

THIS AGREEMENT made as of the 7th day of July, 2013^{4gh}
BETWEEN:

THE REGIONAL MUNICIPALITY OF NIAGARA
(hereinafter, the "**Region**")

- and -

FORT ERIE FIRE DEPARTMENT, GRIMSBY FIRE DEPARTMENT, LINCOLN FIRE RESCUE & EMERGENCY SERVICES, NIAGARA FALLS FIRE DEPARTMENT, NIAGARA-ON-THE-LAKE FIRE & EMERGENCY SERVICES, PELHAM FIRE SERVICES, PORT COLBORNE FIRE & EMERGENCY SERVICES, ST. CATHARINES FIRE & EMERGENCY MANAGEMENT SERVICES, THOROLD FIRE & EMERGENCY SERVICES, WAINFLEET FIRE & EMERGENCY SERVICES, WELLAND FIRE & EMERGENCY SERVICES and WEST LINCOLN FIRE DEPARTMENT
(hereinafter, the "**Fire Services**")

WHEREAS the Fire Services wish to obtain an internet based software application to collaboratively document, track, map and view information about identified fire investigations on a region-wide scale (the "**Fire Investigation Tracking Application**");

AND WHEREAS the Region possesses the expertise and existing software platforms to deliver and support the Fire Investigation Tracking Application;

AND WHEREAS the Region has a hosted server environment which can be utilized to host the Fire Investigation Tracking Application;

AND WHEREAS the parties wish to enter into an agreement whereby the Region will develop, deliver, host and support the Fire Investigation Tracking Application and the Fire Services will, from time to time, supply such information and data as may be required for the development and maintenance of the Fire Investigation Tracking Application;

NOW THEREFORE the parties hereby agree as follows:

1. **Parties**

It is understood and agreed that the definition of "Fire Services" set forth above is inclusive and contemplates all parties named therein becoming signatory to the Agreement. In the event that one or more of the parties identified within the definition of "Fire Services" elects not to become signatory to the Agreement, the definition of "Fire Services" shall be read so as not to include any party so electing and the Agreement shall not fail or become invalid by reason only of a "Fire Services" party failing or declining to become signatory but shall be of full force and effect with respect to all signatory parties.

2. **Term of Agreement and Automatic Renewal**

The term of this Agreement shall be one (1) year ("**Term**"), commencing on the last date of execution of this Agreement by any Party hereto ("**Commencement Date**") and ending one (1) year thereafter unless earlier terminated in accordance with the provisions of this Agreement.

Provided, however, that at the conclusion of the Term this Agreement shall automatically renew in perpetuity for successive one (1) year terms ("**Renewal Term**") unless either of the Parties provides written notice of their intention to terminate the Agreement. Any notice of an intention to terminate pursuant to this section shall be given not less than ninety (90) days prior to the expiration of the Term or Renewal Term, as the case may be, and shall become effective only upon the end of the current Term or Renewal Term in which the notice is delivered.

3. **Services**

The Region agrees to provide the following services ("**Services**") to the Fire Services, subject to the terms and conditions of this Agreement, which Services shall collectively constitute the Fire Investigation Tracking Application:

- i. The Region shall develop, implement and host for the Term of this Agreement a secure web-based application ("**Web Application**") to permit the entry and retrieval of data and information pertaining to Fire Investigations.
- ii. The Region shall further develop, implement and host for the Term of this Agreement a secure web-based Geographic Information System (GIS) mapping tool ("GIS Tool") to permit the display and analysis of the Fire Investigation information entered into the Web Application.
- iii. The Region shall supply spatial data, including roads, address points, parcels and aerial photography ("Spatial Data") where the Region possesses same from time to time, for use in the base mapping of the GIS Tool.

4. **Region's Obligations**

4.1 **Maintenance**

The Region shall provide ongoing maintenance and updates as required for each of the Services comprising the Fire Investigation Tracking Application.

4.2 **Technical Support**

The Region shall provide technical support services as required by the Fire Services between 8:30 a.m. and 4:30 p.m., Monday through Friday, except on statutory holidays and any day that the Region has elected not to be open for business.

4.3 **Training**

The Region shall provide training, at times and in quantities to be determined by the parties, to such individuals as may be designated by the Fire Services in the use and application of each of the Web Application and the GIS Tool.

