

TO:	CHAIR AND MEMBERS COMMUNITY AND PROTECTIVE SERVICES COMMITTEE MEETING ON OCTOBER 10, 2018
FROM:	LYNNE LIVINGSTONE MANAGING DIRECTOR NEIGHBOURHOOD, CHILDREN AND FIRE SERVICES
SUBJECT:	ONTARIO TRANSFER PAYMENT AGREEMENTS SENIORS ACTIVE LIVING CENTRES PROGRAM FOR KIWANIS SENIORS COMMUNITY CENTRE, HAMILTON ROAD SENIORS CENTRE & COMMUNITY CENTRE AND NORTH LONDON OPTIMIST COMMUNITY CENTRE

RECOMMENDATION

That, on the recommendation of Managing Director of Neighbourhood, Children and Fire Services, the attached proposed by-law (Appendix "A1") BE INTRODUCED at the Municipal Council meeting to be held on October 16, 2018 to:

- a) authorize and approve a template agreement (substantially in the form attached as Schedule "1" to the by-law) between The Corporation of the City of London and Her Majesty the Queen in right of Ontario as represented by the Minister for Seniors and Accessibility ("Province") for the purpose of funding Seniors Active Living Centres Programs at Kiwanis Seniors Community Centre, Hamilton Road Seniors Centre and Community Centre and North London Optimist Community Centre; and
- b) authorize the Mayor and the City Clerk to execute the Agreement authorized and approved in part a); and
- c) authorize the City Manager, and the Managing Director, Neighbourhood, Children and Fire Services, and written designates, to approve agreements with respect to programs under the *Seniors Active Living Centres Act, 2017*, or any successor legislation, to be entered into between The Corporation of the City of London and Her Majesty the Queen in right of Ontario, and any schedules thereto, and any amendments thereto, and such further other documents (including project budgets, cash flows and other financial reporting) that:
 - i. are consistent with the requirements contained in the Agreement approved in part a);
 - ii. do not require additional funding or are provided for in the City's current budget; and
 - iii. do not increase the indebtedness or liabilities of The Corporation of the City of London.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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Elderly Persons Centres Funding Agreement – April 15, 2014

BACKGROUND

The City of London has received funding from the Province of Ontario, since 1999, through the Elderly Persons Centres (EPC) Act and more recently through the Seniors Active Living Centres (SALC) Act, 2017. These funds support seniors' recreation and leisure programs at Kiwanis Seniors Community Centre, Hamilton Road Seniors Centre and Community Centre and North London Optimist Community Centre.

The purpose of this report is to provide an update on the new agreements required by the Province of Ontario (which will replace the terms and conditions the City signed in 2014) and to delegate authority and authorize the execution of agreements and such further documents (including project budgets, cash flows and other financial reporting) with respect to programs under the Seniors Active Living Centres Act, 2017 or any successor legislation for the purpose of funding Seniors Active Living Centres Programs.

Seniors Active Living Centres

On October 1, 2017, the *Seniors Active Living Centres Act, 2017* was proclaimed. This new Act replaces the former Elderly Persons Centres Act.

Aging with Confidence: Ontario's Action Plan for Seniors promotes healthy seniors, age friendly communities, and ensuring that seniors are provided with the programs, services and supports that help seniors to live safely, independently, and with dignity. Seniors Active Living Centres (SALCs) are an integral part of Ontario's Action Plan for Seniors and specifically support Ontario's mission to make the province the best place to grow up and grow old.

There are currently 263 provincially-funded SALC programs in Ontario. The City of London delivers these programs at Kiwanis Seniors Community Centre, Hamilton Road Seniors Centre and Community Centre and North London Optimist Community Centre.

Program Funding

City records indicate that in 1999 the City of London first started to participate in the EPC funding program through the following community centres: Kiwanis Seniors Community Centre, Hamilton Road Seniors Centre and Community Centre and North London Optimist Community Centre. Since that time, the City has received uninterrupted yearly funding through the EPC funding program with some modest increases along the way. These funds are used to off-set Centres' operational costs. The EPC and SALC program funds are cost shared between the City and the Province, with the City addressing its 20% contribution through existing approved budgets; the City will continue to do so.

