

HOUSING SERVICES COST APPORTIONMENT AGREEMENT

AGREEMENT effective this 1st day of January, 2013.

B E T W E E N:

THE CORPORATION OF THE CITY OF LONDON
(hereinafter called the "City")

OF THE FIRST PART

- and -

THE CORPORATION OF THE COUNTY OF MIDDLESEX
(hereinafter called "the County")

OF THE SECOND PART

WHEREAS pursuant to the *Housing Services Act, 2011*, S.O. 2011, c. 6 ("the Act"), and Ontario Regulation 367/11 ("Reg. 367/11"), the Province of Ontario designated the City as the service manager for the service area of the County of Middlesex and the City of London ("the Service Area") responsible to, in accordance with its housing and homelessness plan, carry out measures to meet the objectives and targets relating to the transferred housing program as defined by the Act;

AND WHEREAS section 111(3) of the Act provides that for each billing period, the service manager shall apportion, in accordance with the regulations of the Act, the service manager's housing costs among itself and each municipality;

AND WHEREAS section 111 of Reg. 367/11 provides that for the purposes of subsection 111 (3) of the Act, a municipal service manager's housing costs shall be apportioned among the parties in accordance with,

- (a) an agreement made by the parties; or
- (b) if there is no agreement, an award given pursuant to an arbitration;

AND WHEREAS section 112(3) of Reg. 367/11 provides that an agreement respecting apportionment of costs may be effective with respect to a period before it is made if the agreement provides for a monetary reconciliation between the parties with respect to that period;

AND WHEREAS the City and the County entered into an agreement on January 1, 2005 for the apportionment of the social housing costs between the City and the County and that such agreement expired on December 31, 2010;

AND WHEREAS the City and the County hereby agree that the costs of Housing Services shall be apportioned for the Service Area as set forth in this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT, in consideration of the covenants and undertakings contained herein and the provision of other good and valuable consideration by each Party to the other, the receipt and sufficiency of which is hereby acknowledged, **the County** and **the City** (hereinafter, collectively referred to as the "Parties") do hereby mutually covenant and agree as follows:

Recitals

1. The above recitals are true and are hereby incorporated into this Agreement by reference.

Definitions

2. In this Agreement, in addition to terms defined elsewhere in this Agreement, the following terms have the following meanings:

- (a) **"Actual Costs Basis"** means annual calculation of Costs to be apportioned as more fully described in paragraph 6 of this Agreement;
- (b) **"Actual Cost"** means the annual Costs incurred by the City represented by the Location of the Unit;
- (c) **"Agreement"** means this Agreement;

