

MICROTRANSIT OPERATOR AGREEMENT

MEMORANDUM OF AGREEMENT effective May 9, 2023

B E T W E E N:

THE CORPORATION OF THE COUNTY OF MIDDLESEX
(hereinafter, called the “**County**”)

THE PARTY OF THE FIRST PART

- and -

VOYAGO
(hereinafter, called the “**Microtransit Operator**”)

THE PARTY OF THE SECOND PART

collectively hereinafter referred to as the “**Parties**”

WHEREAS:

- A. The County is a municipal corporation governed by Warden and Council and operated by administration, which is hereby authorized to administer this Agreement in its entirety, including, but not limited to decisions with respect to the operation and termination of the Agreement in accordance with its provisions;
- B. In 2019, the County received funding through the Province of Ontario’s Community Transportation Grant Program for the implementation of a microtransit service, connecting communities in Middlesex County and their regional neighbours;
- C. The County launched the microtransit service, named Middlesex Connect (hereinafter referred to as “**Middlesex Connect**” or the “**Project**”), in 2020, which is served by the Microtransit Operator;
- D. Through the County’s management, Middlesex Connect since 2020 has provided transportation to Middlesex residents, enabling them to access post-secondary, employment, medical appointments and social programs and the service has seen a steady increase number of riders;
- E. The Province of Ontario has extended the funding for the Community Transportation Grant Program through to March 31, 2025, for the purpose of allowing the County to fully establish Middlesex Connect as a sustainable microtransit service, as Middlesex County communities continue to recover from the COVID-19 pandemic; and

- F. This Microtransit Operator Agreement extends the involvement of the microtransit operator of the uniquely established and ongoing service.

NOW THEREFORE WITNESSETH that for good and valuable consideration, including the mutual covenants contained herein, the receipt and sufficiency of which the Parties acknowledges as sufficient, the Parties do hereby agree as follows:

ARTICLE 1 - GENERAL CONDITIONS

1.01 Recitals

The Parties warrant that the above recitals are true and the same are hereby incorporated into this Agreement by reference.

1.02 Covenants

The Parties agree that all obligations contained in this Agreement, even if not expressed specifically to be covenants, shall be deemed to be covenants.

1.03 Retainer

The County hereby retains the professional community transportation services of the Microtransit Operator in connection with Middlesex Connect and the Microtransit Operator hereby agrees to provide the microtransit operator services (hereinafter, called the "Services") set forth in section 2 of this Agreement and under the general direction and control of the County. The Services may only be changed and/or altered at the discretion of the General Manager, Community Services of the County (being the Project Coordinator) and in accordance with section 2.08 of this Agreement.

1.04 Staffing and Methods

The Microtransit Operator hereby agrees and warrants that:

- a) it shall perform the Services and obligations as required by this Agreement;
- b) it shall employ only competent staff to perform the Services and obligations as required by this Agreement;
- c) its employees, agents and any subcontractors shall perform the Services to the degree of care, skill and diligence of a professional community transportation Microtransit Operator and will at all times, be in compliance with all Federal, Provincial and Municipal laws, County's Health and Safety provisions, statutes, regulations, By-Laws and codes of conduct relevant to providing transportation services;
- d) it shall ensure that spare drivers be available to ensure service continuity with respect to the required Services of the Project;
- e) it shall be fully responsible for one hundred percent (100%) of the work undertaken by any and all of its employees, agents and sub-contractors; and

- f) it shall not hire any employees and/or staff of the County or Lower-tier Municipalities, which includes but is not limited to Adelaide Metcalfe, Lucan Biddulph, Middlesex Centre, Newbury, North Middlesex, Southwest Middlesex, Strathroy-Caradoc, and Thames Centre (hereinafter, called the "Middlesex Lower-tier Municipalities").

1.05 Suspension, Termination and Damages

1.05.01 Suspension and Termination at Discretion of the County

The County may, upon giving thirty (30) days of written notice to the Microtransit Operator and without cause, suspend or terminate the Services or any portion thereof at any stage of the Project for any reason to the Microtransit Operator. Upon receipt of such notice of suspension or termination from the County, at the County's discretion, the Microtransit Operator may cease work immediately and perform no further services other than those reasonably necessary to close out its services. The Microtransit Operator does hereby acknowledge that in the event the County suspends or terminates the services of the Microtransit Operator, either temporarily or permanently without cause, the County shall provide compensation in accordance with the Services that have been completed, and the Microtransit Operator does hereby fully release the County, its Lower-Tier Municipalities and surrounding partner Municipalities and/or Townships who additionally participate in the Project, its employees, legal counsel, and/or Councillors from any and all claims, actions, losses, expenses, costs or damages of every nature and kind whatsoever resulting from the termination.

1.05.02 Suspension and Termination at Discretion for Breach by the Microtransit Operator

In the event the Microtransit Operator breaches any term or obligation of this Agreement, the County may, upon giving thirty (30) days of written notice to the Microtransit Operator, terminate for default the whole or any part thereof, and order all work to cease and/or the Agreement may be terminated at the election of the County without any compensation owed being owed by the County to the Microtransit Operator. In the event that this Agreement is terminated as a result of a breach by the Microtransit Operator, the County shall retain the full amount of funds from the Microtransit Operator that have been provided to and cashed by the County and secured by the Letter of Credit, as liquidated damages. The Microtransit Operator does hereby acknowledge that the retention of such funds by the County constitutes compensation for the cost of delay and administrative costs associated with administering an additional request for tender and is not a penalty. The Microtransit Operator further acknowledges and agrees that in the event it breaches this Agreement, it may be ineligible to contract further with the County for a period of time to be determined by the County.

