

FINANCING AGREEMENT

MUSIC FESTIVAL REOPENING FUND 2022

This agreement (the “**Agreement**”) dated as of July 5th, 2022

Between: The Foundation Assisting Canadian Talent on Recordings (“**FACTOR**”), a non-profit organization duly incorporated on June 17, 1982 under the laws of Canada, 247 Spadina Avenue, Third Floor, Toronto, Ontario M5T 3A8 Canada

And: The City of Port Colborne, (“**Applicant**”), a(n) Corporation, **Address:** 66 Charlotte Street, Port Colborne, Ontario L3K 3C8

PREAMBLE:

FILE: 346269

AMOUNT GRANTED: CDN \$35,000.00

PROJECT: FR - The City of Port Colborne

WHEREAS:

- A. FACTOR has developed a funding program entitled “*Music Festival Reopening Fund 2022*” (the “**Program**”), as fully described in the FACTOR guidelines and rules entitled “*Music Festival Reopening Fund 2022*” (the “**Rules**”), which may be found at the following link:

https://factorportalprod.blob.core.windows.net/portal/Documents/Emergency_Support_Fund/Festival%20Reopening/FACTOR_Festival_Reopening_Program_Guidelines.pdf

- B. The Applicant has sought financial support from FACTOR for the project (the “**Project**”) identified in an application filed online at live.factor.ca (the “**Application**”) pursuant to the Guidelines;
- C. FACTOR, after reviewing the Application, has accepted the Application and approved a financial contribution to the Applicant in the amount granted as set out above in the Preamble (the “**Contribution**”);

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which acknowledged, the parties agree as follows:

1. **FINANCING:** Subject to the terms and condition of this Agreement, FACTOR grants to the Applicant the Contribution.
2. **REPRESENTATIONS AND WARRANTIES:** The Applicant represents and warrants to FACTOR and agrees as follows:
 - a. it has the legal power and authority to enter into this Agreement without the consent of any third party;
 - b. it is legally entitled to perform its obligations under this Agreement;

- c. if the Applicant is a sole proprietorship, partnership, limited partnership or corporation, it is registered and in good standing in its applicable jurisdiction;
- d. it has obtained all of the rights and authorizations required for all applicable recording activities and, as applicable, the acquisition of necessary for synchronization licenses;
- e. all of the information contained in the Application is accurate, truthful, correct and complete;
- f. it is currently and shall at all times act in strict compliance with the Guidelines;
- g. there are no legal proceedings nor threat of imminent proceedings nor outstanding judgments or other claims of any type against the Applicant except as those disclosed in writing to FACTOR prior to FACTOR's approval of the Contribution;
- h. it is currently and shall at all times comply with all applicable laws, contracts, rules and regulations related to the business of the Applicant;
- i. it is in compliance with all applicable respects federal, provincial/territorial and municipal laws and regulations, including without limitation, related guidelines in respect of environmental issues;
- j. it is in good standing with the Crown pursuant to any agreements concluded with the Minister of Canadian Heritage (the "**Minister**"), any other federal minister or the third party administrators of FACTOR;
- k. it has not failed to disclose any important fact or information regarding its legal or financial standing that could: (i) affect its ability to satisfy its obligations under this Agreement; (ii) make it ineligible under the Rules; or (iii) have an impact on its right to receive the Contribution in the amount determined by FACTOR based on the information provided.

3. APPLICANT OBLIGATIONS: The Applicant agrees and undertakes to:

- a. comply with the terms and conditions of this Agreement and the Program pursuant to the Guidelines, as they may be amended by FACTOR in its sole discretion from time to time;
- b. not breach any copyright, trademark or other intellectual property rights of any third party and fully satisfy all contractual obligations to authors, composers, translators, technicians, other workers and Canadian project service providers;
- c. ensure the Project that is the subject of the Application and any related promotional materials do not contain any elements that may be hateful, obscene, pornographic or notably sexual, denigrating towards a particular group or display excessive or gratuitous violence, or any other offensive content that is hateful or defamatory in nature or otherwise breach the Criminal Code;
- d. ensure that the Project is conducted in a healthy workplace that is respectful and free from any form of harassment, poor treatment or discrimination of employees and independent contractors;