- (d) **“Business Day”** means any day excluding a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (e) **“City Manager”** means the person appointed by the City to the position of the City Manager of the City or the person appointed by the City to any other title or position which will require such person to perform the same duties or functions as performed by the City Manager;
- (f) **“Communication”** means any notice, demand, request, consent, approval or other communication which is required or permitted by this Agreement to be given or made by a Party;
- (g) **“Cost”** or **“Costs”** means all of the costs as defined by section 109 of the Act net of any Provincial Payment;
- (h) **“County Administrator”** means the person appointed by the County to the position of the Chief Administrative Officer of the County of Middlesex or the person appointed by the County who is appointed to any other title or position which will require such person to perform the same duties or functions as performed by the Chief Administrative Officer;
- (i) **“Deemed Arbitration Date”** means December 31, 2017;
- (j) **“Housing Services”** means Transferred Housing Program;
- (k) **“Location of Units”** means the location of the Unit, either within the geographic area of County or within geographic area of the City, as the context requires, at the time that Housing Services are delivered to the Client;
- (l) **“Negotiation Period”** means that period of January 1, 2017 to December 31, 2017;
- (m) **“Parties”** means the County and the City collectively and **“Party”** means one of them;
- (n) **“Property class or subclass”** means property class or subclass as defined in the *Assessment Act*, R.S.O. 1990, c. A.31, as amended;
- (o) **“Province”** or **“Provincial”** means the Province of Ontario;
- (p) **“Provincial Payment”** means the amount paid by the Province to the County as delivery agent as determined in accordance with the Act and the regulations for the Province’s share of the County’s Costs incurred under the Act;
- (q) **“Tax Ratio”** means tax ratio as defined in section 308 of the *Municipal Act, 2001*;
- (r) **“Total Weighted Assessment”** means the sum of all the Weighted Assessments of all the property classes for each of the City or the County as the case may be;
- (s) **“Transferred Housing Program”** means “transferred housing program” as defined in the Act;
- (t) **“Unit”** or **“Units”** means a building or part of a building intended for use as residential accommodation pursuant to the transferred housing program as defined by the Act;
- (u) **“Weighted Assessment”** means:
 - (i) with respect to property that is in a sub-class to which section 313 of the *Municipal Act, 2001* applies, the taxable assessment for the property, as reduced by the percentage reduction that applies to the tax rate for properties of that sub-class under section 313 of the *Municipal Act, 2001* and multiplied by the Tax Ratio of the property class that the property is in, and
 - (ii) in all other cases, the taxable assessment for a property multiplied by the Tax Ratio of the property class that the property is in;
- (v) **“Weighted Assessment Basis”** means the annual calculation of Costs to be apportioned as more fully described in paragraph 5 in this Agreement.

Term

3. This Agreement shall commence on the 1st day of January, 2013 and shall expire on December 31, 2017.

Apportionment of Cost of Housing Services

4. For the term of this Agreement, the Parties agree that the Costs of Housing Services shall be apportioned between the County and the City on the basis that seventy percent (70%) of Costs shall be apportioned on a Weighted Assessment Basis and that thirty percent (30%) of Costs shall be apportioned on an Actual Costs Basis.

5. Where the portion of the Costs of Housing Services described in this Agreement are to be apportioned on a Weighted Assessment Basis, the Parties agree that the apportionment shall be determined by the following formula:

$$A = B \times (C/D) \times 70\%$$

where,

A = the amount to be apportioned to the County

B = the total of the Costs of Housing Services

C = the Total Weighted Assessment for all of the properties within the geographic area of the County of Middlesex

D = the Total Weighted Assessment for all of the properties in the Service Delivery Area.

6. Where the portion of the Costs of Housing Services described in this Agreement are to be apportioned as between the County and the City based on an Actual Costs Basis, the Parties agree that the apportionment shall be determined *pro rata* by the following formulas:

$$A = B \times (C/D) \times 30\%$$

where,

A = the amount to be apportioned to the County

B = the Total of the Costs of Housing Services

C = 706, being the number of Units located within the geographic area of the County of Middlesex excluding the geographic area of the City of London

D = 7676, being the total number of Units located within the Service Delivery area.

7. The net obligation owing to either the County or the City as a result of the apportionment set forth in this Agreement shall be computed and remitted in arrears on a quarterly basis.

8. The Parties agree to make an annual adjustment to the apportionment of Costs of Housing Services to reflect any and all potential changes to Weighted Assessment. The Parties further agree to that the said annual adjustment shall be made within the month of July of each year in this Agreement. Any necessary reconciliation payments shall be paid in the second quarter.

9. The Parties agree that the cost apportionment for the Cost of Housing Services from the time period of January 1, 2011 to December 31, 2012 shall be reconciled in accordance with the cost apportionment basis referred to in paragraphs 4, 5, and 6 above. The Parties further agree and acknowledged that amount of the reconciliation for the said period is calculated in the sum of \$897,571.00, to be paid by the City to the County by December 15, 2013.

