

Bill No. 65
2021

By-law No. A.-_____ - ____

A by-law to approve and authorize the execution of the Transfer Payment Agreement between Her Majesty the Queen in right of the Province of Ontario, as represented by the Minister of Transportation for the Province of Ontario and the City of London for the reimbursement of funds under the Municipal Transit Enhanced Cleaning funding program.

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 subsection 10(1) of the *Municipal Act, 2001* provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting, among other things: i) economic, social and environmental well-being of the municipality, including respecting climate change; and ii) financial management of the municipality;

AND WHEREAS the Province of Ontario provides dedicated gas tax funds to support local public transportation services in the municipality;

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

1. The Transfer Payment Agreement for the reimbursement of funds under the Municipal Transit Enhanced Cleaning funding program between Her Majesty the Queen in right of the Province of Ontario, as represented by the Minister of Transportation for the Province of Ontario and The Corporation of the City of London ("Transfer Payment Agreement") attached as Schedule "1" to this by-law is hereby authorized and approved.
2. The Mayor and the City Clerk are hereby authorized to execute the Letter of 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 February 23, 2021

Ed Holder
Mayor

Catharine Saunders
City Clerk

First Reading – February 23, 2021
Second Reading – February 23, 2021
Third Reading – February 23, 2021

Schedule 1

**TRANSFER PAYMENT AGREEMENT
FOR MUNICIPAL TRANSIT ENHANCED CLEANING**

THIS TRANSFER PAYMENT AGREEMENT for Municipal Transit Enhanced Cleaning (the “Agreement”) is effective as of the Effective Date (both “Agreement” and “Effective Date” as further defined in section A1.2 (Definitions)).

B E T W E E N:

Her Majesty the Queen in right of Ontario as represented by the
Minister of Transportation for the Province of Ontario

(the “Province”)

- and -

The Corporation of the City of London

(the “Recipient”)

BACKGROUND:

In response to the COVID-19 pandemic and subject to the terms and conditions set out in the Agreement, the Province has agreed to provide funding to the Recipient for the Municipal Transit Enhanced Cleaning (“MTEC” as further defined in section A1.2 (Definitions)).

CONSIDERATION:

In consideration of the mutual covenants and agreements contained in the 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 Schedules and Sub-schedule to the Agreement. The following schedules and sub-schedule form part of the Agreement:

Schedule “A” - General Terms and Conditions

Schedule “B” - Contact Information and Authorized Representatives

Schedule “C” - Eligible Expenditures and Ineligible Expenditures

Schedule “D” - Claim and Attestation Submission, Supporting Documentation and
Payment Procedures

Sub-schedule “D.1” - Claim and Attestation Form

1.2 **Entire Agreement.** The Agreement constitutes the entire agreement between the Parties (as defined in section A1.2 (Definitions)) 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

2.1 **Conflict or Inconsistency.** In the event of a conflict or inconsistency between any of the requirements of:

- (a) Schedule “A” (General Terms and Conditions) and any of the requirements of another schedule or a sub-schedule, Schedule “A” (General Terms and Conditions) will prevail to the extent of the inconsistency; or
- (b) a schedule and any of the requirements of a sub-schedule, the schedule will prevail to the extent of the inconsistency.

3.0 COUNTERPARTS

3.1 **Counterparts.** 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.

3.2 **Electronic Execution and Delivery of Agreement.**

- (a) The Agreement may:
 - (i) be executed and delivered by scanning the manually signed Agreement as a PDF and delivering it by email to the other Party; or
 - (ii) subject to the Province’s prior written consent, be executed and delivered electronically to the other Party.
- (b) The respective electronic signature of the Parties is the legal equivalent of a manual signature.

4.0 AMENDING THE AGREEMENT

4.1 **Amendments.** The Agreement may only be amended by a written agreement.

4.2 **Execution of Amending Agreements.** An amending agreement under section 4.1 (Amendments) may be executed by the respective representatives of the

Parties listed in Schedule “B” (Contact Information and Authorized Representatives).