In 2007/2008 the Ministry introduced a new "Special Grants" funding component under the EPC. The Special Grant (SG) funding is available to support new program development and equipment. The City has made annual submissions to this program and each of the Centres has been successful in receiving funding each year up to \$15,000.

The total SALC program funding provided by the Province for 2018-19 is \$156,178.98. This funding consists of \$42,700 in operating funding and \$9,359.66 in special grants for SALC programs at each of three community centres: Kiwanis Seniors Community Centre, Hamilton Road Seniors Centre and Community Centre and North London Optimist Community Centre.

Ontario Transfer Payment Agreements (TPA) between The Corporation of the City of London and the Province of Ontario

On September 18, 2018 the City of London received a communication from the Minister for Seniors and Accessibility that:

- outlines the Seniors Active Living Centres Program 2018-19 Confirmation of Funding; and
- describes the requirement to sign updated transfer payment agreements (which represents the City of London's contract with the Province of Ontario) which will replace the Terms and Conditions the City of London signed in 2014.

A template Ontario Transfer Payment Agreement is attached as Schedule 1.

Risk Management

The Risk Management staff has identified the indemnity provisions within the Ministry of Seniors and Accessibility Transfer Payment Agreement exposes the Corporation to unlimited liability. Risk Management concludes that the indemnity clause should not prevent the City of London from entering into the Transfer Payment Agreement as the benefit of the funds outweigh the associated risk from the indemnity provision.

More clearly, the City of London will mitigate risks associated with the Transfer Payment Agreement by using the optimum level of oversight and control, enabling the City of London to manage risk and ensure objectives are met. This will be done using clearly defined expectations of the objectives, functions, and eligibility criteria for all activities that are supported by this program.

FINANCIAL IMPACT

There is no financial impact to the City budget. The funding application, to the Ministry of Seniors and Accessibility is cost shared using 80% Provincial dollars with the 20% City contribution accommodated within the existing approved Neighbourhood, Children & Fire Services, Neighbourhood Operations, Community Centres budget.

CONCLUSION

Since 1999/2000 (from our records) City involvement in the EPC/SALC funding program has generated \$994,672. The Special Grant program since 2007/2008 has generated \$396,400.

The City's long standing relationship with the Provincial Government in the EPC/SALC funding program has yielded tremendous benefits to the City of London and in particular for older adult and senior residents.

Acknowledgements: this report was prepared with the assistance of Jason Wills, Manager III, Risk Management, Risk Management Division; Lynn Marshall, Solicitor II, Legal and Corporate Services; Steve Whitmore, Financial Business Administrator, Finance and Corporate Services.

PREPARED BY:	SUBMITTED BY:
 MELISSA COSTELLA, MANAGER II, COMMUNITY & SENIORS' CENTRES NEIGHBOURHOOD OPERATIONS NEIGHBOURHOOD, CHILDREN & FIRE SERVICES	 PAUL D'HOLLANDER, MANAGER IV, NEIGHBOURHOOD OPERATIONS NEIGHBOURHOOD, CHILDREN & FIRE SERVICES
RECOMMENDED BY:	
 LYNNE LIVINGSTONE, MANAGING DIRECTOR NEIGHBOURHOOD, CHILDREN & FIRE SERVICES	

- C. Lynn Marshall, Solicitor II
Jason Wills, Manager III, Risk Management
Kyle Murray, Director, Financial Planning & Business Support

APPENDIX A1

Bill No.
2018

By-law No. A.-_____

A by-law to approve the template Ontario Transfer Payment Agreement between The Corporation of the City of London and Her Majesty the Queen in right of Ontario with respect to funding for Seniors Active Living Programs; and to authorize the Mayor and the City Clerk to execute the Agreement.