Administrative Oversight

10. The County and the City agree to an administrative joint management body for the sole purpose of providing oversight of Housing Services in the Service Delivery Area, hereinafter known as the Management Oversight Committee (the "MOC"). The Parties further

agree that the MOC is not a decision-making body or a service manager as designated by the Act. The MOC shall be composed of the following persons:

- (a) the County Administrator (or delegate);
- (b) the City Manager (or delegate);
- (c) up to (3) representatives from the City; and
- (d) up to (3) representatives from the County.

11. The MOC shall:

- (a) establish its own procedures and meeting schedules during the term of this Agreement;
- (b) review issues relating to the delivery of Housing Services including:
 - (i) reviewing operating funding and funding for extraordinary expenses;
 - (ii) reviewing Provincial standards and requirements; and
 - (iii) reviewing administrative policies;
- (c) report, if necessary and as required, to the County Administrator and the City Manager details and particulars in relation to the administration of Housing Services;
- (d) exchange information relevant to the administration of the delivery of Housing Services, as requested by either Party from time to time; and
- (e) report to the respective Councils for both the City and the County from time to time as considered by either Party to be appropriate or necessary.

Dispute Resolution other than Costs Apportionment

12. During the term of this Agreement, in the event that a dispute arises in connection with the administration of this Agreement, the Parties agree that:

- (a) the dispute shall be referred in writing by the party raising the dispute to the MOC where both the Parties agree to negotiate in good faith for resolution to the dispute;
- (b) if the dispute is not settled by the Parties at the MOC, the dispute shall be referred to the City/County Liaison Committee (the "CCLC") for its consideration of the dispute and possible recommendation of a resolution to the Municipal Council of the City and the County Council of the County ;
- (c) if the CCLC are unable to make a recommendation to the Municipal Council of the City and the County Council of the County, the dispute shall be referred to arbitration conducted in accordance with the provisions of the *Arbitration Act*, R.S.O. 1990, c. A.24, or any successor legislation. The decision arrived at by the arbitrator shall be final and binding and no appeal shall lie therefrom.

Amendment of Agreement

13. The Parties agree that this Agreement shall not be amended or altered without the consent of both Parties in writing as authorized by the Municipal Council for the City and the County Council for the County.

14. If either the City or the County is in good faith delayed or hindered in or prevented from performance of this Agreement by virtue of a change in provincial legislation, regulations or a change in provincial policy, then performance of this Agreement shall be excused for the period of time that the change in legislation, regulations or policy render it impossible to comply with the terms, covenants or provisions of this Agreement.

Negotiation of Costs Apportionment Agreement prior to Arbitration

15. Subject to the provisions of any applicable Provincial legislation, the Parties agree to negotiate a costs apportionment agreement prior to the Deemed Arbitration Date, pursuant to this section.

16. The Parties agree that during the Negotiation Period the Parties shall negotiate in good faith a further agreement for the apportionment of costs of Housing Services, as follows:

- (a) Between January 1, 2017 and March 31, 2017, the County Administrator and the City Administrator shall report to the CCLC for its consideration of any issues related to the renewal of this Agreement or the apportionment of the Costs of Housing Services and the CCLC shall forthwith report to the County Council and Municipal Council accordingly;
- (b) In the event a Housing Services Cost Sharing Agreement is not approved by the respective Councils of both Parties prior to April 1, 2017, the Parties shall attempt to negotiate a Housing Services Cost Apportionment Agreement through without prejudice negotiations conducted by the respective Administrations of the Parties, subject to approval of a renewed Housing Services Cost Apportionment Agreement by each of the respective Councils of the County and the City;
- (c) In the event that the aforementioned negotiations do not lead to Council resolutions from each of the County and the City approving a Social Housing Cost Apportionment Agreement by June 1, 2017, the Parties shall agree to a mediation, the mediator to be appointed by the parties by July 1, 2017 and the mediation to be completed by November 1, 2017; and
- (d) In the event that the above-noted mediation is conducted but does not lead to Council resolutions from the County and the City approving a Housing Services Cost Sharing Agreement by December 31, 2017, the Parties shall thereafter continue with the arbitration process.

