

Bill No. 305  
2012

By-law No. A.-

A By-law to approve the Grant Agreement between The Corporation of the City of London and Argyle Business Improvement Association; and to authorize the Mayor and City Clerk to execute the Grant Agreement.

WHEREAS subsection 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by By-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

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

1. The Grant Agreement to be entered into between The Corporation of the City of London and Argyle Business Improvement Association attached as Schedule "A" to this By-law, is authorized and approved.
2. The Mayor and the City Clerk are authorized to execute the Grant Agreement authorized and approved under section 1 of this By-law.
3. This By-law shall come into force and effect on the day it is passed.

PASSED in Open Council on June 26, 2012.

Joe Fontana  
Mayor

Catharine Saunders  
City Clerk

First Reading – June 26, 2012  
Second Reading – June 26, 2012  
Third Reading – June 26, 2012

## “Schedule A” Grant Agreement

THIS AGREEMENT dated as of the 1<sup>st</sup> day of July, 2012

Between

**The Corporation of the City of London**  
(the "City")

-and-

**Argyle Business Improvement Association**  
(the "Recipient")

WHEREAS s. 107 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that a municipality may make grants, on such terms and conditions as to security and otherwise as the Council considers appropriate, to any person, group, or body, including a fund, within or outside the boundaries of the municipality for any purpose that Council considers to be in the interests of the municipality;

AND WHEREAS the Recipient has applied to the City for a grant to assist the Recipient in the Recipient's activities as described in **Schedule A** ("the Funded Activity");

AND WHEREAS City Council has approved that a grant be made to the Recipient in connection with the Recipient's activities upon such terms and conditions as are more particularly described in this Agreement;

NOW THEREFORE in consideration of the mutual covenants and other terms and conditions in this Agreement, the parties agree each with the other as follows:

### 1. Definitions & Schedules

#### 1.1 Definitions

In this Agreement, the following definitions apply:

“**City Representative**” means the City Treasurer, Chief Financial Officer, or his or her respective written designates;

“**Eligible Expenditures**” means the expenditures that are listed in the Funded Activity Budget (**Schedule B**), and in compliance with the Conditions Governing Eligible Expenditures set out in **Schedule B**;

#### 1.2 Schedules Forming Part of Agreement

The following Schedules are attached and form part of this Agreement:

<b>Schedule A:</b>	Description of Funded Activity - <b>Operating Grant</b>
<b>Schedule B:</b>	Maximum Contribution & Eligible Expenditures – <b>Operating Grant</b>

and the parties agree that all references in this Agreement to “this Agreement” shall be deemed to include such Schedules.

### 2. Term

2.1 The Agreement shall commence on the date this Agreement is signed by both parties, and shall terminate on the Funded Activity End Date as set out in **Schedule A** (“Term”), or shall terminate on such earlier date as set out in this Agreement.

### 3. Grant

3.1 (a) Subject to the terms and conditions of this Agreement, the City shall make a grant to the Recipient as set out in **Schedule B**, which amount shall be payable as set out in **Schedule B**.

(b) Payment of any grant under this Agreement is subject to the availability of funds in the City's current approved budget.

### 4. Use of Grant

4.1 The Recipient covenants and agrees that the Recipient shall use the grant solely for the purpose of paying the Eligible Expenditures in connection with the Funded Activity and for no other purpose. The Recipient further covenants and agrees that the grant or any portion thereof shall not be advanced to any third party party except under a bona fide arms length written contractual arrangement for valuable consideration.

**5. Repayment of Grant**

5.1 The City, in its sole discretion, may require the Recipient to repay to the City some or all of the grant for the Funded Activity based upon the City’s assessment of the current year’s final audited statement provided to the City under this Agreement.

5.2 If the Recipient uses some or all of the grant funds for purposes other than Eligible Expenditures, the Recipient covenants and agrees that it shall return such funds to the City.

5.3 If the Recipient does not comply with the provisions of this Agreement, the Recipient shall be considered in default of this Agreement and all grant funds the City advanced to the Recipient shall be deemed to be a loan and shall be immediately due and payable in full upon the written demand of the City Representative.

5.4 The City reserves the right to demand interest on any amount owing by the Recipient at the then current rate charged by the City on accounts receivable.

5.5 The Recipient shall return all unexpended grant funds to the City within 90 days of the end of the Term, unless the City Representative has given prior written approval for such grant funds to be spent on a specific program or activity.

**6. Reports**

6.1 The Recipient shall submit the reports as set out in **Schedule A**, on or before the date set out in **Schedule A** to the City Representative in a form and content satisfactory to the City Representative. The reports shall include a financial statement for the period covered by the reports.