5. **Fire Services Obligations**

5.1 **Payment**

Fire Services agrees that the annual cost of the Application, to be accounted for as part of the budget of the Niagara Regional Fire Coordinator, shall be as follows:

- (a) for the Term, the sum of \$5,500.00; and

(b) for each Renewal Term, the sum of \$4,000.00, unless the Parties agree in writing to a different sum for any particular Renewal Term.

For certainty, it is understood and agreed that payment of the above amounts shall be deducted from or otherwise accounted for in the budget of the Niagara Regional Fire Coordinator and no payment shall be payable or due from the members of the Fires Services directly.

5.2 Data Entry

Fire Services shall be responsible for the entry of data into the Web Application in the fields agreed or to be agreed by the parties. For certainty, the Fire Services bears the responsibility of identifying the required fields of information. Region bears no responsibility for the population of any information fields within the Web Application.

5.3 Administration of Access

Fire Services shall be exclusively responsible for determining and identifying to the Region those individuals permitted from time to time to have access to any of the Services and the terms of that access, including without limitation any restrictions on the nature, quantity, type or display of information which may be accessed through the Web Application or the GIS Tool.

6. Incorporation of "Roles and Responsibilities"

The parties agree that the allocation of their respective roles, duties and responsibilities as set forth in the document entitled "Roles and Responsibilities" and attached hereto as Appendix A shall form part of this Agreement and the parties shall each be responsible for the satisfaction of the obligations set forth therein.

7. Termination

Either party may terminate this Agreement, without cause, on ninety (90) days written notice to the other party. Compensation shall be deducted from or otherwise accounted for in the budget of the Niagara Regional Fire Coordinator on a pro-rated basis for any part of the year during which the Fire Investigation Tracking Application was provided or made available prior to discontinuance. Upon termination of this Agreement, the Fire Services will immediately cease all use of the Fire Investigation Tracking Application.

In addition to the foregoing, either party may terminate this Agreement if the other party is in default of any of its obligations and fails to remedy such default within five (5) working days after receipt of a written notice of said default from the non-defaulting party in accordance with the notice provisions set forth at section 12.

8. Intellectual Property and Freedom of Information

The parties acknowledge and agree that ownership of any Intellectual Property utilized in the creation or operation of the Services shall remain with the party that owned, supplied, provided or created the Intellectual Property. More particularly, any data populated into the Web Application fields will remain in the custody and control of the Fire Service that owned, supplied, provided or created the data originally. Any such party shall be responsible for the collection,

use and disclosure pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). The retention and eventual destruction of this data pursuant to relevant legislation shall remain the responsibility of the Fire Services.

9. License

Commencing on the Commencement Date, the Region grants to the Fire Services for the duration of the Term a non-exclusive right and licence to use and access the Services, the Spatial Data and all other intellectual property utilized in the creation or operation of the Services.

The Fire Services shall not sub-license, assign, sell or transfer any right or license granted or arising under this Agreement, nor shall it make the Spatial Data or any other intellectual property owned by the Region available to any other party, corporation or entity without the prior written permission of the Region. The Fire Services acknowledge that the granting of a license herein does not constitute a transfer or assignment of any intellectual property rights from the Region to the Fire Services.

10. Confidentiality

The parties agree to keep confidential and not to publish, disclose, display, disseminate, provide or otherwise make available in any form the Spatial Data or any data or intellectual property owned by the other and to protect any other information contained therein to the same standard each uses to protect its own confidential information from any third party, excepting their employees or agents who require the Data or confidential information to fulfil the purpose of the uses or services set out in this Agreement, without express written permission from the other party. Both parties shall require their employees and agents not to otherwise disclose any Data to anyone else. Both parties agree they shall not disseminate or make available the Data of the other or of an external agency on any digital communications network, including without limitation, the Internet or any intranet, without express written permission of the owner of such Data. Both parties acknowledge that they are governed by and agree to comply in this Agreement with all applicable privacy legislation including, but not limited to, the *Municipal Freedom of Information and Protection of Privacy Act*.

11. Indemnification

The Fire Service acknowledges and agrees that the Region shall not be liable for any loss, damage, injury, death, cost or loss of revenue suffered by the Fire Service or any other person, employee, agent or servant arising from the use of, misuse of, or the inability to use Services. In no event shall Niagara Region, its councilors, officers, employees, agents or affiliates be liable to the Fire Service with respect to any subject matter of this Agreement under any contract, negligence, strict liability or other legal or equitable theory for any consequential, incidental, indirect or special damages whatsoever including but not limited to damages for loss of business profits, business interruption, future benefit of use, early termination, loss of business information and the like, whether foreseeable or unforeseeable, or for the cost of procurement of substitute goods, technology or services arising out of the use of or inability to use the Services, regardless of the basis of the claim.

