

THE CORPORATION OF THE TOWN OF LINCOLN

("Lincoln")

- and -

THE CORPORATION OF THE TOWN OF PELHAM

("Pelham")

AGREEMENT TO ESTABLISH A UNION PUBLIC LIBRARY

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 3 of the *Public Libraries Act*, R.S.O. 1990, c. P. 44 ("*Public Libraries Act*") provides that the council of a municipality may by by-law establish a public library; and

AND WHEREAS section 5 of the *Public Libraries Act* provides that the Councils of two or more municipalities may make an agreement for the establishment of a union public library;

AND WHEREAS the Councils of the municipalities of Pelham and Lincoln (each "a party" and collectively "the parties") wish to enter into an agreement to establish a union public library pursuant to section 5 of the *Public Libraries Act*;

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. ESTABLISHMENT OF THE LINCOLN PELHAM UNION PUBLIC LIBRARY

- 1.1. The parties hereby agree that a union public library shall be established pursuant to and in accordance with the provisions of the *Public Libraries Act* to serve Lincoln and Pelham ("the Lincoln Pelham Union Public Library").

2. TERM

- 2.1. This Agreement comes into effect on the date it is signed by the parties or, should the parties sign this Agreement on different dates in accordance with section 12.9, on the latest date on which it is signed by a party, and shall continue indefinitely unless it is amended or terminated in accordance with the provisions herein.

3. THE LINCOLN PELHAM UNION PUBLIC LIBRARY BOARD

- 3.1. The Lincoln Pelham Union Public Library shall be under the management and control of a union board as described in the *Public Libraries Act*, which shall be a corporation incorporated pursuant to the *Not-for-Profit Corporations Act, 2010*, S.O. 2010, c. 15 and shall be known as The Lincoln Pelham Union Public Library Board ("the Board").

- 3.2. The Board shall be composed of eleven (11) members of the communities served by the Lincoln Pelham Union Public Library and shall be appointed by the Councils of the parties in accordance with the following rules:
- i. Every member of the Board shall meet the qualifications prescribed by section 10 of the *Public Libraries Act*;
 - ii. Lincoln and Pelham shall each appoint one (1) member of Council to the Board;
 - iii. Lincoln and Pelham, or either of them, may, but are not required to, appoint a second member of Council to the Board, and any such member of Council shall be counted toward that party's total number of appointees under paragraphs 3.2 iv. and 3.2 v. of this Agreement;
 - iv. Six (6) members of the Board, including the appointed member(s) of Council for Lincoln, shall be residents of Lincoln, which accords with the proportion of costs payable by Lincoln pursuant to section 8 of this Agreement; and
 - v. Five (5) members of the Board, including the appointed member(s) of Council for Pelham, shall be residents of Pelham, which accords with the proportion of costs payable by Pelham pursuant to section 8 of this Agreement.

4. ASSETS AND LIABILITIES

- 4.1. Upon entry into this Agreement, the public library boards established for Lincoln and Pelham are dissolved and the assets and liabilities of those public library boards are vested in and assumed by the Board, subject to the following exceptions:
- i. Ownership of any existing library building(s) owned by a party shall remain with that party. Responsibility for capital repairs to any such existing library building(s) shall be addressed in separate Facilities Agreements to be established between the Board and each party to this Agreement.
 - ii. If a party and/or a former public library board serving that party had established a capital reserve account for the sole purpose of expanding and/or renovating any existing library building(s), that reserve account shall be kept separate for the sole purpose of building expansion and/or renovation of said existing library building(s) and shall be identified as a separate capital reserve within the financial accounts of the Board.
 - iii. If a party and/or a former public library board serving that party had established a specific reserve account for other library purposes, that reserve account shall be kept separate for the identified purposes and shall be identified as a separate specific reserve within the financial accounts of the Board.
 - iv. The Board shall maintain a joint operating reserve account to which the parties shall contribute surplus funds annually in accordance with the proportions set out in section 8 of this Agreement. Should the balance of the joint operating reserve reach five percent (5%) of the Lincoln Pelham Union Public Library operating budget, any surplus shall be deposited annually into the capital reserve accounts described in paragraph 3.1 ii. in accordance with the proportions set out in section 8 of this Agreement.

- v. If a party and/or a former public library board serving that party had established a charitable trust for the sole purpose of receiving financial donations, the charitable trust account shall be kept separate for the purpose of receiving such financial donations and shall be identified as a separate account within the financial accounts of the Board.
- 4.2. Other than donations received via a charitable trust as set out in paragraph 3.1 v., all donations received by a party and/or a former public library board for library purposes prior to this Agreement shall vest in and be assumed by the Board. Notwithstanding the foregoing, the parties agree that where a donation is made for a purpose specified by the donor, it shall be allocated and applied in accordance with that purpose.
- 4.3. Other than donations received via a charitable trust as set out in paragraph 3.1 v., all donations received by the Lincoln Pelham Union Public Library or the Board shall be the property of the Board. Notwithstanding the foregoing, the parties agree that where a donation is made for a purpose specified by the donor, it shall be allocated and applied in accordance with that purpose.