**7. Right of Audit**

7.1 (a) The City auditor or anyone designated in writing by the City auditor may audit and inspect accounts, records, receipts, vouchers, and other documents relating to the grant and shall have the right to make copies thereof and take extracts. For the purposes of this clause, audit includes any type of audit.

(b) The Recipient shall make available all facilities, physical and otherwise, for such audits and inspections and shall furnish the City and its authorized representatives with all such information as it, or they, may from time to time require with reference to such accounts, records, receipts, vouchers, and other documents.

(c) The Recipient shall cause all such accounts, records, receipts, vouchers, and other documents required under this clause, to be preserved and kept available for audit and inspection at any reasonable time, and from time to time, until the expiration of seven years from the date of disbursement of the grant under this Agreement, or until the expiration of such lesser or greater period of time as shall be approved in writing by the City.

**8. Official Notification**

8.1 (a) Any notice required or permitted to be given under this Agreement shall be given or provided by personal delivery, mail, courier service, or fax at the postal address or fax number, as the case may be, of the receiving party as set out below:

<p>The City City Clerk</p> <p><b>Schedule A</b></p> <p>Room 308, 300 Dufferin Avenue PO Box 5035 London, ON N6A 4L9 Fax: (519) 661-4892</p>	<p>The Recipient As set out in</p>
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(b) Any notice that is delivered personally or by courier service shall be deemed to have been received upon delivery, or if sent by mail five working days after the date of mailing, or in the case of fax, one working day after they are sent.

(c) Either party to this Agreement may, at any time, give notice under this section to the other of a change of address and thereafter such changed address shall be substituted for the previous address set out in subsection (a).

**9. Informing the Public of the City’s Contribution**

9.1 (a) The Recipient acknowledges that the City may publicize the name of the Recipient, the amount of the contributions and the nature of the activity supported under this Agreement.

(b) The Recipient shall recognize the City as a funding contributor in all Funded Activity-related publicity.

**10. Termination**

### **Termination Without Default**

10.1 Despite any other provisions in this Agreement, the City may terminate this Agreement for any reason, effective upon the giving of fifteen (15) days' prior written notice to the Recipient.

### **Termination Where Default**

10.2 The following are considered defaults of this Agreement for which the City may terminate the Agreement immediately:

- (a) If any proceeding in bankruptcy, receivership, liquidation or insolvency is commenced against the Recipient or its property, and the same is not dismissed within **30 days**; or
- (b) If the Recipient files a voluntary petition in bankruptcy or insolvency, makes any assignment for the benefit of its creditors, becomes insolvent, commits any act of bankruptcy, ceases to do business as a going concern, or seeks any arrangement or compromise with any or all of its creditors under any statute or otherwise.

10.3 Any termination by the City under this Agreement shall be without compensation, penalty or liability on the part of the City, and shall be without prejudice to any of the City's legal or equitable rights or remedies.

10.4 Where this Agreement is terminated by the City under section 10.1 or 10.2, the Recipient shall return forthwith to the City any unexpended grant funds.

### **11. Indemnity**

11.1 The Recipient shall indemnify and save the City, its Officers, Directors, Employees, Agents and Councillors, harmless from and against all claims, actions, losses, expenses, costs or damages of every nature and kind that the City may suffer, caused or alleged to be caused by any wilful or negligent act, omission or delay on the part of the Recipient or its officers, directors, employees, contractors or agents, in connection with anything purported to be or required to be done by the Recipient in connection with this Agreement or the Funded Activity.

### **12. Insurance**

12.1 Throughout the term of this Agreement, the Recipient agrees to obtain and maintain at its sole expense:

- (a) Comprehensive general liability insurance on an occurrence basis for an amount of not less than Two Million Dollars (\$2,000,000.00) and shall include the City as an additional insured to cover any liability resulting from anything done or omitted by the Recipient or its employees, or agents, in carrying out the Funded Activity, such policy to include non-owned automobile liability, personal liability, personal injury, broad form property damage, contractual liability, owners' and contractor's protective products and completed operations, contingent employers liability, cross liability and severability of interest clauses. The Recipient shall submit a completed standard Insurance Certificate (Form #0788).
- (b) In addition, the Recipient shall furnish the City with a Blanket Position Policy or equivalent Fidelity Bond in the amount not less than the maximum amount of the City's contribution of this grant. The City shall be shown on the Policy as a named Obligee with respect to any loss or misuse of funds held by the Recipient as described in this Agreement.
- (c) The City reserves the right to request such higher limits of insurance or other types of policies appropriate to this Agreement as it may reasonably require.
- (d) Failure to satisfactorily meet these conditions relating to insurance shall be deemed a breach of this Agreement.
- (e) On the signing of this Agreement and within thirty (30) calendar days after any subsequent change or renewal of its insurance coverage, the Recipient shall provide the City with evidence that it has obtained the insurance coverage required under this section. The Recipient shall notify the City forthwith of any lapse, cancellation or termination of any such insurance coverage.

