

FUNDING AGREEMENT

THIS AGREEMENT dated this ____ day of _____, 2021

BETWEEN:

THE CORPORATION OF THE CITY OF BRANTFORD

(hereinafter referred to as the “City”)

-and-

CORPORATION OF THE COUNTY OF BRANT – CAN WE HELP

(hereinafter referred to as the “Recipient”)

WHEREAS:

- A. City Council has endorsed the provision of funding to be contributed to projects in the community that support low-income individuals, children and/or families;
- B. The Recipient, a not-for-profit corporation, submitted an application for funding of the project set out in **Schedule “D”** to this Agreement (the “**Project**”);
- C. The Project qualifies for support and the Recipient is eligible for funding;
- D. The Parties wish to enter into an agreement regarding the terms and conditions governing the provision of funding for the Project, and they wish to formalize that agreement in writing; and
- E. The Parties acknowledge that while this Agreement will have retroactive effect, this Agreement reflects the Parties understanding for the Project, the Funding, and the terms and conditions related thereto as existed at the Effective Date, and is a formalization of their agreement at that time, not requiring new or additional consideration in addition to the warranties and covenants contained herein;

NOW THEREFORE THIS AGREEMENT WITNESSETH in consideration of the covenants, rights, and obligations as contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

Article 1 - INTERPRETATION

1.1. **Definitions** In this Agreement,

“**Agreement**” means this agreement;

“**Business Day**” means a day other than a Saturday, Sunday or any other day on which Brantford City Hall is not open for the transaction of domestic business during normal business hours;

“**City**” means The Corporation of the City of Brantford;

“**Effective Date**” means January 1, 2021;

“**Eligible Costs**” means the costs described in Article 4, incurred by the Recipient in carrying out the Project and does not include the portion of any cost of the Project in respect of which the Recipient has received funding, or is eligible to receive funding, from another source;

“**Execution Date**” means the date this Agreement is fully signed by both Parties;

“**Event of Default**” has the meaning ascribed to it in section 5.2;

“**Funding**” means monies which may be payable by the City to the Recipient pursuant to Section 2.1 of this Agreement;

“**Party**” means either the City or the Recipient and “**Parties**” means both of them;

“**Project**” means the Project as described in **Schedule “D”**;

“**Project Period**” has the meaning given to it in section 3.4;

“**Recipient**” means Corporation of the County of Brant – Can We Help;

“**Term**” means the period commencing on the Effective Date, and ending on the Termination Date;

“**Termination Date**” means December 31, 2021 or earlier termination in accordance with this Agreement;

- 1.2. **Including** Wherever the words “include”, “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation” and the words following “include”, “includes” or “including” are not considered to set forth an exhaustive list.
- 1.3. **Hereof** The words “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions are construed as referring to this Agreement in its entirety and not to any particular section or portion of it.
- 1.4. **Headings** The division of this Agreement into articles and sections, schedules, and other subdivisions are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The headings in the Agreement are not intended to be full or precise descriptions of the text to which they refer. Furthermore, unless something in the subject matter or context is inconsistent therewith, references herein to an article, section, subsection, paragraph, clause or schedule are to the applicable article, section, subsection, paragraph, clause or schedule of this Agreement.
- 1.5. **Singular, Gender** Words importing the singular number include the plural and *vice versa*. Words importing the masculine gender include the feminine and neuter genders, and words importing persons include firms and corporations and *vice versa*.
- 1.6. **Currency** Unless otherwise expressly specified, all dollar amounts in this Agreement, including the symbol “\$”, refer to Canadian currency.
- 1.7. **Recitals** The recitals in this Agreement are true and correct.
- 1.8. **Relationship** Nothing in this Agreement creates an employment relationship between the Parties and the Recipient is at all times an independent contractor. Furthermore, nothing contained in this Agreement constitutes or is deemed to create a partnership, joint venture or principal and agent relationship between the Recipient and the City.
- 1.9. **Jurisdiction** This Agreement and the rights of the Parties are governed by the laws of the Province of Ontario and the laws of Canada (excluding any conflict of law rule or principle of such laws that might refer such interpretation or enforcement to the laws of another jurisdiction). Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of Ontario with respect to any matter arising hereunder or relating hereto.
- 1.10. **No Contra Proferentem** The provisions of this Agreement have been mutually prepared by the Parties and each Party has had the opportunity to consider each and every term in this Agreement (which the Parties consider reasonable and valid) and to obtain

Independent Legal Advice. Should any aspect of this Agreement be brought before a judicial or quasi-judicial hearing, this Agreement will be read, reviewed, and interpreted without regard to *contra proferentem*, and that the rule *contra proferentem* does not apply with respect to the interpretation of this Agreement.

