



THE REGIONAL MUNICIPALITY OF NIAGARA  
CORPORATE SERVICES COMMITTEE  
FINAL AGENDA

CSC 9-2020

Wednesday, October 14, 2020

9:30 a.m.

Council Chamber

Niagara Region Headquarters, Campbell West

1815 Sir Isaac Brock Way, Thorold, ON

Due to efforts to contain the spread of COVID-19 and to protect all individuals, the Council Chamber at Regional Headquarters will not be open to the public to attend Committee meetings until further notice. To view live stream meeting proceedings, visit:  
[niagararegion.ca/government/council](http://niagararegion.ca/government/council)

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Pages

1. CALL TO ORDER

2. DISCLOSURES OF PECUNIARY INTEREST

3. PRESENTATIONS

4. DELEGATIONS

4.1. Canada Summer Games - Transition Update (Report CSD 64-2020  
(Agenda Item 6.2))

4.1.1. *Doug Hamilton, Chair, 2021 Canada Summer Games*

5. ITEMS FOR CONSIDERATION

5.1. CLK 10-2020 REVISED  
2021 Legislative Schedule of Regular Meetings

4 - 9

5.2. CSC-C 20-2020  
Recommendations for Consideration from the Women's Advisory  
Committee meeting held September 30, 2020

10 - 16

- 5.3. HR 5-2020 17 - 37  
Human Resources Information Systems (HRIS) Support

A presentation will precede the consideration of this item.

**6. CONSENT ITEMS FOR INFORMATION**

- 6.1. CSC-C 19-2020 38 - 50  
COVID-19 Response and Business Continuity in Corporate Services

- 6.2. CSD 64-2020 51 - 97  
Canada Summer Games - Transition Update

**7. OTHER BUSINESS**

**8. CLOSED SESSION**

- 8.1. Confidential CSD 59-2020  
A Matter Respecting Litigation and a Matter of Advice that is Subject to Solicitor-Client privilege under s. 239(2)(e) and (f) of the Municipal Act, 2001 – Hatch Corporation and South Side Low Lift Sewage Pumping Station Upgrades, Chippawa (Niagara Falls)

- 8.2. Confidential CSD 62-2020  
A Matter Respecting Litigation and a Matter of Advice that is Subject to Solicitor-Client privilege under s. 239(2)(e) and (f) of the Municipal Act, 2001 – Cole Engineering Group Ltd. re Welland Waste Water Treatment Plant

- 8.3. Confidential CSD 67-2020  
A Matter of Advice that is Subject to Solicitor-Client privilege and A Matter of Commercial Information supplied in confidence to the municipality which if disclosed could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization, under s. 239(2) of the Municipal Act, 2001 – 2021 Canada Summer Games Agreements - Update and Next Steps

- 8.4. Confidential CSC-C 21-2020  
A Matter of a Proposed or Pending Acquisition or Disposition of Land by the Municipality - Niagara Regional Housing Acquisition of Property in the City of Niagara Falls (Confidential Report NRH 12-2020)

**9. BUSINESS ARISING FROM CLOSED SESSION ITEMS**

**10. NEXT MEETING**

The next meeting will be held on Monday, November 9, 2020, at 9:30 a.m. in the Council Chamber, Regional Headquarters.

**11. ADJOURNMENT**

If you require any accommodations for a disability in order to attend or participate in meetings or events, please contact the Accessibility Advisor at 905-980-6000 ext. 3252 (office), 289-929-8376 (cellphone) or [accessibility@niagararegion.ca](mailto:accessibility@niagararegion.ca) (email).

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**Subject:** 2021 Legislative Schedule of Regular Meetings

**Report to:** Corporate Services Committee

**Report date:** Wednesday, October 14, 2020

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## Recommendations

1. That ***one of the two options*** of the 2021 Legislative Schedule of Regular Meetings, attached as Appendix 1 ***and 2*** of Report CLK 10-2020 **REVISED, BE ADOPTED APPROVED.**

## Key Facts

- ***At the Corporate Services Committee meeting held on September 9, 2020, the 2021 Legislative Schedule of Regular Meetings was referred to staff to provide additional meeting schedule options reflecting feedback received at the meeting.***
- ***Staff have taken the feedback provided at the Corporate Services Committee and included two potential options for the 2021 Legislative Schedule of Regular Meetings.***
- The legislative schedule for the following calendar year is typically adopted in the later months of the previous year.
- The proposed schedule continues the cycle of monthly meetings for both Council and Standing Committees that was the preference of Council and staff when the 2020 calendar was adopted.
- Section 5.1 of the Region’s Procedural By-law provides that “All meetings of Council and Committee of the Whole shall be held...according to the schedule to be set annually and approved by Council or at such other time or place as may be designated by Council from time to time.”
- Section 5.2 of the Region’s Procedural By-law provides that “Regular meetings of Council shall be held on a Thursday, commencing at 6:30 p.m. in Open Session or at such other time as may be designated by the Regional Chair from time to time.”
- Section 22.2 of the Region’s Procedural By-law provides that “Standing Committees shall meet on the days and times according to the schedule set annually and approved by Council.”

## **Financial Considerations**

There are no financial considerations associated with the adoption of this report's recommendations.

## **Analysis**

Staff has prepared a draft 2021 Legislative Meeting Schedule for Council's consideration (attached as Appendix 1). The schedule was prepared in accordance with the Region's Procedural By-law and the established monthly cycle of Council and Standing Committees.

The proposed meeting schedule results in 24 days of Standing Committee meetings, 12 Regional Council meetings, and five (5) Committee of the Whole meetings.

The schedule includes the date of the 2021 Association of Municipalities of Ontario (AMO) conference, being held on August 15 to 18, in London, Ontario. The date of the 2021 Federation of Canadian Municipalities (FCM) conference has not been included on the schedule, as a final date has yet to be confirmed. The conference is to be held in Montreal, Quebec, on either June 3 to 6 or June 10 to 13. As such, June Standing Committees have been scheduled for June 15 and 16 so that regardless of when FCM is scheduled there will be no impact to Standing Committees.

***At its meeting held on December 13, 2018, Regional Council approved the 2019 Legislative Schedule of Regular Meetings changing from a three week cycle of meetings to once a month. This change allowed for additional time between meetings to prepare the necessary reports and documents for Council's consideration and to help avoid the addition of addendum items unless absolutely required. At that time, given the move to monthly meetings, Council was supportive of scheduling meetings in the month of August which had been previously been designated as a month without meetings.***

***It was requested that the schedule include monthly Committee of the Whole meetings. Staff have included monthly dates for Committee of the Whole, avoiding the months of October through December as these months include Budget Review Committee of the Whole meetings.***

***Staff have taken the feedback provided at the Corporate Services Committee meeting held on September 9, 2020 to offer two options for consideration for the 2021 Legislative Schedule of Regular Meetings.***

***The schedule includes the 2021 tentative dates for the Budget Review Committee of the Whole meetings to provide a fulsome overview of meetings in 2021. In accordance with the Budget Planning By-law (By-law 2019-79), these dates would be subject to approval of the Budget Review Committee of the Whole at its meeting scheduled on June 17, 2021.***

***Option 1 proposes 24 days of Standing Committee meetings, 12 Regional Council meetings, and seven (7) Committee of the Whole meetings. Committee of the Whole meetings are not scheduled in January (due to the previously approved dates of January 7 for a Budget Workshop and January 14 for Budget Review Committee of the Whole in accordance with CSD 41-2020), June (still waiting for confirmation on the date for FCM) and as noted above October through December (due to Budget Review Committee of the Whole meetings).***

***Option 1 also includes holding meetings in the month of August.***

***Option 2 follows the same schedule as noted above but no meetings are scheduled during the month of August. It is worthwhile noting that should a decision be made to not to hold any meetings in the month of August this could mean potentially heavier agendas in both July and September.***

***In consideration of timing, staff have attempted to limit evening meetings to two Thursdays a month and have avoided scheduling meetings on Thursdays of Standing Committee weeks where possible.***

### **Alternatives Reviewed**

Not applicable.

### **Relationship to Council Strategic Priorities**

Not applicable.

### **Other Pertinent Reports**

None.

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**Prepared and recommended by:**  
Ann-Marie Norio  
Regional Clerk  
Administration

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**Submitted by:**  
Ron Tripp, P.Eng.  
Acting Chief Administrative Officer

**Appendices**

Appendix 1            2021 Draft Legislative Meeting Schedule – Option 1

Appendix 2            2021 Draft Legislative Meeting Schedule – Option 2

# 2021 LEGISLATIVE SCHEDULE OF REGULAR MEETINGS - DRAFT - Option 1

REGIONAL COUNCIL, BUDGET REVIEW COMMITTEE OF THE WHOLE,  
COUNCIL BUSINESS PLANNING COMMITTEE OF THE WHOLE AND STANDING COMMITTEES

JANUARY						
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	Council		Committee of the Whole		March Break
	Committee Week		Budget Review Committee of the Whole		<b>TENTATIVE</b> Budget Review Committee of the Whole (Subject to approval by BRCOTW)
	Workshop		Stat Holiday		

<b>AMO - August 15-18, London, ON</b>	<b>FCM Conference - June -, Montreal, QC</b>
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### Meeting Times

**Council**  
**Committee of the Whole** (includes Budget Review)  
**Public Works Committee**  
**Public Health and Social Services Committee**  
**Corporate Services Committee**  
**Planning & Economic Development Committee**

Thursdays at 6:30 p.m.  
 Thursdays at 6:30 p.m.  
 Tuesdays at 9:30 a.m.  
 Tuesdays at 1:00 p.m.  
 Wednesdays at 9:30 a.m.  
 Wednesdays at 1:00 p.m.

*Approved by Regional Council on*

# 2021 LEGISLATIVE SCHEDULE OF REGULAR MEETINGS - DRAFT - Option 2 - AUGUST OFF

REGIONAL COUNCIL, BUDGET REVIEW COMMITTEE OF THE WHOLE,  
COUNCIL BUSINESS PLANNING COMMITTEE OF THE WHOLE AND STANDING COMMITTEES

JANUARY						
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OCTOBER						
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NOVEMBER						
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DECEMBER						
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 Council	 Committee of the Whole	 March Break
 Committee Week	 Budget Review Committee of the Whole	 <b>TENTATIVE</b> Budget Review Committee of the Whole
 Workshop	 Stat Holiday	(Subject to Approval by BRCOTW)

AMO - August 15-18, London, ON	FCM Conference - June -, Montreal, QC
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## Meeting Times

**Council**  
**Committee of the Whole** (includes Budget Review)  
**Public Works Committee**  
**Public Health and Social Services Committee**  
**Corporate Services Committee**  
**Planning & Economic Development Committee**

Thursdays at 6:30 p.m.  
 Thursdays at 6:30 p.m.  
 Tuesdays at 9:30 a.m.  
 Tuesdays at 1:00 p.m.  
 Wednesdays at 9:30 a.m.  
 Wednesdays at 1:00 p.m.

*Approved by Regional Council on*

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**MEMORANDUM**

**CSC-C 20-2020**

**Subject: Recommendations for Consideration from the Women's Advisory Committee meeting held September 30, 2020**

**Date: October 14, 2020**

**To: Corporate Services Committee**

**From: Ann-Marie Norio, Regional Clerk**

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At its meeting held on September 30, 2020, the Women's Advisory Committee put forward the following motions for consideration by the Corporate Services Committee:

**Minute Item 7.1.1**

**Meeting Frequency**

That the Women's Advisory Committee Terms of Reference **BE AMENDED** to provide that the Committee meet six (6) times per year.

**Minute Item 7.1.2**

**Establishment of Working Groups**

That in alignment with the goals of the Women's Advisory Committee Terms of Reference, that three (3) working groups **BE FORMED**;

That a working group **BE ESTABLISHED** to advocate for gender-based issue resolutions and opportunities related to Regional policies, priorities and decisions and that Sabrina Hill, Rochelle Ivri, Naheed Qureshi, and Elisabeth Zimmermann **BE APPOINTED** to this working group;

That a working group **BE ESTABLISHED** to promote leadership development that empowers women in Niagara to fully participate in civic life and that Councillors Butters, Huson, and Villella, and Isabell Camillo, and Laura Lane **BE APPOINTED** to this working group; and

That a working group **BE ESTABLISHED** to research and provide information and resources about women's gender-based issues to Niagara and that N'ora Kalb, Emily Kovacs, Coletta McGrath, Hafsah Shaikh, and Ruth Unrau **BE APPOINTED** to this working group.

Respectfully submitted and signed by

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Ann-Marie Norio  
Regional Clerk

**THE REGIONAL MUNICIPALITY OF NIAGARA  
WOMEN'S ADVISORY COMMITTEE  
MINUTES**

**WAC 1-2020  
Wednesday, September 30, 2020  
Meeting held by Video Conference**

Committee: Councillors Butters, Huson, Villella, I. Camillo, S. Hill, R. Ivri, N. Kalb, E. Kovacs, L. Lane, C. McGrath, N. Qureshi, H. Shaikh, R. Unrau, E. Zimmermann

Absent/Regrets: Councillor Ip

Staff: L. Gigliotti, Associate Director, Employee Services, A.-M. Norio, Regional Clerk, J. Smith, Human Resources Consultant, M. Trennum, Deputy Regional Clerk, C. Ogunniyi, Diversity, Equity & Inclusion Program Manager

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**1. CALL TO ORDER**

Ann-Marie Norio, Regional Clerk, called the meeting to order at 4:02 p.m.

**2. DISCLOSURES OF PECUNIARY INTEREST**

There were no disclosures of pecuniary interest.

**3. ROUND TABLE INTRODUCTIONS**

Committee members briefly introduced themselves and provided their experience and reasons for wanting to be part of the Committee.

**4. SELECTION OF COMMITTEE CHAIR AND VICE CHAIR**

**4.1 Call for Nominations for Committee Chair (Regional Councillor)**

Ann-Marie Norio, Regional Clerk, explained that in accordance with the Women's Advisory Committee terms of reference, the Committee Chair must be a Regional Councillor from the membership of the Committee.

The Regional Clerk called for nominations for the position of Committee Chair of the Women's Advisory Committee for a two-year term (2020-2022).

Moved by Councillor Butters  
Seconded by Councillor Villella

That Councillor Huson **BE NOMINATED** as Chair of the Women's Advisory Committee for a two-year term (2020-2022).

4.2 Motion to Close Nominations for Committee Chair

The Regional Clerk called a second and third time for nominations for the position of Women's Advisory Committee Chair. There being no further nominations it was:

Moved by R. Unrau  
Seconded by E. Kovacs

That nominations for the position of Chair of the Women's Advisory Committee **BE CLOSED**.

**Carried**

4.3 Voting for the Position of Committee Chair

There being only one nominee for the position of Committee Chair (Regional Councillor), the Regional Clerk announced that Councillor Huson would be the Women's Advisory Committee Chair for a two-year term (2020-2022).

4.4 Call for Nominations for Committee Vice Chair (Public Member)

Ann-Marie Norio, Regional Clerk, explained that in accordance with the Women's Advisory Committee terms of reference, the Committee Vice Chair must be a public member from the membership of the Committee.

The Regional Clerk called for nominations for the position of Committee Vice Chair of the Women's Advisory Committee for a two-year term (2020-2022).

Moved by Councillor Huson  
Seconded by Councillor Butters

That Ruth Unrau **BE NOMINATED** as Vice Chair of the Women's Advisory Committee for a two-year term (2020-2022).

Moved by N. Qureshi  
Seconded by Councillor Huson

That Elisabeth Zimmermann **BE NOMINATED** as Vice Chair of the Women's Advisory Committee for a two-year term (2020-2022).

Elisabeth Zimmermann declined the nomination.

4.5 Motion to Close Nominations for Committee Vice Chair

The Regional Clerk called a second and third time for nominations for the position of Women's Advisory Committee Vice Chair. There being no further nominations it was:

Moved by Councillor Butters  
Seconded by Councillor Huson

That nominations for the position of Vice Chair of the Women's Advisory Committee **BE CLOSED**.

**Carried**

4.6 Voting for the Position of Vice Chair

There being only one nominee for the position of Committee Vice Chair (Public Member), the Regional Clerk announced that Ruth Unrau would be the Women's Advisory Committee Chair for a two-year term (2020-2022).