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

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

AND WHEREAS 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, including respecting climate change; 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 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;

AND WHEREAS the *Seniors Active Living Centres Act, 2017*, S.O. 2017, c. 11, Sched. 6, provides for the payment of Provincial grants towards the cost of maintaining and operating Seniors Active Living Centre programs;

AND WHEREAS the City operates Seniors Active Living Centre programs at Kiwanis Seniors Community Centre, Hamilton Road Seniors Centre and Community Centre, and North London Optimist Community Centre;

AND WHEREAS the City wishes to enter into Transfer Payment Agreements with the Queen in right of Ontario with respect to funding for these Seniors Active Living Centre programs;

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

1. (a) The template agreement, substantially in the form attached as Schedule 1 to this By-law, between The Corporation of the City of London and Her Majesty the Queen in right of Ontario, as represented by the Minister for Seniors and Accessibility, with respect to funding for Seniors Active Living Centre Programs at Kiwanis Seniors Community Centre, Hamilton Road Seniors Centre and Community Centre, and North London Optimist Community Centre, is approved.

(b) The Managing Director, Neighbourhood, Children and Fire Services, and his or her written designates, are severally delegated the authority to insert the name of the centre onto the first page, and to insert contact information on Schedule B of the agreement approved in (a) above.
2. The City Manager, and his or her written designates, and the Managing Director, Neighbourhood, Children and Fire Services, and his or her written designates, are severally delegated the authority to approve agreements with respect to programs under the *Seniors Active Living Centres Act, 2017*, or any successor legislation, to be entered into between The Corporation of the City of London and Her Majesty the Queen in right of Ontario, and any schedules thereto, and any amendments thereto, and such further other documents (including project budgets, cash flows and other financial reporting) that:
 - (i) are consistent with the requirements contained in the Agreement approved in section 1 above;
 - (ii) do not require additional funding or are provided for in the City's current budget; and
 - (iii) do not increase the indebtedness or liabilities of The Corporation of the City of London.

3. The Mayor and the City Clerk are authorized to execute the contracts, agreements, schedules, amendments and documents approved under section 1 and section 2 above.
4. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on October 16, 2018.

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading –
Second Reading –
Third Reading –

SCHEDULE 1

ONTARIO TRANSFER PAYMENT AGREEMENT SENIORS ACTIVE LIVING CENTERS PROGRAM

THE AGREEMENT is effective as of the first day of May, 2018.

B E T W E E N :

Her Majesty the Queen in right of Ontario
as represented by the Minister for Seniors and Accessibility (the
“Province”)

- and -

The Corporation of the City of London
(*<Insert Name of Centre>*)

(the “Recipient”)

CONSIDERATION

In consideration of the mutual covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Province and the Recipient agree as follows:

1.0 ENTIRE AGREEMENT

1.1 The agreement, together with:

Schedule “A” - General Terms and Conditions

Schedule “B” - Project Specific Information and Additional Provisions

and

any amending agreement entered into as provided for in section 4.1, 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.

2.0 CONFLICT OR INCONSISTENCY

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2.1 **Conflict or Inconsistency.** In the event of a conflict or inconsistency between the Additional Provisions and the provisions in Schedule “A”, the following rules will apply:

- (a) the Parties will interpret any Additional Provisions in so far as possible, in a way that preserves the intention of the Parties as expressed in Schedule “A”; and
- (b) where it is not possible to interpret the Additional Provisions in a way that is consistent with the provisions in Schedule “A”, the Additional Provisions will prevail over the provisions in Schedule “A” to the extent of the inconsistency.

3.0 COUNTERPARTS

3.1 The Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

4.0 AMENDING THE AGREEMENT

4.1 The Agreement may only be amended by a written agreement duly executed by the Parties.

5.0 ACKNOWLEDGEMENT

5.1 The Recipient acknowledges that:

- (a) by receiving Funds it may become subject to legislation applicable to organizations that receive funding from the Government of Ontario, including the *Broader Public Sector Accountability Act, 2010* (Ontario), the *Public Sector Salary Disclosure Act, 1996* (Ontario), and the *Auditor General Act* (Ontario);
- (b) Her Majesty the Queen in right of Ontario has issued expenses, perquisites, and procurement directives and guidelines pursuant to the *Broader Public Sector Accountability Act, 2010* (Ontario);
- (c) the Funds are:
 - (i) to assist the Recipient to carry out the Project and not to provide goods or services to the Province;
 - (ii) funding for the purposes of the *Public Sector Salary Disclosure Act, 1996* (Ontario);
- (d) the Province is not responsible for carrying out the Project; and
- (e) the Province is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Province in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

- SIGNATURE PAGE FOLLOWS -

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

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO** as represented by the Minister for
Seniors and Accessibility

Date

Kathleen Henschel, Director

THE CORPORATION OF THE CITY OF LONDON

Date

Name:

Title:

I have authority to bind the Recipient.

