

THE CORPORATION OF THE TOWN OF PELHAM

("Pelham")

- and -

THE CORPORATION OF THE TOWN OF GRIMSBY

("Grimsby")

- and -

THE CORPORATION OF THE TOWN OF LINCOLN

("Lincoln")

- and -

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

("Niagara-on-the-Lake")

- and -

THE CORPORATION OF THE CITY OF PORT COLBORNE

("Port Colborne")

- and -

THE CORPORATION OF THE CITY OF ST. CATHARINES

("St. Catharines")

- and -

THE CORPORATION OF THE CITY OF THOROLD

("Thorold")

- and -

THE CORPORATION OF THE TOWNSHIP OF WAINFLEET

("Wainfleet")

### **SHARED SERVICES AGREEMENT**

**WHEREAS** section 20 of the *Municipal Act, 2001*, S.O. 2001, c. 25 ("*Municipal Act, 2001*") provides that a municipality may enter into an agreement with one or more other municipalities to jointly provide, for their joint benefit, any matter which all of the municipalities have the power to provide within their own boundaries; and

**WHEREAS** section 102.1 of the *Municipal Act, 2001* provides that a municipality may require a person to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with any by-laws respecting the parking, standing or stopping of vehicles; and

**WHEREAS** Ontario Regulation 333/07 under the *Municipal Act, 2001* (“the Regulation”) provides that a municipality shall not require a person to pay an administrative penalty under section 102.1 of the *Municipal Act, 2001* unless the municipality has met the requirements of the Regulation; and

**WHEREAS** the Regulation provides that a person who receives a penalty notice shall be given the right to request a review of the administrative penalty by a screening officer appointed by the municipality for that purpose; and

**WHEREAS** the Regulation provides that a person who receives notice of the decision of the screening officer shall be given the right to a review of the screening officer’s decision by a hearing officer appointed by the municipality for that purpose; and

**WHEREAS** the municipalities of Pelham, Grimsby, Lincoln, Niagara-on-the-Lake, Port Colborne, St. Catharines, Thorold and Wainfleet (each “a party” and collectively “the parties”) have each established a system of administrative penalties in accordance with section 102.1 of the *Municipal Act, 2001* and the Regulation; and

**WHEREAS** section 434.1 of the *Municipal Act, 2001* provides that a municipality may require a person to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with a by-law of the municipality passed under the *Municipal Act, 2001*; and

**WHEREAS** the parties have each established a system of administrative penalties in accordance with section 434.1 of the *Municipal Act, 2001* that provide a person who receives a penalty notice with a right to request a review of an administrative penalty by a screening officer appointed by the municipality for that purpose and a right to a review of the screening officer’s decision by a hearing officer appointed by the municipality for that purpose; and

**WHEREAS** the parties wish to enter into an agreement to jointly provide the services of a hearing officer within their respective municipalities as required by the Regulation and by their respective administrative penalty systems established pursuant to section 434.1 of the *Municipal Act, 2001* and to share the costs incurred in so doing;

**NOW THEREFORE** in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

## **1. TERM**

- 1.1. This Agreement comes into effect on the date it is signed by all parties or, in the event that the parties sign this Agreement on different dates in accordance with paragraph 11.8, on the latest date on which it is signed by a party (“the Effective Date”), and shall continue for a period of three (3) years unless it is renewed or amended or terminated in accordance with the provisions herein (“the Term”).
- 1.2. Not less than six (6) months prior to the expiration of the Term, the parties shall each provide written notice to all other parties of their intention to renew this Agreement or to conclude this Agreement at the end of the Term.

- 1.3. Unless a party has given notice of its intention to conclude the Agreement, the parties shall use best efforts in the final six (6) months of the Term to negotiate in good faith and to enter into (i) a renewal of this Agreement for a further period of three (3) years; or (ii) a new Shared Services Agreement on such terms and conditions as may be negotiated at that time.
- 1.4. In the event that one or more parties provides written notice of its intention to conclude the Agreement, the remaining parties shall determine, within sixty (60) days after the notice is delivered, if any or all of them wish to enter into negotiations for a new Shared Services Agreement and shall advise all other remaining parties accordingly.