At this point in the meeting Councillor Huson, Committee Chair, assumed the chair.

5. **ITEMS FOR CONSIDERATION**

There were no items for consideration.

6. **CONSENT ITEMS FOR INFORMATION**

Moved by R. Unrau  
Seconded by Councillor Villella

That the following items **BE RECEIVED** for information:

ED 11-2020  
Economic Recovery Plan Update

WAC-C 1-2020  
YWCA Canada & Gender and the Economy - 2019 - Feminist Economic Recovery Plan for Canada

**Carried**

7. **OTHER BUSINESS**

7.1 **Round Table - Priorities and Work Plan**

7.1.1 Meeting Frequency

Committee members discussed the frequency of meetings as outlined in the Committee Terms of Reference.

Moved by E. Zimmermann  
Seconded by R. Ivri

That this Committee **RECOMMENDS** to the Corporate Services Committee:

That the Women's Advisory Committee Terms of Reference **BE AMENDED** to provide that the Committee meet six (6) times per year.

**Carried**

7.1.2 Establishment of Working Groups

Moved by Councillor Butters  
Seconded by N. Kalb

That this Committee **RECOMMENDS** to the Corporate Services Committee:

That in alignment with the goals of the Women's Advisory Committee Terms of Reference, that three (3) working groups **BE FORMED**;

That a working group **BE ESTABLISHED** to advocate for gender-based issue resolutions and opportunities related to Regional policies, priorities and decisions and that Sabrina Hill, Rochelle Ivri, Naheed Qureshi, and Elisabeth Zimmermann **BE APPOINTED** to this working group;

That a working group **BE ESTABLISHED** to promote leadership development that empowers women in Niagara to fully participate in civic life and that Councillors Butters, Huson, and Villella, and Isabell Camillo, and Laura Lane **BE APPOINTED** to this working group; and

That a working group **BE ESTABLISHED** to research and provide information and resources about women's gender-based issues to Niagara and that N'ora Kalb, Emily Kovacs, Coletta McGrath, Hafsah Shaikh, and Ruth Unrau **BE APPOINTED** to this working group.

**Carried**

8. **NEXT MEETING**

The next meeting date is to be determined.

9. **ADJOURNMENT**

There being no further business, the meeting adjourned at 5:37 p.m.

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Councillor Huson  
Committee Chair

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Ann-Marie Norio  
Regional Clerk

# Human Resources Information Systems Support

Corporate Services Committee  
Wednesday, October 14, 2020

# Agenda

1. Current State
2. Recommendation
3. Key Considerations
4. Actions Completed
5. Next Steps & Questions

# Current State

- In 2004, Niagara Region outsourced to a 3<sup>rd</sup> party regular support and the technical development, configuration, maintenance, upgrades and break/fixes of :
  - PeopleSoft HCM (payroll, recruiting, learning, pension, etc)
  - Kronos Time and Attendance (tracking, scheduling)
  - LifeRay Portal (employee and manager self service)
- HRIS Support covers Business Critical processes that cannot be interrupted or delayed
- Includes Niagara Region, NRPS, NRH and City of St. Catharines

## Recommendation:

That an extension to the current *Human Resources Information Systems (HRIS) Application Support, Maintenance & Development agreement*, currently set to expire on March 31, 2021, **BE APPROVED**, for a period not to exceed 18 months, in order to ensure adequate time to facilitate a procurement process (Request for Proposal), award the ensuing contract, ensure a seamless transition and mitigate the risk of any interruption to critical HR and payroll services should the outcome of the RFP necessitate a change from the current provider. The total cost of the extension will be \$1,270,100, should it be for the entire 18 month period.

## What will be accomplished:

1. Secure business critical support
2. Procurement process: RFP issuance, award, new provider contract potential
3. Transition plan to new provider if required based on awarded agreement

## Key Considerations:



- ✓ With the up to 18 month extension, the intent is to ONLY execute the number of months required to implement these steps.
  - 6 month minimum with option to terminate with 6 months notice.
- ✓ Secures external resources, with contingency, to mitigate risk of any service interruption to Niagara Region and its partners
- ✓ Will provide Committee with updates as required with respect to go forward HRIS support

# Actions Completed: 2019 - 2020

- **Ongoing:** Comparative costing analysis of alternatives reviewed
  - internal model vs. current costs (not marketed) including comparison to internal model
- **April to November 2019:** PeopleSoft HCM Upgrade
- **February to April 2020:** Expression of Interest: to inform RFP with market data
- **March to October 2020:** Kronos Time & Attendance Upgrade
- **March 2020 to present:** COVID-19 reprioritize work and resources
- **Ongoing:** Technical RFP drafting, period of discovery with current provider for existing technical documentation, confirming items in scope for new agreement

# Next Steps:

## **Current Contract Extension:**

- Approval by Council
- Confirm with Vendor

## **Request for Proposal**

- Issue RFP Q4 2020
- Award RFP Q1 2021
- Contract with provider

## **New Support Agreement**

- Inform Council
- Execute transition plan to new provider if required

# Questions ?

Franco Meffe, Director Human Resources

Linda Gigliotti, Associate Director Employee Services

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**Subject:** Human Resources Information Systems (HRIS) Support

**Report to:** Corporate Services Committee

**Report date:** Wednesday, October 14, 2020

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## Recommendations

1. That an extension to the current *Human Resources Information Systems (HRIS) Application Support, Maintenance & Development agreement*, currently set to expire on March 31, 2021, **BE APPROVED**, for a period not to exceed 18 months, in order to ensure adequate time to facilitate a procurement process (Request for Proposal), award the ensuing contract, ensure a seamless transition and mitigate the risk of any interruption to critical HR and payroll services should the outcome of the RFP necessitate a change from the current provider. The total cost of the extension will be \$1,270,100, should it be for the entire 18 month period.

## Key Facts

- The purpose of this report is to seek an extension of the current contractual agreement for outsourced HR technology support which expires on March 31, 2021, in the event that the outcome of the Request for Proposal (RFP) requires a transition away from the current provider. The extension will ensure a seamless transition and mitigate the risk of any interruption to critical HR and Payroll services.
- As no further options exist to extend the current contract beyond March 31, 2021, an extension for a period of up to 18 months is a single source award in accordance with Schedule B of Procurement By-law 02-2016 and as such, Council approval is required given that the value of the extension could exceed \$1,000,000. The single source purchase for the up to 18 month extension with the current provider is being done in accordance Section 19 (a)(vi) of the Procurement By-law 02-2016.
- Since the implementation of the existing applications in 2004, Niagara Region has outsourced technical administration, troubleshooting, software application configuration and development, and technical maintenance upgrades of its PeopleSoft Human Capital Management (HCM), Kronos Time and Attendance and the Employee/Manager Self Service portal applications which supports all human

resources data, time and attendance, payroll technical processing and related reporting support. The initial outsourcing agreement was offset by a reduction of 6.2 Niagara Region FTE.

- The current human resource applications are utilized by Niagara Region, Niagara Regional Police Services (NRPS), Niagara Regional Housing (NRH) and the City of St. Catharines.
- The RFP would consider a contract term of up to five (5) years with a scope of work which would maintain status quo in terms of the external services as listed in *Appendix A: Current Outsourced Support Services* of this report.
- Niagara Region has notified the current provider of its intention to issue the RFP, and that subject to Council approval, Niagara Region would intend to extend the current agreement to allow sufficient time to complete the RFP process and award the ensuing contract. Staff intends to issue the RFP in Q4 2020 and confirms that a timeline of 8-10 weeks is required to facilitate the formal procurement process, which would culminate in the execution of an agreement with the highest ranked Proponent. Based on the possibility that the outcome of this process could result in award to a new Proponent, Staff deem it unreasonable to expect that a successful and seamless transition would occur prior to March 31, 2021.
- The RFP will require Proponents to outline and propose their detailed methodology for implementation/transition to onboard services. While the current provider could elect to bid, in the event that the outcome of the process is a recommendation to award to a new provider, a transition from the current provider will require the shared commitment of Staff and the current provider to ensure a seamless transference of extensive knowledge of Niagara Region's systems.
- Should it be required, the terms and conditions of a transition agreement are to be negotiated and mutually agreed to by the parties. The current agreement requires that the current Support Provider cooperate and assist with a smooth transition of responsibilities and continue to provide Services for a limited time in order to ensure uninterrupted service. Moreover, the current agreement provides that, if requested by the Region, the service provider shall continue to provide the services for a limited period of time after the contract expiry date, at reasonable rates, so as to effect an orderly transition to a new service provider.

## Financial Considerations

The current twelve month contract fees for the external support are approximately \$820,000, with an external support team ranging from 6 to 10 FTE dedicated to Niagara Region support at any given time, dependant on various projects and ongoing technical development requirements. The external support team includes technical developers, business and systems analysts, and operational support staff. Additionally, technical development fees are budgeted annually and charged on a time and materials basis, with consideration to various operational business needs for the year which may include technical/functional application upgrades, or newly required system configuration or development. The development costs incurred each year range from \$200,000 to \$400,000 depending on the business need for new operational functionality and required technical upgrades/maintenance. The total cost of the extension is \$1,270,100. This amount can be accommodated within the proposed budget, and includes recoverable fees for the City of St. Catharines.

As approved by Council, support agreement operating costs for the past three (3) years with an annual 3.5% increase trend is outlined in Table 1:

*Table 1: 3-year Annual Operating Costs\**

	Operating	Capital Development	Total
Year 1: 2018	\$789,615	\$350,000	\$1,139,615
Year 2: 2019	\$796,372	\$350,000	\$1,146,372
Year 3: 2020	\$820,263	\$350,000	\$1,170,263

\*demonstrated annually however contract years are April 1 to March 31

Given the above recent costs, the total for *up to* five-year contract costs would likely be in excess of \$5 million. Council approval would be required for award in accordance with Schedule B of the Procurement By-law 02-2016 as amended on February 28, 2019.

Should the outcome of the procurement process result in the selection of a new provider, a comprehensive transition plan would be required to transition each application to prevent any service interruption to payroll services, time and attendance

tracking, recruitment etc... This will result in some normal duplication of efforts during various testing phases, training, knowledge transfer, and security access changes.

Additionally, should a transition between 3<sup>rd</sup> party providers be required as a result of the RFP process, the RFP would include transition terms. Subsequent negotiations with the current provider for any necessary consulting and transition of knowledge to a new provider would be required. For budgetary purposes, an estimate of approximately \$800,000 in consulting, transition fees and resourcing was approved in the 2020 budget with one time funding from the Taxpayer Relief Reserve. These funds have not been committed, nor encumbered in 2020, as the procurement process has not started; rather they have been budgeted in 2021 with updated cost analysis, which is underway. The RFP evaluation process will consider each proposals proposed methodology for implementation and transition to onboard services inclusive of their financial submissions.

## **Analysis**

Ultimately, the long-term HR technology strategy is to deliver the highest level of HR support services that firmly enable the business, are cost effective and sustainable, and align with corporate technology strategies. Business operational demands for the expanded use of the existing HR technology, including reporting, is on the rise. Increased demand to further leverage and expand the use of all existing platforms, such as advanced scheduling capability for 24/7 legislated areas, mobile and web access, increased employee and manager self-serve functionality, enhanced recruitment candidate functionality, and analytical reporting which all requires significant continued technical development.

Niagara Region has an outsourced technology support model for corporate human resource technology platforms (PeopleSoft HCM, Kronos Time and Attendance, Employee/Manager Self Service) through a 3<sup>rd</sup> party outsourced support agreement, and development and upgrade projects completed on a time and materials basis for a fixed rate within the terms of the same agreement. The support contract is a long standing agreement in place since 2004, and has been extended since that time mostly in 3-year increments with Council approval as outlined in Table 3:

*Table 2: Outsourcing Agreement History*

<b>Agreement Start Date</b>	<b>Term</b>
April 1, 2004	3 years
April 1, 2007	5 years
April 1, 2012	3 years
April 1, 2015	3 years
April 1, 2018	3 years

The technology platforms currently in place are still considered amongst the best in class and similar/same to those used in many upper tier municipalities. They are sophisticated applications that are required to be scalable and able to accommodate complex, large multi-union environments with a broad scope of diverse needs and demands. The nature of the work and tools must ensure compliance with payroll, taxation, pension, labour and health and safety regulations. The scope of work covered in the support agreement is technical in nature and highly specialized, including the maintenance of PeopleSoft HCM System, Kronos Time and Attendance Management System, and an Employee/Manager Self Service portal. This includes technical support for payroll tax and patch updates, configuration in response to collective bargaining requirements, pay and time code mapping, HR financial reporting support/tools, and more. At this time the existing support agreement is exclusive of training, upgrade implementation costs and all development, which is offered on a fixed rate, time and materials basis. Niagara Region, NRPS, NRH and City of St. Catharines currently use the HR platforms affecting approximately 5,500 employees. (See *Appendix A: Current Outsourced Support Services*)

At this time, with the current support agreement scheduled to expire on March 31, 2021, it is critical to arrange support services to secure operations that include technology for payroll processing, recruitment (internal/external), attendance management and scheduling, reporting, training and benefits records and more. There is an immediate need to manage the potential risk and secure support services in such a way that is seamless and to prevent any interruption to services for Niagara Region, NRPS, NRH or the City of St. Catharines. Therefore a new arrangement is required that maintains or improves the current support levels and future business requirements, including building

capacity for the potential for business expansion, while effectively managing current and future costs.

A formal procurement process has the potential to determine best value in terms of market offerings relative to the deliverables, and that coupled with financially competitive submissions received via a competitive process demonstrates fiscal responsibility to the constituents of Niagara. To help inform the RFP and anticipate a market response, an initial Expression of Interest (EOI) was issued on February 21, 2020 and closed on March 24, 2020 for HRIS Application Support and Development. This EOI did provide some insight to a limited market of providers and also highlighted the consideration for offshore vendor support in the RFP and its impact to pricing. From a project feasibility perspective, any transition plan/project would require careful consideration regarding limited staff resources as this team of subject matter experts will overlap with the teams and subject matter experts required to consider and evaluate other CAO and KPMG identified business opportunities.

Additional noted considerations includes that operational business demands for the expanded use of the existing HR technology is on the rise. Increased demand to further leverage existing platforms and introduce expanded functionality of the platforms, such as advanced scheduling capability, mobile access, enhanced recruitment candidate functionality, is in high demand by the operating areas and all require technical development. The need to appropriately manage these critical assets used for payroll, the employee database, recruitment, time/attendance, scheduling, attendance management and more, continues to be a significant operational and service level priority.

The COVID-19 pandemic has further highlighted the criticality for HR technology and support resources for corporate financial reporting, attendance and sick time management, payroll and redeployment implementation changes. During this pandemic, the volume of changes to staffing, reporting and encoding updates for cost tracking, and the ability to produce and manage these changes with extreme efficiency has made it even more evident that the control of this work and assets remains business critical. The financial pressures created by the pandemic also highlights the need for cost management and reduction strategies. As the global pandemic situation is not likely to be fully resolved in the immediate future, the exposure and need to ensure a seamless transition during this challenging time is required and perhaps more important than ever.

Finally, Council has identified that the HR technology strategy should consider and strengthen our ability to expand our capacity in order to support local area municipalities through enhanced shared service opportunities. The CAO working group and the KPMG Sustainability Review further highlight shared services as a cost mitigation strategy. The RFP and any future HRIS planning will include serious consideration to the scalability and responsiveness to accommodate future growth and expansion in this regard.

Scanning other municipalities in Ontario of a similar size and scope, many use the same or similar technologies, but are managing the regular support configuration and new development within these applications with internal teams of staff, and supplementing consulting support as required for larger scale efforts.

