

THIS SERVICE AGREEMENT (the “**Agreement**”) made in duplicate this ____ day of December 2020 (the “**Effective Date**”)

BETWEEN:

THE CITY OF SAINT JOHN, having its offices at the City Hall Building at 15 Market Square, Saint John, New Brunswick, a body corporate by Royal Charter, confirmed and amended by Acts of the Legislative Assembly of the Province of New Brunswick (hereinafter called the “**City**”)

OF THE FIRST PART

- and -

CARLETON COMMUNITY CENTRE, INC., a body corporate under the laws of the Province of New Brunswick (hereinafter called “**CCC Inc.**”)

OF THE SECOND PART

WHEREAS the City is owner of a parcel of land bearing PID 00361675 located at 82 Market Place West in the City of Saint John and Province of New Brunswick (the “**Lands**”);

AND WHEREAS located on the Lands is a building known as the Carleton Community Centre (the “**Centre**”);

AND WHEREAS CCC Inc. submitted to the City a Proposal dated May 15, 2017, which is attached as Schedule 1 hereto, for the management and operation of the Centre;

AND WHEREAS the Common Council of the City, at its meeting held on November 14, 2017 resolved to enter into an agreement with CCC Inc. for the management and operation of the Centre, commencing February 1, 2018;

AND WHEREAS the agreement referenced in the immediately foregoing recital was intended for an additional term of one (1) year commencing on February 1, 2019;

AND WHEREAS CCC Inc. signalled its intention to have The Boys and Girls Club of Saint John Inc. (the “**BGC**”) take over responsibility for youth programming at the Centre commencing on October 1, 2019 and concluding on December 31, 2020;

AND WHEREAS CCC Inc. has signalled its intention to resume sole responsibility over the management and operation of the Centre, including responsibility over youth programming at the Centre, commencing on January 1, 2021;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

1.0 INTERPRETATION AND GENERAL PROVISIONS

1.1 Defined Terms

When used in this Agreement, the following words or expressions have the following meanings:

1. **“Adult”** means an individual 18+ years old;
2. **“Agreement”** means this Agreement and all accompanying Schedules and includes any and every instrument supplemental and ancillary thereto;
3. **“Applicable Laws”** mean all applicable requirements, laws, statutes, codes, acts, ordinances, orders, decrees, injunctions, by-laws, rules, regulations, official plans, permits, licenses, authorisations, directions, and agreements with all Authorities that now or at any time hereafter may be applicable to either this Agreement or the terms and conditions or any part of them set out in this Agreement;
4. **“Authority”** means any government authority, agency, body or department, whether federal, provincial or municipal, having or claiming jurisdiction over this Agreement; and **“Authorities”** means all such authorities, agencies, bodies and departments;
5. **“Business Day”** means a day other than a Saturday, Sunday or statutory holiday under the laws of Canada or the Province of New Brunswick or a civic holiday proclaimed by the City;
6. **“CCC Inc. Mailing Address”** means 120 Market Place, Saint John, NB, E2M 0E1;
7. **“CCC Inc. Representative”** means Dustin Leclerc;
8. **“Centre”** means the Carleton Community Centre located at 82 Market Place West, in the City of Saint John, and Province of New Brunswick, and forms part of PID number 00361675;
9. **“Change in Law”** means the coming into effect or repeal (without re-enactment or consolidation) in New Brunswick of any Applicable Laws, or any amendment or variation of any Applicable Laws, including any judgment of a relevant court of law, board, arbitrator or administrative tribunal, which changes binding precedents in New Brunswick in each case after the date of this Agreement;
10. **“Child”** means an individual 0-5 years old;
11. **“City Address”** means 15 Market Square, City Hall, Saint John, New Brunswick, E2L 4L1;
12. **“City Manager”** means the city manager of the City appointed by resolution of Common Council, or his designate;

