

THIS MUTUAL ASSISTANCE AGREEMENT

made this 4th day of February, 2013

B E T W E E N:

THE CORPORATION OF THE CITY OF ST. CATHARINES
and
THE CORPORATION OF THE CITY OF NIAGARA FALLS
and
THE CORPORATION OF THE CITY OF WELLAND
and
THE CORPORATION OF THE CITY OF THOROLD
and
THE CORPORATION OF THE CITY OF PORT COLBORNE
and
THE CORPORATION OF THE TOWN OF FORT ERIE
and
THE CORPORATION OF THE TOWN OF PELHAM
and
THE CORPORATION OF THE TOWN OF GRIMSBY
and
THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE
and
THE CORPORATION OF THE TOWN OF LINCOLN
and
THE CORPORATION OF THE TOWNSHIP OF WEST LINCOLN
and
THE CORPORATION OF THE TOWNSHIP OF WAINFLEET
and
THE REGIONAL MUNICIPALITY OF NIAGARA

WHEREAS Subsection 13(3) of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E. 9, as amended (the "Act") provides that the council of a municipality may make an agreement with the council of any other municipality or with any person for the provision of any personnel, service, equipment or material during an emergency;

AND WHEREAS the Parties wish to provide for mutual aid and assistance to each other through the provision of personnel, services, equipment or material to one or the other within the meaning of the Act;

AND WHEREAS each of the Parties has an Emergency Plan pursuant to the Act;

NOW THEREFORE in consideration of the mutual covenants herein contained, the Parties agree as follows:

1. Definitions

1.1 In this Agreement,

- 1.1.1 “Act” means the *Emergency Management and Civil Protection Act*, as may be amended, and all regulations thereto;
- 1.1.2 “Assisted Municipality” means the municipality receiving aid or assistance pursuant to this Agreement;
- 1.1.3 “Assisting Municipality” means the municipality providing aid or assistance pursuant to this Agreement;
- 1.1.4 “Emergency”, “Emergency Area” and “Emergency Plan” shall have the same meanings as in the Act;
- 1.1.5 “Mutual Assistance Agreement” means this Agreement and the attached Schedule(s) which embody the entire Agreement between the Parties;
- 1.1.6 “Requesting Party” means the municipality asking for aid, assistance or both pursuant to this Agreement; and
- 1.1.7 “Emergency Control Group” means the organizational entity responsible for directing and controlling the Assisted Municipality’s response to an Emergency.

2. Role of the Solicitor General

- 2.1 The Parties acknowledge that pursuant to the Act, the Solicitor General for the Province of Ontario is responsible for the administration of the Act and is the principal contact for all Emergencies.
- 2.2 The Parties further agree that the Solicitor General shall be notified in writing of any request made under this Agreement. The Requesting Party agrees to notify as soon as reasonably practicable, Emergency Management Ontario (EMO), Ministry of Community Safety and Correctional Services and any other person required to be notified pursuant to the Act, on the matter of any request for assistance made under this Agreement.

3. Authorization to Request/Offer Assistance

- 3.1 Each Party hereby authorizes its Chief Administrative Officer, City Manager, Town Manager or such other senior administrative officer of

the Party as the Chief Administrative Officer has designated (hereinafter "CAO") to request assistance or offer to provide assistance pursuant to this Agreement on behalf of that Party.

4. Requests for Assistance

- 4.1 The Parties agree that in an Emergency, a Requesting Party may request assistance in the form of qualified personnel, services, equipment, or material from another Party.
- 4.2 The request for assistance shall be made by the CAO of the Requesting Party to the CAO of the other Party. The CAO of the Requesting Party may make the initial request for assistance orally, however, a written request using the form set out in Schedule "A", and in accordance with Section 17, should follow as soon as reasonably practicable.
- 4.3 The written request shall set out in detail the specific personnel, services, equipment and/or material that has been requested as assistance. A Party may request such reasonable additional information as it considers necessary to confirm the existence of the Emergency and to assess the type, scope, nature and amount of assistance to be provided.
- 4.4 The Party which has received a request from a Requesting Party shall respond to the request within one (1) day, and may in its sole discretion determine the type and scope, nature and amount of assistance it will provide. The Assisting Municipality may respond to the request orally, however, shall respond in writing as soon as reasonably practicable using the form set out in Schedule "A" attached hereto. The CAO of the Requesting Party shall complete, sign and forward the form to the CAO of the Assisting Municipality, who shall then return a signed copy. The written confirmation shall set out in detail the specific personnel, services, equipment or material that has been requested as assistance and which the Assisting Municipality has agreed to provide.
- 4.5 The Assisting Municipality and the Assisted Municipality may by mutual agreement at any time as necessary, amend the scope, type, nature or amount of assistance to be provided to the Assisted Municipality under this Agreement. Amendments shall be confirmed in writing by the Parties using the form set out in Schedule "A" attached hereto within three (3) days of being agreed upon or as soon as reasonably practicable.