As Council is aware, in 2016 the Region completed the Enhanced Financial Management Service Project which completed the implementation of the Financial Systems to PeopleSoft with a full in house support model. With the introduction of PeopleSoft Financials in 2016, Niagara Region is currently operating with two separate support models for similar type of technology support and development – an external 3<sup>rd</sup> party support model for PeopleSoft HCM (and other applications per Appendix A), and an internal support model for PeopleSoft Financials (and other applications such as Hyperion). Initial concerns with an internal support model were primarily in regards to the ability to source key talent and technical skill sets required to appropriately manage the complexity and volume of work. While these concerns remain ongoing and the nature of this talent and skill set is increasingly competitive and scarce in the market, the successful PeopleSoft Financials internal support model has demonstrated that Niagara Region staff have been able to build/develop or source the necessary talent, manage workload, new development requests and upgrades in an efficient and effective manner; albeit with sufficient time and effort to fully develop this function internally. While the up-front cost of transitioning to an insourced model for HRIS as well may be significant there are many advantages to an in house solution that are identified in the Alternatives Reviewed below. Staff have been reviewing and compiling the cost of analysis, both one-time and on going, of this option and will continue to consider this option as part of a longer term HR strategy. .

## **Alternatives Reviewed**

Alternatives considered include:

1. Maintain status quo with current external 3<sup>rd</sup> party support agreement.

While the current service provider has served Niagara Region for several years, staff acknowledge that this agreement has been sole sourced since its inception and would therefore not align with the direction of Council. Furthermore, the RFP process ensures Niagara Region is competitively tendering for goods and/or services to ensure best value to the Region and the constituents of Niagara.

This option also assumes the current provider supports a continued arrangement on the same terms that currently exist and that the Region are able to continue to secure these extended services at a reasonable cost.

2. Transition to a fully insourced technical support and development model following the current intended Procurement process

Staff have been reviewing this option as part of the longer term HR technology strategy, including considerable time researching this strategy over the past several months. With an insourced technical support and development model, Niagara Region maintains greater control of managing critical assets required for payroll, employee database, recruitment, time/attendance, scheduling, attendance management, pension, and more.

As stated, the level of continued development and expansion operationally required is completed by a 3<sup>rd</sup> party for HR technologies, however budget constraints each year limit the ability and affordability to complete development work, which falls outside the support agreement, to fully leverage applications, build efficiencies, and at times even prevents or delays the development required for break fixes. While the demand and cost for development by a 3<sup>rd</sup> party on a time and materials basis increases each year, budgetary constraints prevent the type of investment to keep up with current demand, particularly given the budgetary requests which are also required to have 3<sup>rd</sup> party consultants complete necessary maintenance upgrades required almost annually to manage multiple applications, which are significant contractual hours over a six month period to complete as a capital project. There is little budgetary room left for new development and progress without significantly greater capital investment costs, which is typically not achievable within approved capital and is proving difficult to sustain. Operating area business needs are also dynamic and if the business is not able to

identify these needs early enough for budget planning inclusion, the request often needs to be deferred to future budget year consideration, limiting HR's ability to be responsive and proactively address these needs, and risks the business finding alternative solutions within a single department out of necessity, ultimately creating risk of driving up costs by creating multiple single department response solutions as opposed to delivering a corporate wide solution. At the same time, the trend for the annual 3<sup>rd</sup> party ongoing support agreement costs, while closely managed and carefully negotiated, also experienced increases greater than council budget guidance for the past several years.

An external model is also creating some duplication of effort particularly for lower level, high volume requests. Within an external support model, staff are not permitted access to our systems for configuration and development to protect the terms of the external support agreement. Practically, this creates a process whereby staff are identifying and carefully documenting all of the detailed requirements for the request to configure for the provider, and then often there is additional turn-around time resulting in the need to log the request with the provider, address enquiries from the external party that is not as familiar with the business or the nature of the request, wait for the work to be completed, and then confirm/test result and provide back to the operating area. For straightforward, high volume requests such as security access changes, an internal resource could complete the effort and serve the business in fewer steps. Understandably, an outsourced model restricts Niagara Region's access from internally managing the completion of these requests.

When considering the immediate future of HR service delivery, an internal support model would allow for greater control to cost and deliver services to other local area municipalities and additional partners. While Niagara Region would contractually request that a 3<sup>rd</sup> party agreement includes a level of scalability to allow for service delivery to local area municipalities, the Region would still have limited control over the cost and delivery of those services as each unique request would need to be individually negotiated with the 3<sup>rd</sup> party to address each new scope of work. This could significantly alter the affordability and timelines for such arrangements.

Once the RFP process requirements are satisfied and the costs and availability of these services in the market are better determined through the formal procurement process, it will allow Staff to make an informed recommendation on the most effective method to deliver services in the future, and provide the best value for the constituents of Niagara.

### 3. Transition to a fully insourced technical support model immediately following the expiration of the 3<sup>rd</sup> party agreement

The considerations for an in-house solution are as stated in Alternative #2 above.

This alternative has been given a measured amount of staff time to explore and analyze over the past several months. This analysis requires resources from across the organization including Human Resources, Information Technology, Finance, Procurement and Legal. In order to implement this solution, new resources are required to complement existing staff resources in order to transition work currently being outsourced. While the benefits of insourcing still remains with this alternative, in the absence of conducting the Procurement Process there is no comparative market data to analyze cost of insourcing in comparison with maintaining a 3<sup>rd</sup> party model, and whether any cost differential outweighs the stated benefits of insourcing.

### **Relationship to Council Strategic Priorities**

This report aligns with Council's Strategic Priority of Sustainable and Engaging Government.

### **Other Pertinent Reports**

- September 27, 2017: GM 6-2017 Employee Information Systems (HRIS): External Systems Support Agreement
- February 18, 2015: HR 05-2015 Employee Information Systems; Contract Renewal
- July 18, 2012: CSD 96-2012 Corporate Services Committee
- March 7, 2012: CSD 44-2012 Corporate Services Committee
- January 31, 2007: CSD 25-2007 Corporate Services Committee

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*This report was prepared in consultation with Franco Meffe, Director Human Resources; Todd Harrison, Commissioner Corporate Services/Treasurer; Helen Chamberlain, Director Financial Management & Planning/Deputy Treasurer; Stuart Hendrie, Chief Information Officer; Laura Ford, Manager, ERP System Support; Bart Menage, Director, Procurement & Strategic Acquisitions and Brian Wilson, Legal Counsel.*

**Appendices**

Appendix A Current Outsourced Support Services

Appendix A: Current Outsourced Support Services

**Niagara Region**

Application	Description	Supported Period	# of Users
PeopleSoft HCM	<ul style="list-style-type: none"> <li>Core HR (Workforce Admin)</li> <li>Benefits</li> <li>Payroll</li> <li>Position Management</li> <li>Training Administration</li> <li>Competency Management</li> <li>Recruiting</li> </ul>	<ul style="list-style-type: none"> <li>Seniority custom bolt-On</li> <li>Pension custom bolt-On</li> <li>Attendance management custom bolt-On</li> <li>Custom Ticklers (Accomplishments, Probation)</li> <li>Interfaces: Kronos, PeopleSoft Financials, Parklane, myINFO/myHR</li> </ul>	2004 - current  ~160  Public: ~ 30,000+ recruiting applications annually
Kronos	<ul style="list-style-type: none"> <li>Timekeeping</li> <li>Biometric Clocks (Seniors)</li> <li>Scheduling (Seniors)</li> </ul>	<ul style="list-style-type: none"> <li>Accruals/Bank Balances</li> <li>Self Service (Seniors)</li> <li>Interfaces: PeopleSoft, MMS, myINFO/myHR</li> </ul>	2004 - current  ~2,900
Reports and Analytics	<ul style="list-style-type: none"> <li>HR Reporting</li> <li>OLAP tool for HR Analysis</li> </ul>	<ul style="list-style-type: none"> <li>Interfaces: PeopleSoft and Kronos</li> </ul>	2014 - current  ~170
Self-Serve portals	<ul style="list-style-type: none"> <li>Employee &amp; Manager Self Service (subscription-based, RMON and NRPS)</li> </ul>	<ul style="list-style-type: none"> <li>HR Content Portal, including pay statements and schedules</li> <li>Interfaces: PeopleSoft and Kronos</li> </ul>	2013 - current  ~5,500

**City of St. Catharines**

Application	Description	Supported Period	# of Users
Kronos	<ul style="list-style-type: none"><li>• Timekeeping</li><li>• Biometric Clocks</li><li>• Scheduling</li><li>• Accruals/Bank Balances</li><li>• Self Service</li></ul>	2013 - current	~375

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**MEMORANDUM**

**CSC-C 19-2020**

**Subject:** COVID-19 Response and Business Continuity in Corporate Services  
**Date:** October 14, 2020  
**To:** Corporate Services Committee  
**From:** Todd Harrison, Commissioner of Corporate Services and Regional Treasurer

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Corporate Services delivers efficient and innovative service excellence to external and internal customers in an integrated and timely manner.

During this pandemic, our staff have continued this support function for core businesses within our group and for operating departments. In addition, Corporate Services has provided critical support to the Emergency Operations Committee (EOC).

The following provides an overview of activity that has taken place and a projection of expected service delivery moving forward:

***CONSTRUCTION, ENERGY AND FACILITIES MANAGEMENT (CE&FM)***

The CE&FM group is divided into two main groups, Construction and Facilities Management. This Team continues to be an essential component of the Region's EOC. Some of the functions performed in this capacity are:

- Maintaining Vine Portal for EOC supply chain requests allowing for increased efficiencies and tracking of delivery;
- Coordinating the sourcing of essential supplies in collaboration with other departments;
- Continuing Operations and Maintenance of all opened facilities including enhanced cleaning protocols to ensure safe working environment for essential staff not working from home;
- Coordinating emergency procurements of PPE and other supplies that are critical to business continuity for essential services;
- Coordinating shipping/receiving and securement of critical supply needs;

- Providing dedicated and secured storage areas to assist LTC pandemic supply requirements;
- Upgrading facilities with social distancing barriers, protective screens;
- Responding to internal client needs for changes in normal operations, special moves and health & safety concerns;
- Providing enhanced security monitoring of sites with reduced and or no staff on site; and
- Redeployment of CE&FM staff to support REOC and facilities operations.

## **Operational Outlook**

### **1/3/6 months**

#### *Construction:*

- Continue to work with contractors on construction sites for work that resumed as of mid-May.
- For projects not in construction, staff is proceeding with procurement for projects deemed to be critical to proceed.
- Working with OH&S, determining what physical changes are required to re-open Regional office locations to the public.
- Completed installation of glass/plexi barriers at SAEO Niagara Falls and Welland SAEO for public waiting areas.
- Continuing to install COVID barriers and modify furniture as needed for Fort Erie and Port Colborne SAEO offices.
- Working with communications, developed new Region floor decals and signage for physical distancing. Decals are installed at Welland POA Courts, SAEO offices at Niagara Falls, Welland and St. Catherines and partial installation at Niagara Region HQ based on operational need.
- Completed working with dental clinics to review air exchange requirements in order to resume in person appointments.

#### *Cleaning:*

- Staff has extended the current enhanced COVID cleaning requirements for facilities managed by CE&FM and EMS stations.
- Renegotiated cleaning contract to extend for another 6 months based on right sizing operations to meet PH guidelines.
- Procured additional cleaning and janitorial supplies to meet divisional and client needs.
- Addressed multiple emergency workplace disinfection requests following positive COVID findings in the workplace.

### *Supply Chain and Deliveries*

- Dedicated staff for delivery and reception of all Region Headquarters deliveries to loading dock to limit personnel entry to Region Headquarters.
- Have met all client and division's support requests for procurement of PPE, hygiene and cleaning supplies.
- Sourced N95, cloth and surgical masks for use by region staff based on operational needs.
- Increasing inventory of critical PPE supplies for fall flu season (including anticipation of second wave).

### *Building Security*

- Continue to monitor security and facility access control systems to meet program delivery needs.
- Continue to keep all Region sites functional, safe and secure for eventual return to normal operations.

### *Non-essential maintenance and repair work*

With opening up of maintenance and repair work by the Province in early May, continue with critical maintenance repair work and services and any other work required for the efficient building operations.

## **FINANCIAL MANAGEMENT AND PLANNING (FMP)**

### **Current Status of Operations**

As indicated, all of the Corporate Services Departments continue to deliver core services while at the same time perform a significant number of duties to support the Regional EOC.

FMP staff have continued to support core business functions during the pandemic. Some highlights of these actions include:

- Complete the 2019 year end audit;
- Submission to the Province of the 2019 Financial Information Return;
- Publication of the 2019 Annual Report;
- Develop 2020 tax bylaws and provide required necessary report and bylaws;

- Work with Public Works to update financial implications of SNF water treatment plant for inclusion in the 2021 budget;
- Publication of the 2020 Budget Summary;
- 2021 budget planning and preparations;
- Successful sale of \$34 million in serial debentures (\$15.5 million Regional) on July 31 at all time historical low interest rate of 1.43% for 10 years;
- Preparation of 2021 Capital and Operating Budgets timetables and planning report for Council and establishing strategies for budget preparation;
- Reported to Council on the second quarter financial results and year end forecast; and
- Completion of Service Sustainability Review project and reporting to Council.

Additionally, FMP has a main role in the Region's EOC as part of the Finance and Administration Unit. Highlights include:

- Development and implementation of procedures for cost reporting and tracking;
- Coordination and collaboration with municipal treasurers of assumptions and information for consolidated financial impact information for advocacy to provincial and federal governments;
- Review of Regional capital projects in light of provincial legislative essential construction business and Regional capacity to complete;
- Implementation of on-line/credit card payments for services such as business licenses, garbage bag tags including direct sales to residents, planning and transportation permits, long term accommodations, etc.;
- Support HR in development of cost tracking system to facilitate staff redeployment to essential services in pandemic including ongoing update of EOC costing assumptions;
- Support HR in establishing process to administer pandemic pay. Finance is leading completion of significant additional reporting requirements for various different Ministry;
- Extensive cash flow and collections analysis and planning in conjunction with local municipalities;
- Analysis and reporting related to Council motion to consider deferral of 2020 water/wastewater budget increases;
- Preparation of COVID-19 recovery planning documentation and consolidation of corporate plan; and

- Evaluation of options and reporting requirements for \$12.6 million in provincial Safe Restart funding and completion of additional COVID-19 extraordinary cost claims and reports to various Ministry.

## **Operational Outlook**

### **1/3/6 months**

- Managing Local Area Municipality receivable and payables in accordance with CSD 31-2020.
- Improvements to Cash Flow model tools and processes to support ongoing operations and cash flow implications of municipal COVID concessions.
- Ongoing COVID financial analysis and weekly/monthly impact and cash flow reporting to Council with updates for items impacting 2021 budget to be added.
- Third quarter financial reporting to Council in accordance with policies.
- Ongoing financial reporting submissions for pandemic pay and COVID-19 extraordinary cost claims.
- Supporting the 2021 Capital and Operating Budgets preparation including establishing new processes to integrate Capital Asset Management Resource Allocation model integration with Capital Financing Strategy.
- Supporting GO implementation, Niagara Regional Transit Governance, Canada Summer Games, Airport Master Plan RFP, sponsorship revenue, Asset Management Planning.
- Securing HST advisory services to minimize HST impacts on Canada Summer Games construction costs.
- Creation of Development Charge Bylaws RFP and new Development Charge Policy regarding payment instalment options and related interest.
- Financial and implementation analysis for HRIS support and alternative models.
- Coordinating debenture issuances with infrastructure Ontario for Region and Area Municipalities.
- Supporting the annual Standard and Poor's credit rating review,
- PeopleSoft configuration changes to report to Council on sole source procurements in excess of \$5,000.

## ***PROCUREMENT AND STRATEGIC ACQUISITIONS (PSA)***

### **Current Status of Operations**

Similar to other departments within Corporate Services, PSA staff have delivered by supporting core business functions while taking on additional projects to support the Region's EOC.

Highlights of activity during the operational period includes:

- Facilitating new and ongoing procurements culminating in award;
- Realty related works for inflight projects, leases and licenses;
- PeopleSoft Change PO's, Supplier and PCard administration;
- Sourcing critical PPE and supplies needed for the EOC response to the pandemic; and
- Preparation of Covid-19 recovery planning documentation.

### **Operational Outlook**

#### **1/3/6 months**

The Region's review of essential projects both capital and operational has resulted in a prioritization of formal procurements moving forward. This will continue throughout the pandemic and afterwards.

## ***INFORMATION TECHNOLOGY SERVICES (ITS)***

### **Current Status of Operations**

Similar to other departments within Corporate Services, ITS staff have delivered by supporting core business functions while taking on additional established projects to support the Region's EOC.