5.0 ACKNOWLEDGEMENT

5.1 **Acknowledgement.** The Recipient acknowledges that:

- (a) the Funds are to assist the Recipient to carry out the MTEC and not to provide goods or services to the Province;
- (b) the Province is not responsible for carrying out the MTEC; and
- (c) 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 MTEC or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

5.2 **Acknowledgement from Province.** The Province acknowledges that the Recipient is bound by the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario) and any information provided to the Recipient in connection with the MTEC 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 THE
PROVINCE OF ONTARIO**, represented by the
Minister of Transportation for the Province of Ontario

Date

Name: Caroline Mulroney
Title: Minister

THE CORPORATION OF THE CITY OF LONDON

Date

Name: Ed Holder
Title: Mayor

I have authority to bind the Recipient.

Date

Name: Catharine Saunders
Title: City Clerk

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 background and 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) all accounting terms not otherwise defined in the Agreement have their ordinary meanings.

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

“Agreement” means this agreement, entered into between the Province and the Recipient, all of the schedules and the sub-schedule listed in section 1.1 (Schedules and Sub-schedule to the Agreement), and any amending agreement entered into pursuant to section 4.1 (Amendments).

“Authorities” means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over the Agreement or the MTEC, or both.

“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 of signature by the last signing Party to the Agreement.

“Eligible Expenditures” means the costs of the MTEC that are eligible for funding by the Province under the Agreement, and that are further described in section C2.1 (Scope of Eligible Expenditures).

“Event of Default” has the meaning ascribed to it in section A12.1 (Events of Default).

“Expiry Date” means June 30, 2021.

“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, and includes Her ministers, agents, appointees, and employees.

“Ineligible Expenditures” means the costs of the MTEC that are ineligible for funding by the Province under the Agreement, and that are further described in section C3.1 (Scope of Ineligible Expenditures).

“Loss” means any cause of action, liability, loss, cost, damage, or expense (including legal, expert and consultant fees) that anyone incurs or sustains as a result of or in connection with the MTEC or any other part of the Agreement.

“Maximum Funds” means \$433,025.

“MTEC” means the municipal transit enhanced cleaning as described in section C1.1 (Description of the MTEC).

“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 paragraph A12.3(b), and includes any such period or periods of time by which the Province extends that time in accordance with section A12.4 (Recipient not Remediating).

“Parties” means the Province and the Recipient.

“Party” means either the Province or the Recipient.

“Proceeding” means any action, claim, demand, lawsuit, or other proceeding that anyone makes, brings or prosecutes as a result of or in connection with the MTEC or with any other part of the Agreement.

“Records Review” means any assessment the Province conducts pursuant to section A7.4 (Records Review).

“Reports” means the reports described in Schedule “D” (Claim and Attestation Submission, Supporting Documentation and Payment Procedures).

“Requirements of Law” means all applicable requirements, laws, statutes, codes, acts, ordinances, approvals, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licences, authorizations, directions, and agreements with all Authorities.

A2.0 REPRESENTATIONS, WARRANTIES AND COVENANTS

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

- (a) it has, and will continue to have, the experience and expertise necessary to carry out the MTEC;
- (b) it is in compliance with, and will continue to comply with, all Requirements of Law related to any aspect of the MTEC, the Funds, or both;
- (c) if Funds are used for acquired goods or services, or both, these were acquired in compliance with the Recipient’s policies and procedures and, to the extent possible under the COVID-19 unprecedented times, through a process that promotes the best value for the money;
- (d) it is in compliance with the insurance requirements set out in section A10.1 (Recipient’s Insurance); and
- (e) unless otherwise provided for in the Agreement, any information the Recipient provided to the Province in support of its request for funds including, without limitation, information relating to any eligibility requirements, the MTEC and related timelines 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, including passing a municipal by-law authorizing the Recipient to enter into the Agreement.