- 1.11. **Severability** If any covenant or obligation in this Agreement or the application thereof is to any extent be invalid or unenforceable, the remainder of this Agreement is not affected thereby and each covenant and obligation in this Agreement is separately valid and enforceable to the fullest extent permitted.
- 1.12. **Sole Agreement** This Agreement, including all schedule attached hereto, constitutes the entire agreement between the Parties with respect to the transactions contemplated and cancels and supersedes any prior understandings, agreements, negotiations and discussions, written or oral, between the Parties. Other than as expressly contained in this Agreement, the Parties are not bound by any representations, collateral agreements, warranties, terms, undertakings, understandings or conditions (whether express or implied), whether oral or written, as may be between them relating to the subject matter hereof.
- 1.13. **Amendment** This Agreement may not be amended, supplemented or otherwise modified in any respect except by written instrument executed by both Parties. Amendments to the budget in Schedule “A” may be made by written agreement between the parties, provided that the overall objectives of the Project as described in Schedule “A” are not thereby being altered.
- 1.14. **By Reference** All references to any document (including this Agreement) means such document, as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified, includes all schedules and exhibits attached thereto.
- 1.15. **Idem** Any reference in this Agreement to all or any part of any manual, statute, regulation, by-law or Council resolution, unless otherwise stated, is a reference to that manual, statute, regulation, by-law or Council resolution or the relevant part thereof, as amended, substituted, replaced or re-enacted from time to time.
- 1.16. **Conflict and Priority** In the case of conflict among any of the contract documents, such conflict will be resolved by the following priority of documents, where the higher document takes priority over a lower document;
- (a) This Agreement not including any schedules or documents incorporations by reference;
 - (b) Schedule A to this Agreement;
 - (c) Schedule B to this Agreement;
 - (d) Schedule C to this Agreement;
 - (e) Schedule D to this Agreement;
 - (f) Schedule E to this Agreement; and
 - (g) Schedule F to this Agreement
- 1.17. **Schedules** The following schedules form part of this Agreement:
- | | |
|---------------------|---------------------------------|
| Schedule “A” | Budget Request |
| Schedule “B” | Program Reporting |
| Schedule “C” | General Conditions |
| Schedule “D” | Funding Application |
| Schedule “E” | Quarterly Program Report |
| Schedule “F” | Monthly Emergency Meals Program |

