

**THIS AGREEMENT** made in triplicate this \_\_\_\_ day of \_\_\_\_\_, 2021

**B E T W E E N:**

**THE CORPORATION OF THE CITY OF BRANTFORD**  
(the “City”)

-and-

**THE CORPORATION OF THE COUNTY OF BRANT**  
(the “County”)

**WHEREAS**, pursuant to the Transfer Agreement, the City is responsible for court administration for proceedings commenced under Parts I, II and III of the Act; and the prosecution of proceedings commenced under Part I and Part II of the Act, subject to exceptions as set out in the Transfer Agreement, for the Court Service Area (as defined in the Transfer Agreement), which includes the geographic areas of the City and the County;

**AND WHEREAS** section 5.3.5 of the Transfer Agreement requires an inter-municipal service agreement with all serviced municipalities which includes obligations and arrangements regarding court administration, court support, prosecutions, reporting, revenue-sharing and local dispute resolution;

**AND WHEREAS** the City and the County are parties to a cost-sharing agreement governing various “county-wide” services, which is undated, but from the year 2002 (“**Cost-Sharing Agreement**”), which among other matters addresses the operation of the Provincial Offences Court and prosecutions as outlined in section 14 thereof;

**AND WHEREAS** the City and the County are parties to a services agreement governing the provision of prosecutorial services by the City to the County, dated July 16<sup>th</sup>, 2002 (“**Services Agreement**”)

**AND WHEREAS** City Council and County Council desire to terminate such portions of the Cost-Sharing Agreement and the Services Agreement; and to enter into an agreement governing the management and operation of court administration, the provision of prosecutorial services, reporting, revenue-sharing, local dispute resolution and to apportion costs for such services;

**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,

“**Act**” means the *Provincial Offences Act*, R.S.O. 1990, c.P.33, as amended or replaced from time to time;

“**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;

“**Collected Fines**” means the amount of Fines collected by the City;

“**Confidential Information**” means non-public information or data that one Party makes available or has previously made available to the other Party in oral, written, graphic or machine readable format, in connection with this Agreement, and includes all information of any type, scope or subject matter whatsoever related to a Party’s financial data, business, plans and strategies, enforcement, (including but not limited to reports, letters, drawings, manuals, specifications, designs, documents, records, notebooks and similar records of information relating to the enforcement of any matter), or any Personal Information; but does not include information that (a) has entered the public domain through no action or failure to act by the receiving Party; (b) was already in or comes into the lawful possession of the receiving Party from a third party; (c) was created by the other Party; or (d) subsequent disclosure is ordered to be or otherwise required to be disclosed by a court of law, government body or by legislation, provided that the owner of the Confidential Information is given notice with a reasonable opportunity to intervene;

“**Cost-Sharing Agreement**” has the meaning ascribed to it in the preamble;

“**Council**” means one or both of City Council and County Council, as the context requires;

“**County**” means The Corporation of the County of Brant;

“**Fines**” means:

- (a) The amount of any fine owing by a third party that was imposed for a contravention of a County or City by-law;
- (b) The amount of any fine owing by a third that was imposed for a contravention of a provincial statute that is payable to the County, the City, or Six Nations; and
- (c) The amount of any allowance retained by the City under clause 20(1)(g) of the Act.

**“Court Administration Services”** the services as described in Article 3;

**“Director”** means the City’s City Solicitor/Director of Legal and Real Estate Services;

**“Effective Date”** means the Execution Date;

**“Costs”** means the total sum of all costs associated with the provision by the City of the Court Administration Services and the Prosecution Services which includes but is not limited to personnel, salaries and benefits, facilities, equipment, administration, operations, disbursements, third party costs, or any other matter, thing, or service.

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

**“Initial Term”** has the meaning ascribed to it in section 2.1;

**“Local Side Agreement” or “LSA”** means the local side agreement between the City and Her Majesty the Queen in right of Ontario, as represented by the Attorney General (“LSA”), fully executed on August 8, 2000, a copy of which has been provided to the County;

**“Memorandum of Understanding” or “MOU”** means the memorandum of understanding between the City and Her Majesty the Queen in right of Ontario, as represented by the Attorney General, fully executed on February 10, 2000, and its schedules, a copy of which has been provided to the County;

**“Operational Standards”** means the operational standards for Court Administration Services as set out in Schedule “A”;

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

**“Personal Information”** means any personal information as defined by the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56;

**“Prosecution Services”** means the services as described in Article 4;

**“Prosecutorial Standards”** means the prosecutorial standards set out in Schedule “B”;

**“Services”** means the Prosecution Services, and the Court Administration Services;

**“Services Agreement”** has the meaning ascribed to it in the preamble;

**“Six Nations”** means Six Nations of the Grand River;

**“Term”** has the meaning ascribed to it in section 2.1;

**“Transfer Agreement”** means the Memorandum of Understanding and the Local Side 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, and form part of this Agreement.
- 1.8. **Relationship** Nothing in this Agreement creates an employment relationship between the Parties. The Parties are at all times to be considered independent contractors. Furthermore, nothing contained in this Agreement constitutes or is deemed to create a partnership, joint venture or principal and agent relationship between the City and the County.
- 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 deemed to 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 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).
- 1.13. **Amendment** This Agreement may not be amended, supplemented or otherwise modified in any respect except by written instrument executed by both Parties.
- 1.14. **By Reference** All references to any document (including this Agreement) mean 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** Nothing contained in this Agreement will require the City to perform any act which would be in contravention of legislation, regulation, provincial requirement or the Transfer Agreement.
- 1.17. **Schedules** The following schedules form part of this Agreement:

<b>Schedule “A”</b>	Operational Standards
<b>Schedule “B”</b>	Prosecutorial Standards
<b>Schedule “C”</b>	Costs

## **Article 2 - TERM, TERMINATION, and AMENDMENT OF PRIOR AGREEMENTS**

- 2.1. **Term** The term of this Agreement shall commence on the Effective Date and run for a minimum period of five years (“**Initial Term**”) and thereafter, this Agreement shall be a continuing agreement and shall not terminate on the mere passage of time, but may be terminated by either Party at any time after the expiration of the Initial Term by providing

a written notice of termination. Such notice of termination shall identify a termination date which is at least 180 from delivery of such notice.