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

- (a) procedures to enable the Recipient to manage the Funds prudently and effectively;
- (b) procedures to enable the Recipient to complete the MTEC successfully;

- (c) procedures to address any identified risks to the MTEC initiatives, all in a timely manner;
- (d) procedures to enable the preparation and submission of all Reports required pursuant to Article A7.0 (Reporting, Accounting and Review); and
- (e) procedures to enable the Recipient to address such other matters as the Recipient considers necessary to carry out its obligations under the Agreement.

A2.4 **Supporting Proof.** Upon request of the Province and within the timelines set out in the request, the Recipient will provide the Province with proof of the matters referred to in this Article A2.0 (Representations, Warranties and Covenants).

A3.0 TERM OF THE AGREEMENT

A3.1 **Term.** The term of the Agreement will commence on the Effective Date and will expire on the Expiry Date unless terminated earlier pursuant to Article A11.0 (Termination on Notice) or Article A12.0 (Event of Default, Corrective Action and Termination for Event of Default).

A4.0 FUNDS AND CARRYING OUT THE MTEC

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

- (a) provide the Recipient up to the Maximum Funds towards the Eligible Expenditures the Recipient incurred and paid for the purpose of carrying out the MTEC;
- (b) provide the Funds to the Recipient in accordance with the payment procedures provided for in Schedule "D" (Claim and Attestation Submission, Supporting Documentation and Payment Procedures); 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 (Funds Provided):

- (a) the Province is not obligated to provide any Funds to the Recipient until the Recipient provides evidence satisfactory to the Province that the Recipient's council has authorized the execution of the Agreement by the

Recipient by municipal by-law; and

- (b) the Province may adjust the amount of Funds it provides to the Recipient based upon the Province's assessment of the information the Recipient provides to the Province pursuant to section A7.2 (Preparation and Submission).

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

- (a) spend the Funds only for Eligible Expenditures; and
- (b) not use the Funds to cover any Eligible Expenditure that has or will be funded or reimbursed by one or more of any third party, including any level of government, or ministry, agency, or organization of the Government of Ontario, other than the Province pursuant to the Agreement.

A4.4 Rebates, Credits and Refunds. The Province will calculate Funds based on the actual Eligible Expenditures to the Recipient to carry out the MTEC, 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 DISPOSAL OF ASSETS

A5.1 Disposal. The Recipient agrees not to sell, lease or otherwise dispose of any assets acquired with the Funds without the Province's prior written consent.

A6.0 CONFLICT OF INTEREST

A6.1 No Conflict of Interest. The Recipient represents and warrants that there is and there will continue to be no conflict of interest in respect to how the MTEC has been and will continue to be carried out and that the Recipient will use the Funds without an actual, potential, or perceived conflict of interest.

A6.2 Conflict of Interest Includes. For the purposes of this Article A6.0 (Conflict of Interest), 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 MTEC, 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 REPORTING, ACCOUNTING AND REVIEW

A7.1 **Province Includes.** For the purposes of sections A7.4, A7.5 and A7.6, “Province” includes any auditor or representative the Province may identify.

A7.2 **Preparation and Submission.** The Recipient will:

- (a) submit to the Province at the address referred to in section A15.1 (Notice in Writing and Addressed):
 - (i) all Reports in accordance with the timelines and content requirements as provided for in Schedule “D” (Claim and Attestation Submission, Supporting Documentation and Payment Procedure); and
 - (ii) any other reports in accordance with any timelines and content requirements the Province may specify from time to time; and
- (b) ensure that all Reports and other reports are:
 - (i) completed to the satisfaction of the Province; and
 - (ii) signed by an authorized signing officer of the Recipient.