5. Limitations on Assistance Provided

- 5.1 Nothing in this Agreement shall require or obligate or be construed to require or obligate a Party to provide assistance. Each Party shall retain

the right to refuse the request to provide assistance, and the right to offer alternatives to the assistance that has been requested.

- 5.2 No liability shall arise against the Party who was being asked for assistance if it fails, for any reason whatsoever, to respond to a request for assistance made under this Agreement.
- 5.3 When assistance has been offered or provided by the Assisting Municipality, the Assisting Municipality shall not be obligated to provide any further assistance or to do anything or take any action beyond that which is specifically agreed to by the acceptance of the request for assistance.
- 5.4 Nothing in this Agreement shall prevent the Assisting Municipality, in its sole discretion, from withdrawing any or all assistance it had agreed to provide to the Assisted Municipality. Any withdrawal of assistance by the Assisting Municipality shall be made only upon at least forty-eight (48) hours' notice to the Assisted Municipality, unless the Assisting Municipality is responding to an actual or pending Emergency within its own geographical boundaries, in which case it may withdraw assistance from the Assisted Municipality immediately upon notice.
- 5.5 The Assisted Municipality may determine in its sole discretion, subject to any required approval by governmental authorities, that its requirement for assistance has ceased and shall notify the Assisting Municipality of this in writing.

6. Term and Termination

- 6.1 The Mutual Assistance Agreement shall be in effect for each Party from the date on which each Party signs the Agreement.
- 6.2 Despite any other section of this Agreement, any Municipality may terminate this Agreement upon at least sixty (60) days' written notice to all the other Parties. It is understood that the Agreement shall continue in force as between the other Parties.

7. Costs

- 7.1 Unless otherwise agreed upon, any and all direct and indirect costs of the Assisting Municipality in providing assistance are to be paid by the Assisted Municipality. The Assisted Municipality shall be required to reimburse any and all actual costs incurred by or attributable to the Assisting Municipality in providing the assistance. Such costs shall include, but are not limited to, any and all supplies, equipment materials, fuel, repairs, parts, lodging, wages, salaries, overtime, shift premium charges, and similar charges and expenses incurred in or

attributable to providing the assistance including those wages, salaries, overtime and shift premium charges incurred resulting from staffing requirements in its home jurisdiction during the period of the assistance, providing all such costs are reasonable in the circumstances.

- 7.2 The Assisting Municipality shall remain responsible for making all statutorily required deductions, contributions, payments and costs of employment benefits which includes for the purposes of this Agreement, Canada Pension Plan, Employment Insurance, OMERS contributions, and/or contributions made to life insurance, health, dental, and/or disability plans or policies.
- 7.3 The Assisted Municipality shall be responsible for the cost of replacing equipment or material furnished by the Assisting Municipality if damaged beyond reasonable repair while providing assistance.
- 7.4 The Assisting Municipality shall provide to the Assisted Municipality, if practical and available, an estimate of the cost of providing the assistance.

