

Bill No.
2019

By-law No. A.- _____

A by-law to approve a Grant Agreement with
TechAlliance of Southwestern Ontario.

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 the City may provide any service or thing that the City considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental well-being of the City, and the health, safety and well-being of persons;

AND WHEREAS section 107 of the *Municipal Act, 2001* provides that, subject to section 106, a municipality may make grants, on such terms 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 council considers it to be in the interests of the municipality to provide a grant to TechAlliance of Southwestern Ontario under the terms as set out in the proposed agreement attached;

AND WHEREAS TechAlliance of Southwestern Ontario is a non-profit corporation without share capital;

AND WHEREAS section 23.1 of the *Municipal Act, 2001* provides that sections 9 and 10 of that Act authorize a municipality to delegate its powers and duties to a person;

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

1. The Grant Agreement with TechAlliance of Southwestern Ontario, substantially in the form attached as Schedule "A" to this by-law, is approved.
2. The City Manager or written designate is delegated the power to act as the City Representative for the purposes of the Agreement approved in section 1 above.
3. The Mayor and the City Clerk are authorized to execute the Agreement approved in section 1 above.
4. This by-law shall come into force and effect May 22, 2019.

PASSED in Open Council on May 21, 2019.

Ed Holder
Mayor

Catharine Saunders
City Clerk

First reading – May 21, 2019
Second reading – May 21, 2019
Third reading – May 21, 2019

SCHEDULE A

Grant Agreement

THIS AGREEMENT with effect as of the 22nd day of May, 2019.

Between

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

-and-

TechAlliance of Southwestern Ontario
(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 made a request to the City for a grant to assist the Recipient in the Recipient's activities as described in **Schedule A1** ("the Funded Activity");

AND WHEREAS 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 an individual delegated by by-law to act as City Representative for the purposes of this Agreement;

"**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**.

"**Vulnerable Person**" means an individual who has difficulty protecting themselves from harm, and/or may be reliant on others because of age, mental disability, physical disability, or circumstances, and includes but is not limited to minors.

1.2 Schedules Forming Part of Agreement

The following Schedules, marked with an "X" (or where not marked with an "X", attached to this Agreement), form part of this Agreement:

Schedule A1: Description of Funded Activity - Operating Grant

Schedule B: Maximum Contribution & Eligible Expenditures – Operating Grant

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 Funded Activity Start Date, and shall terminate on the Funded Activity End Date as set out in Schedule A1 ("the 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.

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 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. Eligibility for Funding

- 6.1 **Reporting and By-laws** – To remain eligible for funding, and if required by the City Representative, the Recipient shall submit the reports and by-laws as set out in Schedule A1, on or before the date set out in Schedule A1 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.
- 6.2 **Annual Presentations** – To remain eligible for funding, and if required by the City Representative, the Recipient shall make a presentation to Council, or a Committee of Council. The form and the content of the presentation must be provided to the City Representative in advance of the presentation, and the City Representative may request any changes to the form and content of the presentation.
- 6.3 **Quarterly Meetings with City Representative and Leads from London Community Small Business Centre and the London Economic Development Corporation** – To remain eligible for funding, and as required by the City Representative, the Recipient shall participate in a joint meeting four (4) times a year with:
- (i) the City Manager, or designate; and
 - (ii) the Chief Executive Officer, or equivalent, and Chair of the Board, or designate, of London Community Small Business Centre; and
 - (iii) the Chief Executive Officer, or equivalent, and Chair of the Board, or designate, of the London Economic Development Corporation.

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:

The City
City Clerk
300 Dufferin Avenue

The Recipient
As set out in **Schedule A1**

London, Ontario N6A 4L9

(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 15 days' prior written notice to the Recipient.

Termination Where Default

10.2 The following constitute events of default, the proof of which to the contrary lies upon the Recipient:

- (a) the Recipient becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute from time to time being enforced relating to bankrupt or insolvent debtors;
- (b) an order is made or resolution passed for winding up or for the dissolution of the Recipient or it is dissolved;
- (c) the Recipient ceases actual bona fide operation for a period of 30 days;
- (d) the Recipient has knowingly submitted false or misleading information to the City;
- (e) the Recipient is in breach of the performance of, or compliance with, any term, condition or obligation on its part to be observed or performed under this Agreement;
- (f) the Recipient refuses or neglects to comply with any reasonable requirement from the City Representative which he or she is entitled to stipulate under this Agreement;
- (g) the Recipient assigns or transfers or attempts to assign or transfer this Agreement; or
- (h) the Recipient ceases to be a non-share capital, non-profit corporation.

