

THIS AGREEMENT made this _____ day of _____, 2023, and authorized by By-law No. 2020-156 of the City of St. Catharines.

B E T W E E N :

THE CORPORATION OF THE CITY OF ST. CATHARINES
(hereinafter called “St. Catharines”)

OF THE FIRST PART

- and -

THE CORPORATION OF THE CITY OF PORT COLBORNE
(hereinafter called “Recipient”)

OF THE SECOND PART

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

AND WHEREAS section 2(5) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c.4, as amended, authorizes a municipality to provide and/or receive fire protection services to or from other municipalities;

AND WHEREAS St. Catharines has been providing the Recipient with emergency communications services and the Recipient has requested that St. Catharines continue to provide its municipality with such services;

AND WHEREAS St. Catharines also provides similar services to Niagara-on-the-Lake, Pelham, Haldimand, West Lincoln, Grimsby, Wainfleet, Thorold, Lincoln and Norfolk;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements herein contained and subject to the terms and conditions hereinafter set out the parties hereto agree as follows:

1. St. Catharines agrees to provide the Recipient with emergency communications services and required backup operations for a fifteen (15) year period commencing on January 1, 2023 to continue until December 31, 2037 (the "Term").
2. The Recipient agrees that it shall be responsible to pay to St. Catharines the annual sums as highlighted in yellow on Schedule "A" attached hereto. In every case the annual amounts shall be payable by the Recipient in quarterly instalments, in advance and upon the receipt of an invoice from St. Catharines.
3. The parties hereto agree that in the event St. Catharines should be successful in negotiating additional users to this emergency communications service, that the rate referred to herein may be renegotiated to reflect other users, however the Recipient's share will not increase except as outlined in paragraph 2 herein.
4. Any subsequent renewal of this Agreement is subject to changes in terms and conditions, including fees payable, as agreed to by the parties.
5. St. Catharines, together with all Municipalities that have an agreement with St. Catharines for the provision of fire dispatch services shall form a Joint Operating Committee (hereinafter "JOC") to oversee the provision of emergency communications services including Geographical Information Systems, Information Technology, Standard Operating Guidelines, and performance targets for St. Catharines' Emergency Communications Centre (hereinafter the "Centre"). This JOC will consist of the Fire Chief, or his or her deputies, of St. Catharines, the Fire Chiefs, or their deputies, of each municipality for which St. Catharines provides dispatch services, and communications support personnel.
6. The JOC shall hold two (2) meetings per year during each year of the Term, and all meetings of the JOC shall have an agenda and recorded minutes.
7. On an ongoing basis the JOC shall review staffing and service levels of the Centre and shall forward any recommendations to the CAO's of each municipality.

8. The parties acknowledge that:

a) The overall responsibility for the Communication Division of the St. Catharines Fire Services will be under the direction of a senior (non-union) member of the St. Catharines Fire Services.

b) After hours and holiday supervision of the Centre will be provided by Communications Coordinators, and/or the on duty Platoon Chief of the St. Catharines Fire Services;

c) Operating costs to staff, operate, maintain, repair and replace the Centre will be determined and administered by St. Catharines in its sole discretion. For added clarity, costs related to Centre building upgrades and improvements shall be borne by St. Catharines;

d) A minimum of two (2) Public Safety Telecommunicators will be present at the Centre at all times; and

e) City of St. Catharines Information Systems support staff and Radio Technician will be available Monday to Friday 8:30am to 4:30pm for any supported platforms. After hours assistance shall be coordinated through the on-call St. Catharines Senior Officer.

9. The Recipient shall be responsible for the following:

a) To provide high speed internet connections dedicated to each station printer and terminal which is to receive the computer aided dispatch transmittals from St. Catharines;

b) To provide existing or compatible radio systems and hardware to receive the transmittals from St. Catharines;

- c) To maintain all required equipment, owned by the Recipient , including its radio system and hardware and high speed internet connection, in good working order at all times;
- d) To provide master response information run cards and any other pertinent information;
- e) To provide St. Catharines and/or St. Catharines' geographical information systems (GIS) provider all necessary information for the operation of the dispatch system, including but not limited to maps, single line road network data, hydrant locations, assessment data, and any and all other pertinent data as required by the Fire Chief for St. Catharines and to immediately notify St. Catharines of any inaccuracies it discovers;
- f) To continue to be responsible for receiving all non-emergency and business calls directly;
- g) Subject to the review and recommendation of the JOC and authorized by the Council of the Recipient, to pay costs for any additional work arising in relation to this Agreement but that is not specifically identified herein; and
- h) To upgrade all of the Recipient's radio systems used for communication under this Agreement to that of a digital standard prior to the end of the Term. The Recipient acknowledges and agrees to upgrade its radio systems pursuant to the radio replacement plan of the Niagara Regional Police Services and that such upgrade shall occur on the ninth anniversary of the Term (i.e. 2032).