Arbitration

17. If the Parties are unable to resolve the issue of apportionment of costs for Housing Services at a mediation, the parties agree that an arbitration is governed by the *Arbitration Act, 1991*, and subject to the following:

- (a) The Parties may jointly appoint a single arbitrator on or after the day the arbitration is commenced;
- (b) If the Parties are entitled to appoint an arbitrator jointly but have not done so, the Ontario Superior Court of Justice may make the appointment on a party's application under section 10 of the *Arbitration Act, 1991*;
- (c) The arbitrator shall make a final award that disposes of the issue, within three months after being appointed;
- (d) The Parties agree not to seek an order from the court to extend the date by which the arbitrator shall make his award, despite section 39 of the *Arbitration Act, 1991*. However, the said date may be extended by mutual agreement between the Parties;
- (e) The final award shall apportion among the Parties the costs associated with the provision of Housing Services in the Designated Area;
- (f) The arbitration shall not deal with costs associated with the provision of Housing Services incurred before the designation date;
- (g) The final award may be effective with respect to a period before it is made and, in that case, shall provide for a monetary reconciliation among the Parties;
- (h) A Party may appeal the final award to the Ontario Superior Court of Justice only on a question of law, with leave, which the court shall grant only if it is satisfied that the conditions in clauses 45 (1) (a) and (b) of the *Arbitration Act, 1991* are met. No appeal lies on a question of fact or of mixed law and fact;
- (i) The arbitrator shall provide a copy of the final award to the Minister forthwith after it is made;
- (j) At any time during the arbitration, the Parties may enter into an agreement that includes an agreement apportioning the costs of the arbitration among the Parties, in which case the arbitration terminates;

- (k) The Parties may, at any time, amend the final award by agreement or replace the award with an agreement; and
- (l) The Parties shall bear their own costs in connection with this arbitration process.

18. The Parties agree and acknowledge that an arbitration for the determination of the apportionment of the costs associated with the provision of Housing Services, may be consolidated with one or more arbitrations commenced by either party for the determination of the apportionment of costs for land ambulance, child care and/or Ontario Works services, or such other consolidated management service as the parties may agree.

Notices

19. Any Communication shall be in writing and may be delivered:

- (a) personally or by courier;
- (b) by prepaid registered mail; or
- (c) by facsimile; or
- (d) by e-mail or equivalent electronic means of transmission, if a hard copy of the Communication is delivered by one of the three methods of delivery referred to above.

20. Any Communication must be sent to the intended recipient at its address as follows:

to the County at:

The Corporation of the County of Middlesex
Administration Offices
399 Ridout Street North
London, Ontario N6A 2P1
Attention: Chief Administrative Officer
Tel. No.: (519) 434-7321 x2249
Facsimile No.: (519) 434-0638
E-mail: cao@mdlsx.ca

with a copy to:

The Corporation of the County of Middlesex
Administration Offices
399 Ridout Street North
London, Ontario N6A 2P1
Attention: County Clerk
Tel. No.: (519) 434-7321 x2250
Facsimile No.: (519) 434-0638
E-mail: kbunting@middlesex.ca

to the City at:

The Corporation of the City of London
300 Dufferin Ave, P.O. Box 5035
London, Ontario N6A 4L9
Attention: City Manager
Tel. No.: 519-661-2500 x1804
Facsimile No.: 519-661-5813
E-mail: azuidema@londondon.ca

with a copy to:

The Corporation of the City of London
300 Dufferin Ave, P.O. Box 5035
London, Ontario N6A 4L9
Attention: City Clerk

Tel. No.: 519 661-2500 x4937
Facsimile No.: 519 661-4892
E-mail: csaunder@london.ca

or to any other address as any Party may at any time advise the other by Communication given or made in accordance with this section.

