

PURCHASE OF SERVICES AGREEMENT

This Agreement is made as of the 1st day of January 2022

BETWEEN:

**THE CORPORATION OF THE
MUNICIPALITY OF CLARINGTON**
("Municipality")

-and-

CLARINGTON BOARD OF TRADE
("CBOT")

IN CONSIDERATION OF their respective covenants and agreements herein contained and subject to the terms and conditions herein set out, the Municipality and CBOT covenant and agree each with the other as follows:

1. **Definitions.** In this Agreement,
 - "Agreement" means this Purchase of Services Agreement;
 - "CBOT" means the Clarington Board of Trade;
 - "Fee" means the fee paid to CBOT under section 9;
 - "Municipality" means The Corporation of the Municipality of Clarington or the geographic area of Clarington, as the context requires; and
 - "Term" means the term of this Agreement as set out in section 2.
2. **Duration of Agreement.** The term of this Agreement commences on January 1, 2022 and continues until December 31, 2023.
3. **Termination of Agreement.** The agreement between the Municipality and CBOT dated January 1, 2017 expressed to be in force until December 31, 2021 is terminated upon this Agreement coming into effect.
4. **Services Being Purchased and Provided.** The Municipality agrees to purchase from CBOT and CBOT agrees to provide to the Municipality the following economic development services:
 - (a) act on behalf of the Municipality in relation to the services provided by CBOT under this Agreement, mainly the development and implementation of the Business Retention and Expansion program;

- (b) identify target and key employers, and priority economic sectors, to be included in Business Retention and Expansion (BR+E) programming in cooperation with the Municipality;
- (c) assist local businesses with expansions and relocation within the Municipality, and retaining their existing operations within the Municipality;
- (d) establish monthly corporate calling targets on outreach/visits/engagement activities;
- (e) work with the Municipality to explore the possible deployment of a tracking tool to act as a client relationship management instrument to capture critical intelligence of the local economic base and relevant industry sectors;
- (f) undertake regular consultation with the public and business community on relevant economic development topics as requested by the Municipality as part of the services outlined in this agreement;
- (g) market and promote the Municipality to existing and potential new local ventures, taking into consideration the Municipality's Economic Development Strategy, Municipal Council's Strategic Plan, Clarington's Official Plan and the Municipality's communications and branding strategies;
- (h) facilitate interaction between the local business community and the municipality;
- (i) collaborate with the Municipality on funding opportunities with the Federal Government, the Provincial Government, and other sources for economic development purposes;
- (j) support the municipality in identifying, establishing and maintaining suitable partnerships/relationships throughout the community and wherever necessary to meet the economic development objectives of the Municipality;
- (k) provide guidance and leadership in the development of the local workforce based on input from the local business community;
- (l) inform, where able, the offices of the Mayor and the Municipality's Chief Administrative Officer/Director of Planning and Development in advance of public announcements or events involving CBOT and/or economic development matters;
- (m) collaborate with the Municipality and other relevant organizations in the implementation of the Municipality's Economic Development Strategy;
- (n) support the growth of Clarington's entrepreneurial ecosystem and small business economy through partnerships with like-minded agencies and

organizations including the Business Advisory Centre Durham and the Spark Centre; and

- (o) prepare and submit on or before April 1, 2022 and January 1st of every year thereafter, an annual business plan to the Municipality that reports on the progress associated with the services described in this Agreement and the workplan for the year.

5. **Ongoing Liaison.** To keep the Municipality informed on a timely basis of the success of the CBOT in providing the services set out in this Agreement and to maintain good working relationships, CBOT and the Municipality shall maintain ongoing liaison as follows:

- (a) The Municipality shall provide CBOT with a Municipal Advisor (staff) to their board, to support the ongoing efforts of staff and the Board of Directors.
- (b) The Executive Director of CBOT (or designate) shall provide a quarterly update to Council through the Planning and Development Committee.
- (c) The Executive Director of CBOT (or designate) shall meet regularly (at a minimum, quarterly) with the Director of Planning and Development, Director of Community Services and municipal staff leads to provide an update with respect to the services set out in this agreement. This will inform the quarterly update to Council through the Planning and Development Committee.
- (d) The Executive Director and President of CBOT shall meet independently with each member of Council (biannually) to discuss issues and initiatives relevant to their ward and the ongoing activities of CBOT including matters addressed in CBOT's business plans.

6. **Performance Measurement.** CBOT and the Municipality shall work together to develop a business plan for the length of the contract including key performance indicators for the services described in section 4 following completion of the Municipality's Economic Development Strategy in the first quarter of 2022.

7. **Third Party Agreements.** CBOT may enter into agreements with other parties which are consistent with the business plan(s) outlined in this contract. The Municipality may enter into agreements with other parties which are consistent with the Municipality's objective of strengthening and expanding the local economy.

