

AGREEMENT
FOR FIRE DISPATCH SERVICES

Agreement date: May 1, 2021

BETWEEN:

THE CORPORATION OF THE CITY OF WINDSOR,
a municipality as defined in
the *Municipal Act, 2001*, S.O. 2001, c. M. 25, as amended,
hereafter referred to as "Windsor"

and

THE TOWN OF TECUMSEH
a municipality as defined in
the *Municipal Act, 2001*, S.O. 2001, c. M. 25, as amended,
hereafter referred to as "Tecumseh"

Background:

Windsor, through its Fire & Rescue Services, operates a central fire dispatching Emergency Communications Centre (the "ECC").

Tecumseh requires fire dispatch services for the municipality and Windsor agrees to provide the fire dispatch services in exchange for a fee. This document sets out the respective rights and obligations of the parties pertaining to those services.

The parties therefore agree as follows:

ARTICLE 1

SCOPE OF SERVICES

1.1 Windsor agrees to provide fire dispatch services to Tecumseh as described in Schedule "A" (the "**Services**") during the Term of this Agreement, subject to the terms herein contained.

1.2 Windsor is not obligated herein to provide any other fire and rescue services to Tecumseh and its obligations insofar as the services it is to provide in accordance with this agreement are limited to those described in Schedule "A".

ARTICLE 2

DISPATCH SERVICE FEE

2.1 Tecumseh shall pay Windsor an annual fee (the "Fee") for the Services. The Fee shall be calculated by multiplying the amount approved by Windsor's City Council for "Central Dispatch" as contained in Windsor's by-law establishing fees and charges (the "Per Capita Rate") by the most current population of Tecumseh as established for Canadian Cities published by Statistics Canada. Applicable taxes shall be in addition to the Fee.

2.2 The current Per Capita Rate contained in Windsor's by-law establishing fees and charges (By-Law 392-2002, as amended) is \$1.85. This Per Capita Rate will apply in the year 2021. The Per Capita Rate will increase to \$1.94 on January 1, 2022 and is subject to a fee review each year thereafter. The city agrees to communicate a rate increase to the user by August 1st of each year.

2.3 The population of Tecumseh for the purposes of establishing the Fee will be the population found in latest statistics published by Statistics Canada and may increase or decrease from the population identified in Paragraph 2.1 when the next census statistics are published.

2.4 The annual Fee shall be paid in two equal installments in each year of the agreement, with the first installment due and payable on or before June 30 and the second installment due and payable on or before December 31, in each year of the Term.

ARTICLE 3

TERM AND TERMINATION

3.1 Subject to earlier termination in accordance with the provisions herein, the Agreement shall commence on January 1, 2020 and end in accordance with the termination provisions contained herein (the "Term").

3.2 Windsor may terminate this Agreement upon giving 12 months' notice in writing to Tecumseh, in which case, the annual Fee shall be prorated as of the date of such termination.

3.3 Tecumseh may terminate this Agreement upon giving 12 months' notice in writing to Windsor, in which case, the annual Fee shall be prorated as of the date of such termination and payable within 30 days following delivery of such notice.

ARTICLE 4

INSURANCE AND INDEMNITY

4.1 Tecumseh will indemnify and save harmless Windsor, its elected and non-elected officials, officers, servants, employees, contractors, agents, successors and assigns, of, from and against any and all liabilities, losses, claims, actions, damages and costs incurred or suffered by any one or more of them, by reason of, resulting from, in connection with or arising in any manner whatever from any negligent act, negligent omission or the wilful misconduct of Tecumseh or its servants, employees, contractors, or agents resulting from any responsibility or obligation assumed by Tecumseh in this Agreement.

4.2 Windsor will indemnify and save harmless Tecumseh, its elected and non-elected officials, officers, servants, employees, contractors, agents, successors and assigns, of, from and against any and all liabilities, losses, claims, actions, damages and costs incurred or suffered by any one or more of them, by reason of, resulting from, in connection with or arising in any manner whatever from any negligent act, negligent omission or the wilful misconduct of Windsor or its servants, employees, contractors, or agents resulting from any responsibility or obligation assumed by Windsor in this Agreement.

