

**P22-023**  
**Sponsorship Agreement**

**Between**

**Preferred Non-Premier Brewery**  
**(the SUPPLIER)**

**And**

**The Corporation of the City of Kitchener**  
**(the CITY).**

WHEREAS the CITY requires a qualified SUPPLIER to perform certain services as set out in the CITY'S Request for Proposals P22-023 entitled "Preferred Non-Premier Brewery Agreement: Kitchener Memorial Auditorium Complex and Kitchener Golf Courses," dated July 28, 2022 as amended, augmented or clarified by the CITY'S Addenda to the Request for Proposals (together the "RFP");

AND WHEREAS the SUPPLIER has submitted a Proposal entitled "XYZ," with a date of MM/DD/YYYY on its first page, deemed to form part of this Agreement (the "Proposal Submission");

AND WHEREAS this Agreement dated MM/DD/YYYY contemplates the entering into a 15-month contract, starting October 1, 2022 and ending December 31, 2023, with an option in favour of the CITY to extend the contract on the same terms and conditions for an additional one (1) year Term, subject to mutual agreement.

NOW THEREFORE IN CONSIDERATION of the mutual covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged and admitted, the parties agree as follows:

**1. DEFINITIONS**

1.1. Unless the context otherwise requires, in this agreement:

- 1.1.1. "Agreement" shall mean this document including its preambles and schedules, and any written amendments made pursuant to section 13;
- 1.1.2. "Premises" shall mean 400 East Avenue, Kitchener, Ontario; 625 Rockway Drive, Kitchener, Ontario; and 500 Doon Valley Drive, Kitchener, Ontario;
- 1.1.3. "Product" shall mean all advertising materials, goods and chattels that are owned by the SUPPLIER that will be displayed at the Premises.

**2. TERM**

- 2.1. The term of this Agreement commences on October 1, 2022 and, unless earlier terminated in accordance with the provisions of this Agreement, shall end on December 31, 2023 (the "Term"), with option to renew for one (1) additional year Term subject to mutual agreement of the parties.

### **3. SPONSORSHIP RIGHTS**

- 3.1. The SUPPLIER shall perform the services required by the RFP as set out in its proposal submission.
- 3.2. Subject to the conditions contained herein, the CITY hereby grants to the SUPPLIER the following sponsorship rights:
  - 3.2.1. One (1) advertising opportunity inside the licensed beverage point of sale near Door #1 in The Aud.
  - 3.2.2. Two (2) rink board advertisements – One (1) in the Kinsmen Arena and one (1) in the Kiwanis Arena in the Kitchener Memorial Auditorium Complex.
  - 3.2.3. One (1) advertising opportunity at the bar at Rockway Golf Course.
  - 3.2.4. One (1) advertising opportunity at the bar at Doon Valley Golf Course.
  - 3.2.5. One (1) advertising opportunity on the food service cart at Rockway Golf Course.
  - 3.2.6. Two (2) advertising opportunities on the food service carts at Doon Valley Golf Course.
  - 3.2.7. Other advertising opportunities as agreed to by the parties.
- 3.3. Size and technical specifications of each advertising opportunity shall be mutually agreed to by the CITY and the SUPPLIER in advance of installation. For greater certainty, the CITY reserves the right to make any final decisions regarding the signage, but all costs related to the signage shall be the sole responsibility of the SUPPLIER, including the cost of production, printing, installation, maintenance, removal, and repair. and removal.
- 3.4. The CITY hereby gives the SUPPLIER display space for three (3) Stock keeping unit (SKUs )of high-quality products at the Kitchener Memorial Auditorium Complex and Kitchener Golf Courses. These SKUs can include malts, beers, ciders, and/or ready-to-drink products throughout the Term of the contract. For further clarity, the SUPPLIER can have different SKUs at each location and/or can rotate SKUs based on seasonality, noting that display space is limited to only 3 SKUs per location.
- 3.5. All major provincial, national or international events (or privately booked functions) that come with a major competing product sponsor and that takes place at the CITY'S facilities shall not be subject to the provisions of this Agreement relating to advertising and signage, and the CITY may negotiate with the promoter, renter or sponsor of such events advertising deals that may include the temporary covering up of the SUPPLIER'S signage (the SUPPLIER shall be advised by the CITY if and when such covering up will occur and the duration thereof);
- 3.6. Rights of promotion may be suspended during major events set out in Section 3.5.