- 2.2. **Termination as a result of Breach** Notwithstanding section 2.1, where a Party is in breach of this Agreement, the other Party may terminate this Agreement upon at least 30 days written notice of their intention to terminate this Agreement, provided that: (i) such written notice identifies the breach and remedial action that would be necessary to resolve the breach; and (ii) does not take effect unless the breach is not remedied within the 30 day period.
- 2.3. **Upon Termination** Upon termination of this Agreement:
  - (a) The City shall provide the County with reasonable access to any property, as may be reasonably requested, including, but not limited to, systems, records, data, information and material in the possession or control of, or owned by the City as may be required to ensure the continued effective administration and delivery of the Services to each of the areas within the City's and County's boundaries; and
  - (b) the Parties will work collaboratively together to transition the Services to a delivery model where each municipality provides the Services to the residents under their individual jurisdictions, and to resolve any and all outstanding matters including financial matters.In the event of a dispute between the parties in respect to matters arising from the termination of this Agreement, then Article 8 of this Agreement applies.
- 2.4. **Significant Change Review** In the event of a significant change to the Services, either Party may request a review of this Agreement. A significant change may include, but is not limited to (a) a change in legislation, regulation, or direction of the Province; (b) an increased download of responsibility by the Province, such as a download of prosecutions under Part III of the *Act*; (c) the creation of an administrative monetary penalty system (AMPS) by either Party; or (e) an amendment to the MOU or LSA. In the event of a review, should the Parties be unable to reach a mutually agreeable resolution, then either Party may terminate this Agreement, upon sixty days written notice.
- 2.5. **Amendment of Cost-Sharing Agreement** The Cost-Sharing Agreement is hereby amended by deleting sections 1(j) and 14 thereof in its entirety.
- 2.6. **Termination of Services Agreement** The Services Agreement is terminated effective as of the Effective Date.

### **Article 3 - COURT ADMINISTRATION SERVICES**

- 3.1. **Court Administration Services** The City shall, in accordance with the Operational Standards and all legislative and regulatory requirements provide court administration and court support functions with respect to proceedings under Parts I, II, and III of the *Act*, save and except (a) if the proceeding is against a young person as defined in the *Act*; (b) criminal proceedings have also been commenced in relation to the same circumstances; or (c) the defendant who is charged with a criminal offence pleads guilty to a substituted

provincial offence or a substituted offence that has been designated as a contravention under the *Contraventions Act (Canada)*.

- 3.2. **Guiding Principles** In providing the Court Administration Services, the City will adhere to the following guiding principles:
  - (a) The independence of the judiciary shall be preserved;
  - (b) The confidence of the public in the justice system must be maintained through every effort by all parties; and to this end, open access to the system and a fair and timely process must be assured;
  - (c) The fundamental tenets of procedural fairness and natural justice shall be affirmed and upheld; and
  - (d) The separation of the prosecutorial function and the policing function shall be assured.
- 3.3. **Provincial Requirements** The Court Administration Services will be provided in accordance with all provincial requirements, including the *Act*, all other relevant legislation and regulations and the terms and conditions of the Transfer Agreement.
- 3.4. **French Language** The court system provided as part of the Court Administration Services will be an officially bilingual court system in Ontario, as prescribed by the *Courts of Justice Act*, R.S.O. 1990, c. C.43, including the provision of a prosecutor who speaks French and English when a bilingual trial is requested on a charge that is covered by the Transfer Agreement and including out-of-court services in the French language.
- 3.5. **Independence** The Court Administration Services will operate independently and free from political intervention.
- 3.6. **Consultation** The City will consult with the Attorney General, and such other interested parties as the Attorney General may direct, with regard to changes in procedural guidelines; prosecutorial, court administration or court support processes; and changes to case management procedures and court master plans, it being understood that any changes to case management procedures and court master plans are subject to the approval of the judiciary.
- 3.7. **Complaints Process** The City will establish, from time to time, and maintain a process for dealing with complaints to ensure expeditious and effective resolution of day-to-day issues.
- 3.8. **Statistical Data** The City shall use its best efforts to ensure the accuracy and availability of the following data, for matters subject to the Court Administration Services:
  - (a) Number of charges received, by case number and statute, subdivided into Parts I, II and III of the *Act*;
  - (b) Number of charges disposed and their dispositions;
  - (c) Number of charges sentenced with sentence types;
  - (d) Number of trial requests, including requests for French trials;
  - (e) Courtroom utilization by person type and session type;
  - (f) Average time from service date to trial;

- (g) Number of appeals and their dispositions;
  - (h) Number of charges pending, with future court date;
  - (i) Incidence of error in data transmission to provincial ministries;
  - (j) Changes to court master plans;
  - (k) Number of charges received with or without completion date; and
  - (l) Any other data necessary to meet the provincial reporting requirements.
- 3.9. **Operational Data** The City will keep an accurate record, and provide to the County, upon request, a report, of the incidence and manner of resolution of the following:
- (a) Disputes and complaints and their source, including any matter that proceeds through the dispute resolution process;
  - (b) Conflicts of interest;
  - (c) Breaches of ethics or law in the performance of functions under this Agreement; and
  - (d) Financial or administrative irregularities.
- 3.10. **Accounts** The City shall, during the Term, and for four years following the termination, expiry or revocation of this Agreement, maintain detailed and accurate accounts, records, books and data of all financial transactions undertaken by it pursuant to this Agreement, prepared in accordance with the generally accepted accounting principles.
- 3.11. **Financial Controls** The City will ensure that there are adequate financial controls in place at the City's premises, and for greater certainty, shall use its best efforts to ensure the protection of the accuracy, completeness and auditability of all financial data, the segregation of responsibilities in the accounting function, and shall institute adequate management controls.
- 3.12. **Reporting** The City shall maintain accurate accounting and reconciliation records including data on the amount of revenue collected and the amount outstanding and shall prepare and submit semi-annual reports to the County in respect of such matters. The City shall also prepare an annual report in respect of the performance of its obligations under this Agreement and provide it to the County within 90 days of December 31<sup>st</sup> in each year that this Agreement remains in place.
- 3.13. **Collection** The City will collect fines, fees, costs and surcharges and enforce their payment on behalf of the City and the County, pursuant to subsections 165(1) and (2) of the *Act* in accordance with the *Act*, related regulations and any other enforcement proceedings authorized by law.