Article 2 - FUNDING

- 2.1. **Funding** Subject to the terms and conditions of this Agreement, the City agrees to pay the following funding to the Recipient to be used towards the Eligible Costs of the Project of an amount not exceeding \$9,000 (the “**Funding**”).
- 2.2. **Time of Payment** The City will not release any portion of the Funding until (a) the Recipient has provided the City with the Budget Request, in the form of **Schedule “A”**; and (b) the Recipient complies with any other request of the City.
- 2.3. **Budget Change**. During the Project Period, the Recipient shall notify the City of any changes to the Project budget by submitting a new Budget Request, in the form of **Schedule “A”**. Any change to the budget will not increase the Funding.
- 2.4. **Funding from Other Sources** At all times during the Project Period, the Recipient must inform the City promptly, in writing, of any additional revenue to be received for the Project other than those listed in “**Schedule A**”.
- 2.5. **Funding Reduction** Where the Recipient receives any additional revenue, other than that referred to in section 2.4, the City may, in its discretion, reduce its Funding by such amount as it considers appropriate, up to the amount of the additional assistance received, or if the City’s Funding has already been paid, require repayment of such amount. Upon receipt of notice to repay under this section, the Recipient agrees to forthwith repay the amount as a debt due to the City.
- 2.6. **Statement re: Funding** Upon the request of the City, the Recipient shall provide the City with a statement, signed by a senior official of the Recipient, certifying the amounts of revenues for the Project actually received from other sources.
- 2.7. **Financial Information** The Recipient will provide such other financial information pertaining to the Project, as may be requested by the City.
- 2.8. **Appropriations** The disbursement of the Funding by the City is subject to the necessary appropriations from the Federal Parliament, the Provincial Legislature or the City, as the case may be. The City shall not have any liability in the event the respective appropriations are insufficient to meet the funding obligations under this Agreement.
- 2.9. **Insufficient Appropriations** In the event that the City cancels the Funding or reduces the level of Funding for the Project for any calendar year or for any Project Period in which payment is to be made under the Agreement, the City may terminate the Agreement in accordance with the termination provisions of the Agreement or reduce the amount of its Funding payable under the Agreement in that Project Period in its sole discretion. If the City terminates the Agreement or reduces the amount of Funding, the Recipient shall have no claims against the City for any funding, compensation, penalty or liability on the part of the City.
- 2.10. **Notice of Insufficient Appropriations** Where the City intends to reduce the amount of its Funding under the Agreement, it shall give the Recipient notice of its intention to do so. Where, as a result of reduction in Funding, the Recipient is unable or unwilling to complete the Project, the Recipient may, upon notice to the City, terminate this Agreement, in accordance with the terms of this Agreement.

Article 3 - RECIPIENT OBLIGATIONS

- 3.1. **Obligation** The Recipient will comply with all terms and conditions contained in the Schedules attached hereto.
- 3.2. **Project Completion** The Recipient shall carry out the Project in accordance with **Schedule “D”** and this Agreement in a diligent, professional and business-like manner using qualified personnel and/or firms. The Recipient will complete Schedules A, E & F

as outlined and submit to the City, in accordance with Schedule B Reporting Requirements. The Recipient understands that the information provided in these completed Schedules is for the purposes of informing the City of the Recipient's program outcomes.

- 3.3. **Project Change** The Recipient shall not, without the prior written consent of the City, alter the scope or timing of the Project or permit or cause any material change to the Project.
- 3.4. **Project Period** The Project Period shall commence by January 1, 2021 and shall end by December 31, 2021.
- 3.5. **Change affecting Project** The Recipient shall disclose to the City, without delay, any fact or event that the Recipient is aware of from time to time, which may compromise or affect the Recipient's chances of success in carrying out the Project to completion, whether or not such fact or event affects the Project immediately or in the long term.
- 3.6. **Environmental Protection** The Recipient shall maintain and implement any and all environmental protection measures for ensuring that the harm to the environment resulting from the Project activities, if any, will remain minimal and that the Recipient will comply with all applicable environmental standards and rules established by competent or governing authorities.
- 3.7. **Proof of Compliance** Upon written request of the City, the Recipient shall produce any certificates, licenses, or other authorizations required, in respect of the environmental standards or rules relating to environmental protection, for carrying out the Project.
- 3.8. **Term of Contracts** The Recipient shall negotiate all contracts related to the Project, including subcontracts and employment contracts, on terms that will enable the Recipient to cancel same upon conditions and terms which will minimize, to the extent possible their cancellation costs in the event of a termination of this Agreement.

Article 4 - ELIGIBLE COSTS

- 4.1. **Eligible Costs** Costs are Eligible Costs only if they are, in the opinion of the City,
 - (a) directly related to Project activities; and
 - (b) reasonable.
- 4.2. **Value of Costs** Costs of all goods and services acquired from businesses that are, in the opinion of the City, related, associated or affiliated with the Recipient shall be valued at the cost to the supplying entity. The Eligible Costs of these acquisitions shall not include any mark up for profit and shall not exceed fair market value. The Recipient shall ensure that the City has access to the relevant records of the supplying entity for the purpose of verifying the amount of the cost claimed by the Recipient. The City is not obligated to consider the eligibility of any such cost unless access to such records is provided, if requested.

