

THIS AGREEMENT made in triplicate this ____ day of August, 2020.

- BETWEEN -

THE REGIONAL MUNICIPALITY OF NIAGARA

Hereinafter called "Niagara Region" (of the first part)

- AND –

THE CORPORATION OF THE TOWN OF PELHAM

Hereinafter called "Pelham" (of the second part)

RECITALS:

1. Niagara Region is undertaking an on-demand inter-municipal transit service on a pilot project basis within the municipalities of the Township of Wainfleet, Township of West Lincoln, Town of Pelham, Town of Grimsby and Town of Lincoln through a company identified as River North Transit LLC (hereinafter the "Service Provider").
2. Niagara Region and Pelham entered into discussions regarding the possibility of Niagara Region using the fleet of inter-municipal on-demand transit vehicles forming part of the pilot project also being used for intra-municipal transit rides solely within the boundaries of the Town of Pelham.
3. Pelham has sole jurisdiction regarding intra-municipal transit within the geographic boundaries of the Town of Pelham.
4. Pelham has determined that the pilot project will be of benefit to its residents; has asked Niagara Region to include intra-municipal trips within the Town of Pelham in the pilot project and agreed to contribute funds to assist Niagara Region's provision of same;
5. The Province of Ontario provides funding through the Provincial Gas Tax (PGT) Program with funding levels being dependent on both the population of the applying municipality and ridership on the applicant's transit system;
6. The Province of Ontario funding formula counts the populations of local municipalities who have transit services as benefiting the local municipality and subtracts the same amount from the calculation of Niagara Region's funding;
7. Pelham will not be operating a transit system independently of the service provided by Niagara Region in accordance with this agreement and will not be applying to the PGT Program for rebates.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and other good and valuable consideration, the sufficiency whereof is acknowledged hereby by the parties, the parties hereto agree with each other as follows:

1.1 Definitions

In this Agreement, unless something in the subject matter or context is inconsistent therewith:

- (a) "Agreement" means this Agreement and all schedules attached hereto and all amendments made hereto and thereto by written agreement between the Parties;
- (b) "Launch Date" means the first day upon which the Pilot Project transit service becomes available within the Town of Pelham which date is tentatively scheduled to be August 17, 2020;
- (c) "Parties" mean Pelham and Niagara Region and "Party" means Pelham or Niagara Region as the context requires;
- (d) "PGT Program" means the Provincial Gas Tax Program administered and funded by the Province of Ontario;
- (e) "PGT Funding Formula" means the method by which the PGT Program allocates payments from its fund;
- (f) "Pilot Project" means the provision of both intra-municipal and inter-municipal transit services to residents of Pelham as well as to residents of other west Niagara local municipalities through a contract with the Service Provider;

2.1 PGT Program

- (a) Pelham agrees not to submit an application to the PGT Program so that Pelham's population will not be removed from the application of the PGT Funding Formula to Niagara Region's application.
- (b) Pelham consents to Niagara Region submitting an application to the PGT Program using the financial, population, ridership and other data as may be attributable to intra-municipal transit ridership within the Town of Pelham generated by the Pilot Project.
- (c) The Parties agree that if this Agreement is terminated in accordance with Section 2.4, Pelham shall be entitled to submit an application to the PGT Program for the calendar year following the end of the Agreement so as to not conflict with Pelham's covenant not to submit an application that results in a reduction in population for Niagara Region's submission.

2.2 Niagara Region's Covenants

- (a) Niagara Region agrees to include intra-municipal on-demand transit trips within the Town of Pelham as part of its Pilot Project, provided the number of trips available, hours of operations, fees charged and all other operational decisions related to the Pilot Project shall be sole the responsibility of Niagara Region.

- (b) Niagara Region will notify Pelham in writing concerning the first date upon which transit service through the Pilot Project is available within the Town of Pelham.
- (c) In the event of termination, prior to the anniversary date of the Launch Date, by Niagara Region in accordance with section 2.4 of this Agreement, Niagara Region shall return on a pro-rata basis the payment made by Pelham in accordance with section 2.3 of this Agreement.

2.3 Pelham Covenants

Pelham agrees that:

- (a) Pelham shall pay to Niagara Region the sum of \$178,000 each year during the Term divided into three equal instalments as follows:
 1. The first instalment to be made not later than the 10th day following the Launch Date;
 2. the second payment to be made on January 29, 2021; and
 3. the final payment to be made May 31, 2021.

