

INSURANCE AND RISK MANAGEMENT SERVICE AGREEMENT

THIS AGREEMENT, made in duplicate, for **Insurance and Risk Management Services** as outlined in **Request for Proposals (“RFP”) COR-RFP-17-04** is effective as of the 28th day of February 2018

BETWEEN:

The Corporation of the County of Brant
 (“County”)

- and -

BFL CANADA Risk and Insurance Services Inc.
 (“BFL”)

WHEREAS, the County issued a Request for Proposals for Insurance and Risk Management Services COR-RFP-17-04 (the “RFP”) on November 13, 2017;

AND WHEREAS BFL submitted a proposal (the “proposal”) in response to the RFP;

AND WHEREAS the Council of the Corporation of the County of Brant approved an award of the RFP to BFL;

AND WHEREAS in accordance with the terms and conditions contained within the RFP, the parties wish to enter into a contract for the services as set out in BFL’s proposal;

NOW THEREFORE in consideration of their respective agreements set out below, the parties covenant and agree as follows:

ARTICLE 1 – DEFINITIONS

In this Agreement, the following words and phrases have the following meanings:

“**Insurance Premium**” means the Premium as set out in Appendix B of this agreement and any subsequent extensions to this agreement;

“**Term**” means the period of time from the effective date first above written, up to and including the later of:

- (a) August 30, 2019, or,
- (b) the Expiry Date of any extension to this Agreement;

ARTICLE 2 - THE AGREEMENT

The General Conditions which are attached as Appendix A, apply to this Agreement.

ARTICLE 3 – REPRESENTATIVES FOR AGREEMENT

3.1 The BFL's representative for purposes of this Agreement shall be:

Sara Runnalls,
Vice President
Tel. 1-800-668-5901
Direct Line 416-849-3067 Cell 416-278-1142
srunnalls@bflcanada.ca

3.2 The County representative for purposes of this Agreement shall be:

Lynn Dale,
Director of Legal and Property Services
Tel. 519-449-2451 extension 2218
Cell 519-754-5268
lynn.dale@brant.ca

ARTICLE 4 - TERM OF AGREEMENT

4.1 This Agreement shall expire at the end of the Term. The County shall have the option to extend this Agreement for further policy periods until February 28, 2023, such extension to be upon the same terms, conditions and covenants contained in this Agreement, and subject to and with due consideration for premium increases which may apply, satisfactory performance and budget approval for each and every subsequent period. The option shall be exercisable by the County upon written notice to BFL setting forth the precise duration of the extension subsequent to receipt of the rates for renewal of the insurance policies. BFL shall deliver rates for the renewal of the insurance policies ninety (90) calendar days prior to the Expiry of the Term of the then current insurance policies.

ARTICLE 5 – SERVICES

5.1 BFL agrees to provide the services to the County as described in the RFP proposal. BFL shall begin providing these services to the County as of the effective date of this agreement.

ARTICLE 6 - RATES AND PAYMENT

6.1 The County shall pay BFL the Insurance Premium for the insurance coverage as set out in Appendix B.

6.2 BFL shall invoice the County for Insurance Premiums in advance of the policy term.

6.3 The payment terms are net thirty (30) days.

ARTICLE 7 - INSURANCE

- 7.1 BFL shall furnish a Certificate of Insurance to the County in accordance with the insurance requirements set out in the Appendix A of this Agreement.
- 7.2 BFL shall ensure that the County is named as an additional insured party under BFL's liability insurance policy put in effect and maintained pursuant to Appendix A.

ARTICLE 8 - NOTICES

- 8.1 Notices shall be in writing and shall be delivered by email, postage-prepaid envelope, personal delivery or facsimile and shall be addressed to, respectively, the County address to the attention of the County Representative and to the BFL address to the attention of the BFL Representative. The parties may change such addresses by notice in writing delivered to the other in accordance with this paragraph.
- 8.2 Notices shall be deemed to have been given:
- (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or,
 - (b) in the case of personal delivery, facsimile, or email, one (1) Business Day after such notice is sent in accordance with this paragraph.
- 8.3 In the event of a postal disruption, notices must be given by personal delivery or by facsimile or email. Unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this Article.