The Microtransit Operator hereby agrees that in the event of a default related to an emergency situation, the Microtransit Operator will rectify any such default immediately, and, at its option, the County may immediately rectify any such default, and the Microtransit Operator agrees to reimburse the County for any expense incurred in rectifying such default immediately upon request for reimbursement from the County.

1.05.03 Termination by Unilateral Cessation of the Services by the Microtransit Operator

In addition to and without limiting the foregoing and subject to section 1.05 of this Agreement, in the event the Microtransit Operator breaches this Agreement unilaterally and without the written consent of the County ceasing the performance of the Services, dissolves as a corporation, or ceases operations prior to completion of the Services, this Agreement shall terminate as of the earliest date upon which the Microtransit Operator either ceases providing its Services to the County, dissolves as a corporation, or ceases operations. In the case where the Microtransit Operator ceases operations as indicated above, the County shall retain the full amount of funds from the Microtransit Operator which have been provided to the County and secured by the Letter of Credit as liquidated damages in accordance with section 3.01(5) of this Agreement. The Microtransit Operator does hereby acknowledge and agrees that the retention of the above-mentioned funds by the County constitutes compensation for the cost of delay and administrative costs associated with administering an additional request for tender and is not a penalty.

1.05.04 Liquidated Damages for Services Disruption

In addition to and without limiting any other provision of this Agreement, in the event that the delivery of Services is interrupted or is deficient as a result of the negligence, omission, action, act of the Microtransit Operator or its agents, the Microtransit Operator will refund a pro-rated amount from the account of the County, as applicable, for the time that the Services were interrupted in accordance with the Services Disruption Table below and credit such account(s) accordingly. However, should the Microtransit Operator fully remedy at its sole (100%) cost the interruption of Services within thirty (30) minutes of being notified that the Services have been interrupted and/or disrupted, the Services Disruption Table contained in this section 1.05.04 shall not be applicable.

Services Disruption Table	
Full Service Interruption	Partial Service Impairment
Shall result in a credit of 100% of money owed under this Agreement for the period of time of the service interruption. For the purposes of this calculation, the Hourly Rate shall be pro-rated into a daily rate and applied, using an assumption of ten hours, should a daily reduction not be applicable.	Shall result in a credit of 50% of the money owed under this Agreement for the period of time of the service interruption. For the purposes of this calculation, the Hourly Rate shall be pro-rated into a daily rate and applied, using an assumption of ten hours, should a daily reduction not be applicable.

Should the Microtransit Operator not include the pro-rated subtraction in a billing statement forthwith following the Services disruption, the County shall calculate the amount to be subtracted and will deliver written Notice to the Microtransit Operator of such calculation.

1.06 Liability and Indemnification

The Microtransit Operator acknowledges and agrees that throughout the term of this Agreement and Project, and while it is performing the Services, the County, Lower-

Tier Municipalities and surrounding partner Municipalities and/or Townships who additionally participate in the Project, shall not be responsible for any liability arising out of or that is in any way related to:

- a) any bodily injury, death or property damage or any incidental, indirect, special or consequential damages to anyone for any claim, demand or action against the County, the Middlesex Lower-tier Municipalities, its surrounding partner Municipalities and/or Townships who additionally participate in this Project, its elected officials, its Councillors, legal counsel, officers, employees, agents or consultants and/or against the Microtransit Operator, its employees and/or subcontractors which in any manner arises out of or are any manner related to:
 - i) this Agreement;
 - ii) this Project;
 - iii) the execution of Services by the Microtransit Operator, its employees, agents and/or subcontractors;
 - iv) damages incurred while the Microtransit Operator, its employees, agents and/or subcontractors are providing the Services; and/or
 - v) damages incurred as a result of the Microtransit Operator, its employees, agents and/or subcontractors.
- b) without limiting the foregoing, the Microtransit Operator hereby agrees to fully (100%) release, indemnify, defend and hold harmless the County, its Lower-Tier Municipalities, its surrounding partner Municipalities and/or Townships who additionally participate in the Project, its elected officials, Councillors, legal counsel, officers, employees, and agents or consultants from and against any and all suits of any nature, judgments, claims, demands, expenses, actions, causes of action, duties, assessments, fees, interest, penalties, liabilities, losses and costs (including, without limitation, legal expenses and for any and all liability for injuries to persons (including death and acts allegedly attributable to negligence) or damages to property, however caused, which in any manner arises out of or are any manner related to:
 - i) this Agreement;
 - ii) this Project;
 - iii) the execution of Services by the Microtransit Operator, its employees, agents and/or subcontractors;
 - iv) damages incurred while the Microtransit Operator, its employees, agents and/or subcontractors are providing the Services;
 - v) damages incurred as a result of the Microtransit Operator, its employees, agents and/or subcontractors providing the Services; and/or
 - vi) any and all claims of any nature, including but not limited to bodily injury, sickness, death or disease, including loss of revenue or incurred expense resulting from disruption of Services, arising out of or allegedly attributable to the

negligence acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the Microtransit Operator, its directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the execution of Services or performance of this Agreement and Project.