Article 5 - EARLY TERMINATION & EVENT OF DEFAULT

- 5.1. **Early Termination** Either Party may terminate this Agreement at any time during the Term, without cause, upon not less than three (3) months written notice of intention to terminate.
- 5.2. **Event of Default** An "Event of Default" constitutes any one or more of the following:
 - a. the Recipient becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, assignment or arrangement with its creditors, or any steps are taken or proceedings commenced by any person for the dissolution, winding-up or other termination of the Services Provider's existence or the liquidation of its assets;

- b. a trustee, receiver, receiver/manager, or a person acting in a similar capacity is appointed with respect to the business or assets of the Recipient;
- c. the Recipient ceases to operate;
- d. the Recipient makes an assignment or other transfer of rights under this Agreement other than in accordance with the provisions of this Agreement;
- e. the Recipient fails to observe or perform any of the terms, covenants or conditions of this Agreement;
- f. the Recipient, in support of its application for the contribution or in connection with this Agreement, has made false or misleading representations or statements, or provided false or misleading information to the City;
- g. in the opinion of the City, the Recipient has failed to proceed diligently with the Project including, but not limited to, failure to meet deadlines or milestones stipulated in this Agreement except where such failure is due to causes which, in the opinion of the City, are beyond the control of the Recipient; or
- h. in the opinion of the City, there is a material adverse change in risk in the Recipient's ability to carry out its roles and responsibilities under this Agreement.

5.3. **Remedies** If an Event of Default occurs and has not been remedied within 15 days of written notice of default, or such longer period as the City may allow, then the City has the following rights and remedies which are cumulative, not alternative, and do not exclude any other or additional rights and remedies available to the City by statute or common law.:

- a. to terminate this Agreement upon written notice, and in such case the City has no obligation to pay any sums to the Recipient whether in equity or otherwise;
- b. to remedy or attempt to remedy any default under this Agreement, and the Recipient will pay to the City all expenses incurred by it in connection therewith; and
- c. to recover from the Recipient all damages, costs and expenses, including legal costs on a complete indemnity basis, as a result of the Event of Default.

5.4. **Costs** The Recipient will pay to the City all damages, costs and expenses (including all legal fees and costs on a complete indemnity basis) incurred by the City in enforcing the terms of this Agreement, or with respect to any matter or thing which is the obligation of the Recipient under this Agreement, or in respect of which the Recipient has agreed to insure or to indemnify the City. The Recipient expressly acknowledges that notwithstanding anything to the contrary, the City is not obligated to mitigate its damages, and that the Recipient is hereby estopped from making any such claim.

5.5. **Failure to Comply with Other Agreements** If the Recipient:

- (a) has failed to comply with any term, condition or obligation under any other agreement with the City ("Failure");
- (b) has, if applicable, failed to rectify such Failure in accordance with the requirements of such other agreement; and
- (c) such Failure is continuing,

Then such Failure is deemed an Event of Default under this Agreement and the City may, at any time, take one or more of the actions or seek any remedy available to the City under this Agreement.

5.6. **Public Monies** The Recipient acknowledges the policy objectives served by the City's agreement to provide Funding hereunder, and that the Funding comes from public monies, and that the amount of damages sustained by the City in an Event of Default is difficult to ascertain and therefore, that it is fair and reasonable that the City be entitled to exercise any or all of the remedies, provided for in this Agreement and to do so in the manner provided for in this Agreement, if an Event of Default occurs.

5.7. **Upon Termination** In the event of a termination by either Party, without cause, and subject to appropriations and other rights available to the City:

- (a) the Recipient shall make no further commitments in relation to the Project and shall cancel or otherwise reduce, to the extent possible, the amount of any outstanding commitments in relation thereto;

- (b) all Eligible Costs incurred by the Recipient up to the date of termination, not exceeding the maximum amount of the City's Funding payable under this Agreement, will be paid by the City;
- (c) the Recipient's costs of, and incidental to, the cancellation of obligations incurred by it as a consequence of the termination of the Agreement may be an Eligible Cost, provided that payment and reimbursement under this paragraph shall only be made to the extent that it is established to the satisfaction of the City that (i) the Termination is not the result of an Event of Default; (ii) the costs mentioned were actually incurred by the Recipient and the same are reasonable and properly attributable to the termination of the Agreement; and (iii) the Recipient did everything reasonably possible to minimize and reduce the costs; and
- (d) the amount of any Funding which remains unspent shall be promptly repaid to the City.