10. St. Catharines agrees that it shall:

- a) Provide the Recipient with computer aided fire dispatch (CAD) services twenty-four (24) hours a day, seven (7) days a week, which services shall include

the receipt, recording and retransmission of all calls for Fire Department Emergency Services for the Recipient, other than non-emergency and business calls as set out in paragraph 9 f) herein;

b) Maintain the equipment located in St. Catharines, and other locations as may be required from time to time for the provision of the services outlined herein;

c) Retain all voice recordings for a period of up to one hundred and eighty (180) days and all written and CAD records for a period of up to seven (7) years, and provide copies of secure voice recordings upon request from the Fire Chief of the Recipient;

d) Provide monthly and annual call for service reports to the Recipient based on dispatch time reports, call volume and nature of the calls;

e) Provide the necessary training and supervision to ensure that its employees are in compliance with the Operational Guidelines of St. Catharines Fire Service and shall work towards operating at the National Fire Protection Association 1710 and Chapter 15, Standard for Dispatch Operations Level (hereinafter "NFPA 1221"). The parties acknowledge that such performance targets are targets only and not an obligation of St. Catharines; and

f) Use best efforts for communications personnel to meet the current edition of NFPA 1061 Standard for Public Safety Telecommunicator Professional Qualifications, without prejudice.

11. All computer aided dispatch incident records and data in connection with an incident ("Data") will belong to the party to which the incident relates, or as required by federal or provincial legislation. Each party will be responsible for the storage, integrity, retention and destruction of its own Data. St. Catharines will not be responsible for the Recipient's storage, integrity, retention or destruction of its Data.

12. Commencing on the 10th anniversary of the Term, the parties agree that either party shall have the right to terminate this Agreement, for any purpose whatsoever, by giving twenty-four (24) months prior written notice to the other party, and no compensation shall be payable for any damages incurred.

13. If either party to this Agreement is in breach of any of its obligations under this Agreement, the other party may give a notice in writing of the breach to the defaulting party and request that the default be remedied. If the party in breach fails to remedy the breach within fifteen (15) days after the date of written notice, then this Agreement may be terminated by written notice of termination given by the complaining party, such termination to be effective fifty (50) days from the date of the notice of termination. In the event that notice of termination is provided by either party, St. Catharines shall continue to provide the services described herein until the effective date of the termination.

14. The Recipient acknowledges that St. Catharines has incurred substantial costs in upgrading the emergency services infrastructure required to provide the services in this Agreement. If this Agreement is terminated prior to the expiration of the Term as a result of the Recipient's breach of this agreement under section 13, the Recipient shall continue to pay the annual sums in accordance with section 2, as well as any other costs which become owing, until all such payments which are owed throughout the Term of this Agreement or would have been owed but for the earlier termination, are paid for in full. If the Agreement is terminated early by the Recipient pursuant to section 13 due to a breach by St. Catharines, no further payment shall be owed by the Recipient to St. Catharines after the effective date of termination.

15. Each party to this Agreement (the "First Party") shall indemnify and hold harmless the other party and its officers, directors, employees, members of council, assignees, licensees, sub-licensees, customers and agents (the "Other Party") from any and all claims, losses, liabilities, damages, actions, debts, expenses and costs which result from and/or are based on the acts, omissions, default or negligence of the First Party or those for whom the First Party is at law responsible.

16. St. Catharines shall obtain, pay and maintain in effect for the duration of this Agreement Commercial General Liability Insurance and Errors and Omissions Liability Insurance, each in the amount of not less than Two Million Dollars (\$2,000,000.00), naming the Recipient as an additional insured. St. Catharines shall deliver to the Recipient a certificate of insurance for such coverage.

17. No waiver by either party to this Agreement of any default, breach or non-observance by the other party at any time or times in respect of any provision herein contained shall operate as, or be deemed to be, a waiver of the non-defaulting party's rights hereunder in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat or affect in any way such party's rights in respect of any such continuing or subsequent default or breach, and no waiver shall be inferred from or implied by anything done or omitted by the non-defaulting party save only express waiver in writing.

