

## City of Port Colborne Council Meeting Agenda

**Date:** Tuesday, July 18, 2023  
**Time:** 6:30 pm  
**Location:** Council Chambers, 3rd Floor, City Hall  
 66 Charlotte Street, Port Colborne

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In order to speak at a Council meeting, individuals must register no later than 12 noon on the date of the scheduled meeting. To register, complete the online application at [www.portcolborne.ca/delegation](http://www.portcolborne.ca/delegation), email [deputyclerk@portcolborne.ca](mailto:deputyclerk@portcolborne.ca) or phone 905-835-2900, ext. 115.

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## **13. Regional Councillor's Report**



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## **21. Confidential Items**

Confidential reports will be distributed under separate cover. Items may require a closed meeting in accordance with the Municipal Act, 2001.

- 21.1 Confidential Appendices A and B to Corporate Services Department Report 2023-131 Subject: Appointments to Committees
- 21.2 Chief Administrative Office Report 2023-134, a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board
- 21.3 Human Resources Verbal Report, personal matters about an identifiable individual, including municipal or local board employees and labour relations or employee negotiations
- 21.4 Corporate Services Department – Human Resources Report 2023-54, personal matters about an identifiable individual, including municipal or local board employees and labour relations or employee negotiations
- 21.5 Corporate Services Department – Human Resources Report 2023-141, personal matters about an identifiable individual, including municipal or local board employees

## **22. Procedural Motions**

## **23. Information items**

## **24. Adjournment**

## **City of Port Colborne**

### **Public Meeting Minutes**

**Date:** Tuesday, June 6, 2023  
**Time:** 6:30 pm  
**Location:** Council Chambers, 3rd Floor, City Hall  
66 Charlotte Street, Port Colborne

**Members Present:** M. Aquilina, Councillor  
M. Bagu, Deputy Mayor (presiding officer)  
E. Beauregard, Councillor  
R. Bodner, Councillor  
G. Bruno, Councillor  
D. Elliott, Councillor  
T. Hoyle, Councillor

**Member(s) Absent:** F. Danch, Councillor  
W. Steele, Mayor

**Staff Present:** C. Madden, City Clerk  
S. Tufail, Acting Deputy Clerk (minutes)

#### **1. Call to Order**

Deputy Mayor Bagu called the meeting to order at 6:32 p.m.

#### **2. Adoption of Agenda**

Moved By Councillor T. Hoyle

Seconded By Councillor D. Elliott

That the agenda dated June 6, 2023, be confirmed, as circulated.

Carried

#### **3. Disclosures of Interest**

#### **4. Statutory Public Meetings**

#### **4.1 Public Meeting Report for Proposed Zoning By-law Amendment for a Vacant Lot on Knoll Street, File D14-03-23, 2023-108**

##### **Purpose of Meeting**

The purpose of this meeting, pursuant to section 34 of the Planning Act, is to consider a Zoning By-law Amendment application initiated by Stanley Homes for the lands known as Part 1 on Registered Plan 59R-15742, on the east side of Knoll Street, formerly in the Township of Humberstone, now in the City of Port Colborne, within the Regional Municipality of Niagara, municipally known as a vacant lot on Knoll Street.

The Zoning By-law Amendment proposes to change the zoning of the subject lands from the First Density Residential (R1) zone to the Second Density Residential (R2) zone.

##### **Method of Notice**

Notice of the Public Meeting was administered in accordance with Section 34 of the Planning Act, as amended, and Ontario Regulation 545/06.

Notice of Public Meeting was circulated on May 17, 2023, to internal departments and agencies. Notice was also circulated via regular mail to property owners within 120m. Meeting details have been provided along with the Council Agenda on the City's website and under "Current Applications".

As of the date of this meeting, staff have not received comments from any of the commenting departments and agencies.

##### **Questions of Clarification to Planning Staff/Applicant**

No comments or questions from Members of Council.

Moved By Councillor G. Bruno

Seconded By Councillor M. Aquilina

That Planning and Development Report 2023-108 be received for information.

Carried

**5. Stop Up and Close Public Meeting**

**5.1 Proposed Stop Up and Close - Portion of Catharine Street, 2023-104**

Moved By Councillor T. Hoyle

Seconded By Councillor M. Aquilina

That Chief Administrative Office Report 2023-104 be received; and

That the Economic Development Officer be directed to bring forward a Stop Up and Close By-law for a portion of Catharine Street, shown in Appendix A to Chief Administrative Office Report 2023-104, to a future meeting of Council for consideration.

Carried

**6. Procedural Motions**

**7. Information Items**

**8. Adjournment**

Deputy Mayor Bagu adjourned the meeting at approximately 6:43 p.m.

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Mark Bagu, Deputy Mayor

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Charlotte Madden, City Clerk

## **City of Port Colborne**

### **Council Meeting Minutes**

**Date:** Tuesday, June 27, 2023  
**Time:** 5:30 pm  
**Location:** Committee Room 3-City Hall  
66 Charlotte Street, Port Colborne, Ontario, L3K 3C8

**Members Present:** M. Bagu, Councillor  
E. Beauregard, Councillor  
R. Bodner, Councillor  
G. Bruno, Councillor  
D. Elliott, Councillor  
T. Hoyle, Councillor  
W. Steele, Mayor (presiding officer)

**Member(s) Absent:** M. Aquilina, Councillor  
F. Danch, Councillor

**Staff Present:** B. Boles, Director of Corporate Services/Treasurer  
B. Cotton, Economic Development Officer  
G. Long, Manager of Strategic Initiatives  
S. Luey, Chief Administrative Officer  
C. Madden, Manager of Legislative Services/City Clerk  
S. Tufail, Deputy Clerk

#### **1. Call to Order**

Mayor Steele called the meeting to order.

#### **2. Adoption of Agenda**

Moved by Councillor E. Beauregard  
Seconded by Councillor D. Elliott

That the Council in Closed Session agenda dated June 27, 2023 be confirmed,  
as circulated.

Carried

**3. Disclosures of Interest**

**4. By-law**

Moved by Councillor M. Bagu

Seconded by Councillor T. Hoyle

That item 4.1 be enacted and passed.

Carried

**4.1 By-law to Adopt, Ratify and Confirm the Proceedings of the Council of The Corporation of the City of Port Colborne**

**5. Confidential Items**

Moved by Councillor M. Bagu

Seconded by Councillor T. Hoyle

That Council do now proceed into closed session in order to address item 5.1.

Carried

**5.1 Chief Administrative Office Report 2023-110, a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence to the municipality or local board**

**6. Adjournment**

Council moved into Closed Session at 5:32 p.m.

Council reconvened into Open Session at 6:30 p.m.

Mayor Steele adjourned the meeting at 6:31 p.m.

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William C. Steele, Mayor

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Charlotte Madden, City Clerk

**City of Port Colborne**  
**Council Meeting Minutes**

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66 Charlotte Street, Port Colborne

**Members Present:** M. Bagu, Councillor  
E. Beauregard, Councillor  
R. Bodner, Councillor  
G. Bruno, Councillor  
D. Elliott, Councillor  
T. Hoyle, Councillor  
W. Steele, Mayor (presiding officer)

**Member(s) Absent:** M. Aquilina, Councillor  
F. Danch, Councillor

**Staff Present:** C. Madden, City Clerk  
B. Boles, Director of Corporate Services/Treasurer  
S. Luey, Chief Administrative Officer  
S. Shypowskyj, Director of Public Works  
S. Tufail, Acting City Clerk (minutes)

**1. Call to Order**

Mayor Steele called the meeting to order at 6:54 p.m.

**2. National Anthem**

**3. Land Acknowledgment**

**4. Proclamations**

**5. Adoption of Agenda**



Moved by Councillor R. Bodner  
Seconded by Councillor T. Hoyle

That the agenda dated June 27, 2023 be confirmed, as amended.

Carried

**6. Disclosures of Interest**

**7. Approval of Minutes**

**7.1 Regular Meeting of Council - June 13, 2023**

Moved by Councillor D. Elliott  
Seconded by Councillor G. Bruno

That the minutes of the regular meeting of Council, held on June 13, 2023, be approved as presented.

Carried

**8. Staff Reports**

Moved by Councillor M. Bagu  
Seconded by Councillor E. Beauregard

That item 8.1 to 8.3 be approved, and the recommendations contained therein be adopted.

Carried

**8.1 Catharine Street – Stop-Up and Close By-law and Surplus Declaration, 2023-81**

That Chief Administrative Office Report 2023-81 be received;

That the Stop-Up and Close By-law, being a By-law to stop-up and close part of the Catharine Street Road Allowance, described in PIN 64457-0087 as being Part of Catharine Street on the west side of Catharine Street south of 14 Catharine Street abutting the eastern boundary of 12 Catharine Street and being 26.4 m in length and 8.2 m in width be approved;

That the property described in PIN 64457-0087 be declared surplus; and

That the City Clerk and Mayor be directed to sign all necessary documents.

**8.2 45th Annual Canal Days Festival Request for Road Closures, 2023-130**

That Corporate Services Department Report 2023-130 be received;

That the recommendations of Corporate Services Report 2023-130 be approved, and that Council approve all road closures encompassed in this report; and

That Canal Days be deemed as a municipally significant event for the purpose of applying for a Special Occasion Permit from the Alcohol and Gaming Commission of Ontario (AGCO); and

That Council exempt the participants of the Canal Days Marine Heritage Festival from the Noise By-Law No. 4588/119/04 and not be required to apply for the variance in accordance with Section 4(3) Schedule 2(2).

**8.3 Amendment to Storm Sewer Rates, 2023-128**

That Corporate Services Department Report 2023-128 be received; and

That the revised 2023 Storm Sewer Rates, attached as appendix B be approved; and

That the draft By-law to amend By-law No. 7086/31/23, Being a Being A By-Law To Set And Levy The Rates Of Taxation For City Purposes For The Year, attached in Appendix C of Corporate Services Department Report 2023-128 be approved.

**9. Correspondence Items**

Moved by Councillor M. Bagu

Seconded by Councillor E. Beauregard

That items 9.1 to 9.3 be received for information.

Carried

**9.1 Niagara Region - Motion respecting Enhancing Canada's National Adaptation Strategy Through a Great Lakes and St. Lawrence River Basin Coastal Resiliency Study**

**9.2 Niagara Region - 2022 Reserve Water and Wastewater Treatment Capacities**

**9.3 Message from the Parliamentary Assistant to the Minister of Infrastructure - Water and Sewer Infrastructure**

**10. Presentations**

**11. Delegations**

**12. Mayor's Report**

A copy of the Mayor's Report is attached.

**13. Regional Councillor's Report**

**14. Staff Remarks**

**14.1 Waterfront Redevelopment Project (Higginbotham)**

The Tourism Coordinator advised Council that the open house regarding the Waterfront Redevelopment Project was held on June 14, 2023. He further provided details of other public engagement processes in place for the project.

**14.2 Committee Recruitment (Madden)**

The City Clerk advised that recruitment for various citizen advisory committees had begun and the deadline to apply would be June 30, 2023.

**15. Councillors' Remarks**

**15.1 Summer Camps (Bagu)**

Councillor Bagu advised Council that the summer camps will now be offered by YMCA in order to avoid duplication.

**15.2 Port Colborne Concert Band (Bagu)**

Councillor Bagu informed Council that the Port Colborne Concert Band is scheduled to perform Thursday evenings in H.H. Knoll Park on July 6, 13, 20 and 27 starting at 7:20 p.m.

**15.3 Main Street - Decorative Poles (Bruno)**

In response to Councillor Bruno's inquiry, the Director of Public Works advised Council that the decorative poles located on Main Street are part of the City's inventory. He further stated that they are currently delayed and will be installed as soon as they are received.

**15.4 Port Colborne Sign (Bruno)**

In response to Councillor Bruno's request for the dedication tree that is obstructing the Port Colborne Sign to be moved, the Director of Public Works advised that he would investigate.

**15.5 Grass Cutting on Elm Street (Bruno)**

In response to Councillor Bruno's request, the Director of Public Works advised that by August 1, 2023, the contractor will be cutting the grass on Elm Street and beautifying the area.

**15.6 Seaway Park (Hoyle)**

Councillor Hoyle expressed gratitude towards staff for the maintenance of Seaway Park.

**15.7 Nickel Beach - Washroom Accessible Ramps (Hoyle)**

In response to Councillor Hoyle's request for an update, the Director of Corporate Services/Treasurer advised that the accessible ramps for the washrooms at Nickel Beach would be delivered and installed within the next week.

**15.8 Wyldewood Beach Road End - Signage (Bodner)**

In response to Councillor Bodner's inquiry regarding the missing signage at the Wyldewood Beach road end, the Director of Public Works advised that a site visit would be conducted and an update would be brought at a future Council meeting.

**15.9 District Conservation Club (Bodner)**

Councillor Bodner stated that he has concerns regarding the operation of the Port Colborne and District Conservation Club and its impacts on the community. He further noted that he is intending to bring forward a motion regarding potential amendments to the City's Discharge of Firearms and Noise by-laws at the July 18, 2023 Council meeting. Additionally, he has been made aware that there is also a provincial process taking place regarding shooting range approval and given the time sensitive nature of the provincial process, he is requesting that Council waive the rules of the City's Procedural By-law in order to dispense with notice and bring forward a motion with respect to the City sending a letter to the Chief Firearms Officer of Ontario regarding Shooting Range Approval for the Port Colborne and District Conservation Club.

**16. Consideration of Items Requiring Separate Discussion**

**16.1 Physician Recruitment Activities Update, 2023-92**

Jill Croteau, Niagara Region Physician Recruitment & Retention Coordinator, provided a physician recruitment update and responded to questions received from Council.

Moved by Councillor G. Bruno  
Seconded by Councillor M. Bagu

That Chief Administrative Office Report 2023-92 be received.

Carried

**16.2 2023 Trimester 1 Financial Reporting, 2023-114**

Moved by Councillor G. Bruno  
Seconded by Councillor M. Bagu

That Corporate Services Department Report 2023-114 be received for information; and

That the recommended transfers to and from the City's capital close-out account outlined in Appendix B of Corporate Services Report 2023-114 be approved.

Carried

**16.3 Water and Wastewater By-Law Update, 2023-119**

Moved by Councillor G. Bruno  
Seconded by Councillor M. Bagu

That Corporate Services Department Report 2023-119 be received;

That the proposed Water and Wastewater Rates By-law updates as outlined in Appendix A as well as the corresponding Water and Wastewater Rates By-law attached as Appendix B to Corporate Services Department Report 2023-119, be approved; and

That the financial impacts of the proposed Water and Wastewater Rates By-law updates be directed to the water and wastewater capital budgets when they become effective.

Carried

**16.4 2023-2026 Strategic Plan - Final, 2023-122**

Moved by Councillor M. Bagu

Seconded by Councillor D. Elliott

That Chief Administrative Officer Report 2023-122 be received; and

That the 2023-2026 Strategic Plan be approved.

Carried

**16.5 Billing of the Young and Hopf-Wagner Municipal Drains, 2023-102**

Moved by Councillor R. Bodner

Seconded by Councillor T. Hoyle

That Public Works Department Report 2023-102 be received;

That the billing for the Young and Hopf-Wagner Municipal Drains be invoiced in accordance with the *Drainage Act*, as outlined in Appendix A of Public Works Department Report 2023-102; and

That the Young and Hopf-Wagner Drain Levy By-law be approved.

Carried

**16.6 Town of Bradford West Gwillimbury - The Right-to-Repair Movement**

Moved by Councillor R. Bodner

Seconded by Councillor D. Elliott

That the correspondence from the Town of Bradford West Gwillimbury regarding the right-to-repair movement be supported.

Carried

**17. Motions**

**17.1 Motion Re: Letter to Chief Firearms Officer of Ontario - Shooting Range Approval for Port Colborne and District Conservation Club**

Moved by Councillor R. Bodner

Seconded by Councillor T. Hoyle

That the City Clerk be directed to send a letter to the Chief Firearms Officer of Ontario regarding the shooting range approval for Port Colborne and District Conservation Club located at 3757 Second Concession Road, Port Colborne, Ontario; and

That the letter include a request for the Chief Firearms Officer of Ontario to give careful consideration and regard for community impacts and land use conflict when making its decision on the Shooting Range Approval for Port Colborne and District Conservation Club.

Carried

## **18. Notice of Motions**

### **18.1 Royal Canadian Legion -Zoning By-law Amendment Application Fees (Elliott)**

Councillor Elliott provided notice of his intention to bring a motion forward at the July 18, 2023 Council meeting with respect to waiving the fees for zoning by-law amendment application to be applied for by the Royal Canadian Legion, located at 67 Clarence Street, Port Colborne ON L3K 3G1.

## **19. Minutes of Boards & Committees**

Moved by Councillor E. Beauregard  
Seconded by Councillor G. Bruno

That item 19.1 be approved, as presented.

Carried

### **19.1 Downtown Port Colborne Business Improvement Area - Minutes of November 8, 2022, January 26, 2023, February 21, 2023, March 21, 2023, April 25, 2023 and Approved DPCBIA Budget for 2023**

## **20. By-laws**

Moved by Councillor D. Elliott  
Seconded by Councillor M. Bagu

That items 20.1 to 20.5 be enacted and passed.

Carried

- 20.1 By-law to Amend By-Law No. 3151/22/95 and By-Law No. 3424/6/97**
- 20.2 By-law to Stop Up and Close part of Catharine Street, described in PIN 64457-0087 as being Part of Catharine Street**
- 20.3 By-law to Amend the Assessment Schedule to Levy the Actual Costs Incurred in Constructing a Drainage Works Known as the Young & Hopf Wagner Municipal Drain**
- 20.4 By-law to amend By-law No. 7086/31/23, Being A By-Law To Set And Levy The Rates Of Taxation For City Purposes For The Year 2023**
- 20.5 By-law to Adopt, Ratify and Confirm the Proceedings of the Council of The Corporation of the City of Port Colborne**

**21. Confidential Items**

Moved by Councillor G. Bruno  
Seconded by Councillor M. Bagu

That Council do now proceed into closed session in order to address items 21.1 to 21.4.

Carried

- 21.1 Chief Administrative Office Report 2023-121, a proposed or pending acquisition or disposition of land by the municipality or local board**
- 21.2 Corporate Services Department – Human Resources Report 2023-116, personal matters about an identifiable individual, including municipal or local board employees and labour relations or employee negotiations**
- 21.3 Corporate Services Department Report 2023-123, a proposed or pending acquisition or disposition of land by the municipality or local board**
- 21.4 Chief Administrative Office Report 2023-125, a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board**

**22. Procedural Motions**

- 22.1 Motion Re: Letter to Chief Firearms Officer of Ontario - Shooting Range Approval for Port Colborne and District Conservation Club**



Moved by Councillor R. Bodner  
Seconded by Councillor T. Hoyle

That the rules respecting notice of motion, as outlined under Section 26 of the Procedural By-law, be waived in order to dispense with notice.

Carried

**23. Information items**

**24. Adjournment**

Council moved into Closed Session at approximately 9:50 p.m.

Council reconvened into Open Session at approximately 11:47 p.m.

Mayor Steele adjourned the meeting at approximately 11:48 p.m.

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William C. Steele, Mayor

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Saima Tufail, Acting City Clerk



**PORT COLBORNE**

# Mayor's Report

**JUNE 27, 2023**

## **HIGH SCHOOL GRADUATIONS**

On behalf of City Council and staff, congratulations to the graduating classes of 2023 at Lakeshore Catholic High School and Port Colborne High School. Each high school is celebrating convocation ceremonies this evening, where hundreds of proud parents will be cheering their sons and daughters for their achievements. We salute the principals and staff for their commitment to students after three challenging years. We send best wishes to all the students for the next chapters of their lives. Make the most of every year, students!

## **IAN ROBERTS CERTIFICATION ACHIEVEMENT**

Just a quick commendation for Ian Roberts, our Superintendent of Roads and Parks, who recently received additional provincial certification from the Association of Ontario Roads Supervisors. Council supports the continued education and training of our staff, for their personal growth as well as to add to the experience and expertise of our team. We're proud of our team. Those letters after Ian's name are as important to us as they are to him. Today also happens to be Ian's fifth anniversary with the City of Port Colborne. Two excellent achievements to celebrate. Congratulations, Ian.

## **INFORMATION SESSION FOR SENIORS**

The Library's **Let's Talk About** series is back with an important session to wrap up Seniors' Month. The session is Thursday, June 29, from 2 to 4 pm in the LR Wilson Archives, next door to the Library. There will be speakers from Bridges, Port Cares, Niagara Regional Police and Friends Over 55, as well as city staff from By-Law, the Fire Department and the Seniors' Advisory Committee. I will be there, too, to answer seniors' questions and concerns. So come out, and Let's Talk.

### **SLOW DOWN – SAFETY ZONES SIGNS**

We're all aware speeding is a huge issue. There are more car crashes and accidents on roads and highways than ever before. We all have to SLOW DOWN! Just please drive the speed limit. Give yourself time to get to where you're going.

We have signs you can put in your lawn to remind drivers to Slow Down in the Safety Zone where you live.

Come get one from our customer service team at city hall.

We'll have some at the market on Friday, too.

### **CANAL DAYS LAUNCH**

We had a perfect day to welcome sponsors and special guests to our Canal Days launch party last Wednesday in the pavilion at Sugarloaf Marina. It was a fantastic event!

Kudos to Jasmine Peazel-Graham and her communications team, and Amy Duffy and her Canal Days crew for an excellent presentation, and excellent line-up.

Things are really coming together, we're getting great action on social media, and lots of positive response. The festival is a month away!

Rather than read the list of bands and musicians, let's cue up the video, and share all the sights and sounds of what's to come.

### **SAIMA CUE VIDEO**

Isn't that great? We're all looking forward to the 45th annual Canal Days Festival in the Civic Long Weekend in August. We can't wait to see you again!

### **CANADA DAY**

Before we get to our signature festival in five weeks, it's our country's 156th birthday Saturday. Yes, Canada Day, July 1 is Saturday already!

The Niagara Antique Power Show annual Canada Day weekend is back, full steam! I'll be out at the Learn Farm on Wilhelm Road at noon for opening ceremonies. The volunteers have coordinated a terrific weekend of historic displays and activities for the whole family.

I'll also be celebrating with Port Colborne Optimists in HH Knoll Lakeview Park. Activities and events, food and non-stop music get underway at 10am and run until 6pm. I'll see you there for opening ceremonies at 1pm. There are so many things to see and do: including the Niagara Regional Police Band at 2:30.

When the Optimists wind up Canada Day in the Park, we'll all move over to West Street for the continuation of Port Colborne's Community Concert Series. Canada Day on the Canal runs from 6 to 10pm. The concert stage will be near the Harbour Master House on West Street at Charlotte.

XPrime takes the stage at 6:30pm, followed by Grace2, the Tragically Hip tribute band at 8:30pm.

Stick around for Canada Day fireworks over the canal at 10pm. We are always complimented by our fireworks displays over the canal, designed by RedBoss.

Let's all look forward to an amazing weekend ahead with lots of local things to do, to make us appreciate our home, our city, our country.

Let's support all the organizers and volunteers, let's salute our neighbours, and let's all be thankful and proud to be Canadian.



**Subject: CIP Agreement – 176 Elm Street**

**To: Council**

**From: Office of the Chief Administrative Officer**

Report Number: 2023-120

Meeting Date: July 18, 2023

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**Recommendation:**

That Chief Administrative Office Report 2023-120 be received;

That Council approve the Downtown Central Business District Community Improvement Plan (CIP) Revitalization (Tax Increment) Grant agreement between the City of Port Colborne and Hometown Properties Inc., attached as Appendix A to Chief Administrative Office Report 2023-120; and

That a by-law to enter into an agreement with Hometown Properties Inc. be brought forward and approved.

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**Purpose:**

The purpose of this report is to provide Council with a recommendation on the application made by Hometown Properties Inc., owner of 176 Elm Street in Port Colborne, under the Downtown Central Business District CIP Revitalization (Tax Increment) Grant.

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**Background:**

Since 2008, Council has adopted and implemented six Community Improvement Plans (CIPs) for various project areas throughout the City. Hometown Properties Inc., owner of 176 Elm Street, has submitted an application for a TIG under the terms of the Downtown Central Business District CIP Revitalization (Tax Increment) Grant (TIG). The TIG is a ten (10) year grant for 80% of the increase in municipal taxes that result from property rehabilitation and improvements. The grant payment is based on the actual post-project assessed value as determined by the Municipal Property Assessment Corporation (MPAC).

A condition of approving the application for the TIG is that the owner is required by the City to enter into an agreement. As part of the agreement, the owner agrees to develop the subject property in accordance with the City's objectives and required information in the Program Guide for the CIPs. The application is for both the City and Region property tax portions. Approving this report will approve the City portion but the Niagara Region must still approve their portion. Should that be denied for any reason, the City would still pay the City portion and only be responsible for paying the City portion.

The owner of the property purchased a former church to convert into a minimum of 21 residential units (maximum 28). The redevelopment satisfies four Niagara Region Smart Growth principles including:

- Adding residential floors and residential units;
- Adding a new compatible use to a building;
- Conversion within a neighbourhood context featuring;
  - Safe and clearly demarcated pedestrian access to and within the site;
  - Building orientation and pedestrian access oriented toward the street;
  - Site and building access directly from the street without requiring passage across a driveway or parking area;
  - Street oriented building façade featuring fenestration and entranceways that create a sense of permeability and movement between the street and building interior;
  - Contribution to the quality of the public space on the street by the provision of space for public assembly; and
  - Street furniture, artworks and/or landscaping; and
- Adding multiple unit housing types to the housing stock.

While many of the programs contained within the various CIPs for the City can be approved by staff through delegated authority, any application for tax assistance must be approved by City Council.

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## Discussion:

The agreement is comprehensive in terms of what is expected by the City from the owner to meet eligibility requirements for the TIG. Some key provisions are as follows:

- the annual grant is based on actual post-project MPAC assessed value;
- City to be satisfied in its discretion that owner completed property improvements in accordance with the proposed plans;
- City to be satisfied with its review of all documentation submitted to support actual cost of works incurred by owner, including third party review if required by City at cost of owner;
- Payments are repayable by owner if City determines that conditions set out in the Application or Agreement have not been met;

- Grant may be reduced by amount of any tax arrears on the Property;
  - Specific pre-conditions for annual grant to be met to satisfaction of the City.
- 

### **Internal Consultations:**

The application and agreement have been reviewed by the City's CIP Review Team comprised of staff from Building, Economic Development, and Planning. Finance staff have also been consulted.

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### **Financial Implications:**

As per the agreement attached, Schedule B indicates that the Tax Increment Grant over a 10-year period is estimated to be \$906,656 (this includes City and Niagara Region portions). The City-only portion is estimated at \$529,161. These estimated figures are shown in Appendix C. Should the Niagara Region not approve their portion, the recipient will only receive the City portion of the tax grant.

The final amounts will be confirmed after the MPAC reassessment has been completed upon occupancy being granted. There will be no net impact on the property tax levy in relation to the Tax Increment Grant (TIG) Program as the grant will offset the future tax liability that will be calculated once the property is reassessed by MPAC.

As identified in Appendix C, the grant is fixed on the first year of reassessment. In each subsequent tax year, any change in property tax rates will apply to the property and accrue to the City. Following the 10-year period, the City will receive the full property tax value associated with the redeveloped property.

In the immediate term, using the estimate in Appendix C, property taxes received by the City for this property are forecasted to increase from \$6,145 to \$19,374 representing an increase of \$13,229 or 215%.

In this process the owner is responsible for all upfront costs of redevelopment and must pay for the increased taxes arising from the higher assessed value. The incremental portion of the tax increase is returned in the form of a rebate grant. This will show as a line item in future budgets and funded by the property taxes assessed and paid.

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### **Strategic Plan Alignment:**

The initiative contained within this report supports the following pillar of the strategic plan:

- Attracting Business Investment and Tourists to Port Colborne

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**Conclusion:**

Hometown Properties Inc., owner of 176 Elm Street, has submitted an application to the City's Downtown Central Business District Community Improvement Plan Revitalization (Tax Increment) Grant to assist with the improvements to their commercial property. As a condition of approval, the owner is required to enter into an agreement with the City that outlines obligations of the owner to satisfy the eligibility requirements of the City's CIP program. Staff are recommending Council approve the agreement to help facilitate the rehabilitation and redevelopment of property in the City's downtown and add rental units. This staff report and the agreement is regarding the City's portion of the Tax Increment Grant. Niagara Region's portion has not yet been approved and requires a separate process that City staff will initiate.

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**Appendices:**

- a. Tax Increment Grant Agreement
- b. Draft By-law
- c. TIG Tax Amounts Estimate Template

Respectfully submitted,

Gary Long  
Manager of Strategic Initiatives  
(905) 835-2900 Ex. 502  
[Gary.Long@portcolborne.ca](mailto:Gary.Long@portcolborne.ca)

Bram Cotton  
Economic Development Officer  
(905) 835-2900 Ex. 504  
[Bram.Cotton@portcolborne.ca](mailto:Bram.Cotton@portcolborne.ca)

**Report Approval:**

All reports reviewed and approved by the Department Director and also the City Treasurer when relevant. Final review and approval by the Chief Administrative Officer.



**Downtown Central Business District Community Improvement Plan  
Revitalization (Tax Increment) Grant Agreement**

**BETWEEN:**

THE CITY OF PORT COLBORNE  
(hereinafter referred to as the "City")

and

HOMETOWN PROPERTIES Inc.  
(hereinafter referred to as the "Owner")

**WHEREAS** the City has adopted a Downtown Central Business District Community Improvement Plan (DCIP) pursuant to Section 28 of the *Planning Act*;

**AND WHEREAS** the Owner is the registered Owner of the lands described in Section 1 and Schedule "A" to this agreement (the "subject lands") which are located within the City of Port Colborne;

**AND WHEREAS** the Owner has made applications (the "application") to the City for the tax assistance under the DCIP;

**AND WHEREAS** the City has approved this application and has agreed to provide tax assistance;

**AND WHEREAS** a condition of approval of this application for tax assistance and the Owner is required by the City to enter into this Agreement (the "Agreement");

**1. INFORMATION ON SUBJECT LANDS**

- 1.1 The Tax Increment Grant ("TIG") shall apply to the subject lands as set out in Schedule "A" attached.

**2. TAX INCREMENT GRANT ELIGIBILITY**

- 2.1 To be eligible for the tax increment grant, the development works on the subject lands (hereinafter referred to as "work"), shall conform to and fulfill:

- (a) the objectives and requirements of the Tax Increment and Rehabilitation program of the DCIP,
- (b) any other requirements as specified by the City

- 2.2 The Owner acknowledges that it has received and read a copy of the City's DCIP Tax Assistance Program Guide (the "DCIP Guide") and the Owner covenants with the City that the subject lands shall be rehabilitated and developed in accordance with the City's objectives, policies and requirements set out in the DCIP.

### **3. TAX INCREMENT GRANT CALCULATION AND PAYMENT**

- 3.1 The annual tax assistance will be calculated as the difference between property taxes on the subject lands at the time of approval of this Agreement and property taxes that would have been collected on the subject lands after the project's completion. It is calculated once and remains the same for the 10-year period.
- 3.2 The Niagara Region portion of the Municipal Tax must be approved by the Niagara Region to be eligible for this program. If Niagara Region does not approve the TIG for this property for any reason the City of Port Colborne will only provide a grant equal to the City portion of the TIG.
- 3.2 Municipal tax assistance will commence at the time of passing of the by-law for the subject lands and will cease on the earlier of:
- a) sale or conveyance of the subject lands;
  - b) ten (10) years from the date the tax assistance begins.
- 3.3 The annual grant will be calculated as a percentage of the increase in municipal property taxes on the subject lands that result from the development with this percentage as identified in the table below.

Year*	Grant Factor
1	80%
2	80%
3	80%
4	80%
5	80%
6	80%
7	80%
8	80%
9	80%
10	80%

- 3.4 The tax increment grant payments shall be calculated according to the formulas and schedules set out in Schedule B to this agreement.
- 3.6 The actual tax increment grant payment amounts will be based on the actual post-project assessed value (AV) as determined by the Municipal Property Assessment Corporation (MPAC) and actual applicable City tax rates. This amount is calculated once at the time of the MPAC reassessment and will remain constant through the 10-year period.

- 3.7 Where at any time after the original rehabilitation of the subject lands, new construction is added to the subject lands that is not part of the original program application, the tax increment grant will be calculated only in respect of the original rehabilitation contained in the original application, based on the assessed value and property taxes in the last year before revaluation by the MPAC as a result of the new construction added to the subject lands.
- 3.8 The annual TIG shall be calculated by the City based upon, and provided the City is satisfied in its discretion that rehabilitation of the subject lands took place in accordance with the proposed rehabilitation works as specified in the application, accompanying documentation, and this Agreement;
- 3.9 The City shall review all cost estimates and documentation submitted in support of the application in evaluating the estimated costs eligible for tax increment grant, which costs, when designated by the City shall constitute the maximum costs eligible for tax increment grant. In the event the City is not satisfied with said cost estimates, the City may substitute their opinion of such amounts for purposes of calculating the eligible costs and maximum total tax increment and/or maximum total grant.
- 3.10 If the City is not in receipt of sufficient information satisfactory to the City to determine eligible costs and the amount of tax increment grant, there shall be no tax assistance/grant. The decision of the City regarding the total amount of eligible costs, the calculation of the total estimated tax increment grant, and the calculation of the actual tax increment grant is final and within the City's sole discretion.
- 3.11 Payment of the tax increment grant is subject to the City's review and satisfaction with all reports and documentation submitted in support of the application, including but not limited to: documentation of the estimated and actual costs of eligible works. Any and all of these costs may be, where required by the City, subject to verification, third party review or independent audit, at the expense of the Owner.
- 3.12 The Owner shall not be entitled to tax increment grant payment unless and until they have met all the conditions of this Agreement to the satisfaction of the City. Except where expressly stated in this Agreement, all conditions in this Agreement are for the benefit of the City and may only be waived by the City. No waiver is effective unless in writing.
- 3.13 The tax assistance that has been provided to the Owner will become payable (including interest) upon notice in writing from the City that one or more of the terms and conditions set out in the application, this Agreement or the Tax Increment Grant Program have not been met.
- 3.14 Any and all grant payments that have been provided to the Owner will become payable upon notice in writing from the City that one or more of the conditions set out in the application, this Agreement, or the Tax Increment Grant Program have not been met.
- 3.15 Grants are not payable by the City until such time as additional assessment eligible for a grant has been added to the assessment roll by the MPAC, property taxes have been billed by the City, and property taxes have been paid in full for one year on the property.

- 3.16 Annual grant payments to the Owner will not be issued if there is an outstanding tax payment. If at any time after the term of this Agreement, property taxes are owing on a property for more than one full year, the City will have the option, at its sole discretion, to terminate this Agreement and all future grant payments.
- 3.17 The grant is not payable by the City until such time as all assessment appeals relating to the value of the subject lands before the additional assessment or as to the additional assessment as a result of the development of the subject lands have been filed and decided.
- 3.18 The first grant payment as finally determined by the City shall be paid to the Owner by the City, subject to the provisions of this Agreement, following completion and occupancy of the said redevelopment of the subject lands, and during or after the property taxation year in which the property taxes increase as a result of the completed rehabilitation.
- 3.19 Annual grant payments under DCIP will not be provided by the City until the Owner has satisfied the City that:
- a) The development work on the subject lands has been completed in accordance with the work as described in the application;
  - b) There are no outstanding work orders and/or orders or requests to comply from any City department or other regulatory authority in respect of the subject lands, and the business of the Owner conducted on the subject lands;
  - c) The Owner and the subject lands are in full compliance with:
    - i) Any Agreement(s) relating to the property in favour of the City, including any Agreement relating to: subdivision, modified subdivision, service, site plan approval, encroachment, joint sewer & water use, easement or other Agreement; and,
    - ii) Bylaws of the City and provincial or federal legislation and regulations.
  - d) There are no unpaid charges where applicable against the subject lands in favour of the City, including but not limited to: development charges, parkland dedication fees, special assessments and local improvement charges; and,
  - e) The Owner has not appealed the post-project assessed value and there exists no other pending appeal which has not been settled completely in respect of the post-project assessed value.

#### **4. PERSONAL STATUS**

- 4.1 The Owner warrants and represents to the City that:
- a) the Owner is a resident of Canada as of the date of this Agreement and that in the event the Owner ceases to be a resident of Canada, the Owner shall immediately notify the City, and it is agreed, the City may deduct from any or all annual grant payments, such sum(s) as may be required by Canada Customs and Revenue

Agency in order to meet the City's obligations as a payer and the Owner's obligations under the *Income Tax Act (Canada)* and other applicable laws.

- b) to the best of its knowledge and belief, there are no actions, suits or proceedings pending or threatened against or adversely affecting the Owner in any court or before or by any federal, provincial, city or other governmental department, commission, board, bureau or agency, Canadian or foreign, which might materially affect the financial condition of the Owner or title to their property or assets; and,
- c) The Owner shall notify the City immediately of any material change in the conditions set out in paragraphs (a)-(d) above.

## **5. PROVISIONS RELATING TO THE OWNER**

- 5.1 The Owner covenants to the City that building(s) and improvements that are the subject of this Agreement will not be demolished, in whole or in part prior to the advance of all of the grant payments.
- 5.2 The Owner shall ensure there are no liens or other claims outstanding in respect of the subject lands, including its rehabilitation, all accounts for work and materials which could give rise to any claim for a construction lien against the subject lands have been paid; and there is no default by the Owner with respect to any of the terms of this Agreement.
- 5.3 The Owner shall ensure that the Owner is in compliance with the *Construction Lien Act*, including its holdback provisions and is not aware of any potential or unresolved Lien claim in respect of the redevelopment.
- 5.4 The Owner covenants to the City that the Owner shall use the subject lands in compliance with this Agreement, all city by-laws pertaining to use, and all applicable environmental laws.
- 5.5 The Owner covenants to the City that the Owner will require, as a term of every lease that tenants of the subject lands comply with all city by-laws pertaining to use, and all applicable environmental laws.
- 5.6 The Owner agrees to comply with all outstanding work orders and/or orders or requests to comply from any and all City departments during the term of this Agreement.
- 5.7 The Owner covenants to the City that the Owner shall not commit or permit any waste to be dumped or any nuisance upon the subject lands, or permit any part of the subject lands to be used for any dangerous occupation or business or for any noxious or offensive trade.
- 5.8 The Owner covenants to the City that where the Ownership of part or all of the subject lands ceases for any reason to be in the Owner's name by sale, conveyance, assignment or otherwise, prior to the advance of all of the tax assistance and/or the grant, the Owner will notify the City in writing of said change of ownership at least 30 days prior to said change of ownership.
- 5.9 The Owner acknowledges that nothing in this Agreement is intended to impose or shall impose upon the City any duty or obligation to inspect or examine the land for

compliance or non-compliance or to provide an opinion or view respecting any condition of development; and,

- a) Nothing in this Agreement is intended to be or shall be construed to be a representation by the City regarding compliance of the land with:
  - i) Applicable environmental laws, regulations, policies, standards, permits or approvals; or,
  - ii) Other by-laws and policies of the City.

5.10 If the City determines in its sole discretion that any of the conditions of this Agreement are not fulfilled, and the City at its sole discretion delays or cancels tax increment grant payments, and/or requires repayment of the tax increment grant payments already made to the Owner, and/or terminates this Agreement, the Owner agrees that notwithstanding any costs or expenses incurred by the Owner, the Owner shall not have any claim for compensation or reimbursement of these costs and expenses against the City and that the City is not liable to the Owner for losses, damages, interest, or claims which the Owner may bear as a result of the City exercising its rights herein to delay or cancel tax assistance and/or grant payments, require repayment of tax assistance and/or grant payments already made to the Owner, and/or terminate this Agreement.

5.11 The Owner shall indemnify and save harmless from time to time and at all times, the City and its officials, officers, employees, and agents from and against all claims, actions, causes of action, interest, demands, costs, charges, damages, expenses and loss made by any person arising directly or indirectly from:

- a) The City entering into this Agreement; and
- b) Any failure by the Owner to fulfil its obligations under this Agreement. This indemnification shall, in respect of any matter arising prior to the termination of this Agreement, remain in force following termination or expiry of this Agreement.

## **6. PROVISIONS RELATING TO THE CITY**

6.1 The City agrees to provide a grant to the Owner with said grant to commence once the City is satisfied that Section 3 stipulations have been met and ceasing on the earlier of:

- a) sale or conveyance of the subject lands;
- b) Ten (10) years.

6.2 On an annual basis, the City, upon being satisfied that the Owner is not in default of any of the terms and conditions set out in the application, this Agreement, the Tax Increment Grant Program, shall pay the annual grant payment.

6.3 If the Owner cannot be reached over a protracted period (more than 2 years), the City will have the option, without notice and at its own discretion, of terminating this Agreement and all future grant payments to the Owner.

6.4 If in the opinion of the City the property is not maintained in its rehabilitated condition, the City may, at its sole discretion, terminate tax increment grant and all future grant

payments and require repayment of the tax assistance and/or grant payments already provided by the City to the Owner.

- 6.5 The City, its employees and agents are entitled to inspect the subject lands at any time during business hours for the purpose of ascertaining their condition or state of repair or for the purpose of verifying compliance with the DCIP.
- 6.6 The City retains the right at all times to delay or cancel tax increment grant payments, and/or require repayment of tax increment grant payments already made to the Owner, and/or terminate this Agreement where the City deems that there is non-compliance with this Agreement. In particular, without limiting the generality of the foregoing, the tax assistance and the grant is conditional upon periodic reviews satisfactory to the City to there being no adverse change in the rehabilitation works and to there being compliance on the part of the Owner with all other requirements contained in this Agreement.
- 6.7 Communications from the City to the Owner may be addressed to the Owner at the address of the Owner listed in Section 9 of this Agreement.

## **7. DEFAULT AND REMEDIES**

- 7.1 On the occurrence of default under this Agreement the City shall be entitled to its remedies to enforce this Agreement, including, but not limited to:
  - a) Delaying or cancelling tax increment grant payments; and/or,
  - b) Requiring repayment to the City by the Owner of all tax assistance and/or grant payments already made to the Owner; and/or,
  - c) Terminating the Agreement.
- 7.2 Default shall be deemed to occur upon any default of the Owner in complying with the terms set out in this Agreement, including, but not limited to, the following:
  - a) Non-compliance with any City by-laws, provincial, and/or federal laws and regulations;
  - b) Failure to pay and keep in good standing all real property taxes;
  - c) Any representation or warranty made by the Owner is incorrect in any material respect;
  - d) Failure to perform or comply with any of the obligations contained in this Agreement or contained in any other Agreement entered into between the Owner and the City;
  - e) The Owner makes an assignment for the benefit of creditors, or assigns in bankruptcy or takes the advantage in respect of their own affairs of any statute for relief in bankruptcy, moratorium, settlement with creditors, or similar relief of bankrupt or insolvent debtors, or if a receiving order is made against the Owner, or if the Owner is adjudged bankrupt or insolvent, or if a liquidator or receiver is appointed by reason of any actual or alleged insolvency, or any default of the Owner under any mortgage or other obligation, or if the subject lands or interest of the

Owner in the subject lands becomes liable to be taken or sold by any creditors or under any writ of execution or other like process;

f) This Agreement is forfeited or is terminated by any other provision contained in it.

7.3 The City may at its sole discretion provide the Owner with an opportunity to remedy any default.

## **8. ADDITIONAL PROVISIONS**

8.1 This Agreement shall remain in effect from the date of its execution by the City to the earlier of:

a) The time when the City informs the Owner in writing that due to the non-fulfilment or non-compliance with a required condition or due to default, this Agreement is terminated;

b) Ten (10) years.

8.2 Time shall be of the essence with respect to all covenants, Agreements and matters contained in this Agreement.

8.3 Schedule "A" attached to this Agreement forms part of the Agreement.

## **9 NOTICES**

9.1 Where this Agreement requires notices to be delivered by one party or the other, such notice shall be given in writing and delivered either personally, by e-mail, by fax or by prepaid first call mail by the party wishing to give such notice to the other party at the address noted below:

### **To the Owner at:**

Michael Smith  
176 Elm Street  
Port Colborne, ON L3B 4A2  
Ph: 905-732-4481

### **To the City at:**

City of Port Colborne  
c/o Charlotte Madden  
66 Charlotte Street  
Port Colborne Ontario, L3K 3C8  
Ph: 905-835-2900 ext 106  
Fax: 905-835-2939



**THIS AGREEMENT** shall be binding upon the parties and their heirs, executors, successors and assigns.

**IN WITNESS WHEREOF** the parties duly execute this Agreement:

SIGNED, SEALED AND DELIVERED  
In the presence of

THE CITY OF PORT COLBORNE

---

Mayor William C. Steele

---

Charlotte Madden City Clerk

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WITNESS

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Michael Smith:  
Owner

**Schedule "A"**

Of an Agreement between the City of Port Colborne and the Owner named in this Agreement.

Name of Registered Property Owner: Hometown Properties Inc.

Address of Subject Lands: 176 Elm Street

Roll NO.: 271101002219200

Mailing Address of Property Owner (where different from address of subject lands):

176 Elm Street, Port Colborne, Ontario, L3B 4A2 Tel. No: 905-732-4481

**E-mail:** Michael Smith [michaels@royalpage.ca](mailto:michaels@royalpage.ca)

Legal Description of Subject Lands

PT PK LT6 W/S Catharine St PL 987-989

## Schedule "B"

### Downtown CIP Tax Assistance

(1) Cost of approved eligible tax assistance works	\$7,373,000 (estimate)
(2) Pre-project assessed value (AV):	\$425,000
(3) Pre-project City property taxes	\$6,145.00
(4) Post-project assessed value (AV):	CT \$7,373,000
(5) Post-project City property taxes	\$72,290

Municipal Tax Assistance = Post-project City property Taxes – Pre-project City property taxes

Grant = Post-project City property taxes – Pre-project City property taxes

Actual post project assessed value will be determined by MPAC

# **TAX ASSISTANCE CALCULATION SCHEDULE**

	<b>Pre Development</b>	<b>Project Completion</b>	<b>Tax Increment</b>	<b>% of Tax Increment</b>	<b>Annual Grant Estimate</b>
<b>Assessment Value</b>	\$425,000	\$7,373,000	\$282,500	80%	80%
<b>City Taxes</b>	\$6,145	\$72,290	\$66,145	80%	\$52,916.16
		<b>Duration of Grant</b>			10 years
		<b>Total Payment of City Grant</b>			\$ 529,161.57
		however subject to any assessment or tax increase during the 10-year period			

The Corporation of the City of Port Colborne

By-law No. \_\_\_\_\_

Being a By-law to Authorize Entering into an Agreement with Hometown Properties Inc. regarding a Downtown Central Business District Community Improvement Revitalization Plan (Tax Increment) Grant

Whereas at its meeting of July 18, 2023, the Council of The Corporation of the City of Port Colborne (Council) approved the recommendations of Chief Administrative Office Report 2023-120, Subject: CIP Agreement – 176 Elm Street; and

Whereas Council is desirous of entering into an agreement with Hometown Properties Inc., for the purposes of a Downtown Central Business District Community Improvement Plan Revitalization (Tax Increment) Grant; and

Now therefore the Council of The Corporation of the City of Port Colborne enacts as follows:

1. That The Corporation of the City of Port Colborne enters into an agreement with Hometown Properties Inc., for the purposes of a Downtown Central Business District Community Improvement Revitalization Plan (Tax Increment) Grant;
2. That the Mayor and City Clerk be and are hereby authorized to execute any documents that may be required for the purpose of carrying out the intent of this by-law and the City Clerk is duly authorized to affix the Corporate Seal thereto.

Enacted and passed this 18th day of July, 2023.

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William C. Steele  
Mayor

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Charlotte Madden  
City Clerk

NIAGARA ECONOMIC GATEWAY & COMMUNITY IMPROVEMENT PLANS  
TAX INCREMENT GRANT PROGRAM ESTIMATE

Municipality: Port Colborne  
Address: 176 Elm Street  
Roll Number:  
Pre Project Year: 2022  
Post Project Year: 2025

	New Multi-residential	Commercial - Vacant and Excess Land	Residential	Total Pre-Project Taxes	New Multi-residential	Commercial - Vacant and Excess Land	Residential	Total Post Project Taxes	Tax Increment	Annual Grant amount
Class Code	NT	CX	RT		NT	CX	RT			
Assessment Value <sup>1</sup>	\$0.00	\$425,000.00	\$0.00		\$7,373,000.00	\$0.00	\$0.00			
Municipal Taxes <sup>2,3,4</sup>	\$0	\$6,145	\$0	\$6,145	\$72,290	\$0	\$0	\$72,290	\$66,145	\$52,916
Regional Taxes <sup>5,6,7</sup>	\$0	\$4,384	\$0	\$4,384	\$51,571	\$0	\$0	\$51,571	\$47,187	\$37,749
Provincial Taxes <sup>8,9,10</sup>	\$0	\$3,740	\$0	\$3,740	\$11,281	\$0	\$0	\$11,281	N/A	
Total									\$113,332.03	
% of Tax Increment Year 1 <sup>11</sup>									80.00%	
Annual Grant Payment <sup>13</sup>									\$90,665.62	

This estimates the completed project being assessed at \$7,373,000.00 based on cost of land and construction costs; actual assessment will be completed by MPAC following the project completion. Existing assessment value is based on actual 2018 MPAC assessment. These calculations reflect the grant percentage that would be received based on a project score of 80% . These results are estimated using the 2018 tax rates. Actual annual amount will be based on the grant percentage applied to the incremental taxes paid each year for the duration of the grant however may be subject to a reduction should the taxes owing be reduced in any given year due to a assessment appeal.

<sup>1</sup> Both Pre- and post-project completion assessments are estimates and may be subject to change.

<sup>2</sup> Municipal New Multi-residential Tax Rate

<sup>3</sup> Municipal Commercial - Vacant and Excess Land Tax Rate

<sup>4</sup> Municipal Residential Tax Rate

<sup>5</sup> Regional New Multi-residential Tax Rate

<sup>6</sup> Regional Commercial - Vacant and Excess Land Tax Rate

<sup>7</sup> Regional Residential Tax Rate

<sup>8</sup> Education New Multi-residential Tax Rate

<sup>9</sup> Education Commercial - Vacant and Excess Land Tax Rate

<sup>10</sup> Education Residential Tax Rate

Pre-Project Tax Rates	Post-Project Tax Rates
0.00980471	0.00980471
0.01445866	0.01445866
0.00980471	0.00980471
0.00699451	0.00699451
0.01031456	0.01031456
0.00699451	0.00699451
0.00153	0.00153
0.0088	0.0088
0.00153	0.00153

<sup>13</sup> This is an estimate only and does not constitute any guarantee or assurance of a grant and should not be relied upon as such.

SUMMARY FORECAST (excluding education)

Event	Year	Grant %	Municipal Grant Estimate	Regional Grant Estimate	Total Grant Estimate
Base year	2022				
Grant Year 1	2025	80%	\$ 52,916.16	\$ 37,749.47	\$ 90,665.62
Grant Year 2	2026	80%	\$ 52,916.16	\$ 37,749.47	\$ 90,665.62
Grant Year 3	2027	80%	\$ 52,916.16	\$ 37,749.47	\$ 90,665.62
Grant Year 4	2028	80%	\$ 52,916.16	\$ 37,749.47	\$ 90,665.62
Grant Year 5	2029	80%	\$ 52,916.16	\$ 37,749.47	\$ 90,665.62
Grant Year 6	2030	80%	\$ 52,916.16	\$ 37,749.47	\$ 90,665.62
Grant Year 7	2031	80%	\$ 52,916.16	\$ 37,749.47	\$ 90,665.62
Grant Year 8	2032	80%	\$ 52,916.16	\$ 37,749.47	\$ 90,665.62
Grant Year 9	2033	80%	\$ 52,916.16	\$ 37,749.47	\$ 90,665.62
Grant Year 10	2034	80%	\$ 52,916.16	\$ 37,749.47	\$ 90,665.62
Total Estimate	Total Estimate		\$ 529,161.57	\$ 377,494.67	\$ 906,656.24

**Subject: Property Acquisition – 316 2nd Concession / Highway 140**

**To: Council**

**From: Office of the Chief Administrative Officer**

Report Number: 2023-133

Meeting Date: July 18, 2023

---

**Recommendation:**

That Chief Administrative Office Report 2023-133 be received;

That a by-law to authorize entering into an Agreement of Purchase and Sale with Timothy Horst and Reginald Malott (“the sellers”) at the agreed upon price of \$840,000 for 316 2nd Concession legally described as Pt Lt 25 Con 3, Humberstone, As In RO119873 Lying W of RO109911 Except RO222994; be approved and brought forward; and

That the Mayor and City Clerk be authorized to sign and execute all documents respecting the purchase of these lands.

---

**Purpose:**

The purpose of this report is to obtain Council’s approval to enter into an Agreement of Purchase and Sale with the owners of 316 2<sup>nd</sup> Concession and Highway 140 shown in Appendix A.

---

**Background:**

A key area of focus for the Economic Development and Tourism Services (EDTS) Division is City Real Estate. This includes the disposition of surplus City owned land; the acquisition of properties of strategic interest; responding to real estate inquiries; working closely with investors and developers; and undertaking any due diligence or pre-development work required before buying or selling property. EDTS staff work closely with key staff in other City departments to move projects and inquiries forward.

The current property is zoned Gateway Industrial (GI) and is 3.6 acres, with lot dimensions of 226.54 by 401.77. It is un-serviced.

---

### **Discussion:**

The property at 316 2nd Concession is located in an industrial area zoned Gateway Industrial (GI).

An appraisal of this property was requested by City staff through CHS Realty, and the appraisal is in-line with the final purchase price.

The seller of the property would like to live at the property's residence for a term of six (6) months and has agreed to pay \$2,000 a month for rent plus utilities and pay for their own insurance. The seller will sign a Rental Agreement with the City outlining the terms and conditions.

---

### **Financial Implications:**

City staff and the current owner of the property have come to terms on a tentative agreement on a purchase price of \$840,000. It has been agreed that the seller would live in the property for up to 6 months and pay the City rent of \$2,000 per month, plus utilities and insurance. The seller, who will become a tenant leasing City property, will be required to maintain adequate insurance coverage and add the City as an additional insured party. The acquisition of this property would be funded from internal financing against City reserves.

---

### **Strategic Plan Alignment:**

The initiative contained within this report supports the following pillars of the strategic plan:

- Attracting Business Investment and Tourists to Port Colborne
  - Value: Financial Management to Achieve Financial Sustainability
- 

### **Conclusion:**

Staff are recommending that the City purchase the 3.6 acre property at 316 2<sup>nd</sup> Concession on the corner of Highway 140. This property will support future economic growth, new employment opportunities, and the creation of new industrial lands. The purchase price, which is in-line with the appraisal provided by CHS Realty, will be funded from internal financing against City reserves.



**Appendices:**

- a. 316 2<sup>nd</sup> Concession Property Map
- b. By-law

Respectfully submitted,

Bram Cotton  
Economic Development Officer  
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[Bram.Cotton@portcolborne.ca](mailto:Bram.Cotton@portcolborne.ca)


Gary Long  
Manager of Strategic Initiatives  
(905) 835-2900 Ex. 502  
[Gary.Long@portcolborne.ca](mailto:Gary.Long@portcolborne.ca)

**Report Approval:**

All reports reviewed and approved by the Department Director and also the City Treasurer when relevant. Final review and approval by the Chief Administrative Officer.



## Legend

 Parcel Fabric



127.0 0 63.50 127.0 Meters

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This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. This map is not to be used for navigation.



Notes

The Corporation of the City of Port Colborne

By-law No. \_\_\_\_\_

Being a By-law to Authorize Entering into an Agreement of Purchase and Sale with Timothy Horst and Reginald Malott for 316 2nd Concession legally described as Pt Lt 25 Con 3, Humberstone, As in RO119873 Lying W of RO109911 Except RO222994

Whereas at its meeting of July 18, 2023, Council approved the recommendations of Chief Administrative Office Report No. 2023-133, Subject: Property Acquisition – 316 2nd Concession / Highway 140; and

Whereas Council is desirous of entering into an Agreement of Purchase and Sale with Timothy Horst and Reginald Malott (“the sellers”) at the agreed upon price of \$840,000 for 316 2nd Concession legally described as Pt Lt 25 Con 3, Humberstone, As in RO119873 Lying W of RO109911 Except RO222994;

Now therefore the Council of The Corporation of the City of Port Colborne Enacts as follows:

1. That The Corporation of the City of Port Colborne enter into an Agreement of Purchase and Sale with Timothy Horst and Reginald Malott (“the sellers”) at the agreed upon price of \$840,000 for 316 2nd Concession legally described as Pt Lt 25 Con 3, Humberstone, As in RO119873 Lying W of RO109911 Except RO222994.
2. That the Mayor and Clerk be and each of them is hereby authorized and directed to sign said agreement, together with any documents necessary to complete the conditions of said agreement, and the Clerk is hereby authorized to affix the Corporate Seal thereto.
3. That the City Solicitor be and is hereby directed to prepare and register all such documents in the proper Land Registry Office as may be required to give full force and effect to this By-law.

Enacted and passed this 18th day of July, 2023.

\_\_\_\_\_  
William C. Steele  
Mayor

\_\_\_\_\_  
Charlotte Madden  
City Clerk

**Subject: Application to Housing Accelerator Fund**

**To: Council**

**From: Office of the Chief Administrative Officer**

Report Number: 2023-139

Meeting Date: July 18, 2023

---

**Recommendation:**

That Chief Administrative Office Report 2023-139 be received; and

That Council direct the Manager of Strategic Initiatives to submit an application to the federal government's Housing Accelerator Fund (HAF).

---

**Purpose:**

The purpose of this report is to make Council aware of the Housing Accelerator Fund (HAF) and staff's intention to submit an application.

---

**Background:**

The federal government's 2022 Budget announced \$4 billion in funding until 2026-2027 to launch the Housing Accelerator Fund to support the National Housing Strategy. The program is being administered by the Canada Mortgage and Housing Corporation (CMHC). According to program information, HAF "encourages local governments to implement initiatives that will speed up housing development and increase supply" and "provides incentive funding to local governments to create more housing."