## **2. SELECTION OF HEARING OFFICER**

- 2.1. The parties shall jointly select a hearing officer to conduct all requested reviews of the decisions of the screening officer(s) appointed by each party ("Appeals").
- 2.2. Upon their mutual agreement, the parties may select the existing hearing officer of a party or may select a new hearing officer. Once the parties have selected the hearing officer, each party shall pass a by-law to appoint that person as the hearing officer for that party during the Term.

## **3. ADMINISTRATION OF SHARED SERVICES AGREEMENT**

- 3.1. During the Term, Pelham shall provide the following administrative services in relation to this Agreement:
  - i. Coordinate with all parties to ensure the selection and appointment of a hearing officer in accordance with section 2 of this Agreement;
  - ii. Develop and provide to all parties and the hearing officer a schedule for Appeals in accordance with section 5 of this Agreement;
  - iii. Receive and deposit the annual financial contributions of each party pursuant to section 4 of this Agreement;
  - iv. Maintain a record of the number of Appeals received by each party;
  - v. Receive and remit payment for all invoices rendered by the hearing officer;
  - vi. Render invoices to the parties in accordance with section 4 of this Agreement;
  - vii. Provide the parties with an annual accounting of the annual financial contributions of the parties and the invoices rendered by the hearing officer; and
  - viii. Provide information about the administration of this Agreement to any party or parties upon request, provided that the number and/or content of such requests do not exceed what Pelham, in its sole discretion, considers to be reasonable.
- 3.2. Pelham shall provide the services in paragraph 3.1 at no cost to the other parties. For greater certainty, Pelham shall not impose any administrative charge or other fee in relation to delivering the services in paragraph 3.1.

#### **4. ANNUAL FINANCIAL CONTRIBUTIONS**

- 4.1. Subject to paragraphs 4.4 and 4.5, each of the parties shall make an annual financial contribution during the Term in the amount of seven hundred and fifty dollars (\$750.00), which funds shall be used solely for the payment of invoices rendered by the hearing officer.
- 4.2. Pelham shall render an invoice to each party for the initial financial contribution within thirty (30) days of the Effective Date, which shall be payable within fifteen (15) days. Subject to paragraph 4.4, Pelham shall render an invoice to each party for subsequent annual financial contributions on the anniversary of the Effective Date, which shall be payable within fifteen (15) days.
- 4.3. The parties shall pay all annual financial contributions to Pelham by way of cheque. Pelham shall deposit and retain all annual financial contributions received from the parties in a separate general ledger account designated for that purpose and shall pay all invoices rendered by the hearing officer from that account.
- 4.4. Notwithstanding any other term of this Agreement, the annual financial contribution of each party shall be limited to the amount set out in paragraph 4.1 provided that the party receives no more than twenty (20) Appeals in that year. In the event that a party receives more than twenty (20) Appeals in any year of the Term, it shall make a further financial contribution in the amount of fifty dollars (\$50.00) for each additional Appeal. Pelham shall render an invoice for each additional Appeal received by a party, which shall be payable in accordance with paragraphs 4.2 and 4.3 of this Agreement.
- 4.5. Notwithstanding any other term of this Agreement, if the total amount of the annual financial contributions of the parties exceeds the total amount of the invoices rendered by the hearing officer in any year of the Term, the excess shall be used to reduce, on an equal basis, the amount of subsequent annual financial contributions payable by each party pursuant to paragraph 4.1. Any excess funds remaining at the conclusion or termination of this Agreement shall be refunded to the parties on an equal basis.

#### **5. APPEAL HEARINGS**

- 5.1. Subject to paragraphs 5.3 and 6.4, Appeals shall be heard on a bi-monthly basis and shall be hosted by each of the parties (“the Host”) in accordance with the following rotation:
  - i. Grimsby;
  - ii. Lincoln;
  - iii. Niagara-on-the-Lake;
  - iv. Pelham;
  - v. Port Colborne;
  - vi. St. Catharines;
  - vii. Thorold; and
  - viii. Wainfleet.
- 5.2. Subject to paragraph 5.3 and section 6, Appeals shall be heard during the bi-monthly period in which they are received by a party.