Highlights of initiatives completed during the pandemic include the following:

- During these unprecedented times, the need existed more than ever, to effectively communicate, collaborate and connect with one another. In response to the pandemic, IT was able to the accelerated deployment of corporate email accounts to all Senior's staff that previously did not have a corporate mailbox. In

July of this year, over 800 Senior's staff were provided a corporate email account through Office 365.

- Wireless infrastructure deployed and enhanced the WiFi coverage at all 8 Senior's facilities.
- Deployed Recollect mobile application in support of the upcoming Waste Management changes in service delivery.
- Implemented enhancements to Online Payment and modified systems to allow Respite workers to be paid for telephone calls instead of only home visits.
- IT continues to provide remote access capabilities to over 4000 network users - 24 hours a day/7 days a week.
- SERVICEDESK continues to provide support and assist IT related inquiries from staff. We are currently averaging 500 calls/day.

## **Operational Outlook**

### **1/3/6 months**

- Continued support for COVID-19 initiatives while supporting and enabling staff to work from home. Prior to COVID-19 daily average for the number of remote connections was approximately 90 users, current daily average is 1270 users.
- Ongoing updates to the screening questions used by EMS in their tool 'EMS Tools'
- Ongoing COVID-19 data analytics including internal operations supports and external data visualizations - Launched enhanced stats on external website including municipal breakdown.
- Implemented technology and processes to accommodate electronic public participation in Council and Committee meetings.
- Went live with the "Homelessness Reporter" for Community Services that will allow staff to track and monitor homeless in Niagara.
- Automated Public Health EOC status report for daily briefing and Ministry submission.

## **LEGAL SERVICES**

### **Current Status of Operations**

As indicated, all of the Corporate Services Departments continue to deliver core services while at the same time perform a significant number of duties to support the Regional EOC.

The Legal team provides a key role in the Region's EOC. The team provides ongoing support and advice in particular related to the interpretation and implementation of new provincial legislation and Emergency Orders that have been issued throughout the pandemic. Highlights of advice provided in this regard:

- Advice and legal support related to the development and implementation of the Region's face covering by-law;
- Advice related to impact of emergency orders on construction to ensure the continuation of essential Regional capital projects and help minimize pandemic-related project costs and disruptions;
- Risk management advice on building screening and security issues; and
- Advice related to recovery planning/reopening of Regional facilities.

### **Operational Outlook**

#### **1/3/6 months**

The Legal team continues to provide advice and support to operational departments on core business activities, including risk management and insurance advice and litigation support. The team also continues to provide additional support for REOC and COVID-19 related matters as required, with the majority of the team working remotely.

## **COURT SERVICES**

### **Current Status of Operations**

The Court Services team is overseen by the Region's legal department on behalf of the joint board of management, between the Region and area municipalities.

Highlights of operational changes to Court Services:

- Facility reopened to the public effective September 14, 2020 for counter service only. Remote service continues to be leveraged wherever possible.
- Direction from the Ministry of the Attorney General has been received indicating that all in-person matters have been adjourned to at least October 19, 2020.
- Since July 6, judicial pre-trial matters and early resolution guilty pleas have been conducted remotely where eligible, before a Justice of the Peace via audio or video conference.
- Amendments to the Provincial Offences Act made pursuant to Bill 197, the COVID-19 Economic Recovery Act, 2020, received Royal Assent came into effect July 21, 2020. These amendments will enable Court Services, in consultation with the judiciary, to make greater use of technology to deliver justice services remotely. These updates include:
  - Allowing defendants to request a trial, in early resolution courts and in first attendance municipalities that administer parking, by mail or other electronic method permitted by the court house;
  - Allowing defendants and prosecutors to conduct early resolution discussions remotely in all cases; and
  - Allowing any participant, including a clerk of the court, witness, judge, or justice of the peace, to attend any proceeding remotely by audio or video, unless the presiding judicial official orders otherwise.
- Court services is well equipped to deliver these services remotely, and has begun to do so, based on extensive preparation for remote matters in addition to the modern technology available onsite at the courthouse facility. Further guidance is pending from MAG regarding electronic protocols to enable further transition to remote proceedings.
- Continued collaboration with Facilities and Corporate Health & Safety to prepare for resumption of in-person court matters, utilizing the Recovery Secretariat Guidelines which have been provided by the MAG.

## **Operational Outlook**

### **1/3/6 months**

Continue to provide customer service support remotely wherever possible, and in-person via counter service where required. Continue to conduct eligible remote court matters electronically while awaiting resumption of in-person court proceedings.

## ***ASSET MANAGEMENT OFFICE***

### **Current Status of Operations**

AMO staff have continued to support core business functions during the pandemic. Some highlights of these actions include:

- Planning and leading the development and submission to the Province of the 2021 Asset Management Plan in accordance with Reg 588.
- Participating on the Public Health initiative to develop a Health Impact Assessment methodology to apply against the Region's capital projects.
- Initiated development of the Region's Enterprise Risk Management Framework

AMO has redeployed 2 of 5 staff to support the Regional response to Covid-19.

The recruitment process for 2 of the 5 staff vacancies that was put on hold in March 2020 is being completed.

Projects to improve the Region's Asset Management System (AMS) require participation and collaboration from staff across the organization. Given the impact of COVID-19 on divisional plans and resources, the ability of Region staff to focus time on the AMS projects is limited and will have further impact on the schedule of 2020 projects. A schedule assessment indicates the majority of planned 2020 projects are now delayed while some are on hold due to the previous staffing levels. Once AM Analysts are on board, projects that have been delayed will be rolled out sequentially and in coordination with other Regional staff. There will be continued delay due to AMO staff who remain redeployed and are not expected back until October – November.

## Operational Outlook

### 1/3/6 months

The Asset Management System development projects that are underway (Priority 0) and those planned in the coming months (Priority 1) are tabled below. These projects are directly related to the requirements of the 2021 Asset Management Plan.

Table 1: Asset Management System development projects

Priority	Service availability by Phase	Current status	
			Project
0	PNM	Delayed	Region AM delivery structure ID 112
0	PNM	Delayed	AM program foundations ID 430
0	PNM	Pilot completed	CAMRA - Risk Management Framework ID 248
0	M	Delayed	Develop data analytics capabilities- Microsoft BI ID 530
0	PNM	Delayed	Develop AM performance management KPIs ID 410
0	PNM	Initiated	Niagara Region AM working group ID 512
0	PNM	Delayed	Process for preparing the AM Plan ID 210
1	PNM	Delayed	Capital planning process ID 262
1	PNM	Initiated	Enterprise Risk Management Framework ID 249
1	PNM	Delayed	Develop Asset Registry - hierarchy and relationships ID 242
1	C	On hold	Project Resource Estimating - cost model ID 310
1	PNM	Pending	2021 AMP ID 630

Notes: PNM: No changes but delivered differently - e.g. working remotely  
 C: Cancelled pending redeployed/ staff vacancies are filled

Other planned 2020 projects not tabled above, and that have only an indirect bearing on the 2021 Asset Management Plan, or are related to supporting Niagara's local municipalities are also on hold until staffing issues have been resolved.

## ***BUSINESS LICENSING***

### **Current Status of Operations**

Similar to the other departments in Corporate Services, the Business Licensing unit has continued to operate with core service delivery as well as play a role in the Region's EOC. These activities are identified separately.

#### Business License

- Continuance of issuance of licenses.
- Developing office protocols for future public intake by appointment only.
- Investigating permanent eCommerce licensing sales.

#### Provincial Order Enforcement

The provincial government's announcement for stricter enforcement of social distancing and businesses' temporary closings resulted in an enhanced bylaw enforcement. In cooperation and coordination with local municipalities, the Region's enforcement team has increased its hours of operations to respond to increased complaints.

- Staff have been re-assigned to enforce the Provincial Orders and remain assigned to an evening shift schedule Monday to Friday. Staff remain assigned to this until further notice or when the orders and state of emergency is lifted. Hours of operation and days of service are assessed weekly and will be adjusted to meet demands and pressures.
- Staff respond to after-hours calls to assist the local response and also monitor the Region's six public open space properties and beach and ensure Region licensed businesses are following order requirements and adherence to the Regional Licensing Bylaw.
- Order enforcement for the Re-opening Ontario Act.
- Face Covering bylaw enforcement including education.

### **Operational Outlook**

#### **1/3/6 months**

The Regional Enforcement Manager will continue to work in cooperation with local municipalities, NRPS and other Regional departments in a coordinated approach to enforcement of the social distancing legislation and Face Covering Bylaw until the pandemic eases.

The business license bylaw review is ongoing and will likely come before Council in December of 2020.

## ***INTERNAL AUDIT***

### **Current Status of Operations**

The Internal Audit function and related projects were paused to allow a focus on essential and core program areas. Recently, Internal Audit has been re-engaged to deliver several audits as directed by Audit Committee. In addition, as with other subcommittees, Audit Committee will restart in September with a committee meeting scheduled on September 21, 2020.

### **Operational Outlook**

#### **1/3/6 months**

Manager of Internal Audit will be developing two tender packages in the short term to commence an audit on Single/Sole Procurement and a comprehensive review of the BioSolids program. In addition, a revised workplan will be presented to Audit Committee to consider other audit areas, most notably building upon the recently completed Information Technical General Controls (ITGC) audit to look at cybersecurity.

A more comprehensive operational strategy for the internal audit function is still be considered and will be presented to Audit Committee in the new year.

Respectfully submitted and signed by

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Todd Harrison, CPA, CMA  
Commissioner of Corporate Services and  
Regional Treasurer

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**Subject:** Canada Summer Games – Transition Update

**Report to:** Corporate Services Committee

**Report date:** Wednesday, October 14, 2020

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## Recommendations

1. That this report be **RECEIVED** for information.

## Key Facts

- The purpose of this report is to provide Corporate Services Committee with an update on the Canada Games Park build transition progress.
- On June 4, 2020 Regional Council approved, in principle, the transitioning of responsibility for construction of Canada Games Park to the Region.
- On June 30, 2020 The Regional Municipality of Niagara (the “**Region**”) executed a Transition Agreement with 2021 Canada Games Host Society Inc. (“**CSG Host Society**”) setting out the details, including preconditions, to the transition of responsibility for managing the remaining construction of Canada Games Park to the Region.
- Only a handful of preconditions to effecting the transition remain, most notably, receipt of the Province’s consent to the transition.
- The 2021 Canada Summer Games were originally set to be held in August, 2021; however, were recently postponed until 2022. Construction remains on track to reach Substantial Performance by December 1, 2021.

## Financial Considerations

The following are financial considerations provided by Region staff based on the documentation and information made available by the CSG Host Society through to the end of July.

The 2021 CSG budget, including both the original operating budget and revised Legacy capital budget now sits at \$146.7 million.

The Region has budgeted for and is scheduled to contribute \$1.0 million a year for four years, contributing a total of \$4.0 million to CSG Host Society's \$34.9 million operating budget.

The Region has budgeted \$20.05 million for the capital contribution, \$6.3 million funded with debentures and \$13.7 million which has already been transferred to the Host Society funded from the Gas Tax capital funding. Should the Regions role in the delivery of any of the capital projects linked to the Canada Summer Games change, this would require budget adjustment. A comprehensive budget reconciliation will be completed once the date of transition is set.

At this time, the capital budget below includes an estimate of the non-recoverable HST municipal tax rebate applicable to the transfer of the building to the consortium at the end of construction. The amount budgeted is for the portion of the facility owned by Brock University, current advice from Deloitte indicates that the Niagara Region, St. Catharines and Thorold are eligible for 100% recoverable HST. The tax status of the Consortium has yet to be finalized, however should the Consortium not be eligible for this rebate; the HST expense could be greater and would represent an additional liability for the Region which would require a future funding allocation.

Capital Program - EXPENSES	Total Approved Canada Summer Games Capital Budget	Canada Games Park Allocation	Henley & Other
<b>SOURCE BUDGET NOTES</b>			
<b>Canada Games Park</b>			
Canada Games Park - Final Contract (excl. HST)		\$ 85,580,225	
Canada Games Park - Change order as of Aug 30 2020 (excl. HST)		\$ 4,471,178	
Canada Games Park - Competition Equipment		\$ 3,959,914	
Off-Site Sanitary Replacement		\$ 1,612,326	
Design, Project Management, Commissioning, Technical Studies, Permits, Admin etc.		\$ 4,386,356	
Canada Games Park - Other Facility Equipment		\$ 1,528,934	
CSG Legacy Capital Project(s) Contingency		\$ 970,856	
Non-refundable HST		\$ 880,000	
<b>Henley Rowing Centre &amp; Other Capital Infrastructure</b>			\$ 8,442,150
<b>TOTAL PROJECT COST</b>	<b>111,810,586</b>	<b>\$ 103,389,789</b>	<b>\$ 8,442,150</b>
(1) Non-recoverable HST of 1.76% was not included in Host budget, funding requirements have been taken out of contingency			

A balanced budget is subject to successfully securing \$6.5 million in collective sponsorship and fundraising for both the Canada Games Park (\$5.5 million) and Henley Rowing Centre (\$1.0 million) respectively. It is anticipated that the COVID-19 pandemic will have a negative impact on the ability to secure sponsorship and fundraising in the short and medium term. This will have a corresponding impact on the overall operating

and capital budget for the Canada Summer Games given that contingencies identified did not consider the potential impacts of a global pandemic.

In addition, the Host Society is currently revising their budget in light of the postponement of the Games to 2022, and will present a revised budget reflective of COVID-19 and the postponement of the Games to their Board in October/November.

Recognising that the financial and capital risks above exist, the Consortium and Host Society continue to meet frequently and collaboratively to address these risks and deliver a Canada Summer Games that will benefit the community as a whole.

## **Analysis**

### **2021 Canada Summer Games – Timing**

On September 16, 2020 the Canada Games Council and CSG Host Society, after consulting with the Federal Government, the Province and the Region, announced the difficult decision to postpone the 2021 Canada Summer Games. While the Games were originally scheduled to take place in August, 2021 they are being reschedule as a result of continued public health concerns relating to the COVID-19 pandemic. The press release by CSG Host Society provides:

Given the uncertainty created by the ongoing pandemic, the decision to postpone the Games was made, first and foremost, to ensure the health and safety of all the athletes, coaches, staff, volunteers and spectators expected to attend this event. Additionally, the COVID-19 pandemic would likely prevent us from delivering a phenomenal Games experience, both in terms of sport competitions and cultural events. By postponing the Niagara Canada Games, we will be able to better protect the health and safety of Games participants, the Niagara community and visitors from across the country, while delivering an extraordinary Games experience.

While no decision has been made yet on new dates our understanding is that Canada Games Council and CSG Host Society are aiming for the rescheduled Games to take place in the summer of 2022. The Region will continue to receive updates on timing as they become available.

## Canada Games Park – Construction Update

Based on the last issued construction schedule (July 13, 2021), construction progress is tracking to schedule and is set to achieve Substantial Performance of the Work on December 1, 2021. Milestone events complete or nearing completion include: site works (excluding landscaping), storm water management, outdoor athletic facilities (excluding volleyball courts and outdoor storage), west parking and driveways, foundations, below slab building services, superstructure (structural steel and concrete block), structural steel and gymnasium slab. Roofing, building envelope, HVAC, plumbing, life safety, lighting, electrical and remaining site works are underway. As per the contract, Total Completion is due by February 1, 2022 and includes work remaining after Substantial Performance as well as completion of deficiencies to the Owner's satisfaction.

### *Schedule Risk – Low to moderate*

As indicated in CAO 11-2020 construction commenced on the Canada Games Park in late 2019 utilizing a phased approach. Prior to the postponement of the Games, the contractor provided a schedule delivering Phase 1 exterior amenities and a portion of Phase 2 Games Ready Amenities (a portion of the Canada Games Park building) for August 1, 2021. Staff previously reported a low risk to the schedule for Phase 1 and a moderate to high risk for Phase 2 success. With the Games delayed until the summer of 2022, the requirement to achieve Games Ready is no longer a risk to the project schedule and there is no need to phase the remaining construction.

Overall project schedule risk is low to moderate. During the fall and winter season, construction efficiency decreases with the cold weather and with the potential of a 2<sup>nd</sup> wave of COVID in late 2020/2021 there may be a further loss of productivity, uncertainty with labour availability and instability with material supply chains further impacting the schedule. To date, the project has lost 17.75 working days due to weather and 20 working days due to the provincially ordered shutdown.