8. **Relationship.** Nothing contained in this Agreement shall constitute CBOT as the agent, partner, employee, or joint venturer of the Municipality. CBOT shall not act to,

- (a) incur any expense, liability or obligation on behalf of or in the name of the Municipality;

- (b) enter into or engage in any negotiations on behalf of or in the name of the Municipality concerning a proposed acquisition or disposition of land by the Municipality; or
 - (c) make any representation, inducement or enter into or engage in any negotiations on the basis that the Municipality would assist directly or indirectly any manufacturing business or other industrial or commercial enterprise through the granting of bonuses for that purpose by the Municipality giving or lending any property of the municipality, including money, guaranteeing borrowing, leasing or selling any property of the municipality at below fair market value, or giving a total or partial exemption from any levy, charge or fee contrary to section 106 of the *Municipal Act, 2001*.
 - (d) The Board acknowledges that the responsibility for economic development services lies with Municipal Council.
9. **Consideration.** For the services provided under this Agreement, and once a business plan has been approved to the satisfaction of the Director of Planning and Development Services and provided CBOT is not in default, the Municipality shall pay CBOT a flat fee of \$325,000 for the first year of the Term and a flat fee of \$300,000 for second year of the Term. Each such payment shall be made as soon as possible after the Municipality has approved its annual budget.
10. **CBOT's Human Resources.** CBOT shall be the direct employer of its own human resources, with an organizational structure, staff complement, and salaries and benefits determined by CBOT.
11. **CBOT's Corporate Services.** CBOT shall be responsible for its own corporate services such as payroll and benefits administration, banking, accounting and financial management, legal, purchasing, printing, computers and office technology, human resource management, mail/courier, office space, furniture, fixtures and supplies.
12. **Indemnification by CBOT.** CBOT shall indemnify and save harmless the Municipality and its representatives from and against all claims, demands, losses, costs, damages, actions, suits or other proceedings by whomsoever made, sustained, brought or prosecuted, in any manner arising from any willful or negligent act, or attributed to anything done or omitted to be done by CBOT, its directors, officers, employees or agents arising from or pertaining to the receipt, disposition or refunding of Fees, as the case may be.
13. **Indemnification by Municipality.** The Municipality shall indemnify and save harmless CBOT, its directors, officers, employees and agents, and their respective heirs, executors, administrators, successors and assigns from and against all claims, demands, losses, costs, damages, actions, suits or other proceedings by whomsoever made, sustained, brought or prosecuted in any manner arising from any willful or negligent act, or attributable to anything done or omitted to be done

by the Municipality, its officers, employees or agents, arising from or pertaining to the late payment or nonpayment of any installment of the Fee or other financial obligation of the Municipality to CBOT except where such late payment or nonpayment is permitted by this Agreement.

14. **Provision of Information.** Upon written request from the Municipality, CBOT shall provide the Municipality, without expense to it, any information, as it pertains to economic development activities, which is available to CBOT with respect to its business plan and which it is able to provide without breaching any applicable law.
15. **Events of Default.** The following constitute events of default under this Agreement:
 - (a) CBOT becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute from time to time being enforced relating to bankrupt or insolvent debtors;
 - (b) An order is made or resolution passed for winding up or for the dissolution of CBOT or it is dissolved;
 - (c) CBOT ceases actual bona fide operation for a period of thirty (30) days;
 - (d) CBOT has knowingly submitted false or misleading information to the Municipality; or
 - (e) CBOT is in breach of the performance of, or compliance with, any term, condition, or obligation on its part to be observed or performed under this Agreement.
16. **Remedies on Default.** If an event of default specified in subclause 15 (a), (b), (c) or (d) occurs or an event of default specified in subclause 15 (e) occurs and is not remedied within thirty (30) business days after receipt by CBOT of notice of default, or a plan satisfactory to the Municipality to remedy such an event of default is not implemented within such period and fully and diligently carried out thereafter, then the Municipality may, in addition to any other remedies otherwise available, terminate this Agreement and any obligation by the Municipality to pay the Fee including any unpaid installment outstanding prior to the date of such termination.
17. **Waiver of Breaches.** In the event of a breach of any provision of this Agreement by one party, no action or failure to act by the other party shall constitute a waiver of any right or duty afforded by that party under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any such breach, except as may be specifically agreed to in writing.
18. **Further Documents.** CBOT and the Municipality shall, from time to time, execute and deliver all further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better

evidence or perfect the full intent and meaning of this Agreement.

19. **Notice.** Where in this Agreement any notice, request, direction or other communication is required to be given or made by either party, it shall be in writing and is effective if delivered in person or by recognized courier addressed to the other party for whom it is intended at the following addresses, and any notice shall be deemed to have been given on the date of such delivery.

Any notices intended for the Municipality shall be delivered and addressed to:

Municipality of Clarington
40 Temperance Street
Bowmanville, ON L1C 3A6
Attention: Municipal Clerk

Any notices intended for CBOT shall be delivered and addressed to:

Clarington Board of Trade
54 King Street East, Suite 102
Bowmanville, ON L1C 1N3
Attention: President

The address of either party may be changed by notice in the manner set out above.

20. **Assignment.** Neither party shall assign all or any portion of its rights or obligations under this Agreement to a third party without the other party's prior written consent.
21. **Supplementary or Additional Agreements.** If at any time during the continuance of this Agreement, the parties shall deem it necessary or advisable to make any alteration or addition to this Agreement, they may do so by means of a written agreement between them which shall be supplemental or additional hereto and form part hereof.
22. **Severability of Provisions.** If any of the provisions of this Agreement shall be illegal or invalid, such illegality or invalidity shall not render the whole Agreement illegal or invalid, but the Agreement shall be construed as if it did not contain the illegal or invalid provision or provisions, and the rights and obligations of the parties shall be construed and enforced accordingly.

IN WITNESS WHEREOF the Municipality and CBOT have signed this Agreement.

**THE CORPORATION OF THE
MUNICIPALITY OF CLARINGTON**

Per: _____
Adrian Foster, Mayor

Per: _____
June Gallagher, Municipal Clerk

CLARINGTON BOARD OF TRADE

Per: _____
Angelo Lyall, President

Per: _____
Sheila Hall, Executive Director