21. Any Communication delivered to the Party to whom it is addressed will be deemed to have been given or made and received on the day it is delivered at that Party's address, provided that if that day is not a Business Day then the Communication will be deemed to have been given or made and received on the next Business Day. Any Communication transmitted by facsimile, e-mail or other functionally equivalent electronic means of transmission will be deemed to have been given or made and received on the day on which it is transmitted; but if the Communication is transmitted on a day which is not a Business Day or after 4pm (local time of the recipient), the Communication will be deemed to have been given or made and received on the next Business Day.

Further Assurances

22. The Parties hereto at all times warrant that they shall do, execute, acknowledge, deliver and/or cause to be done such other acts, agreements and other documents as may be reasonably required or desirable to give effect to the terms of this Agreement.

Amendment and Waiver

23. No amendment, discharge, modification, restatement, supplement, termination or waiver of this Agreement or any section of this Agreement is binding unless it is in writing and executed by the Parties to be bound. No waiver of, failure to exercise, or delay in exercising, any section of this Agreement constitutes a waiver of any other section (whether or not similar) nor does any waiver constitute a continuing waiver unless otherwise expressly provided.

Enurement

24. This Agreement enures to the benefit of and is binding upon the Parties.

Assignment

25. Neither this Agreement nor any right or obligation under this Agreement may be assigned by any Party without the prior written consent of the other Party.

Covenants

26. All obligations contained in this Agreement, even if not expressed to be covenants, shall be deemed to be covenants.

Entire Agreement

27. This Agreement constitutes the entire agreement between the Parties pertaining to Housing Services and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. The Parties acknowledge that there are no representations, warranties or other agreements between the Parties in connection with the subject matter of this Agreement except as specifically set out in this Agreement and that no Party has been induced to enter into this Agreement in reliance on, and there will be no liability assessed, either in tort or contract, with respect to, any warranty, representation, opinion, advice or assertion of fact, except to the extent it has been reduced to writing and included as a term in this Agreement. Except as amended herein, the terms of this Agreement shall remain in full force and effect.

General Provisions

28. The parties agree that:

- (a) words importing the singular only shall include the plural;
- (b) words importing the masculine only shall include the female;
- (c) words importing a person shall include a corporation;

- (d) the part numbers and headings, subheadings and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (e) all references to any statute, regulation or by-law or any provision thereof includes such statute, regulation or by-law or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute, regulation or by-law thereto; and
- (f) whenever a statement or provision in this Agreement is followed by words denoting inclusion or example and then a list of or reference to specific items, such list or reference shall not be read so as to limit the generality of that statement or provision, even if words such as "without limiting the generality of the foregoing" do not precede such list or reference.

Counterparts

29. This Agreement may be executed and delivered by the Parties in one or more counterparts, each of which will be an original and those counterparts will together constitute one and the same instrument.

Severability

30. Each section of this Agreement is distinct and severable. If any section of this Agreement, in whole or in part, is or becomes illegal, invalid, void, voidable or unenforceable in any jurisdiction by any court of competent jurisdiction, the illegality, invalidity or unenforceability of that section, in whole or in part, will not affect:

- (a) the legality, validity or enforceability of the remaining sections of this Agreement, in whole or in part; or
- (b) the legality, validity or enforceability of that section, in whole or in part, in any other jurisdiction.

Governing Law

31. This Agreement is governed by, and is to be construed and interpreted in accordance with the laws of the Province of Ontario.

[ONE (1) ENDORSEMENT PAGE FOLLOWS]

IN WITNESS WHEREOF the Parties have hereunto set their hands and seals this on the date(s) noted below and agree that this Agreement shall be effective on the date set out at the top of page one (1) of this Agreement.

Date: _____, 2013

THE CORPORATION OF THE COUNTY OF MIDDLESEX

Brad Richards, Warden

Kathy Bunting, County Clerk

Date: _____, 2013

THE CORPORATION OF THE CITY OF LONDON

Joe Fontana, Mayor

Catharine Saunders, City Clerk