#### **Article 4 - PROSECUTION SERVICES**

- 4.1. **Prosecution Services** The City will, in accordance with the Prosecutorial Standards, prosecute, and take such steps as are reasonably necessary to prosecute, the following matters on behalf of the County:
- (a) Matters in respect of alleged infractions of Brant County by-laws, including the Parking by-law and the Animal Control by-law;
  - (b) Matters in respect of alleged infractions of the *Building Code Act* in Brant County;

- (c) Matters in respect of alleged infractions of the *Planning Act* in Brant County insofar as the same relate to alleged breaches of the County zoning by-laws;
- (d) Matters in respect of alleged the *Fire Protection and Prevention Act* violations; and
- (e) To the extent that the same are not performed by the Crown Attorney, matters in respect of alleged infractions which result in charges under Part I or Part III of the Act, which may include:
  - (i) Alleged violations under the *Trespass to Property Act*, R.S.O. 1990, c.T.21;
  - (ii) Alleged violations under the *Liquor Control Act*, R.S.O. 1990, c.L.18;
  - (iii) Alleged violations under the *Highway Traffic Act*, R.S.O. 1990, c.H.8;
  - (iv) Alleged violations under the *Safe Streets Act*, 1990, S.O. 1999, c.8;
  - (v) Alleged violations under the *Smoke Free Ontario Act, 2017*, S.O. 2002, c.8, Sched. K;
  - (vi) Alleged violations under the *Cannabis Control Act, 2017*, S.O. 2017, c.26, Schedule 1; and
  - (vii) Alleged violations under the *Cannabis Licence Act, 2018*, S.O. 2018, c.12, Sched 2.

4.2. **Exception to Prosecution Services** Notwithstanding anything contained herein, the City is not obligated to provide Prosecution Services with respect to the following matters:

- (a) Matters which are, in the determination of the prosecutor, in consultation with the Director, not of a routine nature;
- (b) Matters where there are, in the determination of the prosecutor, in consultation with the Director, complex issues of fact or law in the case;
- (c) Matters where, in the determination of the prosecutor, in consultation with the Director, the trial of the case would be especially time consuming;
- (d) Matters where the prosecutor feels that he or she is not capable of adequately presenting the case;
- (e) Matters which call into question the validity of a County by-law;
- (f) Matters which raise issues pursuant to the *Charter of Rights and Freedoms*; and
- (g) Matters on appeal.

4.3. **Notification of Exception** The City may, in its sole discretion, and on a case-by-case basis provide Prosecution Services in respect of matters identified in section 4.2. Proceeding with any such matter in one case will not obligate the City to provide such Prosecution Services in the future. In the event that the City declines to provide Prosecution Services in any given instance, pursuant to section 4.2, notification will be provided to the County without delay and, in any event, no later than 2 Business Days following its decision.

4.4. **County Discretion** The County is not obligated by this Agreement to utilize the Prosecution Services, and may, in its absolute discretion use other means to prosecute the matters identified herein.

4.5. **Legal Advice** Unless specifically hired in the capacity of a prosecutor, the Prosecution Services do not include the provision of legal services or legal advice by a lawyer employed by the City (save and except for administrative oversight provided by the

Director) . In the event that a prosecutor requires legal advice in the provision of the Prosecution Services, such legal advice will be provided by the County

- 4.6. **County Briefing Obligations** The County will supply sufficient information to the prosecutor as is necessary to enable cases to be properly prepared and presented. Such information will be compiled and provided in the form of a Crown Brief and will include at least the following:
- (a) In the case of an alleged by-law infraction, three certified copies of such by-law;
  - (b) Two copies of a synopsis of the case prepared by the individual who investigated the alleged infraction on behalf of the County;
  - (c) Two copies of any notes taken by the individual who investigated the alleged infraction on behalf of the County;
  - (d) For each proposed witness, two copies of a witness or ‘will-say’ statement outlining the testimony which is available in support of the prosecution;
  - (e) Three copies of any other relevant documents or materials necessary to support the prosecution, in accordance with the following:
    - (i) Where such other relevant documents or materials are records of the County, they shall be certified copies;
    - (ii) Where such other relevant documents or material are not records of the County, they shall be accompanied by information describing their source and authorship;
  - (f) For purposes of scheduling, a calendar or equivalent memorandum which shows the availability of the individual who investigated the alleged infraction on behalf of the County; and
  - (g) Such further materials as are requested from time to time.
- 4.7. **County Obligations** In addition to the briefing obligations set out in section 4.6, the County will:
- (a) Make suitable arrangements to ensure the attendance of its witnesses at trial, including the issuance and service of subpoenas, at its sole expense; and
  - (b) Ensure that the prosecutor(s) exercise of discretion is not influenced by any employee, elected official, or enforcement agency acting on behalf of the County.
- 4.8. **Acknowledgement of Prosecutorial Discretion and Complaint Process** The County acknowledges that a prosecutor has professional obligations that transcend a normal principal-contractor relationship, and must maintain a high degree of professional detachment and independence. Without limiting the generality of the foregoing, it is accepted that the prosecutor may withdraw particular prosecutions, negotiate plea bargains, or otherwise take such actions or make such sentencing or other submissions to the Court as may appear to him or her to be in the interests of justice, from time to time. The prosecutor shall perform his or her duties in a timely manner with fairness, impartiality, competence and integrity. Day to day supervision and normal employee relations shall be the responsibility of the City and any complaints thereto, subject to section 4.7(b), shall be handled in accordance with Article 8.

- 4.9. **Dockets** The prosecutor(s) will measure the amount of time spent performing Prosecution Services for the County, and will keep appropriate records and dockets related thereto.
- 4.10. **Notification of Common Errors** Where the prosecutor notices repeated, and substantially similar, errors by the County which negatively affect the ability of the prosecutor to successfully prosecute a matter pursuant to this Agreement, the prosecutor will notify the County of the nature of the error.