- e. ensure that this Agreement is performed in compliance with all applicable laws, regulations, decrees, standards and guidelines and that all subcontractors involved in the Project are subject to the same obligations;
- f. communicate to FACTOR at the outset and conclusion of the Project all of the sources of financing expected, confirmed and obtained for the Project, it being agreed that the Applicant must never be financed for more than 100% of the Project costs;
- g. provide, on demand, all financial or other information and any documentation that FACTOR may reasonably require relating to the Project in accordance with this Agreement and the Guidelines, including, amongst other things: (i) progress reports; (ii) a summary table showing all expenses incurred; (iii) proof of payments and receipts; (iv) a balance sheet of income and costs relating to the Project; and (v) a Project completion report;
- h. refund to FACTOR forthwith the applicable amount of the Contribution if, following the review of the completion report and supporting records by FACTOR, it appears that the Contribution or payments made exceed the eligible expenses incurred by the Applicant;
- i. advise promptly and in writing to FACTOR the occurrence of any default under this Agreement or any change related to the Applicant's representations or warranties herein or in the Application.
- j. respect the appeals policy of FACTOR, as applicable;
- k. immediately inform FACTOR of any fact or occurrence that risks compromising the success of the activities of Applicant or its capacity to comply with the obligations under the present Agreement, including but not limited to the cancellation of the Project by reason of health measures;
- l. until such time as the completion of the obligations of the Applicant under this Agreement, the Rules and the Application and any subsequent documentation, the Applicant shall notify FACTOR within ten (10) days of any changes to the corporate structure or business ownership such as an amalgamation, reorganization, change to its name, or any material matter that may affect the Applicant's eligibility under FACTOR, or that may in any way affect the Applicant's capacity to fully perform the Applicant's obligations under this Agreement.
- m. indemnify and save harmless FACTOR from all costs, professional fees, losses or damages resulting directly or indirectly from any claims, action or proceedings relating to this Agreement;
- n. provide access to chartered accountants under instruction from FACTOR or the Minister of Canadian Heritage to examine the Applicant's accounts, books and records for the purposes of auditing compliance with this Agreement. The Applicant must retain its accounts, books and records relating to the financial support received from FACTOR for at least five (5) years following completion of the Project for the purposes of audit. If the Applicant wishes to dispute the results of an audit, notice must be given to FACTOR within seven (7) days of the delivery of the inspection report and such information under

dispute shall be submitted to board of FACTOR for review and determination and the board of FACTOR's decision on the matter under dispute shall be final.

4. **VALUES AND CONDUCT:**

- a. Respect and cooperation are fundamental values of FACTOR in step with its value of *Interaction* that it endeavours to promote in all its relations with Applicants. Consequently, it is an integral condition of the relations between the parties that the Applicant undertakes to demonstrate and maintain at all times conduct marked by respect and cooperation in all of its interactions with FACTOR, its leaders, officers, employees, representatives, agents and other personnel. The Applicant acknowledges and agrees that no harassing behaviour of any types, physical, mental or otherwise nor any conduct constituting intimidation, bullying or otherwise undermining the aforementioned values in any interactions will be tolerated.
- b. The Applicant and FACTOR mutually agree that their conduct will promote respect of each other and will contribute to upholding the highest standards of fairness and discipline promoted by FACTOR relating to its values of integrity and competence.
- c. Any breach by the Applicant of the obligations set out in sections 4a and 4b above will constitute a material breach under this Agreement.

5. **ACKNOWLEDGEMENT OF FINANCIAL ASSISTANCE:** The FACTOR logo and Canada wordmark, unless it is already present, must appear side-by-side, but separately on any promotional item, publicity material, press release, homepage of a website, video, or any other form of communication in writing, print or electronic format. Where is space and circumstances allow, the following acknowledgement sentence must also be added on the website of the Applicant: "this project has been made possible in part by the government of Canada. Ce projet a été rendu possible en partie *grâce* au gouvernement du Canada". The factor logo and the Canada Wordmark must have similar size and prominence as other logos. In addition to what is previously mentioned, the Applicant undertakes to comply with all the obligations set out in the FACTOR Logo and Acknowledgment Guide Live.pdf (windows.net) (the "**Acknowledgement Guide**"). Acknowledgement of factor and the government of Canada must be verbally announced during any performance. The "**Canada Wordmark**" means the Government of Canada logo. The style and use of the Canada Wordmark is outlined in the Acknowledgement Guide.