SCHEDULE "A"
GENERAL TERMS AND CONDITIONS

A1.0 INTERPRETATION AND DEFINITIONS

A1.1 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 headings do not form part of the Agreement; they are for reference only and will not affect the interpretation of the Agreement;
- (d) any reference to dollars or currency will be in Canadian dollars and currency; and
- (e) "include", "includes" and "including" denote that the subsequent list is not exhaustive.

A1.2 Definitions. In the Agreement, the following terms will have the following meanings:

"Additional Provisions" means the terms and conditions set out in Schedule "B".

"Agreement" means this agreement entered into between the Province and the Recipient, all of the schedules listed in section 1.1, and any amending agreement entered into pursuant to section 4.1.

"Budget" means the budget for expenses related to the Recipient's seniors active living centre program, as set out in the Funding Letter.

"Business Day" means any working day, Monday to Friday inclusive, 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; Remembrance Day; Christmas Day; Boxing Day and any other day on which the Province 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 A13.1.

"Funding Letter" means the letter(s) from the Province to the Recipient indicating the approved amount of the Funds to the Recipient for the Funding Year;

"Funding Year" means:

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

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

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

“**Maximum Funds**” means the maximum Funds set out in the Funding Letter.

“**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 pursuant to section A13.3(b), and includes any such period or periods of time by which the Province extends that time in accordance with section A13.4.

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

“**Party**” means either the Province or the Recipient.

“**Program Guidelines**” means the Province’s program guidelines, issued April 2018, and revised from time to time by the Province, containing terms and conditions in respect of seniors active living centre program funding.

“**Project**” means the undertakings approved by the Province in accordance with the *Seniors Active Living Centres Act, 2017*, in support of the Recipient’s seniors active living centre program, as set out in the Funding Letter.

A2.0 REPRESENTATIONS, WARRANTIES, AND COVENANTS

A2.1 General. The Recipient represents, warrants, and covenants that:

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

A2.2 Execution of Agreement. The Recipient represents and warrants that it has:

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

A2.3 **Governance.** The Recipient represents, warrants, and covenants that it has, will maintain in writing, and will follow:

- (a) a code of conduct and ethical responsibilities for all persons at all levels of the Recipient's organization;
- (b) procedures to enable the Recipient's ongoing effective functioning;
- (c) decision-making mechanisms for the Recipient;
- (d) procedures to enable the Recipient to manage Funds prudently and effectively;
- (e) procedures to enable the Recipient to complete the Project successfully;
- (f) procedures to enable the Recipient to identify risks to the completion of the Project and strategies to address the identified risks, all in a timely manner;
- (g) procedures to enable the preparation and submission of all Reports required pursuant to Article A7.0; and
- (h) procedures to enable the Recipient to address such other matters as the Recipient considers necessary to enable the Recipient to carry out its obligations under the Agreement.

A2.4 **Supporting Proof.** Upon the request of the Province, the Recipient will provide the Province with proof of the matters referred to in Article A2.0.

A3.0 TERM OF THE AGREEMENT

A3.1 **Term.** The term of the Agreement will commence on the Effective Date and shall continue until terminated pursuant to Article A11.0, Article A12.0, or Article A13.0.

A4.0 FUNDS AND CARRYING OUT THE PROJECT

A4.1 **Funds Provided.** The Province will:

- (a) provide the Recipient up to the Maximum Funds for the purpose of carrying out the Project;
- (b) provide the Funds to the Recipient at regular intervals determined by the Province, with notice to the Recipient, as set out in the Funding Letter; -; 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.