A7.3 **Record Maintenance.** The Recipient will keep and maintain for a period of seven years from their creation:

- (a) proper and accurate financial accounts and records, kept in a manner consistent with generally accepted accounting principles in effect in Canada or with the public sector accounting standards approved or recommended by the Public Sector Accounting Board including, without limitation, its contracts, invoices, statements, receipts, and vouchers and any other evidence of payment relating to the Funds or otherwise to the MTEC; and
- (b) all non-financial records and documents relating to the Funds or otherwise to the MTEC.

A7.4 **Records Review.** The Province may, at its own expense, upon twenty-four hours' Notice to the Recipient and during normal business hours, enter upon the Recipient's premises to conduct an audit or investigation of the Recipient regarding the Recipient's compliance with the Agreement, including assessing any of the following:

- (a) the truth of any of the Recipient's representations and warranties; and
- (b) the Recipient's allocation and expenditure of the Funds.

A7.5 **Inspection and Removal.** For the purposes of any Records Review, the Province may take one or more of the following actions:

- (a) inspect and copy any records and documents referred to in section A7.3 (Record Maintenance); and
- (b) remove any copies the Province makes pursuant to section A7.5(a).

A7.6 **Cooperation.** To assist the Province in respect of its rights provided for in section A7.5 (Inspection and Removal), the Recipient will cooperate with the Province by:

- (a) ensuring that the Province has access to the records and documents including, without limitation, paid invoices and original receipts, wherever they are located;
- (b) assisting the Province in copying records and documents;
- (c) providing to the Province, in the form the Province specifies, any information the Province identifies; and
- (d) carrying out any other activities the Province requests.

A7.7 **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.

A7.8 **Auditor General.** The Province's rights under Article A7.0 (Reporting, Accounting and Review) are in addition to any rights provided to the Auditor General pursuant to section 9.2 of the *Auditor General Act* (Ontario).

A8.0 COMMUNICATIONS REQUIREMENTS

A8.1 **Acknowledge Support.** Unless the Province directs the Recipient to do otherwise, the Recipient will in each of its MTEC-related publications whether written, oral or visual:

- (a) acknowledge the support of the Province for the MTEC;
- (b) ensure that any acknowledgement is in a form and manner as the Province directs; and
- (c) indicate 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 Loss and any Proceeding, unless solely caused by the negligence or wilful misconduct of the Indemnified Parties.

A10.0 INSURANCE

A10.1 Recipient's Insurance. The Recipient is responsible for its own insurance and has been carrying, at its own costs and expense, and requiring the same from its subcontractors, all the necessary and appropriate insurance that a prudent municipality in similar circumstances would maintain in order to protect itself and the Indemnified Parties and support the Recipient's indemnification set out in section A9.1 (Indemnification). For greater certainty, the Recipient is not covered by the Province of Ontario's insurance program and no protection will be afforded to the Recipient by the Government of Ontario for any Loss or Proceeding that may arise out of the MTEC or the Agreement.

A11.0 TERMINATION ON NOTICE

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 (Termination on Notice), the Province may take one or more of the following actions:

- (a) cancel all further instalments of Funds; and
- (b) demand from the Recipient the payment of any Funds remaining in the possession or under the control of the Recipient.

A12.0 EVENT OF DEFAULT, CORRECTIVE ACTION, AND TERMINATION FOR DEFAULT

A12.1 Events of Default. It will constitute an Event of Default if, in the opinion of the Province, the Recipient breaches any representation, warranty, covenant or other material term of the Agreement including, without limitation, failing to do any of the following in accordance with the terms and conditions of the Agreement:

- (a) use or spend any of the Funds or related interest for a purpose other than that contemplated under the Agreement without the prior written consent of the Province; or
- (b) provide, in accordance with section A7.2 (Preparation and Submission), Reports or such other reports as may have been requested pursuant to paragraph A7.2(b).