ARTICLE 9 –TERMINATION

9.1 Termination by Either Party

Upon giving BFL not less than sixty (60) days' prior written notice, the County may, at any time and without cause, cancel the Contract, in whole or in part. In the event of such cancellation, the County shall not incur any liability to BFL apart from the payment for the goods, material, articles, equipment, work or services that have been satisfactorily delivered or performed by BFL at the time of cancellation.

Failure of BFL to perform its obligations under the Agreement shall entitle the County to terminate the Agreement upon ten (10) days' written notice to BFL if a breach which is remediable is not rectified at that time. In the event of such termination, the County shall not incur any liability to BFL apart from the payment for the goods, material, articles, equipment, work or services that have been satisfactorily delivered or performed by BFL at the time of termination.

All rights and remedies of the County for any breach of BFL's obligations under the Agreement shall be cumulative and not exclusive or mutually exclusive alternatives and shall not be deemed to be in exclusion of any other rights or remedies available to the County under the contract or otherwise at law.

No delay or omission by the County in exercising any right or remedy shall operate as a waiver of them or of any other right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or any other right or remedy.

Notice to BFL of termination of the Contract shall not be construed as Notice of Cancellation to the Insurance Company which shall be governed by the Policy Conditions for giving such notice.

ARTICLE 10 - LEGAL RELATIONSHIP BETWEEN COUNTY AND BFL

10.1 BFL's Power to Contract

BFL represents and warrants that it has the full right and power and all necessary licences, authorizations and qualifications to enter into and perform its obligations under this Agreement and that it is not a party to any agreement with another Person which would in any way interfere with the rights of the County under this Contract.

10.2 Subcontracting or Assignment

BFL shall not subcontract or assign the whole or any part of this agreement without the prior written consent of the County. Such consent shall be at the sole discretion of the County and subject to the terms and conditions that may be imposed by the County.

10.3 Independent Contractor

This Agreement is for a particular and non-exclusive service. BFL shall have no power or authority to bind the County or to assume or create any obligation or responsibility, express or implied, on the County's behalf, or to hold itself out as an agent, employee or partner of the County. Nothing in the Agreement shall have the effect of creating an employment, partnership or institution relationship between the County and BFL. For the purposes of this paragraph, BFL includes any of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors.

ARTICLE 11 – GENERAL

11.1 Severability

If any term or condition of the Agreement, or the application thereof to the parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of the agreement, and the application of such term or condition to the parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

11.2 Changes By Written Amendment Only

Any changes to this Agreement shall be by written amendment signed by both parties. No changes shall be effective in the absence of such an amendment.

11.3 Laws and Regulations

This contract shall be governed by the laws and regulations of Ontario.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

THE CORPORATION OF THE COUNTY OF BRANT

(R.E.F.) Ron Eddy, Mayor

Heather Boyd, Clerk

I have authority to bind the Corporation

BFL CANADA Risk and Insurance Services Ltd.

Sara E. Runnalls, Vice President

Chris S. Sinardo, Vice President

I have the authority to bind the Corporation

APPENDIX A – GENERAL CONDITIONS

1. INDEMNIFICATION

BFL shall indemnify and save harmless the County, its elected officials, officers, employees and agents from and against any losses, liens, charges, claims, demands, suits, proceedings, recoveries and judgments (including legal fees and costs) arising from or related to the BFL's performance or non-performance of its obligations, including payment obligations to insurers and others and including breach of any confidentiality obligations under this Agreement.

2. INTELLECTUAL PROPERTY RIGHTS AND INDEMNIFICATION

BFL shall indemnify and save harmless the County, its elected officials, officers, employees and agents from and against any losses, liens, charges, claims, demands, suits, proceedings, recoveries and judgments (including legal fees and costs) arising from infringement, actual or alleged, by the Proposal, its use or misuse, or by any of the deliverables developed or provided or supplied under or used in connection with the Services (including the provision of the Services themselves), of any Canadian, American or other copyright, moral right, trade-mark, patent, trade secret or other thing with respect to which a right in the nature of intellectual/industrial property exists.