A4.2 **Limitation on Payment of Funds.** Despite section A4.1:

- (a) the Province is not obligated to provide any Funds to the Recipient until the Recipient provides the certificates of insurance or other proof as the Province may request pursuant to section A10.2;

- (b) the Province is not obligated to provide instalments of Funds until it is satisfied with the progress of the Project;
- (c) the Province may adjust the amount of Funds it provides to the Recipient in any Funding Year based upon the Province's assessment of the information the Recipient provides to the Province pursuant to section A7.1; or
- (d) if, pursuant to the *Financial Administration Act* (Ontario), the Province does not receive the necessary appropriation from the Ontario Legislature for payment under the Agreement, the Province is not obligated to make any such payment, and, as a consequence, the Province may:
 - (i) reduce the amount of Funds and, in consultation with the Recipient, change the Project; or
 - (ii) terminate the Agreement pursuant to section A12.1.

A4.3 **Use of Funds and Carry Out the Project.** The Recipient will do all of the following:

- (a) carry out the Project in accordance with 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;
- (d) not use the Funds to cover any cost that has or will be funded or reimbursed by one or more of any third party, ministry, agency, or organization of the Government of Ontario.

A4.4 **Interest Bearing Account.** If the Province provides Funds before the Recipient's immediate need for the Funds, the Recipient will place the Funds in an interest bearing account in the name of the Recipient at a Canadian financial institution.

A4.5 **Interest.** If the Recipient earns any interest on the Funds, the Province may:

- (a) deduct an amount equal to the interest from any further instalments of Funds; or
- (b) demand from the Recipient the payment of an amount equal to the interest.

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A4.6 **Rebates, Credits, and Refunds.** The Ministry will calculate Funds based on the actual costs to the Recipient to carry out the Project, less any costs (including taxes) for which the Recipient has received, will receive, or is eligible to receive, a rebate, credit, or refund.

A5.0 **RECIPIENT'S ACQUISITION OF GOODS OR SERVICES, AND DISPOSAL OF ASSETS**

A5.1 **Acquisition.** If the Recipient acquires goods, services, or both with the Funds, it will:

- (a) do so through a process that promotes the best value for money; and
- (b) comply with the *Broader Public Sector Accountability Act, 2010* (Ontario), including any procurement directive issued thereunder, to the extent applicable.

A5.2 **Disposal.** The Recipient will not, without the Province'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 the amount as provided for in Schedule "B" at the time of purchase.

A6.0 CONFLICT OF INTEREST

A6.1 **No Conflict of Interest.** The Recipient will carry out the Project and use the Funds without an actual, potential, or perceived conflict of interest.

A6.2 **Conflict of Interest Includes.** For the purposes of Article A6.0, 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.

A6.3 **Disclosure to Province.** The Recipient will:

- (a) disclose to the Province, 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 Province may prescribe as a result of the disclosure.

A7.0 REPORTS, ACCOUNTING, AND REVIEW

A7.1 **Preparation and Submission.** The Recipient will:

- (a) submit to the Province at the address referred to in section A17.1, an annual report in accordance with the Program Guidelines, or in a form as specified by the Province from time to time;
- (b) submit to the Province at the address referred to in section A17.1, any other reports as may be requested by the Province in accordance with the timelines and content requirements specified by the Province;
- (c) ensure that the annual report and any other reports are completed to the satisfaction of the Province; and
- (d) ensure that the annual report and any other reports are signed on behalf of the Recipient by an authorized signing officer.

A7.2 **Record Maintenance.** The Recipient will 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.

A7.3 **Inspection.** The Province, any authorized representative, or any independent auditor identified by the Province may, at the Province's 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 Province, any authorized representative, or any independent auditor identified by the Province may take one or more of the following actions:

- (a) inspect and copy the records and documents referred to in section A7.2;
- (b) remove any copies made pursuant to section A7.3(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.

A7.4 **Disclosure.** To assist in respect of the rights provided for in section A7.3, the Recipient will disclose any information requested by the Province, any authorized representatives, or any independent auditor identified by the Province, and will do so in the form requested by the Province, any authorized representative, or any independent auditor identified by the Province, as the case may be.

A7.5 **No Control of Records.** No provision of the Agreement will be construed so as to give the Province any control whatsoever over the Recipient's records.

A7.6 **Auditor General.** The Province's rights under Article A7.0 are in addition to any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).