13. **“Common Council”** means the elected officials of the City;
14. **“Dispute”** means any dispute, controversy, disagreement or failure to agree arising out of, in connection with, or relating to the interpretation, performance or application of the Agreement;
15. **“Dispute Resolution Process”** has the meaning ascribed thereto in Schedule 4;
16. **“Facility Management”** means the Facility Management Division of the City;
17. **“Force Majeure Event”** means the occurrence after the date of this Agreement of any circumstance, occurrence or event beyond the reasonable control of a Party to this Agreement to the extent such cannot be prevented or mitigated by the affected Party, including, without limitation, any of the following:
 - i. civil war, armed conflict, warlike operation or terrorism, acts of foreign enemies, hostilities, invasion, rebellion, military or usurped power;
 - ii. nuclear or radioactive contamination at the Centre;
 - iii. chemical or biological contamination at the Centre from any event referred to in items (i) or (ii) of this definition;
 - iv. epidemics or pandemics in New Brunswick, or Canada, if such epidemics or pandemics have formally been declared to exist by the World Health Organization or the Chief Medical Officer of Health of the Province, or Canada which have a direct effect on the supply or transportation of goods, services or materials at the Centre; or
 - v. a Change in Law;

which directly causes a Party to be unable to comply with or perform all or a material part of its obligations under this Agreement, despite the reasonable efforts of the Party claiming Force Majeure to prevent its occurrence or mitigate its effects; provided always that such circumstances, occurrence or event does not arise by reason of:

- i. the negligence or any misconduct of the Party claiming Force Majeure;
- ii. any act or omission of the Party claiming Force Majeure in breach of the provisions of this Agreement; or
- iii. the lack or insufficiency of funds or failure to make payment of monies or provide required security.

18. **"Market Place Wellness Clinic"** means the Wellness Clinic which is operated by The Horizon Health Network and is located in the basement of the Centre;
19. **"Party"** individually means the City or CCC Inc. and **"Parties"** means the City and CCC Inc.;
20. **"Person"** if the context allows, includes any individual, person, firm, partnership, agency, board, statutory commission, commission or corporation or any combination thereof;
21. **"Programs"** means the administration of any recreational, social or child care programs based on the needs of the general public, including but not limited to, after school programs, breakfast and lunch programs, day-care and summer camps, and senior citizens fitness classes, community seniors club, teen leadership programs, evening community gym activities, dance instruction and special community rentals (e.g. baby showers and birthday parties);
22. **"Proposal"** means the proposal submitted by CCC Inc. dated May 17, 2017, in the form attached as Schedule "1";
23. **"Schedules"** means the following schedules attached to and forming an integral part of this Agreement:
- a) Schedule "1" – Carleton Community Centre a community-led model dated May 17, 2017 (updated October 16, 2017);
 - b) Schedule "2" – Recreation and Program Services Specifications;
 - c) Schedule "3" – Carleton Community Centre: Limited Facility Operations and Maintenance Specification;
 - d) Schedule "4" – Dispute Resolution Process;
 - e) Schedule "5" – License Agreement between The City of Saint John and Horizon Health Network dated July 1, 2015;
 - f) Schedule "6" – License Agreement between The City of Saint John and West Side Food Bank Inc. dated July 1, 2015; and
 - g) Schedule "7" – Centre Floor Plan.
24. **"Services"** mean those services as set out in this Agreement and the Proposal and any additional services agreed between the Parties in writing and as set forth in this Agreement;

25. **“Term”** means the term of this Agreement as set out in Section 2.1;

26. **“West Side Food Bank”** means the Food Bank which is operated by West Side Food Bank Inc. and is located in the basement of the Centre;

27. **“Youth”** means an individual aged 6-17 years old;

1.2 No Indemnities from the City

1.2.1 Notwithstanding anything else in this Agreement, any express or implied reference to the City providing an indemnity or incurring any other form of indebtedness or contingent liability that would directly or indirectly increase the indebtedness or contingent liabilities of the City, shall be void and of no legal effect.

1.3 Entire Agreement

1.3.1 This Agreement, including the Schedules, constitutes the entire agreement between the Parties and supersedes all prior agreements, communications, understandings, negotiations and discussions, whether oral or written, express or implied, of the Parties with respect to the subject matter hereof. There are no covenants, representations, warranties, agreements or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Agreement except as expressed herein.