The indemnity contained in this entire section 1.06 shall be in addition to and not in lieu of any insurance to be provided by the Microtransit Operator in accordance with this Agreement and Project, and shall survive this Agreement.

- c) the Microtransit Operator agrees to fully defend, indemnify and save harmless the County, its Lower-Tier Municipalities and surrounding partner Municipalities and/or Townships who additionally participate in this Project from and against any and all claims of any nature, actions, causes of action, losses, expenses, fines, costs (including legal costs), interest or damages of every nature and kind whatsoever arising out of or related to the Microtransit Operator's status with WSIB. This indemnity shall be in addition to and not in lieu of any proof of WSIB status and compliance to be provided by the Microtransit Operator in accordance with this Project, and shall survive this Project.

1.07 Liability Insurance

The Microtransit Operator, at all times while retained with respect to the Project, shall have in place, pay for and maintain the following policies of insurance:

1) Commercial General Liability

Commercial General Liability, underwritten by an insurer licensed to conduct business in the Province of Ontario, for a limit of not less than five million dollars (\$5,000,000.00) per occurrence and no aggregate with respect to completed operations. The policy shall include an extension for a standard provincial and territorial form of non-owned automobile liability policy. This policy shall include but not be limited to:

- a. name the County as an additional insured;
- b. cross-liability and severability of interest;
- c. blanket Contractual;
- d. products and Completed Operations;
- e. premises and Operations Liability;
- f. personal Injury Liability;
- g. contingent Employers Liability;
- h. work performed on Behalf of the Named Insured by Sub-Contractors;
- i. broad Form Property Damage;
- j. the policy shall include 30 days' notice of cancellation; and
- k. any other party that the County deems necessary to be included as an additional insured. Should the County request in writing that an additional

party be named as an additional insured with respect to this Project, the Microtransit Operator shall amend the Commercial General Liability policy accordingly within thirty (30) days and provide written confirmation to the satisfaction of the County.

2) Owned Automobile Liability Insurance

Standard Owned automobile liability insurance, on an occurrence basis in an amount not less than five million dollars (\$5,000,000.00) exclusive of interest and legal costs against loss or damages resulting from bodily injury or death to one of more persons or loss of or damages to property. The automobile liability insurance must comply with all requirements of the current legislation of the Province of Ontario, and shall provide coverage to carry passengers for compensation in which the Microtransit Operator is operating a Public Vehicle Operating License where required.

3) Certificate of Insurance

The Microtransit Operator shall provide a Certificate of Insurance evidencing coverage in force at least ten (10) days prior to the Project commencing. At any time requested by the County, the Microtransit Operator shall provide to the County proof of insurance.

The Microtransit Operator hereby agrees that it shall not change, amend or cancel the above noted insurance policies in any manner for the Term of this Agreement and while the Project is ongoing, unless the County consents in writing.

1.08 Contracting with Sub-Contractors

The Microtransit Operator agrees that it shall not and that no person, firm or corporation associated with the Microtransit Operator, including but not limited to its subsidiaries, employees, agents and subcontractors, shall contract, assign and/or or tender any of the work of the Project to anyone, unless the County consents in writing.

1.09 Assignment

Neither party may assign this Agreement without the prior consent in writing of the other.

1.10 Approval by Other Authorities

Unless otherwise provided in this Agreement, where the work of the Microtransit Operator is subject to the approval or review of an authority, department of government, or agency other than the County, such applications for approval or review shall be the responsibility of the Microtransit Operator, but shall be submitted through the offices of the County and unless authorized by the County in writing, such applications for approval or review shall not be obtained by direct contact by the Microtransit Operator with such other authority, department of government or agency.

1.11 Project Co-ordinator and Inspection/Stoppage by County

The Parties agree that the Project Coordinator for the County with respect to the Project shall be the:

General Manager, Community Services
County of Middlesex
399 Ridout Street North, London, ON N6A 2P1
(519)434-7321, ext. 2234
choward@middlesex.ca

The Project Coordinator shall supervise and co-ordinate all work required and shall have authority to stop any work contemplated whenever such stoppage, in their sole opinion, may be necessary to co-ordinate any of the work described in this Agreement or to ensure the proper execution of this Agreement.

The Project Co-ordinator on behalf of the County and/or such other individual authorized by the County shall have the right, at all reasonable times, to inspect or otherwise review the Services performed, or being performed, under the Project and the premises where they are being performed.

The Project Coordinator shall have the authority to reject all services or work which in the sole opinion of the Project Coordinator, do not conform to the requirements of this Agreement or in the sole opinion of the Project Coordinator are otherwise substandard, flawed or unsuitable for the County's purposes.

In the event that questions or a disputes arise with respect to execution of the Services or with respect to the interpretation of the requirements of this Agreement, the Project Coordinator shall have the final authority to decide all such questions, the opinion of the Project Co-ordinator shall prevail, and the decision will be deemed final by the Parties.

In the event that the Project Coordinator is unavailable, the Microtransit Operator shall contact the County's Director of Economic Development for immediate assistance:

Director of Economic Development
County of Middlesex
399 Ridout Street North, London, ON N6A 2P1
(519) 434-7321, ext. 2347
cfinn@middlesex.ca

1.12 Dispute Resolution

In the event of an unresolved dispute, all remedies available at law shall be available to the Parties.