Article 6 - INSURANCE & INDEMNITY

- 6.1. **Insurance for benefit of Recipient** The Recipient shall protect itself from and against all claims for or involving bodily injury (including personal injury), death, or property damage that might arise from anything done or omitted by the Recipient or by any person acting in any capacity for it or on its behalf pursuant to this Agreement. Notwithstanding the foregoing, it is the Recipient's sole responsibility to determine the nature and extent of insurance coverage, if any, is necessary or advisable for its own protection. The City makes no representation or warranty as to the nature or extent of insurance that the Recipient may require to provide itself with such protection, and any requirement for insurance contained in this Agreement does not constitute any such representation or warranty.
- 6.2. The Recipient shall obtain and maintain insurance coverage satisfactory to the City throughout the Term as follows:
- (a) A standard Workplace Safety and Insurance Board policy as evidenced by a clearance certificate or an Employer's general public liability policy on all of its employees, unless the City waives this requirement in writing;
 - (b) *(Where the Project provides for or contemplates the use of a motor vehicle)* A Standard Form automobile liability policy that complies with the current legislation of the Province of Ontario covering bodily injury liability and property damage. The policy shall protect the Recipient against all liability arising out of the use of owned or leased automobiles, both passenger and commercial, used by the Recipient, its employees or agents. The limits of the liability under this insurance policy shall not be less than two million dollars (\$2,000,000.00) per occurrence;
 - (c) A commercial general public liability policy providing coverage for third party bodily and personal injury liability, and property damage claims, on an occurrence basis, and shall include Products and Completed Operations, Contractor Liability and Cross Liability. The City shall be added as "additional insured". The limits of the liability under the commercial general liability insurance shall be two million dollars (\$2,000,000.00) per occurrence;
 - (d) Non-owned Automobile Liability insurance in standard form having an inclusive limit of not less than two million dollars (\$2,000,000.00) per occurrence or such greater amount as the City may from time to time request, in respect of vehicles not owned by the Recipient, that are used or operated on its behalf for the provision of services under the contract; and
 - (e) A Broad Form property insurance policy on the property, against loss or damage by all perils, on a full replacement cost basis without depreciation, or coverage limitations, including costs associated with by-law improvements and such other coverage as the City may require from time to time in reasonable amounts that a prudent Recipient would maintain, having regard to age, size and location of the property.
- 6.3. **No Alteration** Coverage provided by each of the policies required hereunder shall not be altered or amended in any way or cancelled by the Recipient, until thirty (30) days after

written notice of such change or cancellation has been delivered to the City, and a clause so indicating shall be included on any insurance certificate required by the City.

- 6.4. **No Impact** The Recipient shall not undertake the Project, nor permit any activity to take place in connection with Project which would in any way affect the insurance coverage required hereunder.
- 6.5. **Proof of Insurance** The Recipient shall provide the City with a certificate of insurance showing all lines of coverage as required hereunder on the Execution Date and on each anniversary date of the Execution Date throughout the Term. All certificates must be to the satisfaction of the City. Additionally, the Recipient shall submit to the City such further proof of insurance as may be requested by the City, from time to time.
- 6.6. **Indemnity** The Recipient will, at all times, defend, indemnify and save harmless the City, its elected officials, officers, employees and agents, from and against all claims, losses, damages, costs, charges, fees, expenses and other actions of every kind or nature whatsoever made, sustained, brought, threatened to be brought or prosecuted, in any manner based upon, occasioned by or attributable to any injury or death of a person, or any kind of loss or damage to property caused, alleged to be caused, or suffered as a result of this Agreement, the performance of the Project or any part thereof, the negligence of the Recipient or those for whom it is at law responsible for, or any act or omission by the Recipient and those for whom it is at law responsible for, including volunteers, except that the City shall not claim indemnity under this section to the extent that the injury, loss or damage has been solely caused by the negligence of the City.