A12.2 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) provide the Recipient with an opportunity to remedy the Event of Default;
- (b) suspend the payment of Funds for such period as the Province determines appropriate;
- (c) reduce the amount of the Funds;
- (d) cancel all further instalments of Funds;
- (e) demand from the Recipient the payment of any Funds remaining in the possession or under the control of the Recipient;
- (f) 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;
- (g) demand from the Recipient the payment of an amount equal to any Funds the Province provided to the Recipient;
- (h) demand from the Recipient the payment of an amount equal to the costs the Province incurred or incurs to enforce its rights under the Agreement, including the costs of any Record Review and the costs it incurs to collect any amounts the Recipient owes to the Province; and
- (i) terminate the Agreement at any time, including immediately, without liability, penalty or costs to the Province upon giving Notice to the Recipient.

A12.3 **Opportunity to Remedy.** If, in accordance with paragraph A12.2(a), the Province provides the Recipient with an opportunity to remedy the Event of Default, the Province will provide Notice to the Recipient of:

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

A12.4 **Recipient not Remediating.** If the Province has provided the Recipient with an opportunity to remedy the Event of Default pursuant to paragraph A12.2(a), 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 paragraphs A12.2 (b), (c), (d), (e), (f), (g), (h) and (i).

A12.5 **When Termination Effective.** Termination under this Article A12.0 (Event of Default, Corrective Action, and Termination for Default) will take effect as provided for in the Notice.

A13.0 FUNDS UPON EXPIRY

A13.1 **Funds Upon Expiry.** The Recipient will, upon expiry of the Agreement, pay to the Province any Funds and interest remaining in its possession or under its control.

A14.0 DEBT DUE AND PAYMENT

A14.1 **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.

A14.2 **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 amounts will be deemed to be a debt due and owing to the Province by the Recipient, and the Recipient will pay the amounts to the Province immediately, unless the Province directs otherwise.

A14.3 **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.

A14.4 **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” (Contact Information and Authorized Representatives).

A14.5 **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.

A15.0 NOTICE

A15.1 **Notice in Writing and Addressed.** Notice will be:

- (a) in writing;
- (b) delivered by email, postage-prepaid mail, personal delivery or courier; and
- (c) addressed to the Province and the Recipient as set out in Schedule “B” (Contact Information and Authorized Representatives), or as either Party later designates to the other by Notice.

A15.2 **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; and
- (b) in the case of email, personal delivery or courier on the date on which the Notice is delivered.

A15.3 **Postal Disruption.** Despite paragraph A15.2(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 provide Notice by email, personal delivery or courier.

A16.0 CONSENT BY PROVINCE AND COMPLIANCE BY RECIPIENT

A16.1 **Consent.** When the Province provides its consent pursuant to the Agreement:

- (a) it will do so by Notice;
- (b) it may attach any terms and conditions to the consent; and
- (c) the Recipient may rely on the consent only if the Recipient complies with any terms and conditions the Province may have attached to the consent.

A17.0 SEVERABILITY OF PROVISIONS

A17.1 **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.

A18.0 WAIVER

A18.1 **Waiver Request.** Either Party may, by Notice, ask the other Party to waive an obligation under the Agreement.

A18.2 **Waiver Applies.** If in response to a request made pursuant to section A18.1 (Waiver Request) a Party consents to a waiver, the waiver will:

- (a) be valid only if the Party that consents to the waiver provides the consent by Notice; and
- (b) apply only to the specific obligation referred to in the waiver.

A19.0 INDEPENDENT PARTIES

A19.1 **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.

A20.0 ASSIGNMENT OF AGREEMENT OR FUNDS

A20.1 **No Assignment.** The Recipient will not, without the prior written consent of the Province, assign any of its rights or obligations under the Agreement.

A20.2 **Agreement Binding.** All rights and obligations contained in the Agreement will extend to and be binding on:

- (a) the Recipient's successors, and permitted assigns; and
- (b) the successors to Her Majesty the Queen in right of Ontario.

A21.0 GOVERNING LAW

A21.1 **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.

A22.0 FURTHER ASSURANCES

A22.1 **Agreement into Effect.** The Recipient will:

- (a) provide such further assurances as the Province may request from time to time with respect to any matter to which the Agreement pertains; and
- (b) 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.