6. **DEFAULT:** The Applicant is automatically in default if:

- a. it does not satisfy any of its obligations under this Agreement, including without limitation, the failure to pursue and complete the Project, unless approved in advance in writing by FACTOR;
- b. it declares bankruptcy, becomes insolvent, is placed into receivership, makes recourse to any law relating to debtors in bankruptcy or insolvency or is the subject of an order made or resolution adopted pertaining to the judicial liquidation of its commercial activities or enterprise;
- c. it makes or has made, directly or by the agency of its representatives, a false or misleading declaration, statement, representation or warranty;


- d. it has forged or imitated a signature, falsified or forged any document required under this Agreement or in the Application or used to establish payment or the receipt of a payment for the costs of the Project.
- 7. **REMEDIES:** If the Applicant is in default of this Agreement and such default is not cured within ten (10) days from Applicant's receipt of notice from FACTOR describing the default, FACTOR may, among other things, terminate this Agreement, cease any payments hereunder and require from the Applicant immediate reimbursement of the Contribution, pursue any of its available rights and remedies and/or suspend all financial support to Applicant. All of FACTOR's rights and remedies shall be cumulative and the pursuit of one remedy shall not be deemed a waiver of any other remedy either at law or in equity. A waiver by FACTOR of any term or condition of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future or any subsequent breach thereof.
- 8. **ENTIRE AGREEMENT:** The preamble to this Agreement, any documents signed by the Applicant and provided to FACTOR, the Application and the Rules (collectively, the "**Project Documents**") all form an integral part of this Agreement and shall be incorporated into this Agreement by this reference, it being acknowledged and agreed that the Program and Rules may be subject to modification from time to time by FACTOR in its sole discretion. Any default by the Applicant under any of the Project Documents shall constitute and be deemed to be a default under all of the Project Documents. Any amendment or modification to this Agreement must be in writing and signed by authorized representatives of both parties, except for amendments to the Program or Guidelines, which FACTOR may make unilaterally in its sole discretion from time to time.
- 9. **GENERAL:**
 - a. The Agreement shall be effective as of the date first written above and shall expire when the parties have entirely satisfied their respective obligations hereunder.
 - b. FACTOR may assign, in whole or in part, this Agreement. The Applicant may not assign this Agreement, whole or in part, to any other party without the prior written consent of FACTOR.
 - c. FACTOR is not the agent of the Minister or of her Majesty in right of Canada.
 - d. The Applicant shall not, under any circumstances, hold itself out or be deemed an agent of FACTOR or of the Minister. The Applicant has no right or authority to engage or bind FACTOR or the Minister in any manner.
 - e. The Program is at all times subject to the availability of funds to FACTOR. It shall not be a breach hereunder, nor shall FACTOR be held liable for any damages in the event that FACTOR must delay or terminate its obligations under this Agreement due to the delay, suspension or substantial reduction of funding, advances, subscriptions or contributions in a manner unforeseen by the Minister or the sponsoring broadcasters. Subject to any written agreement to the contrary with FACTOR, the obligations of the Applicant under the Project Documents shall in no way be deemed to be amended or modified in the event of a reduction of total Contribution.

- f. This Agreement shall be governed by and interpreted in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein. Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership, joint venture or employee/employer relationship between the parties. This Agreement shall enure to the benefit of the parties and their respective successors, assigns, heirs, executors and personal representatives, as applicable.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first written above.

The Foundation Assisting Canadian Talent on Recordings

By: Meg Symczyk

By:  _____
Authorized Signatory

APPLICANT:

If Corporation:

Name of Corporation: _____

By: _____

Authorized Signatory

***If Partnership or Sole Proprietorship
(d/b/a):***

Print Name: _____

By:

If Individual:

Print Name: _____