1.3.2 The Parties agree that in entering into this Agreement, they have not relied upon any oral or written agreements, representations, warranties, promises, information, or understandings, express or implied, not specifically set forth in this Agreement.

1.4 Severability

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

1.5 Priority of Documents

1.5.1 In the event of a conflict or inconsistency between any provisions in this Agreement and the Schedules, the main body of this Agreement shall govern over the Schedules.

1.6 Headings and Grammatical Variations

1.6.1 The division of this Agreement into sections and paragraphs and the insertion of headings are for convenience of reference only, and shall not affect the construction or interpretation of this Agreement.

- 1.6.2 In this Agreement, grammatical variations of any defined term shall, unless the context otherwise requires, have similar meanings to such defined terms, words denoting singular include the plural and vice versa, and words, denoting any gender include all genders.

1.7 Notices

- 1.7.1 Notices shall be in writing and shall be delivered by courier or personal delivery and shall be addressed to, in the case of service upon the City, the City Address to the attention of the City Clerk, or in the case of service upon CCC Inc., to CCC Inc. Address to the attention of CCC Inc. Representative.
- 1.7.2 Notices shall be deemed to have been given in the case of courier or personal delivery, one (1) Business Day after such notice is received by the other Party. In the event of a courier disruption, notices must be given by personal delivery. Unless the Parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

1.8 Governing Law

- 1.8.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of New Brunswick and all applicable federal laws of Canada.

1.9 Applicable Laws

- 1.9.1 The Parties shall comply with Applicable Laws or Change in Laws which are or become in force during the performance of the Services and which relate to the Services, notwithstanding the Applicable Laws or Change in Laws shall not apply retroactively.

1.10 Modification and Amendments

- 1.10.1 This Agreement may not be modified or amended except by an instrument in writing signed by the Parties or by their successors or permitted assigns.

1.11 Enurement

- 1.11.1 This Agreement shall extend to, be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

1.12 Miscellaneous

- 1.12.1 The Parties and each of them shall at all times and from time to time hereafter and upon every reasonably written request to do so, make, do, execute, deliver or cause to be made, done, executed and delivered all such further documents, acts, deeds, assurances and things as may be required to more effectively implement and carry out the true intent and meaning of this Agreement.
- 1.12.2 Time shall be of the essence for this Agreement.
- 1.12.3 This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of

signature pages by facsimile or electronic transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or electronic transmission shall be deemed to be their original signature for all purposes.

2.0 TERM

2.1 Term

- 2.1.1 Unless otherwise terminated in accordance with Section 10, this Agreement shall commence as of the 1st day of January 2021 and terminate at midnight on the 31st day of December, 2022.

3.0 STATUS OF PARTIES

3.1 Capacity of Parties

- 3.1.1 The Parties represent and warrant that they have the full right, power and authority to enter into this Agreement and there is no Agreement with any other Person which would in any way interfere with the rights of the Parties under this Agreement.

3.2 Authority of representatives

- 3.2.1 The Parties represent that their respective representatives have the authority to legally bind them to the extent permitted by Applicable Laws.

3.3 No Partnership, Agency etc.

- 3.3.1 CCC Inc. shall have no power or authority to bind the City or to assume or create any obligation or responsibility, express or implied, on behalf of the City. CCC Inc. shall not hold itself out as an agent, partner or employee of the City. Nothing in this Agreement shall have the effect of creating an employment, partnership or agency relationship between the City and CCC Inc. (or any of CCC Inc. directors, officers, employees, agents, partners, affiliates or subcontractors).

3.4 Acts and Omissions

- 3.4.1 CCC Inc. acknowledges and agrees that it is liable for the acts and omissions of its directors, officers, employees, agents, partners, affiliates and subcontractors. This paragraph is in addition to and not in derogation of any and all of CCC Inc.'s liabilities under this Agreement and under the general application of Applicable Laws.
- 3.4.2 CCC Inc. shall advise those individuals and entities, for whom it is responsible, of its obligations under this Agreement and, without limiting the generality of the foregoing, shall take all appropriate action to ensure compliance with this Agreement.
- 3.4.3 In addition to any other liabilities of CCC Inc. pursuant to this Agreement or otherwise at law or in equity, CCC Inc. shall be liable for all damages, costs, expenses, losses, claims or actions arising from any breach of this Agreement resulting from the actions of those individuals and entities listed at s. 3.4.1.

