness or liabilities of the City.

4. The Managing Director of Neighbourhood, Children and Fire Services, and his or her written designates, and the Manager, West Area Recreation Services, are severally delegated the authority to execute the agreement approved under section 1 above and as amended by section 2 above, and such further and other documents that may be required under section 2 above.

5. The approval and authorization in sections 1, 2, 3 and 4 above are subject to the City having a valid Transfer Payment Agreement with Her Majesty the Queen in Right of Canada for funding for the Healthy Kids Community Challenge.

6. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on July 26, 2016.

Matt Brown
Mayor

Catharine Saunders
City Clerk

SCHEDULE 1

**Project Funding Agreement
Healthy Kids Community Challenge**

NOTE: This is a standard form agreement. Terms and conditions cannot be altered without the approval of Municipal Council.

THE AGREEMENT effective as of the 1st day of _____, 20_____.

BETWEEN:

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

- and -

**[insert name of Recipient]
(the “Recipient”)**

BACKGROUND:

The Recipient has agreed to carry out the Project and the City wishes to provide funds to the Recipient to carry out the Project.

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” denote that the subsequent list is not exhaustive.

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

“**Agreement**” means this agreement entered into between the City and the Recipient and includes all of the schedules listed in section 31.1 and any amending agreement entered into pursuant to section 35.2.

“**BPSAA**” means the *Broader Public Sector Accountability Act, 2010* (Ontario).

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

“**Business Day**” means any day, Monday to Friday inclusive, that is a working day excluding statutory and other holidays, namely: New Year’s Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Christmas Day; Boxing Day and any other day on which the City has elected to be closed for business.

“**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.

“**Funding Period**” means the period of time for which funding is provided complete the terms of the project.

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

“**Healthy Kids Community Challenge Coordinator**” means the City of London staff administering this contract.

“**Indemnified Parties**” means the City, its agents, appointees, Mayor, councillors and employees.

“**Maximum Funds**” means \$_____.

“**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 City considers it reasonable to extend that time.

“**Parties**” means the City and the Recipient.

“**Party**” means either the City 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;
- (c) it is 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, the Funds or both; and
- (d) unless otherwise provided for in the Agreement, any information the Recipient provided to the City 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 for the Recipient;
 - (d) procedures to enable the Recipient to manage the Funds prudently and effectively;
 - (e) procedures to enable the Recipient to complete the Project successfully;
 - (f) procedures to enable the Recipient, in a timely manner, to identify 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 enable the Recipient 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 City 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 _____, 20____ 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 City 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 plan 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 **Revised Schedules.** The City may, at any time, upon consultation with the Recipient, provide any or all of the following:
- (a) a new Schedule "A" (Project Description and Timelines);
 - (b) a new Schedule "B" (Budget);
 - (c) a new Schedule "C" (Payment); and
 - (d) a new Schedule "D" (Reports).

- 4.3 **Deemed to be Replaced.** If the City provides a new schedule in accordance with section 4.2, the new schedule shall be deemed to be either Schedule “A” (Project Description and Timelines), Schedule “B” (Budget), Schedule “C” (Payment) and Schedule “D” (Reports), as the case may be, (collectively referred to as “**New Schedules**”), for the period of time to which it relates.
- 4.4 **Limitation on Payment of Funds.** Despite section 4.1:
- (a) the City is not obligated to provide any Funds to the Recipient until the Recipient provides the insurance certificate or other proof as the City may request pursuant to section 11.3;
 - (b) the City is not obligated to provide instalments of Funds until it is satisfied with the progress of the Project;
 - (c) the City may adjust the amount of Funds it provides to the Recipient in any Funding Year based upon the City’s assessment of the information provided by the Recipient pursuant to section 7.1; and
 - (d) if, the City does not receive the necessary funding from the Province for payment under the April 1st 2015 Transfer Payment Agreement, the City is not obligated to make any such payment, and, as a consequence, the City 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.
- 4.5 **Use of Funds and Project.** The Recipient shall:
- (a) carry out the Project in accordance with the terms and conditions of the Agreement;
 - (b) use the Funds only for the purpose of carrying out the Project;
 - (c) spend the Funds only in accordance with the Budget; and
 - (d) return any unspent Funds promptly.
- 4.6 **No Changes.** The Recipient shall not make any changes to the Project, the Timelines, or the Budget without the prior written consent of the City.
- 4.7 **Interest Bearing Account.** If the City provides Funds to the Recipient prior to the Recipient’s immediate need for the Funds, the Recipient shall place the Funds in a separate interest bearing account in the name of the Recipient at a Canadian financial institution.
- 4.8 **Interest.** If the Recipient earns any interest on the Funds, the City may:
- (a) deduct an amount equal to the interest from any further instalments of Funds; or
 - (b) demand from the Recipient the repayment of an amount equal to the interest.
- 4.9 **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement shall not exceed the Maximum Funds.
- 4.10 **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 OR SERVICES, AND DISPOSAL OF ASSETS

