

DONATION AGREEMENT

THIS AGREEMENT made this day of , 2024

AMONG:

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

-and-

COUNTY OF BRANT POLICE SERVICES BOARD
(the “PSB”)

-and-

ONTARIO PROVINCIAL POLICE
(the “OPP”)

WHEREAS the PSB and Her Majesty the Queen in right of Ontario as represented by the Solicitor General (the “Province”) are parties to an agreement, dated April 1, 2022 with respect to funding pursuant to the Community Safety and Policing Grant program (the “Transfer Payment Agreement”), namely that, among other things, the Province will provide funding up to \$98,365.65 for the 2023-2024 funding year for purposes of the Project (as defined in the Transfer Payment Agreement);

AND WHEREAS the OPP has requested that in lieu of the Project that the funding be re-allocated for purposes of the acquisition of an ATV;

AND WHEREAS the OPP has obtained the consent of the Province, by an email, dated February 28, 2024, has agreed to the reallocation of the funding for the 2023-2024 funding year;

AND WHEREAS the County, as agent for the PSB, and at the cost of PSB, will acquire the ATV;

AND WHEREAS the PSB, as the recipient of the grant funding pursuant to the Transfer Payment Agreement will donate the ATV to the OPP;

AND WHEREAS, in accordance with section A5.2 of the Transfer Payment Agreement (which limits disposition of assets acquired with the funding granted therein to assets valued below \$5,000.00 without the prior written consent of the Province) the Province has implicitly acknowledged, in its email, dated February 28, 2024, that the ATV will be for the OPP;

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;

“**ATV**” means the ATV, as described in the quote attached as **Schedule “A”**

“**Business Day**” means a day other than a Saturday, Sunday or any other day on which the County’s administration offices are not open to the public for the transaction of domestic business during normal business hours;

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

“**Effective Date**” means the date set out at the header of this Agreement;

“**OPP**” means the Ontario Provincial Police;

“**Party**” means one of the PSB, the County or the OPP and “**Parties**” means all of them;

“**Province**” means Her Majesty the Queen in right of Ontario as represented by the Solicitor General;

“**PSB**” means the County of Brant Police Services Board;

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

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. **Recitals** The recitals in this Agreement are true and correct.
- 1.7. **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.
- 1.8. **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.
- 1.9. **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.
- 1.10. **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).
- 1.11. **Amendment** This Agreement may not be amended, supplemented or otherwise modified in any respect except by written instrument executed by all Parties.
- 1.12. **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.
- 1.13. **Schedules** The following schedules form part of this Agreement:

Schedule “A” Quote

Article 2 - ACQUISITION & DONATION OF THE ATV

- 2.1. **Acquisition** The County will, as agent for the PSB, and at PSB's cost, acquire the ATV in the County's name, approximately in accordance with Schedule "A". The acquisition is to occur forthwith, and prior to March 31, 2024.
- 2.2. **Cost** PSB is responsible for all the costs of acquisition of the ATV, as determined by the County.
- 2.3. **Donation** The ATV shall be donated to the OPP following acquisition in accordance with **section 2.1**. The OPP shall pick up the ATV at a date and location to be mutually agreed. Title to the ATV shall be conveyed to the OPP upon acceptance of possession by the OPP. All documents necessary or appropriate to effect the transfer of title will be signed by the County or PSB, as applicable.
- 2.4. **"As Is"** The OPP accepts the ATV in as is condition. Neither the County nor the PSB make any representation or warranties, express or implied, about the condition of the ATV, nor as to its fitness for use. By accepting possession of the ATV, the OPP assumes full responsibility for all risks arising directly or indirectly from its possession, use or misuse, both known and unknown, regardless of the cause.
- 2.5. **Upon Possession** Once the OPP accepts possession of the ATV, the OPP is responsible for all responsibilities and obligations related to ownership of the ATV, including but not limited to: insurance, licensing, service, maintenance, and repair, as may be applicable from time to time. The OPP acknowledges that the County and the PSB, as may be applicable, will cancel any and all insurance coverage, license, tags, plates, or registration of the ATV upon possession of the ATV by the OPP.
- 2.6. **Disposition** The OPP will not, without the PSB's prior written consent, sell, lease, or otherwise dispose of the ATV. It is expressly acknowledged that the purpose of this clause is to satisfy the PSB's obligations under the Transfer Payment Agreement, and the conditions set by Province in the granting of their consent to the donation contemplated herein.

Article 3 - CANCELLATION

- 3.1. **Cancellation** The County and the PSB, each individually reserve the right to cancel this Agreement:
 - a. The County is unable to complete the acquisition prior to March 31, 2024;
 - b. If the OPP fails to take possession of the ATV within a reasonable period of time;
or
 - c. If the Province neglects, refuses, or fails to remit the funding under the Transfer Payment Agreement.

- 3.2. **Method of Cancellation** In the event that the County or the PSB elects to cancel this Agreement, such Party shall provide written notice to the other Parties, in accordance with **Article 5**.

Article 4 - INDEMNIFICATION

- 4.1. **Hold Harmless** The OPP shall waive and release any and all claims they or any third party may have against either the County or PSB, their elected officials, directors, officers, agents, and employees with respect to the ATV, including but not limited to any and all claims for damages resulting from possession, use or misuse of the ATV, regardless of the cause. The OPP further agrees to indemnify and hold harmless the County and the PSB from and against any and all liability, loss, damages, claims and fees that may be suffered by one or both of them as a result of the possession, use or misuse of the ATV by the OPP or any other person.

Article 5 - NOTICE

- 5.1. **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.

- 5.2. **County Contact** Where notice is to be provided to the County, such notice will be provided,

*In the case of a notice of claim,
which must be delivered personally*
The County of the County of Brant
66 Grand River North
Paris, ON N3L 2M2

Attention: County Clerk

In all other cases:
The County of the County of Brant

XXX

Attention: GM, Emergency Services

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

County of Brant Police Services Board

XXX

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

Ontario Provincial Police

XXX

- 5.5. **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 5**, 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 5.2 or 5.3** hereof, as the case may be.

Article 6 - GENERAL

- 6.1. **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.
- 6.2. **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.
- 6.3. **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. No 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 Parties, which may be unreasonably withheld.
- 6.4. **Time** Time is of the essence.
- 6.5. **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 5**, 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.
- 6.6. **Survival** The terms and conditions contained in this Agreement that by their sense and context are intended to survive the performance thereof by the Parties hereto shall so

survive the completion of performance, the expiration and termination of this Agreement, including, without limitation, the following sections: **Article 4 (Indemnity)**.

IN WITNESS WHEREOF the Parties have, in the case of corporations, hereunto affixed their corporate seals or asserted binding authority as attested by their proper signing officers in that behalf, and in the case of individuals have hereunto set their hands as witnessed

**THE CORPORATION OF THE
COUNTY OF BRANT**

Name:
Title:

**COUNTY OF BRANT POLICE
SERVICES BOARD**

Name:
Title:

ONTARIO PROVINCIAL POLICE

Name:
Title:

Schedule “A” Quote