

THIS AGREEMENT made this 1st day of April, 2021,

Between:

THE CORPORATION OF THE CITY OF WELLAND

(hereinafter referred to as "Transit")

OF THE FIRST PART

AND

THE CORPORATION OF THE CITY OF PORT COLBORNE

(hereinafter referred to as the "City")

OF THE SECOND PART

WHEREAS Transit has agreed to provide transit services to the City (the "Services") within Port Colborne with respect to the transit routes as more particularly described in Schedule "A" and being the Port Colborne East and West (collectively referred to herein as the "**Routes**");

AND WHEREAS the City has agreed to provide compensation for the provision of the Transit Services as detailed herein;

AND WHEREAS the parties previously entered into an agreement authorized by Council on December 4, 2018 by By-law 2018-113 with attached agreement (undated) for the provision of Transit Services, which terminated as of March 31, 2020;

AND WHEREAS Transit continued to provide Transit Services to the city without written agreement for the period ending March 31, 2021;

AND WHEREAS the parties wish to enter into this agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. In this Agreement "Service Cost" shall mean the amount set forth in Schedule "B" hereof.
2. This Agreement shall commence on the 1st day of April, 2021 and terminate on the 31st day of December, 2021 (the "Term").
3. This Agreement may be extended upon mutual agreement between the parties with ninety (90) days notice.
4. The City or their designate (Transit Advisory Committee) shall continue to meet with Transit to enhance all matters pertaining to the provision of public transit service by Welland Transit in Port Colborne.
5. Transportation data pertaining to the Services, as may be reasonably required, shall be available to both parties during normal working hours upon request.
6. Each of the parties shall maintain and provide proof of general liability insurance of not less than \$15,000,000 naming the other party as an additional insured. The proof of insurance shall be satisfactory to the other party acting reasonably and shall contain a provision requiring the insurer to serve the other party at least thirty (30) days written notice of any cancellation of such policy. In addition, Transit agrees to maintain vehicle liability insurance at not less than \$ 10,000,000.
7. Each party (the "Indemnifying Party") agrees to indemnify and hold harmless the other party from and against all actions, causes of actions, liabilities, claims and demands whatsoever, including third party claims with respect to any damage or loss whatsoever (including without limitation, direct or indirect, special or incidental or consequential bodily injury or loss of life) arising or resulting out of any negligence by the Indemnifying Party in connection with the Services provided under this Agreement.
8. Transit will not be held responsible for any service disruptions due to unforeseen circumstances (i.e. weather, accidents, strikes, traffic congestion, detours, road closures, pandemics, and mechanical breakdowns). The responsibilities of Transit shall be as follows:
 - (i) to operate the Routes in accordance with the schedules set out in Schedule "A" attached hereto;

- (ii) at its sole cost and expense, to provide the necessary buses and manpower to operate the Services including all administration and licensing requirements;
- (iii) at its sole cost and expense, to maintain all buses in a good and safe working order and condition;
- (iv) not to change the hours or the level of service with respect to the Routes within the City of Port Colborne limits, without the prior written consent of the City;
- (v) to invoice the City monthly for the Service Cost , plus HST, with a monthly ridership report;
- (vi) to provide Transit information to customers, as well as assist with marketing initiatives including print and website materials;
- (vii) to work with the City to support post-secondary transportation connections, including monthly post-secondary ridership totals;
- (viii) to work with the City to ensure fare media employed on the City's transit services are acceptable to Transit;
- (ix) to provide any bus stop signage to the City for installation;
- (x) to appoint one person to the Port Colborne Transit Advisory Committee;
- (xi) to ensure accessibility standards are in compliance with the Accessibility for Ontarians with Disabilities Act (Ontario) with regard to the operation of the buses and the operators; and
- (xii) to investigate any new revenue sources, such as advertising, and other cost saving measures which could reduce the Service Cost.
- (xiii) To review new technologies, which would better serve the customer experience and enable operational efficiencies.
- (xiv) To credit the City with all revenues from the post secondary U Pass Agreements for students travelling on the Community Bus routes.