The key objectives of HAF are as follows:

- implementation of initiatives to get more homes built faster;
- development of low carbon and climate resilient communities;
- development of affordable, inclusive, equitable and diverse communities;
- development of complete communities;
- speed up approvals and building processes.

To be eligible, applicants must develop an action plan; commit to housing growth targets (increase average rate of growth by at least 10% that otherwise wouldn't be achieved without the HAF); complete/update housing needs assessment; and submit periodic reports.

Local governments who have delegated authority over land use planning and development approvals are eligible to apply. The City of Port Colborne falls within the "large/urban" category which is any jurisdiction in Canada with a population equal to or greater than 10,000. The action plan must include initiatives that will help to achieve committed housing supply growth targets and that will accelerate approvals. The minimum number of initiatives for large/urban jurisdictions is seven (7).

## **Discussion:**

One of the pillars in the new 2023-2026 Strategic Plan is "Increasing Housing Options." To this end, Council and staff are committed to creating more housing supply and more affordable housing units. It is staff's intention to submit an application to the Housing Accelerator Fund with the assistance of Tim Welch Consulting, who completed the City's Affordable Housing Strategy and Action Plan. Through the HAF program, there is potential opportunity for the City to secure funding to assist with implementation of policy initiatives that will support the development of more housing supply and streamline development approvals.

According to Niagara Regional Housing, Port Colborne has the highest "core housing need" rate among municipalities in Niagara at 16.2%. The average rate in Niagara is 13.3%, Ontario is 15.3%, and Canada is 12.7%. A household is said to be in 'core housing need' if its housing falls below at least one of the adequacy, affordability or suitability standards and it would have to spend 30% or more of its total before-tax income in rent.

There are several growth and development related studies and plans that are either completed, underway, or that will be initiated that demonstrate Council and staff's commitment to creating more housing supply and affordable housing units. This level of commitment will be highlighted in the HAF application. The plans and studies are as follows:

- Affordable Housing Strategy and Action Plan (approved September 2022)
- Growth Review Analysis (completed, report to Council in August/Sept. 2023)
- Comprehensive CIP Review (report/recommendation – September 2023)
- Infrastructure Needs Study (report/recommendation – September 2023)
- Development Charges Background Study (to be initiated in Q4/2023)
- Official Plan Review (to be initiated in 2024)

Once HAF funding is approved, there is flexibility in the use of the funding. For example, it could be used to pay for studies and policy work that lead to an increase in housing



supply. It could also be used for direct development costs such as the Haney Street Housing Project and partnership with Niagara Regional Housing as it will create more affordable housing units and there is pre-development and site work that needs a funding source.

The following are examples of initiatives that align with HAF objectives that could be part of a municipality's action plan and submitted with the application:

- Allowing increased housing density on a single lot;
- Encouraging Accessory Dwelling Units;
- Promoting infill developments with increased housing density and a variety of unit types (e.g., duplexes or secondary suites);
- Allowing higher density as of right residential zoning on main streets;
- Implementing revised parking requirements such as reduced or eliminated parking spaces for new developments;
- Ensuring that development charges are clear, transparent, and pre-determined;
- Aligning development charges with the costs of infrastructure and servicing;
- Implementing incentives, costing or fee structures, for example density bonusing, to encourage such things as affordable housing and conversions from non-residential to residential;
- Waiving public hearings on all affordable housing projects that conform to the official plan;
- Incorporating a climate adaptability plan into the Official Plan;
- Encouraging alternative forms of housing construction such as modular housing, manufactured housing, and prefabricated housing;
- Creating a process for the disposal of city-owned land assets for the development of affordable housing as-of-right (not requiring rezoning);
- Implementing new/enhanced processes or systems such as case management, e-permitting, land and building modelling;
- Implementing changes to decision making such as delegating development approval authority to municipal staff based on established thresholds or parameters;
- Partnering with non-profit housing providers to increase the stock of affordable housing;
- Updating infrastructure planning to align with the official plan, growth targets, and housing needs assessment.

There are four categories of permitted uses of HAF funding:

- investments in HAF action plans;
- investments in affordable housing;
- investments in housing related infrastructure;
- investments in community related infrastructure.

Staff have discussed several potential initiatives with Tim Welch Consulting that could be included in the action plan that is required for the HAF application. The potential initiatives are outlined in Appendix A attached to this report.

Applications are due on August 18, 2023, and are to be submitted through a portal. There will be only one intake. According to CMHC, applications will be evaluated, prioritized, and selected for approval this fall with Contribution Agreements to be signed over the winter. Initiatives which have started after April 2022 are eligible to be funded under the HAF.

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### **Internal Consultations:**

The City's Building, Planning, and Economic Development Divisions are working together on process and service delivery changes, and policy initiatives, to drive efficiencies, increase collaboration, and create more housing supply.

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### **Financial Implications:**

The HAF does not require the municipality to make a matching financial contribution to be eligible to receive funding. One of the documentation requirements for the application is an attestation letter from the CFO (or equivalent) regarding the action plan viability.

According to program information, HAF is not directly underwriting specific housing projects or reimbursing applicants for specific costs incurred. HAF funding can be used in support of housing under any of the following four categories identified in the Discussion section of this report.

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### **Public Engagement:**

Creating more housing supply and housing units is an open and transparent process, including staff reports to Council, public meetings, open houses, and plans and studies that are posted on the City's website for public consumption. The community survey results for the 2023-2026 Strategic Plan indicated that 55% of respondents choose housing affordability and availability as priorities the City should focus on.

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### **Strategic Plan Alignment:**

The initiative contained within this report supports the following pillars of the strategic plan:

- Attracting Business Investment and Tourists to Port Colborne
  - City-Wide Investments in Infrastructure and Recreational/Cultural Spaces
  - Value: Financial Management to Achieve Financial Sustainability
  - Governance: Communications, Engagement, and Decision-Making
- 

## Conclusion:

There has been significant Council, staff, and community focus on increasing housing supply and more housing types to create affordability. Staff want to make Council aware that the federal government has created a National Housing Strategy that includes \$4 billion for a Housing Accelerator Fund (HAF).

It is staff's intention to work with Tim Welch Consulting to submit a HAF application this summer to capitalize on the potential opportunity to secure funding to assist with initiatives that will create more housing units.

---

## Appendices:

- a. Potential action plan initiatives to be submitted with HAF application

Respectfully submitted,

Gary Long  
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905-835-2900 x.502  
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Chief Planner  
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## Report Approval:

All reports reviewed and approved by the Department Director and also the City Treasurer when relevant. Final review and approval by the Chief Administrative Officer.



Potential “action plan” initiatives being discussed by City staff and Tim Welch Consulting that may be included in the City’s HAF application:

- utilize data, analysis, and recommendations from the 2023 Growth Review Analysis (GRA) to create more housing units within a streamlined approvals process;
- community engagement and policy updates to the City’s Zoning By-Law to support Accessory Dwelling Units (ADUs)
- changes to the City’s Zoning By-Law to provide more options and flexibility to increase density;
- new CityWide module to track status of planning and development applications;
- provide more delegated authority to staff, within established parameters, to make decisions regarding aspects of planning and development approvals;
- complete a Development Charges (DC) Background Study and By-law to develop new DC rates that align with the cost of infrastructure and servicing;
- as of right zoning to increase residential development
- brownfield remediation to support affordable housing (eg. Haney Street project)
- reviewing parking requirements
- incentives to increase affordable housing and support conversions from non-residential to residential;
- partner with not-for-profit organizations such as Niagara Regional Housing and Port Cares to redevelop specific parcels of surplus City property and construct affordable housing units;
- utilize both the GRA and the Infrastructure Needs Study (INS) as infrastructure planning tools to ensure alignment with new Official Plan and determine servicing needs and related costs.

**Subject: Recommendation Report for Zoning By-law Amendment  
D14-03-23, VL Knoll Street**

**To: Council**

**From: Development and Legislative Services Department**

Report Number: 2023-137

Meeting Date: July 18, 2022

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**Recommendation:**

That Development and Legislative Services Department Report 2023-137 be received;  
and

That Council approves the Zoning By-law Amendment attached as Appendix A, to  
amend the zoning of the subject lands from First Density Residential (R1) to Second  
Density Residential (R2).

---

**Purpose:**

The purpose of this report is to provide Council with an update and recommendation  
regarding a Zoning By-law Amendment application initiated by the owner Stanley  
Homes.

The application was received on May 10, 2023, and was deemed complete on May 11,  
2023. The application is requesting to change the zoning of the subject property from  
First Density Residential (R1) to Second Density Residential (R2). There are no special  
provisions being requested as a part of this application.

The requested amendment is being sought to facilitate the construction of a semi-  
detached dwelling. A site plan for the proposed dwelling has been attached as Appendix  
B.

---

**Background:**

**Location:**

The subject lands are located on the east side of Knoll Street. The legal description of the property is Part 1 on Registered Plan 59R-15742, on the east side of Knoll Street, formerly in the Township of Humberstone, now in the City of Port Colborne, within the Regional Municipality of Niagara, municipally known as a vacant lot on Knoll Street.

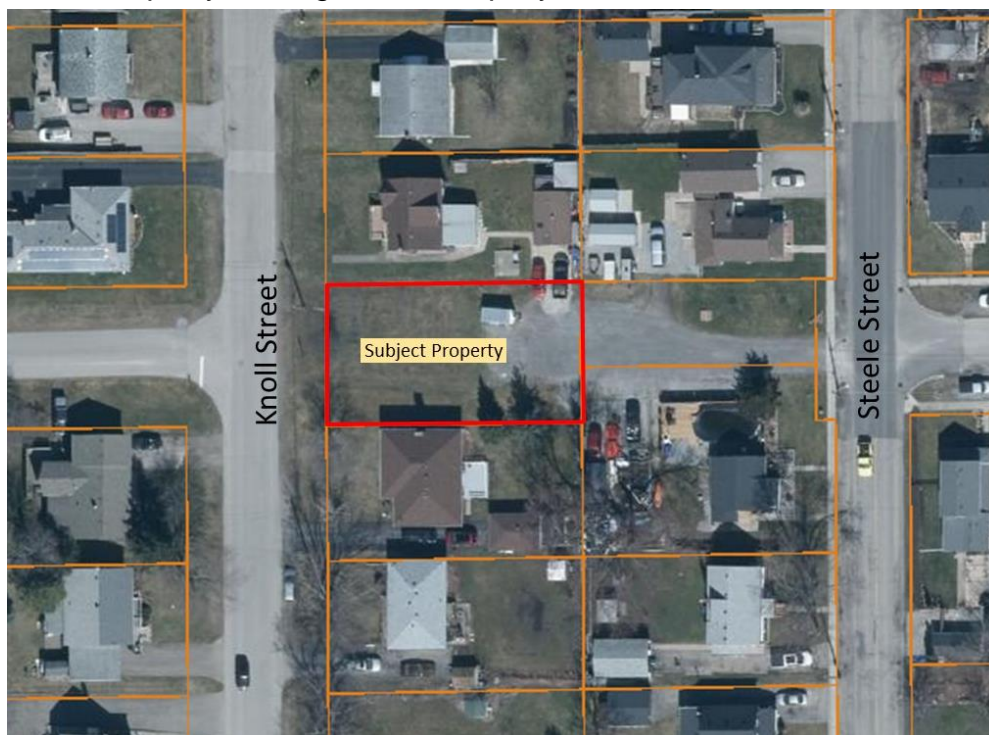


Figure 1: Location of subject lands in red, from Niagara Navigator 2020

### **Surrounding Land Uses and Zoning:**

The surrounding properties are zoned R1 to the north, south, east, and west. The surrounding uses consist of residential dwellings.

---

### **Discussion:**

#### **Planning Documents:**

Planning staff reviewed this application with consideration of several planning documents including the *Planning Act*, R.S.O. 1990, as amended, the Provincial Policy Statement (2020), A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019), the Regional Official Plan, the City of Port Colborne Official Plan and the City of Port Colborne Comprehensive Zoning By-law 6575/30/18. For an application to be supported by staff, it must conform to or be consistent with the aforementioned plans.

***Planning Act:***

Section 3 of the Act requires that, in exercising any authority that affects a planning matter, planning authorities “shall be consistent with the policy statements” issued under the Act and “shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be”.

Section 34 of the Act allows for the consideration of a Zoning By-law Amendment.

**Provincial Policy Statement:**

The Provincial Policy Statement provides policy direction on matters of provincial interest related to land use planning and development. The subject lands are within a “settlement area” according to the PPS. Settlement areas are to be the focus of growth and development and land use patterns shall be based on densities and a mix of land uses and should efficiently use land and resources.

Staff is satisfied that the proposed Zoning By-law Amendment is consistent with the PPS. The application proposes growth within a settlement area and proposes a semi-detached dwelling that will result in a more diverse range of housing on Knoll Street and a mix of dwelling types in the surrounding area.

**Growth Plan for the Greater Golden Horseshoe:**

The Growth Plan also directs development to settlement areas. The subject parcel is located within a “Delineated Built-up Area” where intensification is generally encouraged. The Growth Plan Policies support the achievement of complete communities that are designed to support healthy and active living and meet people’s needs for daily living throughout an entire lifetime. Furthermore, they support a range and mix of housing options, including additional residential units and affordable units, to serve all sizes, incomes, and ages of households.

Staff is satisfied that the proposed Zoning By-law Amendment conforms to the Growth Plan. The proposed application supports a range and mix of housing types by proposing additional diverse residential units.

**Niagara Official Plan:**

The subject property is located within a delineated built-up area within the settlement area, according to the Niagara Official Plan (NOP). As per section 2.2 of the NOP, development will occur in urban areas where municipal water and wastewater systems exist or are planned. Furthermore, sections 2.2.1.1 b) and c) state that development in urban areas will support a compact built form, vibrant public realm, a mix of land uses, including residential uses, as well as, a diverse range and mix of housing types, units sizes and densities.

Planning staff is satisfied that the proposed Zoning By-law Amendment conforms to the NOP. The application proposes a semi-detached dwelling that makes efficient use of existing services and provides for a range and mix of housing types in the area.

### **Port Colborne Official Plan:**

The subject property is located within the Urban Residential designation according to the City's Official Plan (OP) and represents the existing and planned built-up area within the urban area boundary. The predominant uses in this designation include residential uses. As per section 3.2.2 of the OP, intensification will be encouraged in the urban area in accordance with section 2.4.3 of the plan, which states that intensification of residential lands will offer opportunities to promote the reduction of greenfield land consumption, meet the municipality's intensification target of 15% and maximize the efficiency of existing infrastructure.

Furthermore, section 3.2.3.3 of the OP states that semi-detached dwellings should front onto open space where possible, have higher quality landscaping and architectural features, and have garages that are either side drive attached, detached, recessed, or flush with the main building.

Planning staff is satisfied that the proposed application conforms to the OP. The development encourages intensification within the urban area, reducing greenfield land consumption, assists in meeting the intensification target of 15%, and uses existing infrastructure. The dwelling will also front onto an open public road and has proposed garages that are recessed from the main wall of the dwelling.

### **Port Colborne Zoning By-law 6575/30/18:**

The subject property is currently zoned **First Density Residential (R1)**. It was identified in the public meeting report that the zoning was a special provision of the First Density Residential zone (R1-69), however after further review, staff have determined that this parcel does not have any special provisions and the R1-69 zoning only applies to the eastern side of the Borden Avenue road allowance that was closed by Council in 2022.

The Zoning By-law Amendment proposes to change the zoning of the property from First Density Residential (R1) to Second Density Residential (R2). The R2 zone permits detached, semi-detached, and duplex dwellings, as well as uses, structures, and buildings accessory thereto. The applicant has submitted a site plan, attached as Appendix B, that shows that the proposed semi-detached dwelling can meet the zone requirements of the R2 zone. As such, no special provisions have been requested.

Planning staff is of the opinion that the proposed application is appropriate and compatible with the surrounding area. The proposal adds to a mixture of housing types and makes efficient use of existing services. The proposal is also compatible with adjacent uses as residential lots surround the subject parcel.

**Internal Consultations:**

Notice of Public Meeting was circulated on May 17, 2023, to internal departments and agencies. As of the date of this report, the following has been received.

**Drainage Superintendent:**

There are no comments on this application regarding municipal drains.

**Ministry of Transportation:**

The subject site is located within the MTO Permit Control Area for Highway 58 and as a result, the applicant should be made aware that MTO Building and Land Use Permits will be required prior to the start of any onsite construction/works.

**Niagara Catholic School Board:**

No comments on the application.

**Enbridge:**

Enbridge does not object to the proposal but reserves the right to amend any development conditions.

---

**Financial Implications:**

There are no financial implications.

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**Public Engagement:**

Notice of Public Meeting was circulated by mail to property owners within 120m of the subject property, as per Section 34 (13) of the *Planning Act* on May 17, 2023. A public notice sign was also posted on the property by May 17, 2023, and notices were posted on the City's website under "Current Applications". A public meeting was also held on June 6, 2023. As of the date of preparing this report, no comments from the public have been received.

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**Strategic Plan Alignment:**

The initiative contained within this report supports the following pillar of the strategic plan:

- People: Supporting and Investing in Human Capital
- 

## **Conclusion:**

Based on the review of the application and applicable Provincial, Regional, and City planning policies, Planning staff is of the opinion that the proposal is consistent with the Provincial Policy Statement and conforms to the Growth Plan, Regional Official Plan, and City Official Plan, and represents good planning. Staff recommends that the Zoning By-law Amendment attached as Appendix A be approved.

---

## **Appendices:**

- a. Zoning By-law Amendment
- b. Site Plan

Prepared by,

Chris Roome, BURPI  
Planner  
905-835-2900 ext. 205  
Chris.Roome@portcolborne.ca

Respectfully submitted,

Denise Landry, MCIP, RPP  
Chief Planner  
908-838-2900 ext. 203  
Denise.Landry@portcolborne.ca

## **Report Approval:**

All reports reviewed and approved by the Department Director and also the City Treasurer when relevant. Final review and approval by the Chief Administrative Officer.

The Corporation of the City of Port Colborne

By-law no. \_\_\_\_\_

Being a by-law to amend Zoning By-law 6575/30/18 respecting the lands legally known as Part 1 on Registered Plan 59R-15742 municipally known as a vacant lot on Knoll Street.

Whereas By-law 6575/30/18 is a by-law of The Corporation of the City of Port Colborne restricting the use of land and the location and use of buildings and structures; and

Whereas, the Council of The Corporation of the City of Port Colborne desires to amend the said by-law.

Now therefore, and pursuant to the provisions of Section 34 of the *Planning Act, R.S.O. 1990*, The Corporation of the City of Port Colborne enacts as follows:

1. This amendment shall apply to those lands described on Schedule “A” attached to and forming part of this by-law.
2. That the Zoning Map referenced as Schedule “A8” forming part of By-law 6575/30/18 is hereby amended by changing those lands described on Schedule A8 from R1 to R2.
3. That this by-law shall come into force and take effect on the day that it is passed by Council, subject to the provisions of the Planning Act.
4. The City Clerk is hereby authorized and directed to proceed with giving notice of the passing of this by-law, in accordance with the Planning Act

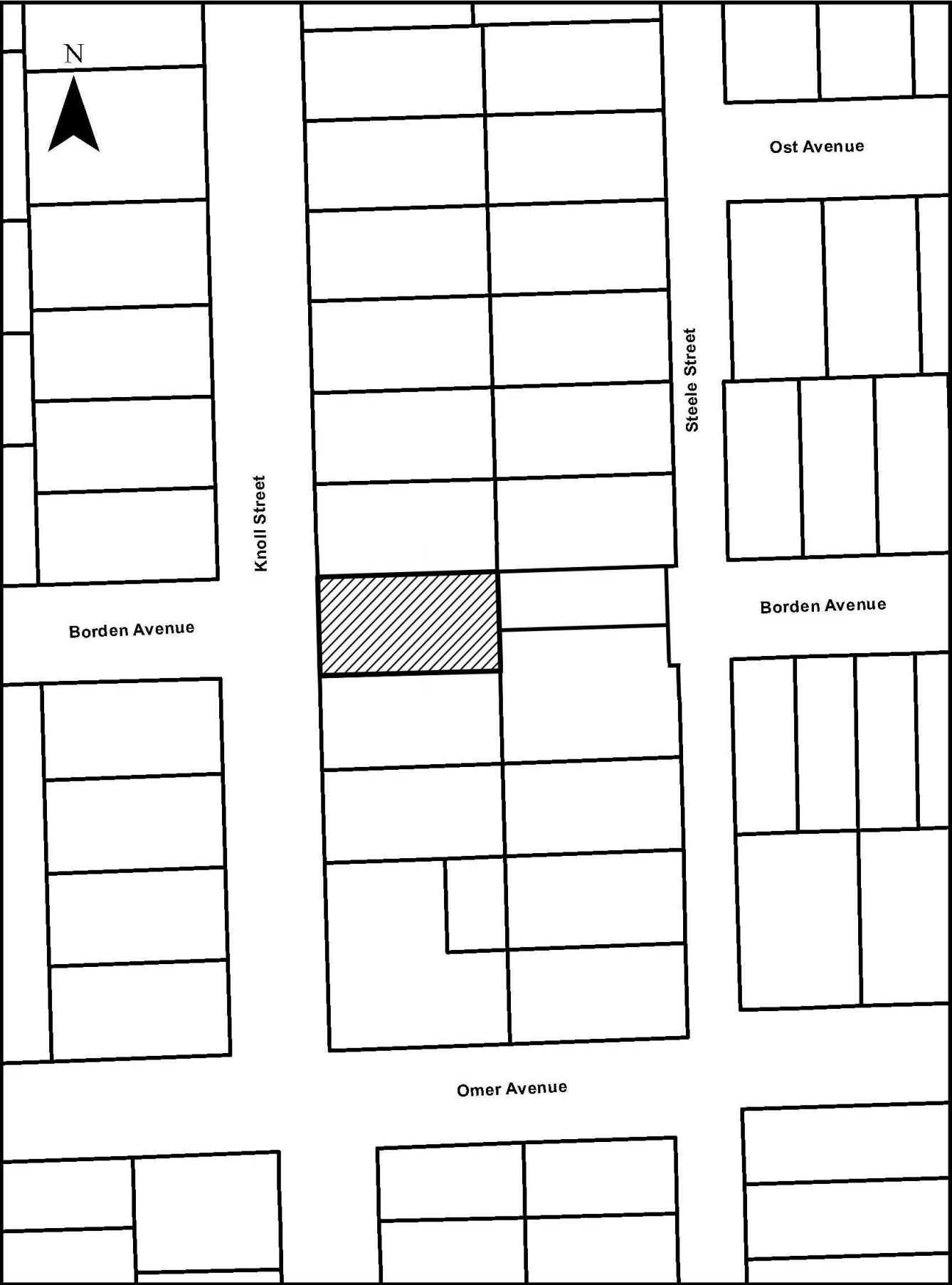
That this by-law shall come into force and take effect on the day that it is passed by Council, subject to the provisions of the *Planning Act*.


Enacted and passed this      day of                      , 2023.

\_\_\_\_\_  
William C Steele  
Mayor

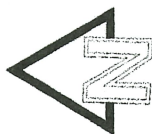
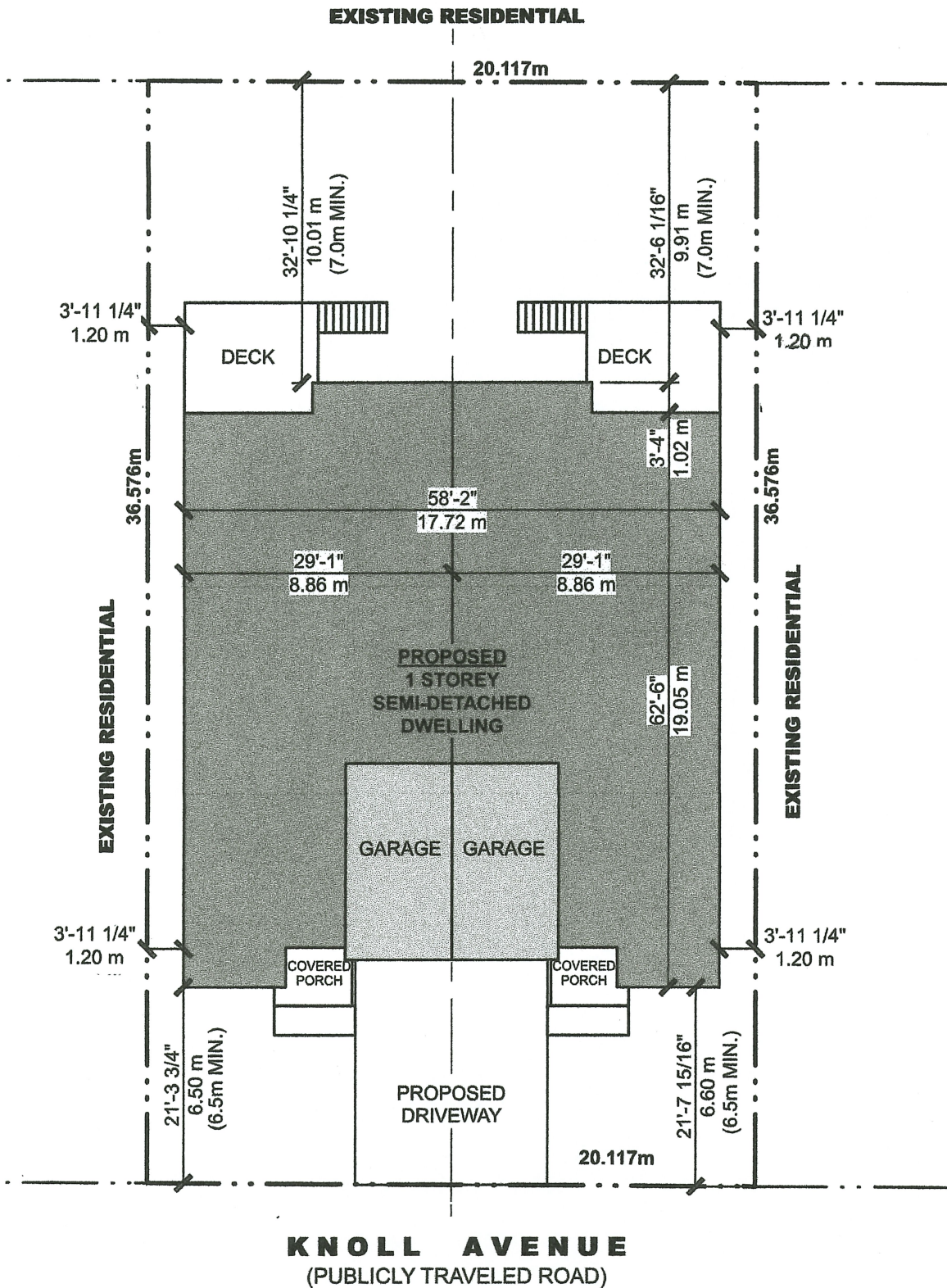
\_\_\_\_\_  
Charlotte Madden  
City Clerk





<p>This is Schedule "A" to By-law No. _____</p> <p>Passed _____, 2023</p> <p>_____ Mayor</p> <p>_____ Clerk</p>	<p> - Lands Subject to By-law</p> <p>May 2023</p> <p>File No. D14-03-23</p> <p>Drawn by: DS - City of Port Colborne Planning Division</p> <p>Not to scale</p>
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**PROPOSED SEMI DETACHED**  
**PART 1, PLAN 59R-17542 - PORT COLBORNE**

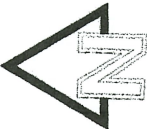
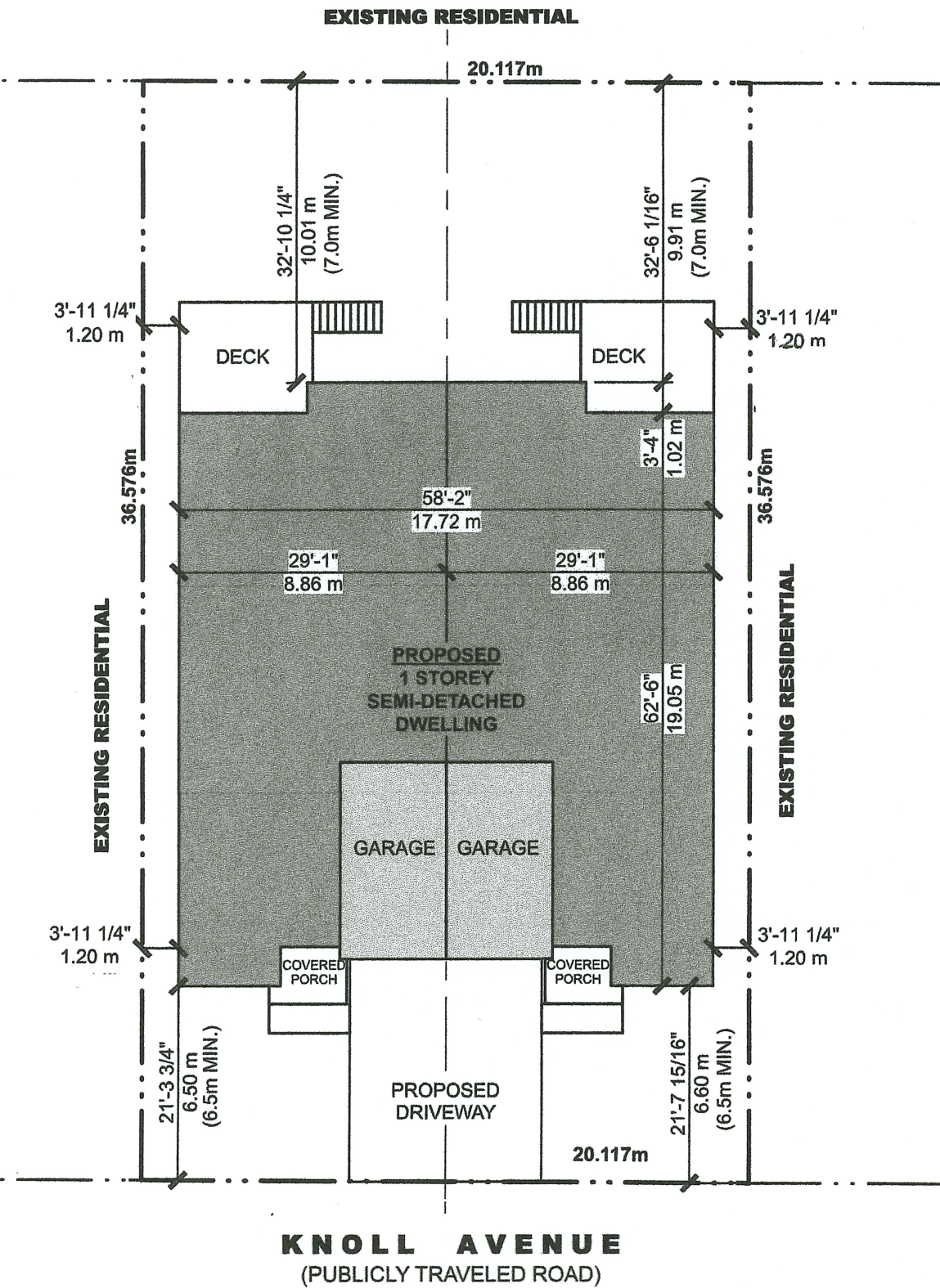


**SITE PLAN**  
SCALE = 1:150

SITE STATISTICS:		
LOT AREA	- 735.8 m²	(100%)
LIVING AREA	- 289.2 m²	(39.3%)
GARAGE	- 46.0 m²	(6.3%)
COV. PORCH	- 9.0 m²	(1.2%)
TOTAL	- 344.2 m²	(46.8%)



**PROPOSED SEMI DETACHED**  
**PART 1, PLAN 59R-17542 - PORT COLBORNE**

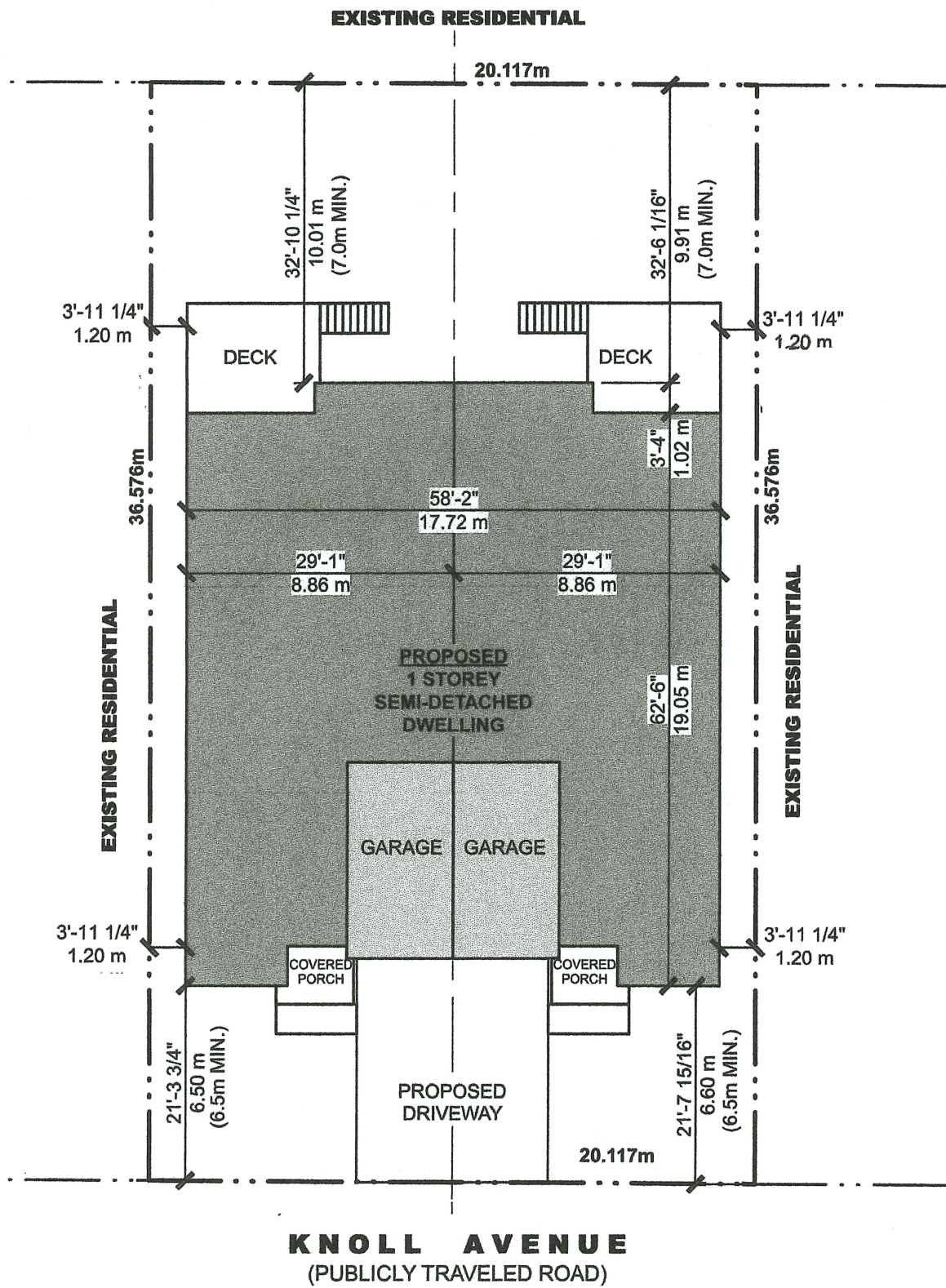


**SITE PLAN**  
SCALE = 1:150

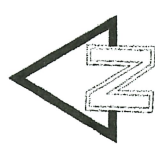
SITE STATISTICS:		
LOT AREA	- 735.8 m <sup>2</sup>	(100%)
LIVING AREA	- 289.2 m <sup>2</sup>	(39.3%)
GARAGE	- 46.0 m <sup>2</sup>	( 6.3%)
COV. PORCH	- 9.0 m <sup>2</sup>	( 1.2%)
TOTAL	- 344.2 m <sup>2</sup>	(46.8%)



**PROPOSED SEMI DETACHED**  
**PART 1, PLAN 59R-17542 - PORT COLBORNE**



**KNOLL AVENUE**  
(PUBLICLY TRAVELED ROAD)

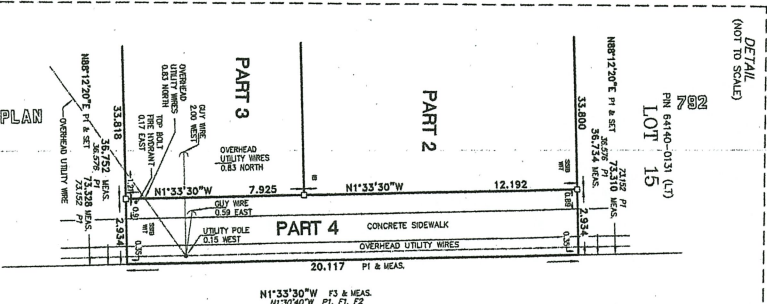



**SITE PLAN**  
SCALE = 1:150

SITE STATISTICS:		
LOT AREA	- 735.8 m <sup>2</sup>	(100%)
LIVING AREA	- 289.2 m <sup>2</sup>	(39.3%)
GARAGE	- 46.0 m <sup>2</sup>	( 6.3%)
COV. PORCH	- 9.0 m <sup>2</sup>	( 1.2%)
TOTAL	- 344.2 m <sup>2</sup>	(46.8%)







1 RECEIVED BY MAIL IN RE- DEPOSITED UNDER THE LAND TITLES ACT.		PLAN 59R-17512	
DATE: JANUARY 10, 2023		RECEIVED AND DEPOSITED DATE: <u>JAN. 17, 2023</u>	
 _____ JOHN L. HARRIS GRANTED LAND SURVEYOR		"GARDIN LUTSON" REPRESENTATIVE FOR LAND SURVEYOR FOR THE LAND TITLES DIVISION OF HONOLULU SOUTH (SO)	
SCHEDULE			
PART	STREET	PLAN	PIN
1			
2	BROOKLYN AVE		
3	EAST SIDE OF KAUAI STREET	792	
4	GRATED BY BR-348 No. 7010/46/22		ALL OF PIN 61410-0165 (17)

**BORDEN AVE** EAST SIDE OF KNOLL STREET  
**PLAN 792**

IN THE

**CITY OF PORT COLBORNE**  
**REGIONAL MUNICIPALITY OF NIAGARA**

SCALE 1:200

LANTIER & CALORE SURVEYING LTD.

2023

[illegible]

OBSERVED REFERENCE POINTS (ORP<sub>2</sub>) DERIVED FROM GPS OBSERVATIONS USING THE PRECISE POINT POSITIONING (PPP) SERVICE, UTM ZONE 17, MAD 83 (CSRS) (1987).

POINT ID	NORTHING	EASTING
ORP1	4,751,327.69	641,880.75
ORP2	4,751,385.71	641,859.23

COORDINATES CANNOT, IN THEMSELVES, BE USED TO RE-ESTABLISH CORNERS OR BOUNDARIES SHOWN ON THIS PLAN

BEARINGS ARE UTM GRID, DERIVED FROM SMALL TRIANGULAR GPS OBSERVATIONS FROM MONUMENTS ORP1 TO ORP2 SHOWN HEREON, HAVING A BEARING OF N13010W REFERRED TO THE CENTRAL MERIDIAN OF UTM ZONE 17 (01° WEST LONGITUDE) MAG 83 (CSRS) (1987).

FOR BEARING COMPARISONS, A ROTATION OF 1° 40' 10" IN A COUNTER CLOCK-WISE DIRECTION WAS APPLIED TO BEARINGS ON PLAN 702, 'EL' FILE 16-823, '3337' FILE W.O. 95-2852 & '1337' FILE W.O. 08-4983.

**METRIC CONVERSION**  
DISTANCES AND COORDINATES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY MULTIPLYING BY 3.2808

DISTANCES SHOWN ON THIS PLAN ARE ADJUSTED GROUND LEVEL DISTANCES AND CAN BE USED TO COMPUTE GRID COORDINATES BY MULTIPLYING THE DISTANCES BY A COMBINED SCALE FACTOR OF 0.9998195.

1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEYS ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM.

2. THE SURVEY WAS COMPLETED ON JANUARY 9, 2023.

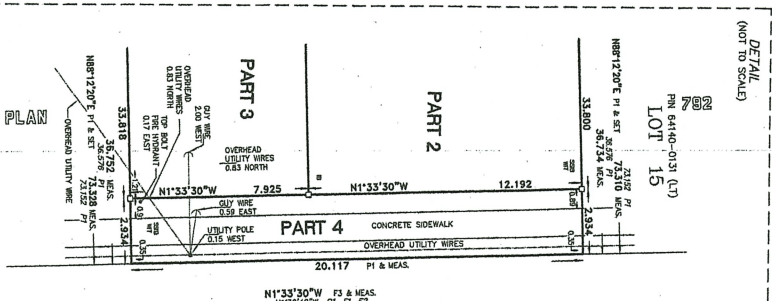
DATE: JANUARY 10, 2023

ONTARIO LAND SURVEYOR

THIS PLAN OF SURVEY RELATES TO AOLS PLAN SUBMISSION FORM NUMBER V-34850

**ELAN MILLER & GILMORE SURVEYING, LTD.**  
173 CLARENCE ST. PORT COLBORNE, ONT. (905) 835-5177

SCALE: 1:200



SCHEDULE			
PART	STREET	PLAN	PIN
1			
2	1010 BRONX AVE		
3	1010 BRONX AVE	702	
4	CLOSED BY ORDER NO. 010749/2		ALL OF PIN 64148-013 (1)

SCALE 1:200

0 5 10 15 20 25 30 meters

LAMPHIER & CALDWELL SURVEYING LTD.  
2023

DRINKS		LATHAM & GILBERT SHREVEING LTD
SIN	SUNSHINE MOUNTAIN FORD	
SMB	STANDARD IRON BAR	1767
SP	ROCK STANDARD IRON BAR	P 1
HP	ROUND IRON BAR	F 2
PP	PLASTIC BAR	F 3
WT	WET CROSS	
TUP	TOOTH PICK	
ORIGEN LINDHOLM		
MEAS-	METER MEASURE POINT	
MEAS-	MEASURED	

INTEGRATION DATA

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OBSERVED REFERENCE POINTS (ORP) DERIVED FROM GPS OBSERVATION  
USING THE PRECISE POINT POSITIONING (PPP) SERVICE, UTM ZONE 17,  
MAD 63 (CSRS) (1997).

**CAUTION**  
COORDINATES CANNOT, IN THEMSELVES, BE USED TO RE-ESTABLISH CORNERS OR BOUNDARIES SHOWN ON THIS PLAN.

BEARING NOTE

FOR BEARING COMPARISONS, A NOTATION OF 1° 48' 10" IN A COUNTER CLOCK-WISE DIRECTION WAS APPLIED TO BEARINGS ON PLAN 792, SEE FILE W-6-023, 1337 FILE NO. 93-2632 & 1337 FILE NO. 09-0983.

### DISTANCE NOTES

DISTANCES AND COORDINATES SHOW  
BY DIVIDING BY 0.3048.

DISTANCES SHOWN ON THIS PLAN /  
GRID COORDINATES BY MULTIPLYING

SURVEYOR'S CERTIFICATE

I CERTIFY THAT:

1. THIS SURVEY AND PLAN ARE CORRECT AND IN ACCORDANCE WITH THE SURVEY ACT, THE SURVEYORS ACT AND THE LAND TITLES ACT AND THE REGULATIONS MADE UNDER THEM.
2. THE SURVEY WAS COMPLETED ON JANUARY 9, 2023.

DATE: JANUARY 10, 2023

  
MARK GILMORE  
ONTARIO LAND SURVEYOR

THIS PLAN OF SURVEY RELATES TO AOLS PLAN SUBMISSION FORM NUMBER V-3485

**BLANTHIER & GILMORE SURVEYING LTD.**  
173 CAMDEN ST. PORT COLBORNE, ONT. (905) 835-5477

SCALE: 1:200	DR. BRT: CM CH, BRT, DM	JEL. FILE: 22-783	F-1415
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**Subject: Agreement for Dispatching Services with the City of St. Catharines**

**To: Council**

**From: Community Safety & Enforcement Department**

Report Number: 2023-135

Meeting Date: July 18, 2023

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### **Recommendation:**

That Community Safety & Enforcement Department Report 2023-135 be received;

That Council approve the Fire & Emergency Dispatch Services agreement between the City of Port Colborne and the City of St. Catharines, attached as Appendix A to Community Safety & Enforcement Department Report 2023-135, for a 15-year period commencing on January 1, 2023 to continue until December 31, 2037; and

That a by-law to enter into an agreement with the City of St. Catharines for Fire & Emergency Dispatch Services be brought forward and approved.

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### **Purpose:**

After conducting a thorough analysis of various options for fire and emergency dispatch services and taking into consideration the Next Gen 911 implementation scheduled for 2024-2025; staff recommends that the City of Port Colborne continue to utilize the current Computer-Aided Fire Dispatch Services (see Appendix "A") and extend the existing agreement with the City of St. Catharines. This recommendation was reached after careful consideration of all factors and is in the best interest of ensuring the safety and security of the community.

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### **Background:**

Port Colborne Fire & Emergency Services currently operates on an analog radio system that utilizes an antenna site located behind the fire hall at 3 Killaly Street West. If there are any system failures of that site, the department has a back-up location located on



top of the Niagara Health site at 260 Sugarloaf Street. These two locations also provide support to the radio system used by the Public Works Department.

In early 2021, there was an effort to consolidate emergency service dispatching services within the Region of Niagara. This would have seen Niagara Falls, St. Catharines and Niagara Regional Police consolidate their dispatching centres into one. As part of the discussions, any dispatch centre service user would have to migrate to a digital platform known as P25 from their current analog system. The plan was an all-or-nothing proposal mandating all users switch to digital.

On July 12, 2021, Council received Report 2021-201 regarding the proposed Consolidated Dispatch Services within the Niagara Region. The Fire Chief received instructions to explore possible alternatives, including switching to the digital system used by the Niagara Regional Police or continuing with the current analog system. To stay with the analog system meant leaving the Region for dispatching services.

Six municipalities within the Niagara Region operate on analog radio equipment. Despite the best efforts to bring all Fire Departments onto the digital system, digital was not a preferred option for multiple partners and the plan of a consolidating dispatch ended. After the consolidation plan was abandoned, St. Catharines returned to Port Colborne Fire & Emergency Services with a willingness to maintain analog dispatching services.

The City's fire service staff partnered with the other analog radio users (Niagara-on-the-Lake, Wainfleet, and Thorold) and have engaged other dispatch providers, conducted site visits, received preliminary pricing, and reviewed neighbouring RFPs and contracts to ensure that Port Colborne Fire & Emergency Services will receive the dispatch services it requires, at a cost that is reasonable and with value-added services as needed.

Staff have also engaged in negotiations between St. Catharines and the remaining analog radio users (Niagara-on-the-Lake, Port Colborne, and Thorold) for the continuation of dispatch services on existing systems, which have been successful.

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## **Discussion:**

With the implementation of Next Gen 911 coming in 2024-2025, all dispatch centres are required to undertake costly and extensive upgrades to their systems to ensure compliance with Canadian Radio-television and Telecommunications Commission regulations. As a cost-saving measure, St. Catharines has partnered with the Niagara Regional Police Service for the supply and implementation of a shared Next Gen 911 compliant Computer Aided Dispatch system; provided that its users migrate to a digital radio network by 2032.

These costs will need to be shared to the end users (local area fire departments) who require these communication centres for the dispatch of emergency services.

To regulate and manage rising costs, St. Catharines has proposed a 15-year contract (Appendix “A”) and agreed to continue dispatching the City’s fire service on the existing radio system until such time as it is no longer supported by the CAD system.

The move towards a digital platform is an inevitable shift that must occur soon. Many of the radio components currently used by Port Colborne Fire & Emergency Services are reaching their end of life. St. Catharines has the capability to dispatch both analog and digital signals, which will make the transition to a digital network efficient. However, it is important to keep in mind that the dispatching console in St. Catharines needs replacing after nine years and the new console will not be compatible with analog signals. As a result, staff feel that the fire service must transition to the digital platform no later than 2032.

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### Internal Consultations:

There have been no internal consultations.

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### Financial Implications:

The City of Port Colborne will make quarterly payments to the City of St. Catharines which will increase annually by a certain percentage as per the fee schedule below. This agreement builds upon the terms of the previous contract that expired in 2022.

<b>Port Colborne Proposed CAD Partner Allocation 15 Year (2023-2037)</b>			
<b>Year # (Contract)</b>	<b>Year</b>	<b>Contract Target Increase</b>	<b>Contract Amount (CAD \$)</b>
<b>1</b>	2023	<b>3.00%</b>	86,805
<b>2</b>	2024	<b>4.00%</b>	90,278
<b>3</b>	2025	<b>4.00%</b>	93,889
<b>4</b>	2026	<b>3.50%</b>	97,175
<b>5</b>	2027	<b>3.50%</b>	100,576
<b>6</b>	2028	<b>3.00%</b>	103,593
<b>7</b>	2029	<b>3.00%</b>	106,701
<b>8</b>	2030	<b>2.50%</b>	109,368
<b>9</b>	2031	<b>2.50%</b>	112,103
<b>10</b>	2032	<b>2.50%</b>	114,905
<b>11</b>	2033	<b>2.50%</b>	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

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### Public Engagement:

There has been no public engagement.

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### Strategic Plan Alignment:

The initiative contained within this report supports the following pillar(s) of the strategic plan:

- Service and Simplicity - Quality and Innovative Delivery of Customer Services
  - Value: Financial Management to Achieve Financial Sustainability
- 

### Conclusion:

This agreement represents the continuation of the on-going relationship between the City of Port Colborne and the City of St. Catharines for dispatching services. The agreement not only meets the current dispatching needs of the department but also the future needs. The City of St. Catharines is dedicated to enhancing its system to ensure reliable service for its users.

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### Appendices:

- a. Dispatch agreement between the City of St Catharines and the City of Port Colborne

Respectfully submitted,

Scott Lawson  
Fire Chief  
905-834-4512 ext. 402  
scott.lawson@portcolborne.ca

### **Report Approval:**

All reports reviewed and approved by the Department Director and also the City Treasurer when relevant. Final review and approval by the Chief Administrative Officer.

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

BETWEEN:

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 10<sup>th</sup> 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.

**Subject: Vale Health & Wellness Centre – Commercial Food Operations**

**To: Council**

**From: Corporate Services Department**

Report Number: 2023-140

Meeting Date: July 18, 2023

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**Recommendation:**

That Corporate Services Department Report 2023-140 be received;

That Council provides approval for the Mayor and Clerk to enter into a 5-year lease agreement, attached as Appendix A to Corporate Services Department report 2023-140, with the ownership of The Kennedy Club as the new Commercial Food Vendor at the Vale Health & Wellness Centre.

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**Purpose:**

This report seeks approval to enter into an agreement for a commercial food vendor at the Vale Health & Wellness Centre (VHWC) effective August 1, 2023.

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**Background:**

The VHWC was established in 2013. It is a state-of-the-art facility, fully accessible for sport, recreation, health, wellness, entertainment, and commerce – all under one roof and has become a hub of Port Colborne.

Subway Inc. was the first and only commercial food vendor operating within the VHWC since 2013. Subway notified the City of Port Colborne that they will not be renewing their lease which expired on February 28, 2023.

When Subway's non-renewal was identified, staff took direction to seek a commercial food vendor that would provide a variety of quality food and beverage items but not have exclusivity over food and beverages in the facility or on the grounds of Thomas A. Lannan Sports Complex.



A community survey was conducted in December 2022 to determine users' appetite for certain food and beverage offerings in the facility. The survey results are a key component in identifying the suggested items to be sold. The survey is attached as Appendix C.

The Request for Proposal (RFP) for a new Commercial Food and Beverage Vendor was shared on the City of Port Colborne website and social media including Facebook. In addition, the RFP was sent via email to key local partners, food vendors, and businesses. The RFP was also shared with food vendors and the members of the Downtown BIA and Main Street BIA. The RFP is attached as Appendix B.

Interested vendors had the opportunity to view the space and ask questions during the site inspection on March 20, 2023, at 2:00 p.m.

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## **Discussion:**

The Kennedy Club is the only candidate that meets all the requirements included in the Request for Proposal (RFP).

From a branding perspective, The Kennedy Club is an intentional concept that fits well with the community-minded focus of the City of Port Colborne.

Staff have confidence with the proposal given the owners of The Kennedy Club have illustrated extensive experience in the food and beverage industry. One of the partners in The Kennedy Club is the owner of Whiskey & Walleye at Sugarloaf Marina.

The Kennedy Club has agreed to adjust their menu to the desires of customers using the City's questionnaire responses as a starting point. On an annual basis, The Kennedy Club will be required to submit their menu to staff, including pricing for approval. At the time of writing this report the final menu and pricing is being finalized. The contract does identify they will primarily sell sandwiches, french fries, hot dogs and "grab and go" food. As the facility is a 'health and wellness centre', they will emphasize healthy food and beverage options.

The recommended agreement is attached as Appendix A. Staff negotiated this agreement with the owners of The Kennedy Club through the City's solicitors, Sullivan Mahoney.

During negotiations it became apparent both parties could benefit from expanded service opportunities. These include vending machine operations, partnership support with vendors at City events such as Canal Days and the opportunity to sell alcoholic beverages at certain events in restricted areas (i.e. the premises beside the Golden Puck room). The agreement attached provides for these opportunities to be permitted but does not guarantee these opportunities to The Kennedy Club. Any revenue generated from

these opportunities will form part of the revenue calculated determined as a percentage of sales.

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### **Internal Consultations:**

This agreement is the result of a cooperative effort between Recreation (specifically events) and Procurement. Public Works support requirements with respect to facilities.

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### **Financial Implications:**

The Kennedy Club will pay a minimum of \$72,000 per annum for the Leased Premises, plus Sales Taxes, payable in equal monthly installments.

In addition to the annual base rent, The Kennedy Club will pay 7% for the first \$150,000 of aggregate Gross Sales and 10% of aggregate Gross Sales greater than \$150,000 to the City of Port Colborne.

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### **Public Engagement:**

A survey was conducted in December 2022 to get a sense of the what the community would like to see at the VHWC for food and beverage options.

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### **Strategic Plan Alignment:**

The initiative contained within this report supports the following pillars of the strategic plan:

- Attracting Business Investment and Tourists to Port Colborne
  - City-Wide Investments in Infrastructure and Recreational/Cultural Spaces
  - Governance: Communications, Engagement, and Decision-Making
- 

### **Conclusion:**

That Council provides approval for the Mayor and Clerk to enter into a 5-year lease agreement with the ownership of The Kennedy Club as the new Commercial Food Vendor at the Vale Health & Wellness Centre.

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**Appendices:**

- a. Appendix A - Kennedy Club Lease Agreement
- b. Appendix B - Vale Health and Wellness Centre – Commercial Food Vendor RFP 2023
- c. Appendix C - VHWC Survey Results

Respectfully submitted,

Amy Duffy  
Supervisor, Events and Sponsorship  
Phone: 905-835-2900 ext. 536  
Email: amy.duffy@portcolborne.ca

**Report Approval:**

All reports reviewed and approved by the Department Director and also the City Treasurer when relevant. Final review and approval by the Chief Administrative Officer.

THIS LEASE dated as of the 18<sup>th</sup> day of July, 2023.

**BETWEEN:**

**THE CORPORATION OF THE CITY OF PORT COLBORNE**  
(hereinafter referred to as the “**CITY**”)

**AND**

**THE KENNEDY CLUB**  
(hereinafter referred to as the “**LESSEE**”)

**WHEREAS:**

The CITY is the owner of a recreational facility known as the Vale Health and Wellness Centre and municipally described as 550 Elizabeth Street, in the City of Port Colborne; and

The CITY has agreed to lease to the LESSEE certain retail space at the Vale Health and Wellness Centre (hereinafter sometimes referred to as the “**VHWC**”) for the provision of food services; and

The entry into this Lease has been authorized by the Municipal Council of the City of Port Colborne By-law as attached.

**NOW THEREFORE, THIS AGREEMENT WITNESSETH THAT** in consideration of the mutual covenants and other terms and conditions hereinafter contained and sufficient consideration having been given one to the other, the parties hereby covenant and agree as follows:

**1.0 Grant of Lease**

1.1 The CITY hereby leases to the LESSEE an area comprised of approximately 310 square feet on the main level of the VHWC, as highlighted in orange in Appendix A hereto (hereinafter referred to as the “**Leased Premises**” or “**Food Services Areas**”).

1.2 The CITY, at its sole discretion, may from time to time make additional space available to the LESSEE in the VHWC or on the property of the T.A. Lannan Sports Complex. One such area comprised of approximately 203 square feet on the second floor of the VHWC as highlighted in orange in Appendix “B” attached hereto (hereinafter referred to as the “**Second Floor Premises**”) available to the LESSEE for lease. In the event additional space is made available to the LESSEE all of the terms and conditions contained within this Lease shall apply to the lease of the additional space unless modified by an addendum to this Lease. For greater certainty, all sales made in such additional space will be added to the sales of the Leased Premises for the purposes of calculating the Gross Sales for the Percentage Rent pursuant to this Lease.

1.3 Subject to the execution of this Lease, the Indemnity Agreement and the LESSEE providing a certificate of insurance satisfactory to the CITY, the LESSEE shall have possession of the Leased Premises prior to the Commencement Date, subject to the LESSEE paying utility charges set forth in Section 5 herein during the fixturing period.

1.4 In the event the CITY, in its sole discretion, determines that a relocation of the Leased Premises is necessary, the LESSEE agrees to move to a similar size space in an alternative location within the VHWC. Any alternative location would be constructed at the cost of the CITY.

1.5 The LESSEE is granted a licence to service vending machines located within the VHWC designated by the CITY (the “**Vending Machines**”).

## **2.0 Term**

### **INITIAL TERM – YEARS ONE TO FIVE**

2.1 The initial term of this Lease shall commence on August 1<sup>st</sup>, 2023 (the “**Commencement Date**”) and shall terminate five (5) years from the Commencement Date (the “**Initial Term**”).