## **Article 5 - FINANCIAL MATTERS and CONTRACTING OUT**

- 5.1. **HST** The County acknowledges that the *Excise Tax Act* (“ETA”) may require that the City collect a tax equivalent to 13% of the amount invoiced hereunder from the County. The County agrees that it shall, if the City determines that the said tax is properly payable in this transaction, pay the entire amount of such tax to the City, in addition to the price for Services identified in this Agreement. Where the City has required that the County pay the said tax and the County disputes its liability to pay for any reason, the full amount of the said tax shall nevertheless be paid to the City and the County’s only remedy with respect to the said tax shall be to claim a refund from the Federal or Provincial Government.
- 5.2. **Fees for Court Administration Services** The City’s net costs for providing Court Administration Services shall be recovered from fine revenues received in respect of convictions, and the remainder, if any, and subject to section 5.3(d), shall be distributed to each municipality or First Nation within the Provincial Offences Area on the basis of the jurisdiction in which the offences occurred, or such other method of distribution as the Provincial Government may require by legislation. All such distributions shall occur on a cash basis when fine revenue is actually received, and shall not be distributed on an accrual basis when fine revenues merely become payable.
- 5.3. **Fees for Prosecution Services** The City shall be compensated for the provision of the Prosecution Services in accordance with the following:
- (a) The County will pay a fee to the City for the Prosecution Services provided hereunder based upon the hourly rate of the City employee(s) who provide Prosecution Services. Such hourly rate shall be derived by adding:
- (i) The annual salary, benefits (including medical and other benefits, such as parking and membership fees), and professional development costs of the applicable employees; and,
- (ii) 5% of the annual salary, benefits (including medical and other benefits, such as parking membership fees), and professional development costs of the City Solicitor
- and dividing the sum thus obtained by 52 to obtain a weekly cost, further dividing the quotient thus obtained by 35 to obtain an hourly cost, and rounding up the result thus obtained to the nearest ten dollars to obtain the hourly rate.

- (b) The County shall reimburse the City for any out-of-pocket expenses and disbursements which the City incurs in the performance of the Prosecution Services. Any substantial disbursement shall have been pre-approved by the County, it being recognized that the City prosecutor may be required to withdraw a prosecution where an expenditure is refused by the County and the prosecutor reasonably considers the expenditure to be crucial to the case.
- (c) In the event that the Law Society of Ontario or LawPro should determine that either or both of the City Solicitor or Legal Counsel is required to obtain professional errors and omissions insurance in respect of their supervisory role over the City prosecutor(s), and such ruling is solely caused by the provision of the Prosecution Services, the City shall forthwith advise the County of the ruling and the approximate cost, so that the County may, in its discretion, exercise the termination rights contained in this Agreement; and unless and until such time as the County exercises such right, the costs for such insurance coverage shall be recovered in accordance with section 5.3(a).
- (d) Charges, including out of pocket expenses and disbursements, arising pursuant to section 5.3 of this Agreement will be paid to the City by deducting the charges from the entitlement of the County to its share in fine revenue as set out in section 5.6. from the Provincial Offences Court. Reports describing the said charges, including the time dockets of the City Prosecutor regarding same, shall be included with the normal reports in respect of the division of fine revenue between the City and the County

5.4. **County Acknowledgement** The County acknowledges that the Court Administration Costs may be expanded or reduced in the sole discretion of the City, including but not limited to additional personnel, facilities, equipment or operations; and any such change shall not require an amendment of this Agreement.

5.5. **Statement of Account** The City will provide to the County a statement of account, on an annual basis, itemizing the following:

- (a) The charges for Court Administration Services;
- (b) The charges for Prosecution Services;
- (c) The charges for any Additional Services, if any, as determined in accordance with section 5.13;
- (d) The amount of any out of pocket expenses or disbursement, or other fees payable pursuant to this Agreement;
- (e) HST, if any;
- (f) Interest, if any; and
- (g) The amount which is either owing to or payable by the County, in accordance with this Article 5.

5.6. **Payments** The County will pay to the City, on an annual basis, in arrears, a sum equal to its apportionment (as calculated in accordance with section 5.2 or 5.3, as the case may be) of the Costs. The City Treasurer and County Treasurer may agree on alternate frequency (and calculation of amount based on frequency). The City may set off against such amount as may be payable by the County, any amount which is payable to the County pursuant to this Agreement.

- 5.7. **Audit** Not later than 120 days after the end of each calendar year and not later than 120 days after the termination of this Agreement the City will provide the County with a draft annual statement accounting for the annual revenues and cost of providing the Services earned and incurred in the preceding calendar year. Such statement shall be in such form and style and contain such details and breakdowns as may be reasonably required. No later than 180 days from the end of the preceding year, the City shall provide the County with a final annual statement accounting for the Services. The County Treasurer may request confirmation of the statements provided with a signed opinion of a chartered accountant qualified to practice in the Province of Ontario through the City's year end audited financial statements as approved by Council. The cost of preparing such statement shall be an allowable operating cost.
- 5.8. **Reconciliation** Upon receipt of the auditor's statement or report, pursuant to section 5.7, the Parties will reconcile payments made pursuant to this Agreement, such that an appropriate adjustment will be made from City to County, or County to City, as the case may be, with respect to any overpayments or underpayments by the City during the previous year. Any additional payment therefor due shall be made within 30 days of receipt of such auditor's statement or report.
- 5.9. **Payment and Interest** The County, upon receipt of a statement of account issued pursuant to this Agreement, will make full payment to the City, if any owing. Failure to make such payments after 30 days from receipt, will result in such amounts not paid bearing interest at the rate of 24% per annum calculated on a per diem basis. In the event that monies are owing to the County, the City will make payment to the County within 30 days of issuing the statement of account.
- 5.10. **First Payment** Notwithstanding anything contained in this Agreement, it is expressly acknowledged and agreed that payments from the County on account of any amounts owing pursuant to section 5.6 will commence in and for the 2022 budget year.
- 5.11. **County Collection Prohibited** The County will not accept any monies as payment for Fines, fees, costs or surcharges which are payable to the City as the provider of Court Administration Services, save and except for amounts which the County adds to the tax roll at the City's request.
- 5.12. **Provincial Costs** The City will remit to the Province, in a timely manner, any amounts owing pursuant to section 165(5) of the *Act*.
- 5.13. **Additional Services** The County may request the provision of services which are in addition to the Services otherwise rendered in accordance with this Agreement (including, for example, training of County staff regarding matters affecting the Prosecution Services). Where the City agrees to provide such additional services, the charge for such additional services will be in accordance with the rates as determined by the City, in its sole and unfettered discretion.