### *Budget Risk – High*

There is a high risk to the project budget. The original contract amount with Aquicon in respect of Canada Games Park was \$85,580,225. The revised contract amount including 76 change orders and 1 change directive approved to date is \$90,051,403. Of the \$4.471 M in added cost, over \$3.2 M is attributed to poor soil conditions. Based on revenue, committed and forecast project cost, the amount remaining in the project budget as a construction contingency is \$804,511 (approximately 1.5% of balance to complete the contract).

At this point in the construction, particularly with a complex building, best practice suggests maintaining a contingency of 3% to 5% indicating a potential budget risk of

\$800,000 to \$2.6 M. In order to mitigate the risk, staff recommends continuing to defer exterior lighting for the athletics and beach volley ball facilities and the purchase of FFE until next spring/summer as they are not part of the base contract.

### Canada Games Park – Transition Update

Pursuant to report CSD 42-2020 Regional Council authorized staff to proceed, in principle, with the transfer of responsibility for the construction of Canada Games Park from CSG Host Society to the Region, subject to the fulfillment of the following two conditions:

1. the financial terms and conditions of any Transition Agreement, including with respect to the \$58 million in Investing in Canada Infrastructure Program (“ICIP”) capital funding committed to Canada Games Park are satisfactory to the Commissioner of Corporate Services and Treasurer; and
2. the Transition Agreement includes terms and conditions consistent with the principles set out in the term sheet attached as APPENDIX 3 to CSD 42-2020

Pursuant to this direction CSG Host Society and the Region successfully negotiated the terms of a transition agreement and executed same on June 30, 2020 (the “**Transition Agreement**”). The Transition Agreement, attached hereto as **APPENDIX 1**, contemplates the Region being added to the Provincial Transfer Payment Agreement (the “**Provincial TPA**”) as a Recipient and, once the transition occurs, all Provincial TPA monies being deposited into a Region controlled bank account. This is a clean arrangement and ensures the necessary access to the \$58M in combined provincial/federal funding in order to pay for construction – construction for which the Region will bear direct financial responsibility post transition.

The Transition Agreement also provides, as an over-arching principle, that the parties cooperate in good faith in all matters necessary to facilitate the effective and efficient transition of responsibility for the Canada Games Park build. In this way, both CSG Host Society and the Region have been working together to satisfy the various preconditions to transition set out in the Transition Agreement. While a number of these conditions have been satisfied other key conditions remain outstanding. Until all conditions are satisfied, the transition cannot take place. Accordingly, the Transition Agreement and, specifically, the closing date thereunder (originally anticipated to be July 31, 2020)

continue to be extended on a month-to-month basis pending the completion of these conditions. The following three (3) conditions remain the most noteworthy outstanding preconditions to closing the transition:

1. Provincial Consent
  - i. The Transfer Payment Agreement made between CGS Host Society (as Recipient) and the Region, the City of St. Catharines, the City of Thorold and Brock University executed on or about March 31, 2020 provides that no assignment (or similar) can occur without the consent of the province.
  - ii. The parties circulated a form of Provincial Acknowledgement and Consent to the province on July 4, 2020 and have been diligently following up through regular Steering Committee meetings on its status. The Province has indicated that they are doing their best to turn their attention to this matter but that COVID-19 continues to draw on a large number of their resources.
  
2. Aquicon (Construction Contractor) – Consent to Assignment
  - i. We understand from CSG Host Society that this document is forthcoming, but that it is taking some time to complete as the Henley scope of work must, first, be removed from the Construction Contract before assignment to the Region (as required by the Transition Agreement). CSG Host Society and Aquicon have been working out the details of the Henley scope of work, following which, we anticipate Aquicon consenting to the assignment as well as executing the necessary amendments to the Construction Contract the Region will assume (to remove the Henley scope of work).
  
3. MJMA Architect (Consultant)
  - i. As was the case with Aquicon, above, MJMA and CSG Host Society are currently negotiating the particulars of the removal of the Henley scope of work from the Architect contract(s) to be assigned to the Region following which we understand MJMA will be in a position to consent to the assignment as well as complete

the necessary amending agreements to reflect the removal of the Henley scope of work.

### Canada Games Park – Consortium Update

In addition to the work that continues under the Transition Agreement the Consortium members have also been working to finalize the Consortium Agreement and Legacy Lease – documents which underpin the future use, operation and governance oversight of Canada Games Park. These documents have been reworked to reflect the Region’s role change as it relates to construction and are largely settled.

As a result of the Games being postponed, the Consortium partners have begun to turn their minds to operationalizing Canada Games Park in advance of the Games (now anticipated to be held in 2022). The Region, on behalf of the Consortium partners, has retained the services of an experienced consultant to help assist in operationalizing the building, including with respect to the development of an operational plan, maintenance program and the development of specifications for an RFX for qualified third party operators to run the facility on behalf of the consortium partners.

The Consortium Members together with CSG Host Society have also created a sponsorship committee who has a mandate to provide assistance in relation to generating sponsorship revenue for the development of Canada Games Park and the Games. The committee is made up of members of the Consortium, CSG Host Society as well as community members who will develop a plan for securing sponsorship revenue for the sale of long-term naming rights for Canada Games Park.

### **Alternatives Reviewed**

N/A

### **Relationship to Council Strategic Priorities**

The successful delivery of Canada Games Park will provide the Region with a legacy of health, wellness and athletic excellence for decades to come. In this way, the project supports meeting Council’s strategic objective of fostering a ‘healthy and vibrant community’.

## Other Pertinent Reports

CSD 67-2020  
CAO 11-2020  
CSD 42-2020

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**Prepared by:**  
Brian Wilson  
Legal Counsel  
Corporate Services

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**Recommended by:**  
Todd Harrison, CPA, CMA  
Commissioner/Treasurer  
Corporate Services

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**Submitted by:**  
Ron Tripp, P.Eng.  
Acting Chief Administrative Officer

*This report was prepared in consultation with Nicole Wolfe, Director, Construction Energy and Facility Management, and Heather Talbot, Financial and Special projects Consultant.*

## Appendices

Appendix 1            Transition Agreement

**TRANSITION AGREEMENT FOR**  
**CANADA GAMES PARK**

THIS AGREEMENT is made as of this 30<sup>th</sup> day of June, 2020

BETWEEN:

**2021 CANADA GAMES HOST SOCIETY INC.**

**(“CGHS”)**

- and -

**THE REGIONAL MUNICIPALITY OF NIAGARA**

**(“Niagara”)**

**WHEREAS:**

- A. The Canada Games in 2021 (the “**Games**”) will be held across all municipalities in the Niagara Region of Ontario;
- B. By a memorandum of understanding dated January 26, 2017 (“**MOU**”), between the Niagara 2021 Canada Summer Games Bid Committee, Niagara, and Brock University, it was contemplated, among other things, that Niagara and the Niagara 2021 Canada Summer Games Bid Committee would facilitate the hosting of the Games and that, if the Niagara 2021 Canada Summer Games Bid Committee’s bid was successful a corporation would be created to, *inter alia*, plan, organize, promote, finance and stage the Games as well as to assist in the construction and preparation of facilities as may be required for the Games;
- C. Based on the MOU, it is intended that prior to the Games, there will be upgrades to existing sport facilities and the development of new sport infrastructure and equipment, and much of that new sport infrastructure and equipment is to be located at a new site to be known as “**Canada Games Park**” that will include among other related infrastructure, a new Sport and Ability Centre with a twin pads ice arena, beach volleyball courts, a new athletics facility, and parking areas, and will be located on lands owned by Brock University, south of Sir Isaac Brock Blvd South and west of Merrittville Highway on Brock University’s main campus (the “**CGP Lands**”);
- D. The 2021 Canada Games Host Society Inc. was created, in accordance with the *Corporations Act* (Ontario) to constitute CGHS, and, pursuant to a Hosting Agreement with the Canada Games Council dated December 12, 2018, was charged with planning, organizing, promoting, financing and staging the Games as well as assisting in the construction and preparation of Canada Games Park and to leave a tangible legacy and

funding for amateur sport for future generations in the Region of Niagara and the Province of Ontario;

- E. With input and approval from the Consortium (as hereinafter defined), CGHS undertook the design and commenced construction and development of the Canada Games Park;
- F. CGHS has entered into:
  - a. a Transfer Payment Agreement with Her Majesty the Queen in right of the Province of Ontario (the “**Province of Ontario**”) with respect to the Games dated November 1, 2017 ;
  - b. a Transfer Payment Agreement with Niagara with respect to the Games dated January 1, 2018 (the “**Niagara TPA**”);
  - c. a Contribution Agreement with Canada with respect to the Games dated May 1, 2019;
  - d. a Transfer Payment Agreement with the Province of Ontario, Niagara, the City of St. Catharines, City of Thorold and Brock University with respect to certain funding for the Canada Games Park construction dated August 30, 2019 and executed on or about March 31, 2020 (the “**Provincial TPA**”);
  - e. a construction contract with Aquicon Construction Co. Ltd. to construct the Canada Games Park and the Henley Rowing Centre (as hereinafter defined) dated December 4, 2019;
  - f. an Offer to Lease (the “**Offer to Lease**”) with Brock University in respect of those lands shown in Schedule A of the Offer to Lease to allow for the development, construction and operation of Canada Games Park for the Games dated December 4, 2019;
  - g. a Project Manager Agreement with Urban & Environmental Management Inc. for the construction management of Canada Games Park dated December 13, 2019;
  - h. a site plan agreement with the City of Thorold with respect to the CGP Lands upon which the Canada Games Park is to be constructed dated January 21, 2020;
  - i. a commissioning agreement with CFMS-West Consulting Inc. for the commissioning of the facilities contained within Canada Games Park dated March 1, 2020;
  - j. a Temporary Construction Access Licence Agreement with Ontario Power Generation Inc. (“**OPG**”) made as of March 1, 2020 for temporary access to certain OPG lands in connection with the construction of a spillway serving a newly constructed stormwater holding pond on lands owned by Brock University; and
  - k. three separate architectural agreements with MacLennan Jaunkalns Miller Architects for the design of Canada Games Park and the Henley Rowing Centre

(as hereinafter defined) dated September 28, 2018, December 2, 2019 and March 11, 2020;

- G. CGHS has obtained a building permit for the Canada Games Park dated February 4, 2020 from the City of Thorold;
- H. Following the Games, it is the intention that a new ground lease will be entered into between Brock University, as landlord, and a consortium made up of Niagara, the City of St. Catharines, the City of Thorold, and Brock University (collectively the “**Consortium**”), as tenant, and the Consortium will have possession of the Canada Games Park and the CGP Lands for a term of forty (40) years;
- I. CGHS has advised that it would be preferable to transition responsibility for the balance of the construction of Canada Games Park to Niagara for several reasons including so that CGHS can focus on organizing and delivering the Games and the development of other facilities such as the Henley Rowing Centre;
- J. Niagara is agreeable to assuming responsibility for the balance of the construction of Canada Games Park on the terms and conditions of this Agreement;
- K. Niagara is agreeable to becoming a Recipient party jointly with CGHS pursuant to the Provincial TPA on the terms and conditions of this Agreement; and
- L. This Agreement sets out the framework for the transition of the construction of Canada Games Park from CGHS to Niagara (the “**Transition**”).

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual covenants hereinafter set forth for good and valuable consideration (the receipt and sufficiency of which are acknowledged by each of the undersigned) the Parties agree as follows:

## **ARTICLE 1 INTERPRETATION**

### **1.01 Recitals**

The foregoing recitals are true and correct in fact and in substance and are incorporated herein and form part of this Agreement.

### **1.02 Definitions**

In this Agreement, in addition to the terms defined above, the following definitions apply:

- a) “**Agreement**” means this transition agreement, including all Schedules, Appendices and Exhibits to this transition agreement, as amended, supplemented, restated and replaced from time to time in accordance with its provisions.

- b) **“Applicable Law”** means:
- i. any domestic (federal, provincial or municipal) or foreign statute, law (including common and civil law), code, ordinance, rule, regulation, order-in-council, restriction or by-law (zoning or otherwise);
  - ii. any judgment, order, writ, injunction, directive, decision, ruling, decree or award;
  - iii. any regulatory policy, practice, standard or guideline;
  - iv. any published administrative position; or
  - v. any Permit;
- of any Governmental Authority, binding on or affecting the person referred to in the context in which the term is used or binding on or affecting the property of that person.
- c) **“Assignment Condition Date”** means 5:00pm (local time) on July 30, 2020.
- d) **“Books and Records”** means all books, records, files and papers of CGHS relating to the Project, including, electronic data, financial working papers, financial books and records, business reports, business plans and projections, records and correspondence, all other documents and data (technical or otherwise) relating to the Project and the Material Agreements, and all copies and recordings of the foregoing.
- e) **“Business Day”** means any day, except Saturdays and Sundays, on which banks are generally open for non-automated business in the City of Thorold.
- f) **“Canada Games Park”** has the meaning ascribed to that term in Recital C.
- g) **“CGP Lands”** has the meaning ascribed to that term in Recital C.
- h) **“Claims”** means any and all actions, causes of action, suits, proceedings, claims, losses, demands, damages, liabilities, penalties, costs and expenses of every nature and kind.
- i) **“Closing”** means the completion of the transactions contemplated in this Agreement on the Closing Date in accordance with this Agreement.
- j) **“Closing Date”** means the date which is one (1) Business Day after all of the conditions in Article 3 are satisfied or waived by Niagara and/or CGHS as applicable, or such other date as agreed to by the Parties in writing.
- k) **“Consortium”** has the meaning ascribed to that term in Recital H.
- l) **“Council Approval Date”** means 5:00pm (local time) on July 30, 2020.

- m) **“Due Diligence Condition Date”** means 5:00pm (local time) on July 30, 2020.
- n) **“Financial Statements”** means the financial statements in respect of the Project, consisting of the budgets, reports, balance sheet, income statement, cash flow statement and all notes, schedules and exhibits thereto.
- o) **“Funds Reconciliation”** shall have the meaning given to it in Section 9.01a).
- p) **“Games”** means the 2021 Canada Summer Games, as further defined in Recital A.
- q) **“Games Equipment”** means the “Games Equipment” identified in Schedule C.
- r) **“Governmental Authority”** means any domestic or foreign government, whether federal, provincial, state, territorial, local, regional, municipal, or other political jurisdiction, and any agency, authority, instrumentality, court, tribunal, board, commission, bureau, arbitrator, arbitration tribunal or other tribunal, or any quasi-governmental or other entity, body, organization or agency, insofar as it exercises a legislative, judicial, regulatory, administrative, expropriation or taxing power or function of or pertaining to government.
- s) **“Hazardous Substance”** means any substance that is, or is likely to be, hazardous or harmful to the environment or likely to cause an adverse effect, damage or impairment to persons or property and includes, without limiting the generality of the foregoing, the following: (A) any substance that, if added to water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water to the extent that it is detrimental to its use by humans or by any animal, fish or plant; (B) any solid, liquid, gas or odour or combination of any of them that, if emitted into air, soil or water, would create or contribute to the creation of a condition that does or would endanger the health, safety or welfare of persons or the health of animal life, interfere with normal enjoyment of life or property, or cause damage to plant life or to property; and (C) any material or substance declared or deemed to be hazardous, toxic, deleterious, caustic, radioactive, explosive, dangerous, a contaminant, a waste, a source of contaminant, a pollutant or a dangerous good under any environmental law, including, without limitation, petroleum hydrocarbons, benzene, toluene, ethylbenzene, xylene, urea formaldehyde, asbestos, lead, polychlorinated biphenyls and dioxins;
- t) **“Henley Rowing Centre”** means the Games legacy project consisting of certain rowing infrastructure improvements to be constructed by CGHS for and on behalf of the Canadian Henley Rowing Corporation.
- u) **“Holdback”** or **“Holdbacks”** means, as applicable, the holdback(s) required to be retained under Part IV of the *Construction Act*.
- v) **“Insurance Policies”** all insurance policies maintained in respect of the Project.