4.3 Windsor does warrant or guarantee that the software it uses for the services herein performs as intended or is free from malfunction or temporary unavailability. Windsor will advise Tecumseh within a reasonable time if it becomes aware that the software is not performing as it is intended. Windsor shall not be liable to Tecumseh in any way whatsoever arising from damages caused by the failure of the software to perform as it is intended except for any wilful or negligent acts of Windsor or its officers, servants, employees, agents, successors or assigns that cause the failure.

ARTICLE 5

CONFIDENTIALITY

5.1 The parties acknowledge that they are subject to the *Municipal Freedom of Information and Protection of Privacy Act* (the "Act"). Subject to the provisions of the Act, each party shall use reasonable efforts to safeguard the confidentiality of any information identified as confidential, but shall not be liable in any way whatsoever to one another if such information is disclosed based on an order or decision made under the Act or any other applicable legislation, including the *Municipal Act, 2001*.

5.2 Tecumseh waives all claims against and releases Windsor from all liability relating to or arising from such disclosure where the disclosure is based on an order or decision made under the Act or any other applicable law.

ARTICLE 6

FREEDOM OF INFORMATION, PRIVACY AND THIRD PARTY REQUESTS FOR INFORMATION

6.1 For the purposes of this Section, the term "record" shall have the same meaning as that given to it in the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56, as amended (the "Act").

6.2 The parties acknowledge that they are "institutions" as defined within the Act and are subject to the Act.

6.3 Subject to the provisions of the Act, each party shall use reasonable efforts to safeguard the confidentiality of any information identified as confidential, but shall not be liable in any way whatsoever to one another if such information is disclosed based on an order or decision made under the Act or any other applicable legislation, including the *Municipal Act, 2001*.

6.4 If Windsor receives a request for access to a record and the City considers that Tecumseh has a greater interest in the record, Windsor may transfer the request and, if necessary, the record to Tecumseh within fifteen days after the request is received, in which case Windsor shall give notice of the transfer to the person who made the request and the Parties will thereafter continue to abide by the Act.

ARTICLE 7

NOTICES

7.1 **Method of delivering notices.** Notices from one party to another under this agreement must be in writing and addressed to the recipient at the address set out below and shall be delivered as set out below:

- (a) Notices shall be delivered by hand, by courier or by prepaid first class mail. For greater certainty, a notice in writing is not effective if it is sent by e-mail; and

7.2 When notices deemed to be received.

- (a) **Notices delivered by hand or courier.** Notices delivered by hand or courier will be deemed to have been received by the addressee on the date of delivery;
- (b) **Notices sent by mail.** For the purposes of this section, "Business Day" means each of Monday, Tuesday, Wednesday, Thursday and Friday, except when any such day occurs on a statutory holiday observed in Ontario. Notices sent by mail shall be deemed to have been received seven calendar days after the date of mailing, provided that if either such day is not a Business Day, then the communication shall be deemed to have been received on the Business Day next following such day.

7.3 Address for Notices.

To Tecumseh:

Town of Tecumseh
 917 Lesperance Road,
 Tecumseh, ON N8N 1W9
 Attention: City Clerk

And to:

Town of Tecumseh
 917 Lesperance Raod,
 Tecumseh, ON N8N 1W9
 Attention: Fire Chief

To Windsor:

The Corporation of the City of Windsor
 350 City Hall Square West
 Windsor, Ontario N9A 6S1
 Attention: City Clerk

Copy to:

The Corporation of the City of Windsor
Fire & Rescue Services
815 Goyeau Street
Windsor, Ontario N9A 1H7
Attention: Fire Chief

7.4 **Change of address.** Either party may, by notice to the other given in accordance with this section, designate another address or number to which notices mailed, delivered or transmitted more than ten days thereafter shall be addressed or transmitted.