5. POWERS AND DUTIES OF THE LINCOLN PELHAM UNION PUBLIC LIBRARY BOARD

- 5.1. The Board shall have the powers and duties prescribed under the *Public Libraries Act* and, without limiting the generality of the foregoing, the Board shall:
- i. Operate a library system with a minimum of four (4) locations that represent the present geographical locations of libraries in Lincoln and Pelham and ensure that library operations are conducted in accordance with the *Public Libraries Act* and its regulations;
 - ii. Employ a Chief Executive Officer, who shall have general supervision over and direction of the operations of the Lincoln Pelham Union Public Library and its staff, shall attend all Board meetings and shall have such other powers and duties that the Board assigns to him or her from time to time;
 - iii. Enter into an employment contract with the Chief Executive Officer described in paragraph 4.1 ii., which contract shall set out the terms and conditions of his or her employment including salary, benefits, vacation and such other terms as are necessary, and which terms and conditions shall be set by the Board;
 - iv. Review all library locations every four (4) years, with the first such review to take place four (4) years after this Agreement is signed, to ensure that such locations are appropriate for the purposes of providing a comprehensive and efficient public library service that reflects community needs; and
 - v. Have exclusive control of the disbursement of the finances of the Lincoln Pelham Union Public Library and apply all revenues and profits of all property of the Board solely to the establishment, operation and maintenance of a public library service.

6. ANNUAL ESTIMATES OF COSTS

- 6.1. On or before the first day of December in each year of this Agreement, the Board shall prepare, adopt and submit to the Councils of Lincoln and Pelham estimates of all sums required during the upcoming year for the purposes of the Board as required by section 24 of the *Public Libraries Act*. For greater certainty, such estimates:
- i. Shall set forth the estimated revenues and expenditures of the Board;

- ii. Shall set forth the proportion of the estimates to be charged to each of Lincoln and Pelham; and
 - iii. May provide for capital expenditures to be made using funds accumulated and/or received by the Board during the previous year.
- 6.2. If the estimates are approved or amended and approved by the Council or Councils of the party or parties representing more than one-half of the population of the area for which the Board was established, then such approvals are binding on all parties to this Agreement in accordance with section 24 of the *Public Libraries Act*.
- 6.3. Notwithstanding any other provisions of this Agreement, in the second and third years of this Agreement, the Board shall not prepare, adopt or submit estimates that set forth an annual increase of more than two percent (2%) over the contributions made by each of the parties in the first year of this Agreement or that change the proportions to be charged to each of the parties.
- 6.4. The parties shall cause the accounts and transactions of the Board to be annually audited by a municipal auditor in accordance with section 296 of the *Municipal Act, 2001*. The parties acknowledge and agree that such audits shall be conducted by the auditor of the party that is responsible for the largest share of the expenses of the Board in that year.

7. COUNCIL OBLIGATION TO PAY ANNUAL ESTIMATES

- 7.1. The Councils of Lincoln and Pelham shall each appropriate and pay to the Board the amounts in the estimates that have been approved for the establishment, operation and maintenance of a comprehensive and efficient public library service that reflects the parties' unique needs.

8. PROPORTIONS

- 8.1. Lincoln and Pelham shall each supply one hundred percent (100%) of their respective Provincial Library Operating Grant ("PLOG") and Pay Equity ("PE") to the Board.
- 8.2. In addition, the Councils of Lincoln and Pelham shall each contribute local operating support to the Board, the proportions of which shall reflect the relative populations of the municipalities as established by available census data.
- 8.3. The proportions of local operating support to be contributed by the Councils of Lincoln and Pelham in each of the first four (4) years of this Agreement shall be based on 2016 census data.
- 8.4. Census data shall be reviewed by the Board every four (4) years, with the first such review to take place four (4) years after this Agreement is signed, and the parties shall make any necessary adjustment to the proportions at that time.
- 8.5. The PLOG, PE and local operating support payable to the Board in accordance with this Agreement in the first year of this Agreement is as follows:

Library	Population (2016)	PLOG/PE (2020)	Provincial Pay Equity Down Payment	Local Support (2022)	Proportion of Local Support Requested
Lincoln	23,787 58%	\$27,394	\$13,486	\$1,164,054	58%
Pelham	17,110 42%	\$22,256	\$932	\$827,207	42%
	40,897	\$49,650	\$14,418	\$1,991,261	100%

9. ADDITION OF PARTIES

- 9.1. At any time after the Board is established, the Council of any municipality that is not a party to this Agreement may submit a request to the Councils of Lincoln and Pelham to join the union public library established by this Agreement.
- 9.2. Where a majority of the members of each of the Councils of Lincoln and Pelham vote in favour of a request submitted under section 9.1 of this Agreement, this Agreement shall be amended in accordance with section 10 to make all amendments required to add the municipality as a party to this Agreement and a participant in the union public library, including but not limited to the proportions set out in section 8 of this Agreement.