- 5.1 **Acquisition.** Subject to section 28.1, if the Recipient acquires goods, services, or both with the Funds, it shall do so through a process that promotes the best value for money.
- 5.2 **Disposal.** The Recipient shall not, without the City’s prior written consent, sell, lease or otherwise dispose of any asset purchased or created 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, the use of the Funds, or both.
- 6.3 **Disclosure to City.** The Recipient shall:
- (a) disclose to the City, without delay, any situation that a reasonable person would interpret as an actual, potential or perceived conflict of interest; and
 - (b) comply with any terms and conditions that the City 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 City 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 City from time to time;
 - (b) submit to the City at the address provided in section 18.1, any other reports as may be requested by the City in accordance with the timelines and content requirements specified by the City;
 - (c) ensure that all Reports and other reports are completed to the satisfaction of the City; 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 City or Her Majesty the Queen in right of Ontario (the "Province"), its authorized representatives or an independent auditor identified by the City or 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 allocation and expenditure of the Funds and, for these purposes, the City or the Province, its authorized representatives or an independent auditor identified by the City or the Province may take one or more of the following actions:
- (a) inspect and copy the records and documents referred to in section 7.2;
 - (b) remove any copies made pursuant to section 7.3(a) from the Recipient's premises; and

- (c) conduct an audit or investigation of the Recipient in respect of the expenditure of the Funds, the Project, or both.
- 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 City or the Province, its authorized representatives or an independent auditor identified by the City or the Province, and shall do so in the form requested by the City or the Province, its authorized representatives or an independent auditor identified by the City or 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 City or 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 COMMUNICATIONS REQUIREMENTS

- 8.1 **Acknowledge Support.** Unless otherwise directed by the City, the Recipient shall acknowledge the support of the Province in a form and manner as directed by the City.
- 8.2 **Publication.** The Recipient shall indicate, in any of its publications, of any kind, including written, oral, or visual, 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 City or the Province.

ARTICLE 9 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

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

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 City.

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 **Crime/Fidelity Insurance.** The Recipient shall furnish the City with evidence of a blanket position insurance policy or equivalent fidelity bond in the amount determined in the sole discretion of the City's Manager III, Risk Management from time to time.
- 11.3 **Proof of Insurance.** The Recipient shall provide the City with certificates of insurance, or other proof as may be requested by the City, that confirms the insurance coverage as provided for in section 11.1. Upon the request of the City, the Recipient shall make available to the City a copy of each insurance policy.

ARTICLE 12

TERMINATION ON NOTICE

- 12.1 **Termination on Notice.** The City 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 City.** If the City terminates the Agreement pursuant to section 12.1, the City may take one or more of the following actions:
- (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
 - (c) determine the reasonable costs for the Recipient to wind down the Project, and do either or both of the following:
 - (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
 - (ii) subject to section 4.9, provide Funds to the Recipient to cover the costs determined pursuant to section 12.2(c).