### **4. ADVERTISING CONTENT**

- 4.1. All advertising artwork shall be submitted to the CITY for prior written approval, which approval shall not be unreasonably conditioned, withheld or delayed. The SUPPLIER agrees to display only

advertising that is of acceptable and high moral standard, non-political, not contrary to contemporary community standards of good taste and acceptable to the CITY, which acceptance shall not be unreasonably conditioned, withheld or delayed. Without limiting the generality of the foregoing, the SUPPLIER agrees that no tobacco, or related products shall be advertised at the Premises.

- 4.2. The SUPPLIER shall be entitled to change the content of the advertisement from time to time at its own cost.
- 4.3. The SUPPLIER acknowledges that this Agreement shall not be construed in any way as affecting, preferentially or otherwise, any current or future contractual regulations or relationships of any kind which that SUPPLIER may have with the CITY.

## 5. CONSIDERATION

5.1. In consideration of the Sponsorship Rights, the SUPPLIER shall pay the CITY the Fees set out below plus applicable tax. All dollars in this agreement are in Canadian Dollars (CDN).

5.1.1. On October 1, 2022      \$ plus applicable tax

5.1.2. On January 1, 2023      \$ plus applicable tax

5.2. There will be no delay in payment(s) or set off, deductions and abatement in the rate(s), and payments should be forthcoming even if display of material is delayed as a result of any failure, for any reason, of the SUPPLIER to fully comply with the requirements of this Agreement or with the specifications set out herein.

5.3. The CITY may require payment of a delinquent charge of one and one quarter percent (1.25%) per month or fifteen per cent (15%) per year for each payment which has not been remitted to the CITY within thirty (30) days of the date of invoice.

## 6. TAXES

6.1. Any tax, including without limiting the generality of the foregoing, any federal or Harmonized Sales Tax, or sales or use tax, imposed on any transactions between the SUPPLIER and the CITY contemplated by this Agreement shall be the subject of an additional charge and shall be shown separately on any invoice or similar document together with the required tax registration numbers and any other information required by law. Neither party will be held liable for any value added tax that the other party omits to charge at the time prescribed by the applicable tax legislation or regulations, and subsequently charges, if a party is ineligible to claim an offsetting input tax credit or refund due to the statutory time limits for recovering such tax(es) having been exceeded. In addition, neither party will be held liable for penalty or interest charges associated with any federal or provincial tax assessments levied against the other party.

6.1.1. The CITY'S HST number is 122016769RT0001.

6.1.2. The SUPPLIER'S HST number is XXXXX

## **7. NO LIABILITY FOR DAMAGE TO PROPERTY AND PERSONS**

- 7.1. The CITY shall not be liable for damage to or theft of any of the SUPPLIER'S Products at the Premises, or while entrusted to the CITY, whether damage or loss is occasioned by or arises from the act, default, or negligence of the CITY, its agents, servants, employees, contractors, customers, invitees or licensees or resulting from any cause whatsoever.
- 7.2. The CITY shall not be liable for any damages due to injury or any damages of any nature and kind whatsoever suffered by the SUPPLIER, or its agents, servants, subcontractors, customers, invitees or licensees, occasioned by or arising from the act, default, or negligence of the CITY, its agents, servants, employees, contractors, customers, invitees or licensees or resulting from any cause whatsoever.

## **8. INDEMNITY**

- 8.1. The SUPPLIER shall protect and defend the CITY and indemnify and hold it harmless with respect to any encumbrance or damage to the SUPPLIER occasioned by or arising from the act, default, or negligence of the SUPPLIER, its agents, servants, employees, contractors, customers or invitees.
- 8.2. Without limiting the generality of 7.1, the SUPPLIER covenants and agrees that it shall at all times, defend, indemnify and save the CITY from and against any and all actions, claims, demands, liability, damages, losses, costs and or expenses including reasonable legal fees which the CITY may suffer, incur or sustain at any time as a result of or arising out of :
  - 8.2.1. Any claim or alleged claim that the content, character or subject matter of any advertisement used, displayed or intended for use or display by the SUPPLIER on the sign is defamatory, libelous, slanderous or which contravenes or may contravene any statutes, by-law or regulation passed by any legally constituted governing body;
  - 8.2.2. Any infringement or alleged infringement of any registered trademark, trade name, title copyright, secret process, trade secret or right to privacy arising from or in connection with the use by the SUPPLIER of any advertising material used, displayed or intended for use or display by the SUPPLIER; or
  - 8.2.3. Any infringement or alleged infringement of any other proprietary right arising from or in connection with the use or intended use of the SUPPLIER or any advertising material used, displayed or intended for used or display by the SUPPLIER.
- 8.3. The SUPPLIER agrees that the foregoing indemnities shall survive the termination of this Agreement notwithstanding any provisions of the Agreement to the contrary.