### **13. Compliance with Laws**

13.1 The Recipient shall carry out the Funded Activity in compliance with all applicable Federal, Provincial and Municipal laws, by-laws, policies, guidelines, rules and regulations. The Recipient shall obtain, prior to the commencement of the Funded Activity, all permits, licenses, consents and other authorizations that are necessary to the carrying out of the Funded Activity. It is a condition of this Agreement that the Recipient will not infringe upon any right under the *Human Rights Code* in carrying out the Funded Activity.

#### **14. Confidentiality**

14.1 For the purposes of the *Municipal Freedom of Information and Protection of Privacy Act*, the City's access to the Recipient's information pursuant to this Agreement is subject to the Recipient's assertion at all material times that all such documents, contracts, records, claims, and accounts are supplied by the Recipient to the City in confidence, recognizing that their disclosure could reasonably be expected to be injurious to the economic and other interests of the Recipient, and the City shall not disclose any such information without the Recipient's consent.

#### **15. Assignment**

15.1 The Recipient shall not assign this Agreement or any interest in this Agreement without the prior written consent of the City, and for the purposes of this Agreement, assignment shall include any transfer in the majority ownership or controlling interest in the Recipient, whether through the sale of shares, direct acquisition of assets or otherwise.

#### **16. Relationship Between the Parties**

16.1 The Recipient is not in any way authorized to make a promise, agreement or contract on behalf of the City. This Agreement is a funding agreement only, not a contract for services or a contract of service or employment. The City's responsibilities are limited to providing financial assistance to the Recipient towards the Eligible Expenditures. The parties hereto declare that nothing in this agreement shall be construed as creating a partnership, an employer-employee, or agency relationship between them. The Recipient shall not represent itself as an agent, employee or partner of the City.

#### **17. Facsimile Copy of Recipient's Signature Sufficient**

17.1 A facsimile copy of the Recipient's signature on this Agreement shall be sufficient and binding.

#### **18. Executed in Counterparts**

18.1 This Agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same document. All counterparts shall be construed together, and shall constitute one and the same Agreement.

#### **19. Headings**

19.1 The headings in this Agreement are for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.

#### **20. Entire Agreement**

20.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, arrangements, letters of intent, understandings, negotiations and discussions, whether oral or written, of the parties pertaining to the Funded Activity. The Recipient acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms and conditions.

#### **21. Waiver**

21.1 Failure by either party to exercise any of its rights, powers or remedies shall not constitute a waiver of those rights, powers or remedies.

#### **22. Circumstances Beyond the Control of Either Party**

22.1 Neither party shall be responsible for damage caused by delay or failure to perform under the terms of this Agreement resulting from matters beyond the control of the parties including strike, lockout or any other action arising from a labour dispute, fire, flood, act of God, war, riot or other insurrection, lawful act of public authority, or delay or default caused by a common carrier that cannot be reasonably foreseen or provided against.

#### **23. Payment of Grant is Subject to City Budget Approval**

23.1 (a) Any payment under this Agreement is subject to the approval by City Council for the fiscal year in which the payment is to be made. In the event that the City Council cancels or reduces the level of funding for the grants for any fiscal year in which payment is to be made under this Agreement, the City may terminate this Agreement in accordance with the termination provisions of this Agreement or reduce the amount of its contribution payable under this Agreement in that fiscal year by such amount that it deems advisable.

(b) Where, pursuant to this section, the City intends to reduce the amount of its contribution under the Agreement, it shall give the Recipient not less than 1 months' notice of its intention to do so. Where, as a result of reduction in funding, the Recipient is unable or unwilling to complete the Funded Activity, the Recipient may, upon written notice to the City, terminate the

Agreement. The Recipient shall not hold the City liable for any reduction or termination of funding.

**24. Governing Law**

24.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

**25. Headings**

25.1 Descriptive headings are inserted solely for convenience of reference, do not form part of this Agreement and are not to be used as an aid in the interpretation of this Agreement.

**26. Canadian Currency**

26.1 Any reference to currency is to Canadian currency and any amount advanced, paid or calculated is to be advanced, paid or calculated in Canadian currency.