18. St. Catharines will not disclose or disseminate confidential information received by the Recipient to anyone other than those employees with a need to know. Nothing in this section precludes St. Catharines from complying with the requirements of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended and subject to the provisions of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, CHAPTER E.9, as amended, it is understood and agreed by the Recipient that this Agreement and any information or material submitted to St. Catharines under this Agreement may be subject to disclosure under the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended.

19. This Agreement embodies the entire Agreement of the parties hereto with regard to the matters dealt with herein, and no understandings or agreements, verbal or otherwise, exist between the parties except as herein expressly set forth.

20. This Agreement may only be amended in writing upon being signed by both parties.

21. Any notice required by any provision of this Agreement shall be given in writing addressed, in the case of notice to St. Catharines, to it at:

The Corporation of the City of St. Catharines
50 Church Street
P. O. Box 3012
St. Catharines, Ontario L2R 7C2
Attention: City Clerk

and, in the case of notice to Recipient, to it at:

The Corporation of the City of Port Colborne
ATTN: Fire Chief
3 Killaly Street West,
Port Colborne, ON L3K 6H1

and sent by prepaid registered mail. The time of giving such notice shall be conclusively deemed to be the second business day after the day of such mailing. Such notice shall also be sufficiently given when it shall have been delivered, in the case of notice to St. Catharines, to the City Clerk, and in the case of notice to the Recipient, by delivery to the City Clerk. Such notice, if delivered, shall be conclusively deemed to have been given and received at the time of such delivery.

22. Neither party shall assign this Agreement nor any right or obligation hereunder without first obtaining the prior written consent of the other party.

23. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada.

24. The invalidity or unenforceability of any provision or part of any provision of this Agreement shall not affect the validity or enforceability of any other provision or part thereof, and any such invalid or unenforceable provision or part thereof shall be deemed to be separate, severable and distinct.

25. Nothing in this Agreement should be construed to create a partnership, joint venture or employer-employee relationship between St. Catharines and the Recipient.

26. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their successors and assigns.

27. Each party agrees that no portion of this Agreement shall be interpreted less favourably to either party because that party or its counsel was primarily responsible for the drafting of that portion.

28. This Agreement may be executed in any number of counterparts, either electronically or manually, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

29. The following sections, and all applicable cross-referenced sections and schedules, will continue in full force and effect from the date of expiry or termination of this Agreement: section 2, section 15, section 18, section 23, section 24, section 25, section 26, section 27, and section 29.

[remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF the parties hereof have hereunto affixed their corporate seals under the hands of their proper officers duly authorized in that behalf.

SIGNED, SEALED AND DELIVERED
in the presence of

THE CORPORATION OF THE CITY OF
ST. CATHARINES

Dave Upper, Fire Chief
As authorized under By-law 2020-156

THE CORPORATION OF THE CITY OF
PORT COLBORNE

MAYOR

CLERK

SCHEDULE "A"
PAYMENT SCHEDULE

Port Colborne Proposed CAD Partner Allocation 15 Year (2023-2037)			
Year # (Contract)	Year	Contract Target Increase	Contract Amount (CAD \$)
1	2023	3.00%	86,805
2	2024	4.00%	90,278
3	2025	4.00%	93,889
4	2026	3.50%	97,175
5	2027	3.50%	100,576
6	2028	3.00%	103,593
7	2029	3.00%	106,701
8	2030	2.50%	109,368
9	2031	2.50%	112,103
10	2032	2.50%	114,905
11	2033	2.50%	117,778
12	2034	2.50%	120,722
13	2035	2.50%	123,740
14	2036	2.50%	126,834
15	2037	2.50%	130,005
Total Port Colborne Year Contract (2023-2037)			\$ 1,634,471

*The Contract Target Increase, and corresponding Contract Amount, is subject to change in accordance Annual Inflation and with the formula below. In any given year of the contract, Annual Inflation shall be calculated in accordance with the Consumer Price Index (Bank of Canada) for the month of December.

Should "Annual Inflation" exceed twice the Contract Target Increase, for each 1% of the overage, the Contract Target Increase shall increase by an additional 0.25% for the given year. After Year 3 (i.e. 2026 and beyond), should Annual Inflation fall under 2% of the Contract Target Increase, for each 1% of the shortage, the Contract Target Increase shall decrease by 0.25% for the given year.