1.13 Time

The Microtransit Operator shall perform the Services expeditiously to meet the requirements of the County and shall complete the Services by the Microtransit Operator, or such other date agreed to by the County in its sole discretion (through

the Project Coordinator or her designate), taking into consideration any reasonable delay due to weather.

1.14 Centralized Reporting Requirements

The Microtransit Operator shall provide monthly summary reports to the County without demand on the first (1st) business day of each month. The centralized reporting to be provided to the County includes but is not limited to the following particulars from the preceding month:

- (a) the portion of the Services completed;
- (b) number of complaints received;
- (c) all reported incidents by type;
- (d) end of shift reports;
- (e) vehicle(s) dispatched;
- (f) special instructions;
- (g) all transportation requests;
- (h) overall ridership statistics of the Services;
- (i) all of the pick-up/drop off locations;
- (j) most frequent times and days that the Services were utilized;
- (k) standard mileage for each trip;
- (l) vehicle cleaning procedures and frequency;
- (m) late and/or missed Service hours and/or trips;
- (n) on-time performance;
- (o) rider wait time for the Microtransit Operator and the reason outlining the delay;
- (p) any ridership trends;
- (q) rider on/off counts;
- (r) rider with mobility devices;
- (s) staff list showing the number, classifications and identities of staff, Principals and Executives, who performed the Services and breaking down which particular type of work that each staff member has performed; and
- (t) any additional reporting information with respect to the Project that is acceptable to the County.

1.15 Incident Reporting

The Microtransit Operator ensures that all rider complaints and inquiries are fully documented, assessed and reviewed by authorized staff with follow-ups, as required. The Microtransit Operator undertakes that all rider complaints will be reported to the County on a monthly basis and in accordance with section 1.14 of this Agreement. However, serious complaints shall be reported to the County within twenty-four (24) hours, and a full report will be subsequently provided in the required monthly report.

1.16 Additional Conditions

This Agreement includes the ongoing Route Memorandum set out in paragraph 2.01, which is incorporated by reference into this Agreement.

ARTICLE 2 – THE SERVICES

The Parties hereby agree that all of Article 2 (inclusive of 2.01-2.08), make up the Services required to be performed by the Microtransit Operator.

2.01 Proposed Transportation Routes

The Parties agree and acknowledge that the transportation routes with respect to the Project may continuously evolve and reasonably change over time in order to provide the most efficient service to its riders in the community. The Parties further agree and acknowledge to act in a flexible and collaborative manner throughout the Term of the Project in order to provide the most efficient and effective routes for its riders in the community.

At all times where Middlesex Connects is in operation, the Microtransit Operator shall operate the microtransit service in accordance with the official route schedule, which is determined by a Route Memorandum, in writing, which is incorporated into this Agreement by reference (hereinafter referred to as the “**Route Memorandum**”). The Parties further agree that at the County’s discretion, the above-referenced Route Memorandum may continuously evolve and reasonably change over time to suit the general ridership needs within the community, as determined at the discretion of the General Manager of Community Services. Should the Routes and applicable schedules change throughout the term of this Agreement, the County shall advise the Microtransit Operator in writing of the necessary adjustments and the Microtransit Operator agrees to implement any Route and schedule adjustments within thirty (30) days of being advised in writing.

2.02 Term

For the purposes of this Agreement, its “**Term**” shall mean any date in which this Agreement is in force in accordance with this paragraph.

Subject to the suspension and termination provisions of this Agreement (subsection 1.05), the Microtransit Operator agrees as follows:

The Term of this Agreement shall commence on May 9, 2023, continue for one year, eleven months and twenty-two days, and end on March 31, 2025 (hereinafter, the “**Initial Term**”).

Following the Initial Term, the County in its sole discretion may renew this Agreement with the Microtransit Provider for three (3) separate consecutive renewal terms of five (5) years each (each a “**Renewal Term**”). To exercise the first option to renew, the County must provide the Microtransit Provider written notice of such election to renew prior to the expiry of the Initial Term. To exercise the second option to renew, the County must provide the Microtransit Provider

written notice of such election to renew prior to the expiry of the first valid five-year Renewal Term, failing which the Agreement will terminate due to expiry. To exercise the third option to renew, the County must provide the Microtransit Provider written notice of such election to renew prior to the expiry of the second valid five-year Renewal Term.

In the event that a Renewal Term is not exercised by the County in writing as set out above, the Agreement will automatically continue on a month-to-month basis, with the provision of the same Services continuing at the same pricing. During the month-to-month period, either Party may terminate the Agreement by providing a notice of termination, and such termination shall be effective 30 days after the notice is given. Furthermore, the Parties reserve the right to mutually extend the services for a specified period of time, subject to formal agreement.