10.3 If an event of default occurs, all of the grant funds paid in the calendar year in which the default occurs and any grant funds advanced thereafter shall be deemed to be a loan and all such funds shall be immediately due and payable in full upon the written demand of the City Representative. 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.

10.4 If an event of default occurs, the City may, at any time, take one or more of the following actions in addition to any other remedy that may be available to it:

- (a) provide the Recipient with an opportunity to remedy the event of default;
- (b) terminate this Agreement at any time, including immediately, upon the City Representative giving written notice to the Recipient.

10.5 If under section 10.4 the City has provided the Recipient with an opportunity to remedy the event of default and the Recipient does not remedy the event of default within the time specified by the City in the notice, the City may in its sole discretion extend the notice period or terminate this Agreement.

10.6 Where the City has terminated this Agreement, the City shall have no further responsibility or liability under this Agreement and any termination by the City 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.

10.7 The Recipient acknowledges and agrees that the provisions in this Part 10 are for the sole benefit of the City and may be waived in whole or in part by the City Representative at any time.

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, those Recipients with Grants greater than Ten Thousand Dollars (\$10,000) shall furnish the City with a Blanket Position Policy or equivalent Fidelity Bond in an amount not less than the maximum single payment amount or fifty percent (50%) of the City's contribution of this grant; whichever is greater, to a maximum of One Hundred Thousand Dollars (\$100,000). The City shall be shown on the Policy as a named Obligee as their interest may appear 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. Services to Vulnerable Persons

13.1 The Recipient shall ensure that where services are provided to Vulnerable Persons, it obtain police clearance certificates for those individuals working with Vulnerable Persons. Failure to do so may result in immediate termination of this Agreement.

13.2 Where the Recipient provides services to Vulnerable Persons, it shall ensure it has appropriate policies and procedures in place with respect to providing services to those Vulnerable Persons.

14. Compliance with Laws

14.1 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, licences, consents and other authorizations that are necessary to the carrying out of the Funded Activity.

15. *Municipal Freedom of Information and Protection of Privacy Act and The Municipal Act, 2001*

15.1 The Recipient acknowledges that all records in the City's control (including any records provided by the Recipient to the City) are subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*, and such records may be disclosed by the City to the public upon request under that Act. The Recipient further acknowledges that pursuant to the *Municipal Act, 2001*, the proceedings of City Council are matters of public record. The Recipient acknowledges that the City does not make any covenants with respect to maintaining the confidentiality of any records the Recipient provides to the City.

16. Assignment

16.1 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.

17. Relationship Between the Parties

17.1 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.

18. Facsimile Copy of Recipient's Signature Sufficient

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

19. Executed in Counterparts

19.1 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.

20. Headings

20.1 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.

21. Entire Agreement

21.1 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.

22. Waiver

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

23. Circumstances Beyond the Control of Either Party

23.1 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.

24. Payment of Grant is Subject to City Budget Approval

24.1 (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 the Agreement, the City may terminate the Agreement in accordance with the termination provisions of this Agreement or reduce the amount of its contribution payable under the 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.

25. Governing Law

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

26. Headings

26.1 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.

27. Canadian Currency

27.1 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.

28 Other Agreements

28.1 If the Recipient:

- (i) has failed to comply (a "Failure") with any term, condition or obligation under any other agreement with the City;

- (ii) has been provided with notice of such Failure in accordance with the requirements of such other agreement;
- (iii) has, if applicable, failed to rectify such Failure in accordance with the requirements of such other agreement; and
- (iv) 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.

29. Execution of Agreement.

29.1 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.

30. Survival

30.1 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 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

Mayor (Ed Holder)

City Clerk (Catharine Saunders)

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

TECHALLIANCE OF SOUTHWESTERN ONTARIO

(Signature)

(Print Name)

(Print Title)

I/We have authority to bind the Corporation

(Signature)

(Print Name)

(Print Title)

I/We have authority to bind the Corporation

SCHEDULE A1

Operating Grant

THE FUNDED ACTIVITY

Full Legal Name of Recipient: TechAlliance of Southwestern Ontario

Address for Service of Notice: 121-999 Collip Circle, London, ON N6G 0J3

Primary Contact Name: Jennifer Starcok Phone #: (519) 858-5185

Fax #: (519) 858-5077 E-mail: Jennifer.starcok@techalliance.ca

Funded Activity Start Date (date for which funding will be commenced): 19/05/22

Funded Activity End Date (date for which funding will end): 23/12/31

FUNDED ACTIVITY DESCRIPTION:

As a Regional Innovation Centre (RIC) resource hub for tech companies, TechAlliance of Southwestern Ontario (operating as TechAlliance), was formed with the mandates to foster growth in London's technology industry in the areas of biotechnology, information technology, and advanced manufacturing. Particularly, it has committed to delivering business acceleration, development and collaboration programs, events, and services throughout the 5 counties in the Southwestern Ontario region, including London-Middlesex, St. Thomas-Elgin, Huron Sarnia-Lambton, and Oxford.

The funded activities are set out as follows:

1. To help advance and contribute to the City of London's Strategic Plan 2019-2023 and the Strategic Area of Focus 'Growing Our Economy.' This includes the following Outcomes:
 - a. London will develop a top quality workforce
 - b. London is a leader in Ontario for attracting new jobs and investments
 - c. London creates a supportive environment where entrepreneurs, businesses, and talent can thrive

REPORTING

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. Audited Financial Statement - due on or before September 30th annually.

The Audited Financial Statement shall be signed by the Recipient's auditor.

2. Projected Income Statement— due on or before September 30 annually.

BY-LAWS

The Recipient shall provide the following by-laws to the City Representative, if requested by 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. Consolidated by-laws due on or before the end of the first year of the Agreement.

SCHEDULE B

Operating Grant

MAXIMUM CONTRIBUTION & ELIGIBLE EXPENDITURES

1. MAXIMUM CONTRIBUTION OF THE CITY

1.1 The total maximum annual amount of the City's contribution towards the Funded Activity under this Agreement is \$200,000 for each twelve month period during the Term.

1.2 Subject to City of London budget approval, beginning in 2020 and thereafter annually during the term of this Agreement the grant in the amount of \$200,000.00 shall be adjusted by the percentage change over 12 months in the February All-Items Consumer Price Index for Canada, (Table 326-0020 all items, 2002 = 100)

2. 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 annually for the entire Term, to be paid within 30 days of execution of this Agreement in 2019, and thereafter within 30 days after submission of the reports in accordance with Schedule A1 Reporting.

3. ELIGIBLE EXPENDITURES

3.1 Funded Activity Budget

Eligible Expenditures include the Recipient's operating expenditures, including, but not limited to, operating expenditures in the following categories and subject to the conditions and restrictions in the section below:

- i) Administration
- ii) Personnel
- iii) Marketing
- iv) Development and Special Projects
- v) Operations

4. CONDITIONS GOVERNING ELIGIBLE EXPENDITURES

4.1 Eligible Expenditures are subject to the following conditions and restrictions:

- (a) expenditures must be incurred during the fiscal year of each of the multi-year agreement years;
- (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) fines and penalties are not eligible;
- (e) the cost of alcoholic beverages are not eligible.

5. TERMS OF PAYMENT

5.1 Subject to subsections (2) and (3), the City will make payment of the grant funds by way of advance payments. Each payment shall cover a specific period as set out in paragraph 2.0 of **Schedule B** (hereinafter referred to as the "Payment Period") from the start to the end of the Term.

5.2 Each advance shall cover the Recipient's estimated financial requirements for each Payment Period. Such estimate shall be based upon a cash flow forecast that, in the sole opinion of the City Representative, is reliable and up-to-date.

5.3 If the amount of an advance payment for a Payment Period exceeds the actual amount of Eligible Expenditures incurred by the Recipient during the Payment Period, the City reserves the right to deduct the excess amount from any subsequent advance payment to be made under this Agreement, or to require repayment of that part of the grant funds.

5.4 The City may withhold any payment due to the Recipient under this Agreement if any one or more of the

following are applicable:

- (a) If the Recipient has failed to submit when due any report required by the City under this Agreement;
- (b) If the Recipient has budgeted on a deficit basis or is operating on a deficit basis;
- (c) pending the completion of an audit of the Recipient's books and records, should the City decide to undertake such an audit;
- (d) if the Recipient is not in compliance with any applicable laws, regulations, by-laws, Council Policies, or if applicable the vulnerable person requirements;
- (e) in the event that an audit of the Recipient's books and records indicates mismanagement or use of funds, in the sole opinion of the City Representative;
- (f) the Recipient is in breach of the performance of, or compliance with, any term, condition or obligation on its part to be observed or performed under this Agreement.