

EMPLOYMENT CONTRACT

This Agreement made the 1st. day of October, ¹⁹⁹⁹~~2000~~.

BETWEEN:

THE CORPORATION OF THE TOWN OF PELHAM

(hereinafter referred to as the "Town")

- and -

GORD CHERNEY

(hereinafter referred to as the "Employee")

WHEREAS there is uncertainty concerning the initiative of the Province of Ontario (the "Province") with respect to restructuring the municipal sector which will affect the municipal governments in the Regional Municipality of Niagara, including the Town;

AND WHEREAS the Town wishes to ensure that it continues to service the community and its residents to the highest standards during any period of transition resulting from such restructuring, and recognizing that the Town's human resources are essential to that purpose;

AND WHEREAS it is necessary to provide for fair compensation to the employees whose employment may be terminated, or who are adversely affected by any restructuring, both to ensure continuity during any period of transition and to eliminate the uncertainty, expense and litigation that may ensue;

AND WHEREAS it is in the mutual interest of the Town and the Employee to enter into an individual employment agreement to define each party's respective rights and obligations, including the rights and obligations which may arise in the event the Employee's employment is adversely affected and/or terminated by the restructuring as hereinafter defined;

AND WHEREAS the Employee is currently employed by the

Town as Chief Administrative Officer ("C.A.O.") and Director of Financial Services ("Treasurer");

AND WHEREAS the Town and the Employee wish to enter into a written contract of employment setting out the terms and conditions of the Employee's employment;

THEREFORE in consideration of the mutual covenants hereafter, and the payment of the Town to the Employee of the sum of \$10.00 as valuable consideration, the receipt of which is hereby acknowledged by the Employee, the parties agree as follows:

1. For the purpose of this agreement:
 - (a) "benefits" includes all employment benefits and allowances provided to the Employee by or through the Town whether by way of insurance contracts or otherwise, prior to the commencement of the transition period;
 - (b) "restructuring" means the amalgamation, reorganization, consolidation, or closure or other administrative, constitutional, functional or structural change affecting the Town and as required by the Province or any other event which may be determined by law to be a restructuring;
 - (c) "Town" means the Corporation of the Town of Pelham and any other successor institution, government or body that, as a result of the restructuring, becomes the employer of the Employee;
 - (d) "transition period" means the period of time commencing retroactive as of October 1, 1999 and concluding upon the earlier of,
 - (i) the completion of restructuring; and
 - (ii) September 30, 2004.

2. **EMPLOYMENT**

- (a) The Employee acknowledges and warrants that he has the required skills and experience to perform the duties

required as C.A.O. and Treasurer and agrees to be bound by the terms and conditions of this agreement. The Employee covenants and agrees to comply with all reasonable instructions as may be given by the Council of the Town in order to carry out his duties and employment. Without limiting the generality of the foregoing, the Employee will be responsible for the duties and responsibilities of the C.A.O. and Treasurer as set out in the job description attached hereto as Schedule "A" and pursuant to any amendments made to same by the Town from time to time by by-law or otherwise. The Employee shall report to the Council of the Town.

- (b) The Employee agrees that he shall devote his full time and attention to the discharge of his duties under this agreement and that he shall devote that amount of time and attention normally expected of the C.A.O. and Treasurer of a municipal corporation.
- (c) The Employee undertakes and agrees not to commence any employment for or with any other person during the term of this agreement. Notwithstanding the foregoing, the Employee may accept part time engagements to teach courses, to chair or present panel seminars and speeches, to keep all fees and honorarium therefrom, provided that the employee has received prior approval from the Town. The Employee acknowledges that this is a reasonable restriction imposed upon him by the Town.

3. REMUNERATION AND BENEFITS

- (a) In consideration of the performance of the obligations contained in this agreement, the Town will:-
 - i) pay the Employee an annual salary as agreed to by the parties, payable bi-weekly and subject to the deductions in accordance with the Town's customary practice;

ii) provide other benefits, presently described in Schedule "B", including car mileage in accordance with the Town's policy concerning the payment of mileage to employees,

and may make adjustments to the annual salary based on an appraisal of the Employees's performance. All benefits shall be subject to those conditions as to entitlement and eligibility as are in effect at the commencement of this agreement and the proportionate contributions of the Town and the Employee towards the cost of these benefits during the term of this agreement shall be in the same proportions as were in effect at the commencement of this agreement.

- (b) In the event that the transition period should conclude after the 30th day of September, 2000, and provided that the Employee's employment shall not have been terminated before conclusion of the transition period, then the Employee shall receive a bonus of 15% of his annual salary at the conclusion of the transition period.

4. **TERM AND TERMINATION**

- (a) This Agreement shall take effect retroactive as of October 1, 1999 subject to earlier termination as set out below, and will continue in force and effect for a term of five (5) years terminating as of September 30, 2004, unless renewed in writing by the mutual agreement of the parties hereto.