### **OPTION TO EXTEND TERM**

2.2 Upon the expiry of the Initial Term, the LESSEE and the CITY shall have the option to extend the Initial Term of this Lease for one (1) additional period of five (5) year (the “**Extended Term**”) upon giving notice in writing to the CITY at least six (6) months prior to the expiration of the Initial Term, and the CITY agreeing to the Extended Term prior to the termination of the Initial Term. In the event of the exercise of the renewal option, such extension shall be upon the same terms and conditions as this Lease with the exception of the annual base rent which shall be increased in accordance with Article 7.0 of this Lease. In the event that the CITY or the LESSEE do not agree to the Extended Term, this Lease shall terminate at the end of the Initial Term.

### **OPTION TO TERMINATE LEASE**

2.3 The LESSEE shall have the option of terminating this Lease during the Initial Term upon giving at least three (3) months’ prior notice in writing to the CITY, provided that all amounts due and owing to the CITY pursuant to this Lease are paid in full and the LESSEE is in compliance with all other terms and conditions of this Lease. For greater certainty, the LESSEE shall be entitled to terminate this Lease pursuant to the provisions of this Section 2.3 only during the Initial Term and the LESSEE acknowledges and agrees that it shall not be entitled to terminate this Lease on prior written notice during any Extended Term.

2.4 The CITY shall have the option of terminating this Lease in accordance with the provisions herein provided.

## **3.0 Leased Premises and Use**

3.1 Subject to compliance by the LESSEE with the provisions of this Lease, the LESSEE shall have exclusive use and quiet possession of the Leased Premises. The Leased Premises shall be used by the LESSEE for the operation of a food and beverage business for on and off the Leased Premises consumption operating as “The Kennedy Club” and for no other purposes whatsoever.

3.2 The Common Lounge Area, as highlighted in orange on Appendix ‘C’ is available for use by the LESSEE’s customers, but shall remain accessible to members of the public and shall be controlled by the CITY.

3.3 The CITY acknowledges that the LESSEE’s menu consists of primarily sandwiches, French fries, hot dogs, “grab and go” food, and related items. The LESSEE must submit a listing of all menu items, including pricing, to the CITY for approval. The LESSEE’s menu items must highlight the healthy choice options. Any material changes to the menu items, including pricing, shall require the approval of the CITY. The CITY shall determine what is a material change in its sole discretion. The LESSEE is expressly forbidden from sale of any tobacco or cannabis products of any kind.

3.4 The LESSEE, at its sole cost and expense, may, with the consent of the CITY, which consent may be unreasonably withheld, apply for a licence from the Alcohol and Gaming Commission of Ontario for the sale of alcohol from spaces within in the VHWC and the T.A. Lannan Sports Complex that have subsequently been leased to the LESSEE. Notwithstanding a successful application for a liquor sales licence by the LESSEE, the CITY maintains the right to withdraw their consent to the sale of alcohol by the LESSEE at any time.

3.5 The LESSEE shall supply the Vending Machines and keep supplied the Vending Machines in areas designated by the CITY at prices approved by the CITY. In the event the LESSEE, in the sole discretion of the CITY, fails to adequately service the Vending Machines, the CITY may terminate the licence to service the Vending Machines.

#### **4.0 Rent and Percentage Rent**

4.1 The annual base rent payable by the LESSEE to the CITY for the Initial Term of this Lease is \$7,200.00 per annum for the Leased Premises, plus Sales Taxes (as hereinafter defined) payable in equal monthly installments of \$600.00, plus Sales Taxes, for the Initial Term, subject to the adjustments hereinafter set forth.

Annual base rent for the Leased Premises payable during the Initial Term and any Extended Term thereof is payable by the LESSEE without any prior demand therefor and without deduction, abatement or set off. Annual base rent shall be increased in accordance with the provisions of Section 7.1 herein.

#### **PERCENTAGE RENT**

4.2 In addition to the annual base rent, the LESSEE shall pay further rent to the CITY, in the manner and upon the conditions and at the times hereinafter set forth during each Lease Year (as hereinafter defined), a sum equivalent to the amount of seven percent (7%) of the first \$150,000.00 of Gross Revenue (as hereinafter defined) of the LESSEE for such Lease Year, plus ten percent (10%) of Gross Revenue in excess of \$150,000.00 for such Lease Year (collectively, the “**Percentage Rent**”). Percentage Rent is payable, as hereinafter provided without any prior demand therefor and without any deduction, abatement or set-off whatsoever. Percentage Rent shall be subject to and the LESSEE shall be liable to pay, any and all Sales Taxes attributed thereto. For greater clarity, each Lease year ends May 31<sup>st</sup> and all sales of the Lessee in the VHWC or on the T.A. Lannan Sports Complex property are included in the calculation of Gross Sales for the purposes of calculating Percentage Rent. This includes additional premises the CITY may make available and vending machine sales.

#### **PAYMENT OF PERCENTAGE RENT**

4.3 The LESSEE covenants to pay an amount monthly on account of Percentage Rent within 60 days following the end of each month. The payments will be accompanied by a sales summary of sales by location, by month and year to date with vending machine sales broken out as one location. The payment will be calculated by the applicable rates of Seven Percent (7%) for the first \$150,000.00 of aggregate Gross Sales and Ten Percent (10%) of aggregate Gross Sales greater than \$150,000.00.

#### **LESSEE’S RECORDS**

4.4 For the purposes of ascertaining the amount payable as Percentage Rent, the LESSEE shall prepare and keep on the Leased Premises or at the LESSEE's principal office in the Province of Ontario for at least eighteen (18) months following the end of each Lease Year, adequate books and records which shall show all inventories and receipts of merchandise and goods at the Leased Premises and daily receipts from all sales, charges, services and other transactions on, at or from the Leased Premises and the VHWC made by the LESSEE and any other persons conducting business upon or from the Leased Premises as well as sales tax returns, all pertinent original sales records and such other sales records as the CITY reasonably determines which would normally be examined by an independent chartered professional accountant pursuant to accepted auditing standards in performing a detailed audit of the LESSEE's sales. The LESSEE shall cause all such records to be kept by all sub-tenants, assignees, concessionaires, franchisees, licensees or other persons doing business on or from the Leased Premises and the VHWC. The LESSEE and all other persons conducting business on or from the Leased Premises and the VHWC shall record at the time of sale, in the presence of the customer, all receipts from sale, charges, services or other transactions whether for cash or credit, in a cash register or point of sale system having a sealed cumulative total.

4.5 *Intentionally deleted.*

## RIGHT TO EXAMINE BOOKS

4.6 The receipt or use by the CITY of any statement of Gross Revenue from the LESSEE or any payment of Percentage Rent based thereon, shall neither constitute acceptance of such statement or of the Percentage Rent payable with respect to any period, nor constitute a waiver by the CITY of any obligation by the LESSEE hereunder and shall be without prejudice to the CITY's right to an examination of the LESSEE's books and records relating to the Gross Revenue and inventories of merchandise and goods at the Leased Premises, for the period covered by any statement issued by the LESSEE as above set forth. The CITY and CITY's authorized representatives shall have the right to examine the LESSEE's records and procedures aforesaid during regular business hours and shall have the right to enter the Leased Premises, through its agents, accountants, auditors and officers, to check, verify and tabulate Gross Revenue, or to examine accounting records and procedures including control features affecting the determination of Gross Revenue.

## AUDIT

4.7 The CITY may at any reasonable time cause a complete audit to be made of the LESSEE's entire business affairs and records relating to the Leased Premises and the calculation of Gross Revenue for the period covered by any statement issued by the LESSEE as above set forth. If the auditor or chartered accountant performing such audit reports to the CITY that in his opinion the LESSEE's records and procedures are insufficient to permit a determination of Gross Revenue for any Lease Year, or part thereof, or if the LESSEE is not complying with each of the provisions of this Lease in respect thereto, the LESSEE shall immediately, after notice from the CITY, take such steps as are necessary to remedy such default. If the LESSEE is unable to satisfy forthwith the objections contained in the auditor's report as aforesaid, the CITY may thereafter deliver to the LESSEE an estimate (which shall be final and binding on the LESSEE) made by the CITY of Gross Revenue for the period under consideration (which estimate shall be based on any information or records of the LESSEE that have been made available and such other information as the CITY considers relevant) and the LESSEE shall immediately pay to the CITY any amount shown thereby to be owing on account of Percentage Rent.

If the CITY's auditor or chartered professional accountant reports that the LESSEE is in default pursuant to the requirements of this Article 4 or that in his opinion the LESSEE's records and procedures are insufficient to permit a determination of the LESSEE's Gross Revenue or if such audit discloses that Gross Revenue for the period in question is understated by three percent (3%) or more of Gross Revenue actually received by the LESSEE from the business operations on the Leased Premises and the VHWC, the LESSEE shall forthwith, after notice from the CITY, pay to the CITY the cost of said audit, in addition to the deficiency, which deficiency is payable in any event. If there is any substantial or continuing breach by the LESSEE of the requirements of this Article 4, or if the LESSEE substantially or continually fails to produce records and procedures to permit a determination of Gross Revenue, or if Gross Revenue is understated by three percent (3%) or more as aforesaid, then, in addition to any other remedies of the CITY under this Lease or otherwise, the CITY may terminate this Lease upon five (5) days notice to the LESSEE. The report of the CITY's auditor from time to time is final and binding upon the parties hereto.

## LESSEE'S FAILURE

4.8 If the LESSEE fails to deliver any of the statements to the CITY provided for by this Article 4 and within the time herein provided, the CITY, in addition to any other rights or remedies hereunder, has the right thereafter to employ a chartered professional accountant or auditor to examine such of the LESSEE's books and records as are necessary to certify the amount of Gross Revenue for such period as it related to the statement in question, and the LESSEE shall pay to the CITY on demand the cost of any such examination, together with any and all sums shown to be owing on account of Percentage Rent pursuant thereto.

## DEFINITIONS

4.9 For purposes of this Lease, the following terms shall have the meanings ascribed to them below:

“Gross Revenue” means the entire amount of the sales price, whether for cash or credit or otherwise, of merchandise, goods and services (including amounts received for equipment rental, if any) and all other receipts or receivables whatsoever of all business conducted at, in or upon or from the Leased Premises, the additional space made available at the VHWC, or the T.A. Lannan Sports Complex, including receipts of receivables in respect of orders taken at or received at the Leased Premises (although such orders may be filled elsewhere), by the LESSEE and every sublessee, franchisee, concessionaire and licensee of the LESSEE or otherwise in or from the Leased Premises and all proceeds from vending carts, but shall not include:

- (a) delivery or installation charges;
- (b) the sale price of merchandise or goods returned or exchanged by customers for which a credit or refund is made, to the extent of such refund, provided that the sales price of such merchandise shall have been previously included in Gross Revenue;
- (c) any sums or credits received in settlement of claims for loss or damage to merchandise or goods; and
- (d) taxes which are required to be collected as a direct and separate tax from customers and which are not included in the sales price of such merchandise, goods or services;

“Indemnifier” means the individuals who have executed the Indemnity Agreement attached as Appendix “G” hereto and any replacement Indemnifiers required pursuant to the provisions of this Lease.

“Lease Year” means a period of time, the first lease year commencing on the earlier of the date of possession of the Leased Premises and Commencement Date the last day of the month of May next following. Each subsequent Lease Year commences on the first day following the expiration of the preceding Lease Year and terminates on the earlier of the expiration of twelve (12) months thereafter or on the termination of this Lease.

“LESSEE” means The Kennedy Club and any reference to “LESSEE” includes, where the context allows, (as in, by way of example, but without limitation Section 4.5, Section 4.6, Section 10.2, Section 10.4, Section 10.6, Article 24 and Section 25.5), the directors, officers, servants, employees, contractors, agents, invitees, franchisees, sublessees and licensees of the LESSEE and all other persons or entities over whom the LESSEE: (i) may be expected to exercise control; and (ii) is in law responsible.

“rent” includes base rent, Percentage Rent and any and all sums of money or charges required to be paid by the LESSEE under this Lease whether or not designated as “additional rent” or whether or not payable to the CITY or to any other person or entity.

“Sales Taxes” includes any and all goods and services taxes, sale taxes, value added taxes, harmonized sales taxes, business transfer taxes and any other taxes imposed on the CITY with respect to amounts due under this Lease whether characterized as goods and services taxes, sales taxes, value added taxes, harmonized sales taxes, business transfer taxes or otherwise, it being the intention of the parties that the CITY shall be fully reimbursed by the LESSEE with respect to any and all Sales Taxes payable by the CITY in respect of the rent and other amounts payable by the LESSEE to the CITY under this Lease.

## **5.0 Utility Charges**

5.1 The CITY shall provide the LESSEE with utilities (electricity, potable water, heating and cooling to building standards) on a best efforts basis. The LESSEE is responsible, at its own cost and expense, for all telephone, internet, cable television or other non-building supplied utility-type services required by the LESSEE. The City reserves the right to require the LESSEE to shut down utilities for any reason. In the event a required shut down exceeds 24 hours in any given month, for a reason other than weather, it is anticipated that month’s financial terms will be prorated accordingly.



## **6.0 Intentionally Deleted.**

## **7.0 CPI Increases and Total Lease Payment**

7.1 The annual base rent payable by the LESSEE hereunder shall be increased commencing at the beginning of each Lease Year by the most recent percentage increase in the Consumer Price Index for Ontario (All Items) published by Statistics Canada (the “**Index**”), as hereinafter set forth. It is understood and agreed by the parties that in the event that: (i) there is a reduction in the Index as at the Index Date, the LESSEE shall not be entitled to a reduction in annual base rent for the next succeeding Lease Year of the Initial Term or any Extended Term; and (ii) the Index is no longer published at any time during the Initial Term or any Extended Term, then the CITY shall, in its sole discretion, use such other price index it determines appropriate for the adjustments to be made pursuant to this Section 7.1.

7.2 The LESSEE covenants to make all payments in respect of base rent, in equal monthly installments on the first day of every calendar month in advance, and Percentage Rent in accordance with section 4.3 of this Lease, without deduction, abatement or set off.

Cheques shall be made payable to the Corporation of the City of Port Colborne and delivered to the attention of the Director of Corporate and Community Services of the City of Port Colborne, at 66 Charlotte Street, Port Colborne, Ontario, L3K 3C8.

7.3 Any and all sums of money or charges required to be paid by the LESSEE under this Lease shall be deemed to be and shall be paid as additional rent, whether or not the same be designated “additional rent” hereunder, or whether or not the same be paid to the CITY or otherwise, and all such sums shall be payable in lawful money of Canada without deduction, set-off or abatement whatsoever. Any additional rent provided for in this Lease, unless otherwise provided herein, shall become due with the next installment of monthly base rent and upon default of payment shall be collectable by the CITY as rent, in arrears.

## **8.0 Intentionally Deleted.**

## **9.0 Lessee Leasehold Improvements and Fixtures**

9.1 The LESSEE shall be responsible for the installation, maintenance and replacement of all trade fixtures and leasehold improvements within the Leased Premises, including, but not limited to, all shelves, racks, counters, sinks, oven, freezers and signage. Modifications and improvements, including, but not limited to fixtures and trade fixtures, made by the LESSEE to the VHWC building which are affixed to the VHWC building shall become property of the CITY upon their installation and shall not be removed by the LESSEE at the termination or expiration of this Lease, nor at any other time, unless required by the CITY. During the Initial Term and any Extended Term and provided the LESSEE is not in default of any of its obligations or covenants in this Lease, the LESSEE may remove its trade fixtures provided it replaces such trade fixtures with new or like new trade fixtures and equipment. At the termination or expiration of this Lease the LESSEE must return the Leased Premises to its original condition to the extent required by the CITY, to the complete satisfaction of the CITY and shall immediately repair any damage to the Leased Premises caused by the removal of the LESSEE’s trade fixtures. All leasehold improvements, renovations or redecorating shall be subject to prior written approval by the CITY, as set forth below.

The LESSEE shall not make any repairs, alterations, replacements, decorations or improvements (collectively, the “**Work**”) to the Leased Premises without submitting to the CITY: (i) details of the proposed Work, including drawings and specifications; and (ii) evidence that the LESSEE has obtained the necessary consents, permits, licenses and inspections from the governmental authorities having jurisdiction in relation to the Work to be performed. The Work will be completed (1) at the LESSEE’s sole cost; (2) by competent workmen who are duly qualified or licensed as required by law; (3) in a good and workmanlike manner, using only new or like new materials; (4) in accordance with the drawings and specifications approved by the CITY; and (5) subject to the reasonable restrictions imposed by the CITY.

9.2 The LESSEE will not install any equipment which overloads the capacity of any utility, electrical or mechanical facilities in the Leased Premises or the VHWC or which the CITY does not approve of and the LESSEE will not bring upon the Leased Premises any machinery, equipment or thing which might, in the opinion of the CITY, damage the Leased Premises or overload the floors of the Leased Premises and the LESSEE shall forthwith repair or pay to the CITY, as additional rent, on demand, any damage caused for failure to abide by this provision.

9.3 The LESSEE shall not suffer or permit any liens under the *Construction Act*, or other or similar liens or orders to be filed against the Leased Premises, the VHWC or any parts thereof by reason of work, labour, services or materials holding the Leased Premises or any part thereof through or under the LESSEE. If any such liens or orders as aforesaid shall be at any time filed against the Leased Premises, the VHWC or any part thereof, the LESSEE shall cause same to be discharged from the record and from title to the Leased Premises and the VHWC within ten (10) days after notice to the LESSEE of the filing of the same. If the LESSEE shall fail to discharge such lien or order within such period, the CITY may, in addition to any other right, or remedy of the CITY, but shall not be obligated to, discharge same either by paying the amount claimed to be due or by procuring the discharge of such lien or order by deposit in Court or by bonding. Any amount paid by the CITY for any of the aforesaid purposes and all fees and expenses (including legal fees on a full indemnity basis) and all other expenses of the CITY in defending such action or in procuring the discharge of such lien or order, with all necessary disbursements in connection therewith, shall be repaid by the LESSEE to the CITY on demand, and if unpaid may be treated as rent in arrears. Nothing herein contained shall authorize the LESSEE, or imply any consent or agreement or request on the part of the CITY, to subject the CITY's estate or interest in the Leased Premises or the VHWC to any construction lien or other lien of any nature or kind whatsoever.

9.4 The CITY and its agents, upon prior written notice, at all reasonable times during the Initial Term and any Extended Term of this Lease, shall have the right to enter the Leased Premises and inspect the condition thereof. Where an inspection reveals that repairs or replacements are necessary, the CITY shall give the LESSEE notice in writing, and thereupon the LESSEE will, within thirty (30) days from the date of delivery of the notice, make the necessary repairs and replacements in a good and workmanlike manner. If the LESSEE shall not, within thirty (30) days after the service of such notice, commence to proceed diligently with the execution of the repairs and replacements and work mentioned in such notice, it shall be lawful for the CITY to enter onto the Leased Premises and execute such repairs, replacements and work and the cost thereof shall be collectible as additional rent on demand. Entry by the CITY in accordance with this Section 9.4 shall not be deemed to be a breach of the LESSEE's quiet enjoyment of the Leased Premises and the CITY will not be liable for any damage or injury caused to any property of the LESSEE or others located on the Leased Premises by reason of such entry.

**10.0** *Intentionally deleted.*

## **11.0 Food Services at VHWC**

11.1 The LESSEE acknowledges and agrees that the CITY may permit food vendors, food carts, food kiosks, or stationary food facility other than the LESSEE to operate within the VHWC and the T.A. Lannan Sports Complex.

## **12.0 Conduct and Operating of Business**

12.1 The overall governance of the VHWC will be the responsibility of the CITY. The CITY will develop the facility operations policy and procedures manual. The facility policies and procedures will be adhered to by the LESSEE. The LESSEE agrees to abide by all rules, regulations and facility policies and procedures established and approved from time to time by the CITY.

12.2 The CITY may make reasonable regulations with regard to the use and occupancy of the Leased Premises and the LESSEE shall fully comply with such regulations.

12.3 The LESSEE shall, during the Initial Term and any Extended Term;

- operate its business with due diligence and efficiency and maintain an adequate compliment of staff to properly serve its customers;

- obtain and file with the CITY police checks for all staff, including ownership of the LESSEE;
- observe and obey the rules and regulations of the CITY promulgated from time to time for reasons of safety, health or preservation of property or for the maintenance of the good and orderly appearance and operation of the VHWC. The CITY agrees that except in cases of emergency, it will give the LESSEE notice of every new rule or regulations adopted by it at least thirty (30) days before the LESSEE shall be required to comply therewith;
- abide by all rules and regulations and general polices formulated by the CITY from time to time;
- shut down operations for any reason given by the CITY. In the event a required shut down exceeds 24 hours in any given month, for a reason other than weather, it is anticipated that months' base rent shall be prorated accordingly;
- from time to time participate, along with the LESSEE's staff, in CITY training on topics that range from, but not limited to, health and safety to diversity, equity and inclusion. In such situations the CITY shall cover the costs of training and the LESSEE shall be responsible for its staff wages;
- keep the Food Services Area free of hazards and fire dangers at all times;
- encourage patrons to dispose of garbage and recycling in the appropriate receptacles to maintain a clean facility;
- make use of biodegradable packaging when the LESSEE is reasonably able to; and
- meet with and negotiate with other partners and organizations for special events such as birthday parties, tournaments, team parties etc.
- be liable to the CITY to pay for structural repairs that are due to the acts and omissions of the LESSEE, as additional rent due on demand;
- The LESSEE covenants and agrees that it will not use or permit to be used any part of the Leased Premises, or any part of the VHWC and T.A. Lannan Sports Complex so as to cause a nuisance, and will not cause or maintain any nuisance in, at or on the Leased Premises, or any part of the VHWC and T.A. Lannan Sports Complex nor do or permit to be done or omitted anything upon, in or about the Leased Premises, or any part of the VHWC and T.A. Lannan Sports Complex the doing, permission or omission of which shall be, or result in a nuisance; and
- The LESSEE will at its expense promptly, (i) comply with the requirements of all governmental authorities, including, without limitation, federal, provincial and municipal legislative enactments, laws, by-laws, regulations and environmental laws, policies and regulations now or subsequently in force which pertain to the LESSEE's use of the Leased Premises or any part of the VHWC and T.A. Lannan Sports Complex, or the conduct of LESSEE's business in the Leased Premises or any part of the VHWC and T.A. Lannan Sports Complex, or the making of any repairs, replacements, alterations or changes to the Leased Premises or any part of the VHWC and T.A. Lannan Sports Complex, (ii) comply with the policy, fire and sanitary regulations imposed by any governmental authorities or made by fire insurance underwriters, in connection with the LESSEE's use of the Leased Premises or any part of the VHWC and T.A. Lannan Sports Complex, and (iii) carry out all modifications or changes to the Leased Premises or any part of the VHWC and T.A. Lannan Sports Complex and the LESSEE's conduct of business in or use of the Leased Premises or any part of the VHWC and T.A. Lannan Sports Complex which are required by any of those authorities.

### **13.0 Independent Contractor**

13.1 The LESSEE shall act solely as an independent contractor and shall retain complete control over its agents, employees and administrators.

### **14.0 Employees**

14.1 The LESSEE shall provide at all times, a sufficient number of qualified and trained employees to operate the Food Services Area and any other additional space made available to the LESSEE by the CITY. Employed personnel of the LESSEE shall not be employees of the CITY.

### **15.0 Labour**

15.1 The LESSEE shall remain in good standing with the Workers Safety & Insurance Board as well as comply with all other relevant employment statutes, including the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code.

15.2 The LESSEE agrees to implement and comply with all health and safety legislation and regulations.

### **16.0 Sanitation and Housekeeping**

16.1 The LESSEE shall at all times be responsible for the regular housekeeping and sanitation in the preparation, storage and service areas of the Food Service Area and any additional spaces made available to the LESSEE by the CITY.

The LESSEE shall not permit garbage, ash, waste or other objectionable material to accumulate on the Leased Premises. The LESSEE shall, during the Initial Term and any Extended Term, at its own cost and expense, remove all garbage and debris from the Leased Premises and shall comply with all applicable laws and regulations regarding the disposal of same.

16.2 The LESSEE agrees to be responsible for the removal of waste from and cleaning/clearing of tables and the cleaning of minor spills in the Common Lounge Area and any area in the VHWC or on the grounds of the T.A. Lannan Sports Complex impacted by the operations of the LESEE during daily operational hours. For greater certainty this includes space not identified as leased by the LESSEE and includes any adjacent space. The YMCA in agreement with the CITY is responsible for the overall cleaning of the Common Lounge Area of the VHWC.

16.3 The LESSEE is responsible to supply all their own cleaning materials and supplies for their operations.

### **17.0 Waste Management**

17.1 The LESSEE agrees to be responsible for emptying and transporting waste from the Food Services Area and any additional spaces made available to the LESEE by the CITY to the waste confinement and recycling area inside or outside the VHWC as directed by the CITY. The LESSEE shall participate in all recycling programs required by the CITY.

17.2 The CITY shall be responsible, at its expense, for emptying waste containers on a daily basis in the Common Lounge Area and any additional spaces made available to the LESEE by the CITY.

## **18.0 Security and Repairs**

18.1 The LESSEE acknowledges and agrees that the CITY is not responsible for providing security to the Food Services Area. The LESSEE acknowledges that it is responsible for security of the Food Services Area during the Initial Term and any Extended Term of this Lease. The LESSEE will, throughout the Initial Term and any Extended Term, at its sole cost and expense, keep the Leased Premises in good condition and repair, reasonable wear and tear only excepted, and will make, with due diligence and dispatch, all repairs and replacements to the whole of the Leased Premises, including all appurtenances, fixtures and equipment, as would a careful and prudent owner. The LESSEE shall, at its own expense, keep the whole of the Leased Premises in a neat and tidy condition and shall keep the Leased Premises well painted, clean and in a first class condition. The CITY shall not be obligated to repair, replace or maintain any part of the Leased Premises during the Initial Term or any Extended Term of this Lease.

18.2 The CITY shall not be liable to the LESSEE for any interference, disruption or inconvenience caused by repairs, alterations, improvements or construction to the VHWC, provided such are carried out as expeditiously as reasonably possible.

## 19.0 Keys/Alarms

19.1 The LESSEE covenants to provide a key to the Leased Premises to the CITY's facility manager. The LESSEE hereby grants permission to the City of Port Colborne's staff to enter the Leased Premises in case of an emergency. If the CITY enters the Leased Premises in an emergency situation, the facility manager will contact the LESSEE as soon as possible and, as a matter of record, will provide the date, time and entry point for their information.

## 20.0 Washrooms

20.1 The CITY acknowledges that the LESSEE's staff and customers shall be entitled to use the VHCW public washrooms, in common with others.

## **21.0 Other Taxes**

21.1 The LESSEE shall collect any applicable taxes in respect of the sales to its customers and shall remit the taxes to the appropriate taxing authority as required by applicable laws.

## 22.0 Hours of Operation

22.1 The LESSEE agrees that the hours of operation of the Leased Premises shall be adjusted seasonally to meet the needs of the programs offered at the VHWC. The CITY will be requested to review hours of operation with the LESSEE if any concerns are raised as to hours of operation. The LESSEE acknowledges and agrees to modify the hours of operation for tournaments and other special events.

## BASE HOURS

22.2 The LESSEE covenants to be open for business during the proposed hours of:

Sunday to Saturday 6:00 am to 11:00 pm

The LESSEE acknowledges that the proposed hours are subject to change to meet the demands of the facility.

The CITY will circulate electronically a schedule of all regular program and upcoming events in the VHWC to the LESSEE for scheduling purposes.

## **23.0 Signage**

23.1 The LESSEE shall have the right during the Initial Term and any Extended Term, at its expense, to have signage as follows:

(a) Store name above the Food Services Area on the main floor in size, materials and colours approved by the CITY

(b) Store name on the road pylon sign at a cost of \$1,000.00 per year (plus Sales Taxes) for the Initial Term, payable as additional rent, in equal monthly installments of \$83.33, plus Sales Taxes on the first day of each month during the Initial Term, and \$500.00 per year for each year of an Extended Term, plus Sales Taxes, thereafter payable in equal monthly installments of \$41.67, plus Sales Taxes, payable on the first day of each month during each year of the Extended Term, for advertising in size, materials and colours approved by the CITY.

(c) Store Name above the outside service window in size, materials and colours to be approved by the CITY.

(d) The City of Port Colborne will supply directional signage at all three building entrances indicating The Kennedy Club as the food services provider in size, materials and colours approved by the CITY. The LESSEE shall supply appropriate art work and specifications for text and font.

23.2 All signs purchased by the LESSEE will remain the property of the LESSEE and shall be removed by the LESSEE upon the expiration or termination of the Initial Term or any Extended Term. The LESSEE must return the area where signage was installed to its original condition at its sole expense and shall repair all damage caused by such removal.

23.3 The Lessee shall not affix or maintain upon the glass panes and/or supports or within twelve (12) inches of any opening/window/glass or exterior wall of the Leased Premises, any signs, advertisements, placards, descriptive material, names, logos, insignia, trademark or other such items, except those that have been approved by the CITY in writing as to size, type, color, location, display quantities, copy and nature. The Lessee shall not affix any sign within the common area of the VHWC. This excludes signage pursuant to Section 23.1, an 'OPEN' sign on the outside service window of the Leased Premises (as approved by the CITY), and signage on the LESSEE's vending cart. All signage shall conform to LESSEE's logo.

23.4 Any unauthorized advertising displayed by the LESSEE shall be removed by the CITY, with the cost of removal charged to the LESSEE, as additional rent.

#### **24.0 LESSEE'S Insurance**

24.1 The LESSEE will, throughout the Initial Term and any Extended Term, at its own expense, take out and maintain, in the names of the LESSEE and the CITY, as an additional named insured, the following insurance:

(a) insurance upon all property owned by the LESSEE or for which the LESSEE is legally liable, or which is installed by or on behalf of the LESSEE, and which is located within the Leased Premises including, but not limited to, fittings, installations, alterations, additions, partitions, trade fixtures, fixtures and anything in the nature of a leasehold improvement as well as the LESSEE's stock-in-trade, furniture and personal property, in an amount not less than the full replacement cost thereof with coverage against at least the perils of fire and standard extended coverage, including sprinkler leakages (where applicable), earthquake, flood and collapse. If there is a dispute as to the amount which comprises full replacement cost, the decision of the CITY will be conclusive;

(b) commercial general liability insurance including products liability, personal injury liability and property damage insurance coverage with respect to the Leased Premises, the Second Floor Premises and the LESSEE's use of the common areas, Exterior Sales Area and the VHWC, coverage to include the activities and operations conducted by the LESSEE and any other persons on the Leased Premises, the Second Floor Premises, the Exterior Sales Area and by the LESSEE and any other person performing work on behalf of the LESSEE in the Leased Premises, the Second Floor Premises, the Exterior Sales Area or any other part of the VHWC. Such policies shall: (i) be written on a comprehensive basis with inclusive limits of not less than \$2,000,000.00 per occurrence, \$5,000,000.00 annual aggregate, for product liability, bodily injury or property damage; (ii) contain a severability of interests clause and a cross-liability clause; (iii) have a deductible not greater than five thousand dollars (\$5,000.00); and (iv) not contain any exclusions of liability for damage, etc., to property, building or land arising from the removal or weakening

of support of any property, building or land whether such support be natural or otherwise;

(c) LESSEE's legal liability insurance with limits of not less than \$750,000.00, including loss of use of the Leased Premises thereof;

(d) Standard Automobile Policy on both owned and non-owned vehicles with inclusive limits of not less than five million dollars (\$5,000,000.00) Bodily Injury and Property Damage with a deductible not greater than five thousand dollars (\$5,000.00); and

(e) Professional Liability Insurance in the minimum amount of five million dollars (\$5,000,000.00). The LESSEE shall provide to the City proof of Professional Liability Insurance carried by the LESSEE.

24.2 The LESSEE hereby waives all claims against the CITY whatsoever nature or kind where such claims arise out of, or in consequence of, this Lease.

24.3 The policies mentioned in this Article 24 will contain a waiver of any subrogation rights which the LESSEE's insurers may have against the CITY and against those for whom the CITY is in law responsible, whether the damage is caused by the act, omission or negligence of the CITY and those for whom the CITY is in law responsible.

24.4 All insurance policies: (i) will be in a form satisfactory from time to time to the CITY; (ii) will be non-contributing with, and will apply only as primary and not as excess to any other insurance available to the CITY; and (iii) will not be invalidated as respects the interests of the CITY by reason of any breach or violation of any warranties, representations, declarations or conditions contained in the policies. All policies of insurance will contain an undertaking by the insurers to notify the CITY in writing by registered mail at least thirty (30) days before any material change, cancellation or termination of such policies.

24.5 Certificates of insurance or, if required by the CITY, certified copies of each of the insurance policies will be delivered to the CITY as soon as possible after the placing of the required insurance but in any case before the LESSEE obtains possession or use of the Leased Premises for any purpose. No review or approval of any insurance certificate by the CITY derogates from or diminishes the CITY's right or the LESSEE's obligations in this Lease including, but not limited to, those contained in this Article 24.

24.6 If the LESSEE fails to take out or keep in force any insurance referred to in this Article 24, and should the LESSEE not commence to diligently rectify (and afterwards to proceed diligently to rectify) the situation within forty-eight (48) hours after written notice by the CITY to the LESSEE, the CITY may, without assuming any obligation in connection with its doing so, effect the insurance at the LESSEE's cost and all costs and expenses of the CITY will be immediately paid by the LESSEE to the CITY as additional rent due on demand. This right is without prejudice to the other rights and remedies of the CITY under this Lease.

24.7 If the occupancy of the Leased Premises, the conduct of business in the Leased Premises or within the VHWC, or any acts or omissions of the LESSEE in the Leased Premises, the Exterior Sales Area the VHWC or any part of it cause an increase in premiums for the insurance carried from time to time by the CITY, the LESSEE will pay the increase as additional rent immediately after invoices for the additional premiums are rendered by the CITY.

24.8 If any insurance policy on the Leased Premises or any part of it is cancelled or threatened by the insurer to be cancelled, or if the coverage under it is reduced in any way by the insurer because of the use or occupation of any part of the Leased Premises or the VHWC by the LESSEE or by any occupant of the Leased Premises, and if the LESSEE fails to remedy the condition giving rise to the cancellation, threatened cancellation or reduction of coverage within forty-eight (48) hours after notice by the CITY, the CITY may, either: (i) re-enter and take possession of the Leased Premises immediately by leaving upon the Leased Premises a notice of its intention to do so upon which the CITY will have the same rights and remedies as are contained in Article 25; or (ii) enter upon the Leased Premises and remedy the condition giving rise to the cancellation, threatened cancellation or reduction of coverage, and the LESSEE will immediately pay the costs and expenses to the CITY, , which costs and expenses may be collected by the CITY as additional rent

and the CITY will not be liable for any damage or injury caused to any property of the LESSEE or others located on the Leased Premises as the result of the entry. Such an entry by the CITY is not a re-entry or a breach of any covenant for quiet enjoyment.

24.9 The CITY will not be liable for any death or injury from or out of any occurrence in, upon, at, or relating to the Leased Premises, or damage to property of the LESSEE or of others located on the Leased Premises, nor will it be responsible for any loss of or damage to any property of the LESSEE or others from any cause whatsoever. Without limiting the general nature of the previous sentence, the CITY will not be liable for: (i) any injury or damage to persons, or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Leased Premises or from the pipes, appliances, plumbing works, roof, or subsurface of any floor or ceiling or from the street or any other place, or by dampness, or caused by or arising from any interruption or failure in the supply of any utility or service to the Leased Premises; (iii) any interruption of or non-supply of heating, ventilation, air-conditioning or other utilities and services; or (iv) any indirect or consequential damage that may be suffered by the LESSEE. The CITY will not be liable for any damage caused by occupants of adjacent property, or the public, or caused by construction or by any private, public or quasi public work. All of the property of the LESSEE kept or stored on the Leased Premises will be kept or stored at the risk of the LESSEE only and LESSEE will indemnify the CITY and save it harmless from any claims arising out of any damages to that property including, but not limited to, any subrogation claims by the LESSEE's insurers.

## **25.0 Default**

25.1 If during the Initial Term or any Extended Term of this Lease:

- (a) without the written consent of the CITY the Leased Premises shall become and remain vacant or not used for a period of thirty (30) days while the same are suitable for use by the LESSEE; or
- (b) in case the Initial Term or any Extended Term hereby granted or any of the goods and chattels of the LESSEE shall be at any time seized; or
- (c) an order or appointment is made for a receiver or a receiver and manager of the LESSEE's assets or any INDEMNIFIER's assets or any part of them; or
- (d) the LESSEE or any INDEMNIFIER shall make any assignment for the benefit of creditors or give any bill of sale without complying with the *Bulk Sales Act* (Ontario), or becomes bankrupt or insolvent, or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or any order shall be made for the winding up or liquidation of the LESSEE or any INDEMNIFIER; or
- (e) the LESSEE assigns this Lease or sublets the whole or any part of the Leased Premises without the prior written consent of the CITY, except for any permitted assignment or sublease pursuant to this agreement; or
- (f) the LESSEE fails to obtain and deliver to the CITY an executed indemnity required pursuant to the provisions of Sections 26.5(c) within the time period therein prescribed; or
- (g) the LESSEE fails to perform any one (1) or more of the Review Procedures (as such term is defined in Section 26.5(b) herein) prior to an assignment of this Lease or sublet of the Leased Premises in accordance with Section 26.5(b) herein; or
- (h) the LESSEE shall default in payment of base rent, Percentage Rent, additional rent or any other amount required to be paid by the LESSEE by any provision of this Lease, following ten (10) days written notice from LESSOR; or
- (i) the LESSEE shall default in performing or observing any of its other covenants or obligations under this Lease and the CITY shall have given to the LESSEE written notice of such default and, at the expiration of thirty (30) days after the giving of such written notice, the default shall continue to exist (or in the case of such default which cannot, with due diligence, be cured within a period of thirty (30) days, the LESSEE fails to commence to cure such default



within such period and thereafter to continue with due diligence to cure such default as determined by the CITY in its sole discretion),

then, if any of such events occur, the LESSEE shall be deemed to be in default hereunder and the then current month's rent and the next ensuing three months' rent shall immediately become due and payable, and at the option of the CITY this Lease shall cease and determine and the Initial Term or any Extended Term hereby demised shall immediately become forfeited and void, in which event the CITY may re-enter and take possession of the Leased Premises as though the LESSEE or any occupant or occupants of the Leased Premises was or were holding over after the expiration of the Initial Term or any Extended Term hereby demised without any right whatsoever.

25.2 The CITY's right of re-entry hereunder shall become exercisable immediately upon such default being made. Upon such re-entry by the CITY under the terms of this Article 25 or any other provisions of this Lease, the CITY may, in addition to any other remedies which the CITY may be entitled, at its option, at any time and from time to time relet the Leased Premises or any part or parts thereof for the account of the LESSEE or otherwise and receive and collect the rents therefrom, applying the same first to the payment of such expenses as the CITY may have incurred in recovering the possession of the Leased Premises, including legal expenses and solicitor's fees and for putting the same into good order or condition or preparing or altering the same for re-rental and all other reasonable expenses, commissions and charges paid, assumed or incurred by the CITY in or about re-letting the Leased Premises and then to the fulfilment of the covenants of the LESSEE hereunder. Any such re-letting herein provided for may be for the remainder of the Initial Term or any Extended Term as originally granted or for a longer or shorter period. In any such case and whether or not the Leased Premises or any part thereof are re-let, the LESSEE shall pay to the CITY the rent that would have been payable and all other sums required to be paid by the LESSEE up to the time of termination of this Lease or of recovery of possession of the Leased Premises by the CITY, as the case may be, and thereafter the LESSEE covenants and agrees, if required by the CITY, to pay to the CITY until the end of the Initial Term or any Extended Term of this Lease the equivalent of the amount of all of the rent hereby reserved and all other sums required to be paid by the LESSEE hereunder, less the net avails of re-letting, if any, and the same shall be due and payable by the LESSEE to the CITY on the days herein provided for rent, that is to say, upon each of the days herein provided for payment of rent, the LESSEE shall pay to the CITY the amount of the deficiency then existing.

25.3 In the case of the removal by the LESSEE of the goods and chattels of the LESSEE from the Leased Premises in breach of this Lease, the CITY may follow such goods and chattels in the manner as is provided for in the *Commercial Tenancies Act* (Ontario).

25.4 Notwithstanding the benefit of any present or future statute taking away or limiting the CITY's right of distress, none of the goods and chattels of the LESSEE on the Leased Premises, at any time during the Initial Term or any Extended Term, shall be exempt from levy by distress for rent in arrears.

25.5 The LESSEE will indemnify the CITY and save it harmless from and against any and all loss (including, loss of rent, payable by the LESSEE under this Lease) claims, actions, damages, liability and expenses in connection with a breach, violation or non-performance of any covenant to be performed on the part of the LESSEE, the loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from or out of this Lease, or any occurrence in, upon, or at the Leased Premises, the Second Floor Premises, the Exterior Sales Area, the VHWC, or the occupancy or use by the LESSEE of the Leased Premises, the Second Floor Premises, the Exterior Sales Area, the VHWC or any part of them occasioned wholly or in part by any act or omission of the LESSEE, including, without limitation, by anyone permitted to be on the Leased Premises by the LESSEE. If the CITY, without fault on its part, is made a party to any litigation commenced by or against the LESSEE, then the LESSEE will protect, indemnify and hold the CITY harmless and will pay all costs, expenses and legal fees (on a full indemnity basis) incurred or paid by the CITY in connection with that litigation. The LESSEE will also pay all costs, expenses and legal fees (on a full indemnity basis) that may be incurred or paid by the CITY in enforcing the terms, covenants and conditions in this Lease

For good and valuable consideration, the CITY agrees to the following provision: In the event of a default by the LESSEE, the CITY acknowledges an affirmative duty to mitigate damages and shall in no event accelerate rent due to the remainder of the term. Further, CITY and LESSEE agree that LESSEE's liability upon default shall not exceed the lesser of twelve (12) months' rent or the sum of \$20,000.00. Upon the termination of this Lease, whether in accordance with this

section or otherwise, LESSEE shall be permitted access to the Leased Premises to remove any and all logo or trademark items, such items shall include, but shall not be limited to, signage and murals, provided the LESSEE repairs all damage occasioned by such removal to the satisfaction of the CITY.

## **26.0 Conditions**

26.1 This Lease, any assignment of this Lease and any sublet of the Leased Premises in whole or in part is conditional upon: (i) the INDEMNIFIER executing and delivering the Indemnity Agreement attached as Appendix G; and (ii) the LESSEE obtaining all necessary permits, approvals and licenses to construct its leasehold improvements and to operate a business from the Food Services Area on or before the Commencement Date. If the INDEMNIFIER fails to execute and deliver the Indemnity Agreement attached as Appendix G hereto, or the LESSEE is unable to obtain any such necessary permits, licenses and approvals on or before the Commencement Date then the CITY in its discretion shall be entitled to terminate this Lease without any liability whatsoever.

26.2 The LESSEE agrees to ensure all required inspections (i.e. Legislated by Fire, Public Health etc.) and servicing of all equipment shall be conducted on or before the Commencement Date and thereafter according to the frequency at which they are required, all at the expense of the LESSEE. Failure to obtain required inspections and provide proof of inspection if and when requested by the CITY, shall entitle the CITY to terminate this Lease forthwith. Required inspections include, but are not limited to:

- Restaurant Inspection, Niagara Regional Public Health
- Fire Safety Inspection, Port Colborne Fire Department. Annual inspection.
- Fire Protection System Inspection – Semi-annual inspection.
- Portable Fire Extinguisher (Kitchen Type K) Inspection Annually.

26.3 The CITY is responsible for and has committed to complying with the Accessibility Standards for Customer Service, O. Reg. 429/07 to ensure that all persons who deal with members of the public or other third parties on behalf of the CITY shall be trained with respect to the provision of Accessible Customer Service. The LESSEE agrees to provide said training to all staff, volunteers and persons providing customer service to the public or third parties. Disclaimer: The Port Colborne Accessible Customer Service Training Manual is specific to the Corporation of the City of Port Colborne and there may be different requirements for the LESSEE under the legislation and the LESSEE is responsible, at its own cost and expense, to comply with the legislation. For reference purposes, the LESSEE may visit the Ministry of Community and Social Services' website for information and updates regarding accessibility standards applicable to the LESSEE at:

[www.mcass.gov.on.ca](http://www.mcass.gov.on.ca)[www.mcass.gov.ca](http://www.mcass.gov.ca)

26.4 Intentionally deleted.

26.5 The LESSEE shall not assign this Lease or assign or sublet the whole or any part of the Leased Premises without prior written consent of the CITY, which consent shall not be unreasonably withheld. Any attempt to assign any of the rights, duties or obligations of this Lease or sublet the whole or any part of the Leased Premises without prior written consent of the CITY will be void. No assignment of this Lease or sublet of the whole or any part of the Leased Premises shall relieve the LESSEE from the obligation to pay rent, all other amounts due hereunder and to perform all of the terms, covenants and conditions contained herein. Notwithstanding an assignment or sublet as aforesaid, the LESSEE shall not be relieved from the obligation to pay rent, all other amounts due hereunder and to perform the terms, covenants and conditions of this Lease.

26.6 The LESSEE covenants and agrees that the Indemnifiers will be jointly and severally liable with the LESSEE, as principal obligors and not as sureties, in respect of all the LESSEE's obligations under this Lease, and that the Indemnifiers will execute the Indemnity Agreement in

the form attached as Appendix G. If the Indemnifiers fail to execute and deliver to the CITY the Indemnity Agreement contemporaneously with the execution and delivery of this Lease by the LESSEE, or in the event of a sale, sublease or assignment contemplated in Section 26.5(c) herein, the indemnity agreement is not executed and delivered in accordance with all of the provisions and the time period specified in Section 26.5(c), then the CITY shall be entitled to terminate this Lease without any liability to the LESSEE whatsoever.

## **27.0 Damage to Leased Premises**

27.1 If during the Initial Term or any Extended Term, the Leased Premises are damaged by fire or any of the perils insured against by the CITY, then and in every such event if the damage or destruction is such that the Leased Premises are rendered wholly unfit for occupancy, or it is impossible or unsafe to use and occupy it, and if in either event the damage, in the opinion of the CITY, acting reasonably to be given to the LESSEE within ten (10) days of the happening of the damage:

- (a) cannot be repaired with reasonable diligence within one hundred and eighty (180) days from the happening of the damage, either party may within five (5) days next succeeding the giving of the opinion terminate this Lease by giving to the other notice in writing, in which event this Lease shall cease as of the date of the damage and the rent and all other payments for which the LESSEE is liable under this Lease shall be apportioned and paid in full to the date of damage. If neither the CITY nor the LESSEE terminates this Lease, then the CITY shall repair the Leased Premises with all reasonable speed and the rent shall abate from the date of the happening of the damage until the damage shall be made good and the LESSEE can again use and occupy the Leased Premises; or
- (b) can be repaired with reasonable diligence within one hundred and eighty (180) days from the happening of the damage, then the rent shall abate from the date of the happening of the damage until the damage shall be made good and the LESSEE can again use the Leased Premises and the CITY shall repair the damage with all reasonable speed; or
- (c) is such that the Leased Premises are capable of being partially used for the purposes for which they are leased, then until the damage has been repaired the rent shall be reduced by the fraction that the area of that part of the Leased Premises which is rendered unfit for occupancy is to the area of the Leased Premises, and the CITY shall repair the damage with all reasonable speed.

Notwithstanding anything in this Lease, the CITY shall only be required to expend funds to repair and replace the Leased Premises in the amounts received by the CITY under the proceeds of insurance maintained by the CITY.

## **28.0 Mediation and Arbitration**

- (a) General operational issues with respect to this Lease shall be resolved through the CITY.
- (b) The parties agree that should a significant dispute arise as to any matters contained in this Lease, the first step to resolve the issue shall be a meeting between the CITY's CAO and the LESSEE. The second step shall be the appointment of a third party mediator and they will attempt to mediate a resolution. This will not limit or otherwise change any legal rights of the parties. The mediator will be chosen by and acceptable to both parties. The parties agree to equally split the cost of the mediation. If the parties are unable to reach a resolution within thirty (30) days of the appointment of a mediator, then the matter shall be referred to arbitration as set out below.
- (c) In the event any dispute between the parties hereto, arising out of the interpretation, performance or observance hereof or any portion hereof, cannot be resolved through mediation, then such dispute shall be submitted to arbitration by the giving of a written notice by either party to the other party. In the event of arbitration, the arbitrator shall be such person as the parties may agree to on or before thirty (30) days from the submission by either party of the dispute to arbitration; in default of agreement on or before the expiration of such thirty (30) days, then within ten (10) days thereafter the LESSEE shall

appoint an arbitrator, the CITY shall appoint an arbitrator, and the two so chosen shall appoint a third arbitrator. If either party defaults in such appointment within the said ten (10) days, the arbitrator appointed by the other party shall act as sole arbitrator as if appointed by both parties. The arbitrator or arbitrators, as the case may be, shall have all the powers given by the *Arbitration Act* (Ontario) to arbitrators and may at any time and from time to time proceed in such manner as she, he or they may think fit on such notice as she, he or they may deem reasonable and after notice in the absence of either party, the award and determination of the arbitrator or a majority of the arbitrators shall be final and binding and each party agrees not to appeal from such award or determination. The costs of any such arbitration shall be borne equally by the parties.

## **29.0 Notice**

29.1 Any notice or communication required or permitted to be given to the LESSEE or to the CITY under terms of this Lease shall be in writing and shall be served personally, delivered by courier or sent by registered mail, postage prepaid with return receipt requested, addressed to the parties and the Indemnifiers as follows:

Notice to the CITY:

The Corporation of the City of Port Colborne  
66 Charlotte Street  
Port Colborne, ON L3K 3C8  
Attention: City Clerk

Notice to the LESSEE:

The Kennedy Club

Notice to the INDEMNIFIERS:

the Leased Premises  
Attention: Geoff Black, Christopher Bruno and Brent Barnai (or such other parties as may become Indemnifiers under the provisions of this Lease)

29.2 Any notice required to be given under the terms of this Lease shall be deemed to have been received on the date of its delivery in person, or in the case of mailing or by courier, two (2) days after the date of mailing or delivery to the courier, as the case may be. A party or the Indemnifiers may change its address for service from time to time by notice given in accordance with the provisions of this Lease.

## **30.0 Consent**

30.1 If at any time under the provisions of this Lease the consent of the CITY is required, it may be unreasonably withheld.

## **31.0 Governing Law**

31.1 This Lease and the rights, obligations and relations of the parties hereto shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in that Province without regard to the principles of conflicts of law and each party irrevocably attorns to the jurisdiction of the courts of the Province of Ontario. In addition, both parties hereby waive their rights to a trial by jury.

### **32.0 Severability**

32.1 If any term or provision of this Lease or the application thereof to any person or circumstances shall to any extent or for any reason be held invalid or unenforceable, the remainder of this Lease and the application of such term or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

### **33.0 Whole Agreement**

33.1 This Lease and the Schedules attached hereto contains the whole agreement between the parties with respect to the subject matter of this agreement. There is no representation, warranty, collateral agreement (express or implied) affecting this Lease or the Leased Premises. The Schedules attached hereto form part of this Lease. This Lease may not be amended or altered except by instrument in writing signed by the CITY and LESSEE.

### **34.0 General Provisions**

34.1 The LESSEE shall from time to time at the request of the CITY produce to the CITY satisfactory evidence of the due payment by the LESSEE of all payments required to be made by the LESSEE under this Lease.

34.2 Other than expressly set forth herein, it is the explicit intention of this Lease that the rent herein provided to be paid shall be on a completely carefree and net basis to the CITY and clear of all taxes, cost and charges arising from or relating to the Leased Premises and the LESSEE shall pay all charges, impositions, expenses of every nature and kind relating to the Leased Premises and the LESSEE covenants with the CITY accordingly.

34.3 The LESSEE acknowledges that the CITY or its agents, shall have the right upon at least twenty-four (24) hours written notice to enter the Leased Premises at all reasonable times, to be arranged with the LESSEE acting reasonably, and without unreasonably interfering with the operation of the LESSEE's business, to show them to prospective purchasers, encumbrancers, lessees or assignees, and may also, during the six (6) months preceding the termination of the Initial Term or any Extended Term of this Lease, place upon the Leased Premises the usual type of notice to the effect that the Leased Premises are for rent, which notice the LESSEE shall permit to remain thereon.

34.4 The parties hereto expressly disclaim any intention to create hereby a joint venture or partnership relationship or any relationship, except that of lessor and lessee. The provisions of this Lease relating to Percentage Rent are included solely for the purpose of providing a method whereby such rent is to be measured and ascertained.

34.5 In the event the LESSEE shall hold over or continue to occupy the Leased Premises after the expiration of the Initial Term or any Extended Term, with or without the consent of the CITY and without any further written agreement, the LESSEE shall be a month-to-month tenant only on the terms and conditions herein set forth, and such holding over shall have no greater effect, any custom, statute, law or ordinance to the contrary notwithstanding.

34.6 The failure of the CITY to insist upon a strict performance of any of the agreements, terms, covenants and conditions herein shall not be deemed a waiver of any rights or remedies that the CITY may have and shall not be deemed a waiver of any subsequent breach or default in any such agreements, terms, covenants and conditions. Notwithstanding any other provision of this Lease to the contrary, the CITY may from time to time resort to any or all of the rights and remedies available to it in the event of default by the LESSEE, either by any provision of this Lease or by statute or common law, all of which rights and remedies are intended to be cumulative and not alternative. The express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the CITY by statute or common law.

34.7 No payment by the LESSEE or receipt by the CITY of a lesser amount than the payment of the rent herein stipulated is deemed to be other than on account of the earliest stipulated rent, nor is any endorsement or statement on any cheque or any letter accompanying any cheque or payment as rent deemed an acknowledgement of the full payment or an accord and satisfaction, and the CITY may accept and cash such cheque or payment without prejudice to the CITY's right to recover the balance

of such rent or pursue any other remedy provided in this Lease.

34.8 In the event that it shall be necessary for the CITY to commence an action for the collection of the rent, or any other payment, herein reserved, or any portion thereof, or if the same must be collected upon the demand of a solicitor, or if in the event that it becomes necessary for the CITY to commence an action to compel performance of any of the terms, conditions, obligations, covenants and agreements contained herein, then it shall be entitled to collect from the LESSEE all legal fees and disbursements in respect thereof on a full indemnity basis as if the same were rent reserved and in arrears hereunder.

34.9 Where the context so requires, words importing the singular number only shall include the plural and vice versa, and words importing the masculine gender shall include the feminine gender and neuter and words importing persons shall include firms and corporations and vice versa.

34.10 Except as herein expressly provided, this Lease and everything herein contained shall extend to and bind and enure to the benefit of the respective heirs, executors, personal representatives, administrators, successors and permitted assigns (as the case may be) of each and every one of the parties hereto. All rights and powers reserved to the CITY hereunder may be exercised by either the CITY or its agents or representatives.

34.11 The headings in this Lease are included for convenience only and shall not be taken into consideration in any construction or interpretation of this Lease or any of its provisions.

34.12 The CITY, within twenty (20) days of the LESSEE's request and at the LESSEE's expense, shall deliver to the LESSEE an executed, written, estoppel certificate identifying the LESSEE and this Lease and certifying and confirming, in addition to any information or confirmation the LESSEE may reasonably require, the following:

- (a) That this Lease is either unmodified since its execution and in full force and effect, or modified since its execution but still in full force and effect as modified;
- (b) That the LESSEE is not in default of any of its obligations under this Lease or the details of any default of any of the LESSEE's obligations under this Lease, as the case may be; and
- (c) The term, commencement date, expiration date, rent, renewal periods remaining as to the Leased Premises for which the estoppel certificate applies.

34.13 Time shall be of the essence of this Lease and every part thereof.

**(the following page is the signature page)**

**IN WITNESS WHEREOF** the parties hereto have duly executed this Lease as of the date first above written under the hands of their proper signing officers duly authorized in that behalf.