A23.0 JOINT AND SEVERAL LIABILITY

A23.1 **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.

A24.0 RIGHTS AND REMEDIES CUMULATIVE

A24.1 **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.

A25.0 FAILURE TO COMPLY WITH OTHER AGREEMENTS

A25.1 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;
- (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.

A26.0 SURVIVAL

A26.1 Survival. The following Articles, sections and paragraphs, and all applicable cross-referenced Articles, sections, paragraphs, schedules and sub-schedules, will continue in full force and effect for a period of seven years from the date of expiry or termination of the Agreement: Articles 1.0 (Entire Agreement), 2.0 (Conflict or Inconsistency), 5.0 (Acknowledgment), and A1.0 (Interpretation and Definitions) and any other applicable definitions, paragraph A2.1(a), sections A4.4 (Rebates, Credits and Refunds), A5.1 (Disposal), A7.1 (Province Includes), A7.2 (Preparation and Submission) 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, A7.3 (Record Maintenance), A7.4 (Records Review), A7.5 (Inspection and Removal), A7.6 (Cooperation), A7.7 (No Control of Records), A7.8 (Auditor General), Articles A8.0 (Communications Requirements) and A9.0 (Indemnity), sections A11.2 (Consequences of Termination on Notice by the Province) and A12.1 (Events of Default), paragraphs A12.2 (b), (c), (d), (e), (f), (g), (h) and (i), Articles A13.0 (Funds Upon Expiry), A14.0 (Debt Due and Payment), A15.0 (Notice) and A17.0 (Severability of Provisions), section A20.2 (Agreement Binding), Articles A21.0 (Governing Law), A23.0 (Joint and Several Liability), and A24.0 (Rights and Remedies Cumulative), and this Article A26.0 (Survival).

- END OF GENERAL TERMS AND CONDITIONS -

**SCHEDULE “B”
CONTACT INFORMATION AND AUTHORIZED REPRESENTATIVES**

<p>Contact information for the purposes of Notice to the Province</p>	<p>Address: Strategic Investments Office Ministry of Transportation 777 Bay, 30th Floor Toronto, ON M7A 2J8</p> <p>Attention: Kevin Dowling, Manager, Strategic Investments Office</p> <p>Phone: (416) 585-6312 Email: kevin.dowling@ontario.ca</p>
<p>Contact information for the purposes of Notice to the Recipient</p>	<p>Position: General Manager, London Transit Commission</p> <p>Address: 450 Highbury Avenue North London ON N5W 5L2</p> <p>Attention: Kelly Paleczny</p> <p>Phone: (519) 451-1340 x337 Email: kpaleczn@londontransit.ca</p>
<p>Contact information for the senior financial official in the Recipient organization (e.g., CFO, CAO) – to respond as required to requests from the Province in respect of the Agreement</p>	<p>Position: Managing Director, Corporate Services and City Treasurer, Chief Financial Officer</p> <p>Address: 300 Dufferin Ave PO BOX 5035 London ON N6A 4L9</p> <p>Attention: Anna Lisa Barbon</p> <p>Phone: (519) 661-2489 x4705 Email: abarbon@london.ca</p>
<p>Authorized representative of the Province for the purpose of Section 4.2 (Execution of Amending Agreements - Exceptions)</p>	<p>Position: Director, Municipal Programs Branch, Ministry of Transportation</p>
<p>Authorized representative of the Recipient for the purpose of Section 4.2 (Execution of Amending Agreements - Exceptions)</p>	<p>Position: Managing Director, Corporate Services and City Treasurer, Chief Financial Officer</p>

SCHEDULE “C”
ELIGIBLE EXPENDITURES AND INELIGIBLE EXPENDITURES

C1.0 MTEC

C1.1 Description of the MTEC. To address health related issues in respect of the COVID-19 pandemic, the Recipient has been acquiring goods and services for the MTEC of its transit system. Subject to Article C2.1 (Scope of Eligible Expenditures) and for greater clarity, the costs of the MTEC that are eligible for funding by the Province under the Agreement are only those that are supplemental to the Recipient’s regular transit system cleaning.