Provided if this Agreement is renewed for a second year in accordance with section 2.4, the payments in the second year shall be made on those dates being the anniversary of each of the first year payments.

- (b) Pelham authorizes and delegates to Niagara Region the right to provide intra-municipal transit in the form of the Pilot Project within the borders of the Town of Pelham and expressly consents to Niagara Region and/or its Service Provider picking up and delivering residents wholly within the boundaries of the Town of Pelham.

2.4 Term

- (a) This agreement shall be effective on the date on which it has been executed by both Parties and unless terminated or renewed in accordance with this section 2.4 of the Agreement, shall continue for a period of one year from the Launch Date.
- (b) Niagara Region and Pelham shall have the right by mutual agreement to renew this Agreement for a further one year term commencing on the anniversary of the Launch Date. Either party may initiate negotiation of the renewal by provision of notice in writing to the other party not less than sixty (60) days preceding the anniversary of the Launch Date.
- (c) Niagara Region shall have the right in its sole discretion to terminate this Agreement on ninety (90) days' written notice to Pelham.

2.5 Release of Claims

- (a) In the event that the whole, or substantially all material provisions of this Agreement including but not restricted to Niagara Region's covenant to provide intra-municipal transit within the boundaries of the Town of Pelham is deemed invalid or void, then this

agreement shall be at an end and the Parties agree that each shall and do hereby release the other from all manner of claims they may now have or may in the future have arising from the execution of this Agreement, save that Niagara Region in such an event shall continue to be liable for the return of a pro-rata share of the payment made by Pelham in accordance with section 2.3 of the Agreement.

2.6 Binding Effect and Enurement

This Agreement shall enure to the benefit of and be binding upon the Parties hereto, their heirs, next of kin, beneficiaries, executors, administrators, successors and assigns.

2.7 Assignment of Agreement

This Agreement shall not be assigned or transferred by either Party without obtaining the prior written consent of the other Party.

2.8 Entire Agreement

The Agreement including the schedules referenced in this Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understanding and agreements between the Parties with respect thereto. 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.

2.9 Jurisdiction, Amendments and Waivers

This Agreement is governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract. The parties hereby irrevocably and unconditionally attorn to the jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom. No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by all the Parties hereto. 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 same and unless otherwise provided in the written waiver, shall be limited to the specified breach waived.

2.10 Severability

In the event that any provision or term of this Agreement is deemed invalid or void, in whole or in part, by any court of competent jurisdiction, the remaining terms and provisions of this Agreement remain in full force and effect.

2.11 Notice

- (a) Any notice given or required under this Agreement shall be deemed to be sufficiently and effectually given if delivered by hand or mailed by prepaid registered post, or sent by facsimile transmission, addressed as follows:

- i) In the case of Niagara Region:

The Regional Municipality of Niagara
 1815 Sir Isaac Brock Way
 P. O. Box 1042
 Thorold, Ontario L2V 4T7
 Attention: Regional Clerk
 Fax: (905) 835-2969

- ii) In the case of Pelham:
 The Corporation of the Town of Pelham
 20 Pelham Town Square
 P. O. Box 400
 Fonthill, Ontario L0S 1E0
 Attention: Town Clerk
 Fax: 1-866-670-4020

or to such other address or number of which either party may from time to time notify the other in writing.

- (b) If any such notice is so given, it shall be conclusively deemed to have been given and received on the date of delivery if delivered, on the next business day if transmitted by facsimile transmission, and on the fifth calendar day following the mailing thereof, if sent by mail as aforesaid.

2.12 Signing in Counterparts

The parties agree that the execution of this Agreement may be facilitated through a facsimile copy and/or this Agreement may be executed in several counterparts and any such facsimile copy and any such counterpart shall be deemed to be an original and such facsimile copies or such counterparts together shall constitute one and the same instrument and shall have the same force and effect as an executed original.

[SPACE LEFT INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF the Parties have caused this Agreement to be duly executed by their duly authorized signing officers as of the date preceding their name.

THE CORPORATION OF THE TOWN OF PELHAM

Per: _____

Name:

Position:

Per: _____

Name:

Position:

I/We have authority to bind the Corporation.

THE REGIONAL MUNICIPALITY OF NIAGARA

Per: _____

Name:

Position:

Per: _____

Name:

Position:

I/We have authority to bind the Corporation.