- w) “**Key Personnel**” shall mean the key individual(s) for CGHS set out in Section 8.01.
- x) “**Labour & Material Payment Bond**” means, collectively, the labour and material payment bond and the Multiple Oblige Rider to the labour and material payment bond issued in respect of the construction contract in respect of the Project, by Travelers Insurance Company of Canada number 90040455 dated December 6, 2019.
- y) “**Legacy Plan**” means the plan, insofar as it relates to the Canada Games Park, prepared in relation to legacy from the Games pursuant to the Hosting Agreement referred to in Recital D.
- z) “**Material Agreements**” means all of the following agreements:
- i. a Construction Contract with Aquicon Construction Co. Ltd. to construct Canada Games Park dated December 4, 2019;
  - ii. Project Manager Agreement with Urban & Environmental Management Inc. (“**UEM**”) for the construction management of the construction of Canada Games Park dated December 13, 2019;
  - iii. a Commissioning Agreement with CFMS-West Consulting Inc. for the commissioning of the facilities contained within Canada Games Park dated March 1, 2020;
  - iv. three separate architectural agreements with MacLennan Jaunkalns Miller Architects for the design of Canada Games Park dated September 28, 2018, December 2, 2019 and March 11, 2020;
  - v. a Temporary Construction Access Licence Agreement with Ontario Power Generation Inc. made as of March 1, 2020 for temporary access to certain OPG lands in connection with the construction of a spillway serving a newly constructed stormwater holding pond on lands owned by Brock University; and
  - vi. a Site Plan Agreement with the City of Thorold with respect to the CGP Lands upon which the Canada Games Park is to be constructed dated January 21, 2020.
- aa) “**MOU**” has the meaning ascribed to that term in Recital B.
- bb) “**Niagara TPA**” has the meaning ascribed to that term in Recital F.
- cc) “**Notice**” means any notice, request, direction, or other document that a Party can or must make or give under this Agreement, which, in each case, shall be given in accordance with Section 13.10.

- dd) **“Offer to Lease”** has the meaning ascribed to that term in Recital F.
- ee) **“Offsite Works”** means the replacement and upsizing of the sanitary sewer along Schmon Parkway to service the CGP Lands and other lands owned by Brock University comprising the installation of approximately 380 metres of 375mm diameter sanitary sewer and related appurtenances in accordance with the Niagara Peninsula Standard Contract Documents and as outlined in the proposal from Upper Canada Planning & Engineering Ltd., dated March 9, 2020 (as amended).
- ff) **“Participant”** has the meaning set out in the Provincial TPA;
- gg) **“Parties”** means collectively, Niagara and CGHS, and **“Party”** means any of them.
- hh) **“Performance Bond”** means collectively, the performance bond and the Multiple Oblige Rider to the performance bond issued in respect of the construction contract in respect of the Project, by Travelers Insurance Company of Canada number 90040455 dated December 6, 2019.
- ii) **“Permits”** means licences, qualifications, approvals, authorizations, consents, certificates, certificates of authorization, decrees, orders-in-council, registrations, exemptions, consents, variances, waivers, filings, grants, notifications, privileges, rights, orders, judgments, rulings, directives, permits and other approvals, obtained from, issued by or required by a Governmental Authority.
- jj) **“Project”** means the construction and development of Canada Games Park on the CGP Lands.
- kk) **“Project Account”** means a segregated bank account held at a Canadian chartered bank in the name of and held by Niagara which has a maximum of three authorized signatories, two of which shall be designated by Niagara and one of which shall be designated by CGHS and such account shall stipulate that any two of the three authorized signatories may sign and access the account.
- ll) **“Province of Ontario”** means Her Majesty the Queen in right of the Province of Ontario.
- mm) **“Provincial Acknowledgement and Consent”** has the meaning ascribed to that term in Section 3.03.
- nn) **“Provincial TPA”** a Transfer Payment Agreement made between CGHS as the Recipient and the Province of Ontario, (with Niagara, the City of St. Catharines, the City of Thorold and Brock University as Participants only), with respect to certain funding for the Canada Games Park construction dated August 30, 2019 and executed on or about March 31, 2020.
- oo) **“Services”** shall mean the services as defined in Section 8.01.

pp) “**Recipient**” has the meaning set out in the Provincial TPA and shall include both CGHS and Niagara from and after the Closing Date.

qq) “**Transition**” has the meaning ascribed to that term in Recital K.

### **1.03 Interpretation**

In this agreement, unless the context requires otherwise, words in the singular include the plural and vice versa.

### **1.04 Schedules**

The following Schedules and Exhibit attached to this Agreement are integral to and form part of this Agreement.

Schedule A - Form of Assignment, Consent To Assignment and Counterparty Estoppel

Schedule B - Form of Acknowledgement and Consent for Provincial TPA

Schedule C - Funds Reconciliation

## **ARTICLE 2 - OVERARCHING PRINCIPLES**

The Parties agree to cooperate in good faith in all matters necessary to enable the Parties to meet the goals and objectives of this Agreement. The Parties will take timely action in relation to any matters of disagreement to attempt to minimize them before they become matters of dispute. Without limiting the generality of the foregoing, in respect of the performance of their roles and responsibilities under this agreement, the Parties agree that they shall:

- a) act in a cooperative and collaborative manner in carrying out their respective roles with respect to Canada Games Park and to facilitate the effective and efficient Transition; and
- b) throughout the delivery of the Project, regardless of the nature of a Party's role, the Parties shall make commercially reasonable efforts that are not limited to financial matters to:
  - i. consider any input that a Party receives from the other Party in carrying out its roles and responsibilities under this Agreement;
  - ii. keep the other Party informed with respect to the status of the Project, as reasonably necessary and appropriate;
  - iii. exchange such information and documents related to the Project, the CGP Lands, the Transition, or otherwise, as may be reasonably required by the other Party to efficiently and effectively complete the Project and implement the Transition; and

- iv. deliver Canada Games Park pursuant to the construction contract timeline so that it is ready to host a portion of the Games.

### **ARTICLE 3 CONDITIONS PRECEDENT**

The Closing shall be conditional upon each of the following conditions being satisfied or waived on or before the respective dates noted below:

#### **3.01 Consortium Approvals**

On or before the Council Approval Date:

- a) the Council of Niagara shall have approved the terms and conditions of this Agreement in its sole, absolute and unfettered discretion;
- b) the Council of the City of St. Catharines shall have approved the Transition of the Project to Niagara as contemplated by this Agreement;
- c) the Council of the City of Thorold shall have approved the Transition of the Project to Niagara as contemplated by this Agreement; and
- d) the Board of Trustees of Brock University shall have approved the Transition of the Project to Niagara as contemplated by this Agreement.

#### **3.02 CGHS Board Approval Condition**

The Closing shall be conditional upon the Board of Directors of CGHS having approved the terms and conditions of this Agreement in its sole, absolute and unfettered discretion on or before July 30, 2020.

#### **3.03 Provincial TPA Condition**

On or before July 30, 2020, the Province of Ontario, Niagara and CGHS shall have executed an Acknowledgement and Consent (substantially in the form as Schedule B) (the “**Provincial Acknowledgement and Consent**”) whereby the Province consents to the Transition and Niagara agrees to, in addition to being a Participant, also become a Recipient party to the Provincial TPA jointly with CGHS, such that Niagara and CGHS shall be jointly and severally liable to the Province under the Provincial TPA as Recipients and Niagara shall also have all the benefits and privileges conferred on a Recipient under the Provincial TPA.

### **3.04 Due Diligence**

On or before the Due Diligence Condition Date, Niagara shall have satisfied itself in its sole, absolute and unfettered discretion with respect to each of the following:

- a) all of the representations and warranties of CGHS made in or pursuant to this Agreement are true and correct;
- b) the Material Agreements and all other materials, documents and information delivered to Niagara by CGHS, the status of the Project, the environmental condition of the CGP Lands, the geotechnical condition of the CGP Lands, the Permits, compliance of the Project with Applicable Laws, Niagara's ability to obtain satisfactory funding for the Project, and such other due diligence reviews, tests, inspections, investigations and evaluations as Niagara may choose to undertake or consider;
- c) the Funds Reconciliation; and
- d) Niagara having obtained reliance letters from any third party consultants identified by Niagara who prepared any reports in respect of the Project on terms and conditions satisfactory to Niagara.

### **3.05 Assignment Condition**

On or before the Assignment Condition Date:

- a) CGHS, at its sole cost and expense, shall have entered into legally binding agreements with the relevant counterparties to each of the applicable Material Agreements that contain a scope of work related to the Henley Rowing Centre and/or any other scope of work that is not related to the Canada Games Park to amend those Material Agreements to remove all work associated with the Henley Rowing Centre and any other work that is not part of the Canada Games Park from the scope of the Material Agreements, satisfactory to Niagara in all respects, and has delivered copies of such amending agreements to Niagara;
- b) CGHS shall have caused to be delivered to Niagara written assignments, consents to assignment and counterparty estoppel of all of the Material Agreements to Niagara from each of the counterparties to each of the Material Agreements, substantially in the form attached at Schedule "A" and each on terms and conditions satisfactory to Niagara;
- c) CGHS, Niagara and the Province shall have executed the Provincial Acknowledgement and Consent, with respect to the Provincial TPA consenting to the Transition and confirming that Niagara shall, in addition to being a Participant, become a Recipient party jointly with CGHS as of and from the Closing Date, on terms and conditions satisfactory to CGHS and Niagara, each in its absolute discretion;

- d) CGHS shall have caused to be transferred to Niagara any Permits obtained by CGHS and relating to the construction of the Project that are required to be transferred for the purposes of this Transition;
- e) CGHS shall have caused to be delivered to Niagara written confirmation or certificates from the relevant insurance companies which have issued the Insurance Policies confirming that of all Insurance Policies will be transferred, endorsed and/or reissued to Niagara on the Closing Date with the intent that Niagara shall have the full benefit and entitlements under all of the Insurance Policies and written confirmation that the Insurance Policies are in full force and effect with no change to the insurance premiums, each in a form satisfactory to Niagara; and
- f) CGHS shall have caused to be delivered to Niagara written confirmation or certificates from the relevant bond issuers which have issued the Performance Bond and Labour and Materials Payment Bond that of all such bonds will be transferred to Niagara on the Closing Date and are in full force and effect, each in a form satisfactory to Niagara.

### **3.06 Consortium Agreement**

On or prior to Closing, Niagara shall have entered into:

- a) an agreement with the Consortium in respect of the Canada Games Park, and
- b) a lease, license or other arrangement with Brock University to permit construction of the Project to continue after Closing.

### **3.07 Waiver and Satisfaction of Conditions**

- a) The condition set out in Section 3.02 is inserted solely for the benefit of CGHS and may be waived by CGHS, at any time or times by Notice to Niagara. Any waiver of a condition or conditions by CGHS shall not constitute or be construed as a waiver of any other conditions, and shall not constitute or be construed as a waiver of the obligations of Niagara under this Agreement or the rights of CGHS in respect thereof, which rights are expressly reserved.
- b) The conditions set out in Sections 3.03, 3.05 and 3.06b) are inserted for the mutual benefit of Niagara and CGHS and may not be waived by either Party.
- c) The conditions set out in Sections 3.01, 3.04 and 3.06a) are inserted solely for the benefit of Niagara and may be waived by Niagara, in whole or in part, at any time or times by Notice to CGHS. Any waiver of a condition or conditions, in whole or in part, by Niagara shall not constitute or be construed as a waiver of any other conditions, and shall not constitute or be construed as a waiver of the obligations of CGHS under this Agreement or the rights of Niagara in respect thereof, which rights are expressly reserved.

### **3.08 CGHS Responsibility**

CGHS shall use commercially reasonable efforts to do all things necessary to satisfy the conditions set out in Sections 3.02, 3.03, 3.04 and 3.05.

### **3.09 Niagara Responsibility**

Niagara shall use commercially reasonable efforts to do all things necessary to (i) satisfy the conditions set out in Section 3.06, (ii) assist CGHS to satisfy the conditions set out in Section 3.03 and 3.05c), and (iii) ensure that Brock University permits construction of the Project to continue without delay pending the satisfaction of the conditions precedent in Article 3 of this Agreement.

## **ARTICLE 4 DUE DILIGENCE**

### **4.01 Deliveries by CGHS**

Niagara acknowledges that CGHS has, prior to the date of this Agreement, delivered to Niagara for Niagara's review certain information and documentation in order to conduct due diligence with respect to the Transition. Within three (3) Business Days following a written request from Niagara, CGHS shall deliver to Niagara such further documentation and information relating to the Project which is reasonably requested by Niagara prior to the Due Diligence Condition Date which requests may include, but not be limited to:

- a) copies of all Material Agreements and any documents that are supplementary or collateral thereto;
- b) the Books and Records;
- c) the Project budgets and Financial Statements;
- d) copies of all Permits;
- e) evidence of all invoices and receipts for payments under the Material Agreements;
- f) copies of all bonds and insurance policies and certificates in respect of the Project and any material correspondence with any bond holder and insurer in respect of the Project; and
- g) copies of any surveys, plans, specifications, drawings, soil test reports, environmental reports and engineering reports relating to the Project.

### **4.02 Authorizations**

Within three (3) Business Days of receipt of a request from Niagara, CGHS shall execute and deliver to Niagara authorizations permitting any counterparty to a Material

Agreements, the bond holders and insurers in respect of the Project, and Governmental Authorities to release information respecting the Project to Niagara.

#### **4.03 Access to the Project**

CGHS shall permit Niagara and its employees, agents, representatives, consultants and contractors to have access to the Project and CGP Lands, from time to time, at reasonable times and subject to permission from Aquicon, which permission CGHS shall use commercially reasonable efforts to promptly obtain, for the purpose of conducting such enquiries, tests, inspections and investigations as Niagara may reasonably consider necessary or desirable.

### **ARTICLE 5 ASSIGNMENT**

#### **5.01 Material Agreements**

On the Closing Date:

- a) CGHS does hereby assign, transfer and set over unto Niagara, as of and from the Closing Date:
  - i. all of the right, title and interest of CGHS under, in and to the Material Agreements;
  - ii. the benefit of all covenants by the other contracting party or parties under each of the Material Agreements;
  - iii. the benefit of all guarantees and indemnities in respect of the obligations of the other contracting party or parties under each of the Material Agreements and any security relating to the obligations of such party or parties under each of the Material Agreements (if any); and
  - iv. all other rights, benefits and advantages whatsoever contained in each of the Material Agreements;

with full power and authority to demand, collect, sue for, distrain for, recover, receive and give receipts for all monies payable thereunder and to enforce performance of the covenants thereunder, each on the terms and conditions of the form of Assignment, Consent to Assignment and Counterparty Estoppel agreement attached at Schedule "A".

- b) Niagara hereby accepts the assignment and assumes all of the CGHS's obligations and liabilities with respect to the Material Agreements as of and from the Closing Date each on the terms and conditions of the form of Assignment, Consent to Assignment and Counterparty Estoppel agreement attached at Schedule "A".

- c) CGHS hereby acknowledges that, notwithstanding the assignment herein contained, CGHS shall not be released from any of its obligations under the Material Agreements prior to the date of the assignment.

## **5.02 Indemnities**

- a) CGHS covenants and agrees to indemnify and save harmless Niagara from and against Claims arising pursuant to or in connection with the Material Agreements with respect to any matter that has occurred prior to the Closing Date.
- b) Niagara covenants and agrees to indemnify and save harmless CGHS from and against any and all Claims arising pursuant to or in connection with the Material Agreements with respect to any matter that occurs on or after the Closing Date.
- c) CGHS covenants and agrees to indemnify and save harmless Niagara from and against Claims arising pursuant to or in connection with CGHS's obligations under the Provincial TPA, except to the extent that any such Claim was caused or contributed to as a result of any action or omission by Niagara.
- d) Niagara covenants and agrees to indemnify and save harmless CGHS from and against any and all Claims arising pursuant to or in connection with Niagara's obligations under the Provincial TPA, except to the extent that any such Claim was caused or contributed to as a result of any action of omission by CGHS,

## **5.03 Provincial TPA**

The Parties hereby agree and declare that the following shall apply with respect to the Provincial TPA:

- a) CGHS and Niagara hereby acknowledge and agree that as of the Closing Date and upon the execution of the Provincial Acknowledgement and Consent by the Province of Ontario, Niagara and CGHS, both Niagara and CGHS shall be jointly and severally liable as Recipients under the Provincial TPA and Niagara shall also be entitled to all of the benefits, rights and privileges as a Recipient thereunder.
- b) Niagara, and CGHS agree that they will:
  - i. take or cause to be taken such action in its name as may be required to provide each other with the benefits thereof, at the direction of each other, provided that such actions or directions are consistent with the terms and conditions of this Agreement;
  - ii. update the designation of the account identified in Section A.4.1(c) of the Provincial TPA as the Project Account and irrevocably direct and ensure that all funds payable under the Provincial TPA shall be paid directly to the Project Account;
  - iii. observe and perform all of its obligations under the Provincial TPA;

- iv. keep each other fully informed of all matters related to the Provincial TPA and promptly forward to each other all documents, correspondence, notices and other information received by them in relation to the Provincial TPA;
- v. coordinate all matters with respect to the funding of the Project under the Provincial TPA with each other; and

otherwise promptly do all things and acts necessary to comply with and administer the Provincial TPA.