8. Payment

- 8.1 Payment by the Assisted Municipality for costs incurred for the assistance provided shall be made to the Assisting Municipality upon receipt of an invoice from the Assisting Municipality. Such invoice shall set out in sufficient detail the costs actually incurred by or attributed to the provision of assistance by the Assisting Municipality pursuant to this Agreement, and where practically available, receipts for disbursements shall be forwarded in support of the invoice.
- 8.2 Any discrepancy relating to an invoice shall be discussed between the Parties involved and additional documentation shall be provided. The Parties shall attempt in good faith to reach resolution as expeditiously and amicably as possible. The Parties may agree on a method of third party resolution, if necessary, and shall share the costs of same equally.
- 8.3 The Assisted Municipality shall remit payment of the amount owing for the assistance provided within thirty (30) days of the receipt of the Assisting Municipality's invoice.
- 8.4 Any amount remaining unpaid and outstanding after the thirty (30) day period referred to in subsection 8.3 of this Agreement shall bear interest at the rate stipulated in the Assisting Municipality's invoice, which rate shall not exceed the Bank of Canada bank rate at the date of the invoice plus two (2) per cent per annum until paid.

9. Employment Relationship

9.1 Despite that the employees, contractors, servants and agents (collectively “the workers”) of the Assisting Municipality may be assigned to perform duties for the Assisted Municipality, and that for the duration of the Emergency, the Assisted Municipality shall reimburse the Assisting Municipality for the costs of the wages, salaries and expenses of the workers, the workers of the Assisting Municipality shall retain their employment or contractual relationship with the Assisting Municipality. The Parties acknowledge and agree that the Assisted Municipality is not to be deemed the employer or contractor of the Assisting Municipality’s employees, agents, contractors or servants, under any circumstances or for any purpose whatsoever.

10. Records

10.1 Any personal (or health) information collected, used or disclosed by an Assisting Municipality while assisting an Assisted Municipality pursuant to this Agreement is subject to the rights, responsibilities and safeguards provided for in the *Municipal Freedom of Information and Protection of Privacy Act* and the *Personal Health Information Protection Act, 2004*. The Parties hereby state their intention that the Assisting Municipality and its employees, contractors, servants and agents are acting as agents of the Assisted Municipality in the collection, use or disclosure of any personal (or health) information, which is at all times the intellectual property of and under the care, custody and control of the Assisted Municipality. The Assisted Municipality may direct the Assisting Municipality how to safeguard and deal with the information to meet the purposes of this Agreement and the Assisting Municipality shall protect and treat the personal (or health) information according to the standards of the applicable legislation and in accordance with the directions of the Assisted Municipality, acting reasonably.

11. Indemnity

11.1 The Assisted Municipality shall defend, indemnify and save harmless the Assisting Municipality, its officers, employees, contractors, servants and agents from any and all claims, costs, all manner of action or actions, cause and causes of action, accounts, covenants, contracts, demands or other proceedings of every kind or nature

whatsoever at law or in equity arising out of this Agreement and out of assistance provided pursuant to this Agreement. The indemnity herein provided shall include all costs, including but not limited to duties, dues, accounts, demands, penalties, fines and fees.

12. Insurance

12.1 During the term of this Agreement, each Party shall obtain and maintain in full force and effect, general liability insurance issued by an insurance company authorized by law to carry on business in the Province of Ontario, providing for, without limitation, coverage for personal injury, public liability and property damage. Such policy shall:

12.1.1 have inclusive limits of not less than Five Million Dollars (\$5,000,000) for injury, loss or damage resulting from any one occurrence;

12.1.2 contain a cross-liability clause endorsement and severability of interests clause of standard wording;

12.1.3 name the other Parties as additional insureds with respect to any claim arising out of the Assisted Municipality's obligations under this Agreement or the Assisting Municipality's provision of personnel, services, equipment or material pursuant to this Agreement; and

12.1.4 include a Non-Owned Automobile endorsement.

12.2 During the term of this Agreement, each Party shall obtain and maintain in full force and effect, automobile liability insurance in the amount of Two Million Dollars (\$2,000,000.00) for injury, loss or damage resulting from anyone occurrence.

12.3 Upon the request of the other Party, each Party shall provide proof of insurance in a form satisfactory to the requesting Party's CAO.

12.4 In the case of any conflict between the provisions of this document and any other provisions speaking to contractual indemnity or insurance clauses, the provisions of this Agreement will govern.

13. Collective Agreements

13.1 Each Party agrees to review the provisions of this Agreement with its appropriate local bargaining units for the purpose of seeking amendments to local agreements, if required to facilitate participation within the terms of this Agreement. Each Party further agrees to advise the other Parties as soon as practically possible if it becomes

aware of any impediments or obstacles imposed by local agreements to meeting its obligations under this Agreement.