Article 7 - CONFIDENTIALITY

- 7.1. **Confidentiality** The Recipient and its employees, servants, agents, volunteers, or others for whom it may be responsible at law, may or will be made party to confidential information. The Recipient is responsible for the maintenance of confidentiality at all times, and bears responsibility for any breach of confidentiality under this Agreement. The Recipient specifically acknowledges and agrees that it will:
- a. hold all information provided to it by the City in the strictest of confidence and will take all steps necessary to maintain the confidentiality of the information;
 - b. only use the information provided for the purposes of completion and execution of the Project;
 - c. not share, reproduce, sell, disclose, distribute or otherwise provide or permit access to the information to any party not requiring such access for the purposes of completing the Project; and
 - d. return or destroy, upon completion of the Project, or the Project Period, whichever if first occurring, all information provided to the Recipient by the City.
- 7.2. **MFIPPA** The City is subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56 (“MFIPPA”) with respect to, and the protection of, information under its custody and control. Personal information is collected pursuant to section 28(2) and 29 (2) of MFIPPA, section 2,4,8,9 and 10 of the Municipal Act, 2001 and may be used for (i) administration of this Agreement; (ii) to contact the Recipient; (iii) City’s insurance purposes (including defense of claims); (iv) the collation of group and meta data; (v) assessment of the program generally (including but not limited to the Recipient’s Services); (vi) as otherwise permitted or required by law. If you have questions regarding the collection, use or disclosure of personal information collected under or pursuant to this Agreement, please contact the Director, Corporate Initiatives & Community Strategies, at the contact information set out in section 9.2.

Article 8 - WARRANTY OF AUTHORITY

- 8.1. **Warranty** The Recipient warrants that its representative who sign this Agreement on behalf of the Recipient has the authority to sign the Agreement, and agrees to provide the City with such evidence of that authorization as the City may reasonably require.

- 8.2. **Liability of Signatories** If the Recipient is an unincorporated organization, it is understood and agreed by the persons signing this Agreement on behalf of the Recipient that, in signing this Agreement in their capacity of representatives of the Recipient, they shall be personally, jointly and severally liable for all obligations of the Recipient under this Agreement, including payment of any debt that may become owed to the City.

Article 9 - NOTICE

- 9.1. **Notice** Whenever notice is required to be given, such notice must be in writing and delivered personally, mailed by prepaid mail, sent by facsimile or by email. A notice or other document so sent is deemed to have been given,
- a. if delivered personally, on the date of such delivery and receipt;
 - b. if transmitted by facsimile or by email, on the Business Day following the day of sending such notice or document; and
 - c. if mailed, on the fifth (5th) Business Day following the day such notice or document was deposited in a post office or public letter box.

- 9.2. **City Contact** Where notice is to be provided to the City, such notice will be provided,

*In the case of a notice of claim,
which must be delivered personally*
The Corporation of the City of Brantford

City Hall, 100 Wellington Square
Brantford, ON N3T 2M2

Attention: City Clerk

In all other cases:

The Corporation of the City of Brantford
Community Services and Social
Development
220 Colborne St
Brantford, ON N3T 5R7

**Attention: Director, Community
Programs and Social Development**

- 9.3. **Recipient Contact** Where notice is to be provided to the Recipient, such notice will be delivered to:

The Corporation of the County of Brant – Can We Help
15 Curtis Ave. N.,
Paris, ON N3L 3W1
Attention: Stacey Ellins

- 9.4. **Contact Change** Either Party may change their contact information, from time to time, by written notice given to the other Party in accordance with this Article 9, and upon receipt of such notice, the Party receiving such information will thereafter rely on that contact information as if it has been inserted in sections 9.2 or 9.3 hereof, as the case may be.