- 5.14. **Contracting Out** Where the City proposes the contracting out of some or all of the Services, the following conditions shall be satisfied:
- (a) The City shall follow generally accepted procedures or its policy and procedures relating to the acquisition of services;
  - (b) The City shall ensure that the documents provide that where it is alleged that the City or its contractor has breached any term, condition or standard of this Agreement, the City has the right to withhold or withdraw its consent;
  - (c) Documents shall include a provision requiring the prospective contractor to disclose any real or perceived conflict of interest;
  - (d) The contract shall provide that the person or organization performing the contract will perform the work to the same standard as required of the City under this Agreement and the City shall take whatever steps are reasonably necessary to ensure that applicable standards are met;
  - (e) The contract shall be for a definite term and may be subject to renewal as long as the applicable standards under this Agreement are being met;
  - (f) The City shall ensure that there is an effective process in place to deal with complaints against the contractor and the City will respond to such complaints directly;
  - (g) The contract shall contain a provision requiring the contractor to adhere to the same confidentiality standards required of the City;
  - (h) Persons providing services pursuant to such contract must perform all aspects of the contract to ensure consistency and continuity in the administration of justice; and
  - (i) The City shall ensure that an effective contingency plan is in place to address any situation where the contractor or its employees fail to comply with any term, condition or standard of this Agreement.
- 5.15. **County Consent** The consent of the County is required for the contracting out of services under this Agreement; and such consent is deemed to have been given where the process followed by the City has met (i) the conditions set out in section 5.14; (ii) any requirements of the province, as may be prescribed by legislation, regulation, or the Transfer Agreement; and (iii) notice is provided to the County.

## **Article 6 - LIABILITY**

- 6.1. **Insurance** The City and the County shall maintain in full force and effect during the term of this Agreement:
- (a) a policy of comprehensive general liability insurance, providing coverage for a limit of not less than five million dollars per occurrence for any cause of action, demand or claim with respect to personal injury (including death) or property damage, including loss of use thereof, and for any cause of action, demand or claim arising or occurring in connection with the obligation of each Party under this Agreement, including, but not limited to a cause of action, demand or claim with respect to defamation; false arrest, detention, imprisonment; malicious prosecution; contravention of rights guaranteed under the Canadian Charter of Rights and Freedoms; and further, each policy shall name the other as an additional insured; and
  - (b) errors and omissions insurance to a limit of not less than one million dollars

- 6.2. **Insurance** The policies of insurance referred to in 6.1(a) will also include: a cross-liability insurance clause endorsement; a clause requiring the insurer to provide 30 days prior written notice to both Parties in the event of the termination, expiry, variation or non-renewal of the policy; and a clause providing that the protection of a Party under the policy will not be affected in any way by any act or omission of the other Party, its members of Council, officers, employees, agents or contractors.
- 6.3. **Proof of Insurance** Within ten days of the Execution Date, and from time to time as may be requested during the Term, the City and the County shall each provide the other with proof of insurance. Proof of insurance shall be on a form of Certificate of Insurance, signed by an authorized representative of the insurer.
- 6.4. **Prosecutor Negligence** Where the County concludes that the prosecutor(s) has shown negligence or incompetence in the presentation of a case, the County shall have the right to terminate this Agreement in accordance with Article 2 of this Agreement and this shall be the County's sole remedy. The County shall not have the ability to claim damages against the City for any such incompetent or negligent presentation, or for any other alleged damages, whether direct, indirect, general, compensatory, consequential, pecuniary, exemplary, aggravated, special or otherwise.
- 6.5. **Fee Reduction** Notwithstanding section 6.4, where the County claims that the prosecution of a particular case was incompetently or negligently performed, the Director may, in his or her discretion, reduce or eliminate the fees charged in respect of such Prosecution Services. The exercise of such discretion is not reviewable.
- 6.6. **No Liability** Except to the extent caused, or contributed to, by the County, its elected officials, officers, employees, agents, contractors, or police officer providing services under contract to the County, the County shall not be liable or responsible in any way for any injury or damages whether physical or economic, direct or consequential, of any kind (including death) that may be suffered or sustained by the City, or any member of its Council, officer, employee, agent, contractor, member of the judiciary, accused person, or any other person who may be in a courtroom or court office administered by the City, or for any loss or theft of, or damage or injury to, any property belonging to the City or members of Council, officers, employees, agents, contractors, members of the judiciary, accused persons, police officers or any other person, while such property is in a courtroom or court facility administered by the City.

## Article 7 - CONFIDENTIALITY

- 7.1. **Confidentiality** The Parties, and their its employees, elected officials, servants or agents may or will be made party to Confidential Information. The Parties are responsible for the maintenance of confidentiality at all times, and bear responsibility for any breach of confidentiality under this Agreement.

- 7.2. **MFIPPA** The Parties are subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56 with respect to access to, and the protection of, information under their custody and control.
- 7.3. **Ownership of Work** Any and all Confidential Information collected or obtained by the City in the performance of the Services is and remains the property of the County and will not be released or used by the City in any way other than that contemplated by this Agreement.
- 7.4. **Use of Data** The City will not sell or otherwise provide to any other person or organization any of the data or information to which it has access pursuant to this Agreement or the Transfer Agreement, or extract from the information or data, or create from the information or data, lists of personal or other information for any purpose other than for the purpose of its obligations under this Agreement.
- 7.5. **Exchange with Province** The County acknowledges that the City is required to exchange Personal Information with the Province pursuant to the Transfer Agreement. Any such exchange will not be a breach of any confidentiality provisions of this Agreement.
- 7.6. **Privacy and Confidentiality Guidelines** The City confirms that it has guidelines in place to be used by elected officials and employees of the City for the protection of privacy and confidentiality of personal information.
- 7.7. **No Warranty of Information** The County shall use reasonable efforts to ensure that information to which the City will have access is reliable and accurate, but does not guarantee the accuracy or completeness of such information.

