



THIS AGREEMENT effective as of the 6<sup>th</sup> day of September, 2016.

BETWEEN

**NIAGARA COLLEGE STUDENT ADMINISTRATIVE COUNCIL INCORPORATED**

(hereinafter referred to as "NCSAC")

- and -

**THE TOWN OF PELHAM**

(hereinafter referred to as "the Town")

In September 2015, the Town commenced a Pilot Project of transit services within Pelham, with these services operated by a private operator.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the sum of ONE (\$1.00) DOLLAR paid by each of the parties to the other, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**TERM AND TERMINATION**

1. This Agreement shall be effective as of September 1, 2016 and shall remain in effect until April 30, 2017 (the "Term")
2. Extension of the Agreement beyond April 30, 2017 shall require mutual consent and agreement of all parties hereto.
3. If NCSAC fails to make payment required under this Agreement, and has not paid within five (5) days after notice in writing from the Town to NCSAC, the Town may, in its absolute discretion, terminate this Agreement

**U-PASS PRIVILEGES**

4. All Eligible Students shall be entitled to unlimited ridership privileges on all Pelham routes, when a valid U-Pass is produced to the bus operator upon entry. In the event a passenger does not produce a U-Pass or cash fare, he/she will be refused access to the bus. The Town will accept student identification without a valid U-Pass from September 1 until September 18, 2016 and January 2 to January 15, 2017.
5. The nature and format of the acceptable identification will be approved jointly by SCTC (St. Catharines Transit Commission), NRT (Niagara Regional Transit), NFT (Niagara Falls Transit), and WT (Welland Transit), collectively, the "Service Providers", and the NCSAC.
6. There shall be no assignment of the U-Pass to any non-Eligible Student. Any student who is found to have breached the conditions of use of the U-Pass will have the privilege revoked without rebate.
7. U-Passes that are being used inappropriately will be confiscated by the bus operator of the appropriate transit authority and will be forwarded to the office of the Niagara College Campus

Security and to the NCSAC, with an explanation of the circumstances, within 24 hours of the confiscation.

#### **PAYMENT TO TOWN**

8. For the Term of this Agreement, NCSAC will remit to the Town or a Service Provider, as directed by the Town a total fee of \$10,000.00 for the privilege of Eligible Students presenting U-Passes to ride on Pelham Transit, for no charge, as per public schedules.
9. The NCSAC shall make payments to the Town according with the following payment schedule:
  - October 15, 2016 - \$5,000.00
  - January 5, 2017 - \$5,000.00
10. Late payments will be assessed at an interest charge of 1.5% per month (18% per annum).

#### **SERVICE LEVELS**

11. Pelham routes and schedules will be the public routes and schedules in operation as published, and as may be amended from time to time at the Town's sole authority and discretion. No liability shall result from the Town changing its public routes and schedules in its sole and unfettered discretion.
12. No liability shall result from delay or non-performance by the Town of the Service Providers caused by unforeseen circumstances, including without limitation, acts of God, terrorist acts, flood, fire, war, action, labour trouble, equipment failure or shortage, weather, accidents, traffic congestion, detours, road closures or similar circumstances beyond the reasonable control of the Town or Service Providers.
13. The Town is not responsible for any U-Pass that has been lost or stolen. Eligible students shall be responsible to secure a new student card and transit validation through the processes established by the NCSAC.

#### **IDEMNIFICATION**

14. NCSAC shall release and indemnify the Town against and save the Town harmless from and against all claims, demands or proceedings for loss, damage or injury, including death, and from and against all costs and expenses which the Town may sustain, suffer or incur, resulting from or arising directly out of any responsibility or obligation assumed by NCSAC in this Agreement.
15. The Town shall release and indemnify NCSAC against and save NCSAC harmless from and against all claims, demands or proceedings for loss, damage or injury, including death, and from and against all costs and expenses which NCSAC may sustain, suffer or incur, resulting from or arising directly out of any responsibility or obligation assumed by the Town in this Agreement.

#### **GENERAL PROVISIONS**

16. The Parties shall do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to its full extent

17. NCSAC shall not assign this Agreement without the Town's express written permission. This Agreement, and all rights, responsibilities and obligations contained therein, shall extend to and be binding on the Parties' respective successors and assigns.
18. This Agreement constitutes the entire agreement between the Parties and supersedes any prior understandings and agreements between the Parties. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory between the Parties other than those expressly set forth in this Agreement.
19. The laws of the Province of Ontario govern this Agreement. No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by an authorized representative of each of the Parties. No waiver of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the waiver and unless otherwise provided in writing, shall be limited to the specified breach waived.
20. The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement and any invalid or unenforceable provision shall be deemed to be severed.

#### **DISPUTE RESOLUTION**

21. NCSAC and the Town hereby commit to make sincere efforts to resolve any disagreements between them promptly, at the lowest possible level of authority and consistent with their respective rights and responsibilities and the objectives of this Agreement. However, if parties hereto cannot resolve matters in difference between them, that matter shall be referred to the arbitration of a single arbitrator, if the Parties agree upon one; otherwise to three arbitrators, one to be appointed by the Service Providers and one to be appointed by the Town, and a third to be chosen by the first two arbitrators before they enter upon the business of arbitration. The award and determination of the arbitrator or arbitrators, or any two of the three arbitrators, including any determination as to the responsibility for payment of the costs of the arbitration, shall be binding upon the Parties and their respective successors and assigns. The provisions of the Arbitration Act, 1991, S.O. 1991, c. 17 shall apply to this arbitration. For these purposes, "matters in difference" shall include matters which the Parties have not resolved within thirty (30) days following delivery by one party to the remaining Parties of notice in writing of an issue arising in connection with this Agreement.

#### **NOTICE**

22. Any notices permitted or required under this Agreement shall be given by personal delivery or sent by prepaid registered mail to the parties at the following addresses. Notices sent by registered mail shall be deemed to be received three regular business days after mailing.

To NCSAC:  
300 Woodlawn Road  
Niagara College SAC  
SA205

To the Town:  
Town of Pelham  
P.O Box 400  
Fonthill, Ontario

Welland, ON  
L3C 7L3

Attention: Executive Director  
Fax: 905-688-4311

LOS 1E0

Attention: Town Clerk  
Fax: 905-892-5055

IN

WITNESS WHEREOF the parties hereto have duly executed this Agreement

NIAGARA COLLEGE STUDENT ADMINISTRATIVE COUNCIL INCORPORATED

Per: [Signature]

Name:  
Position: Executive Director

Date: MARCH 8, 2017

Per: [Signature]

Name: AliceMary Nakiwala  
Position: President

Date: March / 17<sup>th</sup> / 2017

Per: [Signature]

Name: Ryan Huckla  
Position: Executive Vice President, Welland  
Campus

Date: March 8, 2017

We have authority to bind the Corporation.

THE TOWN OF PELHAM

Per: [Signature]

Name: Dave Augustyn  
Position: Mayor

Date: 3 April 2017.

Per: [Signature]

Name: Nancy Bozzato  
Position: Clerk

Date: April 3, 2017.