14. Liaison and Supervision

- 14.1 The Assisting Municipality shall have the right, to be exercised in its sole discretion, to assign an employee or agent (the "Liaison Officer") of the Assisting Municipality to the Emergency Control Group of the Assisted Municipality. The Liaison Officer shall provide a liaison between the Assisting Municipality and the Emergency Control Group of the Assisted Municipality. The parties acknowledge that the purpose of the Liaison Officer shall be to permit communication between the Assisted and Assisting Municipalities. Subject to the *Municipal Freedom of Information and Protection of Privacy Act*, the Liaison Officer shall be permitted to inform the Assisting Municipality on the status of the Emergency and the actions taken by the Assisted Municipality. The Liaison Officer shall have the right to obtain information about the Emergency and the use of the assistance provided in order to report to the Assisting Municipality during and after the duration of the assistance provided and the Emergency. The Assisting Municipality shall keep confidential and not disclose any information concerning the Emergency or the assistance provided without the prior consent of the Assisted Municipality, except as may be legally required.
- 14.2 The Assisting Municipality shall assign its personnel to perform tasks as directed by the Emergency Control Group of the Assisted Municipality. The Assisting Municipality shall have the right to assign supervisory personnel to operate or supervise the operation of any of the Assisting Municipality's personnel and or equipment furnished as assistance to the Assisted Municipality. Such supervision shall be in accordance with the instructions of the Emergency Control Group.

15. Information Sharing

- 15.1 If requested and subject to the *Municipal Freedom of Information and Protection of Privacy Act*, each Party shall respond to the other Party's request for information regarding specified types of personnel, services, equipment or material in the possession of each party that may be used in the provision of assistance under this Agreement. All such information shall be provided without any warranty of any kind as to its accuracy, reliability, usefulness or other characteristics.

16. Food and Lodging

- 16.1 For the duration of the assistance provided under this Agreement, the Assisted Municipality shall be responsible for providing all food, lodging and accommodation as required and appropriate for the personnel furnished pursuant to this Agreement. Where food and

lodging cannot be provided in-kind, the Assisted Municipality shall pay a reasonable *per diem* to personnel for any food and lodging purchased by personnel of the Assisting Municipality. The *per diem* shall be no less than the Assisted Municipality pays to its own employees as a matter of policy or agreement.

17. Notice

- 17.1 Any notice, direction, request or document required or permitted to be given by either Party to the other in writing shall be deemed to have been sufficiently and effectually given if delivered by hand or by prepaid registered mail at the addresses provided for below during normal business hours, or sent by facsimile transmission or electronic mail to the number shown below.

Region at:

The Regional Municipality of Niagara
2201 St. David's Road, P.O. Box 1042
Thorold, Ontario
L2V 4T7

Attention: Chief Administrative Officer
Facsimile No.:(905)685-6243

or to such other address of a Party as it shall specify to the other Parties by written notice given in the manner aforesaid.

- 17.2 If hand delivered, the notice is effective on the date of delivery; if sent by facsimile transmission or electronic mail before 3:00 p.m., the notice is effective on the date and time the fax is sent; if sent by facsimile transmission or electronic mail after 3:00 p.m., the notice is effective on the following day; and if mailed, the notice is deemed to be effective on the fifth business day following the day of mailing.
- 17.3 Any notice given shall be sufficiently given if signed by the CAO or by a person authorized by or acting under the direction or control of the CAO.

18. General

- 18.1 Nothing contained in this Agreement shall be construed as restricting or preventing either Party from relying on any right or remedy otherwise available to it under this Agreement, at law or in equity in the event of any breach of this Agreement.