## Article 8 - DISPUTE RESOLUTION

- 8.1. **Principle** The Parties agree to foster and participate in a co-operative approach to the resolution of disputes arising under this Agreement. The Parties also agree that all reasonable efforts will be made to resolve disputes informally and amicably at an early stage.
- 8.2. **Scope** In the event that a dispute arises between the City and the County with respect to the terms and conditions of this Agreement, the Parties agree to use the mechanisms set out in this Article to resolve the dispute.
- 8.3. **Exception** The provisions of this paragraph do not apply to issues relating to the judiciary.
- 8.4. **Dispute Resolution** In the event that the Parties are unable to agree upon any matter covered by this Agreement, the disagreement shall:
- (a) in the first instance, be referred to the City/County Liaison Committee for discussion, or any other such joint Committee as jointly determined by City Council

- and County Council, and such committee may make recommendations to City Council and County Council for approval;
- (b) in the second instance, if resolution of the dispute is not effected following discussion by the City/County Liaison Committee or such other joint committee contemplated in paragraph (a) above, it shall be referred to a joint meeting of the City Council the County Council;
  - (c) in the third instance, if resolution of the dispute is not effected following a joint meeting of the Council of the City and the Council of the County, or if the dispute arises with respect to the interpretation of this Agreement, it may be referred to mediation, with a mediator as agreed upon by both the City Council and County Council with the costs to be shared equally between the City and the County. All information exchanged during the mediation process shall be for the purpose of resolving the issues in dispute, and therefore shall be treated as confidential; and
  - (d) in the final instance, if City Council and County Council are unable to agree upon a mediator, or if the dispute is not resolved through mediation, it shall be referred to binding arbitration pursuant to the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended, with any decision resulting from such arbitration to be final, and with the costs of arbitration to be determined by the arbitrator(s) with the intention that the costs shall generally follow the result in the case.

- 8.5. **Continuation of Services** Save and except in the case of a termination pursuant to this Agreement, the Parties agree that when a matter is under dispute all Services provided by the City will continue in accordance with the terms of this Agreement.

## **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 (5<sup>th</sup>) 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  
City Hall, 100 Wellington Square  
Brantford, ON N3T 2M2  
**Attention: City Solicitor**  
Fax: 519.751.4757

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

The Corporation of the County of Brant  
26 Park Avenue  
P.O. Box 160  
Burford, ON N0E 1A0  
**Attention: Solicitor and Corporate Counsel**  
Fax: 519-449-2454

- 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. **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.
- 10.2. **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.
- 10.3. **Successors and Assigns** This Agreement and everything in it is binding upon and enures to the benefit of and is binding on the Parties, and their respective successors, heirs, administrators, executors, legal representatives, and permitted assigns. Save and except for the right to contract-out as set out in sections 5.14 and 5.15, 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 withheld. Any assignment made without consent is void and of no effect.
- 10.4. **Time** Time is of the essence.
- 10.5. **Force Majeure** Notwithstanding any other provision of this Agreement, in the event that either the City or the County 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.

- 10.6. **Waiver of Rights** Any waiver of, or consent to depart from, the requirements of any provision of this Agreement is effective only if it is in writing and signed by the Party giving it, and delivered in accordance with Article 9 , and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any Party to exercise, and no delay in exercising, any right under this Agreement operates as a waiver of such right. No single or partial exercise of any such right precludes any other or further exercise of either Party's rights.
- 10.7. **City and County Discretion** Nothing contained in this Agreement and no decision made or action taken by the City or the County pursuant to this Agreement in any manner limits or restricts the normal exercise of discretion by various municipal departments and officials in the City or the County 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 or the County made pursuant to this Agreement.
- 10.8. **Survival** Section 2.3 (Upon Termination), and Articles 6 (Liability), 7 (Confidentiality), and 8 (Dispute Resolution) survive termination of this Agreement.

IN WITNESS WHEREOF the Parties have affixed their corporate seals duly attested by the hands of their proper officers in that behalf.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGE TO IMMEDIATELY FOLLOW**

In the case of the City, signed this \_\_\_\_ day of \_\_\_\_\_, 2021

**THE CORPORATION OF THE  
CITY OF BRANTFORD**

\_\_\_\_\_  
Kevin Davis, Mayor

\_\_\_\_\_  
Charlene Touzel, City Clerk

In the case of the County, signed this \_\_\_\_ day of \_\_\_\_\_, 2021

**THE CORPORATION OF THE  
COUNTY OF BRANT**

\_\_\_\_\_  
Name:  
Title: Mayor

\_\_\_\_\_  
Name:  
Title: County Clerk  
I/We have authority to bind the corporation

**Schedule “A”**  
**Operational Standards**

- A1. **Efficiency of Proceedings** The City shall provide for and accommodate the efficient processing of all court proceedings.
- A2. **Service to Enforcement Agencies** The City shall provide the following services:  
    (a) Consulting with enforcement agencies about witness availability before scheduling trials;  
    (b) Distributing ticket sets and other forms to enforcement agencies; and  
    (c) Providing copies of First Attendant Notices, Notices of Intention to appear, Certificates of Offence, Fail to Respond lists, Notice of Appeal, and other documents containing disposition information, as required.
- A3. **Effective Service** The City shall respond effectively to all enquiries and provide prompt and efficient service in person and by phone.
- A4. **Open to Public** Subject to any statutory limitations, all proceedings under the *Act* shall be open to the public, unless otherwise ordered by the judiciary in a particular proceeding.
- A5. **Language Services** The City shall provide the language services required by legislation, including the following:  
    (a) Supply and pay for qualified interpreters for witnesses and defendants upon their request; and  
    (b) Translation of documents, upon request of defendants, or if necessary, for administrative purposes.
- A6. **Witness Fees** The City shall ensure that witnesses are paid the amounts to which they are entitled, as prescribed by regulation.
- A7. **Clerical Support** The City shall ensure that clerical court support services are provided to the judiciary.
- A8. **Court Record** The City shall ensure the accuracy of the court record for all matters subject to the Court Administration Services, including:  
    (a) Recording all proceedings taken before the judiciary;  
    (b) Preparation and certification of transcripts of proceedings; and  
    (c) Maintenance, retention and release of records and information relevant to the court proceedings, including tapes, transcripts, files, documents and exhibits or any other data in paper or electronic form in accordance with the record retention schedules required by section A10 and with legislative requirements.
- A9. **Court Documents** The City shall ensure the accurate and timely preparation and delivery of court-related documents required to carry out a judicial order relating to:  
    (a) the attendance of a person at a hearing;  
    (b) the arrest, detention or release of a person;

- (c) the commencement, processing and disposition of a proceeding; and
- (d) the imposition of a sentence, or other consequence of conviction.