The Fire Service shall defend, indemnify and hold harmless the Region, its elected officials, officers, employees and agents from and against all claims, actions, losses, expenses, costs or

damages caused by the Fire Service's negligence or willful misconduct in relation to the use of failure to use the Services or any other cause, or arising out of the use of the Services, save and except that which is caused by the negligence, errors or omissions of the Region or those for whom it is in law responsible.

12. Notices

Any notice required to be delivered under this Agreement shall be made by personal delivery, courier, registered mail or other verifiable means of delivery as follows, and shall be deemed to have been delivered when it is actually received by the party to whom the notice is addressed:

To the Region: THE REGIONAL MUNICIPALITY OF NIAGARA
2201 St. David's Road, P.O. Box 1042
Thorold, ON L2V 4T7
Attention: Director, IT Solutions

To the Fire Services: c/o Nancy J. Bozzato, Town Clerk
20 Pelham Town Sq.
P.O. Box 400
Tonawanda On L2S1K0

Unless the Parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this paragraph.

13. General

- 13.1 Each party represents and warrants that it has the full right and power to enter into this Agreement and there is no agreement with any other Person which would in any way interfere with the rights of the other Party under this Agreement.
- 13.2 The Parties represent that their respective representatives have the authority to legally bind them to the extent permissible by law. The Parties may designate a different representative by providing notice in writing in accordance with the terms of this Agreement.
- 13.3 Any failure by a Party to insist in one or more instances upon strict performance by the other Party of any of the terms or conditions of this Agreement shall not be construed as a waiver by the Region of its right to require strict performance of any such terms or conditions, and the obligations of the Fire Service with respect to such performance shall continue in full force and effect.
- 13.4 This Agreement embodies the entire agreement between the Parties and supersedes any prior understanding or agreement, collateral, oral or otherwise, existing between the Parties at the date of execution of this Agreement.

- 13.5 If any term or condition of this Agreement, or the application thereof to the Parties or to any Persons or circumstances, is to any extent invalid or unenforceable, the remainder of this Agreement, and the application of such term or condition to the Parties, Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.
- 13.6 The headings in this Agreement are for convenience of reference only and in no manner modify, interpret or construe this Agreement.
- 13.7 None of the Parties shall be liable for damages caused by delay or failure to perform its obligations under this Agreement where such delay or failure is caused by an event beyond its reasonable control. The Parties agree that an event shall not be considered beyond one's reasonable control if a reasonable business person applying due diligence in the same or similar circumstances under the same or similar obligations as those contained in this Agreement would have put in place contingency plans to either materially mitigate or negate the effects of such event. Without limiting the generality of the foregoing, the Parties agree that force majeure events shall include natural disasters and acts of war, insurrection and terrorism but shall not include shortages or delays relating to supplies or services or lack of money or ability to pay any amounts owing under the Agreement. If a Party seeks to excuse itself from its obligations under this Agreement due to a force majeure event, that Party shall immediately notify the other Party of the delay or non-performance, the reason for such delay or non-performance and the anticipated period of delay or non-performance.
- 13.8 Any changes to this Agreement shall be by written amendment signed by the Region and Fire Service. No changes shall be effective or shall be carried out in the absence of such an amendment.
- 13.9 All warranties and indemnities shall survive the expiry or termination of this Agreement.
- 13.10 This Agreement shall enure to the benefit of and be binding upon the parties and their successors, executors, administrators and their permitted assigns.
- 13.11 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 13.12 This Agreement may be executed in counterparts, including facsimile or "pdf" counterparts (all of which shall together constitute one and the same agreement).