- 18.2 This Agreement shall enure to the benefit of, and be binding upon the Parties and their respective successors, administrators and assigns.
- 18.3 This Agreement shall not be construed as or deemed to be an agreement for the benefit of any third parties, and no third party shall have any right of action arising in any way or manner under this Agreement for any cause whatsoever.
- 18.4 This Agreement and the attached Schedule "A" embody the entire Agreement and supersede any other understanding or agreement, collateral, oral or otherwise, existing between the parties prior to or at the date of execution.
- 18.5 Sections 2, 5.2, 7, 8, 9, 11, 12, 17, and 18 of this Agreement shall survive termination of this Agreement.
- 18.6 The Parties agree to be governed by the laws of the Province of Ontario and Canada.
- 18.7 The Parties herein agree that in the event of any dispute arising under or pursuant to this Agreement, which dispute cannot be resolved by the mutual agreement of the Parties' C.A.O.s, the C.A.O.s shall refer the dispute to the respective Chairs/Mayors of the Parties for resolution. In the event that the Chairs/Mayors cannot resolve the dispute, either Party may, on providing ninety (90) days' written notice to the other, refer the dispute to a third party arbitrator of their mutual choice for resolution. Such arbitration shall be conducted pursuant to the *Arbitration Act, 1991*, S.O. 1991 c. 17, as amended.
- 18.8 This Agreement may be executed and delivered in any number of separate counter-parts, each of which when executed and delivered is an original but all of which taken together constitutes one and the same instrument. Any Party may deliver an executed copy of this Agreement by facsimile transmission.

IN WITNESS WHEREOF the Parties have, by their authorized signing officer(s), executed this Agreement.

THE CORPORATION OF THE CITY OF ST. CATHARINES

Name:

Title:

Name:

Title:

I/We have the authority to bind the Corporation.

Date

THE CORPORATION OF THE CITY OF NIAGARA FALLS

Name:

Title:

Name:

Title:

I/We have the authority to bind the Corporation.

Date

THE CORPORATION OF THE CITY OF WELLAND

Name:

Title:

Name:

Title:

I/We have the authority to bind the Corporation.

Date

THE CORPORATION OF THE CITY OF THOROLD

Name:

Title:

Name:

Title:

I/We have the authority to bind the Corporation.

Date

THE CORPORATION OF THE CITY OF PORT COLBORNE

Name:

Title:

Name:

Title:

I/We have the authority to bind the Corporation.

Date

THE CORPORATION OF THE TOWN OF FORT ERIE

Name:

Title:

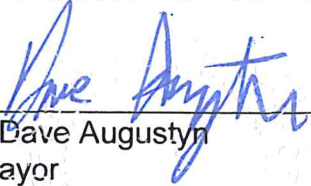
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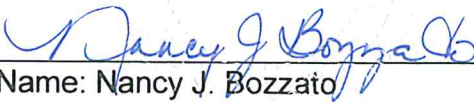
I/We have the authority to bind the Corporation.

Date

THE CORPORATION OF THE TOWN OF PELHAM



Name: Dave Augustyn
Title: Mayor



Name: Nancy J. Bozzato
Title: Town Clerk
I/We have the authority to bind the Corporation.

Date

THE CORPORATION OF THE TOWN OF GRIMSBY

Name:
Title:

Name:
Title:
I/We have the authority to bind the Corporation.

Date

**THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-
LAKE**

Name:
Title:

Name:
Title:
I/We have the authority to bind the Corporation.

Date

THE CORPORATION OF THE TOWN OF LINCOLN

Name:
Title:

Name:
Title:
I/We have the authority to bind the Corporation.

Date

THE CORPORATION OF THE TOWNSHIP OF WEST LINCOLN

Name:
Title:

Name:
Title:
I/We have the authority to bind the Corporation.

Date

THE CORPORATION OF THE TOWNSHIP OF WAINFLEET

Name:
Title:

Name:
Title:
I/We have the authority to bind the Corporation.

Date

SCHEDULE "A"

Mutual Assistance Agreement

I, _____, Chief Administrative Officer / Designated Official of _____, duly authorized to do so by the Council of _____, do hereby confirm my request of _____, to provide assistance in the form of _____

____ PERSONNEL
____ SERVICES
____ EQUIPMENT
____ MATERIAL

AS IS MORE PARTICULARLY SET OUT IN DETAIL AS FOLLOWS:

FOR THE DURATION OF: _____

The above confirms the assistance verbally requested on _____, and which assistance _____ has agreed to provide.

Dated at _____ this _____ day of _____, _____,

Chief Administrative Officer

(Assisted Municipality)

Confirmed at _____ this _____ day of _____, _____

Chief Administrative Officer

(Assisting Municipality)