## **9. INSURANCE**

- 9.1. The SUPPLIER, both during and after the term of this Agreement, shall at all times, and at its own cost, expense and risk, defend, indemnify and hold harmless the CITY, its elected officials, officers, employees, volunteers, agents, contractors, and all respective heirs, administrators, executors, successors and assigns from any and all losses, damages (including, but not limited to, incidental, indirect, special and consequential damages, or any loss of use, revenue or profit by any person, organization or entity), fines, penalties and surcharges, liabilities (including, but not

limited to, any and all liability for damage to property and injury to persons, including death), judgments, claims, demands, causes of action, contracts, suits, actions or other proceedings of any kind (including, but not limited to proceedings of a criminal, administrative, or quasi criminal nature) and expenses (including, but not limited to, legal fees on a substantial indemnity basis), which the indemnified person or persons may suffer or incur, howsoever caused, arising out of or in consequence of or directly or indirectly attributable to the Services required to be performed by the SUPPLIER, its agents, employees and sub-contractors on behalf of the CITY, whether such losses, damages, fines, penalties and surcharges, liabilities, judgments, claims, demands, causes of action, contracts, suits, actions or other proceedings of any kind and expenses as defined above are due or claimed to be due to the negligence, breach of contract, and/or breach of law of the SUPPLIER, its agents, employees or sub-contractors.

9.2. The SUPPLIER shall insure its undertaking, business and equipment under the following coverage so as to protect and indemnify and save harmless the CITY:

9.2.1. General Liability Insurance: The SUPPLIER shall maintain liability insurance acceptable to the CITY throughout the term of this Agreement from the date of commencement of work until one year from the date of substantial performance of work. **Coverage shall consist of a comprehensive policy of public liability and property damage insurance, with all available coverage extensions/endorsements, in an amount of not less than \$5,000,000 per occurrence. Such insurance shall name The Corporation of the CITY of Kitchener and any other person or party identified in the contract documents, as an additional insured with a cross liability endorsement and severability of interests provision.** The policy SIR/deductible shall not exceed \$100,000 per claim and if the policy has an aggregate limit, the amount of the aggregate shall be double the required per occurrence limit.

9.2.2. Owned and Non-Owned Automobile Liability Insurance: The SUPPLIER shall maintain liability insurance on all Owned, Non-Owned and Leased Automobiles used in the performance of this project to a limit of \$2,000,000 per occurrence throughout the term of this Agreement from the date of commencement of work and until one year after the date of substantial performance of work.

9.2.3. Provisions: Prior to the commencement of work the SUPPLIER shall forward a Certificate of Insurance on the CITY'S Standard Certificate of Insurance Form (located on the internet at [www.kitchener.ca/en/businessinkitchener/ContractorSafetyProgram.asp](http://www.kitchener.ca/en/businessinkitchener/ContractorSafetyProgram.asp)) evidencing this insurance with the executed Agreement. The Certificate shall state that coverage will not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days if cancellation is due to non-payment of premium) prior written notice by certified mail to the CITY. It is also understood and agreed that in the event of a claim any deductible or self-insured retention under these policies of insurance shall be the sole responsibility of the SUPPLIER and that this coverage shall preclude subrogation claims against the CITY and any other person insured under the policy and be primary insurance in response to claims. Any insurance or self-insurance maintained by the CITY and any other person insured under the policy shall be considered excess of the SUPPLIER'S insurance and shall not contribute with it. The minimum amount of insurance required herein shall not modify, waive or otherwise alter the SUPPLIER'S obligation to fully indemnify the CITY under this Agreement. The CITY reserves the right to modify the insurance requirements as deemed suitable.

9.2.4. Claims Process: Claims reported to the SUPPLIER, either directly by a third party or through the CITY shall be promptly investigated by the SUPPLIER. The SUPPLIER shall make contact with the third party claimant within 48 hours of receipt of notice of a claim. The SUPPLIER shall initiate an investigation of the claim immediately upon notice, and advise the third party claimant in writing, with a copy to the CITY, of its position regarding the claim within 21 calendar days of the notice. The SUPPLIER shall include in their response the reasons for their position. Should this position not resolve the claim and be accepted by the third party claimant, the SUPPLIER shall immediately report the claim to its Insurer for further review. The SUPPLIER'S Insurer upon receipt of this claim shall advise the third party claimant by letter, with a copy to the CITY, that they are now investigating the claim. When a final position on the claim has been determined, the SUPPLIER'S Insurer shall advise the third party claimant by letter, with a copy to the CITY. Failure to follow this procedure shall permit the CITY to investigate and resolve any such claims. Nothing herein shall limit the right of the CITY to investigate and resolve any such claims notwithstanding the response of the SUPPLIER and/or its Insurer and to seek indemnification from the SUPPLIER or to exercise any other rights under the Contract.