- 5.3. Appeals shall be scheduled for hearing on the third Wednesday of every other month (“the Primary Hearing Date”). A second hearing date shall be scheduled for one (1) week following the Primary Hearing Date (“the Secondary Hearing Date”), other than in the month of December in each year of the Term, when no Secondary Hearing Date shall be scheduled. Where a Secondary Hearing Date is scheduled, it shall be used only where the number of Appeals scheduled for hearing in that bi-monthly period exceeds the number that can be heard on the Primary Hearing Date. In the event that the number of Appeals scheduled for hearing in the month of December in any year of the Term exceeds the number that can be heard on the Primary Hearing Date, the Appeals shall be scheduled for hearing in the order in which they were received by the Host and any Appeals that cannot be heard on the Primary Hearing Date shall be scheduled for hearing in the next bi-monthly period in accordance with section 6.
- 5.4. Subject to such other arrangements as may be made by the parties and/or the hearing officer, which may differ from but shall not be inconsistent with this Agreement, Appeal hearings shall commence at 9:00 a.m. on the Primary Hearing Date and, if applicable, the Secondary Hearing Date. Appeal hearings may be held in person or via Zoom, at the option of the person making the Appeal. All hearings that proceed by Zoom shall be recorded by the Host.
- 5.5. The Host shall provide the following facilities and services for Appeal hearings:
- i. One (1) room of a suitable size and configuration for conducting Appeal hearings, which is equipped with all furniture, equipment and amenities required for Appeal hearings to proceed in person or via Zoom in accordance with this Agreement;
  - ii. One (1) waiting room or breakout room for persons awaiting an Appeal hearing;
  - iii. Such other equipment or supplies as may be requested or required by the hearing officer in relation to the Appeal hearings; and
  - iv. One (1) employee of the Host to assist with Appeal hearings, including but not limited to preparing minutes of the proceedings.
- 5.6. The Host shall provide the facilities and services in paragraph 5.5 at no cost to the other parties. For greater certainty, the Host shall not request, and is not entitled to receive, any payment, reimbursement or compensation for the facilities and services provided in accordance with paragraph 5.5.
- 5.7. The parties acknowledge and agree that any administrative penalties and/or fees that are payable by a person making an Appeal in relation to the Appeal or pursuant to a decision of the hearing officer shall be payable solely to the party to which the Appeal pertains and not to the Host or any other party.

## **6. PROCEDURE UPON RECEIPT OF AN APPEAL**

- 6.1. Subject to paragraph 6.2, a party that receives an Appeal shall immediately notify the Host for the bi-monthly period in which the Appeal was received and shall submit the Appeal to the Host by providing all pertinent materials as soon as possible. The receiving party shall also notify Pelham of the Appeal for the purposes of paragraphs 3.1 and 4.4.