3.5 Assignment

- 3.5.1 CCC Inc. shall not assign the whole or any part of this Agreement or any monies due under it without the prior written consent of the City (which may be arbitrarily withheld). Such consent shall be in the sole discretion of the City and subject to the terms and conditions that may be imposed by the City.

3.6 Sub-Agreements

- 3.6.1 CCC Inc. shall not sublet any portion of the Centre without prior written approval from the City.
- 3.6.2 CCC Inc. shall not enter into an agreement with another Person with respect to the provision of any of the Services contemplated under this Agreement without prior written approval from the City.
- 3.6.3 The City has entered into an agreement with the Horizon Health Centre for the operation of the Market Place Wellness Centre. The terms of the License Agreement dated July 1, 2015 are attached as Schedule "5" – License Agreement between the City and Horizon Health Network. The Horizon Health Network has the use of premises for a portion of the basement of the Centre as described in Schedule "5".
- 3.6.4 The City has entered into an agreement with the West Side Food Bank. The terms of the License Agreement dated January 1, 2019 are attached as Schedule "6" – License Agreement between the City and West Side Food Bank Inc. The West Side Food Bank Inc. has the use of premises for a portion of the basement of the Centre as described in Schedule "6".
- 3.6.5 The City has the sole right to lease the highlighted portion of the Centre Basement as outlined in Schedule "7", notwithstanding agreements with the West Side Food Bank Inc. and Horizon Health Centre.

4.0 PERFORMANCE BY CCC INC.

4.1 Commencement of Performance

- 4.1.1 CCC Inc. shall commence the management and operation of the Centre and the delivery of the Services pursuant to the within Agreement as of January 1, 2021 at 6:00 a.m. and cease same on December 31, 2022 at midnight.

4.2 Performance Warranty

- 4.2.1 CCC Inc. hereby represents and warrants that the Services shall be provided fully and diligently in a professional and competent manner by qualified and skilled employees in their occupations and furthermore that all Services will be provided in accordance with

- a) this Agreement; and
- b) Applicable Laws.

If any of the Services, in the opinion of the City, are inadequately provided or require corrections, CCC Inc. shall forthwith make the necessary rectification or corrections at its own expense as specified by the City in a rectification notice.

4.3 No Waiver

- 4.3.1 Any failure by the City to insist in one or more instances upon strict performance by CCC Inc. of any of the terms or conditions of this Agreement shall not be construed as a waiver by the City of its right to require strict performance of any such terms or conditions, and the obligations of CCC Inc. with respect to such performance shall continue in full force and effect.

5.0 SERVICES BY CCC INC.

5.1 Responsibilities and Obligations of CCC Inc.

- 5.1.1 CCC Inc. shall perform the Services as set out in this Agreement and in the Schedules at the Centre on a daily basis as described in Schedule “2”.
- 5.1.2 The Centre’s schedule set out at s. 5.1.1 may be changed upon agreement of the Parties.
- 5.1.3 CCC Inc. shall provide the recreation and program services set out in this Agreement and the schedules thereto. Such Services include but are not limited to:
- a) Recreational and leisure programs and services;
 - b) community rental space;
 - c) child and adult programming;
 - d) youth programming
 - e) a blend of free and fee based programming at the Centre for youths and adults designed to enable the development of social and emotional skills needed to function in the family, community and school; and
 - f) a comprehensive wellness program for children and adults at the Centre with transportation provided by CCC Inc. for outings and special activities.
- 5.1.4 CCC Inc. shall perform the Services under the general direction and control of the City’s Neighbourhood Improvement Support Service.
- 5.1.5 CCC Inc. shall share on a monthly basis with the City’s Neighbourhood Improvement Support Service all program schedules, special events schedules and activities relating to the Centre.
- 5.1.6 CCC Inc. shall once per year present an annual report to Common Council and shall annually provide the City with a copy of their most recent audited financial statements.
- 5.1.7 CCC Inc. shall also:

- a) Pay all costs associated with the day to day operation of the Centre, including but not limited to staff and equipment, and excluding landscaping equipment;
- b) Be responsible for providing operations and maintenance specification services as outlined in Schedule “3”;
- c) Pay for ongoing maintenance, upkeep or replacement of moveable assets such as furniture, office equipment, and recreation equipment. These assets are for the sole use of Centre operations and may not be sold, transferred, or disposed of without written approval from the City. Assets that are replaced will be the property of the City and CCC Inc. will be required to maintain them;
- d) Not modify the building, including interior and/or exterior elements, without first having obtained the City’s written approval. This includes, but is in no way limited to, the installation of fixed furniture and/or equipment, wall hangings, paintings, etc. Any modifications or alterations not approved by the City in writing will be returned to a state that is acceptable to the City at the sole expense of CCC Inc.;
- e) Be liable for issues or damages to the building caused as a direct result of the negligence of CCC Inc. or its representatives or agents, and CCC Inc. shall, at its sole expense, make good such issues or damages to the satisfaction of the City;
- f) Be responsible for the hiring, training and supervising of staff hired to provide programs and services;
- g) Employ and pay all its employees who will provide Programs and Services at the Centre in accordance with all applicable employment and other laws;
- h) Ensure that all potential employees (including, for greater certainty, permanent, temporary, full-time, and part-time employees) and persons who otherwise perform any of the Services complete and deliver to CCC Inc. a criminal record search form and a vulnerable sector search form, or consents to the performance of a criminal record search and a vulnerable sector search by the Saint John Police Force or any other police detachment;
- i) Not permit the use of alcohol during scheduled activities or the bringing of alcohol on the premises of the Centre without prior written consent of the City;
- j) Not permit the use of non-prescriptive medication or illicit drugs on the premises of the Centre;
- k) Ensure that a CCC Inc. Representative is available on a 24/7 basis to respond to emergency situations at the Centre;

- l) Provide up-to-date contact information (including home and cellular phone numbers and email address) for at least three (3) individuals who can be contacted and have authority to make decisions on a 24/7 basis in case of emergency. This information may be forwarded to the company responsible for monitoring the Centre Alarm System;
- m) Ensure that one CCC Inc. staff person carries a cell phone during business hours of the Centre, and that the number is provided to the City;
- n) Ensure that a CCC Inc. staff person is available onsite at the Centre at all times during which the Programs and Services at the Centre are being carried out to respond to any emergency circumstances that may arise at the Centre;
- o) Meet with Neighbourhood Improvement Support Service's monthly to discuss programming and community needs;
- p) Provide a written report on any hazardous conditions, safety concerns, injury, accident or illness related to the Centre to The City's Neighbourhood Improvement Support Service and to Facility Management immediately following the occurrence of the aforementioned incidents;
- q) Provide a written report on July 1, 2021 and every subsequent January 1 and July 1 thereafter, detailing the status, progress and outcomes CCC Inc. has achieved during the foregoing six (6) months
- r) Comply with those requirements of the *Official Languages Act*, and amendments thereto which are applicable to the City;
- s) Comply with those requirements of the *Smoke-Free Places Act*, and amendments thereto which are applicable to the City;
- t) Ensure that emergency exits remain accessible at all times, and that such exits are not obstructed in any way by such things as tables, chairs, walls, stages, people, etc.;
- u) Ensure that no unauthorized gas or propane equipment or fixtures are used inside the Centre; and when such equipment or fixtures are used outside of the Centre, CCC Inc. shall ensure that such use adheres to CSA approved standards;
- v) Ensure that all staff and volunteers who are in contact with children or vulnerable adults receive formal training in the prevention, recognition and reporting of abuse (e.g., sexual, verbal, psychological, physical, financial, neglect, etc.);
- w) Ensure that the appropriate guidelines pertaining to the reporting of sexual abuse of children are in place and adhered to; and

- x) Adhere to the Limited Facility Operations and Maintenance Specifications set out in Schedule 3 to this Agreement.