- A10. **Record Retention** The following minimum record retention periods shall apply once a matter has been completed:
- (a) for all proceedings commenced under Parts I and III of the Act, the calendar year of the date of judgment plus 2 additional years, except where there has been an accident or a charge of careless driving, the calendar year of the judgment plus 7 additional years;
  - (b) for all proceedings commenced under Part II of the Act, the calendar year of the date of judgment plus 2 additional years; and
  - (c) any other record retention requirement prescribed by law.
- A11. **Universal Payment** The City shall permit the public to pay fines imposed on convictions for offences covered by the Transfer Agreement in any court service area.
- A12. **Fine Collection** Fine revenues shall be collected in a secure manner, in accordance with generally accepted accounting principles ensure proper accountability and to meet the provincial audit requirements.
- A13. **Training and Education** The City shall responsible for ongoing training and education of persons performing court administration functions.
- A14. **Storage of Records** To preserve the integrity of court records and data for all processes and proceedings under the *Act*, all files, tapes, transcripts, papers, documents, exhibits and any other court process information, whether in electronic, mechanical, physical or other form, shall be stored in a secure manner.
- A15. **Information Exchange** The City shall ensure that the exchange or sharing of information, electronically or otherwise, is done in a secure manner to preserve the accuracy and security of the data.
- A16. **Access to Information** The City shall provide information and access to information relating to the disposition of cases, fine payments and defaults, and other court related matters to all relevant provincial Ministries, enforcement agencies and others as appropriate.
- A17. **Provincial Database** The City shall ensure the accuracy of the provincial offences database by entering the following information in a timely and accurate manner:
- (a) The charges received;
  - (b) The status of the charge;
  - (c) The charge dispositions;
  - (d) The fine payments; and
  - (e) The imposition and removal of sanctions.

- A18. **Charge for Court Services** The City may charge a fee for photocopies, certification of copies, transcripts and any other service provided and charged for by the Ministry of the Attorney General, in accordance with the *Administration of Justice Act*, R.S.O. 1990, c.A.6.
- A19. **Integrated Technology** The City acknowledges the use of a common integrated technology system is necessary to ensure accurate and timely access to information and will facilitate the sharing of information among justice partners.
- A20. **ICON** The City shall use the ICON system, or its replacement, or another system which meets the technology standards, case flow management and information sharing requirements as directed by the Attorney General, including the development of a common application environment.
- A21. **Information to MTO** The City shall transmit to the Ministry of Transportation information relating to the following:  
(a) Orders and directions to suspend or reinstate drivers' licenses;  
(b) Orders and directions to deny or reinstate plate permits; and  
(c) Convictions, in accordance with subsection 210(1) of the *Highway Traffic Act*, R.S.O. 1990, c.H.8.
- A22. **Electronic Transmissions** Orders transmitted to MTO shall be transmitted electronically, in a standardized format prescribed by MTO and in the consolidated 'one window' template that is provided for by ICON and the defaulted fines control center, or by any other agent doing similar work, as directed by the Attorney General.
- A23. **Complete and Accurate Data** The information referred to in section A22 must be complete and accurate and submitted to MTO in a timely manner, in accordance with all statutory and regulatory requirements.
- A24. **MTO Access to Information** The City shall ensure that the MTO has access to information relating to the status and disposition of cases.
- A25. **Designated Representative** The City shall designate a representative to work with the MTO to resolve data transmission issues.
- A26. **Tickets** The City shall purchase all provincial offences tickets from a single source approved by the Attorney General. Provincial offences tickets must be sequentially numbered with an ICON, or its replacement system, location number.
- A27. **Court Forms** The City shall purchase all charging and service related documents, and other court forms and documents prescribed by regulation, and other standard forms, from a single source approved by the Attorney General.
- A28. **Accessible Facilities** The court facilities shall be easily accessible to the public and all other interested parties and, without limiting the generality of the foregoing, shall:  
(a) Be accessible by public transit or private vehicle;

- (b) Where parking is available, provide sufficient parking areas to accommodate the court's caseload;
- (c) Be clearly identified as a court facility and have signs to identify the location of court offices and courtrooms; and
- (d) Provide barrier-free access into and within the court facilities, including courtrooms, meeting rooms, washrooms, and parking areas.

A29. **Facility Standards** The City shall maintain the following minimum standards for court facilities:

- (a) Public areas shall be separate from the court administration offices and the prosecutors' offices, all of which shall be separate from the areas designated for the judiciary;
- (b) The judiciary shall have chambers which are private and secure and sufficiently equipped to permit the performance of their judicial responsibilities; and the judiciary will have separate and secure access to parking areas, to the court building, and to the courtroom(s) and other rooms in which proceedings take place;
- (c) Courts administration and court support staff shall have secure office areas that contain the furniture, equipment, technology and supplies necessary for them to be able to perform their responsibilities;
- (d) Prosecutorial staff shall have secure office areas that contain the furniture, equipment, technology, and supplies necessary for them to be able to perform their responsibilities;
- (e) If the facility is used for a first attendance process, the meeting room(s) shall be separate from the room(s) in which the court proceedings take place;
- (f) A secure area shall be available for persons in custody; and
- (g) Before making substantial renovations to an existing court facility or when preparing plans for a new facility, the City shall consult with the judiciary, enforcement agencies, prosecution agencies, Infrastructure Ontario, the Ministry of the Attorney General's Court Services Division and its Facilities Branch.