9.3. The CITY may, without breaching this contract, retain from the funds owing to the SUPPLIER an amount that, as between the CITY and the SUPPLIER, is equal to the balance in the CITY'S favour of all outstanding debts, claims or damages, whether or not related to this contract.

## **10. CANCELLATION AND TERMINATION**

10.1. This Agreement may be terminated by the CITY at any time if the SUPPLIER fails to make payment(s) by the due dates as set out herein, or if the SUPPLIER fails to pay on demand any other monies hereby made payable by this Agreement or in the event of any other breach of the Agreement by the SUPPLIER. Upon termination, all payments required to be made under this Agreement shall immediately become due and payable and any advertisement displayed in accordance with this Agreement shall be removed.

10.2. In the event that there is a change in law that would limit or prohibit the SUPPLIER from using in whole or in part any rights, entitlements, licenses or privileges licensed to it hereunder, the parties shall negotiate in good faith to reduce Sponsorship Fees accordingly, and the CITY may terminate this Agreement if such change materially impacts the SUPPLIER'S ability to perform the services contemplated herein.

10.3. This Agreement may be terminated by either party immediately upon notice to the other party: (a) if any execution, distress or other enforcement process becomes enforceable against any material property of the other party; (b) assignment, bankruptcy, insolvency, or a proposal, arrangement or filing therefore; or (c) if the other party breaches a material term or condition of this Agreement and fails to remedy such breach within twenty (20) days from receipt of written notice thereof.

10.4. Upon termination of this Agreement, the CITY shall immediately discontinue all use of the SUPPLIER'S name, logos or any colourable imitations, variations or adaptations thereof not otherwise permitted.

## **11. REPRESENTATIONS AND WARRANTIES**

- 11.1. The CITY represents and warrants that it has full right, title, and authority, to enter into and fully perform its obligations under this Agreement in accordance with its terms and to grant the SUPPLIER all Sponsorship Rights granted hereunder.

## **12. APPROVALS**

- 12.1. Nothing herein shall be construed as granting the CITY any right to use the SUPPLIER'S name, trademarks, trade styles, service marks, designs, patents, or logotypes in any way without the prior written approval of the SUPPLIER. All advertising, contests, promotions or merchandising programs relating to the SUPPLIER'S sponsorship of the Facilities may be subject to the prior approval of the provincial liquor regulatory authorities.

## **13. GENERAL**

- 13.1. Severability. In the event that any provision of this Agreement is found to be illegal or be unenforceable under the law now or hereafter in effect, such illegality or unenforceability shall not affect the validity of the remaining provisions of this Agreement.
- 13.2. Entire Agreement. This covering Agreement, including the RFP document, AND any Addenda issued by the CITY, AND in addition the PROPOSAL submitted by the SUPPLIER, AND any Amendments, Addenda, and Supplementary Information submitted by the SUPPLIER, and acknowledged and approved in writing by the CITY are deemed to, form part of the entire Agreement between the two parties.
- 13.3. Independent Supplier. Each party hereto is an independent Supplier and has no authority or right to incur obligations of any kind in the name of or for the account of the other party. Neither party is or shall be deemed to be, an associate, partner, principal or agent of the other party.
- 13.4. Survival. Subsections 4.4 and 13.6 and Sections 6, 7, 8, 9, and 10 shall survive the termination or expiration of this Agreement.
- 13.5. Governing Law. This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.
- 13.6. Confidentiality. During the Term and at all times thereafter, the parties agree to keep the terms of this Agreement confidential provided that disclosure may be made as required by law (including the Municipal Freedom of Information and Protection of Privacy Act) or an order of the court, administrative board or other authority with appropriate jurisdiction.

**IN WITNESS WHEREOF AND WITH AUTHORITY TO BIND, THE CITY AND THE CLIENT HAVE EXECUTED THIS AGREEMENT,**

FOR THE CORPORATION OF THE CITY OF KITCHENER

\_\_\_\_\_  
Ryan Scott  
Manager, Procurement

DATE: \_\_\_\_\_

FOR THE SUPPLIER

\_\_\_\_\_

DATE: \_\_\_\_\_

SPONSORSHIP AGREEMENT between The Corporation of the City of Kitchener and XYZ for the Term of October 1, 2022 to December 31, 2023.

DOMINION UNMARKED VERSION OF THIS EYE  
YOU WILL BE A REGISTERED B/LAN TAKEE TO  
BBENIEM  
Sample