ARTICLE 13

TERMINATION WHERE NO PROVINCIAL FUNDING

- 13.1 **Termination Where City Receives No Provincial Funding.** If, as provided for in section 4.4(d), the City does not receive the necessary funding from the Province for payment under the April 1st 2015 Transfer Payment Agreement, the City may terminate the Agreement immediately by giving Notice to the Recipient.
- 13.2 **Consequences of Termination Where City Receives No Provincial Funding.** If the City terminates the Agreement pursuant to section 13.1, the City may take one or more of the following actions:
- (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
 - (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 City 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 City, 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; 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 eligibility requirements of the program under which the City provides the Funds;
 - (c) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or a creditor makes an application for an order adjudging the Recipient bankrupt, or applies for the appointment of a receiver;
 - (d) the Recipient ceases to operate.
- 14.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the City may, at any time, take one or more of the following actions:
- (a) initiate any action the City 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 City 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 City provided to the Recipient; and
 - (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 City provides the Recipient with an opportunity to remedy the Event of Default, the City 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 City 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 City 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 City,
- the City 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 PROJECT

- 15.1 **Funds at the End of a Project.** Without limiting any rights of the City under Article 14, if the Recipient has not spent all of the Funds allocated for the Project as provided for in the Budget, the City may take one or both of the following actions:
- (a) demand the return of the unspent Funds; and
 - (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 City any Funds remaining in its possession or under its control.

ARTICLE 17
REPAYMENT

- 17.1 **Repayment of Overpayment.** If at any time during the term of the Agreement the City provides Funds in excess of the funds to which the Recipient is entitled under the Agreement, the City may:
- (a) deduct an amount equal to the excess Funds from any further instalments of Funds; or
 - (b) demand that the Recipient pay an amount equal to the excess Funds to the City.
- 17.2 **Debt Due.** If, pursuant to the Agreement:
- (a) the City demands the payment of any Funds or an amount equal to any Funds from the Recipient; or
 - (b) the Recipient owes any Funds or an amount equal to any Funds to the City, whether or not their return or repayment has been demanded by the City,
- such Funds or other amount shall be deemed to be a debt due and owing to the City by the Recipient, and the Recipient shall pay or return the amount to the City immediately, unless the City directs otherwise.
- 17.3 **Interest Rate.** The City 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.
- 17.4 **Payment of Money to City.** The Recipient shall pay any money owing to the City by cheque payable to the "City Treasurer, The Corporation of the City of London" and delivered to the City 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 postage-prepaid mail, personal delivery or fax, and shall be addressed to the City and the Recipient respectively as set out below, or as either Party later designates to the other by Notice:

To the Recipient:

Recipient Name

Contact Address

Fax: _____

To the City:

The Corporation of the City of London
City Hall
300 Dufferin Avenue
P.O. Box 5035 London, ON N6A 4L9
Attention: City Clerk Fax: 519-661-4892

- 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 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 personal delivery or by fax.
- 18.4 **Despite Section 18.2.** Despite section 18.2, if either Party receives a Notice on a non-Business Day, or after 5 p.m. on a Business Day, the Notice shall be deemed to have been received on the next Business Day.

ARTICLE 19

CONSENT BY CITY AND COMPLIANCE BY RECIPIENT

- 19.1 **Consent.** When the City provides its consent pursuant to the Agreement, it may impose any terms and conditions on such consent and the Recipient shall comply with such terms and conditions.

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 City, and the Recipient shall not represent itself in any way that might be taken by a reasonable person to suggest that it is, or 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, without the prior written consent of the City, assign any of its rights, or obligations under the Agreement.
- 23.2 **Agreement Binding.** 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 the courts of Ontario, which shall have exclusive jurisdiction over such proceedings.

ARTICLE 25

FURTHER ASSURANCES

- 25.1 **Agreement into Effect.** The Recipient shall provide such further assurances as the City may request from time to time with respect to any matter to which the Agreement pertains, and shall otherwise 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

JOINT AND SEVERAL LIABILITY

- 26.1 **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 City for the fulfillment of the obligations of the Recipient under the Agreement.