- 6.2. Despite paragraphs 5.2 and 6.1, in the event that a party receives an Appeal less than ten (10) days prior to the Primary Hearing Date for the bi-monthly period in which it was received, the Appeal shall be scheduled for hearing in the next bi-monthly period and shall be submitted to the Host for that bi-monthly period in accordance with paragraph 6.3.
- 6.3. Appeals must be submitted to the Host no less than ten (10) days prior to the Primary Hearing Date. Where an Appeal is submitted to the Host less than ten (10) days prior to the Primary Hearing Date, the Host shall determine if the Secondary Hearing Date was required prior to late submission of the Appeal and, if so, the Host shall schedule the Appeal to be heard on that date. If the Secondary Hearing Date was not otherwise required, the Appeal shall be scheduled for hearing in the next bi-monthly period.
- 6.4. Ten (10) days prior to the Primary Hearing Date, the Host shall review the number of Appeals that have been submitted and shall proceed as follows:
  - i. If no Appeals have been submitted, the Host shall take all necessary steps to cancel the Primary Hearing Date and the Secondary Hearing Date and to ensure that no cancellation fees are incurred.
  - ii. If Appeals have been submitted, the Host shall determine whether the Secondary Hearing Date is required. If the Secondary Hearing Date is not required, the Host shall take all necessary steps to cancel it and to ensure that no cancellation fees are incurred. If the Secondary Hearing Date is required, the Host shall prepare a schedule of Appeals to be heard on the Primary Hearing Date and the Secondary Hearing Date and shall provide it to all parties that have submitted Appeals.
  - iii. The Host shall provide all submitted Appeals to the hearing officer.
- 6.5. The party that receives an Appeal shall be responsible for notifying the person making the Appeal of the date on which it will be heard and shall provide the requisite amount of notice in accordance with any applicable by-law(s) of that party.
- 6.6. The Host shall receive Appeals from the parties and shall undertake the activities in paragraphs 6.3 and 6.4 at no cost to the other parties. For greater certainty, the Host shall not request, and is not entitled to receive, any payment or compensation for any activities undertaken in accordance with paragraphs 6.1, 6.3 and 6.4.
- 6.7. Notwithstanding paragraph 6.1, all records and information received by the Host in the course of its activities as the Host shall remain the property of the party providing them and shall not be divulged or produced to any entity other than the hearing officer. At the end of the bi-monthly period in which a party is the Host, it shall return all such records and information to the parties that provided them.
- 6.8. The parties acknowledge that persons making Appeals provide personal and other information as part of the Appeal. The parties agree to obtain such authorizations and/or consents as may be required by law to disclose and provide such information to the Host and the hearing officer, including any authorizations or consents required under applicable privacy legislation.

## **7. ADMINISTRATIVE MATTERS**

- 7.1. Notwithstanding any other term of this Agreement, none of the parties' employees, including those described in paragraph 5.5, shall be employees of any other party and no party or employee shall make representations to the contrary.
- 7.2. Each party undertakes to review the provisions of this Agreement with any appropriate local bargaining units for the purpose of seeking any necessary amendments to any applicable collective agreements to facilitate participation in this Agreement. Each party further undertakes to advise all other parties as soon as practicable if it becomes aware of any impediments or obstacles imposed by applicable collective agreements to the party meeting its obligations under this Agreement.
- 7.3. None of the parties shall be liable for any obligation incurred by any other party except as specified in this Agreement. The parties acknowledge and agree that each party's operations shall remain separate and further acknowledge and agree that each party is solely responsible for its own conduct and for the conduct of its employees.

## **8. INSURANCE AND INDEMNITY**

- 8.1. During the Term, each party shall obtain and maintain in full force and effect a policy of comprehensive general liability insurance with limits of not less than five million dollars (\$5,000,000.00) per occurrence for bodily injury and/or property damage and a policy of errors and omissions insurance with limits of not less than two million dollars (\$2,000,000.00). The policies shall provide for no less than thirty (30) days' notice of cancellation or non-renewal and shall name all other parties as additional insureds but only with respect to this Agreement.
- 8.2. Each of the parties will indemnify and save harmless all other parties and their officers, employees, contractors, agents and officials from any and all claims, actions, causes of action, demands, liabilities, costs or expenses arising from, occasioned by or caused wholly or in part by any failure of that party to comply with the provisions of this Agreement or by any wilful or negligent act or omission of that party or anyone for whom it is in law responsible.

## **9. AMENDMENT AND TERMINATION**

- 9.1. The parties may revise, alter or amend this Agreement only by mutual agreement. If at any time during the Term, the parties deem it necessary or expedient to make any revision, alteration or amendment, they may do so only by way of a written document, signed by the parties, which shall be appended to and form part of this Agreement.
- 9.2. This Agreement shall conclude at the end of the Term unless it is renewed pursuant to paragraph 1.3 or terminated earlier in accordance with paragraphs 9.3 or 9.4.
- 9.3. At any time during the Term, the parties may jointly agree in writing to terminate this Agreement on such terms and conditions as the parties consider appropriate.
- 9.4. Subject to section 10, any party may terminate this Agreement by written notice to all parties where one or more parties commits a material breach of its obligations under this Agreement and fails to remedy the default within thirty (30) days of being required by any non-defaulting party to do so.