## **ARTICLE 6 RELEASE FROM PART OF NIAGARA TPA**

### **6.01 Release**

The Parties acknowledge that the capital funding requirements under sections 7.1(b) and 7.1(d) of the Niagara TPA have been met via Niagara's commitments and obligations under Article A.34.0 of the Provincial TPA. CGHS hereby releases Niagara and its successors and assigns effective as of the Closing Date from any Claims that CGHS may have now or in the future or may have had against Niagara with respect to the capital funding requirements under sections 7.1(b) and 7.1(d) of the Niagara TPA provided that Niagara complies with all of its commitments and obligations under Article A.34.0 of the Provincial TPA.

## **ARTICLE 7 - OTHER MATTERS**

### **7.01 Offsite Works**

CGHS shall be responsible, at its sole cost and expense, for the development of the Offsite Works. CGHS shall ensure that the Offsite Works are completed in accordance with all Permits and Applicable Law and so as to ensure that the Project does not incur any delays, disruption or interference as a result of any failure or delay in completing the Offsite Works and so as to ensure that the Canada Games Park is fully serviced by the Offsite Works prior to the commencement of the Games.

### **7.02 Termination of Offer to Lease and Venue Use Agreement**

CGHS shall be solely responsible for the termination of, and all liability and Claims under, the Offer to Lease, at CGHS's sole cost and expense. CGHS shall be responsible for making the arrangements with the Consortium for CGHS's preparation and use of the CGP Lands and/or Canada Games Park before and during the Games.

### **7.03 Value in Kind Arrangements**

CGHS shall be solely responsible, at its sole cost and expense, for observing, performing and satisfying all arrangements and agreements made by CGHS with the counterparties to the Material Agreements and any other third parties prior to the Closing Date, for any value in kind arrangements or agreements relating to the Canada Games Park and/or Project. Niagara agrees to abide by all such arrangements and agreements provided for in the Material Agreements, from and after the Closing Date.

## **ARTICLE 8 SUPPORT SERVICES**

### **8.01 Key Personnel**

- a) CGHS shall use reasonable efforts to ensure that the following CGHS personnel (the “**Key Personnel**”) are the primary contacts for Niagara and will be available to support and provide assistance, information and documentation in relation to the Project and the Canada Games Park (the “**Services**”):
  - i. Doug Hamilton;
  - ii. Matt Hill; and
  - iii. Mario D’Uva.
- b) Notwithstanding the foregoing, CGHS shall be entitled to add or remove any of the Key Personnel in its reasonable discretion; provided that any replacement Key Personnel shall be competent in carrying out the Services in accordance with this Agreement; and in doing so, the duties and obligations of CGHS under this Agreement shall not be diminished. CGHS shall give Niagara not less than five (5) Business Days advance written notice of any additions or removals of the Key Personnel.
- c) CGHS shall ensure that the Key Personnel are familiar with the specific terms and conditions of this Agreement which apply to the provision of the Services in which they are involved.

### **8.02 Share Documents**

CGHS shall promptly provide true and accurate copies of all information, documentation, and materials relating to the Project requested by Niagara.

### **8.03 Games Equipment**

Prior to the commencement of the Games, CGHS shall supply and install the Games Equipment in accordance with the venue use agreement to be entered into pursuant to Section 7.02 of this Agreement. CGHS shall not be entitled to remove the Games

Equipment from Canada Games Park after the Games unless such removal is in accordance with the Legacy Plan.

#### **8.04 Cooperation**

Each Party shall cooperate with the other Party in relation to the Project, the Canada Games Park and their readiness for the Games. Each Party shall not do anything that delays the construction of the Project or its readiness for use at the Games. UEM shall continue to report jointly to Niagara, the other Consortium members and CGHS, pursuant to the Project Manager Agreement.

#### **8.05 Conduct until Closing**

Without in any way limiting any other obligations of CGHS hereunder CGHS shall, until the Closing continue to perform the Project in a manner consistent with that of a prudent owner of a similar project, and shall not, without the prior written consent of Niagara, enter into any transaction or action or refrain from doing any action that, if effected before the date of this Agreement, would constitute a breach of any representation, warranty, covenant or other obligation of CGHS in this Agreement.

### **ARTICLE 9 FUNDS & FUNDING**

#### **9.01 Funding Matters**

- a) By no later than July 15, 2020, CGHS shall prepare a schedule, to be attached hereto as Schedule “C”, containing a ledger or ledgers detailing revenue and expenses in respect of the Project and the allocation of such revenue and expenses as between the Parties (the “**Funds Reconciliation**”). The Funds Reconciliation shall include details:
  - i. breaking down expenses by supplier, and identifying whether each expense has been accrued, invoiced, and/or paid, and all forecasted expenses with respect to the Project;
  - ii. breaking down revenues by source of revenues, and whether each revenue has been committed, invoiced and/or received; and
  - iii. construction holdbacks, cash or investments held as working capital for the Project.
- b) With respect to the allocation of the revenue and expenses in respect of the Project, the Parties agree that as part of the Funds Reconciliation:
  - i. CGHS shall be reimbursed from the committed revenue, without duplication, for all expenses which it has incurred in respect of the Project

as at the Closing Date, including all non-recoverable HST in respect of such expenses;

- ii. CGHS shall be provided funds from the committed revenue for all expenses budgeted for the Games Equipment and Offsite Works, including all non-recoverable HST budgeted in respect of the Games Equipment and Offsite Works; and
  - iii. The remaining revenue shall be allocated to Niagara.
- c) The Funds Reconciliation shall be prospective to the Closing Date and shall be updated, if necessary, on the Closing Date.
  - d) On the Closing Date, all cash or investments held by CGHS as working capital for the Project other than that reimbursed or provided to CGHS pursuant to Sections 9.01b)i and ii , shall be deposited into the Project Account.

## **9.02 Surplus in funds**

- a) Any surplus in funds in relation to hosting the Games will first be paid by CGHS to Niagara to fund any deficit arising in relation to the costs of constructing the Project.
- b) Any surplus in funds received by Niagara in relation to constructing the Project will be applied to, firstly, fund any financial deficit associated with hosting the Games in accordance with Niagara’s responsibility under section 7.1(a) of the Niagara TPA and, secondly, to fund the legacy fund established pursuant to the Legacy Plan.

## **ARTICLE 10 NAMING RIGHTS, SPONSORSHIP & LEGACY**

### **10.01 Sponsorship Committee**

- a) CGHS will use commercially reasonable efforts to assist Niagara to secure sponsorship revenue from the sale of long term naming rights in respect of Canada Games Park (which the Consortium is responsible for) to fund the uncommitted elements of the budget established for Canada Games Park in the amount of five million, four hundred thousand dollars (\$5,400,000.00) (the “**Sponsorship Revenue**”).
- b) Niagara will use commercially reasonable efforts to assist CGHS to secure other sponsorship revenue to fund the CGHS budget to host the Games.
- c) CGHS shall establish and administer a committee (the “**Sponsorship Committee**”) for the purpose of, *inter alia*, securing the Sponsorship Revenue.

- d) The membership of the Sponsorship Committee shall include appropriate community leaders from the Niagara Region and representatives of each of the Consortium.
  - e) CGHS shall prepare reasonable terms of reference for the Sponsorship Committee, which shall include:
    - i. The number of members;
    - ii. The identity of the members;
    - iii. The protocols and schedule for meetings;
    - iv. The need for the Committee to develop a plan for securing the Sponsorship Revenue;
    - v. Such other matters of governance of the Sponsorship Committee that CGHS and Niagara deem appropriate;
- by no later than July 15, 2020.

## **10.02 Legacy Matters**

- a) Subject to Section 10.02b), CGHS acknowledges that it has no interest, right or title in Canada Games Park or the CGP Lands, save and except as may be set out in the venue use agreement to be made pursuant to Section 7.02 of this Agreement, and accordingly, shall not have the right to make any commitments, bind or act as the agent of Niagara or any member of the Consortium, in respect of the Canada Games Park for any period following the Games.
- b) CGHS acknowledges that Niagara has or will be entering into certain arrangements, including, without limitation the Legacy Lease and a consortium agreement with the Consortium in respect of the Canada Games Park and Legacy Period. Niagara will use commercially reasonable efforts to ensure that the Legacy Lease and consortium agreement includes, as applicable, provision for implementation of the Legacy Plan.
- c) Niagara shall be responsible for satisfying the requirements of the Canada Games Council, Province of Ontario and Her Majesty in right of Canada in relation to naming, signage and the acknowledgement of the sources of financial support in relation to Canada Games Park.
- d) Niagara shall be responsible for the long term naming rights in respect of Canada Games Park.

## ARTICLE 11 REPRESENTATIONS & WARRANTIES

### 11.01 CGHS Representations and Warranties

CGHS represents and warrants to Niagara that:

- a) CGHS is a corporation existing under the laws of Ontario and has the necessary corporate authority, power and capacity to enter into the Material Agreements and the Provincial TPA and to enter into this Agreement and carry out the transaction contemplated by this Agreement on the terms and conditions herein contained;
- b) this Agreement has been duly authorized by all corporate action required to be taken by CGHS and constitutes a legal, valid and binding obligation of CGHS, enforceable in accordance with its terms;
- c) CGHS has the right to assign the Material Agreements and to complete the transaction as contemplated herein on the Closing Date;
- d) CGHS is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) and has not made an assignment in favour of its creditors or a proposal in bankruptcy to its creditors or any class thereof, and no petition for a receiving order has been presented in respect of it. CGHS has not initiated proceedings with respect to a compromise or arrangement with its creditors or for its winding up, liquidation or dissolution. No receiver or interim receiver has been appointed in respect of it or any of its undertakings, property or assets (including any of the Material Agreements and Provincial TPA) and no execution or distress has been levied on any of its undertakings, property or assets (including any of the Material Agreements and Provincial TPA), nor have any proceedings been commenced in connection with any of the foregoing.
- e) The execution, delivery and performance of this Agreement by CGHS and the completion of the transactions contemplated hereunder will not (whether after the passage of time or notice or both) result in:
  - i. the breach or violation of any of the provisions of, or constitute a default under, or give any person the right to seek or cause a termination, cancellation, amendment or renegotiation of any Material Agreement to which it is a party, the Provincial TPA, or by which any of its undertakings, property or assets is bound or affected;
  - ii. the breach or violation of any of the provisions of, or constitute a default under, or conflict with any of its obligations under:
    - A. any provision of its constating documents or resolutions of its board of directors (or any committee thereof) or shareholders;

- B. any judgment, decree, order or award of any Governmental Authority having jurisdiction over it;
  - C. any approval issued to, or held by, CGHS or held, for the benefit of or necessary to the operation of the Project; or
  - D. any Applicable Law;
- iii. the creation or imposition of any encumbrance over any of the Material Agreements and Provincial TPA; or
  - iv. the requirement of any approval from any of its creditors.
- f) CGHS has complied with and has executed the Project, as at the Closing Date, in compliance with all Applicable Laws;
  - g) All accounts for work done, services performed and materials supplied, placed or furnished on or in respect of the Project and/or in respect of the CGP Lands as at the Closing at the request of or on behalf of CGHS have been or will have been fully accounted for and satisfied by Closing;
  - h) Except as disclosed to Niagara prior to the Due Diligence Condition Date, CGHS has not entered into any agreement or other arrangement with the counterparties to the Material Agreements or other third parties for the payment or contribution of in kind value, compensation or consideration in relation to the Project or Canada Games Park.
  - i) CGHS is not aware of any person that claims or may be entitled to claim a lien against the CGP Lands under the *Construction Act* (Ontario) or any similar legislation.
  - j) to the best of CGHS's knowledge and belief, no Hazardous Substance has been stored, treated or disposed of on the CGP Lands except in compliance with Applicable Laws; CGHS has not received notice of and has no knowledge or information of any pending, contemplated or threatened judicial, administrative or other action relating to the existence of a Hazardous Substance on or affecting the CGP Lands and has no reason to believe that any cause of action for such exists.
  - k) CGHS has not received notice and is not aware of any pending or threatened litigation or of any other judicial or administrative proceeding affecting the Project or in respect of any of the Material Agreements and Provincial TPA;
  - l) CGHS has not received any notice of and is not aware of any outstanding work orders, deficiency notices, orders to comply or directives against the Project or any part thereof;
  - m) CGHS has performed all of the obligations required to be performed by it and is entitled to all benefits under, and is not in default or alleged to be in default in respect of, any Material Agreement and the Provincial TPA, to which it is a party

or by which it is bound or affected. All Material Agreements and the Provincial TPA are in good standing and in full force and effect, and no event, condition or occurrence exists that, after notice or lapse of time or both, would constitute a default under any Material Agreement and the Provincial TPA. Each of the Material Agreements constitutes the entire agreement with the counterparty(ies) thereunder in respect of the Project (other than the City of Thorold's participation in the Provincial TPA) and there is no dispute between CGHS and any other party under any Material Agreement and the Provincial TPA. None of the Material Agreements contain terms under which the execution or performance of this Agreement would give any other contracting party the right to terminate or adversely change the terms of that Material Agreement. None of those Material Agreements and the Provincial TPA have been assigned, in whole or in part;

- n) CGHS has obtained all Permits necessary for the construction of the Project. Each such Permit is valid, subsisting and in good standing. CGHS is not in default or in breach of the terms of any Permit and, to the knowledge of CGHS, there exists no grounds nor is any action or proceeding pending or, to the knowledge of CGHS, threatened to revoke, suspend, amend or limit any Permit. True, accurate and complete copies of all Permits relating to the Project have been provided to Niagara.
- o) The Financial Statements:
  - i. have been prepared in accordance with GAAP, applied on a basis consistent with that of the preceding periods;
  - ii. are complete and accurate in all respects;
  - iii. accurately disclose the assets, liabilities (whether accrued, absolute, contingent or otherwise) and financial condition of the Project, as at the dates thereof and for the periods covered thereby;
  - iv. reflect, all proper accruals as at the dates thereof and for the periods covered thereby of all amounts which, though not payable until a time after the end of the relevant period, are attributable to activities undertaken in respect of the Project during or prior to that period; and
  - v. contain or reflect, adequate provision for all liabilities and obligations of CGHS of any nature, whether absolute, contingent or otherwise, matured or unmatured, in respect of the Project, as at the date thereof.
  - vi. No information has become available to CGHS that would render the Financial Statements incomplete or inaccurate.
  - vii. All projections, including forecasts, budgets, pro formas and business plans provided to Niagara were prepared in good faith based on assumptions which were believed to be reasonable and are believed to be reasonable estimates of the Project.