**THE CORPORATION OF THE CITY OF  
PORT COLBORNE**  
Per:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

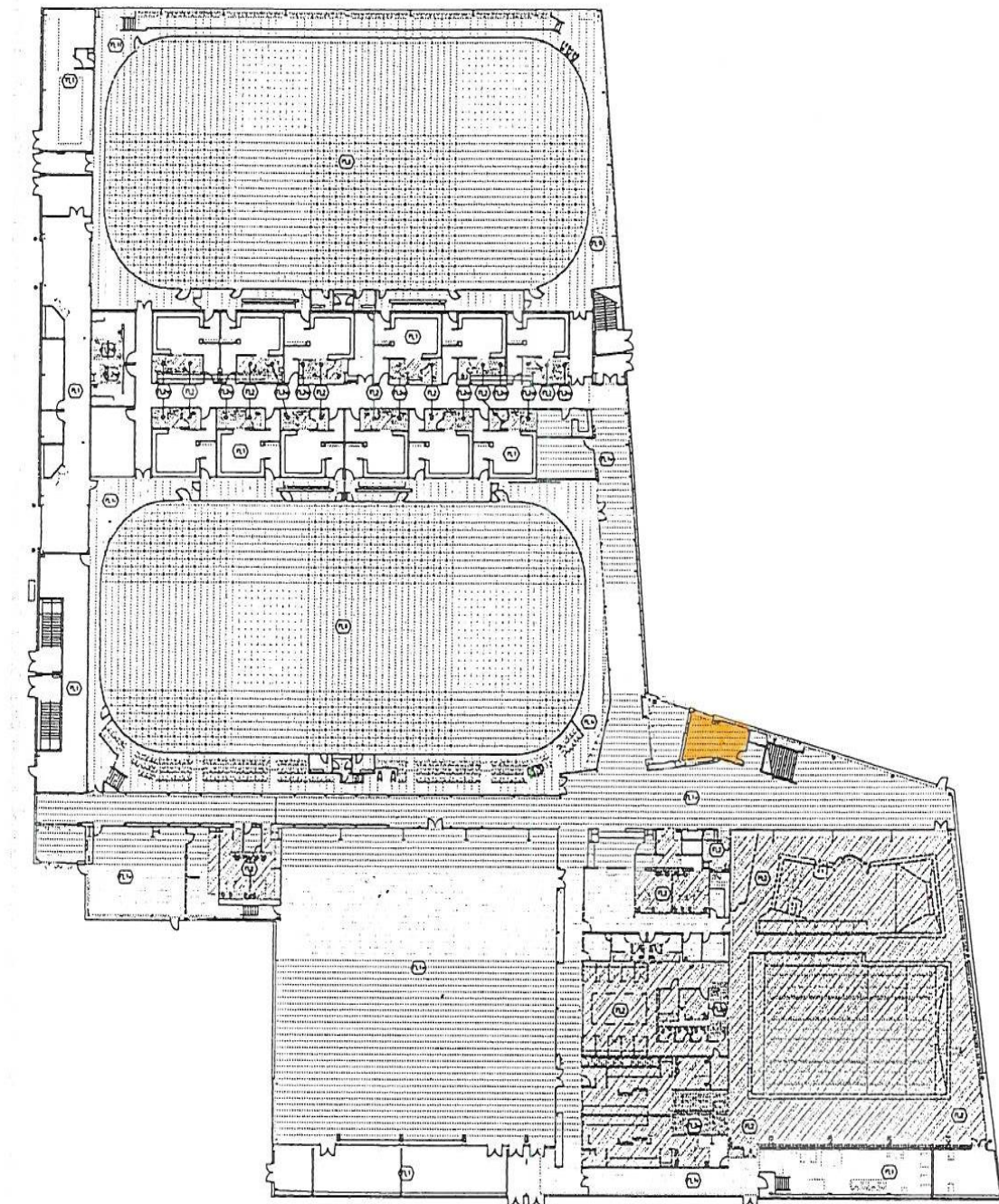
THE **KENNEDY CLUB**  
Per:

\_\_\_\_\_  
Name:  
Title:  
I have authority to bind the Corporation



APPENDIX A

FIRST FLOOR PREMISES

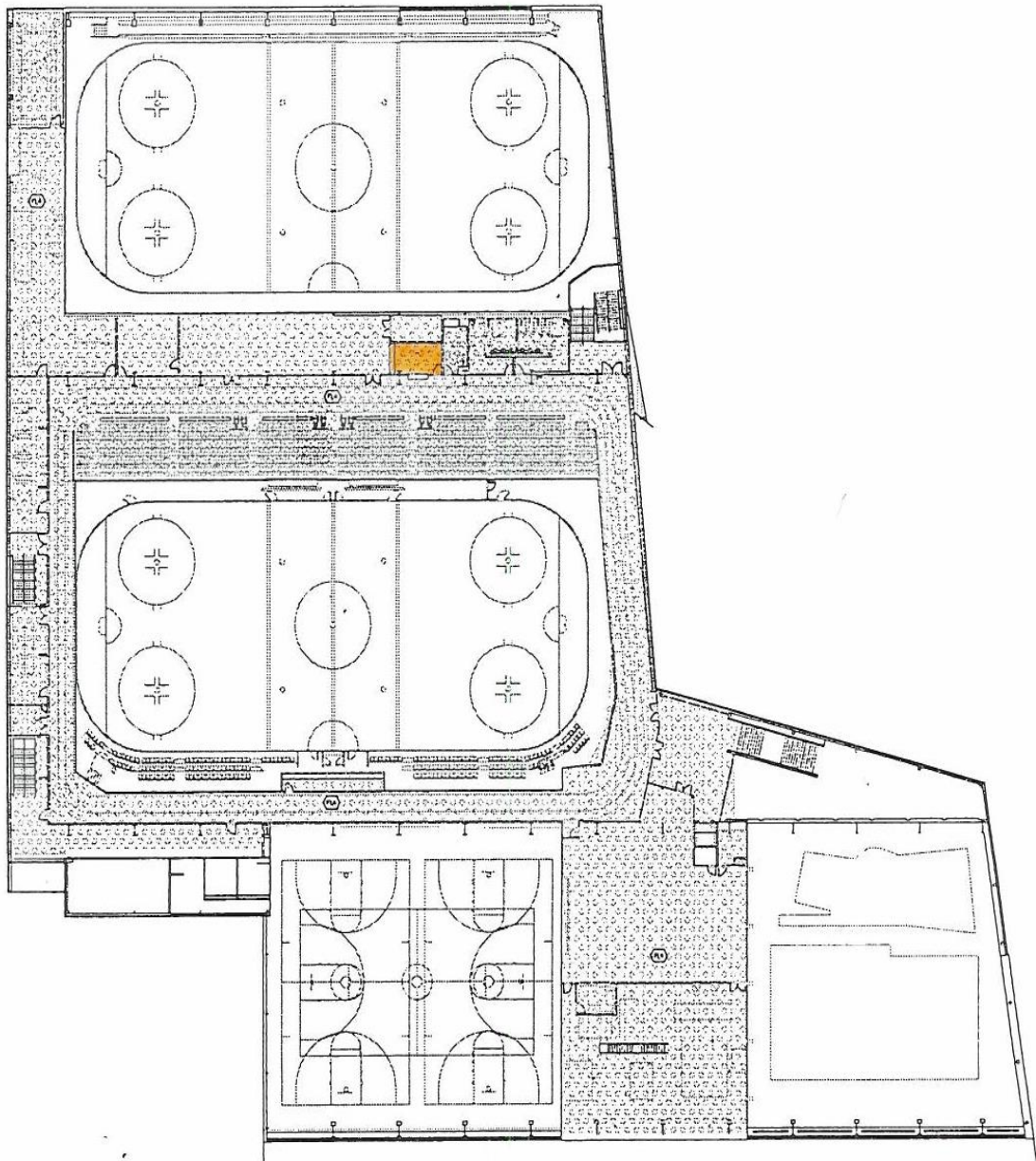


- GROUND FLOOR PLAN



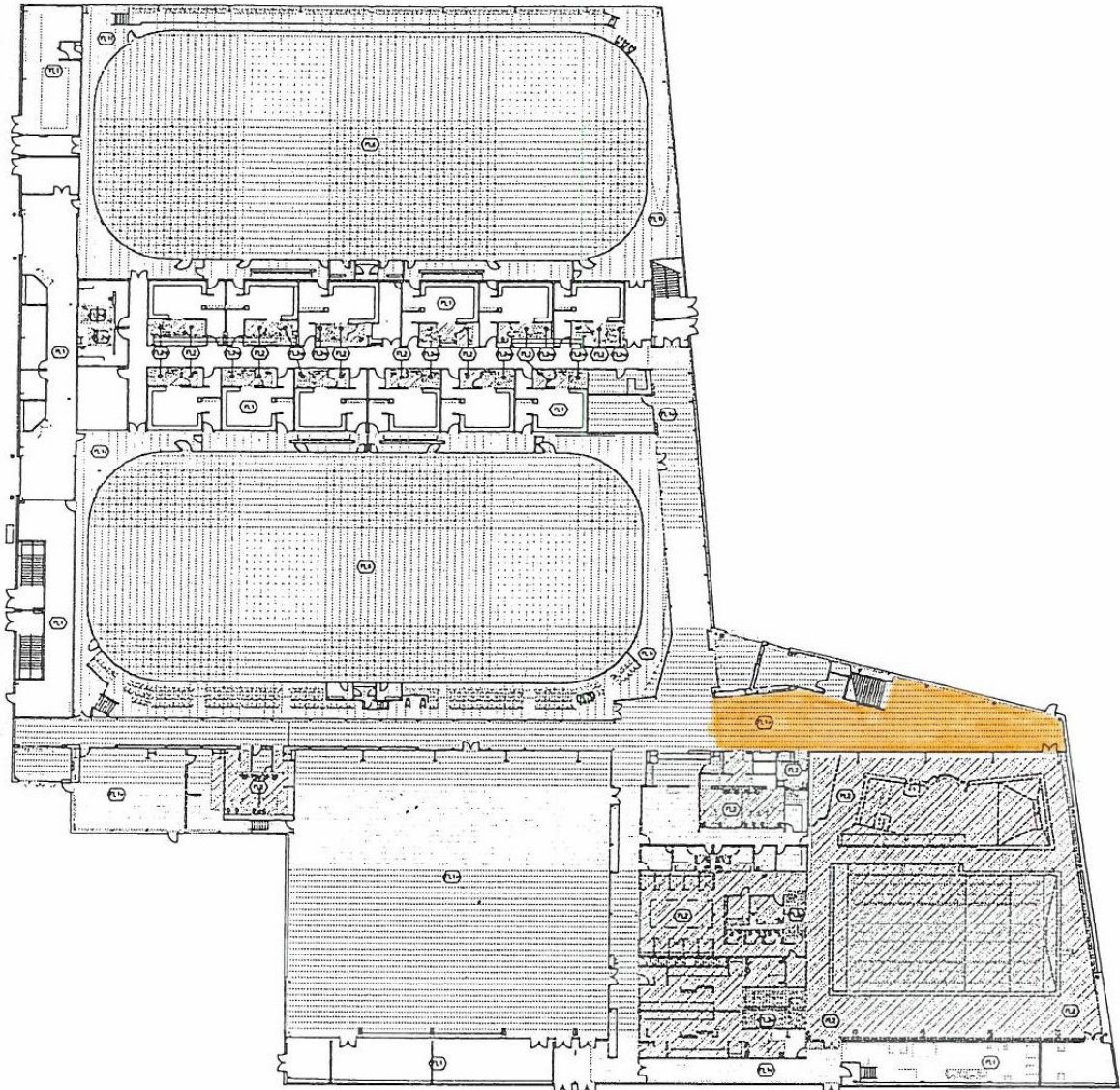
## APPENDIX B

### SECOND FLOOR PREMISES



APPENDIX C

COMMON LOUNGE AREA



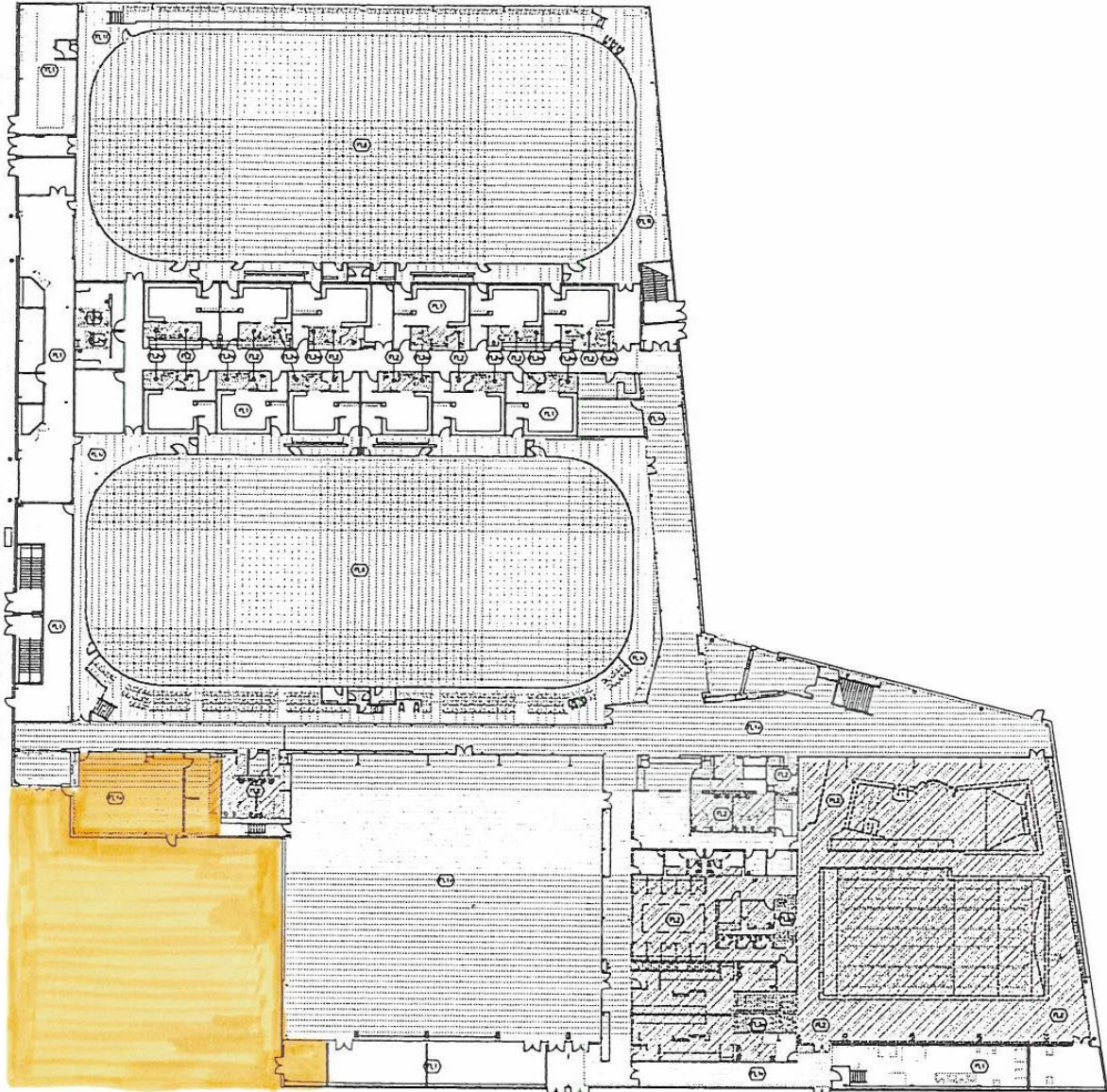
**APPENDIX ‘D’**

**Intentionally Deleted.**



APPENDIX E

**BOCCE CLUB PREMISES**





**APPENDIX G**  
**INDEMNITY AGREEMENT**

## **INDEMNITY AGREEMENT**

THIS INDEMNITY AGREEMENT is made as of the 13<sup>th</sup> day of July, 2023 between Geoff Black, Christopher Bruno and Brent Barnai (hereinafter collectively called the "**Indemnifier**") and THE CORPORATION OF THE CITY OF PORT COLBORNE (hereinafter called the "**City**").

**WHEREAS** the City is the owner of the lands and premises known municipally as 550 Elizabeth Street, in the City of Port Colborne;

**AND WHEREAS** Geoff Black, Christopher Bruno and Brent Barnai own all of the issued and outstanding shares of "The Kennedy Club" (the "LESSEE");

**AND WHEREAS** the LESSEE and the INDEMNIFIER have requested the City to enter into a lease (the "**Lease**") of even date between the City, as landlord, and the Lessee, as tenant, relating to the Leased Premises, and the City has agreed to do so only if the Indemnifier executes and delivers this Indemnity under seal in favour of the City;

**NOW THEREFORE** in consideration of the sum of One (\$1.00) Dollar and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by the Indemnifier) the Indemnifier agrees with the City as follows:

1. The Indemnifier hereby agrees with the City that, at all times during (i) the Initial Term; and (ii) any Extended Term, the Indemnifier shall be bound to the City for the performance of all the obligations of the Lessee and that it shall be jointly and severally liable with the Lessee for all the obligations of the Lessee, as if named as a tenant under the Lease, and the Indemnifier's liability shall be that of a direct and primary obligor (and not as surety), and, in this regard, Indemnifier shall: (a) make due and punctual payment of all base rent, Percentage Rent, additional rent, moneys, charges and other amounts of any kind whatsoever due and payable under the Lease by the Lessee (collectively, hereinafter referred to as "**Rent**"), whether to the City or to any other Person and whether the Lease has been disaffirmed, disclaimed, terminated or surrendered and irrespective of the fact that the Lessee's liability may be limited under the terms of the Lease; (b) effect prompt and complete performance of all the terms, covenants and conditions contained in the Lease on the part of the Lessee to be kept, observed and performed; and (c) promptly indemnify and save the City harmless from and against any and all Claims arising out of any failure by Lessee to pay all Rent or resulting from any failure by the Lessee to observe or perform any of the terms, covenants and conditions contained in the Lease on the part of the Lessee to be kept, observed and performed.

2. This Indemnity is an absolute and unconditional indemnity with respect to all Claims of any nature or kind incurred by the City as a result of non-payment of the Rent or the failure to perform and observe any terms, covenants and conditions contained in the Lease by the Lessee. This Indemnity shall be enforceable against the Indemnifier without the necessity of any suit or proceedings on the City's part of any kind or nature whatsoever against the Lessee, its successors and assigns, and without the necessity of any notice of non-payment, non-performance or non-observance or any notice of acceptance of this Indemnity or of any other notice or demand to which the Indemnifier might otherwise be entitled, all of which the Indemnifier hereby expressly waives; and the Indemnifier hereby expressly agrees that the validity of this Indemnity and the obligations of the Indemnifier hereunder shall, in no way, be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by the City against the Lessee, or against the Lessee's successor and assigns, of any of the rights or remedies reserved to the City pursuant to the provisions of the Lease or allowed at law or in equity or by the relief of the Lessee or variation, reduction, suspension or waiver of any of the Lessee's obligations under the Lease or otherwise by:

- (a) the release or discharge of the Lessee in any creditor's proceedings, receivership, bankruptcy or other proceedings;
- (b) the impairment, limitation or modification of the liability of the Lessee or the estate of the Lessee in bankruptcy, or of any remedy for the enforcement of the Lessee's said liability under the Lease resulting from the operation of any present or future bankruptcy or insolvency legislation or legislation of benefit or potential benefit to debtors or other statutes or laws or from the decision in any court or tribunal;
- (c) the occurrence of any of the events mentioned in paragraph 3 hereof; or



- (d) the compromise, variation, reduction, suspension or waiver of any of the Lessee's obligations under the Lease either pursuant to the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada) or pursuant to any other statute or law for the benefit of debtors or dealing with the relations of debtors and their creditors.

3. The Indemnifier hereby expressly acknowledges and agrees that this Indemnity is absolute and unconditional and the obligations of Indemnifier shall not be released, discharged, mitigated, impaired or affected (whether or not the Indemnifier has notice thereof or is a party thereto) by: (a) any extension of time, indulgences or modifications which the City extends to or makes with the Lessee in respect of the performance of any of the obligations of the Lessee under the Lease; (b) any waiver by or failure of the City to enforce any of the terms, covenants, agreements, stipulations, provisos, conditions and rules and regulations contained in or made pursuant to the Lease; (c) any Transfer of the Lease, any sublease, or of all or any part of the Leased Premises by Lessee or by any Transferee, by any trustee, receiver, receiver-manager or liquidator; (d) any change in the ownership of the capital stock or partnership interests or other interests in the Lessee or of any assignee of the Lease, any sublessee or any other Person (collectively a "Change of Control"); (e) any consent which the City gives to any Transfer or Change of Control; (f) any relocation, expansion or reduction of the Leased Premises, the VHWC and any changes to the Lease resulting therefrom; (g) any amendment, modification or variation to the Lease (whether such amendment, modification or variation is made between the City and the Lessee, or between the City and any Transferee); (h) any waiver by the Lessee or any Transferee of any of its rights under the Lease; (i) any alteration, modification or physical change in, to or for the Leased Premises, the VHWC, or any part thereof; (j) the expiration of the Initial Term, any Extended Term or termination of the Lease; (k) any overholding by the Lessee or Transferee of the Leased Premises or any part thereof; (l) any renewal or extension of the Lease pursuant to any option or right of the Lessee or otherwise, it being understood and agreed that this Indemnity shall extend throughout the Initial Term and any Extended Term; (m) any loss of, or any loss in respect of, any security received or intended to have been received by the City from the Lessee or any other Person, whether or not occasioned or contributed to by or through the act, omission, default or neglect of the City or those for whom the City is in law responsible; (n) any act, omission, default or neglect of the City or any other Person whereby: (i) the Lessee (or any one or more Persons comprising the Lessee) or (ii) the Indemnifier (or any one or more Persons comprising Indemnifiers) is released or has its obligations under the Lease or this Indemnity, as the case may be, discharged, mitigated, impaired or affected in any way whatsoever; (o) any present or future statute or any existing or future common law under which: (i) the Lessee (or any one or more Persons comprising the Lessee); or (ii) the Indemnifier (or any one or more Persons comprising the Indemnifier) is released or has its obligations under the Lease or this Indemnity (as the case may be) discharged, mitigated, impaired or affected in any way whatsoever; or (p) any limitation of the Lessee's liability contained in the Lease. Nothing but payment and satisfaction in full of all Rent and the due performance and observance of all terms, covenants and conditions on the part of the Lessee to be paid and performed under the Lease shall release the Indemnifier from its obligations under the Lease or this Indemnity, as the case may be.

4. No dealings between the City and the Lessee of any kind whatsoever shall exonerate, release or discharge the Indemnifier, in whole or in part hereunder, or diminish, affect or reduce the liability of the Indemnifier under this Indemnity provided notice thereof is provided to the Indemnifier. Without limiting the generality of the foregoing, this Indemnity shall be a continuing indemnity and the liability of the Indemnifier shall, in no way, be affected, modified or diminished by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of the Lease or by reason of any indulgence, release, postponement, extension of time, waiver of any covenant or provision of the Lease or any obligation of the Lessee which may be granted by the City to the Lessee, its successors or assigns, or by reason of the City taking or releasing any security or securities or other indemnities for performance by the Lessee or by reason of any dealings or transactions or matters or things occurring between the City and the Lessee, its successors and assigns.

5. In the event of termination of the Lease, except by surrender accepted by the City in writing, or in the event of termination, rejection, disaffirmance or disclaimer of the Lease by any trustee in bankruptcy or by any receiver or receiver and manager or in any proceedings whatsoever or pursuant to or in or as a result of any proceeding or order under any statute or law, then, at the option of the City, the Indemnifier shall execute and deliver a new lease of the Leased Premises between the City, as landlord, and the Indemnifier, as tenant, for a term equal in duration to the remainder of the unexpired portion of the Initial Term or any Extended Term of the Lease as it may be extended, from



time to time. Such new lease shall contain the same City and Lessee obligations, respectively, and the same covenants, obligations and agreements, terms and conditions, in all respects, including the provisos for re-entry on non-payment of Rent or non-performance or observance of covenants as are contained in the Lease, save and except that the Indemnifier, as tenant, shall accept the Leased Premises in a then "as is" condition and the City shall have no obligation to pay or to provide to the Indemnifier, as tenant, any allowance, concession or inducement of any nature, or to pay or provide any Rent free or Rent reduced periods or any fixturing period or to perform any work in or in respect of the Leased Premises. Such lease shall be prepared by the City, at the expense of the Indemnifier and shall be promptly executed by the Indemnifier forthwith upon presentation thereof by the City. The liability of the Indemnifier shall not be affected by any re-possession of the Leased Premises by the City.

6. Notwithstanding any provision in this Indemnity to the contrary, the Indemnifier shall be released from its obligations under this Indemnity if the City receives an executed replacement indemnity in accordance with all of the provisions specified in Section 26.5(c) of the Lease and within the time period therein specified. For greater certainty, if the Lessee retakes possession of the Leased Premises from a licensee, franchisee, sublessee or an assignee that is comprised of one or more of the Indemnifiers, the obligations of the Indemnifier under this Indemnity shall not be released, discharged, mitigated, impaired or affected in any way whatsoever and they shall remain and continue to be liable under this Indemnity until a new indemnity is signed and delivered to the City in accordance with Section 26.5(c) of the Lease.

7. All of the City's rights and remedies under the Lease or under this Indemnity shall be distinct, separate and cumulative and no such right or remedy in the Lease or herein mentioned, whether exercised by the City or not, shall operate as an exclusion of a waiver of any of the other such rights or remedies. The obligation of the Indemnifier hereunder shall not be released by the City's receipt, application or release of security given for the performance and observance of any covenants and conditions required to be performed or observed by the Lessee under the Lease or shall the Indemnifier be released by the maintenance of or execution upon any lien which the City may have or assert against the Lessee and/or the Lessee's assets.

8. In the event of the occurrence of any circumstances defined within the Lease as an event of default and if both the City and the Indemnifier shall have Claims against the Lessee, and while the Claim of the City is or remains unsatisfied, in whole or in part, as to the Rent, then the Indemnifier:

- (a) shall not enforce any right of subrogation against the Lessee by reason of any payments or acts of performance by the Indemnifier in compliance with the obligations of the Indemnifier hereunder;
- (b) shall not enforce any remedy which the Indemnifier now or hereafter shall have against the Lessee by reason of any one or more payments or acts of performance in compliance with the obligations of the Indemnifier hereunder; and
- (c) subordinates all liabilities or indebtedness of the Lessee now or hereafter held by the Indemnifier to the obligations of the Lessee to the City under the Lease.

9. The Indemnifier hereby covenants to and agrees with the City, its successors and assigns, that the Indemnifier may be joined in any action against the Lessee in connection with the Lease and that recovery may be obtained against the Indemnifier in such action or any independent action against the Indemnifier without the City, its successors and assigns, first pursuing or exhausting any remedy or Claim against the Lessee, its successors or assigns, and the City shall not be obliged to resort to or realize upon any security or other indemnities which the City may, from time to time, have before being entitled to Claim against the Indemnifier.

10. If more than one individual, corporation, partnership or other entity (or any combination of them) execute this Indemnity as Indemnifiers, the liability of each such individual, corporation, partnership or other entity hereunder is joint and several. In like manner, if the Indemnifier named in this Indemnity is a partnership or other business association, the members of which are by virtue of statutory or common law subject to personal liability, the liability of each such member is joint and several. If two (2) or more Persons are named as Indemnifiers in this Indemnity, the release of one or more of such Persons does not release any remaining Person named as an Indemnifier in this Indemnity.

11. Any account or debt settled or stated or any other settlement made between the City and the Lessee shall be binding upon the Indemnifier even though the Indemnifier was not a party to such settlement or statement or had no notice thereof.

12. If any term or provision of this Indemnity or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Indemnity, or the application of the terms or provisions to Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Indemnity shall be valid and enforced to the fullest extent permitted by law.

13. This Indemnity sets forth all of the promises, inducements, agreements, conditions and understandings between the City and the Indemnifier relative to the Indemnity of the Lease and there are no promises, agreements, conditions or understandings either oral or written, expressed or implied between them, other than as expressly set forth herein.

14. The Indemnifier shall, without charge and at any time and from time to time, within ten (10) days after request therefor by the City, certify, by written instrument, duly executed by the Indemnifier and addressed to or delivered to any party specified by the City that this Indemnity has been duly authorized, executed and delivered and is a valid and binding obligation upon the Indemnifier, enforceable in accordance with its terms and provisions and is unmodified and in full force and effect (or, if there has been modifications, then stating that the same is in full force and effect as modified and describing the modifications).

15. Any notice or communication required or permitted to be given to the City or the Indemnifier under terms of this Indemnity shall be in writing and shall be served personally, delivered by courier or sent by registered mail, postage prepaid with return receipt requested, addressed to the parties as follows:

Notice to the City:

The Corporation of the City of Port Colborne  
66 Charlotte Street  
Port Colborne, ON L3K 3C8  
Attention: City Clerk

Notice to the Indemnifier:

the Leased Premises  
Attention: Geoff Black, Christopher Bruno and Brent Barnai

Any notice required to be given under the terms of this Lease shall be deemed to have been received on the date of its delivery in person, or in the case of mailing or by courier, two (2) days after the date of mailing or delivery to the courier, as the case may be. A party may change its address for service from time to time by notice given in accordance with the provisions of this Indemnity.

16. This Indemnity shall enure to the benefit of the City and the City's successors and assigns and shall be binding upon and enforceable against the Indemnifier and the Indemnifier's heirs, executors, administrators, personal representatives, successors and assigns.

17. The Indemnifier hereby submits itself and attorns to the exclusive jurisdiction of the courts of the Province of Ontario. The Indemnifier further covenants and agrees that any final judgment or order of the Courts of the Province of Ontario shall be final, binding and conclusive as against the Indemnifier.

18. The Indemnifier acknowledges that it has received a true copy of the Lease and is familiar with the terms, covenants and conditions contained therein.

19. The words "the City", "the Lessee", "Initial Term" or "Extended Term" and "Leased Premises" and all other words and phrases used in this Indemnity that are defined in the Lease are used in this Indemnity as so defined in the Lease unless otherwise defined in this Indemnity, or the

context otherwise requires. For the purposes hereof, the following words shall have the following meanings set forth below:

- (a) “Claims” means claims, losses, actions, suits, proceedings, causes of action, demands, damages (incidental, direct, indirect, special, consequential or otherwise), fines, duties, interest, penalties, judgments, executions, liabilities, responsibilities, costs, charges, payments and expenses including, without limitation, any professional, consultant and legal fees (on a full indemnity basis).
- (b) “Person” includes any individual, partnership, firm, company, corporation, incorporated or unincorporated association, co-tenancy, joint venture, syndicate, fiduciary, estate, trust, government, governmental or quasi-governmental agency, board, commission or authority, organization or any other form of entity howsoever designated or constituted, or any group, combination or aggregation of any of them.
- (c) “Transfer” means (a) an assignment, sale, conveyance, sublease, licensing or other disposition, or a mortgage, charge or debenture (floating or otherwise) or other encumbrance of the Lease or any interest in it or all or any part of the Leased Premises (whether by operation of law or otherwise), or of any interest in a partnership that is a Lessee under the Lease; (b) a parting with or sharing of possession of all or part of the Leased Premises; (c) a transfer or issue by sale, subscription, assignment, bequest, inheritance, operation of law or other disposition, of all or part of the shares of the Lessee or any of its affiliates (as currently defined under the *Canada Business Corporations Act*) which results in a change in the effective voting control of the Lessee; or (d) a merger, amalgamation or other similar corporate reorganization involving the Lessee. “Transferor” and “Transferee” have corresponding meanings.

20. Each party acknowledges that it has reviewed and participated in settling the terms of this Indemnity, and each of 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 Indemnity.

21. The Indemnifier declares and represents that it has had an opportunity to obtain and has obtained independent legal advice in respect of this Indemnity and that the terms of this Indemnity have been completely read by it and that those terms are fully understood and voluntarily accepted by the Indemnifier.

22. In this Indemnity words importing the singular number only shall include the plural and vice versa words importing the masculine gender shall include the feminine gender and neuter and vice versa.

**(the following page is the signature page)**

**IN WITNESS WHEREOF** the parties hereto have duly executed this Indemnity as of the date first above written, under the hands of their proper signing officers duly authorized in that behalf or by setting their respective hands and seals in their personal capacity, as the case may be.

**SIGNED, SEALED AND DELIVERED**

in the presence of

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)

1/s

Geoff Black

1/s

Christopher Bruno

1/s

Christopher Bruno

**THE CORPORATION OF THE CITY OF  
PORT COLBORNE**

Per:

Mayor

Clerk



Report 2023-140  
Appendix B

**PROJECT NO. 2023-01**  
**REQUEST FOR PROPOSAL (RFP)**

Commercial Food Operations  
at Vale Health & Wellness Centre (VHWC)



ISSUED ON: February 21, 2023  
CLOSING DATE AND TIME: March 20, 2023 at 2:00p.m.

The City of Port Colborne  
66 Charlotte Street  
Port Colborne  
ON, L3K 3C8

<b>Request for Proposal (RFP) Reference</b>	Request for Proposal (RFP) No. 2023-01 Commercial Food Operations at the Vale Health & Wellness Centre (VHWC).
<b>Overview of the Opportunity</b>	The purpose of this RFP is to invite proposals from qualified companies to submit a proposal for the Commercial Food Operations at Vale Health & Wellness Centre (VHWC). The facility is nestled within the T.A. Lannan Sports Complex located at 550 Elizabeth Street, Port Colborne, Ontario.
<b>Questions</b>	Questions are to be submitted in writing quoting the RFP number and name, up to 3 business days before the closing date, sent to Amy Duffy at amy.duffy@portcolborne.ca
<b>Addenda</b>	Proponents are required to check the City's Website for any updated information and addenda issued, before the closing date at the following website: <a href="http://www.portcolborne.ca/en/city-hall/Projects_and_Tenders_Opportunities.aspx#Bids-and-Tender-Opportunities">www.portcolborne.ca/en/city-hall/Projects_and_Tenders_Opportunities.aspx#Bids-and-Tender-Opportunities</a>
<b>Closing Date and Time</b>	March 20, 2023 at 2:00p.m. local time Proposals received after this date and time will not be considered.
<b>Instructions for Proposal Submission</b>	<p>The bid shall include items listed hereunder, but also include other considerations based on the bidder's understanding of the project.</p> <p>Bidders must strictly adhere to the submission instructions. The following policy regarding the submission and opening procedures will be applicable.</p> <p>FOUR (4), properly completed and sealed copies of the bid must be submitted (by the above date and time) to:</p> <p style="padding-left: 40px;">Charlotte Madden, Acting City Clerk City Hall 66 Charlotte Street Port Colborne, Ontario L3K 3C8</p> <p>There will be no public opening of this bid process.</p> <p>Bids received later than the time specified will not be accepted, regardless of the post seal date. Bids must be plainly marked to reveal the contents and the name and address of the Bidder's firm. Bids received after this time will be unopened and returned.</p>
<b>Obtaining RFP Documents</b>	RFP Documents are available for download from the City of Port Colborne's Website: <a href="http://www.portcolborne.ca/projects_and_tenders">www.portcolborne.ca/projects_and_tenders</a> Printing of RFP documents is the sole responsibility of the Proponents.
<b>Terms and Conditions of Contract</b>	City of Port Colborne Terms and Conditions of Purchase

## Definitions

In this RFP the following terms will have the meaning set out below:

**“City”** means the Corporation of the City of Port Colborne

**“RFP”** means this Request for Proposal

**“Services”** means and includes anything, and everything required to be done by the organization for the fulfillment and completion of the contract as described in the RFP.

**“Successful Bidder”** the organization or company that proposal is accepted by the City of Port Colborne and approved by Council.

**“Proposal”** means a response submitted for evaluation in response to this RFP.

**“VHWC”** means Vale Health & Wellness Centre

## RFP and Overview

The City of Port Colborne is accepting proposals for the operation of a commercial food canteen in the VHWC. It is the intent of the City to enter into an agreement for the operation of such commercial services at Vale Health & Wellness Centre at 550 Elizabeth Street, Port Colborne. Any award of this service lease agreement is conditional on the acceptance and approval of Council of the City of Port Colborne. Any and all associated costs and/or expenses incurred by the respondent will be sole responsibility of the respondent.

## About the VHWC

The Vale Health & Wellness Centre was established in 2013. It is a state-of-the-art facility, fully accessible for sport, recreation, health, wellness, entertainment, and commerce – all under one roof and has become a hub of Port Colborne.

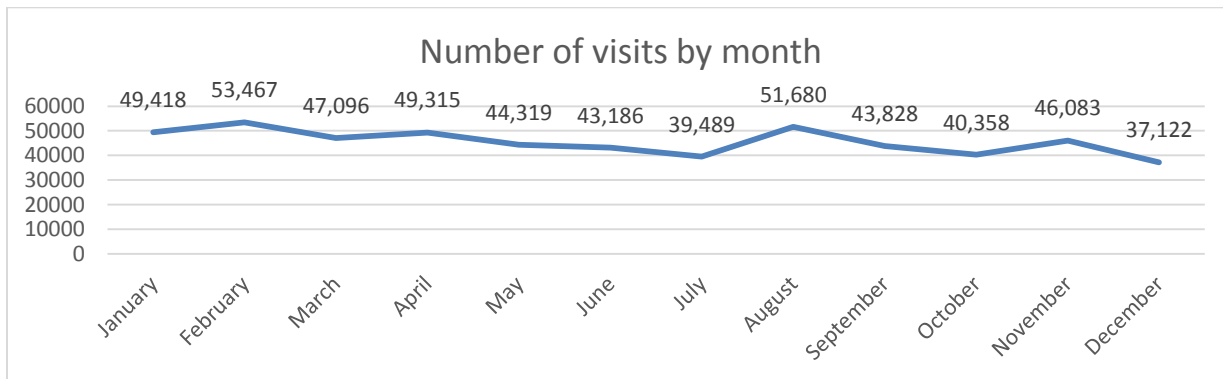
This 145,000 square foot venue includes two NHL-sized ice pads, a walking/jogging track for all season use, six outdoor bocce courts and, through partnership with the YMCA, an aquatic centre with lap and leisure pools, a gymnasium and fitness area.

The facility is nestled within the T.A. Lannan Sports Complex located at 550 Elizabeth Street that is home to six soccer fields, three baseball fields, a playground, outdoor fitness equipment and recreation trails that connect to multi-use trails across the City.

The facility hosts approximately 45 tournaments annually and numerous events and kids camps.

The City utilized an outside subject matter expert to provide the estimated number of visitors by month in the year prior to the pandemic (2019) as follows:

Vale Health & Wellness Centre – Estimated Number of Visits by Month



The city anticipates usage in the current health environment to follow a similar pattern. Recent adjustments such as enhanced YMCA hours on the weekends and new groups using the arena may result in numbers increasing in the future.



## **RFP Particulars**

### **City of Port Colborne – Corporate Values**

The successful proponent must demonstrate alignment with our corporate values:

- Integrity – we interreact with others ethically and honourably
- Respect – we treat each other with empathy and understanding
- Inclusion – we welcome everyone
- Responsibility – we make tomorrow better
- Collaboration – we are better together

### **Space**

The space available is identified in Appendix A. Additional space within the VHWC can be utilized when available and at the discretion of the City. Any changes to the identified or available space by the successful proponent will require the approval of the City, will become the property and asset of the City and are to be at the cost of the successful proponent.

The successful proponent is required to provide a listing of all material equipment used and require the approval of the City to change or add such equipment as the agreement progresses.

Our city is growing, should there become a need to enhance the VHWC that result in moving the identified food concession location identified in Appendix A, the successful proponent agrees to move to a similar size space in an alternative location. Any new location would be built at the cost to the City.

Proponents can attend an on-site walkthrough of the location on Thursday, March 2, 2023 at 2:00p.m. Proponents must register in advance by sending an email to Amy Duffy, Supervisor Events and Sponsorship. Email: amy.duffy@portcolborne.ca

### **Food and Beverage**

The results of a recent survey of customer preferred food offerings can be seen in Appendix B. It is anticipated the successful proponent will demonstrate at least 60 percent of the available menu supports relatively healthy choices.

The successful proponent is required to submit listing of all menu items, including prices. The menu items sold need to highlight the healthy choices options. Any material changes to the menu items, including price will require the approval of the City.

As a reminder to proponents, City facilities are smoke free. The City will not allow the sale of tobacco or cannabis of any kind. The City is not allow the sale of alcohol or lottery tickets from the space identified in Appendix A.

The successful proponent will not have exclusive rights to sell food or beverages within the VHWC, T.A. Lannan Sports Complex or any other location. The City also intends to maintain vending machine operations.

## **Hours of Operations**

It is anticipated that the successful proponent will open no later than April 30, 2023. The space will become available two months prior on February 28, 2023.

The preferred hours of operation for the commercial food services are the same as the arena hours which are currently 6:00a.m. to 11:00p.m. daily and the City is open to discussing further.

The successful proponent will adhere to the City's inclement weather procedures, including any mandated periods of closure. There will be no financial reimbursement for weather related closures.

The City will reserve the right to require the successful proponent to shut down operations for any reason. In the event a required shut down exceeds 24 hours in any given month, for a reason other than weather, it is anticipated that months financial terms will be prorated accordingly.

## **Staffing**

The successful proponent will be required to have obtain and fill police checks for all staff, including ownership, working on site.

From time to time the City may require the successful proponents staff to participate in City wide training on topics range from, but not limited to, health and safety to diversity, equity and inclusion. In such situations the City would cover the costs of training, staff wages of the successful proponent would be the responsibility of the successful proponent.

## **Financial**

Proponent must pay for all related permits/licensing and registration fees with respect to the food concession location and their operations, as required.

The City will evaluate proposed compensation for the identified space on a total compensation basis. For greater clarity the City will review and compare the proposed total compensation over the five-year term of the contract.

The City is open to proposals that are fixed, variable or hybrid (fixed or variable) in nature. Proponent can expect variable and hybrid to be weighted for probability of achievement. The weighting will be at the discretion of the City. They will be based on a combination of the proponents' proposal, feedback from the recent questionnaire attached as Appendix B and City experience, including experience at the VHWC along with other locations across the City.

Proponents can assess that the City, as part of any agreement will provide:

- Utilities
- Parking
- Washrooms, including cleaning of washrooms
- Cleaning of the area outside of the space in Appendix A.

- Garbage and recycling disposal

## **Laws and Regulations**

It will be the responsibility of the successful proponent to ensure all related public health standards, all permits, all licenses and any other laws and regulations are maintained, adhered to and meet with respect to their operations of the food concession. Any and all related costs will be the responsibility of the successful proponent

The successful proponent will maintain insurance as outlined under material disclosures below.

## **Insurance and Liability**

The City of Port Colborne's insurance requirements for consultants (the "successful bidder") are described below. The coverage provided by these policies shall not be changed or amended in any way or cancelled by the successful bidder unless approved by the City in writing.

### Comprehensive General Liability and Automobile Insurance

The successful bidder shall provide the City of Port Colborne with a certified copy of Third Party Liability in a form satisfactory to the City, as follows:

Policy to be written on the comprehensive form including Contractual Liability and Complete Operations with an inclusive limit of not less than five million dollars (\$5,000,000.00) Bodily Injury and Property Damage with a deductible not greater than five thousand dollars (\$5,000.00). The Liability Insurance Policy shall not contain any exclusions of liability for damage, etc., to property, building or land arising from the removal or weakening of support of any property, building or land whether such support be natural or otherwise.

Standard Automobile Policy on both owned and non-owned vehicles with inclusive limits of not less than five million dollars (\$5,000,000.00) Bodily Injury and Property Damage with a deductible not greater than five thousand dollars (\$5,000.00).

A "Cross Liability" clause or endorsement.

An endorsement certifying that the City of Port Colborne is included as an additional named insured.

An endorsement to the effect that the policy or policies will not be altered cancelled or allowed to lapse without thirty (30) days prior written notice to the City.

### Professional Liability Insurance

The Insurance Coverage shall be in the minimum amount of five million dollars (\$5,000,000.00). The successful bidder shall provide to the City proof of Professional Liability Insurance carried by the successful bidder.

## Term of Contract

It is the City's intention to enter into an agreement for five years with an option to renew for up to an additional five years should both the successful proponent and City agree to continuing contract terms.

## Evaluation Criteria

The following sets out the categories, weightings, and descriptions of the rated criteria of the RFP.

<b>Rated Criteria Category</b>	<b>Weighting (Points)</b>
i. Experience and Qualifications	15
ii. Food Menu – incorporation of the options which ranked highest in the survey as well as healthy options.	15
iii. Food Menu, affordability	15
iv. Hours of operations	10
v. Opening day – no later than April 30, 2023	5
<b>Sub-Total Points</b>	60
Financial	40
<b>Total Points</b>	100

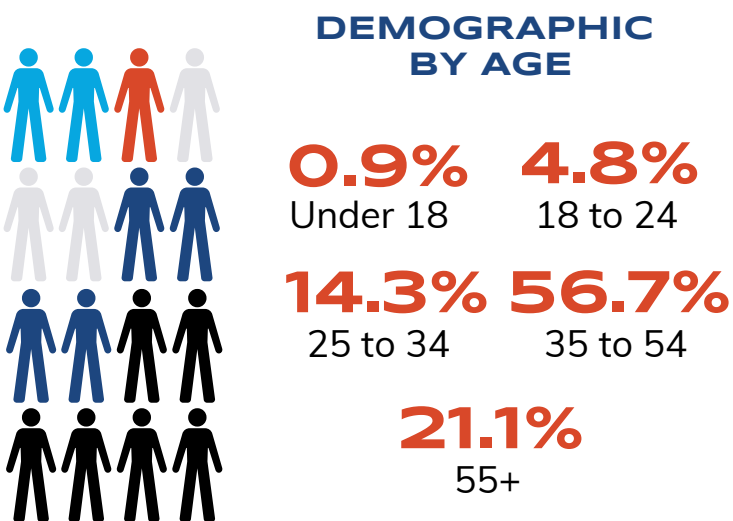
## City Contact

Key contacts for inquiries regarding this RFP are as follows, and must be submitted by e-mail only, and directed to the attention of:

Amy Duffy  
Supervisor, Events and Sponsorship  
Email: amy.duffy@portcolborne.ca

838

TOTAL NUMBER OF SURVEYS COMPLETED



DO YOU HAVE A PORTICIPATE PASS?



61%

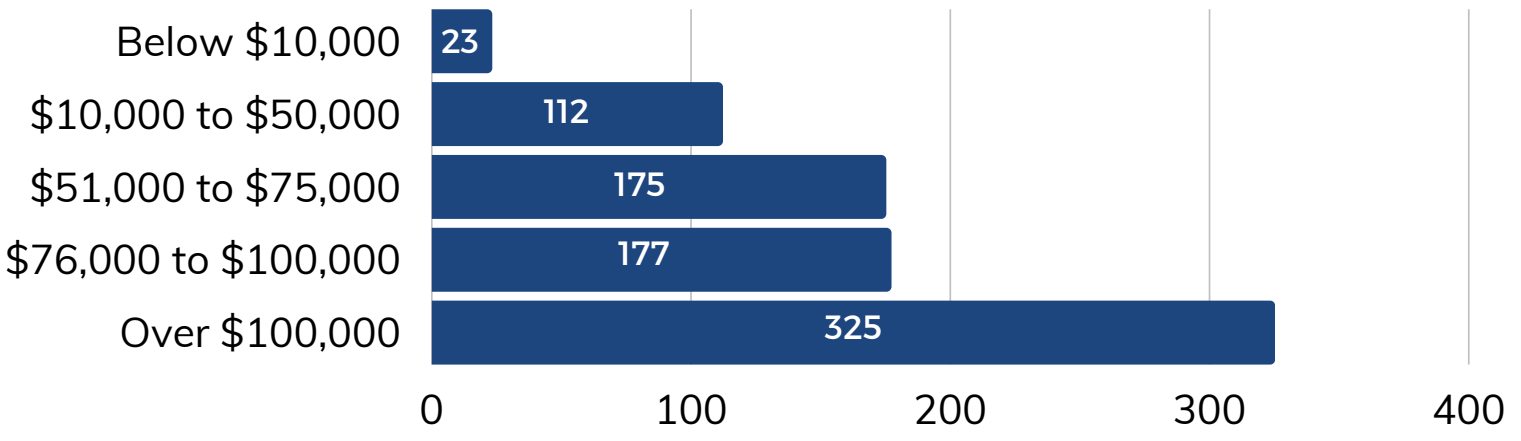
Are PORTicipate Pass holders

42%

Not PORTicipate Pass holders

DEMOGRAPHIC BY INCOME

■ Number of Responses



HOW MANY TIMES PER WEEK DO YOU VISIT THE VALE HEALTH & WELLNESS CENTRE

12.5%  
Once a week

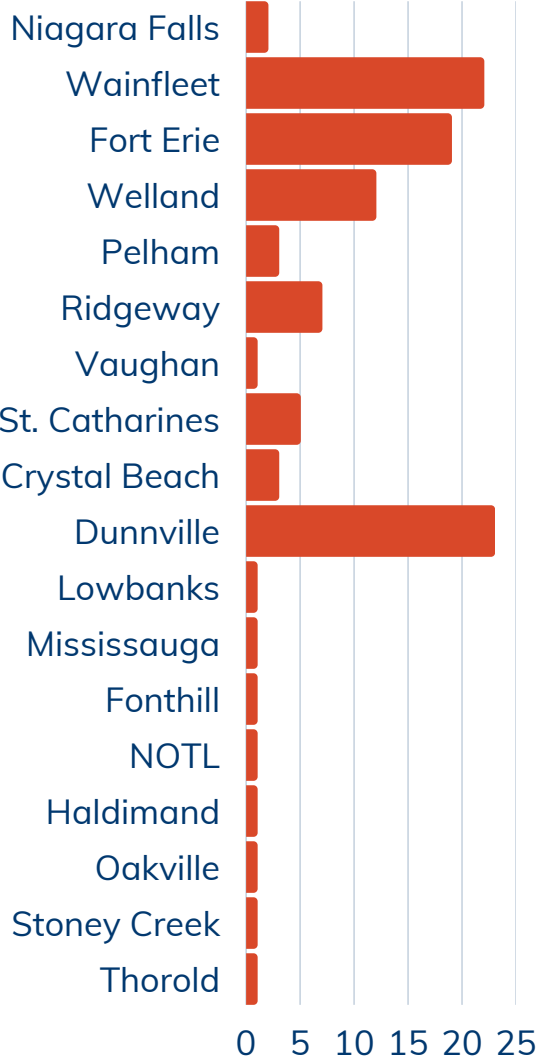
51.3%  
1 to 3 times per week

11.7%  
2 to 3 times per month

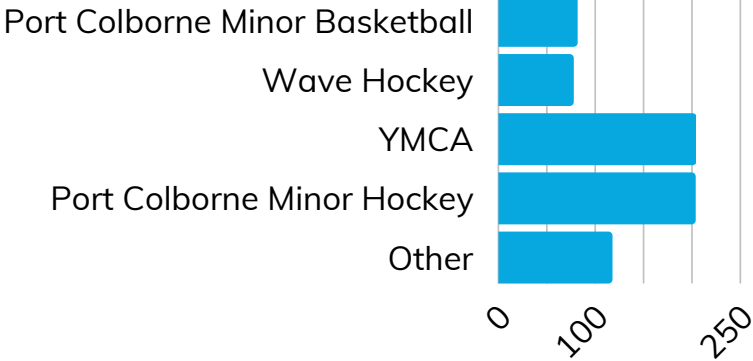
7%  
Once a month

17.5%  
Once or more per year

WHAT CITY ARE YOU A RESIDENT OF? (OTHER THAN PORT COLBORNE)



ARE YOU PART OF ANY OF THE FOLLOWING LOCAL COMMUNITY ORGANIZATIONS?

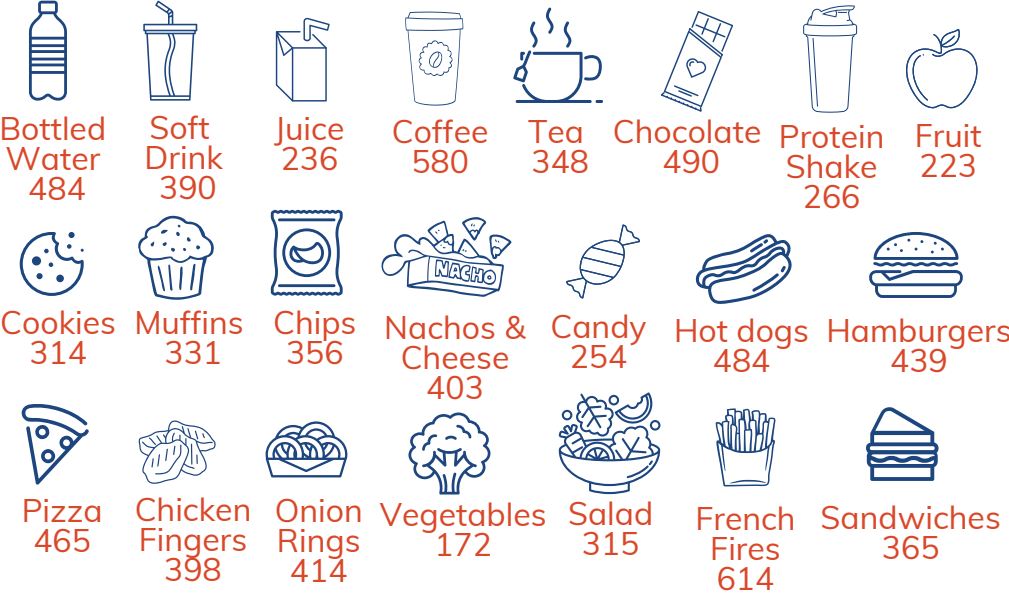


WHAT IS THE MAIN REASON FOR YOUR VISIT TO VHWC?

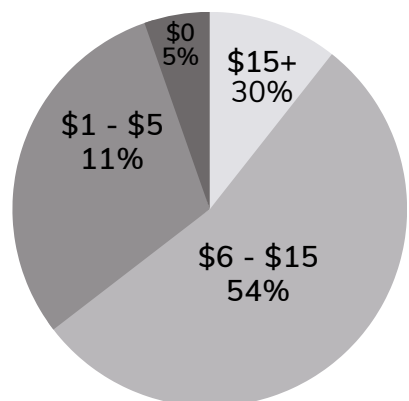
- YMCA
  - Arena
  - Events
  - Swimming
  - Pickle Ball
  - Basketball
  - Grandchildren's sports
  - Women's Hockey
  - Bocce
- Hockey
  - Canal Days
  - Soccer
  - Exercise/Fitness
  - Walk the dogs outside
  - Walking track
  - Vaccines
  - Spector- sports
  - Baseball

ITEMS YOU WOULD MOST LIKELY PURCHASE AT THE VHWC IF THEY WERE AVAILABLE.

Items and number of responses:



WHEN VISITING RECREATIONAL FACILITIES, HOW MUCH DO YOU NORMALLY SPEND ON FOOD AND BEVERAGE?



**Subject: User Fee Update and 2024 Sugarloaf Marina User Fees**

**To: Council**

**From: Corporate Services Department**

Report Number: 2023-136

Meeting Date: July 18, 2023

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**Recommendation:**

That Corporate Services Department Report 2023-136 be received;

That the non-resident fees at the Vale Health and Wellness Centre be approved effective September 1, 2023; and

That the 2024 Sugarloaf Marina User Fees attached as Appendix B be approved effective September 1, 2023, to provide for early registration discounts.

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**Purpose:**

This report has two components. The first is to propose a non-resident fee at the Vale Health and Wellness Centre (VHWC) based on direction to staff during the 2023 budget. The second is to approve the 2024 Sugarloaf Marina User Fees to provide for early registration discounts and clarity with respect to next year's fees prior to registering.

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**Background:**

Historically user fees are approved during the annual budget process.

During the 2023 budget process Council directed staff to investigate a non-residential fee option for ice time at the VHWC. Further, users of Sugarloaf Marina have asked for earlier knowledge of next year's user fees to support their decision to opt into (or not opt into) the early registration process introduced last year.

The early registration process supported a smoother and earlier launch in 2023.

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## Discussion:

On May 9, 2023, Council approved user fee principles with the following cost models as follows:

	<b>Model 1 – Full Cost Recovery</b>	<b>Model 2 – Subsidized (Partial cost recovery)</b>	<b>Model 3 – Differentiated (Model 1 &amp; 2)</b>
<b>Principle 1 – Benefits Principle</b>	Yes	Yes	Yes
<b>Principle 2 – Cost Recovery Principle</b>	Full	Partial (improve demand, improve accessibility barriers, promote)	Full and Partial (+ balances supply and demand and recognizes the ultimate subsidized is the local tax and/or rate payer)
<b>Principle 3 – Management of Public Assets Principle</b>	Yes	Yes	Yes
<b>Principle 4 – Allocation of Resources Principle</b>	Yes	Yes	Yes

## VHWC

The VHWC utilizes Model 3 – Differentiated, full cost recovery and/or subsidized user fees and charges. In establishing the 2023 user fees, staff proposed rates at the average of other local area municipalities. As identified in Appendix A the VHWC is subsidized.

This report as outlined in Appendix A recommends a new non-resident fee to be applied as follows:

- to customers that do not have a Port Colborne address; and
- to customers without a regular season recurring ice permit. For the purposes of application, this means any user with fewer than 2 hours per week for the duration of the season; and
- the rate only to be applied to the fall/winter season (September 1 – March 31); and
- customers that are charged the non-resident rate will pay the City's highest fee which is the adult prime rate.

## Marina

Sugarloaf Marina utilizes Model 3 – Differentiated, full cost recovery and/or subsidized user fees and charges. In proposing the 2024 user fees, staff compared marina fees to other marinas. As identified in Appendix A and through previous budget and financial submissions the Sugarloaf Marina is self-sustaining.

The Sugarloaf Marina budget for 2024 will be proposed during the City's budget process in the fall. The fees proposed in this report, and attached as Appendix B, will be incorporated into the budget to ensure the Sugarloaf Marina budget balances.

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## Internal Consultations:

This user fee review was conducted within the Recreation Services Division.

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## Financial Implications:

The financial implication of the recommended non-resident rate at the VHWC for the period between September 1 and March 31 is anticipated to be minimal. Historically the City has not kept statistics on non-residential users.

The Sugarloaf Marina fees are recommended to maintain the marina as a self-sustaining entity. The marina budget will be presented to maintain its self-sustaining status during the City's budget process in the fall.

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## Public Engagement:

Staff consulted with other municipalities on the non-resident rate and reviewed fees at marinas when setting fees. Users of this report will see in Appendix A the proposed fees at Sugarloaf Marina are in the middle or below other marinas.

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## Strategic Plan Alignment:

The initiative contained within this report supports the following pillar(s) of the strategic plan:

- Service and Simplicity: Quality and Innovative Delivery of Customer Services
- Attracting Business Investment and Tourists to Port Colborne
- City-Wide Investments in Infrastructure and Recreational/Cultural Spaces
- Value: Financial Management to Achieve Financial Sustainability
- Governance: Communications, Engagement, and Decision-Making



## **Conclusion:**

This report proposes a non-resident fee and recommends the 2024 Sugarloaf Marina fees. The fees proposed are consistent with the user fee principles and cost models adopted by Council.

As a matter of procedure, Council is reminded that the recommendations contained in this report can be split and voted on independently, if Council desires.

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## **Appendices:**

- a. Appendix A – Presentation
- b. Appendix B – Sugarloaf Marina User Fees

Respectfully submitted,

Bryan Boles, CPA, CA, MBA  
Director, Corporate Services/Treasurer  
(905) 835-2900 x.538  
[Bryan.Boles@portcolborne.ca](mailto:Bryan.Boles@portcolborne.ca)

## **Report Approval:**

All reports reviewed and approved by the Department Director and also the City Treasurer when relevant. Final review and approval by the Chief Administrative Officer.