- 9.5. Termination of this Agreement is without prejudice to the rights of a party against any other party or parties that may have accrued up to the date of termination.

## **10. DISPUTE RESOLUTION**

- 10.1. In the event that a dispute arises as to the interpretation, application and/or execution of this Agreement, including but not limited to any party's rights or obligations under the Agreement, an allegation of default and/or an allegation of material breach, the party that disputes another party's position or conduct shall immediately provide written notice of the dispute to all parties.
- 10.2. Where a notice of dispute is received in accordance with paragraph 10.1, the parties' Chief Administrative Officers shall attempt to resolve the dispute through negotiation for a period of thirty (30) days from the date on which the notice is delivered. The parties may extend the negotiation period if they agree that a reasonable extension is likely to resolve the dispute.
- 10.3. If a dispute cannot be resolved by the parties through negotiation, the parties shall refer the matter to arbitration by an arbitrator agreed on by the parties. The arbitrator shall direct the arbitration process and determine the dispute. The determination of the arbitrator is final and is binding upon the parties and their respective successors and permitted assigns.
- 10.4. Each party shall bear its own costs associated with the determination of disputes arising under this Agreement, including but not limited to legal costs and arbitration costs.

## **11. GENERAL**

- 11.1. This Agreement constitutes the entire agreement between the parties relating to the matters set out herein. There are no representations, promises, covenants or other terms relating to the subject matter of this Agreement and this Agreement supersedes any prior discussions, understandings or agreements between the parties in relation to its subject matter.
- 11.2. The invalidity or unenforceability of any particular term of this Agreement shall not limit the validity or enforceability of the remaining terms, each of which is distinct and severable from all other terms of this Agreement.
- 11.3. Waiver by a party of any provision of this Agreement in one instance shall not constitute a waiver in any other instance and any such waiver must be made in writing.
- 11.4. Any delay or failure on the part of any party to exercise or enforce any right, power or remedy conferred by this Agreement shall not constitute a waiver of same and shall not operate as a bar to that party exercising or enforcing said right, power or remedy at any subsequent time.
- 11.5. No party shall be considered in default of its obligations under this Agreement to the extent that a delay or failure to perform those obligations is due to an event beyond the control of the parties, including but not limited to fires, floods, acts of God, strikes, riots, war or hostilities, terrorism, lawful acts of public authorities and other events that cannot be reasonably foreseen or provided against.



- 11.6. This Agreement shall enure to the benefit of, and be binding upon, the parties and their respective successors and permitted assigns; however, this Agreement and the parties' associated rights and obligations are not assignable by any party without the prior written consent of all other parties.
- 11.7. This Agreement shall be governed by and construed in accordance with the law of the Province of Ontario and laws of Canada applicable therein.
- 11.8. This Agreement may be signed in counterpart, each of which is an original and all of which together constitute a single document. Counterparts may be executed in original or electronic form and may be exchanged by way of mail or PDF file delivered by email or facsimile transmission.

**IN WITNESS WHEREOF** the parties have executed this Agreement by their authorized representatives and agree to be bound thereby as of the latest date set out below.

**THE CORPORATION OF THE TOWN OF  
PELHAM**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the Corporation.

Date: \_\_\_\_\_

**THE CORPORATION OF THE TOWN OF  
GRIMSBY**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the Corporation.

Date: \_\_\_\_\_

**THE CORPORATION OF THE TOWN OF  
LINCOLN**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the Corporation.

Date: \_\_\_\_\_

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

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the Corporation.

Date: \_\_\_\_\_

**THE CORPORATION OF THE CITY OF PORT  
COLBORNE**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the Corporation.

Date: \_\_\_\_\_

**THE CORPORATION OF THE CITY OF ST.  
CATHARINES**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the Corporation.

Date: \_\_\_\_\_

**THE CORPORATION OF THE CITY OF  
THOROLD**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the Corporation.

Date: \_\_\_\_\_

**THE CORPORATION OF THE TOWNSHIP OF  
WAINFLEET**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the Corporation.

Date: \_\_\_\_\_