ARTICLE 27

RIGHTS AND REMEDIES CUMULATIVE

- 27.1 **Rights and Remedies Cumulative.** The rights and remedies of the City 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 28
BPSAA

- 28.1 **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 29
ACKNOWLEDGEMENT OF OTHER LEGISLATION

- 29.1 **Recipient Acknowledges.** The Recipient acknowledges that by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the BPSAA, the *Public Sector Salary Disclosure Act, 1996* (Ontario), and the *Auditor General Act* (Ontario).

ARTICLE 30
FAILURE TO COMPLY WITH OTHER AGREEMENTS

- 30.1 **Other Agreements.** If the Recipient:
- (a) has failed to comply (a “**Failure**”) with any term, condition or obligation under any other agreement with the City or 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 City may suspend the payment of Funds for such period as the City determines appropriate.

ARTICLE 31
SCHEDULES

- 31.1 **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 32
SURVIVAL

- 32.1 **Survival.** The following Articles and sections, and all applicable cross-referenced sections 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 1 and any other applicable definitions, section 4.4(d), 4.8, section 5.2, section 7.1 (to the extent that the Recipient has not provided the Reports to the satisfaction of the City), sections 7.2, 7.3, 7.4, 7.5, 7.6, Article 8, Article 10, section 12.2, sections 13.2 and 13.3, sections 14.1, 14.2(d), (e), (f), (g) and (h), Article 16, Article 17, Article 18, Article 20, section 23.2, Article 24, Article 26, Article 27, Article 29, Article 30, Article 31, Article 32, and Article 35.

ARTICLE 33
COUNTERPARTS

- 33.1 **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 34
FORCE MAJEURE

- 34.1 **Force Majeure.** Notwithstanding any other provision contained herein, in the event that either the City or the Recipient should be delayed, hindered or prevented from the performance of any act required hereunder by reason of any unavoidable delay, including strikes, lockouts, unavailability of materials, inclement weather, acts of God or any other cause beyond its reasonable care and control, but not including insolvency or lack of funds, then performance of such act shall be postponed for a period of time equivalent to the time lost by reason of such delay.

ARTICLE 35
ENTIRE AGREEMENT

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

The Parties have executed the Agreement on the dates set out below.

SIGNED, SEALED AND DELIVERED

The Corporation of the City of London

Signature
{Print Name:} _____

{Print Title:} _____

Date

{Insert Correct Legal Name of Recipient}

*Signature
{Print Name:} _____

{Print Title:} _____

Date

Witness (If Recipient is an Individual)

Date

*Signature
{Print Name:} _____

{Print Title:} _____

Date

Witness (If Recipient is an Individual)

Date

*I/We have authority to bind the Recipient.

SCHEDULE “A”

PROJECT DESCRIPTION AND TIMELINES

Background

Ontario’s Healthy Kids Community Challenge (The Challenge) is a community-led program where entities from different sectors work together to implement activities to reduce and prevent childhood overweight and obesity. The Challenge is based on the EPODE (Ensemble Prévenons l’Obésité des Enfants – Together Let’s Prevent Childhood Obesity) methodology, which is recognized by the World Health Organization as a best practice in childhood overweight and obesity prevention.

The City of London, as a community selected to participate in and support The Challenge, will adhere to the following guiding principles, as will the Recipient:

- Focus on healthy kids, not just healthy weights. Strategies targeting protective factors for healthy weights — including improving nutrition and increasing physical activity — will benefit all children, regardless of weight status.
- Focus on positive health messages and not on programs or messages that could increase bias or stigma around weight.
- Recognize that healthy kids live in healthy families, schools and communities.
- Support health equity through interventions at the population-level and by targeting at-risk populations.

Project Goal and Objectives

The Recipient will develop and implement programs, policies and supports through community-led planning and action to contribute to the achievement of the following goal and objectives of The Challenge:

Goal of the Healthy Kids Community Challenge:

- To reduce the prevalence of and prevent childhood overweight and obesity in The Challenge communities.