A8.0 COMMUNICATIONS REQUIREMENTS

A8.1 **Acknowledge Support.** Unless otherwise directed by the Province, the Recipient will:

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- (a) acknowledge the support of the Province for the Project; and
- (b) ensure that the acknowledgement referred to in section A8.1(a) is in a form and manner as directed by the Province.

A8.2 **Publication.** The Recipient will indicate, in any of its Project-related publications, whether written, oral, or visual, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Province.

A9.0 INDEMNITY

A9.1 **Indemnification.** The Recipient will 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 Indemnified Parties.

A10.0 INSURANCE

A10.1 **Recipient's Insurance.** The Recipient represents, warrants, and covenants that it has, and will maintain, 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 the amount provided for in Schedule "B" per occurrence. The insurance policy will 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.

A10.2 **Proof of Insurance.** The Recipient will:

- (a) provide to the Province, either:
 - (i) certificates of insurance that confirm the insurance coverage as provided for in section A10.1; or
 - (ii) other proof that confirms the insurance coverage as provided for in section A10.1; and
- (b) upon the request of the Province, provide to the Province a copy of any insurance policy.

A11.0 TERMINATION ON NOTICE

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A11.1 **Termination on Notice.** The Province may terminate the Agreement at any time without liability, penalty, or costs upon giving at least 30 days' Notice to the Recipient.

A11.2 **Consequences of Termination on Notice by the Province.** If the Province terminates the Agreement pursuant to section A11.1, the Province may take one or more of the following actions:

- (a) cancel further instalments of Funds;
- (b) demand from the Recipient the payment 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 such costs against the amount the Recipient owes pursuant to section A11.2(b); and
 - (ii) subject to section A4.1(a), provide Funds to the Recipient to cover such costs.

A12.0 TERMINATION WHERE NO APPROPRIATION

A12.1 Termination Where No Appropriation. If, as provided for in section A4.2(d), the Province does not receive the necessary appropriation from the Ontario Legislature for any payment the Province is to make pursuant to the Agreement, the Province may terminate the Agreement immediately without liability, penalty, or costs by giving Notice to the Recipient.

A12.2 Consequences of Termination Where No Appropriation. If the Province terminates the Agreement pursuant to section A12.1, the Province may take one or more of the following actions:

- (a) cancel further instalments of Funds;
- (b) demand from the Recipient the payment 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 A12.2(b).

A12.3 No Additional Funds. If, pursuant to section A12.2(c), the Province determines that the costs to wind down the Project exceed the Funds remaining in the possession or under the control of the Recipient, the Province will not provide additional Funds to the Recipient.

A13.0 EVENT OF DEFAULT, CORRECTIVE ACTION, AND TERMINATION FOR DEFAULT

A13.1 Events of Default. Each of the following events will constitute an Event of Default:

- (a) in the opinion of the Province, the Recipient breaches any representation, warranty, covenant, or other material term of the Agreement, including failing to do any of the following in accordance with the terms and conditions of the Agreement:
 - (i) carry out the Project;
 - (ii) use or spend Funds; or
 - (iii) provide, in accordance with section A7.1, Reports or such other reports as may have been requested pursuant to section A7.1(b);
- (b) the Recipient's operations, its financial condition, or its organizational structure, changes such that it no longer meets one or more of the eligibility requirements of the program under which the Province provides the Funds;
- (c) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or a creditor makes an application for an order adjudging the Recipient bankrupt, or applies for the appointment of a receiver; or

(d) the Recipient ceases to operate.

A13.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Province may, at any time, take one or more of the following actions:

- (a) initiate any action the Province considers necessary in order to facilitate the successful continuation or completion of the Project;
- (b) provide the Recipient with an opportunity to remedy the Event of Default;
- (c) suspend the payment of Funds for such period as the Province determines appropriate;
- (d) reduce the amount of the Funds;
- (e) cancel further instalments of Funds;
- (f) demand from the Recipient the payment of any Funds remaining in the possession or under the control of the Recipient;
- (g) demand from the Recipient the payment of an amount equal to any Funds the Recipient used, but did not use in accordance with the Agreement;
- (h) demand from the Recipient the payment of an amount equal to any Funds the Province provided to the Recipient; and
- (i) terminate the Agreement at any time, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

A13.3 **Opportunity to Remedy.** If, in accordance with section A13.2(b), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will give Notice to the Recipient of:

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

A13.4 **Recipient not Remediating.** If the Province provided the Recipient with an opportunity to remedy the Event of Default pursuant to section A13.2(b), and:

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

the Province may extend the Notice Period, or initiate any one or more of the actions provided for in sections A13.2(a), (c), (d), (e), (f), (g), (h), and (i).