C2.0 ELIGIBLE EXPENDITURES

C2.1 Scope of Eligible Expenditures. Subject to Article C3.0 (Ineligible Expenditures), Eligible Expenditures include the direct costs incurred by the Recipient on or after April 1, 2020 and on or before December 31, 2020 and that, in the opinion of the Province, are considered to have been properly and reasonably incurred and are necessary for the MTEC of transit vehicles and any other public and non-public facing transit assets, that provide or support transit services. In addition to having been incurred, these costs will have to have been paid by the Recipient prior to being submitted to the Province for payment and may include:

- (a) costs of cleaning materials for the MTEC;
- (b) costs of hand sanitizer for passenger and staff use;
- (c) costs of safety wear for the MTEC, such as gloves or goggles;
- (d) costs of equipment purchased for the MTEC;
- (e) costs of contracted services for the MTEC;
- (f) costs of salaries, including redeployment of staff, for the MTEC; and
- (g) any other costs that, in the opinion of the Province, are considered necessary for the MTEC.

C3.0 INELIGIBLE EXPENDITURES

C3.1 Scope of Ineligible Expenditures. Without limitation, the following costs will be considered Ineligible Expenditures:

- (a) costs incurred before April 1, 2020 and after December 31, 2020;
- (b) costs not paid prior to having been submitted to the Province for payment;
- (c) marketing costs including advertising, promotion and communications;
- (d) core administrative and overhead costs (e.g., rent, telephone and communication lines/services, insurance, and computers);
- (e) Recipient's staff, including permanent and seasonal, salaries and travel costs unless otherwise indicated in C2.1 (Scope of Eligible Expenditures);
- (f) legal, audit, or interest fees;
- (g) budget deficits;
- (h) personal protective equipment, unless otherwise indicated in C2.1 (Scope of Eligible Expenditures);
- (i) refundable Harmonized Sales Tax or other refundable expenses (e.g., security deposits, etc.); and
- (j) any other costs that, in the opinion of the Province, are considered ineligible for payment under the Agreement.

**SCHEDULE “D”
CLAIM AND ATTESTATION SUBMISSION, SUPPORTING DOCUMENTATION AND
PAYMENT PROCEDURES**

D1.0 CLAIM AND ATTESTATION

D1.1 Claim and Attestation from the Recipient’s Senior Financial Official. The Recipient will use the form in Sub-schedule “D.1” (Claim and Attestation Form) for the submission of its claim for payment.

D2.0 SUPPORTING DOCUMENTATION

D2.1 Report on Expenditures and Additional Report and Information. The Recipient will, together with the claim form described in section D1.1 (Claim and Attestation from the Recipient’s Senior Financial Official), submit the following supporting documentation with its claim for payment:

- (a) a report on expenditures using the form in Appendix A (Form of Report on Expenditures) to Sub-schedule “D.1” (Claim and Attestation Form); and
- (b) any additional reports or information, or both, the Province may request at its sole discretion and in a form provided by the Province.

D3.0 PAYMENT PROCEDURES

D3.1 Submission of Claim for Payment and Required Documentation. The Recipient will submit its claim for payment, together with the supporting documentation set out in section D1.1 (Claim and Attestation from the Recipient’s Senior Financial Official) and section D2.1 (Report on Expenditures and Additional Report and Information) on or before January 31, 2021.

D3.2 Claim Payments. Subject to the terms and conditions set out in the Agreement and if due and owing under the Agreement, the Province will use its reasonable efforts to make the payment to the Recipient for the claim submitted pursuant to section D3.1 (Submission of Claim for Payment and Required Documentation) in a timely manner.