Objectives of the Healthy Kids Community Challenge:

- To improve the conditions within communities participating in The Challenge by creating supportive environments to enable healthy behaviours in children, and related support behaviours in their parents.
- To contribute to the evidence on the effectiveness of centrally-coordinated, community-based interventions to improve healthy weights and weight related behaviours.
- To increase community capacity to plan, implement and evaluate sustainable health interventions at the community level.
- To improve community collaboration and coordination on promoting healthy childhood weights, through the development and mobilization of multi-sectoral community partnerships.
- To increase the proportion of children reporting recommended levels of specific health behaviours targeted by The Challenge.
- To increase the proportion of parents in The Challenge communities who engage in parental support behaviours and reduce the proportion who perceives barriers to supporting child health behaviours.
- To increase awareness of and participation in The Challenge.

Scope of Project

The Recipient will implement the activity(ies) outlined below to encourage positive behaviour change in the areas that are known to be key prevention factors for childhood overweight and obesity (healthy eating, physical activity). These activity(ies) will also work to remove the barriers to healthy behaviour change and create healthy communities and environments (e.g., schools, workplaces, homes and other community settings).

I. Project name:			
II. Select the type of Project : (click on “Choose an item” and a drop-down list will appear) Choose an item.			
III. Select the health promotion and behaviour change strategies of the comprehensive approach model that the intervention will incorporate:			
<input type="checkbox"/> Community engagement		<input type="checkbox"/> Education and awareness	
<input type="checkbox"/> Social marketing		<input type="checkbox"/> Parent/Family and caregivers partnerships	
<input type="checkbox"/> Peer support/student involvement		<input type="checkbox"/> Policy	<input type="checkbox"/> Supportive environments
IV. Duration: (<i>What are the planned dates for the intervention expressed in months and/or weeks</i>)			
V. Deliverables/Expected Outcomes of Intervention:			
Need, barrier or opportunity that your intervention seeks to address and the source of this information (e.g. Community Needs Assessment, evidence-based research, successful community interventions etc.) — <i>What are you trying to address? What sources were used to inform this intervention?</i>			
Causes of the need, barrier or opportunity (List all possible causes) – <i>Why is this an issue?</i>			
Targeted population(s) and anticipated reach— <i>Who is the intervention for (i.e. 300 children aged 3-6; include sub-populations, i.e. low-income, new immigrants, French communities). How many people will benefit from the intervention?</i>			
VI. Goals/Objectives and performance measures			
Goals	Objectives/Deliverables	Performance Measures	
<i>List the goal(s) of the intervention (Add rows if required)</i>	<i>For each goal, list specific objectives and/or deliverables that will indicate the achievement of the goal when the intervention is completed.</i>	<i>For each objective/deliverable, list the measures that will be used to evaluate the results achieved. What and will you measure to determine progress? Explain how you will undertake this evaluation. (Include quantitative and/or qualitative measures)</i>	
1.	A. B. C.	• • •	
2.	A. B. C.	• • •	
VII. Sustainability: (<i>How will this intervention or elements of this intervention be sustained beyond the theme and/or project?</i>)			
VIII. Collaborators: <i>Please list collaborators involved in supporting the project. Collaborators can be individuals, groups, private business or organizations. (Add rows if required)</i>			
Name	Area of Expertise	Roles and	Contribution

		Responsibilities	(donation, in-kind, other specify)