BFL shall pay all royalties and patent license fees required for the Services.

If the Services or any part thereof is in any action or proceedings held to constitute an infringement, BFL shall forthwith either secure for the County the right to continue using the Services or shall at the BFL's expense, replace the infringing items with non-infringing Services or modify them so that the Services no longer infringe.

3. INSURANCE

BFL shall purchase and maintain in force, at its own expense (including the payment of all deductibles) and for the duration of this Agreement, the following policies of insurance:

- 3.1** Commercial General Liability Insurance in the amount of at least \$5,000,000 Canadian Dollars per occurrence that protects BFL from all claims, demands, actions, causes of action that may be taken or made against the BFL, its employees or agents, for any loss of or damage to property, and personal injury, including bodily injury or death, that may arise with respect to the BFL's performance of Services. The Policy must also include contractual liability, non-owned automobile liability, products and completed operations coverage, employees as additional insured's, as well as a cross liability and severability of interests' clause.

This policy must provide the County with 30 days' notice of cancellation or material change and must include the County as an additional insured but only with respect of and during BFL's performance of its obligations pursuant to the Contract.

- 3.2** Professional Liability Insurance with limits of not less than \$5,000,000 Canadian Dollars per occurrence. The Policy may be subject to an aggregate limit, provided that the aggregate limit is not less than \$10,000,000 Canadian Dollars.

This policy must provide the County with a (30) days notice of cancellation or material change.

- 3.3** Any other insurance policy or confirmation of insurance coverage which may be required by the County, its Lenders or any other Interested Party identified by the County to be entitled to receive this information.
- 3.4** Workplace and Safety Insurance Clearance Certificate if applicable to any of the services performed by BFL.

4. DISPUTE RESOLUTION

In the event of a misunderstanding or dispute between BFL and the County concerning any aspect of the contract the parties agree that County does not waive its right to litigate the dispute within the period permitted under Ontario Law to bring such action, or to proceed in any other manner.

5. NON-WAIVER

No condoning, excusing or overlooking by the County of any default, breach or non-observance by BFL at any time or times in respect of any provision herein contained shall operate as a waiver of the County's right hereunder in respect of any continuing or subsequent default, breach or non-observance or so as to defeat or affect in any way the rights of BFL herein in respect of any such continuing or subsequent default or breach. No waiver shall be inferred from or implied by anything done or omitted by the County save only for an express waiver in writing. Any work completed by the County required by this agreement to be done by BFL, after reasonable notice, shall not relieve BFL of its obligations to do that work or to reimburse the County for its actual cost to the County of having done it, including an allowance for normal overheads.

6. RIGHT TO AUDIT

The County or anyone designated in writing by it may audit and inspect all financial and related records associated with the terms of the Contract including timesheets, accounts, records, receipts, vouchers, and other documents relating to the Services and shall have the right to make copies thereof and take extract therefrom. BFL shall make available all facilities, physical and otherwise, for such audits and inspections and shall furnish the County and its authorized representatives with all such information as it, or they, may

from time to time require with reference to such timesheets, accounts, records, receipts, vouchers, and other documents. BFL shall cause all such timesheets, accounts, records, receipts, vouchers, and other documents, as aforesaid, to be preserved and kept available for audits and inspection at any reasonable time, and from time to time, until the expiration of **five (5)** years from the later of:

- 6.1** the date of termination of BFL or cancellation of the Contract;
- 6.2** the date of completion of the Services hereunder; or
- 6.3** the expiration of such lesser or greater period of time as shall be approved in writing by the County.

7. EVALUATION OF PERFORMANCE

At any time during the course of, and completion of the Contract the County may complete an evaluation of BFL's performance, which may be made available to persons requesting County references for the Contract and also may be reviewed and may form part of the criteria when awarding future Proposals by the County.

BFL hereby authorizes the maintenance and release of this information.

8. NON-EXCLUSIVITY

The entry into a contract by the County shall not be a guarantee of exclusivity to BFL.