

# CORPORATION OF THE COUNTY OF DUFFERIN

## BY-LAW NUMBER 2023-59

### **A BY-LAW TO RATIFY THE ACTIONS OF THE WARDEN AND THE CLERK FOR EXECUTING AN AGREEMENT BETWEEN THE CORPORATION OF THE COUNTY OF DUFFERIN AND OPTRUST AMARANTH 6 INC. (Temporary Intersection Improvements Agreement)**

BE IT ENACTED BY THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE COUNTY OF DUFFERIN AS FOLLOWS:

1. That the agreement between the County of Dufferin and OPTrust Amaranth 6 Inc., in a form substantially the same as attached hereto as Schedule "A" be approved.
2. That the staff of the County of Dufferin is hereby authorized to take such actions as are appropriate, and the Warden and Clerk are hereby authorized to execute such documents as are appropriate to implement the agreement referred to herein.

READ a first, second and third time and finally passed this 14<sup>th</sup> day of December, 2023.

*Original signed by:*

\_\_\_\_\_  
Darren White, Warden



\_\_\_\_\_  
Michelle Dunne, Clerk

**TEMPORARY INTERSECTION IMPROVEMENTS AGREEMENT**

**THIS AGREEMENT** (the “**Agreement**”) is entered into as of the 10th day of November, 2023 (the “**Effective Date**”)

**BETWEEN:**

**THE CORPORATION OF THE COUNTY OF DUFFERIN**  
(the “**County**”)

**AND**

**OPTRUST AMARANTH 6 INC.**  
(“**OPTrust**” and together with the County, the “**Parties**”)

**WHEREAS:**

- A. OPTrust is the owner of the lands described in Schedule “A” (the “**Lands**”) and seeks to develop a portion of the Lands by constructing a warehouse distribution and office center (the “**Development**”) in the Township of Amaranth (the “**Township**”).
- B. The Lands are currently zoned with a Holding “H” Provision (the “**Holding Provision**”), the lifting of which by the Township in whole or in part is conditional upon OPTrust satisfying certain requirements, including developing, securing and/or implementing any required transportation improvements for the Lands pursuant to Section 10 iv) h) of Township Zoning By-law No. 17-2014 (the “**Transportation Improvement Condition**”).
- C. The conditions of lifting the Holding Provision, including the Transportation Improvement Condition, engages the County’s interest. The site plan agreement under negotiation between the Township and OPTrust states that Township approval to lift the Holding Provision is in part conditional upon, among other matters, the Township securing the obligation of OPTrust to pay for the full cost of the “**Temporary Intersection Improvements**” required by the County to facilitate the Development and the development of the lands to the south of the Lands, which includes the construction of temporary traffic signals on Dufferin County Road 109 at the intersection of Dufferin County Road 109 and 2<sup>nd</sup> Line, as well as the Operation and Maintenance Costs (as defined below).
- D. The County issued an invitation to tender (“**ITT**”) to solicit bids on the construction contract for the Temporary Intersection Improvements in accordance with the construction plans and specifications attached hereto as Schedule “C”, has selected a successful bidder (the “**Awarded Contractor**”) and wishes to formally award the ITT and enter into a stipulated sum construction contract with the Awarded Contractor (the “**Construction Contract**”) forthwith upon receipt of 125% of the Construction Contract costs (defined in Section 1.3 below as the Temporary Improvement Funds).
- E. OPTrust has agreed with the Township and County that OPTrust shall pay the Temporary Improvement Funds and the Operation and Maintenance Costs to the County in accordance with the terms and conditions set out in this Agreement, and that such payments shall satisfy the condition noted in Recital C.

**NOW THEREFORE** in consideration of the mutual covenants and agreements of the Parties hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties covenant and agree as follows:

- 1.1 The Recitals form an integral part of this Agreement and are incorporated by reference.
- 1.2 Forthwith following the execution of this Agreement and the delivery of the funds described in Section 1.3, the County shall enter into the Construction Contract substantially in the form included in the ITT. The Construction Contract shall include a stipulated price of \$553,687.88 inclusive of applicable taxes (the “**Contract Price**”) and shall require that the intent of the Construction Contract be that all work be substantially performed by **June 28, 2024** (the “**Substantial Completion Date**”). The County shall deliver a fully executed copy of the Construction Contract to OPTrust within two (2) business days following the execution thereof, subject to the redaction of such confidential business information the County deems appropriate.
- 1.3 OPTrust agrees to pay to the County the “**Temporary Improvement Funds**” being the aggregate amount of \$692,109.86, which collectively includes the Contract Price plus a contingency amount equal to 25% of the Contract Price (the “**Contingency Amount**”). In addition to the Temporary Improvement Funds, OPTrust agrees to pay the County the amount of \$32,000.00 (inclusive of taxes) to cover the anticipated operation and maintenance costs of the constructed Temporary Intersection Improvements (the “**Operation and Maintenance Costs**”). The County hereby directs OPTrust to pay the Temporary Improvement Funds and the Operation and Maintenance Costs by wire transfer of immediately available funds to the County in accordance with the payment instructions attached hereto as Schedule “B” in satisfaction of the County’s condition described in Recital C, and this shall be OPTrust’s good and sufficient authority to do so. Immediately upon receipt of the Temporary Improvement Funds and the Operation and Maintenance Costs, the County shall deliver written notice to OPTrust confirming the same.
- 1.4 The County shall be solely responsible for administering, managing and enforcing the Construction Contract and shall be permitted to use the Temporary Improvement Funds as required to pay the Awarded Contractor for work performed under the Construction Contract. The County shall use commercial reasonable efforts to ensure the Awarded Contractor diligently performs and completes the work under the Construction Contract (a) in a good and workmanlike manner; (b) in accordance with the Contract Price; (c) in accordance with all design and construction documents incorporated into the Construction Contract, including those attached hereto as Schedule “C”; and (d) in accordance with all applicable laws. The County shall use reasonable efforts to ensure the Awarded Contractor performs the works by the intended Substantial Completion Date, subject to permissible construction season conditions and availability of materials. The County warrants to OPTrust that the Awarded Contractor is a qualified and reputable entity, duly licensed to practice its profession in the jurisdiction where the Temporary Intersection Improvements are located (if required by applicable law). The County shall exercise commercially reasonable efforts to cause the Awarded Contractor to perform the work under the Construction Contract with the degree of skill, diligence, prudence, and foresight which would reasonably be expected to be observed by a skilled, qualified contractor engaged in carrying out activities the same as or similar to the Temporary Intersection Improvements under the same or similar circumstances.
- 1.5 Subject to Section 1.7, OPTrust agrees that in the event that the County is required to make payments to the Awarded Contractor under to the Construction Contract (including any change orders related thereto) which results in the remaining Temporary Improvement Funds held by the County being equal to or less than \$173,027.46, OPTrust shall, within five (5) business days following receipt of notice and reasonable supporting evidence from the County that the Temporary