2.03 Days and Hours of Operation

The Microtransit Operator agrees as follows:

- 1) The Microtransit Operator shall at a minimum, operate and perform the Services Monday to Friday throughout the term of the Project;
- 2) The performance of the Services with respect to the Routes shall be a minimum of two (2) vehicles completing two (2) return trips per day, commencing at approximately 6:30 am to 9:30 am and from 3:30 pm to 6:30 pm, which totals a minimum of 3,120 hours of retained Service per year of the Project; and
- 3) Following the execution of this Agreement, the official transit schedule shall be determined by a memorandum in writing endorsed by the Parties, and upon being endorsed, the memorandum shall form part of this Agreement. The Parties agree and acknowledge that the minimum retained Service hours of 3,120 per year of the Project shall not change; however, any further particulars contained in this section 2.03 with respect to the Services, Route times and schedules may be subject to reasonable changes, amendments and/or alterations at the County's sole discretion, in accordance with section 2.08 of this Agreement.

2.04 On-Demand Flexibility of Services

The Parties agree and acknowledge that in certain instances, fixed-route Services, as identified in section 2.03 of this Agreement may not be efficient or cost-effective for riders in the community. The Microtransit Operator agrees that in addition to the fixed route schedules, as outlined in section 2.03 of this Agreement, it shall provide on-demand flexibility to riders. The full particulars of the Microtransit Operator's on-demand flexibility options shall be determined by a memorandum in writing endorsed by the Parties, and upon being endorsed, the memorandum shall form part of this Agreement. The County undertakes to give the Microtransit Operator at least twenty-four (24) hours of notice prior to scheduling on-demand flexible Services, which is in addition to its regular and fixed Service schedule, as identified in section 2.03 of this Agreement.

2.05 Prior to Commencement of Work

The Microtransit Operator agrees and warrants that prior to commencing any work on the Project, the Microtransit Operator shall allow all of its equipment and vehicles to be inspected and approved by the County.

2.06.1 Role of the County

The County agrees and warrants that at all times it will provide the following services with respect to the Project:

- 1) Marketing and communication of the new microtransit system;
- 2) Website that includes the necessary and up-to-date route and schedule information;
- 3) Evaluation of the Project;
- 4) Erecting bus stop signs and shelters, and maintaining all bus stop signs and shelters from ice and snow; and
- 5) Approval of the annual budget that includes the cost of fares.

2.06.2 Role of the Microtransit Operator

The Microtransit Operator agrees and warrants that at all times when completing the Services, it is anticipated that it shall be responsible for the following:

- 1) **Vehicle Component**
 - a. providing the necessary and accessible vehicles to complete the Services;
 - b. providing a minimum of two (2) designated side entry accessible vehicles to complete the Services throughout the Term of the Project. The Microtransit Operator further acknowledges and undertakes that the particulars of the two (2) designated vehicles will be in strict compliance with its Proposal, which is attached as *Schedule "B"* and forms part of this Agreement;
 - c. providing a minimum of one (1) wheelchair space and a bicycle rack in each vehicle to complete the Services;
 - d. providing professional and properly licensed vehicle operators;
 - e. providing training for any and all new vehicle operators that are hired to complete the Services;
 - f. providing any and all vehicle maintenance, repair and replacement. The Microtransit Operator shall ensure that all vehicles comply with all Ministry of Transportation of Ontario audit requirements and all vehicle maintenance comply with all municipal by-laws. Additionally, the Microtransit Operator ensures that its vehicles will not operate if unsafe. This includes but is not limited to heating and cooling, brakes, steering, and exhaust; and
 - g. performing the Services to the degree of care, skill and diligence of a professional vehicle operator and carry out operations in a skillful manner.

2) Technology Component

- a. collecting any and all of the transit fares and undertaking to report all collected transit fares to the County throughout the term of this Project;
- b. providing complimentary on board WIFI in each vehicle for riders to utilize;
- c. installing fully functioning on board camera systems in all vehicles;
- d. providing the necessary software for riders to assist with determining location stops, pick-up/drop-off times and vehicle tracking;
- e. providing on-demand technology to enhance mobility and general support with respect to the Services. The Microtransit Operator ensures that it is capable of providing on-demand technology to improve Services, and the additional ability to include pick-up and/or drop-off locations for riders;
- f. utilizing audio speakers in all vehicles to assist riders with their respective drop-off locations throughout the Routes;
- g. utilizing fleet tracking software to assist with the Services;
- h. equipping each vehicle with a fully functioning radio to allow the bus driver and/or Voyago staff to effectively communicate with its head office;
- i. equipping each vehicle with a fully functioning GPS device to ensure that the most efficient Routes are being used to avoid rider delay; and
- j. throughout the term of the Project, the County reserves the right in its discretion to purchase any additional technology components from the Microtransit Operator which are not contained in this section 2.06, and any additional purchase shall be effective only if it is endorsed in writing and signed by the County.

3) Administration Component

- a. providing sufficient and competent local supervision and management in order to oversee the effective, efficient and safe operation of the Project, including effectively investigation and dealing with all customer complaints and/or matters;
- b. regularly collecting ridership and other service delivery data and information and providing the findings for the County to use in order to optimize routes and schedules;
- c. submitting monthly performance reports to the County;
- d. in-person meeting and/or teleconference with the County on a quarterly basis, or as required by the County, in its sole and absolute discretion. Additionally, progress meetings will be held as necessary by the County in its reasonable discretion. Progress meetings will be held to review the Microtransit Operator's Route schedules and to discuss general ridership, any delays, unusual conditions, critical matters that have affected or could affect the progress of the Services; or any matters in the County's discretion that arise as a result of the Microtransit Operator's Reporting Requirements; and
- e. submitting an annual budget for the Services to the County.