A30. **Conflict of Interest** The City shall ensure that all employees and other persons performing court administration duties shall, in addition to any City policies and guidelines are required to:

- (a) report to the City and to the local Crown Attorney any attempt at improper influence or interference, financial, political or otherwise;
- (b) if charged with an offence created under the *Criminal Code* of Canada or any other federal statute or regulation that is dealt with under the *Criminal Code* of Canada, to disclose such charge to the City; and upon notification, the City will determine if any actual or perceived conflict of interest exist, and if so, take appropriate action to address the conflict; and
- (c) if charged with an offence under a federal statute or regulation or a provincial statute or regulation, and where continuing to perform his or her duties may erode public confidence in the administration of justice, to disclose such charge to the City; and upon notification, the City will determine if any actual or perceived conflict of interest exists, and if so, shall take appropriate action to address the conflict,

A31. **Oath of Office** All persons performing court administration functions, except municipal prosecutors who have sworn the oath required by section B4, shall swear an oath or affirmation as required by the province, either by contract or legislation.

**Schedule “B”**  
**Prosecutorial Standards**

- B1. **Principles** The City shall ensure that prosecutions are conducted in a manner consistent with the following principles:
- (a) Prosecutorial independence;
  - (b) Fairness and impartiality;
  - (c) Competence and integrity; and
  - (d) Timeliness of prosecutions.
- B2. **Prosecutorial Independence** The City shall ensure that any of its prosecutors who are not lawyers are supervised by or report to the Director or another lawyer designated for that purpose and that its reporting relationships are structured so that the prosecutor’s exercise of discretion is not influenced by any person or body, including:
- (a) Members of City Council;
  - (b) Policing and other enforcement agencies; and
  - (c) City financial officers.
- B3. **Responsibilities** The City shall be responsible to:
- (a) Ensure that any prosecution policies are applied impartially;
  - (b) Ensure that a fair and reasonable appeals policy is in place and is applied consistently;
  - (c) Notify prosecution witnesses of dates and times of hearings in accordance with legislative requirements;
  - (d) Permit prosecutors to exercise their discretion in a fair and impartial manner, free from influence or bias;
  - (e) Taking appropriate steps to educate and inform its prosecutors of any policies which apply to the prosecution proceedings commenced under the Act; and
  - (f) Ensuring provision of fully and timely disclosure to defendants upon request.
- B4. **Prosecutors’ Oath** All prosecutors engaging in prosecutions under this Agreement shall swear the oath or affirmation as required by the province, either by contract or legislation.
- B5. **Conflict of Interest Rules** In addition to the provisions of this Agreement and any City policies regarding conflicts of interest, the City will ensure that:
- (a) Prosecutors are required to report to the City any attempt at improper influence or interference, financial, political or otherwise;
  - (b) Prosecutors who have been charged with an offence created under the *Criminal Code* of Canada or any other federal statute or regulation that is dealt with under the *Criminal Code* of Canada, such charge shall be forthwith disclosed to the City; and upon notification, the City will determine if any actual or perceived conflict of interest exist, and if so, take appropriate action to address the conflict;
  - (c) Prosecutors who have been charged with an offence pursuant to a federal statute or regulation or a provincial statute or regulation, and where continuing to perform his or her duties may erode public confidence in the administration of justice, the prosecutor is required to disclose the charge to the City; and upon notification,

the City will determine if any actual or perceived conflict of interest exist, and if so, take appropriate action to address the conflict;

- (d) Prosecutors are not also enforcement officers;
  - (e) Prosecutors do not hold or have held municipal political office within the preceding 12 months;
  - (f) Prosecutors are required to disclose any actual or reasonably perceived conflict as soon as possible to the City;
  - (g) Prosecutors are not placed or place him or herself in a position where the integrity of the administration of justice could be compromised;
  - (h) Prosecutors do not, personally or through any partner in the practice of law, act or be directly or indirectly involved as counsel or solicitor for any person, in respect of any offence charged against the person under the laws in force in Ontario, unless relates to his or her own case; and
  - (i) It has conflict of interest guidelines in place to be used by its elected officials and employees which reflect the principles, responsibilities and standards set out in the Transfer Agreement and that it has filed the guidelines with the Attorney General.
- B6. **Conflict of Interest Procedure** The City shall establish and follow a procedure that ensures a prosecutor does not act in any matter where a conflict of interest has been identified, until the conflict no longer exists.
- B7. **Competency** The City shall ensure that its prosecutors are competent in relation to the following factors:
- (a) Knowledge of the current law, including the Act, related statutes and regulations, the *Canadian Charter of Rights and Freedoms* and any common law relevant to the conduct of prosecutions;
  - (b) Knowledge of the rules of court and legal procedures, as amended from time to time;
  - (c) Ability to treat members of the judiciary and other persons involved in the court process with professional courtesy; and
  - (d) Ability to address complaints promptly and effectively.
- B8. **Train and Educate** To ensure that municipal prosecutors' knowledge and skills are adequate and current, the City is responsible for the ongoing training and education of its prosecutors.
- B9. **Direction not to Appear** Should the Province's Director of Crown Operations direct that the prosecutor not appear in court, such prosecutor shall not appear.
- B10. **Prosecutorial Policies** The City shall ensure cooperation with local Crown Attorneys and shall ensure compliance with provincial directives and policies which are made known by Ontario. The City may establish its own prosecutorial policies, provided they are consistent with provincial policies and not contrary to law.
- B11. **Reporting Protocol for Significant Cases** In addition to any legislative requirements and any provincial prosecutorial directive or policy made known to the City, the City shall maintain a reporting protocol to notify the local Crown Attorney and the Attorney General

of any matter that appears likely to raise a substantive legal issue at trial or appeal, including:

- (a) An application for judicial review or prerogative writ sought in relation to a prosecution transferred under paragraph 1.3 of the MOU;
- (b) Anything that may affect the administration, constitutional validity, or enforceability of a statute or regulation; and
- (c) Any matter where there could be a substantial public interest in its outcome.

B12. **Report to Federal Prosecutor** The reporting protocol referred to in section B11 shall also include a provision that the regional federal prosecutor shall be notified with respect to offences designated as contraventions under the *Contraventions Act (Canada)*.

B13. **Other Reporting** The reporting protocol referred to in section B11 shall also include a provision that where the matter relates to a statute or regulation for which a provincial Ministry other than the Ministry of the Attorney general is responsible, the Legal Services Branch of that Ministry shall be notified.