6.0 SERVICES BY THE CITY

6.1 Responsibilities and Obligations of the City

6.1.1 The City, at its own expense, through its Neighbourhood Improvement Support Service, shall:

- a) Designate and make available to CCC Inc. a contact person during the term of this Agreement;
- b) Provide CCC Inc. with limited free advertising through its Leisure Guide and/or City Web Page;
- c) Pay the costs associated with the following, for the Centre:
 - electricity,
 - water,
 - heat,
 - property taxes,
 - property insurance,
 - janitorial equipment,
 - landscaping equipment,
 - solid waste collection,
 - building maintenance as defined in paragraph (d),
 - telephone (landline),
 - internet connection;
- d) The City shall maintain the Centre such that it is and remains safe and secure for users. The City has no obligation under this Agreement, expressed or implied, to perform maintenance beyond this minimum level.

7.0 PAYMENT FOR SERVICES

7.1 Fees

7.1.1 Subject to CCC Inc.'s compliance with the provisions of this Agreement, the City shall pay the following to CCC Inc. for Services rendered under this Agreement for the period between January 1, 2021 and December 31, 2022:

- a) the sum of Three Hundred and Sixty Thousand Dollars (\$360,000.00, HST included) to be paid in accordance with the following payment schedule:

January 1, 2021	\$90,000.00
July 1, 2021	\$90,000.00
January 1, 2022	\$90,000.00
July 1, 2022	\$90,000.00

7.1.2 The amounts described in Section 7.1.1 are inclusive of all applicable taxes.

8.0 INSURANCE

8.1 Liability Insurance

8.1.1 CCC Inc., at their sole cost, shall obtain and maintain in full force and effect during the term of this Agreement:

a) a Commercial General Liability Insurance policy with an inclusive limit of not less than Five Million Dollars (\$5,000,000), inclusive per occurrence for Bodily Injury and Property Damage; and

b) an Automobile Insurance Policy with an inclusive limit of not less than Five Million Dollars (\$5,000,000).

8.1.2 The insurance policies listed in Section 8.1.1 shall provide that the coverage shall stay in force and not be amended, cancelled or allowed to lapse without thirty (30) days prior written notice being given to the City. The said insurance policies shall also name the City as an additional insured and shall contain a cross-liability clause.

8.1.3 CCC Inc. shall provide a certificate of insurance to the City evidencing the insurance coverage described in Section 8.1.1 on the signing of this Agreement.

8.1.4 If applicable, CCC Inc. shall obtain and maintain in full force and effect during the term of this Agreement, coverage from WorkSafeNB and provide evidence of this coverage to the City upon request.

8.1.5 Nothing in this Section shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which CCC Inc. may be held responsible for payments of damages to persons or property.

9.0 INDEMNITY

9.1 Indemnification

9.1.1 Notwithstanding any other clauses herein, CCC Inc. shall indemnify and save harmless the City from all damages, costs, claims, demands, actions, suits or other proceedings by whomsoever claimed, made, brought or prosecuted in any manner and whether in respect of property owned by others or in respect of damage sustained by others based upon or arising out of or in connection with the performance of this Agreement or anything done or purported to be done in any manner hereunder, but only to the extent that such damages, costs, claims, demands, actions, suits or other proceedings are attributable to and caused by CCC Inc.'s negligence, errors, omissions or breach of its obligations under this Agreement.

10.0 TERMINATION

10.1 Termination

10.1.1 The City may immediately terminate this Agreement upon giving notice to CCC Inc. where:

- a) CCC Inc. makes an assignment for the benefit of its creditors, is declared bankrupt or commits an act of bankruptcy, becomes insolvent, makes a proposal or otherwise takes advantage of provisions for relief under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation in any jurisdiction, or any other type of insolvency proceedings being commenced by or against the Consultant under the *Bankruptcy and Insolvency Act* (Canada) or similar legislation;
- b) CCC Inc. breaches any of the provisions of this Agreement;
- c) in the City's reasonable opinion, CCC Inc., prior to or after executing this Agreement, makes a material misrepresentation or omission or provides materially inaccurate information to the City;
- d) CCC Inc. undergoes a change of control which, in the reasonable opinion of the City, adversely affects CCC Inc.'s ability to satisfy some or all of its obligations under this Agreement;
- e) CCC Inc. subcontracts any provisions or parts or all of the Services or assigns this Agreement without first obtaining the written approval of the City; or
- f) in the City's reasonable opinion, CCC Inc.'s acts or omissions constitute a substantial breach of CCC Inc.'s obligations under this Agreement.