4) Transit Fare Collection Component

- a. installing the necessary fare box for riders to deposit the transit fare in order to utilize the Service;
- b. collecting and reporting to the County all of the deposited transit fares from the riders utilizing the Service;
- c. providing a monthly invoice to the County outlining all of the collected transit fares from riders from the previous month; and
- d. at the commencement of the Project, the collection of transit fares shall be a cash-based system, and the Microtransit Operator will not be responsible for providing riders with change. If required by the County, the Microtransit Operator has the capability of providing an online reservation system and/or physical ticket system for riders to utilize the Services. Following the commencement of the Project, the Parties agree to discuss implementing the potential additional fare collection methods, as identified in this section 4(d), and shall only be implemented if it endorsed in writing and signed by the County.

5) Additional Components

- a. the Service needs to be in operation for a minimum of five (5) days per week – with a minimum of two (2) return trips on a daily basis, in accordance with section 2.03 of this Agreement;
- b. the Service needs to propose schedule that is not currently offered by other carriers in the microtransit community;
- c. the Microtransit Operator must utilize vehicles that carry a minimum of ten (10) passengers, in accordance with R.R.O. 1990, Reg. 629: *Accessible Vehicles*, as amended or replaced;
- d. riders travelling in a wheelchair must be provided assistance to ensure a safe transition on and off the vehicle;
- e. following the execution of the Agreement, and upon the transit Routes being finalized in accordance with section 2 of this Agreement, if the Microtransit Operator's vehicle(s) have reached full capacity while performing the Services, the Microtransit Operator shall dispatch at no additional cost to the County, additional vehicle(s) so that riders are not left without transportation to their destination. Following the execution of this Agreement, the particulars with respect to the Microtransit Operator dispatching additional vehicle(s) shall be determined by a memorandum in writing endorsed by the Parties, and upon being endorsed, the memorandum shall form part of this Agreement.
- f. the Microtransit Operator at no additional charge shall place any County marketing materials and/or advertisements in its designated vehicles throughout the term of the Project. The marketing materials and/or advertisements shall include but not be limited to, signage on the side and inside of its designated vehicles and a digital screen inside its designated vehicles for promotional purposes. Further, the Microtransit Operator at no additional charge shall provide general marketing guidance and advice to the County when selecting its marketing and/or promotional material;

- g. the Microtransit Operator shall be compliant with any necessary AODA requirements with respect to providing accessible equipment for all riders to utilize the Services;
- h. upon the County giving fourteen (14) days of written notice to the Microtransit Operator, the Microtransit Operator shall at no cost to the County or riders, donate the necessary amount of staff and vehicle(s) prior to June 1, 2020, for the purposes of a soft launch with respect to the Services, promotional transit runs and promotional events at locations to be determined by the County; and
- i. upon the County giving thirty (30) days of written notice to the Microtransit Operator, the Microtransit Operator shall at no cost to the County or riders, donate the necessary amount of staff and vehicle(s) for continued regular Services on statutory holidays, which includes but is not limited to, Christmas Day and New Year's Day for each year of the Project.

2.07 Worker Safety and Insurance

The Microtransit Operator warrants that at all times when performing the Services, it shall:

- 1) have health and safety provisions in its management systems which will be in force and maintains a consistently high level of health and safety;
- 2) only use employees, agents and/or subcontractors who are qualified in providing the Services, competency-based training standards and who are required at all times when performing the Services to wear all appropriate personal protective equipment;
- 3) provide their employees with education and training required to successfully provide the Services;
- 4) possess and be able to produce at the request of the County a satisfactory certificate from the Workplace Safety Insurance Board ("WSIB") confirming that all assessments or compensation payable to the WSIB have been paid and that its workers have WSIB coverage; and
- 5) at any time at the request of the County, submit proof of fulfilment of all the covenants in this Agreement.

In addition to and without limiting any other provision of this Agreement, the Microtransit Operator warrants that it shall pay to the appropriate provincial Board/Commission all assessments and levies owing to the Board/Commission with respect to its performance of the Services pursuant to this Agreement and the Microtransit Operator does hereby acknowledge that any unpaid assessments or levies shall be the sole responsibility of the Microtransit Operator.

2.08 Adjustment to Services

The County and/or the County's Project Co-ordinator, in its sole discretion, may at any time after the execution of the Agreement, make reasonable substitutions, amendments, variations and/or adjustments from time to time with respect to the Services, as it determines to be appropriate based upon the findings and particulars resulting from the Microtransit Operator's reporting requirements pursuant to this

Agreement, and in accordance with general ridership needs and trends in the community. In the event that any of the Services are substituted, amended, deleted, extended, increased, varied or otherwise reasonably altered, the Parties shall cause this Agreement to be amended accordingly.

The Microtransit Operator acknowledges and agrees that it has the capability and resources to accommodate any reasonable substitutions, amendments and/or adjustments at the County's discretion with respect to the Services, which includes but is not limited to, a reasonable substitution in route changes, a substitution in transit schedule changes, a substitution in technology, and a substitution potentially increasing the hours and days of performing the Service.