SIGNED as of the date first above written

THE REGIONAL MUNICIPALITY OF NIAGARA

Name: _____

FORT ERIE FIRE DEPARTMENT

Name: _____

GRIMSBY FIRE DEPARTMENT

Name: _____

LINCOLN FIRE RESCUE & EMERGENCY SERVICES

Name: _____

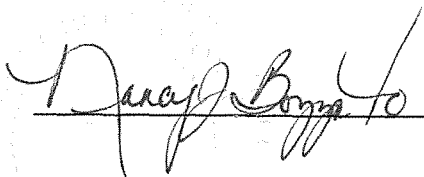
NIAGARA FALLS FIRE DEPARTMENT

Name: _____

NIAGARA-ON-THE-LAKE FIRE & EMERGENCY SERVICES

Name: _____

PELHAM FIRE SERVICES

_____

Name: Nancy J. Bozzato
Town Clerk

PORT COLBORNE FIRE & EMERGENCY SERVICES

Name: _____

ST. CATHARINES FIRE & EMERGENCY MANAGEMENT SERVICES

Name: _____

THOROLD FIRE & EMERGENCY SERVICES

Name: _____

WAINFLEET FIRE & EMERGENCY SERVICES

Name: _____

WELLAND FIRE & EMERGENCY SERVICES

Name: _____

WEST LINCOLN FIRE DEPARTMENT

Name: _____

Appendix A:
Roles & Responsibilities

| Project Phase | Responsible Party | Roles & Duties |
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| Phase 1: Provide a secure on-line tool for data entry of Fire Incidents | Fire Services | <ul style="list-style-type: none"> • Complete user acceptance testing for the data entry tool and provide sign-off that it has been implemented according to project design/scope • Organize the date/time and location for two 1 hour training sessions for data entry • Ensure the appropriate staff attend the aforementioned training |
| | Region | <ul style="list-style-type: none"> • Conduct a needs assessment for the data entry tool • Document, develop and test the methodology for data entry using web based technology • Provide the physical hardware, connectivity services, data backups and infrastructure support for the web application, including all the necessary software licensing • Provide application security according to industry standard SSL and encryption protocols currently employed at Niagara Region • Provide two 1 hour training sessions (train-the-trainer approach) for data entry. All training documents will be provided in electronic format only |
| Phase 2: Provide a secure on-line mapping tool to display and analyze the Fire Incident data collected in Phase 1 | Fire Services | <ul style="list-style-type: none"> • Complete user acceptance testing for the online mapping tool and provide sign-off that it has been implemented according to project design/scope • Organize the date/time and location for two 1 hour training sessions for online mapping • Ensure the appropriate staff attend the aforementioned training |
| | Region | <ul style="list-style-type: none"> • Conduct a needs assessment for the mapping tool • Document, develop and test the methodology for accessing the Fire investigation data in the web application using an online mapping tool • Provide the physical hardware, data backups and infrastructure support for the on-line mapping tool, including all the necessary software licensing • Provide application security according to industry standard SSL and encryption protocols currently employed at Niagara Region • Provide two 1 hour training sessions (train-the-trainer approach) for online mapping. All training documents will be provided in electronic format only |

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| <u>Post Implementation (Maintenance)</u> | Fire Services | <ol style="list-style-type: none"> 1. Web Application Administrator(s) <ol style="list-style-type: none"> a. Elect and/or appoint 1-2 people to act as the web application administrator(s) b. Prepare a form to be completed when requesting user access to the web application c. Create user logins to the web application and provide users with the appropriate level of access on the site d. Attend administrator training provided by Niagara Region e. Act as primary contact for support services from Niagara Region IT Solutions staff 2. Web Application Data Entry <ol style="list-style-type: none"> a. Enter Fire Investigation details into the appropriate list(s) on the web application 3. Consumer of Web Application and Online Mapping applications <ol style="list-style-type: none"> a. Access the mapping application for query and analysis purposes b. Contact the appropriate local Fire Department representative when further Fire Investigation details are required |
| | Region | <ol style="list-style-type: none"> 1. Training & Support <ol style="list-style-type: none"> a. Provide 1 hour of web application Administrator training to the elected/appointed Administrator(s). Coordinate the date/time and location for this training. All training documents will be provided in electronic format only. b. Provide ongoing technical support to the Administrator(s) 2. Hosting <ol style="list-style-type: none"> a. Provide the ongoing physical hardware, data backups and infrastructure support for the aforementioned applications including all the necessary software licensing and maintenance b. Conduct scheduled maintenance outside of regular work hours, which are considered to be Monday to Friday between 08:30 to 16:30 c. Provide 72 hours' notice for unscheduled maintenance, except when the maintenance is deemed to be "Emergency" in which case reasonable effort will be undertaken to inform the |

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| | | <p>client in advance. Any maintenance that is needed to ensure security and continued availability of the data and applications is deemed to be "Emergency"</p> <p>d. Update core data used in the online mapping tool as data updates become available within Niagara Region</p> |
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