# User Fee Update and 2024 Sugarloaf Marina User Fees

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City Council Meeting: July 18, 2023



**PORT COLBORNE**

# User Fees to Consider

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- VHWC – Non-resident rate (update September 1, 2023)
- Marina (2024 fees, effective September 1, 2023 to implement early registration discount)
- Next Steps

# Legislation

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- Subsection 391(1) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended allows municipalities to adopt By-laws imposing fees or charges on any class of person for services or activities provided or done by or on behalf of it, for cost payable by it for services or activities provided or done by or on behalf of any other municipality or local board, and for the use of its property including property under its control
- *Building Code Act, 1992, S.O. 1992, c. 23*, as amended provides a municipality may pass by-laws imposing fees and charges
- *Cemeteries Act (Revised), R.S.O. 1990, c. C.4*, as amended, provides a municipality may pass by-laws imposing fees and charges
- *Planning Act, R.S.O. 1990, c. P.13*, as amended, provides a municipality may pass by-laws imposing tariffs, fees and charges

# User Fee Principles

	Model 1 – Full Cost Recovery	Model 2 – Subsidized (Partial cost recovery)	Model 3 – Differentiated (Model 1 & 2)
Principle 1 – Benefits Principle	Yes	Yes	Yes
Principle 2 – Cost Recovery Principle	Full	Partial (improve demand, improve accessibility barriers, promote)	Full and Partial (+ balances supply and demand and recognizes the ultimate subsidized is the local tax and/or rate payer)
Principle 3 – Management of Public Assets Principle	Yes	Yes	Yes
Principle 4 – Allocation of Resources Principle	Yes	Yes	Yes

# Full Cost Recovery Means

- Full cost recovery, includes people costs, direct costs, future liabilities, capital, environmental costs, administrative, implicit and social costs.

(\$50 per ton of Co2)

(overhead  $\approx$  15 percent  
all other costs)

Will fund Co2 reduction  
initiatives

Asset replacement

i.e. Vale Health and Wellness Centre  
i.e. Beaches  
i.e. Sugarloaf Marina

# VHWC Non-resident Rate

- **Model 3** – Differentiated, full cost recovery and/or subsidized user fees and charges

					2023		
Recreation + VHWC net budget before Ice Rental					\$ 2,517,480		
Less: Direct YMCA Budget					\$ 365,000		
Less: Recreation service costs attributed to YMCA and non-ice activities					\$ 181,700		
Less: YMCA allocated costs (primarily facilities)					\$ 514,400	40%	
					\$ 1,456,380	—————→	\$ 1,456,380
Rented Hours					3,200	Capacity Hours	6,100
Cost per hour before capital replacement or enviromental					\$ 455		\$ 239
Our Fees					\$57 to \$223	—————→	<del>\$57 to \$223</del>

Traditional bookable capacity represents weekends 6am-11pm and weekdays from 6-8 am and 4-11pm from September to June and 6am-11pm July and August with estimates for ice maintenance, replacement, etc. (2 ice surfaces for 7 months and 1 ice surface for 5 months)

# VHWC Non-resident Rate

- **Model 3** – Differentiated, full cost recovery and/or subsidized user fees and charges

Fees modelled is based on average of local area municipalities

Arena	Term	2022 Fee	2023 Proposed Fee
Adult Prime (Mon to Sat 5.00pm – 10.00pm and Sun 8.00am – 10.00pm)	Per hour	\$197.35	\$223.36
Adult Non-Prime (Mon to Fri 8.00am – 4.00pm)	Per hour	\$141.60	\$136.28
Adult League/Tournament (Rental of 3 or more hours for Adults)	Per hour	\$186.75	\$207.96
Junior Hockey Team - Game	Per hour	\$162.83	\$185.84
Individual Training (half ice) (per player w/one coach; 50% of minor hockey)	Per hour	\$65.50	\$75.22
Public/Catholic Schools - Physical Education Classes	Per hour	\$50.45	\$57.52
Public/Catholic Schools - Varsity Hockey Team Practices	Per hour	\$60.20	\$69.02
Public/Catholic Schools - Varsity Hockey Team Games	Per hour	\$131.85	\$146.90
Youth Prime/Minor Hockey	Per hour	\$131.85	\$146.90
Youth Non-Prime (Adult Supervision) (Mon to Fri 8.00am – 4.00pm)	Per hour	\$80.55	\$88.50

Leagues are charged the rate in effect at the time their ice rental agreement are made for the duration of the agreement.





# VHWC Non-resident Rate

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- **Model 3** – Differentiated, full cost recovery and/or subsidized user fees and charges

Council directed staff to review a “non-residential” fee option ... what staff found:

- 3 of the 12 municipalities in Niagara currently use a non-resident ice rate
  - Fort Erie, Niagara Falls, and Fort Erie
- All are border cities and sometimes have American interest to use their rinks
- Niagara Falls specifically mentioned they apply the rate to groups outside of the Niagara Region
- Few non-residential rentals were reported

# VHWC Non-resident Rate

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- **Model 3** – Differentiated, full cost recovery and/or subsidized user fees and charges

If Council directs staff to add a non-resident ice rate, staff recommend it applies to:

- does not have a Port Colborne address; and
- customers without a regular season recurring ice permit. For the purposes of application, this means any user with fewer than 2 hours per week for the duration of the season

If Council directs staff to add a non-resident ice rate, staff recommend:

- The rate only apply for the fall/winter season (September – March)
- customers that are charged the non-resident rate will pay our highest fee which is the adult prime rate; and

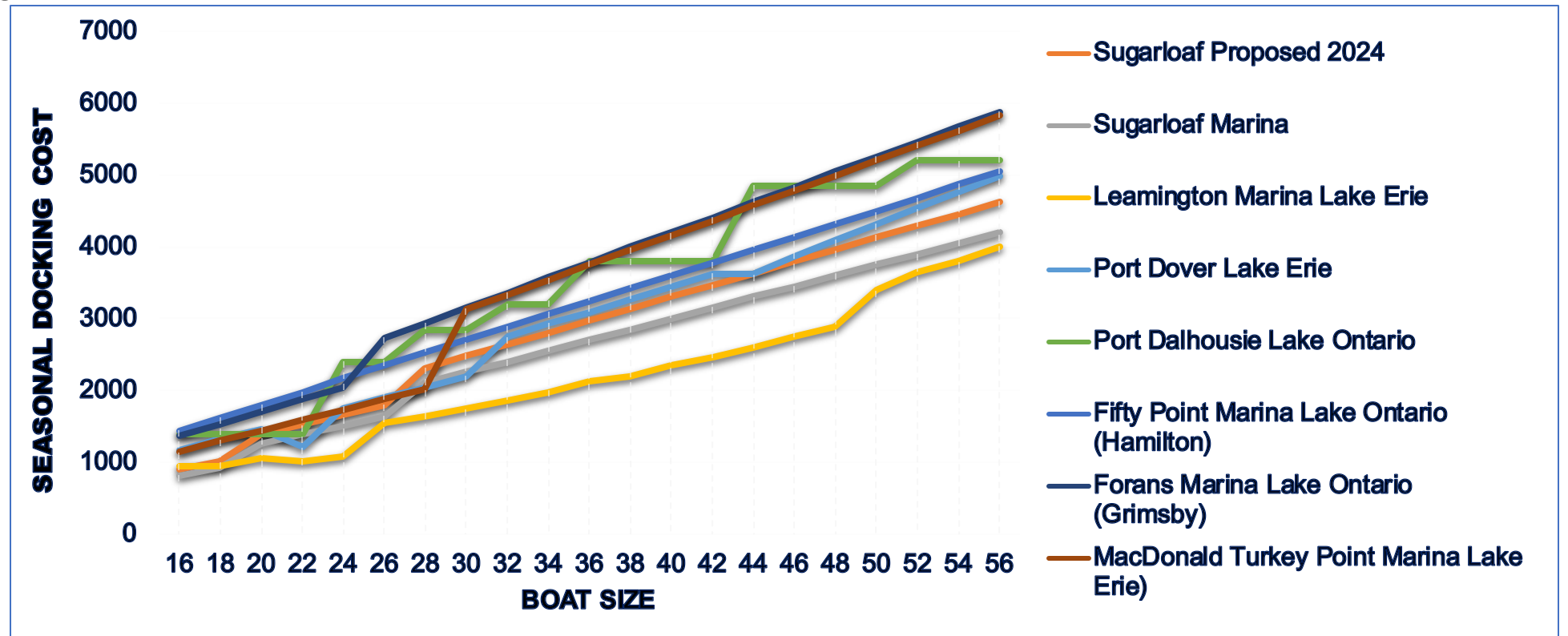
# Marina

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- **Model 3** – Differentiated, full cost recovery and/or subsidized user fees and charges
  - As a self-sustaining entity, by definition, the Marina costs are full cost recovery
  - The fees are differentiated based on user type that follow industry norms/practices
  - The 2024 fees are here to approve so boaters can know the 2024 fee before deciding to reserve their storage and dock for the winter and following 2024 season. An early bird registration discount of 5% of the total fee is applied if done by September 1.
  - The fee increase recommended is generally 10%. The early bird registration model effectively would reduce this to 5%.
  - Fees are attached as Appendix B

# Marina

- **Model 3** – Differentiated, full cost recovery and/or subsidized user fees and charges



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# Thank you!

**APPENDIX B: Sugarloaf Marina**

Seasonal Dock Rates (Whichever is Greater - Boat or Dock LOA)		
Docking Options	2023 Fee	Proposed 2024 Fee
Boats 16 - 19 ft (unserviced)	\$52.50/ft	\$57.75/ft
Boats 20 - 26 ft (optional service)	\$63.85/ft	\$70/ft
Boats 27 - 34 ft (serviced)	\$75.25/ft	\$82.77/ft
Boats 35 - 60 ft (serviced)	\$78.65/ft	\$86.51/ft
Power Options	2023 Fee	Proposed 2024 Fee
Use of 15A/110V Power	\$100.00	\$110.00
Use of 30 Amp shore power	\$265.00	\$291.50
Second Boat (Same owner only)	2023 Fee	Proposed 2024 Fee
On J Run (16 ft dock)	\$265.00	\$291.50
On Dock #3 (17 ft dock)	\$290.00	\$319.00
Discounted Rates	2023 Fee	Proposed 2024 Fee
Early Bird Discount - Based on payment in full for winter storage fees by September 1, and summer launch/mooring fees by February 15th annually	5% of applicable rates	5% of applicable rates
Tournament/Regatta Discount (Only with proof of registration)	40% of applicable rates	40% of applicable rates
First time seasonal customer incentive (One time only, paid in full by February 15)	20% of seasonal rate	10% of seasonal rate
Same Slip/Non Designated Space Discount *	50% of 1st dock fee	50% of 1st dock fee

**\* Only available for use directly beside oversized vessels or non-designated docking spaces. Must be preapproved by marina management. Must be same owner.**

**APPENDIX B: Sugarloaf Marina**

Transient Docking and Public Boat Ramp Rates		
Transient Rates (per foot)	2023 Fee	Proposed 2024 Fee
Daily	\$2.25	\$2.47
Canal Days Daily Rates (Monday-Monday)	\$3.75	\$4.12
Weekly	\$12.50	\$13.75
Monthly	\$30.50	\$33.55
Launch Ramp Rates	2023 Fee	Proposed 2024 Fee
Daily Launch Pass	\$20.00	\$20.00
Seasonal Pass	\$125.00	\$125.00
Miscellaneous Fees		
Rates	2023 Fee	Proposed 2024 Fee
Seasonal Dock Box Rental (Limited Availability)	\$100.00	\$110.00
Workplace Passport (Based on satisfaction of all required registration documents)	\$250.00	\$265.00
Non Registered Boat Fee Daily *	\$1.50	\$1.65
Missed appointment/unprepared Fee**	\$125.00	\$125.00
Dock Hold Deposit (To hold same space for following season)	20% of current dock rate	20% of current dock rate
Interest Charges - Balances owing (Monthly)	1.25%	1.25%

**\*For any boat found in a slip or storage that is without registration at the office or has balances owing**

**\*\*Applied to customers who are not prepared at time of scheduled service appointments, or miss scheduled appointment times without prior confirmation**

**APPENDIX B: Sugarloaf Marina**

Storage and Boat Yard Rates				
Winter Storage - All Inclusive (Includes fall haul out, powerwash*, blocking/cradle setup, and spring launch)	2023 Fees		2024 Proposed Fees	
	\$3.85/ sq. ft	\$925 minimum fee	\$4.23/ sq. ft	\$925 minimum fee
Winter Storage - Trailerable Only (Own trailer, no marina services)	2023 Fees		2024 Proposed Fees	
	\$2.63/ sq. ft	\$500 minimum fee	\$2.89/ sq. ft	\$500 minimum fee
Winter Storage - Non Seasonal Boater	2023 Fees		2024 Proposed Fees	
	\$5.75/ sq. ft		\$6.00/ sq. ft	
Summer Storage	2023 Fees		2024 Proposed Fees	
Seasonal (April 15-October 15)	\$5.75/ sq. ft	\$500 minimum fee	\$6.03/ sq. ft	\$500 minimum fee
Monthly	\$1.02/ sq. ft		\$1.07/ sq. ft	
Weekly	\$0.26/ sq. ft		\$0.27/ sq. ft	
Boat Handling & Yard Fees	2023 Fees		2024 Proposed Fees	
	Seasonal Slip Holder***	Non-Seasonal Slip Holder	Seasonal Slip Holder***	Non-Seasonal Slip Holder
Travel Lift (Haul Out/Launch) Minimum \$225 charge	\$9.70/ft	\$10.90/ft	\$10.18/ft	\$11.44/ft
Travel Lift (per hour after first hour)	\$80/hr	\$100/hr	\$80/hr	\$100/hr
Block & Stand Rental (per season)	\$5.75/ft	\$6.90/ft	\$5.75/ft	\$6.90/ft
Power Washing Hull Bottom**	\$2.75/ft	\$3.15/ft	\$2.75/ft	\$3.15/ft
Yard Equipment Fee	\$ 125/hr	\$ 145/hr	\$ 125/hr	\$ 145/hr
Yard Labour Fee	\$ 80/hr	\$ 100/hr	\$ 80/hr	\$ 100/hr
Mast Stepping - Length Overall (LOA)	\$ 4.15/ft	\$ 6.40/ft	\$ 4.15/ft	\$ 6.40/ft
Mast Storage (per season) - Length Overall (LOA)	\$ 1.81/ft	\$ 3.45/ft	\$ 1.81/ft	\$ 3.45/ft
Trailer/Cradle Storage (per season)	\$115.00	\$200.00	\$120.00	\$215.00
Pump-out (Transients)	N/A	\$20.00	N/A	\$20.00

\* Based on payment in full prior to haul out.

\*\* Powerwash only free for boats with anti-fouling paint on hull. Oversized boats (>42 ft in length), or non anti-fouling on hull may result in applicable extra charges.

\*\*\* Based on payment in full for dockage during current season.



**APPENDIX B: Sugarloaf Marina**

Marina Pavilion Rates**		
	2023 Rate	Proposed 2024 Rate
Seasonal boaters	\$200.00	\$200.00
General Public	\$375.00	\$375.00
<b>Additional charges:</b>	<b>Full Day</b>	<b>Half Day</b>
Clean-up fee is charged	\$30.00	\$30.00
Damage deposit (refundable w/o damage to property)	\$200.00	\$200.00
Chairs (per chair)	\$5.75	\$5.75
Tables (per table)	\$13.00	\$13.00

Non-Motorized Recreation Rental Fees		
Rates	2023 Fee	2024 Proposed Fee
Kayak	\$13.27/hr	\$13.27/hr
Stand Up Paddleboard (SUP) or Canoe	\$17.69/hr	\$17.69/hr
Refundable Security Deposit	\$100.00	\$100.00
Children under 13 years of age	FREE with Adult Purchase	FREE with Adult Purchase
PORTicipate Pass/Seasonal Slip Holder Fee	50% of all applicable fees	50% of all applicable fees
Punch Pass (15 hours)	\$125.00	\$125.00

**Subject: 2022 Consolidated Financial Statements**

**To: Council**

**From: Corporate Services Department**

Report Number: 2023-132

Meeting Date: July 18, 2023

---

**Recommendation:**

That Corporate Services Department – Financial Services Division Report 2023-132 be received;

That the reserve transfers proposed in this report and included in the consolidated financial statements, be approved; and

That the consolidated financial statements attached as Appendix A to Corporate Services Department – Financial Services Division Report 2023-132 be approved.

---

**Purpose:**

The purpose of this report is to seek Council's approval of the consolidated financial statements for the year ended December 31, 2022, for The Corporation of the City of Port Colborne (the City).

---

**Background:**

The *Municipal Act, 2001*, states that a municipality shall prepare financial statements each fiscal year. Management, in accordance with Canadian public sector accounting standards (PSAS) as recommended by the Public Sector Accounting Board (PSAB), prepares the consolidated financial statements for the City. PSAB serves the public interest by establishing standards and other guidance for financial reporting by all Canadian entities in the public sector and by contributing to the development of internationally accepted public sector financial reporting standards.

The Consolidated statement of financial position; the consolidated statement of operations; the consolidated statement of changes in debt; the consolidated statement

of cash flows; and notes to the consolidated financial statements, comprising a summary of significant accounting policies, have been audited by the City's auditor, Grant Thornton.

Management is responsible for the preparation and fair presentation of the financial statements in accordance with PSAB, and for such internal control as management determines necessary, to enable the preparation of the consolidated financial statements that are free from material misstatement, whether due to fraud or error.

The Auditor's responsibility is to express an opinion on the consolidated financial statements based on their audit fieldwork. Following completion of the audit, Grant Thornton has stated, in their opinion, that "the accompanying consolidated financial statements present fairly in all material respects, the financial position of the Corporation of the City of Port Colborne as at December 31, 2022, and its results of operations, its changes in its net financial assets, and its cash flows for the year ended in accordance with Canadian public sector accounting standards".

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## **Discussion:**

### **Consolidated Financial Statements (Appendix A)**

A draft copy of the consolidated financial statements for the year ended December 31, 2022, is attached to this report as Appendix A – 2022 Consolidated Financial Statements.

As a reminder the consolidated financial statements, including the attached segmented disclosure follow full accrual accounting whereas the 2022 Year End Surplus and Project Closeout Report, Report 2023-87 follows a modified cash model for budget and cash flow purposes. Further, there may be certain presentation differences between the two as a result of PSAB vs managerial accounting. To support comparison, staff recommend users of this report and Report 2023-87 compare the reserve balances. Users of both reports will find the reserve balances agree with the proposed adjustments below to account for library audit fee and capital lease transactions finalized after Report 2022-73 was issued as well as entries required to account for capital close-out funding requirements.

Total Reserve Balances by Type	Reserve Balances in Report 2023-73	Adjustments	Reclassification	Airport Consolidation	New Reserve Balances
Boards and Committees	549,112	(6,550)	(2,279)		540,283
Programs, Grants and Activities	910,030				910,030
Self Sustaining Entities	(395,059)				(395,059)
General Government	8,799,534			29,932	8,829,466
Capital	11,384,766	1	2,279		11,387,046 *
Total Reserves before WIP	21,248,383	(6,549)	-	29,932	21,271,766
Work-in-progress (WIP)	9,103,812	(124,188)			8,979,624
Total Reserves	30,352,195	(130,737)	-	29,932	30,251,390

\* This balance includes deferred revenue amounts (\$3,406,337) reported in Note 5 of the Consolidated Financial

Financial Services staff continue to move financial reporting practices to meet leading practices set out through the Government Finance Officers Association (GFOA). This process will take time as comparative year data is compiled.

As communicated to Council in the past, the City's financial reporting will no longer be supported in the future. Financial Services in collaboration with Human Resources will be investigating enterprise resource planning solutions to meet the City's needs from a financial and people planning and reporting perspective. In addition, the City has been in communication with other municipalities with similar needs and may have the opportunity to leverage collaborative procurement processes that are underway. Financial Services and Human Resources will report back to Council on this topic following the investigation/review.

### **Auditors Audit Strategy and Results (Appendix B)**

Financial Services, in preparing the financial statements, has historically, and in the current year, utilized Grant Thornton to finalize reserve transaction accounting as well as the consolidation of certain boards and committees. The summation of these entries is recorded on page 7 of Appendix B – Audit Strategy and Results.

Staff highlight Appendix B – Audit Strategy and Results also provides Council with:

- the auditors; approach to the audit and how they treated certain risks;
- comments on the auditors' independence;
- the management representation letter that staff are required to sign upon approval of the consolidated financial statements;
- a letter of internal control with management's plan to address; and
- upcoming audit and accounting developments.

Staff identify that in Appendix B – Audit Strategy and Results, the Auditors have recommended the Port Colborne Downtown Development Board, which is consolidated into the City's financial statements, should engage a qualified bookkeeper or accountant. The Auditors noted significant additional work required in their audit this year.

The Financial Information Return (FIR) is being prepared at the time of writing this report. The FIR is the main data collection tool used by the Ministry of Municipal Affairs to collect financial and statistical information from municipalities.

Financial Services would like to thank staff, boards, and committees across the City and associated with the City for their efforts in the completion of the Audited Financial Statements.

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### **Internal Consultations:**

Financial Services would like to thank all departments for their assistance and cooperation.

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### **Financial Implications:**

As stated within this report, the auditors have identified “the accompanying consolidated financial statements presents fairly in all material respects”.

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### **Strategic Plan Alignment:**

The initiative contained within this report supports the following pillar(s) of the strategic plan:

- Service and Simplicity - Quality and Innovative Delivery of Customer Services
  - Attracting Business Investment and Tourists to Port Colborne
  - City-Wide Investments in Infrastructure and Recreational/Cultural Spaces
  - Value: Financial Management to Achieve Financial Sustainability
  - People: Supporting and Investing in Human Capital
  - Governance: Communications, Engagement, and Decision-Making
- 

### **Conclusion:**

That Council approve the recommendations as presented above.

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### **Appendices:**

- a. Appendix A – 2022 Consolidated Financial Statements
- b. Appendix B – Audit Strategy & Results

Respectfully submitted,

Bryan Boles, CPA, CA  
Director, Corporate Services  
(905) 835-2900 Ext. 105  
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Adam Pigeau, CPA, CA  
Manager, Financial Services/Deputy Treasurer  
(905) 835-2900 Ext. 101  
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**Report Approval:**

All reports reviewed and approved by the Department Director and also the City Treasurer when relevant. Final review and approval by the Chief Administrative Officer.

# Financial Report

City of Port Colborne

December 31, 2022

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# City of Port Colborne

## Consolidated Statement of Financial Position

As at December 31, 2022

	<u>2022</u>	<u>2021</u>
<b>Financial assets</b>		
Cash and cash equivalents (Note 2)	\$ 1,296,349	\$ 18,276,830
Portfolio investments (Note 3)	25,971,745	4,520,399
Taxes receivable	3,242,420	3,827,772
User charges receivable	1,846,245	1,681,550
Other receivables	6,619,524	5,444,825
Asset held for sale	266,417	266,417
	<u>39,242,700</u>	<u>34,017,793</u>
<b>Liabilities</b>		
Payables and accruals	5,862,969	5,133,842
Other liabilities	3,992,597	2,601,898
Deferred revenue (Note 5)	3,406,337	3,002,941
Long term debt (Note 6)	27,416,116	28,855,949
Employee benefit obligations (Notes 7 and 16)	8,426,300	9,804,900
	<u>49,104,319</u>	<u>49,399,530</u>
<b>Net debt</b>	<u>(9,861,619)</u>	<u>(15,381,737)</u>
<b>Non-financial assets</b>		
Tangible capital assets (Note 8)	134,222,756	133,409,532
Prepaid expenses	957,989	486,445
	<u>135,180,745</u>	<u>133,895,977</u>
<b>Accumulated surplus</b> (Note 9)	<u>\$ 125,319,126</u>	<u>\$ 118,514,240</u>

Contingencies (Notes 20 and 21)  
Commitments (Note 22)

Approved by

\_\_\_\_\_  
Chief Administrative Officer

\_\_\_\_\_  
Director, Corporate Services/Treasurer

See accompanying notes to the consolidated financial statements

# City of Port Colborne

## Consolidated Statement of Operations

For the Year Ended December 31, 2022

	Budget <u>2022</u> (Note 24)	Actual <u>2022</u>	Actual <u>2021</u>
<b>Revenues</b>			
Taxation (Note 11)	\$ 22,464,034	\$ 22,563,927	\$ 21,171,858
User charges (Note 13)	16,014,344	16,082,853	14,984,418
Government transfers (Note 14)	4,735,919	6,256,036	5,308,871
Penalties and interest	496,500	611,247	640,250
Investment income	145,000	483,612	155,772
Other (Note 15)	1,375,020	3,914,237	1,297,118
	<u>45,230,817</u>	<u>49,911,912</u>	<u>43,558,287</u>
<b>Expenses</b>			
General government	5,659,018	4,729,814	5,241,435
Protection to persons and property	5,288,898	5,571,003	5,175,456
Transportation services	7,355,020	7,772,130	7,976,185
Environmental services	12,557,120	11,888,907	11,151,156
Health services	127,521	294,052	114,625
Recreation and culture services	11,179,040	10,922,621	8,964,962
Planning and development	1,365,344	1,928,499	1,228,424
	<u>43,531,961</u>	<u>43,107,026</u>	<u>39,852,243</u>
<b>Annual surplus</b>	1,698,856	6,804,886	3,706,044
<b>Accumulated surplus</b> (Note 9)			
Beginning of year	<u>118,514,240</u>	<u>118,514,240</u>	<u>114,808,196</u>
End of year	<u>\$ 120,213,096</u>	<u>\$ 125,319,126</u>	<u>\$ 118,514,240</u>

See accompanying notes to the consolidated financial statements.

# City of Port Colborne

## Consolidated Statement of Changes in Net Debt

For the Year Ended December 31, 2022

	Budget <u>2022</u> (Note 24)	Actual <u>2022</u>	Actual <u>2021</u>
Annual surplus	\$ 1,698,856	\$ <b>6,804,886</b>	\$ 3,706,044
Amortization of tangible capital assets	5,855,257	<b>5,858,724</b>	5,719,689
Acquisition of tangible capital assets	(4,892,292)	<b>(6,684,729)</b>	(4,056,276)
Contributed tangible capital assets	-	-	(64,000)
Proceeds from disposal of tangible capital assets	-	-	596,216
Loss (gain) on disposal of tangible capital assets	-	<b>12,781</b>	(182,701)
	2,661,821	<b>5,991,662</b>	5,718,972
(Acquisition) usage of prepaid expenses	-	<b>(471,544)</b>	315,534
<b>Decrease in net debt</b>	2,661,821	<b>5,520,118</b>	6,034,506
<b>Net debt</b>			
Beginning of year	<u>(15,381,737)</u>	<u><b>(15,381,737)</b></u>	<u>(21,416,243)</u>
End of year	<u>\$ (12,719,916)</u>	<u><b>\$ (9,861,619)</b></u>	<u>\$ (15,381,737)</u>

See accompanying notes to the consolidated financial statements.

# City of Port Colborne

## Consolidated Statement of Cash Flows

For the Year Ended December 31, 2022

	<u>2022</u>	<u>2021</u>
<b>Increase (decrease) in cash and cash equivalents</b>		
<b>Operating activities</b>		
Annual surplus	\$ 6,804,886	\$ 3,706,044
Non-cash items:		
Amortization of tangible capital assets	5,858,724	5,719,689
Contributed tangible capital assets	-	(64,000)
Loss (gain) on disposal of tangible capital assets	12,781	(182,701)
Decrease in taxes receivable	585,352	422,640
(Increase) decrease in user charges receivable	(164,695)	390,901
Increase in other receivables	(1,174,699)	(1,795,046)
Decrease (increase) in asset held for sale	-	(266,417)
Increase (decrease) in payables and accruals	729,127	(13,213)
Increase in other liabilities	1,390,699	493,496
Increase in deferred revenue	403,396	837,685
(Increase) decrease in prepaid expenses	(471,544)	315,534
	<u>13,974,027</u>	<u>9,564,612</u>
<b>Capital activities</b>		
Proceeds from disposal of tangible capital assets	-	596,216
Acquisition of tangible capital assets	(6,684,729)	(4,056,276)
	<u>(6,684,729)</u>	<u>(3,460,060)</u>
<b>Financing activities</b>		
Repayment of long term debt	(1,419,178)	(1,439,543)
Repayment of capital lease obligation	(20,655)	(32,760)
(Decrease) increase in employee benefit obligation	(1,378,600)	366,700
	<u>(2,818,433)</u>	<u>(1,105,603)</u>
<b>Investing activities</b>		
(Acquisition) disposal of portfolio investments, net	(21,451,346)	2,099,399
<b>Net (decrease) increase in cash and cash equivalents</b>	<b>(16,980,481)</b>	<b>7,098,348</b>
<b>Cash and cash equivalents (Note 2)</b>		
Beginning of year	<u>18,276,830</u>	<u>11,178,482</u>
End of year	<u>\$ 1,296,349</u>	<u>\$ 18,276,830</u>

See accompanying notes to the consolidated financial statements.

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# City of Port Colborne

## Notes to the Consolidated Financial Statements

For the Year Ended December 31, 2022

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### 1. Significant accounting policies

#### Management responsibility

The consolidated financial statements of the City of Port Colborne ("Municipality") are the responsibility of and prepared by management in accordance with Canadian public sector accounting standards. The preparation of the consolidated financial statements necessarily involves the use of estimates based on management's judgment, particularly when transactions affecting the current accounting period cannot be finalized with certainty until future periods.

The significant accounting policies used are as follows:

#### (a) Reporting entity

The consolidated financial statements reflect the financial assets, liabilities, non-financial assets, revenues, expenses and changes in accumulated surplus of the reporting entity. The reporting entity is comprised of all organizations and enterprises accountable for the administration of their affairs and resources to the Municipality and which are owned or controlled by the Municipality. In addition to general government tax-supported operations, they include the following:

Port Colborne Public Library Board  
Port Colborne Downtown Development Board  
Port Colborne Main Street Business Improvement Area  
Niagara's South Coast Tourism Association

Interdepartmental and organizational transactions and balances are eliminated.

The following joint local board is proportionally consolidated:

Niagara Central Dorothy Rungeling Airport Commission (Joint Board)

Related party transactions are eliminated (Note 17).

The statements exclude trust assets that are administered for the benefit of external parties (Note 18).

#### (b) Basis of accounting

Sources of revenue and expenses are reported on the accrual basis of accounting. The accrual basis of accounting records revenues in the period they are earned and measurable and expenses in the period the goods and services are acquired and a liability is incurred.

#### (c) Cash and cash equivalents

Cash and temporary investments include cash on hand, balances with banks and guaranteed investment certificates that mature within one year.

#### (d) Portfolio investments

Portfolio investments are valued at the lower of cost and market value. Interest income is reported as revenue in the period earned.

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# City of Port Colborne

## Notes to the Consolidated Financial Statements

For the Year Ended December 31, 2022

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### 1. Significant accounting policies (continued)

#### (e) Deferred revenue

Resources restricted by agreement with an external party are recognized as revenue in the entity's financial statements in the period in which the resources are used for the purpose or purposes specified. An externally restricted inflow received before this criterion has been met is recorded as a liability until the resources are used for the purpose or purposes specified.

#### (f) Employee future benefits

The present value of the cost of providing employees with future benefit programs is expensed as employees earn these entitlements through service.

#### (g) Contaminated sites liability

Contaminated sites are a result of contamination being introduced into air, soil, water or sediment of a chemical, organic or radioactive material or live organism that exceeds an environmental standard. The liability is recorded net of any expected recoveries. A liability for remediation of contaminated sites is recognized when a site is not in productive use and all the following criteria are met:

- an environmental standard exists;
- contamination exceeds the environmental standard;
- the Municipality:
  - is directly responsible; or
  - accepts responsibility;
- it is expected that future economic benefits will be given up; and
- a reasonable estimate of the amount can be made.

The liability is recognized as management's estimate of the cost of post-remediation including operation, maintenance and monitoring that are an integral part of the remediation strategy for a contaminated site.

#### (h) Tangible capital assets

Tangible capital assets are recorded at cost. Cost includes all directly attributable expenses in the acquisition, construction, development and/or betterment of the asset required to install the asset at the location and in the condition necessary for its intended use. Contributed tangible capital assets are capitalized at their estimated fair value upon acquisition. The Municipality does not capitalize interest as part of the costs of its capital assets.

Works of art for display in municipal property are not included as capital assets. The works of art are held for exhibition, educational and historical interest. Such assets are deemed worthy of preservation because of the social rather than financial benefits they provide to the community. The cost of art is not determinable or relevant to their significance. No valuation of the collection has been conducted or disclosed in the consolidated financial statements.

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# City of Port Colborne

## Notes to the Consolidated Financial Statements

For the Year Ended December 31, 2022

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### 1. Significant accounting policies (continued)

#### (h) Tangible capital assets (continued)

Leases are classified as capital or operating leases. Leases that transfer substantially all benefits incidental to ownership are accounted for as capital leases. All other leases are accounted for as operating leases and the related lease payments are charged to expenses as incurred.

Amortization is calculated on a straight-line basis to write-off the net cost of each asset over its estimated useful life for all classes except land. Land is considered to have an infinite life without amortization. Residual values of assets are assumed to be zero with any net gain or loss arising from the disposal of assets recognized in the consolidated statement of operations as "other revenues". Half-year amortization is charged in the year of acquisition and disposal. Assets under construction are not amortized until the asset is available for productive use.

Amortization is based on the following classifications and useful lives:

<u>Classification</u>	<u>Useful Life</u>
Land improvements	10-100 years
Buildings	20-50 years
Leasehold improvements	20-50 years
Vehicles	10-20 years
Office equipment and furniture and fixtures	5-10 years
Machinery and equipment	3-30 years
Infrastructure	10-100 years

#### (i) Subdivision infrastructure

Subdivision streets, lighting, sidewalks, drainage and other infrastructure are required to be provided by subdivision developers. Upon completion they are turned over to the Municipality and recorded as tangible capital assets. The Municipality is not involved in the construction.

#### (j) Revenue recognition

##### i) Taxation

Property tax billings are prepared by the Municipality based on assessment rolls issued by the Municipal Property Assessment Corporation ("MPAC"). Tax rates are established annually by Council, incorporating amounts to be raised for local services and amounts the Municipality is required to collect on behalf of the Province of Ontario in respect of education taxes. Realty taxes are billed based on the assessment rolls provided by MPAC. Taxation revenues are recorded at the time tax billings are issued.

A normal part of the assessment process is the issue of supplementary assessment rolls which provide updated information with respect to changes in property assessment.

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# City of Port Colborne

## Notes to the Consolidated Financial Statements

For the Year Ended December 31, 2022

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### 1. Significant accounting policies (continued)

#### (j) Revenue recognition (continued)

##### i) Taxation (continued)

Once a supplementary roll is received, the Municipality determines the taxes applicable and renders supplementary tax billings. Assessments of the related property taxes are subject to appeal. Any supplementary billing adjustments made necessary by the determination of such changes will be recognized in the fiscal year they are determined and the effect shared with the school boards, as appropriate.

##### ii) User charges

User charges are recognized when the services are performed or goods are delivered and there is reasonable assurance of collection.

##### iii) Government transfers

Government transfers received are recognized in the financial statements as revenue when the transfers are authorized and all eligibility criteria have been met except when there is a stipulation that gives rise to an obligation that meets the definition of a liability. In that case, the transfer is recorded as a liability and recognized as revenue as the stipulations are met. Government transfers to individuals and other entities are recognized as an expense when the transfers are authorized and all eligibility criteria have been met.

##### iv) Other

Other revenue is recorded when it is earned and collection is reasonably assured.

#### (k) Reserves for future expenses

Certain amounts, as approved by Municipal Council, are set aside in reserves and reserve funds for future operating and capital expenses.

#### (l) Local improvements

The Municipality records capital expenses funded by local improvement agreements as they are incurred. Revenues are recognized in the year they become payable.

#### (m) Region and school board transactions

The taxation, other revenues, expenses, assets and liabilities with respect to the operations of the school boards and the Region of Niagara are not reflected in the accumulated surplus of these consolidated financial statements.

#### (n) Use of estimates

The preparation of financial statements in accordance with Canadian public sector accounting standards requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. Two areas in which management make estimates are with regards to an allowance for uncollectible taxes receivable and obligations for employee benefits.



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# City of Port Colborne

## Notes to the Consolidated Financial Statements

For the Year Ended December 31, 2022

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<b>2. Cash and cash equivalents</b>	<b><u>2022</u></b>	<b><u>2021</u></b>
Cash on hand	\$ 3,475	\$ 3,550
Bank balances	<u>1,292,874</u>	<u>18,273,280</u>
	<b><u>\$ 1,296,349</u></b>	<b><u>\$ 18,276,830</u></b>

---

### **3. Portfolio investments**

Guaranteed investment certificates carry an effective interest rate from 1.24% to 6.00% with maturity dates ranging between January, 2023 to January, 2026. Interest is receivable on maturity. Carrying value approximates market value.

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### **4. Bank indebtedness**

An operating line of credit of \$ 4,000,000 has been established with the CIBC, of which \$ Nil (2021 - \$ Nil) was used at December 31, 2022. An executed borrowing by-law in form and content satisfactory to CIBC is in effect to a limit of \$ 4,000,000. Interest is calculated at prime minus 0.50%. Overdrafts outstanding under the line of credit are converted to a promissory note at the CIBC's request which has not been enacted.

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# City of Port Colborne

## Notes to the Consolidated Financial Statements

For the Year Ended December 31, 2022

<b>5. Deferred revenue</b>	<b><u>2022</u></b>	<b><u>2021</u></b>
Development Charges Act	\$ 242,917	\$ 167,224
Parkland	695,519	475,402
Canada Community Building Fund	1,917,907	1,400,270
Ontario Community Infrastructure Fund	<u>549,994</u>	<u>960,045</u>
	<b><u>\$ 3,406,337</u></b>	<b><u>\$ 3,002,941</u></b>

The continuity of deferred revenue is made up of the following:

Balance, beginning of year	<b><u>\$ 3,002,941</u></b>	<b><u>\$ 2,165,256</u></b>
Contributions from		
Development charges	266,601	298,149
Interest earned	118,411	25,063
Government transfers received		
Federal	580,578	1,138,702
Provincial	<u>900,817</u>	<u>418,769</u>
	<b><u>1,866,407</u></b>	<b><u>1,880,683</u></b>
Utilized for		
Tangible capital asset acquisitions	<b><u>(1,463,011)</u></b>	<b><u>(1,042,998)</u></b>
Balance, end of year	<b><u>\$ 3,406,337</u></b>	<b><u>\$ 3,002,941</u></b>

# City of Port Colborne

## Notes to the Consolidated Financial Statements

For the Year Ended December 31, 2022

### 6. Long term debt 2022 2021

- (a) The balance of net long term debt reported on the consolidated statement of financial position is made up of the following:

The Municipality has assumed responsibility for the payment of principal and interest charges on certain long term debt issued by the Region of Niagara. At the end of the year, the outstanding principal amount of this debt is

\$ **27,411,454** \$ 28,830,632

Capital lease obligations

**4,662** 25,317

Net long term debt

**\$ 27,416,116** \$ 28,855,949

- (b) The net long term debt is made up of the following:

<u>Debenture Type</u>	<u>Interest Rate</u>	<u>Maturity Date</u>	<u>2022</u>	<u>2021</u>
Amortizer	2.67%	2023	\$ <b>169,643</b>	\$ 502,255
Serial	1.15 to 2.80%	2025	<b>885,000</b>	1,166,000
Amortizer	3.18%	2028	<b>379,749</b>	441,990
Amortizer	3.37%	2033	<b>485,996</b>	523,996
Amortizer	3.46%	2035	<b>1,528,833</b>	1,620,573
Amortizer	3.22%	2037	<b>362,862</b>	381,421
Amortizer	3.70%	2043	<b>1,499,782</b>	1,547,972
Amortizer	3.43%	2047	<b>12,340,141</b>	12,648,025
Amortizer	3.56%	2048	<b>4,997,166</b>	5,115,906
Amortizer	2.29%	2050	<b>4,762,282</b>	4,882,494
Capital leases	Various	2023	<u><b>4,662</b></u>	<u>25,317</u>
			<u><b>\$ 27,416,116</b></u>	<u>\$ 28,855,949</u>

- (c) Principal repayments in each of the next five years are due as follows:

2023	\$ 1,294,014
2024	1,154,607
2025	1,190,995
2026	917,336
2027	947,664

- (d) The Municipality paid \$ 902,404 (2021 - \$ 962,338) interest on long term debt during the year.

# City of Port Colborne

## Notes to the Consolidated Financial Statements

For the Year Ended December 31, 2022

<b>7. Employee benefit obligations</b>	<b><u>2022</u></b>	<b><u>2021</u></b>
Workplace Safety and Insurance Board future benefits	\$ 2,255,500	\$ 2,348,000
Vested sick leave benefits	370,500	332,200
Retirement benefits	<u>5,800,300</u>	<u>7,124,700</u>
	<b>8,426,300</b>	9,804,900
Less: benefits funded by future liabilities reserve	<u>(2,188,396)</u>	<u>(1,684,253)</u>
	<b><u>\$ 6,237,904</u></b>	<b><u>\$ 8,120,647</u></b>

### (a) Workplace Safety and Insurance Board future benefits

The City of Port Colborne is a Workplace Safety and Insurance Board ("WSIB") Schedule 2 employer.

In 2022, an actuarial estimate of future liabilities has been completed and forms the basis for the estimated liability reported in these financial statements. During the year \$ 169,598 (2021 - \$ 154,745) was paid by the City to the WSIB in relation to these benefits.

The accrued benefit obligation at December 31, 2022 of \$ 2,255,500 (2021 - \$ 2,348,000) was determined by an actuarial valuation using a discount rate of 4.60% (2021 - 2.90%).

The most recent actuarial valuation was prepared at December 31, 2022.

The main actuarial assumptions employed above are as follows (where applicable):

#### (i) Interest (discount) rate

The obligations as at December 31, 2022 of the present value of future liabilities were determined using a discount rate of 4.60% (2021 - 2.90%).

#### (ii) Future benefit indexing rate

The rates used for loss of earnings benefits and pension and survivors benefits are assumed to be 6.50% in 2023, 5.00% in 2024, 3.50% in 2025 and 2.00% thereafter. The rate for health benefits is assumed to be 4.00% per annum.

# City of Port Colborne

## Notes to the Consolidated Financial Statements

For the Year Ended December 31, 2022

### 7. Employee benefit obligations (continued)

#### (a) Workplace Safety and Insurance Board future benefits (continued)

	<u>2022</u>	<u>2021</u>
Accrued benefit obligation		
Beginning of year	\$ 2,348,000	\$ 2,309,300
Benefit payments	(169,500)	(210,700)
Current service cost	-	169,000
Interest cost	67,800	71,200
Amortization of actuarial loss	<u>9,200</u>	<u>9,200</u>
	<u>\$ 2,255,500</u>	<u>\$ 2,348,000</u>
Funded status		
Deficit	\$ 1,430,700	\$ 2,421,300
Unamortized actuarial gain (loss)	<u>824,800</u>	<u>(73,300)</u>
	<u>\$ 2,255,500</u>	<u>\$ 2,348,000</u>
The net benefit expense is as follows:		
Current service cost	\$ -	\$ 169,000
Interest cost	67,800	71,200
Amortization of actuarial loss	<u>9,200</u>	<u>9,200</u>
	<u>\$ 77,000</u>	<u>\$ 249,400</u>

#### (b) Vested sick leave benefits

Under the sick leave benefit plan for employees of the Port Colborne Firefighters' Association, sick leave can accumulate and employees may become entitled to a cash payment upon leaving the Municipality's employment.

The accrued benefit obligation at December 31, 2022 of \$ 370,500 (2021 - \$ 332,200) was determined by an actuarial valuation using a discount rate of 4.60% (2021 - 2.90%).

The most recent actuarial valuation for the vested sick leave was prepared at December 31, 2022.

The main actuarial assumptions employed for the vested sick leave and retirement benefits valuations above are as follows (where applicable):

##### (i) Interest (discount) rate

The obligations as at December 31, 2022 of the present value of future liabilities were determined using a discount rate of 4.60% (2021 - 2.90%).

##### (ii) Salary increase rate

The rate used to increase salaries is assumed to be 3.00% (2021 - 3.00%) per annum. This rate reflects management's best estimate of future salary increases.

# City of Port Colborne

## Notes to the Consolidated Financial Statements

For the Year Ended December 31, 2022

### 7. Employee benefit obligations (continued)

#### (b) Vested sick leave benefits (continued)

	<u>2022</u>	<u>2021</u>
Accrued benefit obligation		
Beginning of year	\$ 332,200	\$ 295,200
Benefit payments	-	(8,900)
Current service cost	28,200	32,100
Interest cost	10,100	10,300
Amortization of actuarial loss	-	3,500
	<u>\$ 370,500</u>	<u>\$ 332,200</u>
Funded status		
Deficit	\$ 308,100	\$ 361,900
Unamortized actuarial gain (loss)	<u>62,400</u>	<u>(29,700)</u>
	<u>\$ 370,500</u>	<u>\$ 332,200</u>
The net benefit expense is as follows:		
Current service cost	\$ 28,200	\$ 32,100
Interest cost	10,100	10,300
Amortization of actuarial loss	-	3,500
	<u>\$ 38,300</u>	<u>\$ 45,900</u>

During the year \$ Nil (2021 - \$ Nil) was paid to employees who left the Municipality's employment.

#### (c) Retirement benefits

The City of Port Colborne pays certain retirement benefits on behalf of its retired employees. The City of Port Colborne recognizes these retirement costs in the period in which the employees rendered the services. The plan is substantially unfunded and requires no contributions from employees.

The accrued benefit obligation at December 31, 2022 of \$ 5,800,300 (2021 - \$ 7,124,700) was determined by an actuarial valuation using a discount rate of 4.60% (2021 - 2.90%).

The City's obligation under the retirement provision of employment agreements will be funded out of current revenue. During the year benefit payments of \$ 307,600 (2021 - \$ 372,400) were paid to retirees.

Actuarial valuations for accounting purposes are performed every three years using the projected benefit method, pro-rated on service. Under this method, the projected retirement benefits are deemed to be earned on a pro-rata basis over the employee's years of service.

The most recent actuarial valuation for the retirement benefits was prepared at December 31, 2022.

# City of Port Colborne

## Notes to the Consolidated Financial Statements

For the Year Ended December 31, 2022

### 7. Employee benefit obligations (continued)

#### (c) Retirement benefits (continued)

The main actuarial assumptions employed for retirement benefits valuation above are as follows (where applicable):

##### (i) Interest (discount) rate

The obligations as at December 31, 2022 of the present value of future liabilities were determined using a discount rate of 4.60% (2021 - 2.90%).

##### (ii) Medical costs

Drug costs were assumed to be 8.18% in 2022 (2021 - 7.13%) and decrease 0.18% per year until 2043 when the rate will be 4.50% and continue thereafter.

Vision costs were assumed to be 4.50% in 2022 (2021 - 1.25%) and continue thereafter.

Other health costs were assumed to be 4.50% in 2022 (2021 - 4.50%) and continue thereafter.

##### (iii) Dental costs

Dental costs were assumed to be 4.50% in 2022 (2021 - 5.06%) and continue thereafter.

	<u>2022</u>	<u>2021</u>
Accrued benefit obligation		
Beginning of year	\$ 7,124,700	\$ 6,833,700
Benefit payments	(307,600)	(372,400)
Current service cost	433,300	391,900
Interest cost	209,400	213,200
Plan amendment	(1,662,200)	-
Amortization of actuarial loss	2,700	58,300
	<u>\$ 5,800,300</u>	<u>\$ 7,124,700</u>
Funded status		
Deficit	\$ 4,718,600	\$ 7,376,800
Unamortized actuarial gain (loss)	<u>1,081,700</u>	<u>(252,100)</u>
	<u>\$ 5,800,300</u>	<u>\$ 7,124,700</u>

The net benefit expense is as follows:

Current service cost	\$ 433,300	\$ 391,900
Interest cost	209,400	213,200
Past service cost	(1,662,200)	-
Amortization of actuarial loss	<u>2,700</u>	<u>58,300</u>
	<u>\$ (1,016,800)</u>	<u>\$ 663,400</u>

# City of Port Colborne

## Notes to the Consolidated Financial Statements

For the Year Ended December 31, 2022

### 8. Tangible capital assets

	<u>Land</u>	<u>Land Improvements</u>	<u>Buildings and Leaseholds</u>	<u>Vehicles</u>	<u>Furniture and Equipment</u>	<u>Infrastructure</u>	<u>Construction in Process</u>	<u>2022</u>
<b>Cost</b>								
Beginning of year	\$ 4,739,429	\$ 19,481,598	\$ 60,024,872	\$ 5,693,789	\$ 10,054,900	\$ 129,105,303	\$ 1,719,324	\$ 230,819,215
Additions	373,526	729,844	333,063	-	1,948,447	1,461,433	2,463,333	7,309,646
Disposals	-	-	(15,321)	-	(864,532)	(236,757)	(624,917)	(1,741,527)
End of year	<u>5,112,955</u>	<u>20,211,442</u>	<u>60,342,614</u>	<u>5,693,789</u>	<u>11,138,815</u>	<u>130,329,979</u>	<u>3,557,740</u>	<u>236,387,334</u>
<b>Accumulated amortization</b>								
Beginning of year	-	10,027,852	19,064,124	3,381,010	6,099,099	58,837,598	-	97,409,683
Amortization	-	601,492	1,731,862	331,051	803,494	2,390,825	-	5,858,724
Amortization on disposals	-	-	(12,255)	-	(864,314)	(227,260)	-	(1,103,829)
End of year	<u>-</u>	<u>10,629,344</u>	<u>20,783,731</u>	<u>3,712,061</u>	<u>6,038,279</u>	<u>61,001,163</u>	<u>-</u>	<u>102,164,578</u>
<b>Net book value</b>	<u>\$ 5,112,955</u>	<u>\$ 9,582,098</u>	<u>\$ 39,558,883</u>	<u>\$ 1,981,728</u>	<u>\$ 5,100,536</u>	<u>\$ 69,328,816</u>	<u>\$ 3,557,740</u>	<u>\$ 134,222,756</u>

The value of contributed tangible capital assets during the year is \$ Nil.



# City of Port Colborne

## Notes to the Consolidated Financial Statements

For the Year Ended December 31, 2022

### 8. Tangible capital assets (continued)

	<u>Land</u>	<u>Land Improvements</u>	<u>Buildings and Leaseholds</u>	<u>Vehicles</u>	<u>Furniture and Equipment</u>	<u>Infrastructure</u>	<u>Construction in Process</u>	<u>2021</u>
<b>Cost</b>								
Beginning of year	\$ 4,854,479	\$ 18,942,276	\$ 60,133,074	\$ 5,136,268	\$ 9,683,598	\$ 128,132,286	\$ 1,405,364	\$ 228,287,345
Additions	266,423	539,322	492,379	557,521	647,720	1,302,951	466,605	4,272,921
Disposals	<u>(381,473)</u>	<u>-</u>	<u>(600,581)</u>	<u>-</u>	<u>(276,418)</u>	<u>(329,934)</u>	<u>(152,645)</u>	<u>(1,741,051)</u>
End of year	<u>4,739,429</u>	<u>19,481,598</u>	<u>60,024,872</u>	<u>5,693,789</u>	<u>10,054,900</u>	<u>129,105,303</u>	<u>1,719,324</u>	<u>230,819,215</u>
<b>Accumulated amortization</b>								
Beginning of year	-	9,439,936	17,914,876	3,062,204	5,643,009	56,804,860	-	92,864,885
Amortization	-	587,916	1,720,803	318,806	732,508	2,359,656	-	5,719,689
Amortization on disposals	<u>-</u>	<u>-</u>	<u>(571,555)</u>	<u>-</u>	<u>(276,418)</u>	<u>(326,918)</u>	<u>-</u>	<u>(1,174,891)</u>
End of year	<u>-</u>	<u>10,027,852</u>	<u>19,064,124</u>	<u>3,381,010</u>	<u>6,099,099</u>	<u>58,837,598</u>	<u>-</u>	<u>97,409,683</u>
<b>Net book value</b>	<u>\$ 4,739,429</u>	<u>\$ 9,453,746</u>	<u>\$ 40,960,748</u>	<u>\$ 2,312,779</u>	<u>\$ 3,955,801</u>	<u>\$ 70,267,705</u>	<u>\$ 1,719,324</u>	<u>\$ 133,409,532</u>

The value of contributed tangible capital assets during the year is \$ 64,000.

**City of Port Colborne**  
**Notes to the Consolidated Financial Statements**  
For the Year Ended December 31, 2022

<b>9. Accumulated surplus</b>	<b><u>2022</u></b>	<b><u>2021</u></b>
Consists of:		
Surpluses (deficits)		
Operating	\$ -	\$ (336,003)
Port Colborne Public Library Board	-	-
Port Colborne Downtown Development Board	76,703	52,274
Port Colborne Main Street Business Improvement Area	37,430	32,205
Niagara's South Coast Tourism Association	2,337	2,337
Niagara Central Dorothy Rungeling		
Airport Commission (Note 17)	(22,737)	(16,737)
	<u>93,733</u>	<u>(265,924)</u>
Investment in tangible capital assets	<u>134,222,756</u>	<u>133,409,532</u>
Unfunded liabilities		
Long term debt	(27,416,116)	(28,855,949)
Employee benefit obligations	(8,426,300)	(9,804,900)
	<u>(35,842,416)</u>	<u>(38,660,849)</u>
Reserves and reserve funds (Note 10)	<u>26,845,053</u>	<u>24,031,481</u>
	<u><b>\$ 125,319,126</b></u>	<u><b>\$ 118,514,240</b></u>

<b>10. Reserves and reserve funds</b>	<b><u>2022</u></b>	<b><u>2021</u></b>
Reserves and reserve funds set aside for specific purposes by Council or agreement		
Boards and committees		
Community Safety Committee	\$ 4,947	\$ 4,947
Library bequest	4,188	4,188
Library future liabilities	70,384	54,129
Library capital	106,519	135,519
Library stabilization	58,400	45,415
Grant Committee	2,199	13,000
Local Architectural Conservation Advisory Committee	-	11,184
Mayors Youth Council Committee	-	4,217
Seniors Advisory Committee	-	5,242
Niagara's South Coast Tourism Association	63,952	63,952
Museum bequests	229,382	78,827
Museum capital	312	31,667
	<u>540,283</u>	<u>452,287</u>

# City of Port Colborne

## Notes to the Consolidated Financial Statements

For the Year Ended December 31, 2022

<b>10. Reserves and reserve funds (continued)</b>	<b><u>2022</u></b>	<b><u>2021</u></b>
Programs, grants and activities		
Canada Summer Games	-	45,000
Canal Days	145,000	175,000
CIP incentives	208,231	110,054
Municipal elections	-	118,588
Roselawn	556,799	679,299
Transit	-	211,508
	<u>910,030</u>	<u>1,339,449</u>
Self-sustaining entities		
Building department	226,240	168,151
Nickel Beach	198,165	278,966
Overholt cemetery	-	130,000
Marina	(819,464)	(46,579)
	<u>(395,059)</u>	<u>530,538</u>
General government		
Encumbrance	72,037	351,906
Future liabilities	2,188,396	1,684,253
Opportunity Fund	2,000,000	2,000,000
Subject matter experts	208,598	208,598
General stabilization	2,348,582	2,240,562
Working capital	2,318,650	2,187,400
Economic development	(306,797)	466,525
	<u>8,829,466</u>	<u>9,139,244</u>
Capital and related projects		
Drains	35,709	(71,855)
Facilities	131,386	131,386
Fleet and equipment	-	704,237
Goderich maintenance	66,074	43,921
Infrastructure	3,902,670	2,436,082
Storm sewer	557,323	116,975
Wastewater	2,479,933	1,061,002
Water	807,614	324,295
	<u>7,980,709</u>	<u>4,746,043</u>
Allocated capital and related projects	<u>8,979,624</u>	<u>7,823,920</u>
Total reserves and reserve funds	<u>\$ 26,845,053</u>	<u>\$ 24,031,481</u>

The marina reserve of \$ (819,464) represents a reserve of \$ 146,306 less internal financing of \$ (965,770). The economic development reserve of \$ (306,797) represents a reserve of \$ 174,016 less internal financing of \$ (480,813). The drains reserve of \$ 35,709 represents a reserve of \$ 429,562 less internal financing of \$ (393,853).

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**City of Port Colborne**  
**Notes to the Consolidated Financial Statements**  
For the Year Ended December 31, 2022

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<b>11. Taxation</b>	<b>Budget 2022</b>	<b>Actual 2022</b>	<b>Actual 2021</b>
Real property		\$ 42,938,833	\$ 40,869,587
From other governments			
Payments in lieu of taxes		<u>456,928</u>	<u>469,350</u>
		<u>43,395,761</u>	<u>41,338,937</u>
Less: taxation collected on behalf of (Note 12):			
Region of Niagara		<u>16,006,916</u>	<u>15,388,896</u>
School boards		<u>4,824,918</u>	<u>4,778,183</u>
		<u>20,831,834</u>	<u>20,167,079</u>
Net taxes available for municipal purposes		<u>\$ 22,563,927</u>	<u>\$ 21,171,858</u>
Residential, multi-residential and farm	\$ 22,023,989	\$ 17,373,527	\$ 16,238,097
Commercial and industrial	<u>440,045</u>	<u>5,190,400</u>	<u>4,933,761</u>
Net taxes available for municipal purposes	<u>\$ 22,464,034</u>	<u>\$ 22,563,927</u>	<u>\$ 21,171,858</u>

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**12. Collections for the Region of Niagara and school boards**

Total taxation and development charges received or receivable on behalf of the Region of Niagara and the school boards were as follows:

	<b>2022</b>	<b>2021</b>
Region of Niagara	\$ 16,006,916	\$ 15,388,896
School boards	<u>4,824,918</u>	<u>4,778,183</u>
	<u>\$ 20,831,834</u>	<u>\$ 20,167,079</u>

The Municipality is required to levy and collect taxes on behalf of the Region of Niagara and the school boards. The taxes levied over (under) the amounts requisitioned are recorded as accounts payable (receivable).