ARTICLE 3 – PAYMENT

3.01 Payment

- (1) The County has a maximum budget equivalent to the Project funding provided by the Province of Ontario. The County shall not exceed the budget referenced in this section 3.01 unless there is secured provincial and/or municipal funding, which is approved by County Council to reasonably expand the Services with respect to the Project.
- (2) The Microtransit Operator shall provide a detailed statement of account to the County for the Services provided on a monthly basis for the term of the Project. Each statement of account shall identify and itemize the complete Services completed during the billing period for that respective month of the Project, which includes but is not limited to the total fares collected, H.S.T. amount, date of the invoice, total hours and riders for the month. The Microtransit Operator acknowledges that each statement of account shall be subject to the subsection 1.05.04 of this Agreement. The Microtransit Operator shall deduct one hundred percent (100%) of the total transit fares collected in a given month against that month's invoice, and the County shall be responsible for paying the net balance in accordance with section 3.01(3) of this Agreement. The County shall pay each statement of account on a monthly basis.
- (3) In accordance with section 3.01(2) of this Agreement, and throughout the Term of the Project, the County shall pay the Microtransit Operator a maximum upper-limit hourly rate of \$89.00 + H.S.T. (hereinafter, called the "Hourly Rate") for the performance of the Services contained in section 2 of this Agreement. The Hourly Rate shall at no time increase throughout the Term of this Agreement, unless there is written approval by the County and/or the County's Project Co-ordinator. However, throughout the term of the Project, the Hourly Rate might be less than \$89.00 + H.S.T. per hour if the County decides in its sole discretion to increase the Services of the Project, but the Hourly Rate shall at no time exceed \$89.00 + H.S.T. without the County and/or County Project Co-ordinator's written approval. In the event that the County decides in its sole discretion to increase the Services of the Project in accordance with section 2.08 of this Agreement, a memorandum in writing shall be endorsed by the Parties and form part of the Agreement.
- (4) For the Term of this Agreement, the Microtransit Operator will bill and hold the County directly responsible for payment for any additional features ordered by the County. Rates and payment dates for additional features shall be negotiated as

between the Microtransit Operator and the County. However, any additional features must at all times be approved in writing by the County.

- (5) The Microtransit Operator will deliver to the County, prior to the execution of this Project, an unconditional and irrevocable letter of credit (hereinafter, called the "Letter of Credit") in favour of the County from a financial institution approved by the County in the amount of twenty-five thousand dollars (\$25,000.00). This Letter of Credit shall be retained by the County for the duration of the Term of this Agreement, including any extensions exercised. No interest shall be payable on such security deposit. In the event this Agreement is performed without breach, such Letter of Credit will be fully (100%) returned following the completion of the Project to the satisfaction of the County. In the event of a breach, the Letter of Credit may be used by the County in its discretion to mitigate in whole or in part the financial damages that may occur from the breach.

ARTICLE 4 – GENERAL PROVISIONS

4.01 Notices

All notices under this Agreement shall be in writing. It shall be sufficient in all respects if the notice is delivered by hand, sent by electronic means of sending messages, which produces a paper record ("Transmission") during normal business hours, or sent by registered mail, postage prepaid, addressed to:

Voyago	The Corporation of the County of Middlesex
573 Admiral Court	399 Ridout Street North
London, ON N5V 4L3	London, ON N6A 2P1
Attn: Denis Gallant, Chief Executive Officer	Attn: General Manager, Community Services (or Director of Economic Development if the General Manager, Community Services is unavailable)
	<p>General Manager, Community Services County of Middlesex 399 Ridout Street North, London, ON N6A 2P1 (519) 434-7321, ext. 2234 choward@middlesex.ca</p> <p>Director of Economic Development County of Middlesex 399 Ridout Street North, London, ON N6A 2P1 (519) 434-7321, ext. 2347 cfinn@middlesex.ca</p>

or to such other address as either party shall have designated by written notice to the other party. Any notice so given shall be deemed to have been given and to have been received on the day of delivery, if so delivered, on the third Business Day (excluding each day during which there exists any interruption of postal services due to strike,

lockout or other cause) following the mailing thereof, if so mailed, and on the day that notice was sent by Transmission, provided such that is a Business Day (a Business Day being any day of the week save and except for Saturday and Sunday) and if not, on the first Business Day thereafter.

4.02 Waiver of Rights

Any waiver of, or consent to depart from the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the party giving the waiver, and only in the specific instance and for the specific purpose for which it has been given.

The County's rights pursuant to this Agreement shall not in any manner be prejudiced, even if the County has overlooked or condoned any non-compliance with the terms and conditions of this Agreement by the Microtransit Operator. No failure on the part of the County to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right.

No single or partial exercise of any right provided for herein by either party shall preclude any other or further exercise of such right or the exercise of any other right.

4.03 Entire Agreement and Severability

The Parties acknowledge that this Agreement replaces the Community Transit Service Agreement between the Parties dated January 28, 2020 in its entirety and that this Agreement, including its ongoing Route Schedule Memorandum which is included in this Agreement by reference, constitutes the entire Agreement between the Parties with respect to provision of the Services by the Microtransit Operator and supersedes all prior representations, warranties, agreements, and understandings, oral or written, between the Parties with respect to the Services. 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. If any provision of this Agreement is later held to violate the law or regulation, that provision alone shall be deemed void and all remaining provisions of this Agreement shall remain and continue in force.