8. The responsibilities of the City shall be as follows:

- (i) to pay the Transit a monthly fee ~~within 30 days of receipt of invoice~~ based upon the Service Cost as set out in Schedule "B" to this Agreement and as amended from time to time pursuant to the terms of this Agreement for the provision of the Services;
- (ii) to work with Transit to ensure there are common fares;
- (iii) to maintain all stops and or shelters on the bus routes within the municipal boundaries of Port Colborne;
- (iv) to determine the level of service to be operated on the Routes and to give to Transit at least one sixty days (60) days written notice prior to December 31, 2021. Any increase or reduction in the level of service shall be accompanied by a corresponding increase or reduction in the Service Cost agreed upon by the parties, acting reasonably, and pro- rated by the increase or decrease in the number of days of service being provided and the number of hours of Services provided;
- (v) to provide for the installation of benches and shelters, as required;
- (vi) to provide Transit with proper notice of any construction, road closures and winter events which may interrupt the transit service; and
- (vii) to ensure that all bus stops and amenities comply with the Accessibility for Ontarians with Disabilities Act (Ontario).

9. Any notices permitted or required under this Agreement shall be given by personal delivery, email 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 and notices personally delivered shall be deemed received on the day they are delivered and notices sent by email shall be deemed received on the next business day.

To the City at: City Hall, Attention: City Clerk
66 Charlotte Street
Port Colborne, Ontario L3K 3C8

To Transit at: City Hall, Attention: City Clerk
60 East Main Street
Welland, Ontario L3B 3X4

10. Any and all disputes, claims or controversies arising out of or in any way connected with this Agreement, its negotiation, performance, breach, existence or validity shall be referred to and finally settled by binding arbitration conducted by three arbitrators in accordance with the Arbitration Act (Ontario). The place of the arbitration shall be in Port Colborne, Ontario. The language of the arbitration shall be English. The parties shall each appoint an arbitrator within 10 days following written notification of a dispute by one of the parties to the other. If a party fails to appoint an arbitrator within such a 10 day period, the parties agree that the party who has selected an arbitrator may make application to a judge of the Ontario Superior Court of Justice (the "Court") for the appointment of the second arbitrator; the

appointment of the Court of the second arbitrator shall be final and binding. The two arbitrators so appointed shall be within 10 days following their appointment select a third arbitrator, failing which the parties agree to make application to the Court for the appointment of a third arbitrator; the appointment by the Court of the third arbitrator shall be final and binding. The parties agree that the third arbitrator shall chair the arbitration. The arbitration shall be carried out in accordance with the Arbitration Act (Ontario). Any decisions so made by the arbitrators shall be final and binding upon the parties and there shall be no appeal from the decision of the arbitrators. The cost of the arbitration (other than the legal fees and disbursements of each party's legal counsel) shall be borne equally by the parties.

- 11. This Agreement shall be binding upon the parties hereto, their successors and assigns and time shall be of the essence.
- 12. This Agreement and the Schedules hereto constitute the entire agreement between the parties pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, warranties, representations or other agreements between the parties in connection with the subject matter of this Agreement, whether oral or written, expressed or implied, statutory or otherwise, except as specifically set out in this Agreement.
- 13. Nothing in the Agreement shall be deemed in any way or for the purpose to constitute any party, the partner of any other party.
- 14. No modification, supplement, termination, waiver or amendment to the Agreement may be made unless agreed to by the parties in writing.
- 15. The rights of either party hereunder shall not be assignable without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- 16. This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their Corporate Seals duly attested to by the hands of the proper signing officers in that behalf.

THE CORPORATION OF THE CITY OF WELLAND

Frank Campion, Mayor

Tara Stephens, City Clerk

THE CORPORATION OF THE CITY OF PORT COLBORNE

William C. Steele, Mayor

Amber LaPointe, City Clerk

Port Colborne Community Bus Summary

Schedule A:

701		PORT COLBORNE EAST			
		👤 Flag Stop Bus Route 👤			
Time of Day	Port Colborne City Hall (Depart)	Vale Health & Wellness Centre	Colborne St & McRae Ave	Fares St & Bell St	Port Colborne City Hall (Arrive)
MONDAY - FRIDAY					
AM	7:00	7:11	7:17	7:22	7:27
	and every 60 minutes until				
	11:00	11:11	11:17	11:22	11:27
PM	1:00	1:11	1:17	1:22	1:27
	and every 60 minutes until				
	5:00	5:11	5:17	5:22	5:27

Schedule B:

The Port Colborne Community East and West Routes constitute the following hours and subsequent costing.

Hours of Service:

11.5 hrs. per day (including 'Travel Time' paid to Operators)

Days of Service:

250 days per year (Mon. to Fri. less 10 statutory holidays)

Hourly Cost of Service:

\$100.79 per hour Total Annual Cost of Service: \$289,771.25