A13.5 **When Termination Effective.** Termination under Article will take effect as provided for in the Notice.

A14.0 FUNDS AT THE END OF A FUNDING YEAR

A14.1 **Funds at the End of a Funding Year.** Without limiting any rights of the Province under Article A13.0, if the Recipient has not spent all of the Funds allocated for the Funding Year as provided for in the Budget, the Province may take one or both of the following actions:

- (a) demand from the Recipient payment of the unspent Funds; and
- (b) adjust the amount of any further instalments of Funds accordingly.

A15.0 FUNDS UPON EXPIRY

A15.1 **Funds Upon Expiry.** The Recipient will, upon expiry of the Agreement, pay to the Province any Funds remaining in its possession or under its control.

A16.0 DEBT DUE AND PAYMENT

A16.1 **Payment of Overpayment.** If at any time the Province provides Funds in excess of the amount to which the Recipient is entitled under the Agreement, the Province 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 Province.

A16.2 **Debt Due.** If, pursuant to the Agreement:

- (a) the Province demands from the Recipient the payment of any Funds or an amount equal to any Funds; or
- (b) the Recipient owes any Funds or an amount equal to any Funds to the Province, whether or not the Province has demanded their payment,

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

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A16.3 **Interest Rate.** The Province may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

A16.4 **Payment of Money to Province.** The Recipient will pay any money owing to the Province by cheque payable to the "Ontario Minister of Finance" and delivered to the Province as provided for in Schedule "B".

A16.5 **Fails to Pay.** Without limiting the application of section 43 of the *Financial Administration Act* (Ontario), if the Recipient fails to pay any amount owing under the Agreement, Her Majesty the Queen in right of Ontario may deduct any unpaid amount from any money payable to the Recipient by Her Majesty the Queen in right

of Ontario.

A17.0 NOTICE

A17.1 **Notice in Writing and Addressed.** Notice will be in writing and will be delivered by email, postage-prepaid mail, personal delivery, or fax, and will be addressed to the Province and the Recipient respectively as provided for Schedule “B”, or as either Party later designates to the other by Notice.

A17.2 **Notice Given.** Notice will be deemed to have been given:

- (a) in the case of postage-prepaid mail, five Business Days after the Notice is mailed; or
- (b) in the case of email, personal delivery, or fax, one Business Day after the Notice is delivered.

A17.3 **Postal Disruption.** Despite section A17.2(a), in the event of a postal disruption:

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

A18.0 CONSENT BY PROVINCE AND COMPLIANCE BY RECIPIENT

A18.1 **Consent.** When the Province provides its consent pursuant to the Agreement, it may impose any terms and conditions on such consent and the Recipient will comply with such terms and conditions.

A19.0 SEVERABILITY OF PROVISIONS

A19.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement will not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision will be deemed to be severed.

A20.0 WAIVER

A20.1 **Waiver Request.** Either Party may, in accordance with the Notice provision set out in Article A17.0, ask the other Party to waive an obligation under the Agreement.

A20.2 **Waiver Applies.** Any waiver a Party grants in response to a request made pursuant to section A20.1 will:

- (a) be valid only if the Party granting the ¹⁹waiver provides it in writing; and
- (b) apply only to the specific obligation referred to in the waiver.

A21.0 INDEPENDENT PARTIES

A21.1 **Parties Independent.** The Recipient is not an agent, joint venturer, partner, or employee of the Province, and the Recipient will 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.

A22.0 ASSIGNMENT OF AGREEMENT OR FUNDS

A22.1 **No Assignment.** The Recipient will not, without the prior written consent of the Province, assign any of its rights or obligations under the Agreement.

A22.2 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on the Parties' respective heirs, executors, administrators, successors, and permitted assigns.