The above rights of termination are in addition to all other rights of termination available at law, or events of termination by operation of law.

10.2 Termination on Notice

10.2.1 The City reserves the right to terminate this Agreement, without cause, upon thirty (30) days prior written notice to CCC Inc.

10.3 Obligations on Termination

10.3.1 CCC Inc. shall, following the giving of a notice of termination by the City hereunder or upon expiry of the Term, in addition to its other obligations under this Agreement and at law:

- a) provide the City with a report detailing any information requested by The City's Neighbourhood Improvement Support Service pertaining to the provisions and performance of this Agreement;
- b) execute such documentation as may be required by the City to give effect to the termination of this Agreement;

- c) immediately return to the City any unused portion of the grant amounts paid pursuant to this Agreement; and
- d) comply with any other instructions provided by The City's Neighbourhood Improvement Support Service or Common Council.

10.4 Rights and Remedies

- 10.4.1 The express rights of termination in this Agreement are in addition to and shall in no way limit any rights or remedies of the City under this Agreement or Applicable Laws or otherwise, at law or in equity.

11.0 DISPUTE RESOLUTION

11.1 Dispute resolution Process

- 11.1.1 All Disputes shall be resolved in accordance with Schedule "4" of this Agreement.

11.2 Retention of Rights

- 11.2.1 No act by the Parties shall be construed as a renunciation or waiver of any rights or recourses, provided the Party has given the required notices and has carried out the instructions as provided in the Schedules to this Agreement.

12.0 FORCE MAJEURE EVENTS

12.1 Force Majeure

- 12.1.1 A Party claiming to be affected by a Force Majeure Event shall, within ten (10) Business Days of the Party becoming aware of the happening of such an event, provide written notice to the other Party setting out the nature of the event, the expected effect on the performance of this Agreement and the proposed use of the Annual Service Payments rendered under this Agreement.

- 12.1.2 Where a Party is (or claims to be) affected by a Force Majeure Event such Party shall:

- i. take reasonable steps to mitigate the consequences of such Force Majeure Event upon the performance of its obligations under this Agreement;
 - ii. continue to perform its obligations under this Agreement to the extent possible notwithstanding the Force Majeure Event; and
 - iii. use commercially reasonable efforts to resume performance of its obligations affected by the Force Majeure Event as soon as practical.

- 12.1.3 Should a Force Majeure Event which, by reason of an order of the Province of New Brunswick or Canada, preclude the performance by CCC Inc. of the Services stipulated in this Agreement, the City may withhold payment of the Fees for Services rendered under this Agreement on a prorated

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

COUNTY OF SAINT JOHN

1. THAT I am the City Clerk of the City of Saint John and have custody of the Common Seal hereof
2. THAT the seal to the foregoing instrument affixed is the Common Seal of The City of Saint John and that it was so affixed by Order of the Common Council of the said City.
3. THAT the signature "Don Darling" to the said instrument is the signature of W. Donald Darling, Mayor of the said City, and the signature "Jonathan Taylor" thereto is my own signature.
4. THAT we are the proper officers to sign the foregoing instrument on behalf of The City of Saint John.

Commissioner of Oaths Being a Solicitor

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Jonathan Taylor

COUNTY OF SAINT JOHN

1. THAT I am the Chair of the Board of Directors of Carleton Community Centre Inc., and am authorized to make this affidavit and have personal knowledge of the matters hereinafter deposed to.
2. THAT the Signature “Dennis Sisco” subscribed to the said instrument is my signature and as Chair of the Board of Directors I am duly authorized to execute the said instrument.
3. THAT the said document was executed as aforesaid at the City of Saint John in the Province of New Brunswick on the ____ day of _____, 2020.

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Dennis Sisco
Chair, Board of Directors