- viii. CGHS has disclosed the existence of and made available for review by Niagara all Books and Records. The system of internal accounting controls is sufficient to provide reasonable assurances that transactions are executed in accordance with management's general or specific authorization and that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets. The Books and Records:
- A. accurately reflect the basis for the financial condition and expenses of the Project in the Financial Statements;
  - B. together with all disclosures made as part of this Agreement and during Niagara's due diligence review, present fairly the financial condition and the expenses of the Project as of and to the date of this Agreement and Closing; and
  - C. are not recorded, stored, maintained, operated or otherwise dependent on or held by any means (including any electronic, mechanical or photographic process, whether computerized or not), which are not or will not be available to Niagara after Closing.
- p) Niagara acknowledges that the aforesaid Financial Statements and projections may change or be impacted or affected by force majeure, including the current pandemic. CGHS has no liabilities, obligations, indebtedness or commitments, whether accrued, absolute, contingent or otherwise, and is not a party to or bound by any agreement of guarantee, support, indemnification, assumption or endorsement of, or any other similar commitment with respect to the Project, that have not been disclosed in the Financial Statements or in the disclosures made as part of this Agreement and during Niagara's due diligence review;
- q) CGHS has not made any binding commitments in respect of the naming rights of Canada Games Park or in respect of any legacy matter in relation to Canada Games Park save and except as set out in the Provincial TPA, the Niagara TPA, the Hosting Agreement with the Canada Games Council, the Contribution Agreement with Canada, and the Transfer Payment Agreement with the Province of Ontario dated November 1, 2017; and
- r) the materials and documents delivered or which will be delivered by CGHS to Niagara pursuant to Section **Error! Reference source not found.** hereof are true and complete copies of all of the materials of the nature described therein as are in the possession or control of CGHS.

The representations and warranties that are made herein are true, accurate and complete as at the date of this Agreement and shall be true, accurate and complete as at the Closing Date.

## 11.02 Niagara Representations and Warranties

Niagara represents and warrants to CGHS that:

- a) Niagara is a municipal corporation and has the necessary corporate authority, power and capacity to enter into the Provincial TPA as a Recipient party, and to enter into this Agreement and carry out the transactions contemplated by this Agreement on the terms and conditions herein contained;
- b) Subject to satisfaction of the conditions set out in Article 3, this Agreement has been duly authorized by Niagara's council and constitutes a legal, valid and binding obligation of Niagara, enforceable in accordance with its terms;
- c) Subject to satisfaction of the conditions set out in Article 3, Niagara has the authority and right to accept an Assignment of the Material Agreements and to complete the transaction as contemplated herein on the Closing Date;
- d) Subject to satisfaction of the conditions set out in Article 3, the execution, delivery and performance of this Agreement by Niagara and the completion of the transactions contemplated hereunder will not (whether after the passage of time or notice or both) result in:
  - i. the breach or violation of any of the provisions of, or constitute a default under, or conflict with any of its obligations under:
    - A. any provision of its constating documents or resolutions of its council or committees thereof;
    - B. any judgment, decree, order or award of any Governmental Authority having jurisdiction over it;
    - C. any approval issued to or held by Niagara, or held for the benefit of or necessary to the operation of the Project; or
    - D. any Applicable Law;
  - ii. the requirement of any approval from any of its creditors.

The representations and warranties that are made herein, are true, accurate and complete as at the date of this Agreement and shall be true, accurate and complete as at the Closing Date.

## ARTICLE 12 – TERMINATION

### 12.01 Termination

The term of this Agreement will expire on the earliest of: (A) the date of the final dissolution of CGHS; (B) March 31, 2030; and (C) the date of the mutual agreement of

both Parties in accordance with Section 13.06 of this Agreement. Niagara may terminate this Agreement at any time prior to the Closing Date by giving written notice to CGHS, which notice shall state the date on which the termination is to become effective.

## **ARTICLE 13 GENERAL PROVISIONS**

### **13.01 Survival of Obligations**

The rights and obligations of the Parties specified in any provision of this Agreement which by their nature would reasonably be interpreted as intended by the Parties to survive the termination of this Agreement shall survive such termination.

### **13.02 Severability**

The invalidity or unenforceability of any particular term of this Agreement will not affect or limit the validity or enforceability of the remaining terms.

### **13.03 Independence of Parties**

Nothing in this Agreement shall be deemed to create any partnership, agency or joint venture relationship between the Parties hereto.

### **13.04 Entire agreement relating to Transition**

This Agreement constitutes the entire agreement between the Parties relating to the Transition of the Project and other matters as contemplated herein; there are no representations, covenants, or other terms other than those set out in this Agreement relating to its subject matter, and this Agreement supersedes any previous discussions, understandings, or agreements, between the Parties relating to its subject matter. Except as specifically set out in Article 6 of this Agreement, this Agreement does not have any effect whatsoever on any of the rights and obligations in the Niagara TPA. Further, except as specifically set out in this Agreement, this Agreement does not have any effect whatsoever on any of the rights and obligations in the Provincial TPA, including the obligations of Niagara in Article A.34.0 of the Provincial TPA. The Niagara TPA and the Provincial TPA shall continue in full force and effect.

### **13.05 Further assurances**

Each Party, upon receipt of Notice by another Party, shall sign (or cause to be signed) all further documents, do (or cause to be done) all further acts, and provide all reasonable assurances as may reasonably be necessary or desirable to give effect to this Agreement.

### **13.06 Amendment**

This Agreement may only be amended by a written document signed by each of the Parties.

### **13.07 Binding effect**

This Agreement enures to the benefit of and binds the Parties and their respective heirs, trustees, executors, administrators, and other legally appointed representatives, successors, and permitted assigns.

### **13.08 Assignment**

This Agreement may not be assigned by CGHS. This Agreement may not be assigned by Niagara without the prior written consent of CGHS.

### **13.09 Niagara as Municipality**

The Parties acknowledge that although Niagara is a Party to this Agreement, nevertheless, Niagara is and shall each remain an independent planning authority and municipality with all requisite powers and discretion provided under applicable law, including, without limitation, the *Planning Act* (Ontario) and the *Municipal Act*, 2001 (Ontario).

### **13.10 Notice**

Any notice, request, demand, consent, advice, approval or other communication provided for or permitted under this Agreement shall be in writing and may be given by personal delivery or electronic mail, addressed to the Party for which it is intended at its address as follows:

#### **Niagara:**

The Regional Municipality of Niagara  
1815 Sir Isaac Brock Way, PO Box 1042  
Thorold, Ontario  
L2V 4T7  
Attention: Ron Tripp  
Email: Ron.Tripp@niagararegion.ca

#### **CGHS:**

2021 Canada Summer Games Host Society Inc.  
20 Corporate Park Drive, Suite 302, Box 10  
St. Catharines, Ontario  
L2S 3W2  
Attention: Matt Hill  
Email: mhill@2021canadagames.ca

provided, however, that any Party may change its address for purposes of receipt of any such communication to another address in Canada by giving 10 (ten) days' prior written notice of such change to the other Party in the manner above prescribed. Any notice delivered as aforesaid shall be deemed to have been received on the day of delivery if

received on or before 5:00 p.m. on any Business Day, or if not, on the next Business Day following the day of delivery.

### **13.11 Governing law**

The laws of Ontario and the laws of Canada applicable in that province, excluding any rule or principle of conflicts of law that may provide otherwise, govern this Agreement.

### **13.12 Counterparts**

This Agreement may be signed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document.

### **13.13 Time is of the essence**

Time is of the essence of this Agreement and of every part of this Agreement. No extension of time or other variation of this Agreement will operate as a waiver of this provision.

### **13.14 Effective Date**

This Agreement is effective as of the date shown at the top of the first page, even if any signatures are made after that date.

### **13.15 No Merger**

None of the covenants and agreements of the Parties or any of them contained in this Agreement will merge in any certificates or documents signed or delivered at or subsequent to the date hereof and all shall continue in full force and effect.

*[The remainder of this page has been intentionally left blank]*

**IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date first mentioned above.**

**THE REGIONAL MUNICIPALITY OF  
NIAGARA**

By: \_\_\_\_\_  
Name: James Bradley  
Title: Regional Chair

By: \_\_\_\_\_  
Name: Ann-Marie Norio  
Title: Regional Clerk

I/We have the authority to bind the Corporation

**2021 CANADA GAMES HOST  
SOCIETY INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

I/We have the authority to bind Canada Games Host  
Society Inc.

SCHEDULE "A"

**FORM OF ASSIGNMENT, CONSENT TO ASSIGNMENT  
AND COUNTERPARTY ESTOPPEL**

**THIS AGREEMENT** is made as of the \_\_\_\_ day of June, 2020.

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

**2021 CANADA GAMES HOST SOCIETY INC.**

(hereinafter called the "Assignor")

OF THE FIRST PART

- and -

**THE REGIONAL MUNICIPALITY OF NIAGARA**

(hereinafter called the "Assignee")

OF THE SECOND PART

- and -

**[COUNTERPARTY]**

(hereinafter called the "Counterparty")

OF THE THIRD PART

**RECITALS:**

- A. The Assignor and the Counterparty have entered into a [agreement description] in connection with the development of new sport infrastructure and equipment, and much of that new sport infrastructure and equipment is to be located at a new site to be known as "Canada Games Park", as amended from time to time (the "Assigned Agreement").
- B. The Assignor has requested that the Assignee takes over the construction and development of Canada Games Park and have entered into an agreement in respect of the same dated [ ] between the Assignor and the Assignee (the "Transition Agreement").

- C. In connection with the consummation of the transactions described in the Transition Agreement, the Assignor desires to assign all of its future rights and obligations pursuant to the Assigned Agreement to the Assignee.
- D. The Counterparty agrees to provide its consent to the assignment of the Assigned Agreement contemplated herein and to acknowledge the status of the Assigned Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the sum of Two Dollars (\$2.00) now paid by each party hereto to the other and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree as follows:

1. Assignment. The Assignor hereby assigns, transfers and sets over to the Assignee absolutely,
  - (a) all of the right, title and interest of the Assignor under, in and to the Assigned Agreement;
  - (b) the benefit of all covenants by the Counterparty under the Assigned Agreement;
  - (c) the benefit of all guarantees and indemnities in respect of the obligations of the Counterparty under te Assigned Agreements and any security relating to the obligations of the Counterparty under the Assigned Agreement (if any); and
  - (d) all other rights, benefits and advantages whatsoever contained in the Assigned Agreement;with full power and authority to demand, collect, sue for, distrain for, recover, receive and give receipts for all monies payable thereunder and to enforce performance of the covenants thereunder.
2. Assumption. Effective as of the date first written above, the Assignee does hereby assume the Assigned Agreement and covenants and agrees to perform, comply with and discharge each of the duties and obligations of the Assignor under the Assigned Agreement arising from and after Closing.
3. Assignor not Released. The Assignor hereby acknowledges that, notwithstanding the assignment herein contained, the Assignor shall not be released from any of its obligations under the Assigned Agreement prior to the date of assignment.
4. Indemnity from Assignor. The Assignor covenants and agrees to indemnify and save harmless the Assignee from and against any and all claims, costs, expenses and liability the Assignee may suffer or incur in respect of the Assigned Agreement relating to any period prior to the date first written above.

5. Indemnity from Assignee. The Assignee covenants and agrees to indemnify and save harmless the Assignor from and against any and all claims, costs, expenses and liability the Assignor may suffer or incur in respect of the Assigned Agreement relating to any period from and after the date first written above.
6. Full Force and Effect. The Assignor represents and warrants to the Assignee that the Assigned Agreement is presently in full force and effect and has not been cancelled and, except as disclosed in Exhibit A, has not been amended.
7. Further Assurances. Each of the Assignor and Assignee shall execute such documents and other instruments and perform such further acts as may be reasonably required or desirable to effect the provisions hereof and the transactions contemplated hereby.
8. Counterparty Consent, Estoppel and Other Acknowledgments. The Counterparty hereby represents, warrants, agrees and certifies, with the intent that the Assignee (and its successors and assigns) may rely on the following and that the information contained herein shall be binding on the Counterparty:
  - (a) The Assigned Agreement consists entirely of the agreements set out in Exhibit A and is currently in full force and effect and, together with this Agreement, constitutes the entire agreement between the parties thereto.
  - (b) The Assigned Agreement has not been amended, modified or otherwise changed except for such modifications and amendments as are identified in Exhibit A.
  - (c) Neither the Assigned Agreement nor any rights thereunder have been assigned by the Counterparty or the Assignor.
  - (d) Except as set out on Exhibit B, the Assignor has performed all of the obligations required to be performed by it and is entitled to all benefits under, and is not in default or alleged to be in default in respect of the Assigned Agreement. The Assigned Agreement is in good standing and in full force and effect, and except as set out in Exhibit B, no event, condition or occurrence exists that, after notice or lapse of time or both, would constitute a default under the Assigned Agreement.
  - (e) Except as set out on Exhibit B, there is no dispute, claim, setoff, defence or counterclaim between the Assignor and the Counterparty pursuant to or in connection with the subject matter of the Assigned Agreement.
  - (f) The Counterparty is not aware of any person that claims or may be entitled to claim a lien against the lands upon which the Canada Games Park is being constructed under the *Construction Act* (Ontario) or any similar legislation.
  - (g) Except as set out in Exhibit B, the Assignor and, to the best of the Counterparty's knowledge, the Counterparty, are not in default or breach of the Assigned Agreement, and no event has occurred which constitutes, or with the lapse of time

or the giving of notice or both would constitute, a default or breach by the Assignor or the Counterparty of the Assigned Agreement.

- (h) The Counterparty hereby acknowledges and irrevocably consents to the assignment of the Assigned Agreement by the Assignor to the Assignee.
  - (i) The Counterparty hereby acknowledges and agrees that the Assignee shall not be responsible for any costs, expenses or liability in respect of the Assigned Agreement relating to any period prior to the date first written above.
  - (j) [Such other certifications as the Assignee may reasonable require upon the conduct of due diligence]
9. Successors and Assigns. This Agreement shall be binding upon, and shall enure to the benefit of, the parties hereto, and their respective successors and assigns.
10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada, without regard to conflict of law principles.
11. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Electronic or facsimile signatures shall have the same effect as originals.

[SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year first above written.

**2021 CANADA GAMES HOST SOCIETY INC.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**THE REGIONAL MUNICIPALITY OF  
NIAGARA**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the municipality.

**[COUNTERPARTY]**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

I/We have authority to bind the corporation.

**EXHIBIT A**

**Assigned Agreement Documentation**

- (i) [■]

**EXHIBIT B**  
**Defaults, Claims, Setoffs, etc.**

(i) [■]

**PROVINCIAL ACKNOWLEDGEMENT AND CONSENT****CONTEXT**

- A. 2021 Canada Games Host Society Inc. (“**CGHS**”), as recipient, and Her Majesty the Queen in Right of Ontario (the “**Province**”), as transferor, and The Regional Municipality of Niagara (“**Niagara**”), The Corporation of the City of St. Catharines, The Corporation of the City of Thorold and Brock University, as participants, have entered into the Transfer Payment Agreement dated August 30, 2019 and executed on or about March 31, 2020 with respect to certain funding for the Canada Games Park construction (the “**Provincial TPA**”);
- B. CGHS has advised that it would be preferable to transition responsibility for the balance of the construction of Canada Games Park to Niagara for several reasons including so that CGHS can focus on organizing and delivering the 2021 Canada Summer Games and the development of other facilities such as the Henley Rowing Centre;
- C. Niagara is agreeable to assuming responsibility for the balance of the construction of Canada Games Park (the “**Transition**”) on terms set out in the Transition Agreement attached hereto as Schedule “A”;
- D. As set out in Schedule “A”, as conditions of the Transition:
- a. Niagara is to become a party to the Provincial TPA, as Recipient; and
  - b. the written consent of the Province to the Transition is required.

**NOW THEREFORE THIS ACKNOWLEDGEMENT AND CONSENT WITNESSES** that in consideration of the mutual covenants hereinafter set forth for good and valuable consideration (the receipt and sufficiency of which are acknowledged by each of the undersigned) the parties agree as follows:

**ACKNOWLEDGEMENT**

The parties hereto agree that Niagara shall be a party to the Provincial TPA as Recipient, jointly and severally with CGHS.

**CONSENT**

The Province hereby consents to the Transition.

This Consent given on this \_\_\_\_ day of July, 2020.

**HER MAJESTY THE QUEEN IN RIGHT OF  
THE PROVINCE OF ONTARIO**

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

I have authority to bind the Province.

**2021 CANADA GAMES HOST SOCIETY INC.**

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

I have authority to bind the Corporation.

**THE REGIONAL MUNICIPALITY OF  
NIAGARA**

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

I have authority to bind the Municipality.

**SCHEDULE "A"**  
**TRANSITION AGREEMENT**

SCHEDULE "C"

FUNDS RECONCILIATION

[NTD: Funds Reconciliation to be attached once complete, as per Section 9.01a)]