4.04 Accounts and Audit

The Microtransit Operator shall keep proper accounts and records of transactions and activities, in addition to all expenditures or commitments made by the Microtransit Operator in connection therewith and shall keep all documents, invoices, receipts and vouchers relating thereto. All such accounts and records as well as any invoices, receipts and vouchers shall at all times during the term of this Project be open to audit, inspection and examination by the County. Copies of said records shall be provided to the County when requested by the appointed employee responsible for this Project so that they can be maintained in accordance with the County's Records Management Policy and Records Retention Policy. If activities requiring the collection or handling of personal information are contracted out, the contract shall set out the privacy protection and security obligations assumed by the Microtransit Operator.

4.05 Microtransit Operator Status

The Microtransit Operator hereby represents, warrants and covenants to the County (and acknowledges that the County is relying on such representations, warranties and covenants) that it is not aware of any actions, suits or proceedings pending or to its knowledge threatened against or adversely affecting it, which might materially affect its financial condition or its ability to perform and meet all duties, liabilities and obligations as may be required of it under the Project Documents.

4.06 Municipal Freedom of Information and Protection of Privacy Act

The County is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56, as amended (hereinafter, "MFIPPA") with respect to the protection of information under its custody and control. Accordingly, all documents provided in response to the EOI or otherwise may be available to the public unless the party submitting the information requests that it be treated as confidential. The Microtransit Operator hereby acknowledges and agrees that all information it has or may in the future submit to the County is subject to MFIPPA and may be subject to release under such Act, notwithstanding the Microtransit Operator's request to keep the information confidential.

4.07 General Privacy and Confidentiality

In the event of any breach of County or rider confidentiality, the Microtransit Operator shall:

- (1) determine if a breach has occurred and plan a course of action;
- (2) identify the cause of the breach and perform steps to contain it;
- (3) Immediately notify the County of the breach; and
- (4) Implement change to ensure prevention of a future breach.

4.08 Temporary Service Interruption or Delay

In the event that the Microtransit Operator's staff or vehicle cannot complete the Services on schedule, the Microtransit Operator, at no additional charge, shall arrange and dispatch other transportation vehicle(s) in order for the continuation of Services within thirty (30) minutes of discovering said delay. In the event that weather affects the Microtransit Operator's pick-up/drop-off schedule, the Microtransit Operator shall provide regular updates through its software application-advising riders of the delay. Additionally, in the event of an unexpected failure of the Microtransit Operator's electronic scheduling system, the Microtransit Operator shall switch to a manual-based system to complete the Services without delay.

4.09 Force Majeure

If the Microtransit Operator is delayed in completion of this agreement by reasons of labour disputes, strikes, lock-outs, fire, or by any cause of any kind whatsoever beyond the Microtransit Operator's control, then the time of delivery shall be extended for a

period of time equal to the time lost due to such delays, at no cost or penalty to the County. No such delivery time extension shall be made for delays unless written notice of same is given to the County within five (5) business days of its commencement, other than in the case of a continuing cause of delay, only one claim shall be necessary.

4.10 Voluntary Enforceable Agreement

The Parties warrant that this Agreement is voluntary, that neither party is under any legal disability and that each party has had an opportunity to seek the advice of legal counsel with respect to this Agreement. The Microtransit Operator agrees that the County has the legal right and ability to enforce the said provisions of this Agreement hereunder as against it to the extent of its obligations as established herein and that it is estopped from pleading or asserting otherwise in any action or proceeding.

4.11 Electronic Signing & Counterparts

This Agreement may be executed and initialed by the Parties by original or electronic signature and be delivered by the Parties in separate counterparts by e-mail or other functionally equivalent electronic means of transmission. Execution and delivery copy of this Agreement as set out above shall be deemed to effectively bind the Parties and meets the requirements of the *Electronic Commerce Act 2000*, S.O. 2000, c. 17, as amended or replaced. Each counterpart will be considered an original and each, when held together, shall constitute one and the same instrument.

4.12 Applicable Law

This Agreement shall be governed by, and interpreted and enforced in accordance with, the laws in the Province of Ontario and the laws of Canada, as applicable.

This Agreement will enure to the benefit of and be binding on the parties and their respective heirs, executors, administrators, successors and assigns.

Any reference in this Agreement to a statute includes any amendment thereto, its regulations and applicable successor legislation.

The necessary changes in gender required to make this Agreement apply to either corporations or individuals, males or females, will in all instances be assumed as though in each case fully expressed.

All dollar amounts referred in this Agreement and the Schedules are in Canadian funds.

[ONE (1) SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF this Agreement has been executed by the Parties hereto on the date(s) set out below and the Parties agree that this Agreement shall be effective on the date as set out at the top of page one (1) of this Agreement.

Address for Service:

339 Ridout Street North
London Ontario N6A 2P1

May 9, 2023

**THE CORPORATION OF THE
COUNTY OF MIDDLESEX**

Per: _____
Cathy Burghardt-Jesson, Warden

Per: _____
Paul Shipway, Acting Clerk

We have authority to bind the Corporation

Address for Service:

573 Admiral Court
London, ON N5V 4L3

May 9, 2023

VOYAGO

In the presence of:

Per: _____
Name: _____
Title: _____

Signature: _____
Name: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the Corporation