- (b) Employment pursuant to this agreement may be terminated prior to the end of its term or, if renewed, at any time after the date in the following manner, in the specified circumstances by the Town without notice or payment in lieu thereof for any of the following circumstances:

- i) cause although the Town may, in its sole discretion, give notice or pay severance pay

without prejudicing its right to allege cause. For the purposes of this agreement "cause" shall include but shall not be limited to any material breach of the provisions of this agreement by the Employee;

- ii) the employee's incapacity or inability to perform his duties as C.A.O. and/or Treasurer;
 - iii) the employee retires; or
 - iv) the employee resigns, or otherwise chooses to terminate his employment with the Town.
- (c) The Employee may terminate his employment at any time upon giving the Town four (4) months advance notice in writing. The Employee acknowledges that in such a case he shall be entitled to no compensation or benefits under this Agreement upon the date of termination.
- (d) If the employment of the Employee is terminated during the term of this agreement for any other reason other than those as set out in subparagraph 4 (b), the Employee shall be entitled to a lump sum payment equal to his salary and benefits for the remainder of the term of this agreement.
- (e) The parties expressly acknowledge that all of their respective rights and obligations upon the severance of employment for any reason whatsoever during the term of this agreement are provided for in this agreement, and, except for any action to enforce the terms of this agreement, neither party has any cause of action, claim or demand at common law or under any statute, before any court or administrative tribunal against the other arising out of the severance of the employment relationship. The Employee hereby releases and discharges the Town, its successors, assigns, subsidiaries and affiliates, and their respective officers, directors,

employees and agents from any and all actions, causes of action, claims, demands, and proceedings of whatever kind for damages, indemnity, costs, compensation or any other remedy which the Employee has had, may now have, or may in the future have against the Town, its successors, assigns, subsidiaries and affiliates, and their respective directors, officers, employees and agents arising out of the employment relationship of the Employee or out of the termination of that employment relationship. The Employee further agrees that upon any notice of termination or payment in lieu of advance notice being made, there is no right of the Employee to an opportunity to address the Council of the Town on the issue of the termination and the Employee agrees that any appointing by-law for his position can be revoked without opportunity to address Council of the Town on said termination and by-law revocation.

5. **VACATION**

The Employee shall be entitled to an annual vacation as per the current policy of the Town at a time acceptable to Council of the Town.

6. **ASSOCIATIONS AND CONTINUING EDUCATION**

The Employee, at the expense of the Town, may attend such professional development courses and seminars as are recommended or approved by Council of the Town and become a member of the Ontario Municipal Administrators Association and such other professional associations as approved by Council and which are provided for in the annual budget of the Town.

7. **PERFORMANCE REVIEW**

The Employee acknowledges that his performance of the duties and obligations pursuant to this agreement is subject to review by Council of the Town on an annual basis. It is

acknowledged that the review process will be structured to provide the Employee with an opportunity to provide input and response to Council of the Town.

8. **CONFIDENTIAL INFORMATION**

- (a) The Employee acknowledges that as C.A.O., he will acquire information about certain matters which are confidential to the Town, which information is the exclusive property of the Town.
- (b) The Employee undertakes to treat confidential all information and not to disclose it to any third party either during his employment, except as may be necessary to perform his duties, or after termination of this employment for any reasons except with the written permission of the Town or by court order.
- (c) The Employee acknowledges that termination of the Employee's employment or money damages may not be sufficient remedies for any breach of the abovementioned confidentiality provisions and that in addition to any other remedies available to the Town, the Town may seek injunctive relief or specific performance and the Employee agrees to waive and hereby waives any requirement for security or posting of any bond in connection with such remedies.

9. **ASSIGNABILITY**

This agreement, being a contract for personal services, shall not be assigned by either party. Notwithstanding this provision the Employee acknowledges that this agreement may be assumed by any successor, institution, government or body that becomes the employer of the Employee pursuant to restructuring.

10. **NOTICES**

Any notice required or permitted to be given to either party must be delivered personally (personal delivery to include

commercial couriers) to the parties address last known to the other party and will be deemed to be received on the date of personal delivery to that address.

11. **SEVERABILITY**

In the event that any provision or part of this agreement shall be deemed void or invalid by a court of competent jurisdiction, the remaining provisions or parts of it shall be and remain in full force and effect.

12. **WAIVER**

Any waiver by either party of a breach of any provision of this agreement shall not operate as of or be construed as a waiver of any subsequent breach thereof.

13. **MODIFICATION OF AGREEMENT**

Any modification to this agreement must be in writing signed by the Employee and the Town or it shall have no effect and shall be void.

14. **CLAUSE GOVERNING LAW**

This agreement shall be governed by and construed in accordance with the law of the Province of Ontario.

15. **GENERAL**

The parties acknowledge by their signatures below that they have read and understood this agreement, that this agreement represents their entire agreement, and that there are no collateral representations or warranties to this agreement. The Employee acknowledges that, prior to the execution of this agreement, he has had sufficient opportunity to review this agreement, and to obtain such consultation advice (including independent legal advice) as the Employee considers appropriate. This agreement shall enure to the benefit of, and be binding upon the parties hereto and their heirs, executors, trustees and successors.

The parties have executed this agreement as of the date first above written.

SIGNED, SEALED AND DELIVERED

in the presence of

THE CORPORATION OF THE TOWN OF PELHAM

Per: *Ralph Brand*
Mayor

Per: *Sheryl Bennett*
Clerk

W. (Sole)
WITNESS

Gord Cherney
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