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**City of Port Colborne**  
**Notes to the Consolidated Financial Statements**  
For the Year Ended December 31, 2022

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<b>13. User charges</b>	<b>Budget 2022</b>	<b>Actual 2022</b>	<b>Actual 2021</b>
<b>Operating</b>			
Fees and service charges	\$ 3,960,377	\$ <b>3,826,490</b>	\$ 3,117,218
Direct water billings	4,660,000	<b>4,690,010</b>	4,708,631
Wastewater surcharges	6,923,067	<b>6,978,259</b>	6,646,686
Licences and permits	<u>470,900</u>	<u><b>588,094</b></u>	<u>511,883</u>
	<u>\$ 16,014,344</u>	<u>\$ <b>16,082,853</b></u>	<u>\$ 14,984,418</u>

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<b>14. Government transfers</b>	<b>Budget 2022</b>	<b>Actual 2022</b>	<b>Actual 2021</b>
<b>Operating</b>			
Government of Canada	\$ 4,000	\$ <b>63,605</b>	\$ 85,907
Province of Ontario	2,680,393	<b>3,230,935</b>	3,669,484
Municipal	<u>44,500</u>	<u><b>364,598</b></u>	<u>57,866</u>
	<u>2,728,893</u>	<u><b>3,659,138</b></u>	<u>3,813,257</u>
<b>Capital</b>			
Government of Canada	1,330,577	<b>473,873</b>	819,999
Province of Ontario	516,260	<b>1,972,770</b>	264,834
Municipal	<u>160,189</u>	<u><b>150,255</b></u>	<u>410,781</u>
	<u>2,007,026</u>	<u><b>2,596,898</b></u>	<u>1,495,614</u>
	<u>\$ 4,735,919</u>	<u>\$ <b>6,256,036</b></u>	<u>\$ 5,308,871</u>

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**City of Port Colborne**  
**Notes to the Consolidated Financial Statements**  
For the Year Ended December 31, 2022

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<b>15. Other revenues</b>	<b>Budget 2022</b>	<b>Actual 2022</b>	<b>Actual 2021</b>
<b>Operating</b>			
Fines	\$ 68,220	\$ 8,805	\$ 65,880
Rental income	786,200	668,935	564,376
Transfer from trust funds	4,000	5,759	4,235
Donations	187,900	362,267	192,488
Other	328,700	2,701,727	205,718
	<u>1,375,020</u>	<u>3,747,493</u>	<u>1,032,697</u>
<b>Capital</b>			
Donations	-	179,525	16,298
Other	-	-	1,422
Contributed capital assets	-	-	64,000
(Loss) gain on disposal of tangible capital assets	<u>-</u>	<u>(12,781)</u>	<u>182,701</u>
	<u>-</u>	<u>166,744</u>	<u>264,421</u>
	<u>\$ 1,375,020</u>	<u>\$ 3,914,237</u>	<u>\$ 1,297,118</u>

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**16. Pension agreements**

The Municipality makes contributions to the Ontario Municipal Employees Retirement System ("OMERS"), which is a multi-employer plan, on behalf of the members of its staff. The plan is a defined benefit plan that specifies the amount of the retirement benefit to be received by the employees based on the length of service and rates of pay. Employees and employers contribute jointly to the plan.

Since OMERS is a multi-employer pension plan, the Municipality does not recognize any share of the pension plan deficit of \$ 6.1 billion (2021 - \$ 70 million deficit) based on the fair market value of the plan's assets, as this is a joint responsibility of all Ontario municipal entities and their employees. Contributions were made in the 2022 calendar year at rates ranging from 9.0% to 15.8% depending on the member's designated retirement age and level of earnings. Employer contributions for current and past service are included as an expense in the consolidated statement of operations. Employer contributions to OMERS for 2022 current and past service was \$ 1,134,083 (2021 - \$ 1,036,608) and were matched by employee contributions in a similar amount.

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# City of Port Colborne

## Notes to the Consolidated Financial Statements

For the Year Ended December 31, 2022

### 17. Niagara Central Dorothy Rungeling Airport Commission

The Niagara Central Dorothy Rungeling Airport Commission operates a two runway airport offering a year round fixed base operation. The Commission is funded by the four nearby municipalities, City of Welland, City of Port Colborne, Town of Pelham and the Township of Wainfleet. The City of Port Colborne has a non-controlling interest in the airport of 19% (2021 - 19%) based on population.

The following table provides condensed supplementary financial information for the Niagara Central Dorothy Rungeling Airport Commission:

	<u>2022</u>	<u>2021</u>
<b>Financial assets</b>		
Cash and cash equivalents	\$ 291,278	\$ 280,455
Receivables	<u>34,503</u>	<u>6,485</u>
	<u>325,781</u>	<u>286,940</u>
<b>Liabilities</b>		
Accounts payable and accrued liabilities	40,758	30,376
Loans payable	253,160	334,557
Capital lease obligation	<u>24,536</u>	<u>32,627</u>
	<u>318,454</u>	<u>397,560</u>
<b>Net financial assets (debt)</b>	<u>7,327</u>	<u>(110,620)</u>
<b>Non-financial assets</b>		
Prepaid expenses	14,738	14,783
Fuel inventory	15,805	23,912
Tangible capital assets	<u>1,624,743</u>	<u>1,421,197</u>
	<u>1,655,286</u>	<u>1,459,892</u>
<b>Accumulated surplus</b>	<u>\$ 1,662,613</u>	<u>\$ 1,349,272</u>
<b>Accumulated surplus consists of:</b>		
Operating deficit	\$ (119,669)	\$ (88,089)
Reserves	157,539	16,164
Investment in tangible capital assets	<u>1,624,743</u>	<u>1,421,197</u>
	<u>\$ 1,662,613</u>	<u>\$ 1,349,272</u>
<b>Revenues</b>		
Grants	\$ 154,770	\$ 154,770
Fuel, rentals and other	407,113	104,277
Interest	4,453	474
<b>Expenses</b>	<u>(252,995)</u>	<u>(204,087)</u>
<b>Annual surplus</b>	<u>\$ 313,341</u>	<u>\$ 55,434</u>

# City of Port Colborne

## Notes to the Consolidated Financial Statements

For the Year Ended December 31, 2022

### 17. Niagara Central Dorothy Rungeling Airport Commission (continued)

The financial position information is as reported by the Niagara Central Dorothy Rungeling Airport Commission as at December 31, 2022 and the results of operations are as reported for the year ended December 31, 2022. The comparative financial position and results of operations figures are as reported by the Niagara Central Dorothy Rungeling Airport Commission at December 31, 2021.

The Municipality has recorded in the financial statements its 19% (2021 - 19%) share of the Niagara Central Dorothy Rungeling Airport Commissions' assets, liabilities, accumulated surplus, revenues, expenses, and annual surplus.

The following summarizes the Municipality's related party transactions with the Niagara Central Dorothy Rungeling Airport Commission for the year. All transactions are in the normal course of operations, and are recorded at the exchange value based on normal commercial rates, or as agreed to by the parties.

	<u>2022</u>	<u>2021</u>
Government transfers	\$ 29,406	\$ 29,406
Interest	2,171	2,463
Loan, bearing interest of 3.5% per annum repayable in annual instalments of \$ 6,012, commencing June 15, 2018	\$ 27,663	\$ 32,647
Loan, bearing interest of 4.3% per annum repayable in annual instalments of \$ 4,113, commencing August 24, 2019	<u>21,678</u>	<u>24,788</u>
	<u>\$ 49,341</u>	<u>\$ 57,435</u>

### 18. Trust funds

Trust funds administered by the Municipality amounting to \$ 498,829 (2021 - \$ 482,465) have not been included in the Consolidated Statement of Financial Position nor have these operations been included in the Consolidated Statement of Operations.

### 19. Subdividers' deposits

The Municipality holds bank letters of credit as security to ensure the provision of subdivision services and the completion of contracts.

	<u>2022</u>	<u>2021</u>
Letters of credit, beginning of year	\$ 1,537,110	\$ 1,070,405
Net (deletions) additions	<u>(410,103)</u>	<u>466,705</u>
Letters of credit, end of year	<u>\$ 1,127,007</u>	<u>\$ 1,537,110</u>

These letters of credit are not reflected in the accounts.



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# City of Port Colborne

## Notes to the Consolidated Financial Statements

For the Year Ended December 31, 2022

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### **20. Contingencies**

The Municipality is involved from time to time in litigation, which arises in the normal course of business. In respect of any outstanding claims, the Municipality believes that insurance coverage is adequate and that no material exposure exists on the eventual settlement of such litigation, therefore no provision has been made in the accompanying financial statements.

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### **21. Liabilities for contaminated sites**

The Municipality reports environmental liabilities related to the management and remediation of any contaminated sites where the Municipality is obligated or likely obligated to incur such costs. The Municipality has identified one property where environmental assessments have indicated soil contamination exceeds environmental standards. A reasonable estimate of any liability cannot be made as the Municipality has not determined how the property will be used, therefore, no liability has been recognized.

The Municipality's ongoing efforts to assess contaminated sites may result in future environmental remediation liabilities related to newly identified sites, or changes in the assessments or intended use of existing sites. Any changes to the Municipality's liabilities for contaminated sites will be accrued in the year in which they are assessed as likely and reasonably estimable.

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### **22. Commitments**

#### **Tax increment based grants**

The Municipality has a one signed agreement for a tax increment based grant with a term spanning ten years that expires in 2030. At December 31, 2022, the total amount remaining to be paid from this agreement is \$ 25,453. Subsequent to year end, an agreement has been made to pay the outstanding amount in a lump sum payment in 2023.

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### **23. Comparative figures**

Certain of the comparative figures have been reclassified to conform with the consolidated financial statement presentation adopted for the current year.

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# City of Port Colborne

## Notes to the Consolidated Financial Statements

For the Year Ended December 31, 2022

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### 24. Budget

The budget bylaw adopted by Council November 8, 2021 was not prepared on a basis consistent with that used to report actual results in accordance with Canadian public sector accounting standards. The budget was prepared on a modified accrual basis while Canadian public sector accounting standards require a full accrual basis. As a result, the budget figures presented in the Consolidated Statement of Operations and Consolidated Statement of Changes in Net Debt represent the budget adopted by Council with the following adjustments:

Budgeted annual surplus	\$ 13,941
Add:	
Acquisition of tangible capital assets	4,892,292
Repayment of long term debt	1,444,000
Transfers (to) from reserves, net	1,203,880
Less:	
Amortization of tangible capital assets	<u>(5,855,257)</u>
Budgeted surplus per Consolidated Statement of Operations	<u>\$ 1,698,856</u>

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# City of Port Colborne

## Notes to the Consolidated Financial Statements

For the Year Ended December 31, 2022

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### **25. Segmented reporting**

The Municipality is a diverse municipal government that provides a wide range of services to its citizens. Segmented information has been identified for the service lines that reflect the way in which the operations are managed and resource needs are identified and budgeted. Municipal activities are reported by function in the body of the financial statements.

Certain departments that have been separately disclosed in the segmented information, along with the services they provide, are as follows:

#### **General**

The general provision of municipal services includes general government, fire services, transportation services, storm sewer services, planning and development, facilities, parks and cemeteries.

#### **Water**

The water operations install and maintain water capital infrastructure to ensure the safe supply, metering and cost recovery for all treated water to serviced areas within all urban and settlement areas of the Municipality.

#### **Wastewater**

The wastewater operations install and maintain wastewater capital infrastructure and recover costs of providing this service within all urban and settlement areas of the Municipality.

#### **Storm sewer**

The storm sewer operations install and maintain storm sewer capital infrastructure and recover costs of providing this service within all urban and settlement areas of the Municipality.

#### **Port Colborne Public Library Board**

The Port Colborne Public Library Board provides library services, materials and facilities. The Municipality controls the board and consolidates the financial activities.

For each reported segment, revenues and expenses represent both amounts that are directly attributable to the segment and amounts that are allocated on a reasonable basis.

The accounting policies used in these segments are consistent with those followed in the preparation of the consolidated financial statements as disclosed in Note 1. The consolidated schedule of segment disclosure and the schedules of segment disclosure with budget information follow the notes.

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# City of Port Colborne

## Consolidated Schedule of Segment Disclosure

For the Year Ended December 31, 2022

	<u>General</u>	<u>Library</u>	<u>Eliminations</u>	<u>Levy</u>	<u>Water</u>	<u>Wastewater</u>	<u>Storm sewer</u>	<u>2022</u>
<b>Revenues</b>								
Taxation	\$ 22,563,927	\$ -	\$ -	\$ 22,563,927	\$ -	\$ -	\$ -	\$ 22,563,927
User charges	3,049,850	5,023	-	3,054,873	4,742,874	6,979,006	1,306,100	16,082,853
Government transfers	5,169,898	1,034,986	-	6,204,884	-	51,152	-	6,256,036
Penalties and interest	562,902	-	-	562,902	18,135	30,210	-	611,247
Investment income	483,612	-	-	483,612	-	-	-	483,612
Other	<u>3,910,436</u>	<u>6,183</u>	<u>-</u>	<u>3,916,619</u>	<u>(2,382)</u>	<u>-</u>	<u>-</u>	<u>3,914,237</u>
	<u>35,740,625</u>	<u>1,046,192</u>	<u>-</u>	<u>36,786,817</u>	<u>4,758,627</u>	<u>7,060,368</u>	<u>1,306,100</u>	<u>49,911,912</u>
<b>Expenses</b>								
Wages and benefits	13,482,257	641,037	-	14,123,294	1,013,216	725,769	131,595	15,993,874
Materials	6,811,557	128,635	-	6,940,192	228,081	143,066	33,253	7,344,592
Contracted services	4,748,117	33,343	-	4,781,460	2,373,415	4,414,137	57,460	11,626,472
Rents and financial expenses	523,168	191	-	523,359	6,325	3,470	11,880	545,034
External transfers to others	510,930	-	-	510,930	5,000	2,000	-	517,930
Interest on long term debt	177,085	-	-	177,085	146,060	-	579,259	902,404
Tax write-offs	317,996	-	-	317,996	-	-	-	317,996
Amortization	<u>4,401,490</u>	<u>87,054</u>	<u>-</u>	<u>4,488,544</u>	<u>644,510</u>	<u>361,599</u>	<u>364,071</u>	<u>5,858,724</u>
	<u>30,972,600</u>	<u>890,260</u>	<u>-</u>	<u>31,862,860</u>	<u>4,416,607</u>	<u>5,650,041</u>	<u>1,177,518</u>	<u>43,107,026</u>
<b>Annual surplus</b>	<u>\$ 4,768,025</u>	<u>\$ 155,932</u>	<u>\$ -</u>	<u>\$ 4,923,957</u>	<u>\$ 342,020</u>	<u>\$ 1,410,327</u>	<u>\$ 128,582</u>	<u>\$ 6,804,886</u>

# City of Port Colborne

## Consolidated Schedule of Segment Disclosure

For the Year Ended December 31, 2021

	<u>General</u>	<u>Library</u>	<u>Eliminations</u>	<u>Levy</u>	<u>Water</u>	<u>Wastewater</u>	<u>Storm sewer</u>	<u>2021</u>
<b>Revenues</b>								
Taxation	\$ 21,171,858	\$ -	\$ -	\$ 21,171,858	\$ -	\$ -	\$ -	\$ 21,171,858
User charges	2,778,403	2,585	-	2,780,988	4,816,140	6,694,204	693,086	14,984,418
Government transfers	4,397,733	911,138	-	5,308,871	-	-	-	5,308,871
Penalties and interest	612,601	-	-	612,601	11,205	16,444	-	640,250
Investment income	155,772	-	-	155,772	-	-	-	155,772
Other	<u>1,295,009</u>	<u>2,557</u>	<u>-</u>	<u>1,297,566</u>	<u>(448)</u>	<u>-</u>	<u>-</u>	<u>1,297,118</u>
	<u>30,411,376</u>	<u>916,280</u>	<u>-</u>	<u>31,327,656</u>	<u>4,826,897</u>	<u>6,710,648</u>	<u>693,086</u>	<u>43,558,287</u>
<b>Expenses</b>								
Wages and benefits	14,972,954	612,605	-	15,585,559	610,954	305,477	101,826	16,603,816
Materials	3,231,766	129,728	-	3,361,494	161,911	100,042	54,149	3,677,596
Contracted services	4,502,112	45,450	-	4,547,562	2,132,905	4,362,896	18,647	11,062,010
Rents and financial expenses	1,117,619	(5)	-	1,117,614	4,472	847	20,584	1,143,517
External transfers to others	423,797	-	-	423,797	-	-	-	423,797
Interest on long term debt	582,572	50	-	582,622	80,689	-	299,027	962,338
Tax write-offs	259,480	-	-	259,480	-	-	-	259,480
Amortization	4,274,389	76,935	-	4,351,324	641,098	363,024	364,243	5,719,689
Inter-functional transfers	<u>(928,059)</u>	<u>-</u>	<u>-</u>	<u>(928,059)</u>	<u>400,059</u>	<u>460,000</u>	<u>68,000</u>	<u>-</u>
	<u>28,436,630</u>	<u>864,763</u>	<u>-</u>	<u>29,301,393</u>	<u>4,032,088</u>	<u>5,592,286</u>	<u>926,476</u>	<u>39,852,243</u>
<b>Annual surplus (deficit)</b>	<u>\$ 1,974,746</u>	<u>\$ 51,517</u>	<u>\$ -</u>	<u>\$ 2,026,263</u>	<u>\$ 794,809</u>	<u>\$ 1,118,362</u>	<u>\$ (233,390)</u>	<u>\$ 3,706,044</u>

# City of Port Colborne

## Consolidated Schedule of Segment Disclosure with Budget Information

For the Year Ended December 31, 2022

	Budget <u>2022</u>	Actual <u>2022</u>	Actual <u>2021</u>
<b>General</b>			
<b>Revenues</b>			
Taxation	\$ 22,464,034	\$ <b>22,563,927</b>	\$ 21,171,858
User charges	3,021,377	<b>3,049,850</b>	2,778,403
Government transfers	3,780,619	<b>5,169,898</b>	4,397,733
Penalties and interest	470,500	<b>562,902</b>	612,601
Investment income	145,000	<b>483,612</b>	155,772
Other	1,284,920	<b>3,910,436</b>	1,295,009
	<u>31,166,450</u>	<u><b>35,740,625</b></u>	<u>30,411,376</u>
<b>Expenses</b>			
Wages and benefits	14,661,461	<b>13,482,257</b>	14,972,954
Materials	6,107,332	<b>6,811,557</b>	3,231,766
Contracted services	3,673,056	<b>4,748,117</b>	4,502,112
Rents and financial expenses	573,933	<b>523,168</b>	1,117,619
External transfers to others	385,294	<b>510,930</b>	423,797
Interest on long term debt	554,342	<b>177,085</b>	582,572
Tax write-offs	223,974	<b>317,996</b>	259,480
Amortization	4,398,023	<b>4,401,490</b>	4,274,389
Inter-functional transfers	-	-	(928,059)
	<u>30,577,415</u>	<u><b>30,972,600</b></u>	<u>28,436,630</u>
<b>Annual surplus</b>	<u>\$ 589,035</u>	<u><b>\$ 4,768,025</b></u>	<u>\$ 1,974,746</u>

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## City of Port Colborne Consolidated Schedule of Segment Disclosure with Budget Information

For the Year Ended December 31, 2022

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	Budget <u>2022</u>	Actual <u>2022</u>	Actual <u>2021</u>
<b>Library</b>			
<b>Revenues</b>			
User charges	\$ 2,900	\$ 5,023	\$ 2,585
Government transfers	955,300	1,034,986	911,138
Other	5,100	6,183	2,557
	<u>963,300</u>	<u>1,046,192</u>	<u>916,280</u>
<b>Expenses</b>			
Wages and benefits	668,652	641,037	612,605
Materials	134,475	128,635	129,728
Contracted services	23,705	33,343	45,450
Rents and financial expenses	5,467	191	(5)
Interest on long term debt	-	-	50
Amortization	87,054	87,054	76,935
	<u>919,353</u>	<u>890,260</u>	<u>864,763</u>
<b>Annual surplus</b>	<u>\$ 43,947</u>	<u>\$ 155,932</u>	<u>\$ 51,517</u>

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# City of Port Colborne

## Consolidated Schedule of Segment Disclosure with Budget Information

For the Year Ended December 31, 2022

	Budget <u>2022</u>	Actual <u>2022</u>	Actual <u>2021</u>
<b>Water</b>			
<b>Revenues</b>			
User charges	\$ 4,660,000	\$ <b>4,742,874</b>	\$ 4,816,140
Penalties and interest	12,000	<b>18,135</b>	11,205
Other	<u>85,000</u>	<u><b>(2,382)</b></u>	<u>(448)</u>
	<u>4,757,000</u>	<u><b>4,758,627</b></u>	<u>4,826,897</u>
<b>Expenses</b>			
Wages and benefits	1,139,270	<b>1,013,216</b>	610,954
Materials	303,435	<b>228,081</b>	161,911
Contracted services	2,257,771	<b>2,373,415</b>	2,132,905
Rents and financial expenses	-	<b>6,325</b>	4,472
External transfers to others	25,000	<b>5,000</b>	-
Interest on long term debt	73,454	<b>146,060</b>	80,689
Amortization	644,510	<b>644,510</b>	641,098
Inter-functional transfers	<u>-</u>	<u>-</u>	<u>400,059</u>
	<u>4,443,440</u>	<u><b>4,416,607</b></u>	<u>4,032,088</u>
<b>Annual surplus</b>	<u>\$ 313,560</u>	<u>\$ <b>342,020</b></u>	<u>\$ 794,809</u>



# City of Port Colborne

## Consolidated Schedule of Segment Disclosure

### with Budget Information

For the Year Ended December 31, 2022

	Budget <u>2022</u>	Actual <u>2022</u>	Actual <u>2021</u>
<b>Wastewater</b>			
<b>Revenues</b>			
User charges	\$ 6,923,067	\$ <b>6,979,006</b>	\$ 6,694,204
Government transfers	-	<b>51,152</b>	-
Penalties and interest	<u>14,000</u>	<u><b>30,210</b></u>	<u>16,444</u>
	<u>6,937,067</u>	<u><b>7,060,368</b></u>	<u>6,710,648</u>
<b>Expenses</b>			
Wages and benefits	783,896	<b>725,769</b>	305,477
Materials	246,573	<b>143,066</b>	100,042
Contracted services	5,143,510	<b>4,414,137</b>	4,362,896
Rents and financial expenses	-	<b>3,470</b>	847
External transfers to others	25,000	<b>2,000</b>	-
Amortization	361,599	<b>361,599</b>	363,024
Inter-functional transfers	<u>-</u>	<u>-</u>	<u>460,000</u>
	<u>6,560,578</u>	<u><b>5,650,041</b></u>	<u>5,592,286</u>
<b>Annual surplus</b>	<u>\$ 376,489</u>	<u><b>\$ 1,410,327</b></u>	<u>\$ 1,118,362</u>

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## City of Port Colborne Consolidated Schedule of Segment Disclosure with Budget Information

For the Year Ended December 31, 2022

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	Budget <u>2022</u>	Actual <u>2022</u>	Actual <u>2021</u>
<b>Storm sewer</b>			
<b>Revenues</b>			
User charges	\$ 1,407,000	\$ 1,306,100	\$ 693,086
<b>Expenses</b>			
Wages and benefits	155,570	131,595	101,826
Materials	55,879	33,253	54,149
Contracted services	145,451	57,460	18,647
Rents and financial expenses	18,000	11,880	20,584
Interest on long term debt	292,204	579,259	299,027
Amortization	364,071	364,071	364,243
Inter-functional transfers	-	-	68,000
	<u>1,031,175</u>	<u>1,177,518</u>	<u>926,476</u>
<b>Annual surplus (deficit)</b>	<u>\$ 375,825</u>	<u>\$ 128,582</u>	<u>\$ (233,390)</u>

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# City of Port Colborne

## Trust Funds

### Statement of Financial Position

As at December 31, 2022

	<u>Local Improvements</u>	<u>Julia Yager Trust</u>	<u>Fulton Trust</u>	<u>Sherkston Trust</u>	<u>Overholt Cemetery</u>	<u>Roselawn Centre</u>	<u>2022</u>	<u>2021</u>
<b>Assets</b>								
Cash and cash equivalents	\$ 24,088	\$ 7,402	\$ 1,047	\$ 5,912	\$ 3,710	\$ 54,582	\$ 96,741	\$ 100,735
Due (to)/from City of Port Colborne	-	-	-	-	(912)	-	(912)	5,433
Investments	-	-	-	5,846	397,154	-	403,000	376,297
<b>Net assets</b>	<u>\$ 24,088</u>	<u>\$ 7,402</u>	<u>\$ 1,047</u>	<u>\$ 11,758</u>	<u>\$ 399,952</u>	<u>\$ 54,582</u>	<u>\$ 498,829</u>	<u>\$ 482,465</u>

See accompanying notes to the financial statements

**City of Port Colborne**  
**Trust Funds**  
**Statement of Operations and Changes in Net Assets**  
For the Year Ended December 31, 2022

	Local Improvements	Julia Yager Trust	Fulton Trust	Sherkston Trust	Overholt Cemetery	Roselawn Centre	2022	2021
<b>Revenues</b>								
Interest	\$ 458	\$ 1	\$ -	\$ 1	\$ 12,366	\$ 1,036	\$ 13,862	\$ 18,585
Investment income	-	-	-	-	4,730	-	4,730	-
Perpetual trust contributions	-	-	-	-	10,138	-	10,138	10,402
	<u>458</u>	<u>1</u>	<u>-</u>	<u>1</u>	<u>27,234</u>	<u>1,036</u>	<u>28,730</u>	<u>28,987</u>
<b>Expenses</b>								
Investment management fees	-	-	-	-	6,607	-	6,607	5,629
Transfers to City of Port Colborne	-	-	-	-	5,759	-	5,759	4,235
	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>12,366</u>	<u>-</u>	<u>12,366</u>	<u>9,864</u>
<b>Excess of revenues over expenses</b>	458	1	-	1	14,868	1,036	16,364	19,123
<b>Net assets</b>								
Beginning of year	23,630	7,401	1,047	11,757	385,084	53,546	482,465	463,342
End of year	<u>\$ 24,088</u>	<u>\$ 7,402</u>	<u>\$ 1,047</u>	<u>\$ 11,758</u>	<u>\$ 399,952</u>	<u>\$ 54,582</u>	<u>\$ 498,829</u>	<u>\$ 482,465</u>

See accompanying notes to the financial statements

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**City of Port Colborne**  
**Trust Funds**  
**Statement of Cash Flows**

For the Year Ended December 31, 2022

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	<u>2022</u>	<u>2021</u>
<b>Net increase (decrease) in cash and cash equivalents</b>		
<b>Operating activities</b>		
Excess of revenues over expenses	\$ 16,364	\$ 19,123
Decrease (increase) in due from City of Port Colborne	<u>6,345</u>	<u>(6,569)</u>
	<u>22,709</u>	<u>12,554</u>
<b>Investing activities</b>		
Increase in investments - net	<u>(26,703)</u>	<u>(4,544)</u>
<b>Net (decrease) increase in cash and cash equivalents</b>	<b>(3,994)</b>	8,010
<b>Cash and cash equivalents</b>		
Beginning of year	<u>100,735</u>	<u>92,725</u>
End of year	<u>\$ 96,741</u>	<u>\$ 100,735</u>

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See accompanying notes to the financial statements

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# City of Port Colborne

## Trust Funds

### Notes to the Financial Statements

For the Year Ended December 31, 2022

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#### 1. Summary of significant accounting policies

##### Management responsibility

The financial statements are the responsibility of and prepared by management in accordance with Canadian accounting standards for not-for-profit organizations.

The significant accounting policies used are as follows:

##### (a) Basis of accounting

Sources of revenue and expenses are reported on the accrual basis of accounting. The accrual basis of accounting records revenues in the period they are earned and measurable and expenses in the period the goods and services are acquired and a liability is incurred.

##### (b) Cash and cash equivalents

Cash and cash equivalents are represented by cash on hand, cash on deposit in chartered banks and investments that mature within three months.

##### (c) Portfolio investments

Portfolio investments are valued at the lower of cost and market value. Interest income is reported as revenue in the period earned.

##### (d) Financial instruments

###### *Initial measurement*

The Trust Funds financial instruments, other than those resulting from transactions with related parties, are measured at fair value when issued or acquired. For financial instruments subsequently measured at cost or amortized cost, fair value is adjusted by the amount of the related financing fees and transaction costs. Transaction costs and financing fees relating to financial instruments that are measured subsequently at fair value are recognized in operations in the year in which they are incurred.

###### *Subsequent measurement*

At each reporting date, the Trust Funds measure their financial assets and liabilities at cost. The financial instruments measured at cost are cash investments, interest receivable and due from revenue fund.

For financial assets measured at cost, the Trust Funds regularly assesses whether there are any indications of impairment. If there is an indication of impairment, and the Trust Funds determine that there is a significant adverse change in the expected timing or amount of future cash flows from the financial asset, it recognizes an impairment loss in the statement of operations. Any reversals of previously recognized impairment losses are recognized in operations in the year the reversal occurs.

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# City of Port Colborne

## Trust Funds

### Notes to the Financial Statements

For the Year Ended December 31, 2022

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#### 1. Summary of significant accounting policies (continued)

##### (d) Financial instruments (continued)

###### *Financial instruments in related party transactions*

Financial assets and financial liabilities in related party transactions are initially measured at cost, with the exception of certain instruments which are initially measured at fair value. The Trust Funds do not have any financial assets or financial liabilities in related party transactions which are initially measured at fair value.

Gains or losses arising on initial measurement differences are generally recognized in net income when the transaction is in the normal course of operations, and in equity when the transaction is not in the normal course of operations, subject to certain exceptions.

Financial assets and financial liabilities recognized in related party transactions are subsequently measured based on how the Trust Funds initially measured the instrument. Financial instruments initially measured at cost are subsequently measured at cost, less any impairment for financial assets. Financial instruments initially measured at fair value, of which the Trust Funds has none, would be subsequently measured at amortized cost or fair value based on certain conditions.

##### (e) Revenue recognition

###### (i) Perpetual care collections

Revenue is recorded when it is earned and collection is reasonably assured.

###### (ii) Interest

Interest income earned on investments is recorded as revenue in the period earned.

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#### 2. Portfolio investments

Portfolio investments consist of money market, bond and equity funds and a guaranteed investment certificate with an annual interest rate of 2.50% maturing December, 2023. Portfolio investments have an estimated market value of \$ 427,431 (2021 - \$ 448,689).

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#### 3. Comparative figures

Certain of the comparative figures have been reclassified to conform with the consolidated financial statement presentation adopted for the current year.

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# City of Port Colborne

For the year ended December 31, 2022

Report to the Members of Council  
Audit results

July 18, 2023

**James D. Brennan, CPA, CA**  
Principal  
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Appendix C – Internal control letter
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# Executive summary

## Purpose of report and scope

The purpose of this report is to engage in an open dialogue with you regarding our audit of the consolidated financial statements of the City of Port Colborne (the "City") for the year ended December 31, 2022. This communication will assist the Members of Council in understanding the results of audit procedures and includes comments on misstatements, significant accounting policies, sensitive estimates and other matters.

The information in this document is intended solely for the information and use of Council. It is not intended to be distributed or used by anyone other than these specified parties.

We were engaged to provide the following deliverables:

Deliverable	Timing
Report on the December 31, 2022 consolidated financial statements	July 18, 2023
Communication of audit strategy and results	July 18, 2023

## Status of our audit

We have substantially completed our audit of the consolidated financial statements of the City and the results of that audit are included in this report.

We will finalize our report upon resolution of the following items that were outstanding as at July 18, 2023:

- Receipt of signed management representation letter (a draft has been attached in **Appendix B**)
- Approval of the consolidated financial statements by Council
- Procedures regarding subsequent events
- Responses for legal inquiries

We have successfully executed our audit strategy in accordance with the plan presented to the Members of Council on January 11, 2023.

## Independence

We confirm that there have been no changes to our status with respect to independence since we confirmed our independence to you on January 11, 2023.

# Audit risks and results

We highlight our significant findings in respect of significant transactions, accounting practices and other areas of focus.

## Areas of focus

The following is a summary of areas of focus, and the related matters and findings we would like to communicate to the Members of Council.

Area of focus	Matter	Our response and findings
<b>Fraud risk from revenue recognition</b>	<p>There is a presumed risk of fraud in revenue.</p> <ul style="list-style-type: none"><li>The risk primarily relates to revenue recognized under water and sewer and other revenue</li></ul>	<ul style="list-style-type: none"><li>Analytical assessment of revenues based on budgeted expectations</li><li>Monthly water and wastewater analytical based on expectations from prior years</li><li>Other revenue quarterly analytical based on expectations from prior years</li><li>Subsequent receipts testing of receivables as at December 31, 2022 (statistical sample)</li></ul> <p>There were no significant findings as a result of these procedures.</p>
<b>Fraud risk from management override / segregation of duties</b>	<p>This is a presumed fraud risk.</p> <ul style="list-style-type: none"><li>The risk primarily relates to limited segregation of duties, administrative access to accounting system and the senior finance management's ability to post journal entries</li></ul>	<ul style="list-style-type: none"><li>Tested the appropriateness of journal entries recorded in the general ledger and other adjustments made in the preparation of the financial statements</li><li>Reviewed accounting estimates for biases</li><li>Evaluated the business rationale for significant transactions that are or appear to be outside the normal course of business</li></ul> <p>There were no significant findings as a result of these procedures.</p>

Area of focus	Matter	Our response and findings
<b>Taxation revenue and receivables</b>	<ul style="list-style-type: none"> <li>The taxes receivable balances may be invalid and the allowance for uncollectible taxes understated</li> </ul>	<ul style="list-style-type: none"> <li>Recalculation of the net tax revenues based on verified assessment rolls and approved tax rates</li> <li>Subsequent receipts testing of taxes receivable as at December 31, 2022 (statistical sample)</li> <li>Assessed the adequacy of the allowance for doubtful accounts by testing subsequent receipts, reviewing management estimates and examining support for the value of underlying property</li> </ul> <p>There were no significant findings as a result of these procedures.</p>
<b>Purchases and payables</b>	Payables may be understated or not recorded in the correct period.	<ul style="list-style-type: none"> <li>Analytical assessment of expenses based on budgeted expectations</li> <li>Reviewed supporting documentation and management estimates with respect to the completeness and accuracy of significant year end accruals</li> <li>Performed a search for unrecorded liabilities</li> </ul> <p>There were no significant findings as a result of these procedures.</p>
<b>Provisions for employee benefits</b>	Provision and related expense may be understated.	<ul style="list-style-type: none"> <li>Reviewed actuarial reports, method and assumptions used</li> <li>Tested supporting calculations relating to the various amounts and disclosures</li> </ul> <p>There were no significant findings as a result of these procedures.</p>
<b>Provisions for contaminated sites liability</b>	Provision and related expense may be understated.	<ul style="list-style-type: none"> <li>Reviewed assumptions used by management</li> <li>Tested supporting calculations relating to the various amounts and disclosures</li> </ul> <p>There were no significant findings as a result of these procedures.</p>

## Sensitive accounting estimates and disclosures

Area of focus	Matter	Our response and findings
<b>Sensitive accounting estimates and disclosures</b>	The provision for vested sick leave of approximately \$ 370,500 and retirement benefits of approximately \$ 5,800,300.	<ul style="list-style-type: none"> <li>Management engaged an actuary to calculate the liabilities for vested sick leave and for employees who have taken early retirement based on the current annual benefits and the number of years until the employees turn 65.</li> <li>Liabilities have been recognized in the financial statements for vested sick leave and employee retirement benefits. The objective is to recognize a liability in the reporting period in which employees have provided the services that give rise to the benefits. Management's estimate is based on the actuary's valuation report and is reasonable in the context of the consolidated financial statements taken as a whole. The actuary's valuation was performed in accordance with the standards of the Canadian Institute of Actuaries.</li> </ul> <p>Management's estimate is reasonable in the context of the consolidated financial statements taken as a whole.</p>
<b>Sensitive accounting estimates and disclosures</b>	The provision for the Workplace Safety and Insurance Board future benefits of approximately \$ 2,255,500.	<ul style="list-style-type: none"> <li>The Municipality is a Workplace Safety and Insurance Board ("WSIB") Schedule II employer under the Workplace Safety &amp; Insurance Act and follows a policy of self-insurance for all its employees.</li> <li>An actuarial estimate of future liabilities has been completed and forms the basis for the estimated liability reported in these financial statements. The Municipality remits payments to the WSIB as required to fund disability payments.</li> </ul> <p>Management's estimate is reasonable in the context of the consolidated financial statements taken as a whole.</p>
<b>Factors affecting disclosure values</b>	The provision for uncollectible taxes of approximately \$ 291,000.	<ul style="list-style-type: none"> <li>Management reviews previous year's rebates to determine the current years. Management also reviews accounts which are significantly in arrears and determines if it is likely that they will be collected either through the land owner or through tax sale.</li> <li>For tax revenue amounts billed but may not be collected as of December 31, 2022. For uncollected accounts, management estimates the collectability of these receivables based on their age and their knowledge of the specific properties. As part of our audit, we review the age of the receivables and search for any subsequent receipts or relevant communications to assess whether management's allowance for uncollectable receivables is reasonable.</li> </ul> <p>Management's estimate is reasonable in the context of the consolidated financial statements taken as a whole.</p>

# Adjustments and uncorrected misstatements

## Adjustments

Adjustments made in the consolidated financial statements by the City after the December 31, 2022 trial balance was provided to Grant Thornton are as follows:

Description	[Increase (Decrease) Statement of financial position			Statement of operations
	Assets	Liabilities	Accumulated Surplus	Annual Surplus
To consolidate the Main St and Downtown BIAs into the City	\$ 92,826	\$ 44,195	\$ -	\$ 48,631
To proportionately consolidate the Niagara Central Dorothy Rungeling Airport Commission into the City	44,503	(15,221)	26,700	33,024
To balance opening accumulated surplus and interest income	-	-	(1,110,591)	1,110,591
To record library adjustments	-	6,550	-	(6,550)
To record NSTCA adjustments	-	5,250	-	(5,250)
To correct trust fund entry	-	-	-	6,610 (6,610)
To balance transfers recorded to reserves	-	-	117,402	(117,402)
Total adjusted misstatements	\$ 137,329	\$ 40,774	\$ (966,489)	\$ 1,063,044

## Uncorrected misstatements

We have no non-trivial unadjusted misstatements to report.

## Summary of disclosure matters

Our audit did not identify any unadjusted non-trivial misstatements of disclosure matters.

# Other reportable matters

## Internal control

The audit is designed to express an opinion on the consolidated financial statements. We obtain an understanding of internal control over financial reporting to the extent necessary to plan the audit and to determine the nature, timing and extent of our work. Accordingly, we do not express an opinion on the effectiveness of internal control.

If we become aware of a deficiency in your internal control over financial reporting, the auditing standards require us to communicate to the Members of Council those deficiencies we consider significant. However, a financial statement audit is not designed to provide assurance on internal control.

Please refer to **Appendix C** for a detailed explanation of the following internal control observations noted during our audit:

### Information Technology

- Segregation of duties and assignment of administrator rights

### Financial Reporting

- Journal entry controls

## Port Colborne Downtown Development Board Accounting Records

The receipts and disbursements of the Port Colborne Downtown Development Board ("DDB") have greatly increased<sup>4</sup> since taking over the farmers' market and acquiring of several grants. Currently the DDB does not have a formal accounting software package and only records the monthly bank transactions on monthly spreadsheets. This creates a significant amount of additional accounting work to summarize the transactions for audit testing and the preparation of the financial statements, resulting in significant additional fees.

It is strongly recommended that the DDB engage a qualified bookkeeper or accountant, using an appropriate accounting software, to carry out the monthly bookkeeping, bank reconciliations, accounts receivable and account payable reconciliations, as well as filing the HST rebate claims on a timely basis.



# Technical updates – highlights

## Accounting

Accounting standards issued by the Accounting Standards Board that may affect the City in future years include:

- Section PS 3160 Public Private Partnerships
- Section PS 3420 Inter-Entity Transactions

Further details of the changes to accounting standards, including management's preliminary comments on their applicability to the City, are included in **Appendix D**. If you have any questions about these changes we will be pleased to address your concerns.

## Assurance

In addition, assurance standards issued by the AASB that may change the nature, timing and extent of our audit procedures on the City and our communication with the Members of Council include:

- Potential revisions to CAS 500 Audit Evidence

Further details of the changes to assurance standards, including management's preliminary comments on their applicability to the City, are included in **Appendix E**. If you have any questions about these changes we will be pleased to address your concerns.

# **Appendix A – Draft Independent auditor's report**

# Independent auditor's report

## **To the Members of Council, Inhabitants and Taxpayers of the Corporation of the City of Port Colborne**

### **Opinion**

We have audited the consolidated financial statements of the Corporation of the City of Port Colborne ("the Municipality"), which comprise the consolidated statement of financial position as at December 31, 2022, and the consolidated statements of operations, changes in net debt and cash flows for the year then ended, and notes to the consolidated financial statements, including a summary of significant accounting policies.

In our opinion, the accompanying consolidated financial statements present fairly in all material respects, the financial position of the Corporation of the City of Port Colborne as at December 31, 2022, and its results of operations, its changes in its net financial assets, and its cash flows for the year then ended in accordance with Canadian public sector accounting standards.

### **Basis for Opinion**

We conducted our audit in accordance with Canadian generally accepted auditing standards. Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Consolidated Financial Statements* section of our report. We are independent of the Municipality in accordance with the ethical requirements that are relevant to our audit of the consolidated financial statements in Canada, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

### **Responsibilities of Management and Those Charged with Governance for the Consolidated Financial Statements**

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with Canadian public sector accounting standards, and for such internal control as management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the consolidated financial statements, management is responsible for assessing the Municipality's ability to continue as a going concern, disclosing, as applicable, matters related to a going concern and using the going concern basis of accounting unless management either intends to liquidate the Municipality or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Municipality's financial reporting process.

## **Auditor's Responsibilities for the Audit of the Consolidated Financial Statements**

Our objectives are to obtain reasonable assurance about whether the consolidated financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Canadian generally accepted auditing standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these consolidated financial statements.

As part of an audit in accordance with Canadian generally accepted auditing standards, we exercise professional judgment and maintain professional skepticism throughout the audit. We also:

- Identify and assess the risks of material misstatement of the consolidated financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Municipality's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- Conclude on the appropriateness of management's use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Municipality's ability to continue as a going concern. If we conclude that a material uncertainty exists, we are required to draw attention in our auditor's report to the related disclosures in the consolidated financial statements or, if such disclosures are inadequate, to modify our opinion. Our conclusions are based on the audit evidence obtained up to the date of our auditor's report. However, future events or conditions may cause the Municipality to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the consolidated financial statements, including the disclosures, and whether the consolidated financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- Obtain sufficient appropriate audit evidence regarding the financial information of the entities or business activities within the Municipality and the organizations it controls to express an opinion on the consolidated financial statements. We are responsible for the direction, supervision and performance of the group audit. We remain solely responsible for our audit opinion.

We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that we identify during our audit.

Port Colborne, Canada  
\_\_\_\_\_, 2023

Chartered Professional Accountants  
Licensed Public Accountants

DRAFT

# **Appendix B – Draft Management representation letter**

## **Management Representation Letter**

July 18, 2023

### **Grant Thornton LLP**

Chartered Professional Accountants  
PO Box 336  
Port Colborne, ON  
L3K 5W1

Dear Sirs:

We are providing this letter in connection with your audit of the consolidated financial statements of the Corporation of the City of Port Colborne as of December 31, 2022, and for the year then ended, for the purpose of expressing an opinion as to whether the consolidated financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows of the Corporation of the City of Port Colborne in accordance with Canadian public sector accounting standards.

We acknowledge that we have fulfilled our responsibilities for the preparation of the consolidated financial statements in accordance with Canadian public sector accounting standards and for the design and implementation of internal controls to prevent and detect fraud and error. We have assessed the risk that the consolidated financial statements may be materially misstated as a result of fraud, and have determined such risk to be low. Further, we acknowledge that your examination was planned and conducted in accordance with Canadian generally accepted auditing standards (GAAS) so as to enable you to express an opinion on the consolidated financial statements. We understand that while your work includes an examination of the accounting system, internal controls and related data to the extent you considered necessary in the circumstances, it is not designed to identify, nor can it necessarily be expected to disclose, fraud, shortages, errors and other irregularities, should any exist.

Certain representations in this letter are described as being limited to matters that are material. An item is considered material, regardless of its monetary value, if it is probable that its omission from or misstatement in the consolidated financial statements would influence the decision of a reasonable person relying on the consolidated financial statements.

We confirm, to the best of our knowledge and belief, as of July 18, 2023, the following representations made to you during your audit.

### **Financial statements**

- 1 The consolidated financial statements referred to above present fairly, in all material respects, the financial position of the municipality as at December 31, 2022 and the results of its operations and its cash flows for the year then ended in accordance with Canadian public sector accounting standards, as agreed to in the terms of the audit engagement.

### **Completeness of information**

- 2 We have made available to you all financial records and related data and all minutes of the meetings of Council and committees of Council, as agreed in the terms of the audit engagement. Summaries of actions of recent meetings for which minutes have not yet been prepared have been provided to you. All significant Council and committee actions are included in the summaries.
- 3 We have provided you with unrestricted access to persons within the municipality from whom you determined it necessary to obtain audit evidence.
- 4 There are no material transactions that have not been properly recorded in the accounting records underlying the consolidated financial statements. The adjusting journal entries which have been proposed by you are approved by us and will be recorded on the books of the municipality.
- 5 The restatements made to correct material misstatements in the prior period consolidated financial statements have been properly recorded, are approved by us, and will be recorded on the books of the entity.
- 6 We are unaware of any known or probable instances of non-compliance with the requirements of regulatory or governmental authorities, including their financial reporting requirements.
- 7 We are unaware of any violations or possible violations of laws or regulations the effects of which should be considered for disclosure in the consolidated financial statements or as the basis of recording a contingent loss.
- 8 We have disclosed to you all known deficiencies in the design or operation of internal control over financial reporting of which we are aware.
- 9 We have identified to you all known related parties and related party transactions, including sales, purchases, loans, transfers of assets, liabilities and services, leasing arrangements guarantees, non-monetary transactions and transactions for no consideration.
- 10 You provided a non-attest service by assisting us with drafting the consolidated financial statements and related notes. In connection with this non-attest service, we confirm that we have made all management decisions and performed all management functions, have the knowledge to evaluate the accuracy and completeness of the consolidated financial statements, and accept responsibility for such consolidated financial statements.

### **Fraud and error**

- 11 We have no knowledge of fraud or suspected fraud affecting the municipality involving management; employees who have significant roles in internal control; or others, where the fraud could have a non-trivial effect on the consolidated financial statements.
- 12 We have no knowledge of any allegations of fraud or suspected fraud affecting the municipality's financial statements communicated by employees, former employees, analysts, regulators or others.



- 13 We acknowledge our responsibility for the design, implementation and maintenance of internal control to prevent and detect fraud.

**Recognition, measurement and disclosure**

- 14 We believe that the significant assumptions used by us in making accounting estimates, including those used in arriving at the fair values of financial instruments as measured and disclosed in the consolidated financial statements, are reasonable and appropriate in the circumstances.
- 15 We have no plans or intentions that may materially affect the carrying value or classification of assets and liabilities, both financial and non-financial, reflected in the consolidated financial statements.
- 16 All related party transactions have been appropriately measured and disclosed in the consolidated financial statements.
- 17 The nature of all material measurement uncertainties has been appropriately disclosed in the consolidated financial statements, including all estimates where it is reasonably possible that the estimate will change in the near term and the effect of the change could be material to the consolidated financial statements.
- 18 All outstanding and possible claims, whether or not they have been discussed with legal counsel, have been disclosed to you and are appropriately reflected in the consolidated financial statements.
- 19 All liabilities and contingencies, including those associated with guarantees, whether written or oral, have been disclosed to you and are appropriately reflected in the consolidated financial statements.
- 20 With respect to environmental matters:
- a) at year end, there were no liabilities or contingencies that have not already been disclosed to you;
  - b) liabilities or contingencies have been recognized, measured and disclosed, as appropriate, in the consolidated financial statements; and
  - c) commitments have been measured and disclosed, as appropriate, in the consolidated financial statements.
- 21 The municipality has satisfactory title to (or lease interest in) all assets, and there are no liens or encumbrances on the municipality's assets nor has any been pledged as collateral.
- 22 We have disclosed to you, and the municipality has complied with, all aspects of contractual agreements that could have a material effect on the consolidated financial statements in the event of non-compliance, including all covenants, conditions or other requirements of all outstanding debt.
- 23 The Harmonized Sales Tax (HST) transactions recorded by the municipality are in accordance with the federal and provincial regulations. The HST liability/receivable amounts recorded by the municipality are considered complete.

- 24 Employee future benefit costs, assets, and obligations have been determined, accounted for and disclosed in accordance with the requirements of Section 3250 *Retirement Benefits* and Section 3255 *Post-Employment Benefits, Compensated Absences and Terminations Benefits* of the Canadian Institute of Chartered Accountants (CICA) Public Sector – Accounting.
- 25 Events subsequent to the statement of financial position date up to the date hereof have been recognized or disclosed in the financial statements. Further, there have been no events subsequent to the date of the comparative financial statements that would require adjustment of those financial statements and related notes.

**Other**

- 26 We have considered whether or not events have occurred or conditions exist which may cast significant doubt on the municipality's ability to continue as a going concern and have concluded that no such events or conditions are evident.

Yours very truly,

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**Scott Luey**  
**Chief Administrative Officer**

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**Bryan Boles**  
**Director of Corporate Services/Treasurer**

# Appendix C – Internal control letter

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**Grant Thornton LLP**

Suite B  
222 Catharine Street, PO Box 336  
Port Colborne, ON  
L3K 5W1

T +1 905 834 3651  
F +1 905 834 5095

July 18, 2023

**City of Port Colborne**  
66 Charlotte Street  
Port Colborne, ON  
L3K 3C8

Dear Members of Management:

In connection with our audit of the City of Port Colborne consolidated financial statements as of December 31, 2022 and for the year then ended, the Canadian Auditing Standards require that we advise management and Council (hereinafter referred to as "those charged with governance") of the following internal control matters identified during our audit.

### **Our responsibilities**

Our responsibility, as prescribed by the Canadian Auditing Standards, is to plan and perform our audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error or fraud. An audit includes consideration of internal control over financial reporting (hereinafter referred to as "internal control") as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of identifying deficiencies in internal control or expressing an opinion on the effectiveness of the City's internal control. Accordingly, we express no such opinion on internal control effectiveness.

### **Identified deficiencies in internal control**

We identified the following internal control matters as of the date of this letter that are of sufficient importance to merit your attention.

### **Significant deficiencies**

Our consideration of internal control would not necessarily identify all deficiencies in internal control that, individually or in combination, may be material weaknesses or significant deficiencies.

A deficiency in internal control ("control deficiency") exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the City's annual or interim financial statements will not be prevented or detected on a timely basis. A significant deficiency is a deficiency, or a

combination of deficiencies, in internal control over financial reporting that is less severe than a material weakness, yet important enough to merit attention by those responsible for oversight of the City's financial reporting (also referred to as those charged with governance).

We consider the following identified control deficiencies to be significant deficiencies.

## **Information Technology**

### **Segregation of duties and assignment of administrator rights**

The following weaknesses have been identified in the information technology system, specifically relating to the assignment of responsibilities and network administrator rights:

The Director of Corporate Services and the Manager, Financial Services have been assigned administrator rights in the financial reporting application. This allows them unrestricted access to all modules of the system, and results in a lack of segregation of duties as they are responsible for the City's financial reporting. Although our audit procedures did not identify any unauthorized or unusual transactions recorded in the financial application by these individuals, the potential exists for unauthorized transactions to be recorded by the administrators and go undetected.

#### Management response

*For the duration of 2022, the Director, Corporate Services did not have administrator rights. That said, the Manager, Financial Services continued to have the rights given the size of the City's Finance department. Other administrators of the financial reporting system include the Manager, Information Technology, and the IT System Business Analyst. A working group consisting of the Director, Corporate Services, the Manager, Financial Services, the Supervisor, Financial Reporting, and the Manager, Information Technology Services, has been formed and meets on trimesterly basis to review both system access rights and journal entry approvals. This mitigating control was in place for all of 2022.*

## **Financial Reporting**

### **Journal entry controls**

The Director of Corporate Services and the Manager, Financial Services have the ability to post journal entries into the financial reporting application. Duties of senior financial reporting personnel should not include the ability to make journal entries as it is important to have an appropriate level of review and authorization over journal entries. Staff members who have responsibility for authorization and approval of journal entries should not have the ability to post entries into the system.

### Management response

*Given the size of the City's Finance department it is not unreasonable for management to have the ability to create journal entries in the event that staff are not available. Management agrees that staff, regardless of position, should not have the ability to both create and approve their own entries. A working group consisting of the Director, Corporate Services, the Manager, Financial Services, the Supervisor, Financial Reporting, and the Manager, Information Technology Services, has been formed and has met to review both system access rights and journal entry approvals. This group meets on a trimesterly basis. This mitigating control was in place for all of 2022.*

### **Management responses**

The Management's written responses to the internal control matters identified herein have not been subjected to our audit procedures and accordingly, we express no opinion on them.

\* \* \*

This communication is intended solely for the information and use of management, those charged with governance, and others within the City and is not intended to be and should not be used by anyone other than these specified parties.

Yours sincerely,

**Grant Thornton LLP**



James D. Brennan, CPA, CA  
Principal

JDB/jf

# Appendix D – PSAS

## Accounting developments

Public Sector Accounting Standards [updated March 31, 2023]	Effective date
<p><b>2022-2023 Annual Improvements to PSAS</b></p> <p>The Public Sector Accounting Board (PSAB) has adopted an annual improvements process to make minor improvements to standards which include clarifying guidance or wording within the standards or correcting relatively minor unintended consequences, conflicts or oversights.</p> <p>The following standards were amended in the 2022-2023 process:</p> <ul style="list-style-type: none"><li>• Section PS 3160 <i>Public Private Partnerships</i> The amendment updated the transitional provisions to explicitly state that early adoption is permitted.</li><li>• Section PS 3420 <i>Inter-Entity Transactions</i> The amendment clarifies that PSG-8 <i>Purchased Intangibles</i> applies to inter-entity transactions</li></ul>	Effective April 1, 2023 (Immediately)

## Strategic plan for not-for-profit organizations in the public sector

Since 2012, government not-for-profit organizations (GNPOs) have been required to adopt PSAS but were given the option of applying the specific GNPO accounting standards (PS 4200 series) in PSAS. Some GNPOs have utilized those standards, while others have not. The PSAB recognized that a “one-size-fits-all” approach may not be appropriate for all stakeholders. In March 2022, having deliberated feedback from two Consultation Papers, the PSAB decided to incorporate the PS 4200 series, with potential customizations, into PSAS as its strategy for GNPOs. This solution was defined as reviewing and amending, as appropriate, the PS 4200 series guidance and incorporating it within the PSA Handbook available for all public sector entities to apply, if appropriate. That is, the existing standards in the PS 4200 series will be reviewed to determine if they should be retained and added to PSAS. This may involve amending standards to update them and ensuring consistency with PSAB’s conceptual framework. The PSAB believes this strategy will likely:

- improve the comparability and understandability of financial statements, as all public sector entities would be applying a common reporting model;
- provide the PSAB with a tool and some flexibility to address matters warranting a different presentation or accounting treatment for GNPOs when appropriate; and
- make some of the guidance currently found only in the PS 4200 series available to all public sector entities with similar transactions, improving comparability and consistent application of accounting standards.

The implementation plan for this strategy was approved at its June 2022 meeting, and an overview of the implementation plan was presented at its December 2022 meeting. The current ordering of standard level projects will start with tangible capital assets as well as contributions (including endowments), then controlled and related entities, finishing with the reporting model. The capital asset project will focus on proposing amendments to Section PS 3150 *Tangible Capital Assets*, as a result of reviewing Section PS 4230 *Capital Assets Held by Not-for-Profit Organizations* and Section PS 4240 *Collections Held by Not-for-Profit Organizations*. PSAB plans to consult stakeholders throughout the implementation phase and issue an Exposure Draft in the Fall of 2023.



# Appendix E – Auditing developments

Canadian Exposure Drafts issued by the AASB	Effective date
<p><b>Potential revisions to CAS 500 <i>Audit Evidence</i></b></p> <p>The current audit evidence standard was issued many years ago. Since then, developments in technology have affected how entities operate and process information and how audits are performed. In December 2020, the IAASB initiated a project to revise the current standard to respond to changes in the business environment. The Exposure Draft proposes several key changes:</p> <ul style="list-style-type: none"><li>• To respond to changes in the information auditors use, including the nature and source of the information, a set of attributes has been developed to enhance the auditor's principle-based judgments related to audit evidence in a wide variety of circumstances. Enhancements and clarifications have also been made regarding the auditor's role when using information prepared by management's expert</li><li>• To modernise the standard and support a principles-based approach that recognises the evolution in technology, new application material has been added, including explanations of how automated tools may affect auditor bias and examples that recognise the use of technology by the entity or the auditor</li><li>• To foster professional skepticism when making judgments about information to be used as audit evidence and sufficient appropriate audit evidence, language has been added to emphasise the importance of maintaining professional skepticism at various stages, such as when attempting to ensure that audit procedures are being designed and performed in an unbiased manner.</li></ul>	<p>The comment period for the Exposure Draft ended on March 15, 2023. It is expected that the effective date for the revised standard will be for periods beginning in 2025, but the exact effective date has not yet been established.</p>

**Subject: 2022 Development Charge Summary**

**To: Council**

**From: Corporate Services Department**

Report Number: 2023-106

Meeting Date: July 18, 2023

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**Recommendation:**

That Corporate Services Department Report 2023-106 be received for information.

---

**Purpose:**

This report is prepared to satisfy the reporting requirements of Section 43 of the *Development Charges Act, 1997*, as amended.

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**Background:**

Pursuant to Section 43 of the *Development Charges Act, 1997*, as amended, the Treasurer of a municipality shall each year give the Council a financial statement (Treasurer's Statement) relating to development charge by-laws and reserve funds.

In addition to providing the Treasurer's Statement to Council, the Treasurer's Statement should also be made available to the public, and, if requested, be provided to the Minister of Municipal Affairs and Housing.

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**Discussion:**

The attached Treasurer's Statement for the period January 1, 2022 to December 31, 2022, was prepared pursuant to Section 43 of the *Development Charges Act, 1997*, as amended.