**27. Other Agreements.**

27.1 If the Recipient:

- (a) has failed to comply ("Failure") with any term, condition or obligation under any other agreement with the City;
- (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 the grant for such period as the City determines appropriate or terminate the Agreement at any time, including immediately, upon giving Notice to the Recipient.

**28. Execution of Agreement.**

28.1 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.

**29. Survival**

29.1 The provisions relating to liability, indemnity, Right of Audit and Repayment of Grant shall survive termination or expiry of this Agreement for a period of seven (7) years from the date of termination of this Agreement.

IN WITNESS WHEREOF the parties to this Agreement have set their hands and seals:

**SIGNED SEALED AND DELIVERED**

**For the City:**

**THE CORPORATION OF THE CITY OF LONDON**

Date: \_\_\_\_\_

\_\_\_\_\_

Joe Fontana, Mayor

\_\_\_\_\_

Catharine Saunders,

City Clerk

**For the Recipient, by the following authorized officer(s):**

**ARGYLE BUSINESS IMPROVEMENT  
ASSOCIATION**

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

I/We have authority to bind the Corporation

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Title)

I/We have authority to bind the Corporation

## **SCHEDULE A - Operating Grant**

### THE FUNDED ACTIVITY

Full Legal Name of Recipient: Argyle Business Improvement Association

Address for Service of Notice: 1815 Dundas Street East, London, ON N5W 3E6

Primary Contact Name: Nancy McSloy Phone #: 519-601-8002

Fax #: 519-601-8004 E-mail: argyle.bia@gmail.com

Funded Activity Start Date (date for which funding will be commenced):  
July 1, 2012

Funded Activity End Date (date for which funding will end):  
December 31, 2012

#### FUNDED ACTIVITY DESCRIPTION:

Activities of the Recipient related to overseeing the improvement, beautification and maintenance of municipally-owned land, buildings and structures in the area comprising those lands in the City of London fronting on the north and south sides of Dundas Street east of Highbury Avenue and west of Wavell Street (the "Area") beyond that provided at the expense of the municipality generally and to promote the Area as a business or shopping area.

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#### **A. REPORTING - OPERATING GRANTS**

The following requirements apply to Operating Grants:

##### **REPORTS:**

The Recipient shall provide the following reports to the City Representative, on or before the dates set out below, or on such other date as agreed to in writing by the City Representative:

1. Mid Year Report – due six months after Funded Activity Start Date; to include:
  - Outcome Reporting –mid-year report highlighting first 6 months outcomes
  - Financial Reporting – Mid-year financial monitoring includes a 6 month revenue and expenditure statement; to be signed by the Recipient Board Chair and a designated accountant (CA/CMA/CGA); and
2. Annual Report - due 31 days after Funded Activity End Date; to include:
  - Outcome Reporting - yearly activity plan, and highlighting full year's outcomes.
  - Financial Reporting – year-end financial monitoring includes a final revenue and expenditure statement; to be signed by the Recipient Board Chair and a Chartered Accountant, Certified Management Accountant, or Certified General Accountant ("CA/CMA/CGA").
3. Audited Financial Statement – due within 120 days of the end of the Term;
  - to be signed by authorized Recipient Board member and auditor.



**SCHEDULE B – OPERATING GRANT**

**FINANCIAL PROVISIONS**

**1.0 MAXIMUM CONTRIBUTION OF THE CITY**

1.1 The total maximum amount of the City’s contribution towards the Funded Activity under this Agreement is \$55,240.00.

**2.0 DISBURSEMENT OF GRANTS**

2.1 Subject to the Recipient’s compliance with the provisions of this Agreement, the grant shall be disbursed to the Recipient over the Term of this Agreement, as set out below.

2.2 The grant will be payable as follows, subject to the Recipient’s compliance with the provisions of this Agreement:

One payment of grant funds for the entire Funded Activity, to be paid within 30 days of execution of this Agreement, in the amount of: \$ 55,240.00.

**3.0 ELIGIBLE EXPENDITURES**

**3.1 FUNDED ACTIVITY BUDGET**

The following is the Funded Activity Budget – OPERATING GRANT:

Expenditure Categories		Other Sources		Total
		Cash	In-Kind	
1. Funded Activity Management Costs	55,240	55,240		55,240
1.1 Staff Wages *	<b>40,000</b>	<b>40,000</b>		<b>40,000</b>
1.2 Professional Fees	950	950		950
1.3 Capital Assets				
1.4 Other Activity-Related Costs	2,500	2,500		2,500
1.5 Administrative Costs	11,790	11,790		11,790
1.6 Organizational Infrastructure Costs *				
2. Funded Activity Costs *	<b>55,240</b>	<b>55,240</b>		<b>55,240</b>
<b>TOTAL</b>	55,240	55,240		55,240
		0		

**Budget notes:**

“**Funded Activity Management Costs**” is the sum total of costs described in expenditure categories 1.1 through 1.6 incurred by the Recipient to carry out the Funded Activity.