ARTICLE 8

DISPUTE RESOLUTION

8.1 **Dispute Resolution.** All disputes relating to, or arising under this Agreement shall be controlled, construed, and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada, as applicable therein. Should any dispute under this Agreement arise between the parties hereto, such dispute shall be disposed of by a compulsory three-step process, being: 1) Negotiation, 2) Mediation 3) Arbitration, as follows:

- (a) The parties shall attempt to resolve any disputes related to this agreement by discussion between representatives of the parties.
- (b) If the parties do not resolve some or all of the issues in dispute within thirty (30) days from the start of the discussion, the parties agree to attempt to resolve those issues through mediation.
- (c) The parties agree to jointly select a mediator. If they are unable to do so, then each party shall submit a list of three (3) mediators until such time as a common mediator has been suggested by both parties. The parties shall each act in good faith in the selection of a

mediator. In no event shall such selection process exceed ninety (90) days following the close of negotiations.

- (d) All information exchanged during the negotiation and mediation processes shall be regarded as "without prejudice" communications for the purposes of settlement negotiations and shall be treated as confidential by the parties and their representatives unless otherwise required by law. However, evidence that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during negotiation or mediation.
- (e) The parties agree that the representatives selected to participate in the dispute resolution process will have the authority required to resolve the dispute, or will have a rapid means of obtaining the requisite authorization.
- (f) If within sixty (60) days of the appointment of the mediator, or in the event that the parties are unable to agree on an arbitrator within ninety (90) days following the close of negotiations, the parties do not resolve some or all of the issues in dispute, either party may submit those issues in dispute to binding arbitration pursuant to the provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17, as amended. The parties agree to jointly select an arbitrator. If they are unable to do so, the arbitrator shall be designated by a court of competent jurisdiction in the Province of Ontario upon an application by either of the parties. The arbitration shall be governed by the substantive and procedural law of the Province of Ontario.
- (g) The arbitration must be complete, and a decision rendered, within ninety (90) days of the submission of the dispute to arbitration.

- (h) The decision arrived at pursuant to the arbitration shall be final and binding. No appeal shall lie from the arbitration.
- (i) If neither party elects to proceed to arbitration within thirty (30) business days following the termination of mediation, either party may refer the dispute to the Superior Court of Justice.
- (j) All mediations, arbitrations, claims or applications shall take place in the City of Windsor, in the Province of Ontario.
- (k) The parties agree that they will each be responsible for the costs of their own legal counsel and personal travel. Fees and expenses of mediators, arbitrators and all administrative costs of mediation and arbitration, such as the cost of a meeting room, if any, shall be borne equally by the parties.

8.2 Despite the foregoing, the parties hereto may agree, in writing, to an alternative form of dispute resolution. The parties hereto shall each diligently take such steps as may be necessary to give due effect to the foregoing provisions.

ARTICLE 9

GENERAL PROVISIONS

9.1 **Assignment.** This Agreement and the rights and benefits hereunder may not be assigned by either party without the prior written consent of the other party, which consent shall be in the sole and absolute discretion of the non-assigning party.

9.2 **Interest on late payments.** Any amounts unpaid when due will bear interest from the due date until the date of payment at the prime rate declared by the Bank of Nova Scotia from time to time, plus two percent (2%).

9.3 **Relationship of Parties.** The provisions contained in this Agreement shall not be deemed to create any relationship of agency, partnership or joint venture between the Parties save as expressly provided for herein.

9.4 **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and the parties attorn to the jurisdiction of the courts of the province.

9.5 **Amendments to Agreement.** This Agreement shall not be modified or amended except by instrument in writing signed by the Parties.

9.6 **Waiver.** The waiver by a Party of the breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same, or of any other term, covenant or condition herein contained; and no such term, covenant or condition of this Agreement shall be deemed to have been waived by a Party, unless such waiver be in writing and signed by the Party.

9.7 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the transactions described. There are no verbal representations, undertakings or agreements of any kind between the parties respecting the subject matter contained in this Agreement.

9.8 **Partial Invalidity.** If any term, covenant or condition of this Agreement or the application thereof to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

9.9 **Further Assurances.** The parties shall do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of this Agreement to its full extent.