A23.0 GOVERNING LAW

A23.1 **Governing Law.** The Agreement and the rights, obligations, and relations of the Parties will 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 will be conducted in the courts of Ontario, which will have exclusive jurisdiction over such proceedings.

A24.0 FURTHER ASSURANCES

A24.1 **Agreement into Effect.** The Recipient will provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains, and will 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.

A25.0 JOINT AND SEVERAL LIABILITY

A25.1 **Joint and Several Liability.** Where the Recipient is comprised of more than one entity, all such entities will be jointly and severally liable to the Province for the fulfillment of the obligations of the Recipient under the Agreement.

A26.0 RIGHTS AND REMEDIES CUMULATIVE

A26.1 **Rights and Remedies Cumulative.** The rights and remedies of the Province under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

A27.0 FAILURE TO COMPLY WITH OTHER AGREEMENTS

A27.1 **Other Agreements.** If the Recipient:

- (a) has failed to comply with any term, condition, or obligation under any other agreement with Her Majesty the Queen in right of Ontario or one of Her agencies (a "**Failure**");
- (b) has been provided with notice of such Failure in accordance with the requirements of such other agreement;²⁰
- (c) has, if applicable, failed to rectify such Failure in accordance with the requirements of such other agreement; and
- (d) such Failure is continuing,

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

A28.0 SURVIVAL

A28.1 **Survival.** The following Articles and sections, and all applicable cross- referenced sections and schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Article 1.0, Article 3.0, Article A1.0 and any other applicable definitions, section A2.1(a), sections A4.2(d), A4.5, section A5.2, section A7.1 (to the extent that the Recipient has not provided the Reports or other reports as may have been requested to the satisfaction of the Province), sections A7.2, A7.3, A7.4, A7.5, A7.6, Article A8.0, Article A9.0, section A11.2, sections A12.2, A12.3, sections A13.1, A13.2(d), (e), (f), (g) and (h), Article A15.0, Article A16.0, Article A17.0, Article A19.0, section A22.2, Article A23.0, Article A25.0, Article A26.0, Article A27.0 and Article A28.0.

- END OF GENERAL TERMS AND CONDITIONS -

**SCHEDULE “B”
PROJECT SPECIFIC INFORMATION AND ADDITIONAL
PROVISIONS**

Maintenance and Operating	See Ministry for Seniors and Accessibility Funding Letter
Special Grant	See Ministry for Seniors and Accessibility Funding Letter
Maximum Funds	See Ministry for Seniors and Accessibility Funding Letter
Expiry Date	Until terminated pursuant to Article A11.0, Article A12.0, or Article A13.0.
Amount for the purposes of section A5.2 (Disposal) of Schedule “A”	\$2,000
Insurance	\$2,000,000
Contact information for the purposes of Notice to the Province	<p>Name: Anita Koch</p> <p>Position: Senior Program Consultant</p> <p>Address: 777 Bay Street, 6th Fl, Toronto ON M5G 2C8</p> <p>Phone: 416-212-0491</p> <p>Email : anita.koch@ontario.ca</p>
Contact information for the purposes of Notice to the Recipient (Program management)	<p>Name: <i>Insert Name</i></p> <p>Position: <i>Insert Position</i></p> <p>Address: <i>Insert Address</i></p> <p>Phone: <i>Insert Phone Number</i></p> <p>Email: <i>Insert Email Address</i></p>
Contact information for the senior financial person in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province related to the Agreement	<p>Name: Mr. Martin Hayward</p> <p>Position: Chief Administrative Officer</p> <p>Address: City of London, 300 Dufferin Avenue P.O. Box 5035 London, Ontario, Canada N6A 4L9</p> <p>Phone: 519-661-2489 Ext 1724</p> <p>Email: mhayward@london.ca</p>

Additional Provisions:

1. Objective

The Funds are provided for the objective of promoting active and healthy living, social engagement and learning for persons who are primarily seniors by providing them with activities and services. All Funds provided by the Province to the Recipient must be spent in support of this objective.

2. Program Guidelines

- a. The Recipient agrees to abide by all terms and conditions in the Program Guidelines in respect of the use of the Funds.
- b. The Province agrees to provide the Recipient with prompt notice of any revisions to the Program Guidelines.

- End -