“**Staff Wages**” includes *Mandatory Employment Related Costs (MERCs)* which refer to payments an employer is required by law to make in respect of its employees such as EI and CPP/QPP premiums, workers’ compensation premiums, vacation pay and Employer Health Tax; and *Benefits* which refer to payments an employer is required to make in respect of its employees by virtue of company policy or a collective agreement. Examples of Benefits include contributions to a group pension plan or premiums towards a group insurance plan.

“**Professional Fees**” include contracting for goods or services such as bookkeeping, janitorial services, information technology, equipment maintenance services, security, if contracted specifically to support the Funded Activity, audit costs and legal fees.

“**Other Activity-Related Costs**” are costs explicitly linked to the Funded Activity activities described in **Schedule A** that are not covered by any other expenditure category.

“**Administrative Costs**” are general administration-type costs, normally incurred by any organization, that are hereby incurred to enable effective delivery of the Funded Activity. These include costs such as rent, phone/fax, postage/courier, office supplies, internet/website, bank charges, office moving expenses, office cleaning, security system, garbage removal/recycling, publication purchases, equipment maintenance and membership fees.

“**Organizational Infrastructure Costs**” are expenses incurred for services rendered to the Recipient by a “main office”, “head office” or “administration office” of the Recipient. These are costs related to functions which, although they guide and enable effective Funded Activity delivery, are not Funded Activity specific and not covered by any of the other expenditure categories listed in the Funded Activity Budget.

“**Funded Activity Costs**” includes any cost described in expenditure categories 1.1 through 1.6.

**4.0 BUDGET FLEXIBILITY**

4.1 The Recipient shall not, without the express prior written approval of the City Representative, make adjustments to its allocation of funds between any of the expenditure categories identified in the Funded Activity Budget.

4.2 Written approval by the City Representative of adjustments under section 4.1 may be required by the City Representative to be documented by way of a formal amending agreement signed by both parties.

## **5.0 CONDITIONS GOVERNING ELIGIBLE EXPENDITURES**

5.1 The Eligible Expenditures set out in the Funded Activity Budget above are subject to the following conditions:

- (a) expenditures must be incurred during the Funded Activity Start Date and End Date;
- (b) expenditures must, in the sole opinion of the City Representative, be reasonable;
- (c) the portion of the cost of any goods and services purchased by the Recipient for which the Recipient may claim a tax credit or reimbursement are not eligible;
- (d) depreciation of capital assets is not eligible;
- (e) fines and penalties are not eligible;
- (f) the cost of alcoholic beverages or travel expenses are not eligible.

## **6.0 TERMS OF PAYMENT**

6.1 The City may withhold any payment due to the Recipient under this Agreement:

- (a) if the Recipient has failed to submit when due any report required by the City under this Agreement;
- (b) pending the completion of an audit of the Recipient's books and records, should the City decide to undertake such an audit;
- (c) if the Recipient is not in compliance with any applicable laws, regulations, by-laws, Council Policies; or
- (d) in the event that an audit of the Recipient's books and records indicates mismanagement or misuse of funds, in the sole opinion of the City Representative.

6.2 Grants may only be provided to Recipients that do not budget on a deficit basis and that do not operate on a deficit basis.

## **7.0 CAPITAL ASSETS**

7.1 The Recipient shall preserve any capital assets acquired with the grant, whether or not such acquisition is authorized as an Eligible Expenditure. Where a Capital Grant under this Agreement authorizes the purchase of capital assets, the Recipient shall use the capital assets for the purposes of the Funded Activity during the Term, unless the City Representative authorizes their disposition.

7.2 For any capital assets valued at \$1,000 or more, the Recipient recognizes that, either at the end of the Term, or upon termination of this Agreement, if earlier, the City may, at its discretion, direct that the capital assets be:

- (a) sold at fair market value and that the funds realized from such sale be applied to the Eligible Expenses of the Funded Activity to offset the City's contribution;
- (b) turned over to another organization designated or approved by the City; or
- (c) disposed of in such other manner as may be determined by the City.

7.3 Where a direction is made under subsection 7.2, the Recipient undertakes and agrees to comply with such direction.