9.10 **Words.** The words "include" or "including", when following any general statement, term or matter, is not to be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather refers to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

9.11 **Entirety.** The words "herein", "hereinbelow", "hereinabove", "hereunder" and "hereof" used in a provision of this Agreement, relate to the whole Agreement and not to that provision only, unless the context otherwise provides.

9.12 **No Contra Proferentem.** The Parties acknowledge that their respective legal counsel have reviewed and participated in settling the terms of this Agreement, and the Parties hereby agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not be applicable in the interpretation of this Agreement

9.13 **Force Majeure.** In the event that a Party is delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labour troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of such Party in performing any Work or doing acts required under this Agreement, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section shall not operate to excuse the Parties from

prompt payment of any Additional Charges required by the terms of this Agreement.

9.14 **Binding effect.** This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. Tecumseh acknowledges that this Agreement shall be personal to and non-assignable by Tecumseh, except as provided elsewhere in this Agreement.

9.15 **Appendices.** Any appendices referred to in this Agreement shall form part of this Agreement and are incorporated herein by reference.

9.16 **Windsor's and Tecumseh's Discretion.** Nothing contained in this Agreement and no decision made or action taken by either party pursuant to this Agreement limits or restricts in any manner, the normal exercise of discretion by various municipal departments and officials of the either party pursuant to any statute, by-law or regulation, and nothing contained in this Agreement requires, in any way, any such municipal department or official(s) acting pursuant to such statute, by-law or regulation to give his, her or its approval in respect of any matter, notwithstanding any provision of this Agreement or any consent, approval or other action given or taken by either party pursuant to this Agreement.

Each party is signing this agreement on the following page under seal by their authorized representatives.

TOWN OF TECUMSEH

By: _____
 Gary McNamara
 Mayor

By: _____
 Laura Moy
 Clerk

THE CORPORATION OF THE CITY OF WINDSOR

By: _____
 Jason Reynar
 Chief Administrative Officer

By: _____
 Valerie Critchley
 Clerk

Authorized by CR223/2012

Approved as
to content
CR223-2012
Fire Chief

Approved as
to financial
content
CR223-2012
CFO & City
Treasurer

Approved as
to form
CR223-2012
Legal
Counsel

Schedule "A"

The Services

- Answer all County 911 lines and non-emergency phone lines for other fire department related operations including but not limited to open burning permits, alarms out of service, and contact information.
- Dispatch all calls for service utilizing the Computer Aided Dispatch CAD, and specific department response protocols.
- Notify support agencies (EMS, Police, Utilities, etc.) per protocol or by request.
- Update incident records (units responding & # of personnel on each vehicle).
- Benchmark reporting throughout each response.
- Maintain information in CAD system regarding addresses as provided by each participating County Fire Department:
 - Site details
 - Site hazards
 - After hour contacts
 - Hydrant Locations
- Conduct radio and tone tests for each County Fire Department as requested or scheduled
- Log radio transmissions in notes, document information, Voice Record all Tactical frequencies and provide recording upon request of Home Fire Service
- Provide 'Incident Summary' sheets to each County Fire Department at the completion of each incident in their requested format (email/ fax).
- Monitor the radio communications with any/all fire personnel during emergency occurrences.
- Log radio transmissions in notes, document information throughout all emergency occurrences.
- Disseminate information regarding road closures to appropriate Essex County fire departments.
- Maintain the Mutual Aid Plan between all Essex County fire departments and Windsor Fire & Rescue Services.
- Contact CAD system support (currently Crisys) to make additions/changes to dispatching protocols to address customer requests.
- Load address/street shape files (County maps) into CAD system when received from County GIS departments to ensure the most accurate information is available and current.
- Add specific direction/ procedural notes or protocols to identified addresses.
- Remain in contact with Essex County Fire Chiefs regarding ongoing road and construction projects.
- Conduct weekly radio connectivity tests with each dispatched department.

- Relay messaging as requested across individual pager systems.
- Provide training on radio protocols and procedures to fire departments at their locations
- Maintain 'catalogue' of current burn permits
- Provision of reports additional to ordinary protocols
- Provision of recordings (logs – audio) through email or USB