Communications and Marketing

1. The Recipient shall:
 - (a) reference London’s Child and Youth Network, *in motion™*, and the Healthy Kids Community Challenge in all social media posts. Tweets will include @inmotion4life and #healthykidsON; Facebook posts will include #healthykidsON.
 - (b) forward public inquiries, complaints and concerns with respect to the Project to the City forthwith
 - (c) immediately report any potential or foreseeable issues to the Corporation of the City of London through the City of London’s Healthy Kids Community Challenge Coordinator;
 - (d) notify the Healthy Kids Community Challenge Coordinator 10 Business Days prior to issuing any news release and other planned communications relating to news releases and provide materials 6 Business Days prior to release;
 - (e) despite the time frames set out above for news releases and other planned communications relating to news releases, all public announcements and media communications related to urgent and/or emerging Project issues shall require the Recipient to provide the Healthy Kids Community Challenge Coordinator with notice of such announcement or communication as soon as possible prior to release;
 - (f) advise the Healthy Kids Community Challenge Coordinator prior to embarking on major provider outreach activities and the release of any publications related to the Project;
 - (g) develop advertising creative locally with artwork files (e.g., healthy kids assets, word mark, community identifier) and a Visual Identity Guidebook supplied by the Province through the City of London’s Healthy Kids Community Challenge Coordinator:
 - (i) This advertising creative should not include the Ontario Logo or other Ontario identifier associated with the Visual Identity Directive, September 2006;
 - (h) Ensure that Marketing Communications (e.g., printed or printer-ready items provided by the Corporation of the City of London (via the Province of Ontario) such as posters, brochures, fact sheets) are not to be used in paid media. Paid media is:
 - (i) any item that the Recipient pays to have published in a newspaper or magazine, displayed on a billboard, or broadcast on radio or television;
 - (ii) any printed matter (e.g., householder) that the Recipient wants to pay to have distributed unaddressed to Ontario households by any method of bulk delivery; and
 - (iii) still considered to have a value and therefore considered “paid media” if the media is given, donated, and/or traded.

2. Despite the Notice provision in Article 18 of the Agreement, the Recipient shall provide any Notice required to be given under the Communications and Marketing part of this Schedule to the following:

Neighbourhood, Children and Fire Services
 The Corporation of the City of London
 151 Dundas Street, P.O. Box 5045
 London, Ontario N6A 4L6
 Fax: 519-930-7220
 Attention: Healthy Kids Community Challenge Coordinator (wroberts@london.ca) or
 Manager,
 West Area Recreation Services (tkyle@london.ca)

SCHEDULE "B" BUDGET

The Healthy Kids Community Challenge—[Insert Recipient Name(s) here]

IX. Budget: *(Please outline the projected cost of the intervention) (Add rows if required and for each item, copy and paste 'Budget Category' drop down list)*

TOTAL: \$

Item	Budget Category	Cost
	Choose an item.	
	Choose an item.	
	Choose an item.	
	Choose an item.	

SCHEDULE "C" PAYMENT

Healthy Kids Community Challenge – [Insert Recipient Name Here]

PROJECT PERIOD: from _____ to _____

PAYMENT INSTALLMENT DATE	AMOUNT
#1	
#2	
#3	
#4	
MAXIMUM TOTAL OF PAYMENTS	

NOTE: The Corporation of the City of London may make adjustments to these instalments for reasons including, but not limited to, funding adjustments made by the Province to the City.

SCHEDULE "D" REPORTS

Healthy Kids Community Challenge – [Insert Recipient Name(s) here]

	NAME OF REPORT	DUE DATE
Funding Theme Period:		
1	Financial Report #1	
2	Project Activity Report #1	
3	Financial Report #2	
4	Financial Report #3	
5	Project Activity Report #2	
6	Financial Report #4	
7	Funding Period Reconciliation Report	

Certificate of Insurance: The Certificate of Insurance shall be provided to the City at the same time the executed Agreement is provided to the City by the Recipient.

Report Details

1. *Financial Reports*

The financial reports will specify actual expenditures/revenues against approved budget and any resulting variances for each cost category as of the due dates specified. Reporting templates will be provided by the City.

2. *Project Activity Reports*

These reports will outline project progress as of the due dates specified. For this report, document achievements in relation to the expected objectives and outcomes, and/or outline major activities accomplished or under way. Include: key project and evaluation results (outputs and/or outcomes); resources produced (if any); variances in achievement of planned outputs/outcomes (e.g., delays in meeting planned activities) and barriers encountered; and, if appropriate, planned remedial actions to ensure activities are met. Reporting templates will be provided by the City.

3. *Funding Period Reconciliation Report*

The Funding Period Reconciliation report contains the approved budget and actual expenditures for the period and theme for which funding was provided. Reporting templates will be provided by the City of London and the report will be signed by authorized signing officers of the organization.

4. *Reports specified from time to time*

Supplementary information and reports may be required from time to time as specified by the City during or following the funded period.