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## Financial Implications:

Development charges are an important component of the City's long-term financial plan – with underlying principle of growth paying for growth.

While the Treasurer's Statement in Appendix A highlights the balances and transactional activity for the past year, it is important to keep in mind that development charges are still fairly new for the City of Port Colborne and that the City will still be subsidizing growth until January 1, 2024 when development charges will be charged at 100%.

The following tables summarize the City's phased-in approach to development charges as per By-Law No. 6835/97/19 and By-Law No. 6835/85/20.

Property Class	Year 1	Year 2	Year 3	Year 4	Year 5
	October 7, 2019 to December 31, 2020	January 1, 2021 to December 31, 2021	January 1, 2022 to December 31, 2022	January 1, 2023 to December 31, 2023	January 1, 2024 to October 6, 2024
Residential	20%	40%	60%	80%	100%

Property Class	Year 1	Year 2	Year 1	Year 1	Year 1
	October 7, 2019 to October 6, 2020	October 7, 2020 to October 6, 2021	October 7, 2021 to October 6, 2022	October 7, 2022 to October 6, 2023	October 7, 2023 to October 6, 2024
Multi-Residential	0%	0%	0%	50%	100%
Non-Residential	0%	0%	0%	50%	100%

## Strategic Plan Alignment:

The initiative contained within this report supports the following pillar(s) of the strategic plan:

- Service and Simplicity - Quality and Innovative Delivery of Customer Services
- Attracting Business Investment and Tourists to Port Colborne
- City-Wide Investments in Infrastructure and Recreational/Cultural Spaces
- Value: Financial Management to Achieve Financial Sustainability
- Governance: Communications, Engagement, and Decision-Making

**Conclusion:**

Staff recommend that Corporate Services Department Report 2023-106 be received.

---

**Appendices:**

- a. Appendix A - Treasurer's Statement (2022)

Respectfully submitted,

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**Report Approval:**

All reports reviewed and approved by the Department Director and also the City Treasurer when relevant. Final review and approval by the Chief Administrative Officer.

Appendix A - Treasurer's Statement (2022)

City of Port Colborne  
Treasurer's Statement

	Roads	Water	Wastewater	Fire	Public Works	Administration	Parks and Recreation	Library	Parkland	Total
2022										
Opening Balance	28,463	38,751	23,626	2,350	129	3,731	67,453	2,720	475,402	642,625
Add: Development Charges	12,887	22,001	9,502	926		2,118	19,706	974	198,485	266,601
Add: Interest	1,314	1,873	1,068	106	5	180	2,910	121	21,633	29,210
Less: Capital Expenditure										-
Ending Balance	42,664	62,626	34,196	3,383	134	6,030	90,069	3,815	695,519	938,436



**Subject: 2022 Purchasing Summary**  
**To: Council**  
**From: Corporate Services Department**

Report Number: 2023-107

Meeting Date: July 18, 2023

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**Recommendation:**

That Corporate Services Department Report 2023-107 be received for information.

---

**Purpose:**

The purpose of this report is to provide Council with a summary of the City's 2022 purchasing activities.

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**Background:**

The current Purchasing Policy was approved through Report 2021-323 on December 13, 2021. This policy was developed to support the City in obtaining competitive pricing for purchased goods and services in an efficient, timely, and cost-effective manner in accordance with current laws and regulations.

The City's Purchasing Policy includes a requirement to submit an annual summary of the City's procurement activities to Council.

---

**Discussion:**

This 2022 Purchasing Summary highlights purchasing activities at a summarized level.

During 2022, City purchases, excluding payroll, property taxes and utilities, were \$21,109,837. These purchases were made from 2,558 different vendors, with individual purchases ranging from \$5 to \$1,140,834.

The top 10 vendors by total purchases are as follows:

Vendor	Amount (\$)
MCAVOY BELAN & CAMPBELL	1,140,834
RANKIN CONSTRUCTION INC.	1,100,285
STONECAST CONTRACTING LIMITED	757,574
GM BLUEPLAN ENGINEERING LIMITED	720,605
TURKSTRA MODULAR BUILDERS INC	496,994
ASSOCIATED ENGINEERING (ONT) LTD	441,717
SULLIVAN MAHONEY LLP	419,471
YMCA OF NIAGARA	377,554
BRANDT TRACTOR LTD	372,726
MANULIFT EMI LTD	357,959
OTHER	14,924,118
<b>TOTAL</b>	<b>21,109,837</b>

The McAvoy Belan & Campbell was for 18 months of insurance. The City is preparing to do a request for proposal on insurance with a scheduled release date in August. The City's current insurance contract ends December 31, 2023.

The City recovered approximately half of the Sullivan Mahoney LLP amount through third parties. The majority of the difference relates to planning, building, and contract review and negotiations.

Amounts paid to Rankin Construction Inc. relate to resurfacing roads in the City under the City's 2022 Road Resurfacing Program. Rankin Construction Inc. was the Council-approved successful bidder for this program.

A summary of 2022 and year-to-date 2023 procurement activities can be found in Appendix A.

In 2022 there was a total of 38 requests for proposals (RFPs), request for quotes (RFQs), or requests for tenders (RFTs) compared to 18 in 2021.

Helping facilitate these procurement methods was the implementation of the electronic procurement platform Bids and Tenders in April of 2022. The use of an electronic bidding platform streamlines processes, reduces internal administrative labour in the distribution and collection of bids, and encourages more competition on bidding processes.

In January 2023, the City implemented a new purchasing card program that leverages technology to automate the reconciliation process including electronic workflow approvals.

City staff had planned to expand this report to include statistics on collaborative purchasing agreements and vendor geography, however, due to system limitations, this project has been delayed. City staff will continue to work towards the inclusion of this information in future reports.

**Internal Consultations:**

The rollout of the new purchasing policy has been a coordinated effort across the City lead by the City's Purchasing Specialist and Public Works.

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**Financial Implications:**

There are no financial implications associated with this report.

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**Public Engagement:**

Through the application of the Purchasing Policy, City staff engage in public procurement to obtain competitive pricing for goods and services in an efficient, timely, and cost-effective manner.

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**Strategic Plan Alignment:**

The initiative contained within this report supports the following pillar(s) of the strategic plan:

- Value: Financial Management to Achieve Financial Sustainability
  - Governance: Communications, Engagement, and Decision-Making
- 

**Conclusion:**

That Corporate Services Department Report 2023-107 be received for information.

---

**Appendices:**

- a. Appendix A - Summary of 2022 and Year-to-Date Procurement Activity (2023)



Respectfully submitted,

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### **Report Approval:**

All reports reviewed and approved by the Department Director and also the City Treasurer when relevant. Final review and approval by the Chief Administrative Officer.

## Appendix A - Summary of 2022 and Year-to-Date Procurement Activity (2023)

### Procurement Activity (2022)

Type	Description	Vendor(s)	Value (\$) Before HST	Extensions
RFT	Watermain Replacement on Erie Street	Stone Cast Contracting	1,068,429	No
RFT	Construction of (3) Concrete Pads- Sugarloaf Marina, HH Knoll Park,	Stolk Construction	146,790	No
RFP	Design Services for Tennesse Avenue Pillars/Gates/Walls & Firelane Pillars	Wood Environment & Infrastructure Solutions	45,350	No
RFQ	Sewage and Trash Pump Trailers (2)	Rain for Rent Canada	162,708	No
RFQ	Multi-Purpose Debris Collection Vehicle	NexGen Municipal Inc	202,217	No
RFP	Urban Forest Assessment and Mangement Plan	Williams & Associates Forestry	84,700	No
RFT	Asphalt Repair	R. Giffin Construction	40,000	4 Years
RFT	Annual Sidewalk and Curb Repair	CTC Contracting	150,000	No
RFT	City Hall Elevator Modernization	Rooney, Irving & Assoc + Brock Elevator	106,090	No
RFT	City Wide Roadside Grass Mowing	The Greenfield Group	29,464	3 years
RFQ	Equipment/Operator Rental (2022)(Re-Issue)	Various	60,000	No
RFQ	Asphalt Hot Box Trailer	Amaco Equipment	56,180	No
RFQ	Non-Intrusive Sewer Flow Monitoring Equipment	Link Utility Technologies	86,646	No
RFQ	Roads Crack Sealing	Niagara Crack Sealing	46,078	No
RFT	City Wide Annual Sewer Flushing and CCTV Inspection	GFL Environmental	137,349	1 year
RFP	Pollution Prevention Control Plan Update Study	GM BluePlan	248,970	No
RFQ	Cube Van	Cancelled	91,560	No
RFQ	Fleet - Telescopic Handler	Manulift EMI LTEE	316,778	No
RFQ	ENG Design of Watermain on Davis, Homewood and Berkley	Associated Engineering	302,147	No
RFP	HR Management & Information Systems Review	HR Strategies Consulting	40,000	No
RFP	City Wide Insurance	Cancelled	N/A	N/A
RFT	City Wide Line Painting	Apex Pavement Markings	52,000	No
RFP	Investigation of Innovative Stormwater Management Solutions for Omer Drainage	Associated Engineering	89,950	No
RFP	Active Transportation Master Plan	McIntosh Perry Ltd	70,616	No
RFT	Maintenance Hole Repair & Mainline Sewer Lining	Sewer Technologies	152,708	1 year
RFP	Hosted Telephony Related Equipment	Cancelled	N/A	N/A
RFP	Promenade Concrete Pads - Eginering	CIMA+	9,860	No
RFP	Engineering/Soil Sampling for Marina King Street Expansion	GHD	15,100	No
RFP	White Road Guide Rail Replacement	Peninsula Construction	94,000	No
RFQ	Firelane Topographic Surveys	The Larocque Group	17,500	No
RFT	Roads Winter Equipment Rental	No Bids	N/A	N/A
RFT	Equipment/Operator Rental (as needed)	Multiple Awards (10 Suppliers)	Est. \$60,000	1 year
RFT	Winter Rental Tandem Dump Truck	Infinity Truck & Auto Ltd.	74,000	1 year
RFP	Fire Truck Replacement	Dependable Emergency Vehicles (DEV)	894,050	No
RFQ	Vale Centre Arena Chiller Replacement	Black & McDonald Ltd.	272,858	No
RFQ	Water By-Law Update	Associated Engineering	24,750	No
RFQ	Building Condition Assessments	McIntosh Perry Ltd	107,300	No
NSPAF	City Property and Liability Insurance	McAvoy, Belan & Campbell Insurance	565,232	No
NSPAF	Modernize Council Chambers Audio/Visual Technology	Applied Electronics	66,000	No
N/A	ECDM Plan Update	Blackstone Energy Services	31,650	No

RFP Request for Proposal

RFQ Request for Quote

RFT Request for Tender

Single Sourced utilizing Non-Standard Procurement

NSPAF Authorization Form approved by Procurement Review Committee

## Appendix A - Summary of 2022 and Year-to-Date Procurement Activity (2023)

### Procurement Activity (2023 to-date @ June 5, 2023)

Type	Description	Vendor(s)	Value (\$) Before HST	Extensions
RFP	Regulatory Sign Inventory/Retro-reflectivity Project	Advantage Data Collection Ltd	23,169	No
RFP	Welland Street Multi Use Trail	TBD	TBD	No
RFP	Clarke Area Inflow and Infiltration and Reduction Project	Civica Infrastructure Inc.	250,226	No
RFT	By-Law Property Refuse/Debris Removal, Grass Mowing, Snow Removal & Repair	Multiple ( 7 Vendors) as needed.	TBD	2 years
RFP	Citywide Signage Update	TBD	TBD	TBD
RFT	Neff Street Storm Sewer Repair	TBD	TBD	No
RFP	Fleet Replacement (3) 1500 & (3) 2500 Pickup Trucks	Oakville Dodge & Applewood Chevrolet	328,982	No
RFT	Annual Road Resurfacing	TBD	TBD	TBD
RFP	HH Knoll Park Lighting Project	Ground Aerial Maintenance Services (GAMS)	120,580	No
RFQ	Engineering Design Standards	LEV Project Services Inc.	34,960	No
RFQ	HH Knoll Lakeview Park Pedestrian Bridge Bearing Repairs	GHD(Eng Design)& Rankin Construction	61,865	No
RFT	West Street Promenade Sidewalk	Gauboc Construction	94,700	No
RFP	Nickel Beach Parking Lots	Multiple	Est. \$500,000	No
RFP	Stormwater Inventory , Cleaning & Condition Accessment	GFL Environmental	TBD	No
RFP	Demolition of 11 King Street	WIN, PC Quarries, Anthony's Excavating	2,746	No
RFP	Invertose Drive Servicing Extension	CIMA & O'Hara Trucking and Excavating	99,301	No
RFP	Development of Transportation Master Plan RFP	Level Project Management	14,300	No
RFQ	Roselawn Theatre Entry Renovation	TBD	TBD	No
RFQ	Library Elevator Condition Accessment	Rooney, Irving & Associates	1,100	No
RFQ	Wastewater, Storm O & M Manuals	GM Blueplan	54,620	No
RFQ	City Hall Offices Renovation	King Construction	15,520	No
RFP	City Hall Roof Restoration	Flynn Canada	424,720	No
RFP	Fleet Replacement Backhoes (1) Water (1) Roads	Toromont CAT Hamilton	446,481	No
RFT	Cleaning and Painting of Municipal Fire Hydrants	TBD	TBD	No
RFT	Lions Field Park Design	TBD	TBD	No
NSPAF	Scope Change to include Omer Capacity Investigation to PPCP (RFP-2022-19)	GM Blueplan	77,752	No
RFP	Victoria Park Playground Refresh	TBD	TBD	No

RFP Request for Proposal

RFQ Request for Quote

RFT Request for Tender

Single Sourced utilizing Non-Standard Procurement

NSPAF Authorization Form approved by Procurement Review Committee

**Subject: Appointments to Committees**

**To: Council**

**From: Corporate Services Department**

Report Number: 2023-131

Meeting Date: July 18, 2023

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**Recommendation:**

That Corporate Services Department Report 2023-131 be received;

That the applicants listed in Confidential Appendix A of Corporate Services Department Report 2023-131 be appointed to the respective Committees at the pleasure of Council up to the term specified in Appendix A, or until such time as successors are appointed; and

That Councillor Tim Hoyle be appointed as the Council representative on the Mayor's Youth Advisory Committee for a term ending November 14, 2026.

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**Purpose:**

The purpose of this report is to obtain approval regarding appointments to the Environmental Advisory Committee, Grant Allocation Advisory Committee, Mayor's Youth Advisory Committee, and Senior Citizens Advisory Committee.

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**Background:**

In 2006, staggered terms were introduced for many of the City's boards and committees and citizens were appointed for terms of two, three, or four years. Future appointments were to be four-year terms in order to maintain the staggered structure established by the 2006 appointments. Council's current policy regarding the appointments to boards and committees was adopted by Council on November 10, 2008. A copy of the policy is available on the City's website.

New appointments to fill vacancies and expired terms are for a four-year term. Notice was provided by staff liaisons to each board/committee member with an expiring term.

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## **Discussion:**

At the end of 2022, the Clerk's Division postponed recruitment for citizen boards and committees due to the review of all advisory committees' terms of reference. Members whose terms expired at the end of 2022 were permitted to continue attending meetings until recruitment occurred. Moving forward, recruitment will take place annually in the fall for terms to begin in January of the following year.

Recruitment took place from June 14, 2023 to end of day June 30, 2023 for the following citizen committees:

- Environmental Advisory Committee
- Grant Allocation Advisory Committee
- Mayor's Youth Advisory Committee
- Senior Citizens Advisory Committee

The Clerk and Deputy Clerk reviewed the applications and consulted the respective board/committee staff liaison for input. A list was then prepared to indicate staff's recommended appointees based on work/volunteer experience, education, skills, and specialized knowledge. The list of recommended appointees to the above-mentioned committees is attached as Confidential Appendix A. The list of citizens that are not recommended to be appointed to these committees is attached as Confidential Appendix B.

If Council approves the applicants listed in Confidential Appendix A as is, then this appendix will become public record by being attached to the minutes and the successful appointees will be notified later this week. If Council wishes to discuss Confidential Appendix A, then they may pass a motion to go into Closed Session. The list will then be brought forward at the next open Council meeting for approval.

Additionally, the newly established Mayor's Youth Advisory Committee requires a Council representative to be appointed as a non-voting member to act as a liaison to the Committee. Council appointments to committees are made on the basis of interest and the requirements of the Committees, while meeting the needs of the community and striving for a balance in workload requirements. The City Clerk has sought and subsequently received interest as it relates to being appointed to the Mayor's Youth Advisory Committee.

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## **Internal Consultations:**

The Clerk's Division obtained input from the various staff liaisons assigned to each respective committee regarding the applications received. The staff liaisons contributed to the recommendations made in Confidential Appendix A.

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## **Financial Implications:**

There are no financial implications.

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## **Public Engagement:**

Advertisements regarding recruitment were posted on the City's website, social media channels, in community centres, at local high schools and in the local newspaper. Applications from persons wishing to stand for appointment (or reappointment) were accepted from June 14, 2023 until end of day on June 30, 2023.

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## **Strategic Plan Alignment:**

The initiative contained within this report supports the following pillar(s) of the strategic plan:

- Attracting Business Investment and Tourists to Port Colborne
  - People: Supporting and Investing in Human Capital
  - Governance: Communications, Engagement, and Decision-Making
- 

## **Conclusion:**

Staff have prepared this report to obtain approval regarding appointments to the Environmental Advisory Committee, Grant Allocation Advisory Committee, Mayor's Youth Advisory Committee and Senior Citizens Advisory Committee. The list of recommended appointees is attached as Confidential Appendix A.

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## **Appendices:**

- a. Confidential List of Recommended Appointees to Citizen Committees
- b. Confidential List of Applicants Not Recommended to Citizen Committees

**Note: Confidential appendices will be circulated under separate cover.**

Respectfully submitted,

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Charlotte Madden  
City Clerk  
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**Report Approval:**

All reports reviewed and approved by the Department Director and also the City Treasurer when relevant. Final review and approval by the Chief Administrative Officer.



## Legislative Services

June 29, 2023

Sent via email: [premier@ontario.ca](mailto:premier@ontario.ca)

The Honourable Doug Ford  
Premier of Ontario  
Legislative Building, Queen's Park  
Toronto, ON M7A 1A1

Honourable and Dear Sir:

**Re: Impact on Woodbine's Race and Stay Program on the Fort Erie Race Track**

Please be advised the Municipal Council of the Town of Fort Erie passed the following resolution at its meeting of June 26, 2023:

**Whereas** the Fort Erie Race Track is one of only two thoroughbred horse racing facilities in the Province of Ontario, having been established in 1897 and operating continuously since then; and

**Whereas** in recent years, the Fort Erie Race Track has been the primary host facility for the "B" circuit of thoroughbred racing, while the Woodbine track in Toronto has been the primary facility for "A" circuit thoroughbred racing; and

**Whereas** both race tracks host "jewel" races in Ontario Triple Crown of Horse Racing; and

**Whereas** the Ontario Racing Commission, an agency created by the Government of Ontario, regulates horse racing; and

**Whereas** the provincial government has strategies and policies in place to develop and encourage the horse racing industry in Ontario, including funding and incentive programs to grow and expand the industry in the province; and

**Whereas** the Fort Erie and Woodbine Race Tracks are both beneficiaries of these programs; and

**Whereas** Woodbine Entertainment, the owners of the Woodbine track, adopted a stall policy in May 2017, referred to as "Race and Stay," that prevents horses from stabling at Woodbine if they leave to race at another track more than once, except for races with a purse of more than \$20,000; and

.../2

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Mailing Address:

The Corporation of the Town of Fort Erie  
1 Municipal Centre Drive, Fort Erie ON L2A 2S6

Office Hours 8:30 a.m. to 5:00 p.m. Phone: (905) 871-1600 FAX: (905) 871-4022

Web-site: [www.forterie.ca](http://www.forterie.ca)



**Whereas** The Municipal Council of the Town of Fort Erie passed a resolution on May 15, 2017, requesting that the Ontario Racing Commission immediately prohibit Woodbine Entertainment from implementing the Race and Stay program and limitations on the movement of horses between Woodbine and the Fort Erie Race Track; and

**Whereas** the Mayor and members of Fort Erie Council met with the Minister of Economic Development and Growth at the 2017 Association of Municipalities of Ontario conference to discuss the negative impacts of the Woodbine Race and Stay stall program on the Fort Erie Race Track; and

**Whereas** the Mayor and members of Fort Erie Council met virtually with officials with the Minister of Finance during the 2020 Association of Municipalities of Ontario conference to again discuss the Woodbine Race and Stay stall policy and the negative impacts it has on the Fort Erie Race track; and

**Whereas** the Mayor and members of Fort Erie Council met with the Parliamentary Assistant to the Minister of Finance at the 2022 Association of Municipalities of Ontario conference to again discuss Woodbine's Race and Stay program and the negative impacts it continues to have on the Fort Erie Race Track; and

**Whereas** representatives of the Fort Erie Live Racing Consortium have launched a challenge with the Competition Bureau to determine whether Woodbine Entertainment's actions constitute an attempt to create an illegal monopoly; and

**Whereas** Woodbine's Race and Stay policy continues to remain in effect through the 2023 racing season; and

**Whereas** Woodbine's Race and Stay policy continues to have a devastating impact on the ability of the Fort Erie Race Track to operate successfully and grow Ontario horse racing under provincial objectives; and

**Whereas** the Fort Erie Race Track is a job creator in Fort Erie and the surrounding region, both directly and indirectly, and has contributed to the local economy as well as the history and culture of the area since 1897;

**Now therefore be it resolved,**

**That:** The Municipal Council of the Town of Fort Erie again requests that the Alcohol and Gaming Commission of Ontario immediately prohibit Woodbine Entertainment from continuing the Race and Stay stall policy; and further

**That:** The Provincial Government put in place a long-term policy to encourage competition and diversification of horse racing in Ontario that would prevent any single race track from using their market position to create an unfair monopoly on horse racing in Ontario, including but not necessarily limited to implementing policies that would prohibit monopolistic policies like Woodbine's Race and Stay; and further

.../3

**That:** The Alcohol and Gaming Commission of Ontario, Ontario Racing Commission and the Provincial Government recognize the contributions of the Fort Erie Race Track to the growth, history and culture of horse racing in the province of Ontario; and further

**That:** Staff circulate this resolution to the race tracks that host standard bred races and the municipalities that those race tracks reside in, including: Clinton Raceway and the Municipality of Central Huron, Dresden Raceway and the Municipality of Chatham-Kent, Flamboro Downs and the Municipality of Hamilton, Georgian Downs and the Municipality of Barrie, Grand River Raceway and the Municipality of Centre Wellington, Hanover Raceway and the Municipality of Hanover, Hiawatha Horse Park and the Municipality of Sarnia, Kawartha Downs and the Municipality of Cavan Monaghan, Leamington Raceway and the Municipality of Leamington, The Raceway at Western Fair and the Municipality of London, and Rideau Carleton Raceway and the Municipality of Ottawa, and;

**That:** Staff circulate this resolution to the Regional Council of Niagara and all local area municipalities within the Regional Municipality of Niagara for their endorsement and support.

Thank you for your attention to this matter.

Kind regards,



Ashlea Carter, AMP  
Deputy Clerk

[acarter@forterie.ca](mailto:acarter@forterie.ca)

AC:dlk

cc: The Honourable Peter Bethlenfalvy, Ontario Minister of Finance, [Peter.Bethlenfalvy@pc.ola.org](mailto:Peter.Bethlenfalvy@pc.ola.org)  
The Honourable Lisa Thompson, Minister of Agriculture, Food and Rural Affairs, [Lisa.Thompson@pc.ola.org](mailto:Lisa.Thompson@pc.ola.org)  
Marit Styles, Leader of His Majesty's Loyal Opposition in Ontario, [MStiles-QP@ndp.on.ca](mailto:MStiles-QP@ndp.on.ca)  
John Fraser, Interim Leader of the Ontario Liberal Party, [jfraser.mpp.co@liberal.ola.org](mailto:jfraser.mpp.co@liberal.ola.org)  
Mike Schreiner, Leader of the Green Party of Ontario, [mschreiner@ola.org](mailto:mschreiner@ola.org)  
Wayne Gates, MPP for Niagara Falls, [WGates-QP@ndp.on.ca](mailto:WGates-QP@ndp.on.ca)  
Jeff Burch, MPP Niagara Centre, [JBurch-QP@ndp.on.ca](mailto:JBurch-QP@ndp.on.ca)  
Alcohol and Gaming Commission of Ontario [customer.service@agco.ca](mailto:customer.service@agco.ca) / [inquiry@ontarioracingcommission.ca](mailto:inquiry@ontarioracingcommission.ca)  
The Fort Erie Live Racing Consortium [jthibert@forterieracetrack.ca](mailto:jthibert@forterieracetrack.ca)  
Clinton Raceway [jessicacarnochan@gmail.com](mailto:jessicacarnochan@gmail.com)  
Municipality of Central Huron [cao@centralhuron.com](mailto:cao@centralhuron.com)  
Dresden Raceway [jflemming@clintonraceway.com](mailto:jflemming@clintonraceway.com)  
Municipality of Chatham-Kent [JUDYS@chatham-kent.ca](mailto:JUDYS@chatham-kent.ca)  
Flamboro Downs [judy.floss@flamborodowns.com](mailto:judy.floss@flamborodowns.com)  
City of Hamilton [clerk@hamilton.ca](mailto:clerk@hamilton.ca)  
Georgina Downs [cgate@gcgaming.com](mailto:cgate@gcgaming.com)  
City of Barrie [wendy.cooke@barrie.ca](mailto:wendy.cooke@barrie.ca)  
Grand River Raceway [crozema@grandriverraceway.com](mailto:crozema@grandriverraceway.com)  
Township of Centre Wellington [jennifera@wellington.ca](mailto:jennifera@wellington.ca)  
Hanover Raceway [hanoverraceway@wightman.ca](mailto:hanoverraceway@wightman.ca)  
Town of Hanover [btocheri@hanover.ca](mailto:btocheri@hanover.ca)  
Hiawatha Horse Park [info@hiawathahorsepark.com](mailto:info@hiawathahorsepark.com)  
City of Sarnia [clerks@sarnia.ca](mailto:clerks@sarnia.ca)  
Kawartha Downs [daniel@kawarthadowns.com](mailto:daniel@kawarthadowns.com)  
Township of Cavan Monaghan [cpage@cavanmonaghan.net](mailto:cpage@cavanmonaghan.net)  
Leamington Raceway [Wmartinuk@arlentool.com](mailto:Wmartinuk@arlentool.com)  
Municipality of Leamington [clerks@leamington.ca](mailto:clerks@leamington.ca)  
The Raceway at Western Fair [telliott@westernfairdistrict.com](mailto:telliott@westernfairdistrict.com)  
City of London [csaunders@london.ca](mailto:csaunders@london.ca)  
Rideau Carleton Raceway - sent via mail  
City of Ottawa [Rick.Oconnor@ottawa.ca](mailto:Rick.Oconnor@ottawa.ca)  
Niagara Region and Local Area Municipalities

**Report To: Board of Directors**

**Subject: Agreement of Services with Municipalities as required under the Conservation Authorities Act Phase 1 Regulation**

**Report No: FA-28-23**

**Date: June 16, 2023**

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**Recommendation:**

1. **THAT** Report No. FA-28-23 RE: Agreements of Services with Municipalities as required under the Conservation Authorities Act Phase 1 Regulation **BE RECEIVED**.
2. **THAT** staff **BE DIRECTED** to circulate the draft Agreement of Services, as appended, for discussion with NPCA's partner municipalities as part of the 2024 Budget process, related to Category 2 and 3 Programs and Services.
3. **THAT** this report **BE CIRCULATED** to NPCA's partner (funding) municipalities, lower-tier municipalities, Ministry of Natural Resources and Forestry (MNRF) and Ministry of Environment Conservation and Parks (MECP).
5. **THAT** the final Agreements of Services **BE PRESENTED** to the NPCA Board of Directors for final approval.
6. **AND FURTHER THAT** the final executed Agreements of Services **BE POSTED** online as required by the Conservation Authorities Act.

**Purpose:**

The purpose of this report is to update the Board of Directors on ongoing municipal consultations and seek direction on Memorandums of Understandings and Service Level Agreements (i.e. Agreements of Services) with Partner Municipalities as required under the *Conservation Authorities Act* Phase 1 Regulation to be delivered by January 1, 2024, as per the Act Transition requirements.

## Background:

The Phase 1 Regulations requires Conservation Authorities (CAs) to prepare an Inventory of Programs and Services and circulate the Inventory to all participating (funding) municipalities, as well as other lower-tier municipalities with whom the CA intends to enter into an Agreement of Services. The Inventory was required to be submitted to the Ministry of Environment, Conservation and Parks (MECP) and municipalities by February 28, 2022 and changes to the Inventory are allowed after that date in response to municipal feedback.

On February 18, 2022 the Board approved NPCA's Inventory of Programs and Services (FA -03-22) recommending:

**"THAT** Report No. FA-03-22 RE: Conservation Authorities Act – Update on Inventory of Programs/Services **BE RECEIVED** for information.

**THAT** the Inventory of Programs and Services **BE SUBMITTED** to the Ministry of Environment Conservation and Parks (MECP) as required under Ontario Regulation 687/21 and **CIRCULATED** to participating municipalities;

**THAT** the Inventory of Programs and Services **BE SHARED** with NPCA jurisdiction municipalities, as appropriate, throughout 2022-2023 to inform discussions related to NPCA services;

**AND FURTHER THAT** the Final Programs and Services Inventory **BE SUBMITTED** to MECP at the end of the Conservation Authorities Act Transition period along with a copy of Municipal Agreements."

Ontario Regulation 687/21: Transition Plans and Agreements for Programs and Services (as amended) requires CAs to execute Agreements for Services with participating (funding) municipalities by January 1, 2024. Agreements are only required for Programs and Services under Category 2 and 3 below:

Category 2: Municipal programs and services provided at the municipality's request. These programs can be funded through government and other agency grants and/or municipal funding under a MOU or agreement with the municipality.

Category 3: Other programs and services that an Authority (Board) determines are advisable. These programs can be funded through self-generated revenue, user fees, government and other agency grants, donations, etc. Any use of municipal funding will require an agreement and would be subject to cost apportioning.

## Discussion

Discussions are ongoing with NPCA's municipal partners since February 2022. The Inventory of Programs and Services has also been updated based on input from Niagara Region. The Inventory has provided the basis for discussions with participating (funding) municipalities for the provision of municipally requested programs and services.

The attached Draft 1 "NPCA Agreement for Services" template has been coordinated with neighboring CA's and Conservation Ontario and will be updated, as required, by municipal review during the Budget process.

The deadline for execution of agreements with participating (funding) municipalities for Category 2 and Category 3 programs and services, remains January 1, 2024. Should an extension be required, the written request for extension must be submitted to the Minister on or before October 1, 2023.

NPCA staff continue to carry out discussions and Agreement of Services development with participating (funding) municipalities in accordance with the timelines set out in NPCA's Transition Plan and as part of the 2024 Budget process.

Lower-tier municipalities in Niagara Region, which are not levied for CA services, can enter into Agreements of Services on a fee-for-service basis when a local municipality wishes to procure NPCA to deliver services that are not procured through the Regional municipality. It is important to note that the NPCA can no longer provide natural heritage review services under prescribed legislation such as the *Planning Act*.

Over the past few years, NPCA has initiated meetings with lower-tier municipalities to understand the needs of each municipality, as well as helping partner municipalities understand the information and expertise available through NPCA services. Agreements with lower-tier municipalities will be negotiated and executed on a longer time frame as the need for these services emerge.

All Agreements for Services will be brought back to the Board of Directors for final approval and will be posted on the NPCA website for full transparency.

### **Financial Implications:**

There is no immediate financial impact due to carrying out the recommendations above. However, it should be noted that significant amount of staff time is being invested in completing *Conservation Authorities Act* transition requirements.

### **Related Reports and Appendices:**

Appendix 1 – Draft NPCA Agreement of Services

### **Links To Policy/Strategic Plan:**

NPCA is required to execute Agreements of Services for Category 2 and 3 services with Partner Municipalities under the updated *Conservation Authorities Act*.

Strategic Plan Strategy: Financial Sustainability and Partner of Choice

Goal 4. 1 Strengthen Government relations towards collective outcomes and impact.

Goal 6.1 Ensure responsible, sustainable, and sound fiscal practices.

**Submitted by:**

*Original Signed by:*

Chandra Sharma, MCIP, RPP  
Chief Administrative Officer/Secretary-Treasurer



## AGREEMENT FOR SERVICES

**THIS AGREEMENT** dated this \_\_\_\_ day of \_\_\_\_\_, 2023.

**BETWEEN:**

**NIAGARA PENINSULA CONSERVATION AUTHORITY**  
(hereinafter called the "NPCA")

OF THE FIRST PART

– and –

\_\_\_\_\_,  
(Hereinafter called the "Municipality")

OF THE SECOND PART

**WHEREAS** the NPCA is a Conservation Authority established under the Conservation Authorities Act ("Act") and is governed by its members appointed by participating municipalities in accordance with the Act;

**AND WHEREAS** the Participating Municipality is located wholly or in part within the area under the jurisdiction of NPCA;

**AND WHEREAS** the Municipality is a lower tier Municipality in the Region of Niagara located wholly or in part within the area under the jurisdiction of NPCA;

**AND WHEREAS**, pursuant to the Act, Conservation Authorities are permitted to provide non-mandatory programs and services under a memorandum of understanding or such other agreement as may be entered into with a Participating Municipality;

**AND WHEREAS** the Participating Municipality is requesting the NPCA to deliver non-mandatory programs and services within NPCA's area of expertise and jurisdiction, that fall within the Services Areas attached hereto as Schedule "A";

**AND WHEREAS** the NPCA proposes and is prepared to provide certain non-mandatory services to the Municipality, attached hereto as Schedule "A";

**AND WHEREAS** the Council of the Participating Municipality has authorized the Participating Municipality to enter into this Agreement for Services with the NPCA for the delivery of programs and;

**AND WHEREAS** under the *Act*, certain programs and services may be provided at the request of participating municipalities, outside of the budget and apportionment process, through individual procurement agreements, which agreement are not affected or precluded by means of this Agreement for Services;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained in this Agreement for Services, including the exchange of promises it contains, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### **Scope and Use**

1. The NPCA agrees to provide to the Participating Municipality the non-mandatory services attached hereto as Schedule "A".
2. Notwithstanding the foregoing, the Participating Municipality acknowledges and agrees that all programs and services identified in Schedule "A" also be included in a Watershed-based resource management strategy that the NPCA is required to develop and implement under the *Act*.

### **Term of Agreement**

3. The term of this Agreement shall be for a period of five (5) years commencing on January 1, 2024 and running until December 31, 2028 (the "**Initial Term**"),
4. This Agreement shall be reviewed by the parties within six months of the end-date of the Initial Term for the purpose of determining whether or not this Agreement for Services is to be renewed by the parties, and discussing the terms of any renewal, including, but not limited to, whether any changes will be made to the non-mandatory programs and services attached hereto as Schedule "A". It shall be the NPCA's responsibility to initiate the review with the Participating Municipality.
5. The NPCA and the Participating Municipality may renew this Agreement for Services for an unlimited number of additional five (5) year terms (the "**Renewal Term(s)**"), provided that any renewed Agreement for Services must also be reviewed by the parties six months prior to the end-date of any such Renewal Term(s), as set out in paragraph 4, above.
6. This Agreement for Services may be terminated by either party prior to the end of the Initial Term or any Renewal Term(s), upon delivery of a written "Notice of Early Termination" as per the Notice clause 19, below, from the terminating party to the non-terminating party at least six months before the early termination date, which date is to be specified in the written "Notice of Early Termination".



7. The Participating Municipality and NPCA will strive to facilitate open and timely communication at all levels. The resolution of disputes that may arise between the parties to this Agreement for Services during the Initial Term and/or any Renewal Term(s) shall be subject to alternative dispute resolution for the settling of disputes outside the Court system, which shall include, first, a mediation to be conducted by a mutually agreed-upon mediator at such time as may be mutually agreed upon by the NPCA and the Participating Municipality, and, second, should mediation be unsuccessful, an arbitration to be conducted by a mutually agreed-upon arbitrator at such time and pursuant to such procedural rules as may be mutually agreed upon by the NPCA and the Participating Municipality. The cost of any mediation and/or arbitration shall be borne in equal shares by the NPCA and Participating Municipality.
8. The NPCA will not add to or delete from the services or programs funded through the levy without first consulting with the Participating Municipality and entering into a written agreement to this Agreement for Services with the Participating Municipality.
9. The Participating Municipality acknowledges and agrees that by executing this Agreement for Services, it is confirmed that the terms of this Agreement for Services have been reviewed and approved by a resolution of the Council of the Participating Municipality.
10. This Agreement for Services does not preclude the parties identifying or entering into agreements with respect to opportunities for further collaboration to the benefit of both parties, and is intended to ensure efficiency, transparency and accountability in the use of resources, including in-kind services and assistance, coordination of complementary policy and program initiatives and projects involving third parties.
11. The resolution of the NPCA Board of Directors to execute this Agreement for Services shall be attached hereto as Schedule 'B'.
12. The resolution of Council of the Participating Municipality to execute this Agreement for Services shall be attached hereto as Schedule 'C'.

#### **Agreement for Services Available to the Public**

13. As required by the *Act* and/or its regulations, this Agreement for Services shall be made available to the public, including on the NPCA website.

#### **Fees and Payment**

14. The costs associated with non-mandatory programs and services falling within Category 2 and/or 3 under the *Act* and/or its regulations shall, subject to this Agreement for Services, be reviewed by the parties on an annual basis as part of

the NPCA annual budget (operating and capital) approval process, in line with budget guidelines.

15. NPCA's final approved budget shall be appended annually hereto as Schedule 'D'.
16. The fees apportioned to the Participating Municipality will be calculated annually using the Modified Current Value Assessment (MCVA) or the benefit based method, unless otherwise noted as being attributable directly to the Participating Municipality as a special benefiting levy in Schedule 'A'.
17. NPCA may charge a user fee in the delivery of any programs and services listed in Schedule 'A', as appropriate, to assist with costs of NPCA programs or services provided under this Agreement for Services. Such user fees shall only be imposed in accordance with NPCA's Fee Policy and Fee Schedules adopted in accordance with the provisions of the *Act*, or otherwise in accordance with provisions set out in an agreement between NPCA and the Participating Municipality.
18. An 'Annual Notice to Pay' shall be sent to the Participating Municipality following NPCA budget approval and payment for annual fees shall be made by the Participating Municipality in four quarterly installments by the end of each fiscal quarter in each calendar year.

## Notice

19. Any notice in respect of this Agreement for Services shall be in writing and shall be sufficiently given or made if made in writing and either delivered in person during normal business hours of the recipient on a business day to the party for whom it is intended to the address as set out below, or sent by registered mail or by email addressed to such party as follows:

- (1) in the case of the Municipality, to:  
[Participating Municipality]

[Address]

Attention: [Name]

Email: [Email address]

- (2) in the case of NPCA, to:  
Niagara Peninsula Conservation Authority  
250 Thorold Road West, 3<sup>rd</sup> Floor  
Welland, ON - L3C 3W2

Attention: Chandra Sharma, CAO/Secretary-Treasurer

Email: csharma@npca.ca

or to such other addresses as the parties may from time to time set out in writing, and any notice so made or given shall be deemed to have been duly and properly made or given and received on the day on which it shall have been so delivered or, if mailed, then, in the absence of any interruption of postal service affecting the delivery or handling thereof, on the third business day after the date of mailing.

### **Force Majeure**

20. Neither party shall be in default with respect to the performance or non-performance of the terms of this Agreement for Services resulting directly or indirectly from causes beyond its reasonable control (other than for financial inability) that could not reasonably have been foreseen, including, without limitation, any delay caused by war, invasion, riots, acts of terrorism or sabotage, acts of government authority (other than by the Participating Municipality), plague, epidemic, pandemic, natural disaster, strike, lock-out, inability to procure material, or other cause, and the performance of such term or terms shall be extended for a period equivalent to the period of such delay. This provision should not relieve the Participating Municipality of its obligation to pay fees and costs when due.

### **Governing Law**

21. This Agreement for Services shall be 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 the locus of contract.

### **No Agency**

22. Nothing herein contained shall make or be construed to make the Participating Municipality or the NPCA a partner of one another nor shall this Agreement for Services be construed to create a partnership, joint venture, principal-agent relationship or employment relationship in any way or for any purpose whatsoever between the Participating Municipality or the NPCA or between the Participating Municipality, the NPCA and a third party. Nothing in this Agreement for Services is to be construed as authorizing one of the NPCA or the Participating Municipality to contract for or to incur any obligation on behalf of the other of them or to act as agent for the other of them. Any reference herein to the Participating Municipality shall be interpreted to include its boards, agencies, commissions, and subsidiary operations.

### **Invalidity of any Provision**

23. If any provision of this Agreement for Services is invalid, unenforceable or unlawful, such provision shall be deemed to be deleted from this Agreement

for Services and all other provisions shall remain in full force and effect and shall be binding in all respects between the parties hereto.

### **Further Assurances**

24. The Parties hereto agree to execute and deliver to each other such further written documents and assurances from time to time as may be reasonably necessary to give full effect to the provisions of this Agreement for Services.

### **Amendments**

25. This Agreement for Services cannot be altered, amended, changed, modified, or abandoned, in whole or in part, except by written agreement executed by the parties, and no subsequent oral agreement shall have any validity whatsoever.

### **Binding Agreement**

26. This Agreement for Services shall ensure to the benefit and be binding upon the parties hereto and their respective heirs, executors, representatives and successors permitted hereunder.

### **Execution**

27. This Agreement for Services may be executed in counterparts and when each party has executed a counterpart, each of such counterparts shall be deemed to be an original and all of such counterparts, when taken together, shall constitute one and the same agreement.

**IN WITNESS WHEREOF** the Participating Municipality and the NPCA have signed this Agreement for Services on the following page.

*[Signature page follows]*

**SIGNED, SEALED AND DELIVERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2023.**

NIAGARA PENINSULA CONSERVATION AUTHORITY

Per: \_\_\_\_\_  
Chair – Robert Foster

Per: \_\_\_\_\_  
Chief Administrative Officer/Secretary-Treasurer – Chandra Sharma

*I/we have the authority to bind the Corporation*

**SIGNED, SEALED AND DELIVERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2023.**

NIAGARA REGION / CITY OF HAMILTON / COUNTY OF HALDIMAND

Per: \_\_\_\_\_  
Mayor -

Per: \_\_\_\_\_  
TBD water

*I/we have the authority to bind the Corporation*

**Schedule 'A'**  
**To be provided to Municipalities**

DRAFT

**Schedule 'B'**  
**NPCA Board Approval Resolution**  
**2024 Budgets and Municipal Levies**

DRAFT

**Schedule 'C'**  
**Niagara Region (City of Hamilton, Haldimand County)–**  
**Council Approval Resolution**  
**NPCA 2024 Budgets and Municipal Levies**

DRAFT



**Schedule 'D'**  
**NPCA 2024 Budgets and Municipal Levies**

DRAFT

June 29, 2023

Hon. Stephen Lecce  
Minister of Education  
[Stephen.Lecceco@pc.ola.org](mailto:Stephen.Lecceco@pc.ola.org)

***Via email***

RE: recommendation for amendment to the current regulations for licensed home-based childcare operators to increase allowable spaces.

Dear Minister Lecce,

During the June 26, 2023 regular meeting of council, council in response to recent publicly raised concern heard a report from staff in relation to the above, with the following resolution passed:

Moved: Liz Welsh

Seconded: Chad Hyatt

WHEREAS in response the Petrolia Childcare Advocacy Group's recent delegation to Council where they identified a shortage of child care spaces in the Town of Petrolia; and

WHEREAS through additional research undertaken by the Town Staff, and in consultation with the County of Lambton Social Services, it has been further identified that there is an extreme shortage of child care spaces not only across the County but the Province as a whole; and

WHEREAS in response to the identified need the County hosted a community information night to educate members of the public who may be able to offer a licensed home-based child care service;

NOW THEREFORE **the Council of the Town of Petrolia recommends to the Hon. Stephen Lecce, Minister of Education, that in time for the 2023 school year amendment to the current regulations be made to allow licensed home-based child care operators the ability to provide two (2) before and after school care spaces to school aged children, in addition the permitted six (6) full time child care spaces; and**

**THAT in an effort to attract and retain qualified early childhood educators, the Minister of Education, review the current wage bracket for early childhood educators with implementation of an increase to wages to align with the services provided; and**

**THAT the province provides more capital based funding sources for the construction of new centre-based facilities; and**

**THAT the province considers increasing the current goal of thirty-three percent (33%) access ratio, to align better with the current provincial situation and anticipated population growth over the next ten (10) years; and**

THAT these items be considered sooner rather than later, to assist in remedying the critical child care shortage experienced in Petrolia, Lambton, and across the province; and

Phone: (519)882-2350 • Fax: (519)882-3373 • Theatre: (800)717-7694

411 Greenfield Street, Petrolia, ON, N0N 1R0

[www.town.petrolia.on.ca](http://www.town.petrolia.on.ca)  
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THAT this recommendation be forwarded to Hon. Doug Ford, Premier of Ontario | Hon. Michael Parsa, Minister of Children, Community & Social Services | Mr. Bob Bailey, MPP of Sarnia-Lambton | Hon. Monte McNaughton, MPP of Lambton-Kent-Middlesex | Mr. Kevin Marriott, Warden of Lambton County | Municipalities of Ontario;

Carried

Kind regards,

*Original Signed*

Mandi Pearson  
Clerk/Operations Clerk

cc:

Hon. Doug Ford, Premier of Ontario [premier@ontario.ca](mailto:premier@ontario.ca) | Hon. Michael Parsa, Minister of Children, Community & Social Services [Michael.Parsaco@pc.ola.org](mailto:Michael.Parsaco@pc.ola.org) | Mr. Bob Bailey, MPP of Sarnia-Lambton [bob.bailey@pc.ola.org](mailto:bob.bailey@pc.ola.org) | Hon. Monte McNaughton, MPP of Lambton-Kent-Middlesex [Monte.McNaughtonco@pc.ola.org](mailto:Monte.McNaughtonco@pc.ola.org) | Mr. Kevin Marriott, Warden of Lambton County [Monte.McNaughtonco@pc.ola.org](mailto:Monte.McNaughtonco@pc.ola.org) | Municipalities of Ontario

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June 29, 2023

Hon. Doug Ford  
Premier of Ontario  
Room 4620  
99 Wellesley St. W.,  
Toronto, Ontario M7A 1A1

Via Email: premier@ontario.ca

Please be advised that at its meeting held on the 27th day of June 2023, the Council of the Township of Selwyn passed the following resolution:

**Resolution No. 2023 – 143 – Notice of Motion – Short-Term Rentals**

Councillor Brian Henry – Councillor John Boyko –

Whereas the demand for alternative accommodations has resulted in an increased prominence of residential properties being advertised for short term accommodations through third party companies such as Airbnb and VRBO; a shift from the ‘traditional’ cottage rental historically managed by a property owner; and

Whereas over the past decade a flood of properties have been removed from the ownership and long-term rental market (*Canada Research Chair in Urban Governance at McGill University*) contributing to housing shortages, increased housing demands and increased housing costs resulting in housing affordability issues, including affordable rentals; and

Whereas short term rentals (STR) can be beneficial, when operated appropriately, by providing solutions for the accommodation industry that supports local tourism and small businesses as well as providing an opportunity for property owners to generate income from their residence (permanent or seasonal) using a convenient third-party system; and

Whereas STR’s can create nuisances including noise, parking, high volumes of visitors attending a property, septic capacity and fire safety, for adjacent residential property owners who wish to experience quiet enjoyment of their property; and

Whereas research indicates that demand for STR’s is increasing, in part due to vacationers choosing domestic travel options as well as the financial benefits to property owners, demonstrating that STR’s are here to stay; and

**Mailing Address**  
PO Box 270  
Bridgenorth  
Ontario K0L 1H0

**Tel:** 705 292 9507  
**Fax:** 705 292 8964

Whereas there are no Provincial regulations in place governing third party STR companies resulting in a variety of regulations/guidelines being implemented at the local municipal level which creates inconsistencies, confusion and frustrations for both consumers and residents across the Province;

That the Township of Selwyn request that the Province move forward as soon as possible to legislate that all third party Short Term Rental brokerage companies, for example Airbnb and VRBO, appropriately manage and be responsible for their listings and to compel compliance that the Province establish the requirement for STR companies to require each rental listing to be registered and to pay an appropriate annual fee and that STR company provide this registry along with the collected fees to the municipality in which the STR properties are located which allows the municipality to be aware of all registered STR properties and to have access to funds for municipal expenses to enforce/respond to issues at a STR property; and further

That the Province require the STR company to de-list/remove the property from the company's listings so that the property cannot be rented where a municipality has identified and verified life, health and/or nuisance infractions including noise, fire safety, septic, etc...

That a copy of this resolution be sent to all Ontario municipalities for support as well as to Minister of Municipal Affairs and Housing Steve Clark, local M.P.P. Dave Smith and M.P. Michelle Ferreri.

Carried.

If you have any questions, please do not hesitate to contact us.

Sincerely,

*Megin Hunter*

Megin Hunter  
Office Assistant/Receptionist  
mhunter@selwyntownship.ca

cc:   steve.clark@pc.ola.org  
      michelle.ferreri@parl.gc.ca  
      dave.smithco@pc.ola.org  
      All Ontario Municipalities

**From:** diane noble <[dibrettnoble@gmail.com](mailto:dibrettnoble@gmail.com)>

**Sent:** Tuesday, July 4, 2023 11:07 PM

**To:** City Clerk <[cityclerk@portcolborne.ca](mailto:cityclerk@portcolborne.ca)>

**Subject:** Request for Support - Legislative Amendments to Improve Municipal Codes of Conduct and Enforcement

**Importance:** High

Some people who received this message don't often get email from [dibrettnoble@gmail.com](mailto:dibrettnoble@gmail.com). [Learn why this is important](#)

Dear Municipal Clerk – City of Port Colborne,

I am respectfully requesting this email and attachments (*including supporting resolutions by The Township of Cramahe and The Township of Selwyn*), are forwarded to Council and added as action correspondence to your next council meeting agenda as a matter of urgency. Please let me know when this may be on the agenda. If you could also email the outcome to [thewomenofontariosayno.team@gmail.com](mailto:thewomenofontariosayno.team@gmail.com) that would be most appreciated. *Thank you!*

**Dear Mayor Steele, Councillor Bagu, Councillor Elliott, Councillor Beauregard, Councillor Hoyle, Councillor Bruno, Councillor Danch, Councillor Aquilina, Councillor Bodner and Councillor Davies:**

**Legislative Amendments to Improve Municipal Codes of Conduct and Enforcement:**

This request is from The Women of Ontario Say NO. A grassroots advocacy effort comprised of individuals, organizations, and community groups. We are committed to ensuring that locally elected officials are held accountable for violence and harassment in municipal workplaces. This advocacy stems from a number of egregious cases throughout the province including Ottawa, Barrie, and Mississauga. You can learn more on our website:

<https://www.thewomenofontariosayno.com/>

**Thank you for previously passing a resolution in support of Bill 5 Stopping Harassment and Abuse by Local Leaders Act.**

**Many councillors will know that on May 31<sup>st</sup>, 2023, the government voted down Bill 5 – The Stopping Harassment and Abuse by Local Leaders Act. At that time 160 municipalities had endorsed their support for Bill 5. In 2021, the Association of Municipalities Ontario recommended changes to strengthen municipal codes of conduct for elected officials. Again in 2023, after meetings with our group, the AMO issued a statement again calling on government to implement legislation change on this matter. AMO also provided sample resolution text for councils that wish to lend their support to this call: [Codes of Conduct, Changes to Visible Fees, and Fees Charged to Beverage Producers | AMO](#) These recommendations have still not been implemented.**

**As Bill 5 died on the floor, we now have a further request to ask of you.** We are calling on your municipality to continue to be an active and engaged voice in your own workplace safety and

that of the municipal staff in holding municipally elected representatives accountable for violence and harassment.

1. **We are therefore now asking council to pass the attached motion of March 27, 2023, issued by AMO, calling for government legislation on this issue.**
2. **We are requesting the motion include the communication that this legislation be prioritized for the fall of 2023 given the urgency of this issue.**
3. **We are asking that a letter expressing support for the motion be sent to: The Premier, Local MPPs, Minister of Municipal Affairs, Associate Minister of Women's Social and Economic Opportunity, AMO and local municipalities.**

We are counting on you as leaders to ensure your municipal workplace is safe and that there is basic human rights protection for all persons. This cannot wait any longer. This legislation needs to move ahead without any further delay.

Thank you in advance for continuing to being open to advocating for legislative change that will help ensure workplaces and community spaces are safe for everyone!

If you have any questions, please reach out to me.

Sincerely,

Diane Noble  
On Behalf of  
The Women of Ontario Say NO

Sent from [Mail](#) for Windows



**Cramahe Township  
Council Resolution**

**June 29, 2023**

**Sent via Email**

Hon. Doug Ford, Premier of Ontario  
Hon. David Piccini, Minister of Environment, Conservation and Parks & MPP for  
Northumberland - Peterborough South  
Hon. Steve Clark, Minister of Municipal Affairs and Housing  
Hon. Charmaine Williams, Associate Minister of Women's Social and Economic  
Opportunity  
Association of Municipalities of Ontario (AMO)  
All Ontario Municipalities  
The Women of Ontario Say No, Attn: Dianne Noble

**RE: The Women of Ontario Say No: Legislative Amendments to Improve  
Municipal Codes of Conduct and Enforcement**

---

Please be advised that the Council of the Township of Cramahe passed the  
following resolution at their regular meeting held June 20, 2023 regarding  
Amendments to Improve Municipal Codes of Conduct and Enforcement.

**Resolution No. 2023-213**

**Moved By: COUNCILLOR VAN EGMOND**

**Seconded By: COUNCILLOR HAMILTON**

**BE IT RESOLVED THAT** Council receive the request for support from The  
Women of Ontario Say No; and  
**THAT** all Ontarians deserve and expect a safe and respectful workplace; and  
**THAT** municipal governments, as the democratic institutions most directly  
engaged with Ontarians need respectful discourse; and  
**THAT** several incidents in recent years of disrespectful behaviour and workplace  
harassment have occurred amongst members of municipal councils; and  
**THAT** these incidents seriously and negatively affect the people involved and  
lower public perceptions of local governments;  
**THAT** municipal Codes of Conduct are helpful tools to set expectations of council  
member behaviour; and  
**THAT** municipal governments do not have the necessary tools to adequately  
enforce compliance with municipal Codes of Conduct; and

**The Corporation of the Township of Cramahe**

1 Toronto Street, P.O. Box 357, ON K0K 1S0 •Tel 905-355-2821•[www.cramahe.ca](http://www.cramahe.ca)



**THAT** Cramahe Township Council supports the call of the Association of Municipalities of Ontario for the Government of Ontario to introduce legislation to strengthen municipal Codes of Conduct and compliance with them in consultation with municipal governments; and

**THAT** the legislation encompass the Association of Municipalities of Ontario's recommendations for:

- Updating municipal Codes of Conduct to account for workplace safety and harassment
- Creating a flexible administrative penalty regime, adapted to the local economic and financial circumstances of municipalities across Ontario
- Increasing training of municipal Integrity Commissioners to enhance consistency of investigations and recommendations across the province
- Allowing municipalities to apply to a member of the judiciary to remove a sitting member if recommended through the report of a municipal Integrity Commissioner
- Prohibit a member so removed from sitting for election in the term of removal and the subsequent term of office

**CARRIED**

If you have any questions regarding the above resolution, please do not hesitate to contact me at [nhamilton@cramahe.ca](mailto:nhamilton@cramahe.ca)

Sincerely,



Nicole Hamilton  
Municipal Deputy Clerk  
Township of Cramahe

June 29, 2023

Hon. Doug Ford  
Premier of Ontario  
Room 4620  
99 Wellesley St. W.,  
Toronto, Ontario M7A 1A1

Via Email: [premier@ontario.ca](mailto:premier@ontario.ca)

**Re: Legislative Amendments to Improve Municipal Codes of Conduct and Enforcement:**

Please be advised that at its meeting held on the 27<sup>th</sup> day of June 2023, the Council of the Township of Selwyn passed the following resolution:

**Resolution No. 2023 – 142 – Municipal Officer's and Staff Reports – Information/Housekeeping/Non-Controversial**

Councillor John Boyko – Councillor Brian Henry –

That the Township of Selwyn supports the call of the Association of Municipalities of Ontario for the Government of Ontario to introduce legislation to strengthen municipal Codes of Conduct and compliance with them in consultation with municipal governments; and further

That the legislation encompass the Association of Municipalities of Ontario's recommendations for:

- Updating municipal Codes of Conduct to account for workplace safety and harassment
- Creating a flexible administrative penalty regime, adapted to the local economic and financial circumstances of municipalities across Ontario
- Increasing training of municipal Integrity Commissioners to enhance consistency of investigations and recommendations across the province
- Allowing municipalities to apply to a member of the judiciary to remove a sitting member if recommended through the report of a municipal Integrity Commissioner
- Prohibit a member so removed from sitting for election in the term of removal and the subsequent term of office.

Carried.

If you have any questions, please do not hesitate to contact Angela Chittick, Manager of Community and Corporate Services/Clerk at 705-292-9507 or [achittick@selwyntownship.ca](mailto:achittick@selwyntownship.ca).