Article 10 - GENERAL

- 10.1. **Severability** If any provision in this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability attaches only to such provision and every other provision in this Agreement continues in full force and effect.
- 10.2. **Dispute Resolution** The City and the Recipient agree that alternate dispute resolution processes such as mediation, appointment of a neutral third party evaluator or arbitration may be preferable to litigation as a way to resolve disputes that may arise under this Agreement and they agree to give good faith consideration to having resort to an alternate dispute resolution process before initiating legal or other proceedings to deal with any such disputes. Nothing contained in this section shall affect, alter or modify the rights of the City under the Event of Default provisions of this Agreement.
- 10.3. **Successors and Assigns** This Agreement and everything in it is binding upon and ensures to the benefit of and is binding on the Parties, and their respective successors, heirs, administrators, executors, legal representatives, and permitted assigns. Neither

party may assign, transfer or otherwise dispose of all or any part of its rights or obligations under this Agreement without the prior written consent of the other Party, which may be unreasonably or arbitrarily withheld.

- 10.4. **Waiver** Except as expressly provided in this Agreement, 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, signed by the party giving it, and delivered in accordance with Article 9 (Notice), and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of a party 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 such right shall preclude any other or further exercise of such right or the exercise of any other right.
- 10.5. **Further Assurance** Each Party will from time to time execute and deliver or cause to be executed and delivered all such further acts and things as the other Party may, from time to time, reasonably require as being necessary or desirable in order to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement or any provision hereof.
- 10.6. **Compliance with Laws** The Parties will promptly comply with all laws, ordinances and lawful orders and regulations issued by any federal, provincial, municipal or other agency having jurisdiction, including but not limited to obtaining any and all applicable licenses or permits. The Parties will not perform any acts or carry out any practices which injure or damage persons or property, or that are a nuisance or a menace to others.
- 10.7. **Conflict of Interest** The Recipient declares that it does not have any conflict of interest, whether actual or potential, arising out of this Agreement; and further, the Recipient covenants to disclose any conflict of interest, actual or potential, arising during the currency of this Agreement.
- 10.8. **Counterparts** This Agreement may be executed in one or more counterparts, each of which is deemed to be an original and both of which together constitutes one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page to the other Party by facsimile transmission and such transmission constitutes delivery of an executed copy of this Agreement to the receiving Party as of the date of receipt thereof by the receiving Party or such later date as may be specified by the sending Party as part of such transmission. Notwithstanding the foregoing, either Party may demand a fully executed single copy of this Agreement.
- 10.9. **Time** Time is of the essence.
- 10.10. **Force Majeure** Notwithstanding any other provision of this Agreement, in the event that either the City or the Recipient is delayed, hindered, or prevented from the performance of any act required hereunder, by reason of any unavoidable delay, including strikes, lockouts, unavailability of materials, inclement weather, acts of God or any other cause beyond its reasonable care and control, but not including insolvency or lack of funds, then performance of such act is postponed for a period of time equivalent to the time lost by reason of such delay, and the Term of this Agreement is also extended for a period of time equivalent to the time lost by reason of such delay.
- 10.11. **City Discretion** Nothing contained in this Agreement and no decision made or action taken by the City pursuant to this Agreement in any manner limits or restricts the normal exercise of discretion by various municipal departments and officials in the City pursuant to any statute, by-law or regulation, and nothing contained in this Agreement requires any such municipal department or official(s) acting pursuant to such statute, by-law or regulation to give his, her or its approval in respect of any matter, notwithstanding any provision of this Agreement or any consent, approval or other action of the City made pursuant to this Agreement.

10.12. **Survival** Sections 6.2 (Insurance), 6.6 (Indemnity), 7.1 (Confidentiality), and Articles 5 (Default and Remedies) and 8 (Warranty), and Section 2.2 of Schedule C (Audit) survive termination of this Agreement.

IN WITNESS WHEREOF The Corporation of the City of Brantford has hereunto caused its corporate seal to be affixed and attested to by the hands of its signing officers in that behalf duly authorized and the Recipient has hereunto set his hands and seal, at the times and places indicated.

IN WITNESS WHEREOF the parties hereby agree to the Agreement.

Signed this _____ of _____ 2021.

AUTHORIZED REPRESENTATIVE OF AGENCY:

Signature

Print Name

Witness:

Signature

Print Name

THE CORPORATION OF THE CITY OF BRANTFORD

Per: _____