10. AMENDMENT AND TERMINATION

- 10.1. The parties may revise, alter or amend this Agreement only by mutual agreement. If at any time the parties deem it necessary or expedient to make any revision, alteration or amendment to this Agreement, 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.
- 10.2. At any time, the parties may jointly agree in writing to terminate this Agreement on such terms and conditions as the parties consider appropriate.
- 10.3. Either party may terminate this agreement by providing not less than eighteen (18) months written notice to the other party of its desire to terminate this Agreement and of its proposed date for dissolution of the Board and the Lincoln Pelham Union Public Library, which dissolution date shall be not less than twenty-four (24) months from the date of the written notice of termination.
- 10.4. Upon dissolution of the Board and the Lincoln Pelham Union Public Library pursuant to section 10.3, all books and other library materials housed in library building(s) that are located in a municipality are vested in and assumed by the municipality in which they are situated. All other assets and liabilities of the Board and the Lincoln Pelham Union Public Library shall be apportioned and allocated to the parties in accordance with the proportions set out in section 8 of this Agreement.
- 10.5. Termination of this Agreement is without prejudice to the rights of any party that may have accrued up to the date of termination.

11. DISPUTE RESOLUTION

- 11.1. In the event that a dispute arises as to the interpretation, application and/or execution of this Agreement, including but not limited to a party's rights or obligations under the Agreement and/or an allegation of default or breach of the Agreement, the party that disputes the other party's position or conduct shall immediately provide written notice of the dispute to the other party.
- 11.2. Where a notice of dispute is received in accordance with section 11.1, 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.
- 11.3. If a dispute cannot be resolved through negotiation by the parties' Chief Administrative Officers, the parties shall refer the matter to a single, skilled and experienced arbitrator selected by the parties, who shall have the authority to finally resolve the dispute in accordance with the *Arbitrations Act, 1991*, S.O. 1991 c. 17. The cost of any such arbitration(s) shall be paid equally by the parties unless otherwise agreed.
- 11.4. Other than the cost of any arbitration(s) conducted pursuant to section 11.3, each party shall bear any costs that it incurs in relation to the determination of disputes arising under this Agreement.

12. GENERAL

- 12.1. This Agreement constitutes the entire agreement between the parties in relation to the matters set out herein. There are no other representations, promises, covenants or terms relating to the subject matter of this Agreement. This Agreement supersedes any prior discussions, understandings or agreements between the parties in relation to its subject matter.
- 12.2. 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.
- 12.3. 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.
- 12.4. 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.
- 12.5. 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.

- 12.6. 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.
- 12.7. This Agreement shall be governed by and construed in accordance with the law of the Province of Ontario and laws of Canada applicable therein.
- 12.8. In the event of any conflict between any provision of this Agreement and any provision of the *Public Libraries Act* or the *Municipal Act, 2001*, the provision of the statute shall prevail. In the event of any conflict between the *Public Libraries Act* and the *Municipal Act, 2001* in relation to this Agreement, the *Public Libraries Act* shall prevail.
- 12.9. 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 on different dates and in original or electronic form and may be exchanged by way of mail or PDF file delivered by email or facsimile transmission.

13. NOTICE

- 13.1. Upon entry into this Agreement, Lincoln shall promptly notify the Minister of Culture or such other member of the Executive Council to whom the administration of the *Public Libraries Act* has been assigned ("the Minister") and shall mail or deliver a copy of this Agreement to the Minister pursuant to section 5 of the *Public Libraries Act*.
- 13.2. Any written notice to or communication with the Board and/or the Lincoln Pelham Union Public Library provided for or required under this Agreement or otherwise shall be given by personal delivery, mail or electronic mail, addressed as follows:

Lincoln Pelham Union Public Library
5020 Serena Drive
Beamsville, ON L0R 1B0

Email: andrews@lincoln.library.on.ca

[signature page follows]

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 LINCOLN

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the Corporation.

Date: _____

THE CORPORATION OF THE TOWN OF PELHAM

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the Corporation.

Date: _____

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