D3.3 No Interest. The Province will under no circumstances be liable for interest for failure to make a payment within the time limit provided for in section D3.2 (Claim Payments).

D3.4 **No Obligation to Pay.** For greater clarity and without limitation to any other right of the Province, the Province will have no obligation to pay a claim if it does not meet the terms and conditions of the Agreement including, without limitation, if the claim is missing any of the required supporting documentation or is submitted after January 31, 2021, or both.

**SUB-SCHEDULE “D.1”
CLAIM AND ATTESTATION FORM**

Ministry of Transportation File No.: _____

TO: Ministry of Transportation
Transportation Programs Office
10th Floor
151 Bloor Street West
Toronto, ON M5S 1S4

Attention: Manager, Transportation Programs Office
Email: MTO-Transit Cleaning Funding @Ontario.ca

FROM: **[Insert address of the senior official]**

Attention: **[insert name and title of Recipient senior official]**
Telephone No.: **[insert telephone number of Recipient senior official]**

RE: Transfer Payment Agreement for Municipal Transit Enhanced Cleaning

In the matter of the Transfer Payment Agreement for Municipal Transit Enhanced Cleaning entered into between Her Majesty the Queen in right of Ontario, represented by the Minister of Transportation for the Province of Ontario, and the **[insert the name of the Recipient]** (the “Recipient”), on **[insert the month day, and year]** _____ (the “Agreement”).

I, _____ **[insert the name and title of the senior official]**, an authorized representative of the Recipient, having made such inquiries as I have deemed necessary for this attestation, hereby certify that to the best of my knowledge, information and belief.

1. On and as of the date set out below:
 - a. all representations and warranties contained in Article A2.0 (Representations, Warranties and Covenants) and section A6.1 (No Conflict of Interest) of the Agreement are true and accurate;
 - b. Funds have been solely used on Eligible Expenditures as claimed in this Claim and Attestation Form and the Form of Report on Expenditures attached as Appendix A (Form of Report on Expenditures) to this Claim and Attestation Form;

- c. the Recipient is in compliance with all the terms and conditions of the Agreement, and no Event of Default, as described in the Agreement, has occurred and is continuing; and
 - d. all records (including, without limitation, contracts, invoices, statements, receipts, vouchers) are being retained in accordance with the requirements of the Agreement.
2. The Eligible Expenditures have been incurred by the Recipient on or after April 1, 2020 and on or before December 31, 2020, and paid on or before January 31, 2021.

By signing below, I hereby claim a payment in the amount of \$ _____, on behalf of the Recipient, on account of the Province's contribution towards the Eligible Expenditures of the MTEC costs.

Declared at _____ (city), in the Province of Ontario, this _____ day of _____, 20_____.

(Signatures)

Name:

Title:

Witness Name:

Title:

I have authority to bind the Recipient.

**APPENDIX A
FORM OF REPORT ON EXPENDITURES
TO
SUB-SCHEDULE "D.1" (CLAIM AND ATTESTATION FORM)**

MTEC Expenditure Report - April 1, 2020 to December 31, 2020	
Date:	
Recipient's Name:	
Total Funds Allocated:	
Total Funds Claimed:	
Remaining Allocation:	

Date of Invoice (if Applicable) (DD/MM/YY)	Period of Work Performed		Vendor Name	Description of Expense	Eligibility per Schedule "C"	Amount Paid (\$)				
	From (DD/MM/YY)	To (DD/MM/YY)				Subtotal w/o HST (\$) (a)	Total HST (\$) (b)	Recoverable HST (\$) (c)	Net Total (\$) (a) + (b) - (c)	Amount Claimed (\$)
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
									\$0.00	\$0.00
Total						\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Results Achieved with Provincial Funding:

Additional Comments:

Conclusion:

Recommended for payment:

Date:

[insert/print the name and title of the Recipient's authorized representative]

Recommended for payment:

Date:

[insert/print the name of the Director]
Director, Ministry of Transportation