Sincerely,

*Megin Hunter*

Megin Hunter  
Office Assistant

Cc: [dibrettnoble@gmail.com](mailto:dibrettnoble@gmail.com)  
[Communicate@amo.on.ca](mailto:Communicate@amo.on.ca)

**Mailing Address**  
PO Box 270  
Bridgenorth  
Ontario K0L 1H0

**Tel:** 705 292 9507  
**Fax:** 705 292 8964

## **AMO Sample Resolution Text**

### **Legislative Amendments to Improve Municipal Codes of Conduct and Enforcement**

Whereas, all Ontarians deserve and expect a safe and respectful workplace;

Whereas, municipal governments, as the democratic institutions most directly engaged with Ontarians need respectful discourse;

Whereas, several incidents in recent years of disrespectful behaviour and workplace harassment have occurred amongst members of municipal councils;

Whereas, these incidents seriously and negatively affect the people involved and lower public perceptions of local governments;

Whereas, municipal Codes of Conduct are helpful tools to set expectations of council member behaviour;

Whereas, municipal governments do not have the necessary tools to adequately enforce compliance with municipal Codes of Conduct;

Now, therefore be it resolved that (MUNICIPALITY NAME) supports the call of the Association of Municipalities of Ontario for the Government of Ontario to introduce legislation to strengthen municipal Codes of Conduct and compliance with them in consultation with municipal governments;

Also be it resolved that the legislation encompass the Association of Municipalities of Ontario's recommendations for:

- Updating municipal Codes of Conduct to account for workplace safety and harassment
- Creating a flexible administrative penalty regime, adapted to the local economic and financial circumstances of municipalities across Ontario
- Increasing training of municipal Integrity Commissioners to enhance consistency of investigations and recommendations across the province
- Allowing municipalities to apply to a member of the judiciary to remove a sitting member if recommended through the report of a municipal Integrity Commissioner
- Prohibit a member so removed from sitting for election in the term of removal and the subsequent term of office

## **Memorandum**

**To: Mayor Steele and Members of Council**

**From: Councillor Ron Bodner**

**Date: July 18, 2023**

**Re: Port Colborne & District Conservation Club**

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Since being elected to Council in 1998, the Port Colborne & District Conservation Club has been a well-respected member of the Community. The Club has been involved in many activities and been respectful of and tried to work with the neighbours in regard to the activities going on at the club. Skeet and trap shooting occurred every other Sunday between a certain time period and didn't take place on holidays.

Recently, the City has received complaints about the use and operation of the Club, including complaints regarding set times for shooting. These issues remain unresolved, and I feel we should look at all regulatory options to assist residents that are affected by the operations of the club and have experienced recent issues with the club. One option is including the club in the City's Noise and Discharge of Firearms By-laws in addition to anything else staff finds appropriate.

I am requesting that the following motion be approved:

**That the Director of Community Safety and Enforcement be directed to bring a report back to the August 15, 2023 Council Meeting regarding the inclusion of the Conservation Club in the City's Noise and Discharge of Firearms By-laws as well as any additional options that will allow Council to control the amount of shooting at the club.**

Thank you for your consideration,

Councillor Bodner  
Ward 4



## Memorandum

**To:** Mayor Steele and Members of Council  
**From:** Councillor Elliott  
**Date:** July 18, 2023  
**Re:** Royal Canadian Legion – Planning Act Application Fees

---

I bring forward this motion after discussions with Port Colborne Legion members regarding the multiple thefts that have occurred at the Legion's property. Waiving the *Planning Act* fees will save the Legion a financial burden in their attempts to gain a secure storage facility for all of their donations and necessary items. As a Not-For-Profit organization, and one that has a long-standing tradition throughout the country, I would ask Council's support for this motion.

I am requesting that the following motion be approved:

**That Council waive the Planning Act application fee to permit a storage container on 67 Clarence Street – Royal Canadian Legion Branch 56, for the purpose of storing donations, yard equipment and additional equipment, as needed.**

Thank you for your consideration,

Councillor Elliott  
Ward 1



## MINUTES

### Social Determinants of Health Advisory Committee – Everyone Matters

Thursday, Sept. 8, 2022 at 1 p.m. via Teams

#### Attendees:

Co-Chair Lori Kleinsmith, Bridges CHC  
Co-Chair Angie Desmarais, Councillor  
Sherry Hanson, Manager, Municipal Law Enforcement  
Jay McKnight, Niagara Regional Police  
Phil Licskai, Niagara Regional Police  
Jeffrey Sinclair, Community Services, Niagara Region  
Judy Cassan, Bridges CHC  
Tara McKendrick, Canadian Mental Health Association  
Kaitlyn Kerridge

#### Guests:

Kim Simons, Anchors Away  
Rob Salewytch, GO

#### Regrets:

Christine Clark-Lafleur, Port Cares  
Aidan Johnson, Niagara Community Legal Clinic  
Bill Steele, Mayor  
Scott Luey, Chief Administrative Officer  
Taralea McLean, Bridge CHC  
Susan Therrien, Director of Library Services

#### Minutes

Gail Todd, EA to Mayor and CAO

#### Call to Order

Co-Chair Lori Kleinsmith called the meeting to order at 1 p.m.

#### Approval of the Agenda

Moved by J. McKnight  
Seconded by A. Desmarais

That the agenda for the Sept. 8, 2022 meeting of the Social Determinants of Health Advisory Committee – Everyone Matters be approved.  
CARRIED.

### Approval of the April 7, 2022 minutes

Moved by S. Hansen  
Seconded by T. McKendrick  
That the minutes for the April 7, 2022 meeting of the Social Determinants of Health Advisory Committee – Everyone Matters be approved.  
CARRIED.

### Business Arising

Lodging bylaw – Scott Luey

Deferred to November (or next) meeting.

City of Port Colborne Affordable Housing Strategy and Action Plan – Scott Luey, Gary Long  
Report to be presented to Port Colborne City Council Sept. 13. (report attached)

Transportation – NRT on demand – Rob Salewytsch, manager transit services, GO  
Implementation, Niagara Region Public Works

Full report deck attached.

As a resident of Port Colborne, Rob proud to see shared-ride on-demand service underway and growing, with more success stories than missteps in innovative service. Software from US company because it's the best in the world, allows complete turnkey operation. Because it's a pilot project, nothing in stone, lots of opportunities to learn and grow.

OnDemand runs 7am to 10pm Monday to Saturday. Not on holidays yet; coming. Busiest time 2 to 5pm. Pick-ups and drop-offs to be within 100m of caller's residence, but it's actually been door-to-door.

All vehicles are branded mini-vans, can carry bicycles, 40 per cent are wheelchair accessible, but wheelchairs are less than one per cent of ridership. R

Regarding complaints of "not being able to get a ride:" a large number of ridership makes requests but cancels within five to 50 minutes of pick-up; relying on "on-demand" rather than booking ahead. 90 per cent of users are on the app; Port Colborne a little higher percentage of calls by telephone rather than app. All rides can be booked by old-school telephone, for those without smart phones or home computers/internet.

There is no on-board pay currently, and drivers visually validate passes. Will be harmonizing services across Niagara; ApplePay and GooglePay in 2023. The free transit app is a worldwide app: one day we'll be able to book passes for transit all over Niagara, Ontario, Canada, the world.

Lori thanked Rob for presentation.

Angie asked where riders direct complaints.

Rob responded: reach out to service provider; there is a toll-free number.

## New Business

### Request from Steven Soos for Declaration of Emergency Re: Mental Health

Consensus that there is not a mental health emergency, per se, that numbers do not illustrate an emergency, and without any proposed action or advocacy behind the request, a declaration is of no consequence.

P. Licskai reported from January to Sept. 2021 there were 96 non-apprehendable mental health calls; 33 calls which resulted in apprehensions. Similar numbers in same period 2022. Not seeing an increase in mental health calls.

J. Sinclair said Niagara does not see skyrocketing homelessness and encampments as in other municipalities.

T. McKendrick said, yes there are concerns, which people read in newspaper and on social media, but there is so much advocacy, so much good work going on, which are not covered in the press and online. People focus on the crisis, not the many programs in place, action tables, Niagara Ontario Health Team, none of which get the attention of the negative pieces. Yes, there is need for expanded cost-effective prevention programs, and maintenance of hospital and emergency resources; current government focused on hospitals and long-term care, not so much on mental health.

L. Kleinsmith asked if anyone supported/recommended the declaration of emergency.

No hands raised.

Moving on.

### Update on presentation by Ian de Jong, "post pandemic approach to homelessness." – Angie

Angie expressed how impressed she was with presentation, recommended everyone read it, follow-up.

Judy asked how statistics were gathered in Port Colborne, that situations here not like other places.

J. Sinclair said numbers in Port are similar and comparable to statistics around the region.



Angie Desmarais noted city council needs to be aware of homelessness services, that there was lots of work being done elsewhere, but not here

#### [Update on quarterly homelessness services newsletter – A. Desmarais](#)

Angie highly praised and recommended reading the Housing and Homelessness newsletter on Niagara Region website.

#### [Update on Housing Homeless action plan – J. Sinclair](#)

Jeff thanked Angie for the plug on the newsletter, just released.

Updated committee on Housing Master Plan. Affordable housing targets: 479 new units per year for the next 25 years. There is enough land.

Niagara Regional Housing manages co-operative, non-profit and profit some properties are rebuilds, for example on Hawkins Avenue in Niagara Falls, where eight units were converted into housing for 76.

There is a new incentive program to support housing through the Niagara Prosperity Initiative, with \$1million to kickstart the Port Cares project.

Judy asked how to determine “affordable” housing. J. Sinclair explained housing should cost 30 per cent of household income before tax; the lowest 60 per cent of income earners need affordable housing. Region insists 20 per cent of all new housing needs to be affordable. Always looking for partnerships in master plan. One site if Port Colborne will see 54 units.

Plans for seasonal shelters are underway. There are 15 clients to date. Homeless prevention programs prioritize youth, with more mobile services, with attention to smaller communities so all is not focused on largest cities Niagara Falls and St. Catharines. Keep in mind the difference between homeless prevention and poverty issues.

The Niagara Assertive Street Outreach is doing amazing work seven days a week, to 11pm. A simple call to 211 prompts the NASO to respond.

Calls about “renovictions” are constant; need for more legal services, greater access and sooner.

#### [Update on Bill 164](#)

Angie is concerned there is no overriding municipal bylaw to protect residents of “supportive living.” Hoped the committee could take some action.

Sherry Hansen said there are efforts to capture those places within bylaws regarding dwellings, but not retirement homes/residences which are regional or provincial.

Lorie agreed that no action can be taken until we see what's coming from Region or province, and perhaps tweak the recommendations to include private "supportive living."

Angie suggested directing concerns for supportive living residents by going directly to provincial Ministry as local MPP is in opposition; governments in power not likely to pass legislation suggested by opposition.

#### Community updates

None.

Lorie requested all members complete the Niagara Region five-year poverty reduction strategy online survey. Public information session to be held Oct. 3, should members wish to attend.

#### Next meeting

Thursday, Nov. 3, virtual.

#### Adjournment

The meeting adjourned 3:10 p.m.



## SDOH MINUTES

### Social Determinants of Health Advisory Committee – Everyone Matters

#### Minutes of meeting Thursday, Feb. 2, 2023 via Teams

##### Attendees:

Co-Chair Lori Kleinsmith, Bridges CHC  
Co-Chair Tim Hoyle, Councillor  
Jeffrey Sinclair, Community Services, Niagara Region  
Kim Simons, Anchors Away  
Susan Therrien, Director of Library Services  
Taralea McLean, Bridges CHC  
Judy Cassan, Bridges CHC  
Tara McKendrick, Canadian Mental Health Association  
Aidan Johnson, Niagara Community Legal Clinic  
Scott Lawson, Port Colborne Community Safety and Enforcement  
Gail Todd, staff liaison

##### Regrets:

Christine Clark-Lafleur, Port Cares  
Bill Steele, Mayor  
Scott Luey, Chief Administrative Officer  
Jay McKnight, Niagara Regional Police

##### Minutes

Gail Todd, EA to Mayor and CAO

##### Call to Order

Co-Chair Lori Kleinsmith called the meeting to order at 1 pm.

As the Terms of Reference are under review by clerk's department following the municipal election in October 2022, representation on the committee is to be addressed since original formation of the SDOH advisory committee in 2015, and amendments in 2017 and February 2022.

Lori went through list of members, to confirm quorum. Voting and non-voting members to be indicated by updated Terms of Reference, expected by next meeting of the committee.

### Approval of the Agenda

Moved by A. Johnson

Seconded by J. Sinclair

That the agenda for the Feb. 2, 2023 meeting of the Social Determinants of Health Advisory Committee be approved.

CARRIED.

### Approval of the Sept. 8, 2022 minutes (November 2022 meeting cancelled)

Moved by A. Johnson

Seconded by K. Simons

That the minutes for the Sept. 8, 2022 meeting of the Social Determinants of Health Advisory Committee be approved.

CARRIED.

### Terms of Reference

Committee requires clarity of its membership and voting privileges. Will defer full review of Terms of Reference to April meeting.

### Business arising

Carry forward from last meeting: updates on lodging bylaw update and affordable housing strategy.

### New business

#### Impacts of Bill 23, Build More Homes Faster Act, 2022

Staff reports are expected from Region and City to understand impacts of Bill 23. The removal of development charges, for example, will mean loss of \$6million per year.

Aidan said the Community Legal Clinic made submission with several objections to the Housing Supply Action Plan including significant erasure of the Green Belt and that housing is not incentivized for people living in poverty.

Lorie noted the committee needs to stay on top of Bill 23.

Discussion about homelessness, and how best to communicate to the public the many services available. Scott said we can expect more calls when better weather arrives.

Jeff said by the end of December, his team identified out of 1099 homeless individuals in Niagara, 37 identified as from Port Colborne; 10 not experiencing chronic homelessness, 27 are. There is a 20 per cent increase in chronic homelessness since the pandemic. Street homelessness is the face of homelessness; there are “unseen”

others who shelter outside the shelter system with friends or family, for example. The Niagara Assertive Street Outreach (NASO) Team continues to do great work and continues to confer with fire, police and public works in all municipalities, but primarily St. Catharines.

Some homeless individuals prefer encampments over shelters.

Lorie said the challenge is how to manage expectations of complainants/callers, and how to message appropriately.

Discussion about how to address inappropriate use of public washrooms, which are being closed to the public due to vandals, drug users, and people who come to bathe and use facilities for prolonged lengths of time, in public buildings as well as private businesses. Need ideas how to address.

Taralea asked for city's take on the Niagara Health System Strategic Plan, to close Port Colborne and Fort Erie hospitals. Jeff noted that ties in with the 10th year of the Housing and Homeless Action Plan, which he hopes will wrap up in 2023, ready for report, commentary, and next steps.

Lori noted so many angles on so many issues, yet progress has been made.

Lori enquired of any news to share from our organizations? Jeff reported The Bridge housing facility, funded in November by REACH, with 10 recuperative care beds to support individuals released from hospital but no where to go. Includes two nursing staff and medical case management and support to find housing.

### Community updates

Susan reported the "Let's Talk About ..." series at the library has included public discussion about teen mental health, safety for seniors. She'd like to do a Let's Talk About Homelessness and Housing. Another way to inform and engage the public.

Jeff reported there is real time data which can be checked daily on The Homeless Individuals and Families Information System (HIFIS).

### Next meeting

Thursday, April 6, in person, committee room 3, city hall, 66 Charlotte St., Port Colborne

### Adjournment

Moved by Aidan, seconded by Taralea.

Meeting adjourned 2:30pm



## Social Determinants of Health Advisory Committee

**Minutes of meeting Thursday, April 6, 2023**

**Port Colborne City Hall committee room 3**

### **Attendees**

Co-Chair Lori Kleinsmith, Bridges CHC  
Co-Chair Tim Hoyle, Councillor  
Jeffrey Sinclair, Community Services, Niagara Region  
Susan Therrien, Director of Library Services  
Taralea McLean, Bridges CHC  
Kaitlynn Kerridge  
Judy Cassan, Bridges CHC  
Scott Lawson, Port Colborne Community Safety and Enforcement  
Jay McKnight, Niagara Regional Police  
Phil Licskai, Niagara Regional Police  
Scott Luey, Chief Administrative Officer  
Mayor Bill Steele  
Gary Long, Port Colborne director of strategic initiatives  
Gail Todd, staff

### **Regrets**

Christine Clark-Lafleur, Port Cares  
Kim Simons, Anchors Away  
Tara McKendrick, Canadian Mental Health Association  
Aidan Johnson, Niagara Community Legal Clinic

**Minutes** Gail Todd, staff support

### **Call to order**

Co-Chair Lori Kleinsmith called the meeting to order at 1:03 pm.

As the Terms of Reference are under review by clerk's department following the municipal election in October 2022, representation on the committee is to be addressed since original formation of the SDOH advisory committee in 2015, and amendments in 2017 and February 2022.

Lori confirmed quorum. Voting and non-voting members to be clarified in updated Terms of Reference, expected by next meeting of the committee.

### **Approval of the agenda**

Moved by J. Sinclair

Seconded by J. McKnight

That the agenda for the April 6, 2023 meeting of the Social Determinants of Health Advisory Committee be approved.  
CARRIED.

### **Approval of the Feb. 2 minutes**

Moved by J. Cassan

Seconded by S. Lawson

That the minutes for the Feb. 2, 2023 meeting of the Social Determinants of Health Advisory Committee be approved.  
CARRIED.

### **Business arising**

Terms of reference being amended by city clerk; committee expects review by June meeting.

Carry forward from last meeting: updates on lodging bylaw update and affordable housing strategy.

Impact of Region declaration of emergency for homelessness, access to mental health services, and opioid addiction.

Interpretation of emergency declaration discussed: it puts pressure on provincial government but does not mean dollars; does not change regional responsibility for housing and shelter, does not define types of shelters (family/women/men; does not determine housing models.

City CAO S. Luey provided background and update on bylaw for businesses offering supportive living, which is unregulated limbo between nursing homes and retirement homes. Complaints received over the years from residents and relatives of residents. Municipalities want to regulate but are limited to enforce living conditions other than building safety bylaws. Other agencies regulate public health (Region), law enforcement (NRP), and licencing (province). Niagara mayors discussed a bylaw to address, sent to CAOs and legal advisers. CAOs are close to consensus, want to get it right, not quick.

J. Cassan noted complaints from these homes over past 15 years.

T. McLean noted good operators will welcome a bylaw to set and enforce standards of supportive living residences.

CAO Luey said the province determines the responsibilities of the Region.

Every agency is on board with a bylaw on supportive living residences, that they must operate under our rules, or not operate. Bylaw must be legally sound, enforceable. Currently, municipality has no legal authority.

G. Long provided update of city affordable housing partnership with Port Cares, two years in the making: 27-unit building to complement inventory administered by Niagara Regional Housing.

J. Sinclair expects new mandate and recommendations on homelessness and housing within one year, after next round of proposals for funding this fall.

### **New business**

Mayor Steele reported he met with mayors of Fort Erie, Welland, Wainfleet as well as with Niagara Health System management to address health care services in Niagara South with closures of UCCs in Niagara South. He emphasized the importance of maintaining and ER and UCC in Welland. Mayor to form a working group of cross-section of Port Colborne population (front line health care workers, business, labour, industry, seniors, etc.) to brainstorm best responses and suggestions for NHS.

S. Therrien offered “ambassador” service at library – “everyone comes to the library for help, and information.” Speaker series “Let’s Talk About ...” engages community with topical speakers.

### **Next meeting**

Thursday, June 1, in committee room 3, city hall, 66 Charlotte St., Port Colborne

### **Adjournment**

Meeting adjourned 3:15pm



The Corporation of the City of Port Colborne

By-law No. \_\_\_\_\_

Being a By-law to Authorize Entering into an Agreement with Hometown Properties Inc. regarding a Downtown Central Business District Community Improvement Revitalization Plan (Tax Increment) Grant

Whereas at its meeting of July 18, 2023, the Council of The Corporation of the City of Port Colborne (Council) approved the recommendations of Chief Administrative Office Report 2023-120, Subject: CIP Agreement – 176 Elm Street; and

Whereas Council is desirous of entering into an agreement with Hometown Properties Inc., for the purposes of a Downtown Central Business District Community Improvement Plan Revitalization (Tax Increment) Grant; and

Now therefore the Council of The Corporation of the City of Port Colborne enacts as follows:

1. That The Corporation of the City of Port Colborne enters into an agreement with Hometown Properties Inc., for the purposes of a Downtown Central Business District Community Improvement Revitalization Plan (Tax Increment) Grant;
2. That the Mayor and City Clerk be and are hereby authorized to execute any documents that may be required for the purpose of carrying out the intent of this by-law and the City Clerk is duly authorized to affix the Corporate Seal thereto.

Enacted and passed this 18th day of July, 2023.

\_\_\_\_\_  
William C. Steele  
Mayor

\_\_\_\_\_  
Charlotte Madden  
City Clerk

**Downtown Central Business District Community Improvement Plan  
Revitalization (Tax Increment) Grant Agreement**

**BETWEEN:**

THE CITY OF PORT COLBORNE  
(hereinafter referred to as the "City")

and

HOMETOWN PROPERTIES Inc.  
(hereinafter referred to as the "Owner")

**WHEREAS** the City has adopted a Downtown Central Business District Community Improvement Plan (DCIP) pursuant to Section 28 of the *Planning Act*;

**AND WHEREAS** the Owner is the registered Owner of the lands described in Section 1 and Schedule "A" to this agreement (the "subject lands") which are located within the City of Port Colborne;

**AND WHEREAS** the Owner has made applications (the "application") to the City for the tax assistance under the DCIP;

**AND WHEREAS** the City has approved this application and has agreed to provide tax assistance;

**AND WHEREAS** a condition of approval of this application for tax assistance and the Owner is required by the City to enter into this Agreement (the "Agreement");

**1. INFORMATION ON SUBJECT LANDS**

- 1.1 The Tax Increment Grant ("TIG") shall apply to the subject lands as set out in Schedule "A" attached.

**2. TAX INCREMENT GRANT ELIGIBILITY**

- 2.1 To be eligible for the tax increment grant, the development works on the subject lands (hereinafter referred to as "work"), shall conform to and fulfill:
- (a) the objectives and requirements of the Tax Increment and Rehabilitation program of the DCIP,
  - (b) any other requirements as specified by the City

- 2.2 The Owner acknowledges that it has received and read a copy of the City's DCIP Tax Assistance Program Guide (the "DCIP Guide") and the Owner covenants with the City that the subject lands shall be rehabilitated and developed in accordance with the City's objectives, policies and requirements set out in the DCIP.

### **3. TAX INCREMENT GRANT CALCULATION AND PAYMENT**

- 3.1 The annual tax assistance will be calculated as the difference between property taxes on the subject lands at the time of approval of this Agreement and property taxes that would have been collected on the subject lands after the project's completion. It is calculated once and remains the same for the 10-year period.
- 3.2 The Niagara Region portion of the Municipal Tax must be approved by the Niagara Region to be eligible for this program. If Niagara Region does not approve the TIG for this property for any reason the City of Port Colborne will only provide a grant equal to the City portion of the TIG.
- 3.2 Municipal tax assistance will commence at the time of passing of the by-law for the subject lands and will cease on the earlier of:
- a) sale or conveyance of the subject lands;
  - b) ten (10) years from the date the tax assistance begins.
- 3.3 The annual grant will be calculated as a percentage of the increase in municipal property taxes on the subject lands that result from the development with this percentage as identified in the table below.

<b>Year*</b>	<b>Grant Factor</b>
1	80%
2	80%
3	80%
4	80%
5	80%
6	80%
7	80%
8	80%
9	80%
10	80%

- 3.4 The tax increment grant payments shall be calculated according to the formulas and schedules set out in Schedule B to this agreement.
- 3.6 The actual tax increment grant payment amounts will be based on the actual post-project assessed value (AV) as determined by the Municipal Property Assessment Corporation (MPAC) and actual applicable City tax rates. This amount is calculated once at the time of the MPAC reassessment and will remain constant through the 10-year period.

- 3.7 Where at any time after the original rehabilitation of the subject lands, new construction is added to the subject lands that is not part of the original program application, the tax increment grant will be calculated only in respect of the original rehabilitation contained in the original application, based on the assessed value and property taxes in the last year before revaluation by the MPAC as a result of the new construction added to the subject lands.
- 3.8 The annual TIG shall be calculated by the City based upon, and provided the City is satisfied in its discretion that rehabilitation of the subject lands took place in accordance with the proposed rehabilitation works as specified in the application, accompanying documentation, and this Agreement;
- 3.9 The City shall review all cost estimates and documentation submitted in support of the application in evaluating the estimated costs eligible for tax increment grant, which costs, when designated by the City shall constitute the maximum costs eligible for tax increment grant. In the event the City is not satisfied with said cost estimates, the City may substitute their opinion of such amounts for purposes of calculating the eligible costs and maximum total tax increment and/or maximum total grant.
- 3.10 If the City is not in receipt of sufficient information satisfactory to the City to determine eligible costs and the amount of tax increment grant, there shall be no tax assistance/grant. The decision of the City regarding the total amount of eligible costs, the calculation of the total estimated tax increment grant, and the calculation of the actual tax increment grant is final and within the City's sole discretion.
- 3.11 Payment of the tax increment grant is subject to the City's review and satisfaction with all reports and documentation submitted in support of the application, including but not limited to: documentation of the estimated and actual costs of eligible works. Any and all of these costs may be, where required by the City, subject to verification, third party review or independent audit, at the expense of the Owner.
- 3.12 The Owner shall not be entitled to tax increment grant payment unless and until they have met all the conditions of this Agreement to the satisfaction of the City. Except where expressly stated in this Agreement, all conditions in this Agreement are for the benefit of the City and may only be waived by the City. No waiver is effective unless in writing.
- 3.13 The tax assistance that has been provided to the Owner will become payable (including interest) upon notice in writing from the City that one or more of the terms and conditions set out in the application, this Agreement or the Tax Increment Grant Program have not been met.
- 3.14 Any and all grant payments that have been provided to the Owner will become payable upon notice in writing from the City that one or more of the conditions set out in the application, this Agreement, or the Tax Increment Grant Program have not been met.
- 3.15 Grants are not payable by the City until such time as additional assessment eligible for a grant has been added to the assessment roll by the MPAC, property taxes have been billed by the City, and property taxes have been paid in full for one year on the property.

- 3.16 Annual grant payments to the Owner will not be issued if there is an outstanding tax payment. If at any time after the term of this Agreement, property taxes are owing on a property for more than one full year, the City will have the option, at its sole discretion, to terminate this Agreement and all future grant payments.
- 3.17 The grant is not payable by the City until such time as all assessment appeals relating to the value of the subject lands before the additional assessment or as to the additional assessment as a result of the development of the subject lands have been filed and decided.
- 3.18 The first grant payment as finally determined by the City shall be paid to the Owner by the City, subject to the provisions of this Agreement, following completion and occupancy of the said redevelopment of the subject lands, and during or after the property taxation year in which the property taxes increase as a result of the completed rehabilitation.
- 3.19 Annual grant payments under DCIP will not be provided by the City until the Owner has satisfied the City that:
- a) The development work on the subject lands has been completed in accordance with the work as described in the application;
  - b) There are no outstanding work orders and/or orders or requests to comply from any City department or other regulatory authority in respect of the subject lands, and the business of the Owner conducted on the subject lands;
  - c) The Owner and the subject lands are in full compliance with:
    - i) Any Agreement(s) relating to the property in favour of the City, including any Agreement relating to: subdivision, modified subdivision, service, site plan approval, encroachment, joint sewer & water use, easement or other Agreement; and,
    - ii) Bylaws of the City and provincial or federal legislation and regulations.
  - d) There are no unpaid charges where applicable against the subject lands in favour of the City, including but not limited to: development charges, parkland dedication fees, special assessments and local improvement charges; and,
  - e) The Owner has not appealed the post-project assessed value and there exists no other pending appeal which has not been settled completely in respect of the post-project assessed value.

#### **4. PERSONAL STATUS**

- 4.1 The Owner warrants and represents to the City that:
- a) the Owner is a resident of Canada as of the date of this Agreement and that in the event the Owner ceases to be a resident of Canada, the Owner shall immediately notify the City, and it is agreed, the City may deduct from any or all annual grant payments, such sum(s) as may be required by Canada Customs and Revenue

Agency in order to meet the City's obligations as a payer and the Owner's obligations under the *Income Tax Act (Canada)* and other applicable laws.

- b) to the best of its knowledge and belief, there are no actions, suits or proceedings pending or threatened against or adversely affecting the Owner in any court or before or by any federal, provincial, city or other governmental department, commission, board, bureau or agency, Canadian or foreign, which might materially affect the financial condition of the Owner or title to their property or assets; and,
- c) The Owner shall notify the City immediately of any material change in the conditions set out in paragraphs (a)-(d) above.

## **5. PROVISIONS RELATING TO THE OWNER**

- 5.1 The Owner covenants to the City that building(s) and improvements that are the subject of this Agreement will not be demolished, in whole or in part prior to the advance of all of the grant payments.
- 5.2 The Owner shall ensure there are no liens or other claims outstanding in respect of the subject lands, including its rehabilitation, all accounts for work and materials which could give rise to any claim for a construction lien against the subject lands have been paid; and there is no default by the Owner with respect to any of the terms of this Agreement.
- 5.3 The Owner shall ensure that the Owner is in compliance with the *Construction Lien Act*, including its holdback provisions and is not aware of any potential or unresolved Lien claim in respect of the redevelopment.
- 5.4 The Owner covenants to the City that the Owner shall use the subject lands in compliance with this Agreement, all city by-laws pertaining to use, and all applicable environmental laws.
- 5.5 The Owner covenants to the City that the Owner will require, as a term of every lease that tenants of the subject lands comply with all city by-laws pertaining to use, and all applicable environmental laws.
- 5.6 The Owner agrees to comply with all outstanding work orders and/or orders or requests to comply from any and all City departments during the term of this Agreement.
- 5.7 The Owner covenants to the City that the Owner shall not commit or permit any waste to be dumped or any nuisance upon the subject lands, or permit any part of the subject lands to be used for any dangerous occupation or business or for any noxious or offensive trade.
- 5.8 The Owner covenants to the City that where the Ownership of part or all of the subject lands ceases for any reason to be in the Owner's name by sale, conveyance, assignment or otherwise, prior to the advance of all of the tax assistance and/or the grant, the Owner will notify the City in writing of said change of ownership at least 30 days prior to said change of ownership.
- 5.9 The Owner acknowledges that nothing in this Agreement is intended to impose or shall impose upon the City any duty or obligation to inspect or examine the land for

compliance or non-compliance or to provide an opinion or view respecting any condition of development; and,

- a) Nothing in this Agreement is intended to be or shall be construed to be a representation by the City regarding compliance of the land with:
  - i) Applicable environmental laws, regulations, policies, standards, permits or approvals; or,
  - ii) Other by-laws and policies of the City.

5.10 If the City determines in its sole discretion that any of the conditions of this Agreement are not fulfilled, and the City at its sole discretion delays or cancels tax increment grant payments, and/or requires repayment of the tax increment grant payments already made to the Owner, and/or terminates this Agreement, the Owner agrees that notwithstanding any costs or expenses incurred by the Owner, the Owner shall not have any claim for compensation or reimbursement of these costs and expenses against the City and that the City is not liable to the Owner for losses, damages, interest, or claims which the Owner may bear as a result of the City exercising its rights herein to delay or cancel tax assistance and/or grant payments, require repayment of tax assistance and/or grant payments already made to the Owner, and/or terminate this Agreement.

5.11 The Owner shall indemnify and save harmless from time to time and at all times, the City and its officials, officers, employees, and agents from and against all claims, actions, causes of action, interest, demands, costs, charges, damages, expenses and loss made by any person arising directly or indirectly from:

- a) The City entering into this Agreement; and
- b) Any failure by the Owner to fulfil its obligations under this Agreement. This indemnification shall, in respect of any matter arising prior to the termination of this Agreement, remain in force following termination or expiry of this Agreement.

## **6. PROVISIONS RELATING TO THE CITY**

6.1 The City agrees to provide a grant to the Owner with said grant to commence once the City is satisfied that Section 3 stipulations have been met and ceasing on the earlier of:

- a) sale or conveyance of the subject lands;
- b) Ten (10) years.

6.2 On an annual basis, the City, upon being satisfied that the Owner is not in default of any of the terms and conditions set out in the application, this Agreement, the Tax Increment Grant Program, shall pay the annual grant payment.

6.3 If the Owner cannot be reached over a protracted period (more than 2 years), the City will have the option, without notice and at its own discretion, of terminating this Agreement and all future grant payments to the Owner.

6.4 If in the opinion of the City the property is not maintained in its rehabilitated condition, the City may, at its sole discretion, terminate tax increment grant and all future grant

payments and require repayment of the tax assistance and/or grant payments already provided by the City to the Owner.

- 6.5 The City, its employees and agents are entitled to inspect the subject lands at any time during business hours for the purpose of ascertaining their condition or state of repair or for the purpose of verifying compliance with the DCIP.
- 6.6 The City retains the right at all times to delay or cancel tax increment grant payments, and/or require repayment of tax increment grant payments already made to the Owner, and/or terminate this Agreement where the City deems that there is non-compliance with this Agreement. In particular, without limiting the generality of the foregoing, the tax assistance and the grant is conditional upon periodic reviews satisfactory to the City to there being no adverse change in the rehabilitation works and to there being compliance on the part of the Owner with all other requirements contained in this Agreement.
- 6.7 Communications from the City to the Owner may be addressed to the Owner at the address of the Owner listed in Section 9 of this Agreement.

## **7. DEFAULT AND REMEDIES**

- 7.1 On the occurrence of default under this Agreement the City shall be entitled to its remedies to enforce this Agreement, including, but not limited to:
  - a) Delaying or cancelling tax increment grant payments; and/or,
  - b) Requiring repayment to the City by the Owner of all tax assistance and/or grant payments already made to the Owner; and/or,
  - c) Terminating the Agreement.
- 7.2 Default shall be deemed to occur upon any default of the Owner in complying with the terms set out in this Agreement, including, but not limited to, the following:
  - a) Non-compliance with any City by-laws, provincial, and/or federal laws and regulations;
  - b) Failure to pay and keep in good standing all real property taxes;
  - c) Any representation or warranty made by the Owner is incorrect in any material respect;
  - d) Failure to perform or comply with any of the obligations contained in this Agreement or contained in any other Agreement entered into between the Owner and the City;
  - e) The Owner makes an assignment for the benefit of creditors, or assigns in bankruptcy or takes the advantage in respect of their own affairs of any statute for relief in bankruptcy, moratorium, settlement with creditors, or similar relief of bankrupt or insolvent debtors, or if a receiving order is made against the Owner, or if the Owner is adjudged bankrupt or insolvent, or if a liquidator or receiver is appointed by reason of any actual or alleged insolvency, or any default of the Owner under any mortgage or other obligation, or if the subject lands or interest of the



Owner in the subject lands becomes liable to be taken or sold by any creditors or under any writ of execution or other like process;

f) This Agreement is forfeited or is terminated by any other provision contained in it.

7.3 The City may at its sole discretion provide the Owner with an opportunity to remedy any default.

## **8. ADDITIONAL PROVISIONS**

8.1 This Agreement shall remain in effect from the date of its execution by the City to the earlier of:

a) The time when the City informs the Owner in writing that due to the non-fulfilment or non-compliance with a required condition or due to default, this Agreement is terminated;

b) Ten (10) years.

8.2 Time shall be of the essence with respect to all covenants, Agreements and matters contained in this Agreement.

8.3 Schedule "A" attached to this Agreement forms part of the Agreement.

## **9 NOTICES**

9.1 Where this Agreement requires notices to be delivered by one party or the other, such notice shall be given in writing and delivered either personally, by e-mail, by fax or by prepaid first call mail by the party wishing to give such notice to the other party at the address noted below:

### **To the Owner at:**

Michael Smith  
176 Elm Street  
Port Colborne, ON L3B 4A2  
Ph: 905-732-4481

### **To the City at:**

City of Port Colborne  
c/o Charlotte Madden  
66 Charlotte Street  
Port Colborne Ontario, L3K 3C8  
Ph: 905-835-2900 ext 106  
Fax: 905-835-2939

**THIS AGREEMENT** shall be binding upon the parties and their heirs, executors, successors and assigns.

**IN WITNESS WHEREOF** the parties duly execute this Agreement:

SIGNED, SEALED AND DELIVERED  
In the presence of

THE CITY OF PORT COLBORNE

---

Mayor William C. Steele

---

Charlotte Madden City Clerk

---

WITNESS

---

Michael Smith:  
Owner

**Schedule "A"**

Of an Agreement between the City of Port Colborne and the Owner named in this Agreement.

Name of Registered Property Owner: Hometown Properties Inc.

Address of Subject Lands: 176 Elm Street

Roll NO.: 271101002219200

Mailing Address of Property Owner (where different from address of subject lands):

176 Elm Street, Port Colborne, Ontario, L3B 4A2 Tel. No: 905-732-4481

**E-mail:** Michael Smith [michaels@royalpage.ca](mailto:michaels@royalpage.ca)

Legal Description of Subject Lands

PT PK LT6 W/S Catharine St PL 987-989

## Schedule "B"

### Downtown CIP Tax Assistance

(1) Cost of approved eligible tax assistance works	\$7,373,000 (estimate)
(2) Pre-project assessed value (AV):	\$425,000
(3) Pre-project City property taxes	\$6,145.00
(4) Post-project assessed value (AV):	CT \$7,373,000
(5) Post-project City property taxes	\$72,290

Municipal Tax Assistance = Post-project City property Taxes – Pre-project City property taxes

Grant = Post-project City property taxes – Pre-project City property taxes

Actual post project assessed value will be determined by MPAC

# **TAX ASSISTANCE CALCULATION SCHEDULE**

	<b>Pre Development</b>	<b>Project Completion</b>	<b>Tax Increment</b>	<b>% of Tax Increment</b>	<b>Annual Grant Estimate</b>
<b>Assessment Value</b>	\$425,000	\$7,373,000	\$282,500	80%	80%
<b>City Taxes</b>	\$6,145	\$72,290	\$66,145	80%	\$52,916.16
		<b>Duration of Grant</b>			10 years
		<b>Total Payment of City Grant</b>			\$ 529,161.57
		however subject to any assessment or tax increase during the 10-year period			

The Corporation of the City of Port Colborne

By-law No. \_\_\_\_\_

Being a By-law to Authorize Entering into an Agreement of Purchase and Sale with Timothy Horst and Reginald Malott for 316 2nd Concession legally described as Pt Lt 25 Con 3, Humberstone, As in RO119873 Lying W of RO109911 Except RO222994

Whereas at its meeting of July 18, 2023, Council approved the recommendations of Chief Administrative Office Report No. 2023-133, Subject: Property Acquisition – 316 2nd Concession / Highway 140; and

Whereas Council is desirous of entering into an Agreement of Purchase and Sale with Timothy Horst and Reginald Malott (“the sellers”) at the agreed upon price of \$840,000 for 316 2nd Concession legally described as Pt Lt 25 Con 3, Humberstone, As in RO119873 Lying W of RO109911 Except RO222994;

Now therefore the Council of The Corporation of the City of Port Colborne Enacts as follows:

1. That The Corporation of the City of Port Colborne enter into an Agreement of Purchase and Sale with Timothy Horst and Reginald Malott (“the sellers”) at the agreed upon price of \$840,000 for 316 2nd Concession legally described as Pt Lt 25 Con 3, Humberstone, As in RO119873 Lying W of RO109911 Except RO222994.
2. That the Mayor and Clerk be and each of them is hereby authorized and directed to sign said agreement, together with any documents necessary to complete the conditions of said agreement, and the Clerk is hereby authorized to affix the Corporate Seal thereto.
3. That the City Solicitor be and is hereby directed to prepare and register all such documents in the proper Land Registry Office as may be required to give full force and effect to this By-law.

Enacted and passed this 18th day of July, 2023.

\_\_\_\_\_  
William C. Steele  
Mayor

\_\_\_\_\_  
Charlotte Madden  
City Clerk



# Agreement of Purchase and Sale Commercial

## Form 500

for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 18th day of July, 2023

**BUYER,** The Corporation of the City of Port Colborne, agrees to purchase from  
(Full legal names of all Buyers)

**SELLER,** Reginald Mallott and Timothy Horst, the following  
(Full legal names of all Sellers)

### REAL PROPERTY:

Address 316 Concession 2 Road

fronting on the north side of Concession Road 2

in the City of Port Colborne

and having a frontage of ..... more or less by a depth of ..... more or less

and legally described as PT LT 25 CON 3 HUMBERSTONE AS IN RO119873 LYING W OF RO109911

EXCEPT RO222994 ; PORT COLBORNE (the "property")  
(legal description of land including easements not described elsewhere)

### PURCHASE PRICE:

Dollars (CDN\$) 840,000.00

Eight Hundred Forty Thousand Dollars

**DEPOSIT:** Buyer submits Upon acceptance  
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

Ten Thousand Dollars (CDN\$) 10,000.00

by negotiable cheque payable to.. Re/Max Niagara Realty Ltd., In Trust "Deposit Holder"  
to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

**Buyer agrees to pay the balance as more particularly set out in Schedule A attached.**

**SCHEDULE(S) A** ..... **attached hereto form(s) part of this Agreement.**

**1. IRREVOCABILITY:** This offer shall be irrevocable by Buyer until ..... a.m./p.m. on  
(Seller/Buyer)

the ..... day of July, 2023, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

**2. COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the ..... day of See Schedule A

....., 20..... Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S):



INITIALS OF SELLER(S):



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3. **NOTICES:** ~~The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.~~ Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: .....  
(For delivery of Documents to Seller)

FAX No.: .....  
(For delivery of Documents to Buyer)

Email Address: .....  
(For delivery of Documents to Seller)

Email Address: .....  
(For delivery of Documents to Buyer)

4. **CHATELS INCLUDED:** .....

None.

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:** .....

None.

6. **RENTAL ITEMS (Including Lease, Lease to Own):** The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:

Water heater, if applicable

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. **HST: If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price.** The Seller will not collect HST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, a warranty that the Buyer shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Seller in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the transaction is not subject to HST. Any HST on chattels, If applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S):

\_\_\_\_\_

INITIALS OF SELLERS(S):

\_\_\_\_\_



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8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 5 days day of before closing, 20 XXXXXX, (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there

are no outstanding work orders or deficiency notices affecting the property, that its present use (residential / industrial) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.

12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller.

14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S):

INITIALS OF SELLERS(S):



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- 15. PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
- 16. DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O.1990.
- 17. RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada;  
(b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
- 18. ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
- 19. TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
- 20. PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
- 21. TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
- 22. FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O.1990 unless the spouse of the Seller has executed the consent hereinafter provided.
- 23. UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
- 24. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
- 25. CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
- 26. AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
- 27. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):



INITIALS OF SELLERS(S):



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**28. SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

The Corporation of the City of Port

.....  
(Witness)

Colborne  
(Buyer/Authorized Signing Officer)



DATE .....

.....  
(Witness)

.....  
(Buyer/Authorized Signing Officer)



DATE .....

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

.....  
(Witness)

Reginald Mallott  
(Seller/Authorized Signing Officer)



DATE .....

.....  
(Witness)

Timothy Horst  
(Seller/Authorized Signing Officer)



DATE .....

**SPOUSAL CONSENT:** The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein:

.....  
(Witness)

.....  
(Spouse)



DATE .....

**CONFIRMATION OF ACCEPTANCE:** Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at ..... a.m./p.m. this ..... day of ....., 20.....

.....  
(Signature of Seller or Buyer)

#### INFORMATION ON BROKERAGE(S)

Listing Brokerage ..... Tel.No. ....

.....  
(Salesperson / Broker Name)

Co-op/Buyer Brokerage ..... Tel.No. ....

.....  
(Salesperson / Broker Name)

#### ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

..... DATE .....  
(Seller)

..... DATE .....  
(Seller)

Address for Service .....

..... Tel.No. ....

Seller's Lawyer .....

Address .....

Email .....

..... Tel.No. .... FAX No. ....

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

..... DATE .....  
(Buyer)

..... DATE .....  
(Buyer)

Address for Service .....

..... Tel.No. ....

Buyer's Lawyer .....

Address .....

Email .....

..... Tel.No. .... FAX No. ....

#### FOR OFFICE USE ONLY

#### COMMISSION TRUST AGREEMENT

To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:

In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.

DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale:

Acknowledged by:

.....  
(Authorized to bind the Listing Brokerage)

.....  
(Authorized to bind the Co-operating Brokerage)



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Form 500 Revised 2017 Page 5 of 6

WEBForms® Dec/2016



## Schedule A

### Agreement of Purchase and Sale – Commercial

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER,** The Corporation of the City of Port Colborne ....., and

**SELLER,** Reginald Mallott and Timothy Horst .....

for the purchase and sale of 316 Concession 2 Road ..... Port Colborne .....

..... dated the 18th ..... day of July ....., 2023 .....

Buyer agrees to pay the balance as follows:

See Schedule A attached

This form must be initialed by all parties to the Agreement of Purchase and Sale.

**INITIALS OF BUYER(S):**

**INITIALS OF SELLER(S):**



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## SCHEDULE "A"

### 1) Purchase Price

The Buyer agrees to pay the balance of the Purchase Price, subject to adjustments, by wire transfer or a certified cheque drawn against a lawyer's trust account, to the Sellers, or as they may direct, on the completion of this transaction.

### 2) Due Diligence Documents

By no later than two (2) business days from the date of acceptance of this Agreement, the Sellers will deliver to the Buyer all planning studies, environmental reports, soil tests, engineering reports and all other planning, engineering and survey material relating to the Property in the Sellers' possession or control (the "**Due Diligence Documents**").

The Sellers will also deliver such other documents in their control and possession relating to the Property that may be reasonably requested by the Buyer to assist in its due diligence by no later than five (5) business days after receipt of such request.

### 3) Due Diligence Conditions

(a) The Buyer's obligation to complete the transaction of purchase and sale contemplated under this Agreement is conditional for a period of ninety (90) days from the date of acceptance of this Agreement (the "**Conditional Date**") upon the Buyer being satisfied in its sole, absolute and unfettered discretion with respect to each of the following (the "**Due Diligence Conditions**"):

- (i) a review by the Buyer of the Due Diligence Documents relating to the Property;
- (ii) the approval of Council for the Buyer to this Agreement and the transaction contemplated herein;
- (iii) the physical condition of the Property and the buildings situation thereon;
- (iv) the environmental condition of the Property;
- (v) a title search of the Property; and
- (vi) the lease described in Paragraph 4 below.

The foregoing conditions are for the sole benefit of the Buyer and may be waived by the Buyer in its sole, absolute and unfettered discretion in whole or in part by written notice to the Sellers or their solicitors. In the event that notice of the satisfaction or waiver of this condition has not been provided in writing by the Buyer to the Sellers, or the Sellers' solicitors, prior to 5 pm on the Conditional Date, then this Agreement shall come to an end upon which it is agreed that neither party shall have any further rights or obligations hereunder and the Deposit will be returned to the Buyer without deduction.

(b) From the date of this Agreement until the Closing Date, the Sellers will ensure that the Buyer, its representatives and advisers will, upon reasonable prior notice by the Buyer to the Sellers, have full access to the Property to inspect and carry out tests and investigations of the Property, including, without limitation, a Phase I and/or Phase II Environmental Assessment. All tests and investigations carried out by the Buyer or its representatives or advisers will be at the Buyer's sole risk and expense and the Buyer shall not commit waste. Any damage resulting from the Buyer's tests or investigations will be promptly paid for by the Buyer or repaired at its sole expense and the Buyer shall indemnify the Sellers in respect of any such damage in the event the transactions contemplated hereby are not successfully completed.

#### **4) Lease**

Upon completion of the Closing, the Buyer will lease the house on the Property to the Sellers for a term of six (6) months following the Closing and for monthly rent of TWO THOUSAND DOLLARS (\$2,000.00). The Sellers will be responsible for paying all utilities relating to the house of the Property during the term of the tenancy. The Sellers will also carry such liability insurance as may be requested by the Buyer. The lease will be in the form of the standard residential lease prescribed by the Government of Ontario and will be finalized by the Buyer and Sellers on or prior to the Conditional Date.

#### **5) Deletion of "Subject to Spousal Rights" Notation**

Prior to Closing, the Sellers covenant to register an application to delete the "SUBJECT TO SPOUSAL RIGHTS OF THE SPOUSE OF JUDITH HELEN DRINKWATER, IF ANY, AS IN SN686856." from the PIN to the Property.

#### **6) Closing Date**

The "**Closing Date**" will be thirty (30) days after the notice of waiver or satisfaction of the Due Diligence Conditions is delivered pursuant to Section 3 above.

#### **7) Notice**

Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Buyer's solicitors on behalf of the Buyer and by the Sellers' solicitors on behalf of the Sellers. If the last day of a time period is not a business day in the Province of Ontario, then the time period shall end on the next business day.

The Corporation of the City of Port Colborne

By-law no. \_\_\_\_\_

Being a by-law to amend Zoning By-law 6575/30/18 respecting the lands legally known as Part 1 on Registered Plan 59R-15742 municipally known as a vacant lot on Knoll Street.

Whereas By-law 6575/30/18 is a by-law of The Corporation of the City of Port Colborne restricting the use of land and the location and use of buildings and structures; and

Whereas, the Council of The Corporation of the City of Port Colborne desires to amend the said by-law.

Now therefore, and pursuant to the provisions of Section 34 of the *Planning Act*, R.S.O. 1990, The Corporation of the City of Port Colborne enacts as follows:

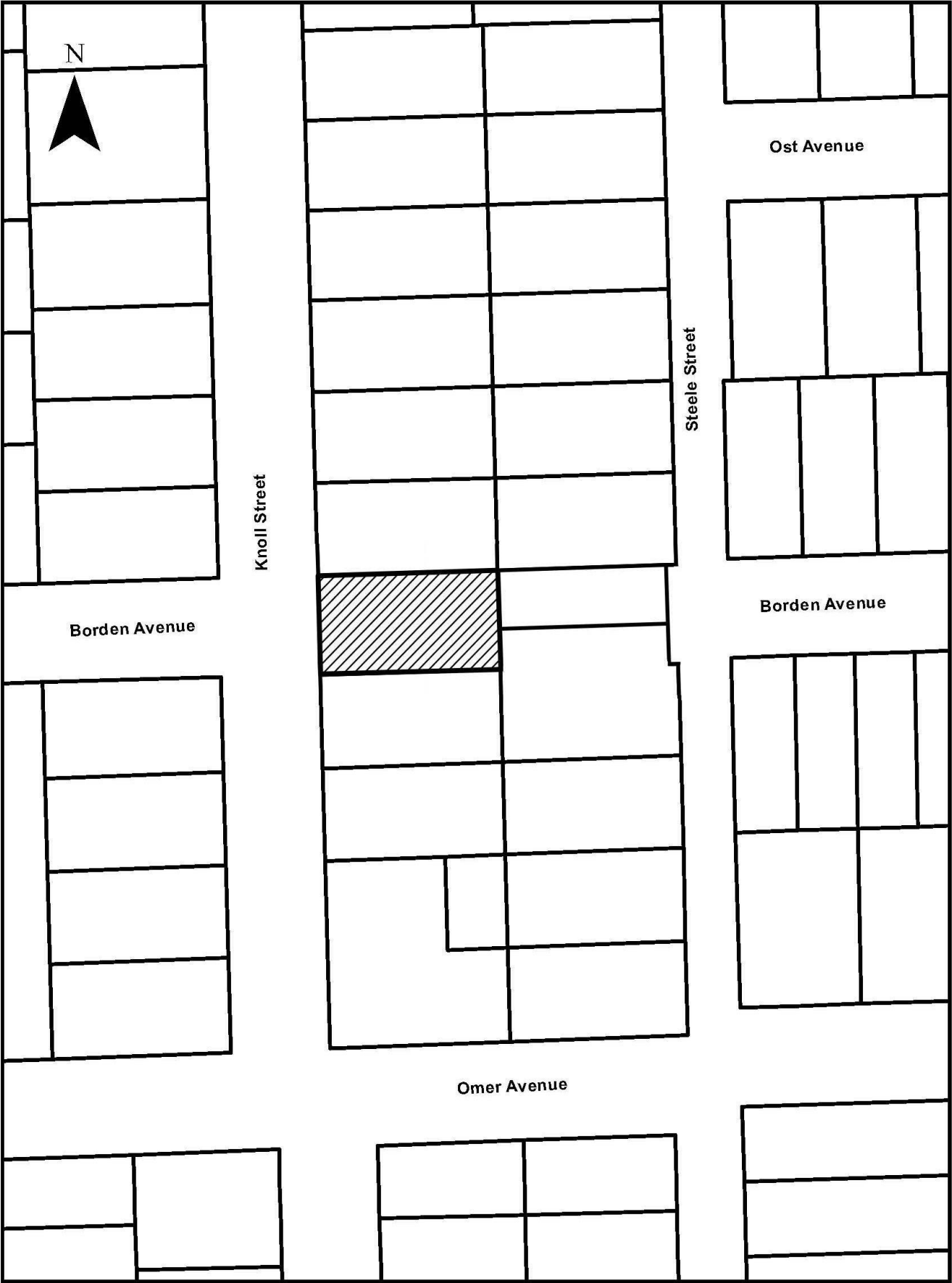
1. This amendment shall apply to those lands described on Schedule "A" attached to and forming part of this by-law.
2. That the Zoning Map referenced as Schedule "A8" forming part of By-law 6575/30/18 is hereby amended by changing those lands described on Schedule A8 from R1 to R2.
3. That this by-law shall come into force and take effect on the day that it is passed by Council, subject to the provisions of the Planning Act.
4. The City Clerk is hereby authorized and directed to proceed with giving notice of the passing of this by-law, in accordance with the Planning Act


That this by-law shall come into force and take effect on the day that it is passed by Council, subject to the provisions of the *Planning Act*.

Enacted and passed this 18th day of July, 2023.

\_\_\_\_\_  
William C. Steele  
Mayor

\_\_\_\_\_  
Charlotte Madden  
City Clerk



<p>This is Schedule "A" to By-law No _____</p> <p>Passed _____, 2023</p> <p>_____ Mayor</p> <p>_____ Clerk</p>	<p> - Lands Subject to By-law</p>
	<p>May 2023</p>
	<p>File No. D14-03-23</p>
	<p>Drawn by: DS - City of Port Colborne Planning Division</p>
<p>Not to scale</p>	



The Corporation of the City of Port Colborne

By-law No. \_\_\_\_\_

Being a By-law to Authorize Entering into an Agreement with the City of St. Catharines regarding Fire & Emergency Dispatch Services

Whereas at its meeting of July 18, 2023, the Council of The Corporation of the City of Port Colborne (Council) approved the recommendations of Community Safety & Enforcement Department Report 2023-135, Subject: Agreement for Dispatching Services with the City of St. Catharines; and

Whereas Council is desirous of entering into an agreement with the City of St. Catharines, for the purposes of Fire & Emergency dispatch services; and

Now therefore the Council of The Corporation of the City of Port Colborne enacts as follows:

1. That The Corporation of the City of Port Colborne enters into an agreement with the City of St. Catharines, for the purposes of Fire & Emergency dispatch services;
2. That the Mayor and City Clerk be and are hereby authorized to execute any documents that may be required for the purpose of carrying out the intent of this by-law and the City Clerk is duly authorized to affix the Corporate Seal thereto.

Enacted and passed this 18th day of July, 2023.

---

William C. Steele  
Mayor

---

Charlotte Madden  
City Clerk

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 10<sup>th</sup> 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.

The Corporation of the City of Port Colborne

By-law No. \_\_\_\_\_

Being a By-law to Authorize Entering into a Lease Agreement with the ownership of The Kennedy Club as the new Commercial Food Vendor at the Vale Health & Wellness Centre

Whereas at its meeting of July 18, 2023, the Council of The Corporation of the City of Port Colborne (Council) approved the recommendations of Corporate Services Department Report 2023-140, Subject: Vale Health & Wellness Centre – Commercial Food Operations; and

Whereas Council is desirous of entering into a lease agreement with the ownership of The Kennedy Club as the new Commercial Food Vendor at the Vale Health & Wellness Centre; and

Now therefore the Council of The Corporation of the City of Port Colborne enacts as follows:

1. That The Corporation of the City of Port Colborne enters into a lease agreement with the ownership of The Kennedy Club as the new Commercial Food Vendor at the Vale Health & Wellness Centre;
2. That the Mayor and City Clerk be and are hereby authorized to execute any documents that may be required for the purpose of carrying out the intent of this by-law and the City Clerk is duly authorized to affix the Corporate Seal thereto.

Enacted and passed this 18th day of July, 2023.

\_\_\_\_\_  
William C. Steele  
Mayor

\_\_\_\_\_  
Charlotte Madden  
City Clerk

THIS LEASE dated as of the 18<sup>th</sup> day of July, 2023.

**BETWEEN:**

**THE CORPORATION OF THE CITY OF PORT COLBORNE**  
(hereinafter referred to as the “**CITY**”)

**AND**

**THE KENNEDY CLUB**  
(hereinafter referred to as the “**LESSEE**”)

**WHEREAS:**

The CITY is the owner of a recreational facility known as the Vale Health and Wellness Centre and municipally described as 550 Elizabeth Street, in the City of Port Colborne; and

The CITY has agreed to lease to the LESSEE certain retail space at the Vale Health and Wellness Centre (hereinafter sometimes referred to as the “**VHWC**”) for the provision of food services; and

The entry into this Lease has been authorized by the Municipal Council of the City of Port Colborne By-law as attached.

**NOW THEREFORE, THIS AGREEMENT WITNESSETH THAT** in consideration of the mutual covenants and other terms and conditions hereinafter contained and sufficient consideration having been given one to the other, the parties hereby covenant and agree as follows:

**1.0 Grant of Lease**

1.1 The CITY hereby leases to the LESSEE an area comprised of approximately 310 square feet on the main level of the VHWC, as highlighted in orange in Appendix A hereto (hereinafter referred to as the “**Leased Premises**” or “**Food Services Areas**”).

1.2 The CITY, at its sole discretion, may from time to time make additional space available to the LESSEE in the VHWC or on the property of the T.A. Lannan Sports Complex. One such area comprised of approximately 203 square feet on the second floor of the VHWC as highlighted in orange in Appendix “B” attached hereto (hereinafter referred to as the “**Second Floor Premises**”) available to the LESSEE for lease. In the event additional space is made available to the LESSEE all of the terms and conditions contained within this Lease shall apply to the lease of the additional space unless modified by an addendum to this Lease. For greater certainty, all sales made in such additional space will be added to the sales of the Leased Premises for the purposes of calculating the Gross Sales for the Percentage Rent pursuant to this Lease.

1.3 Subject to the execution of this Lease, the Indemnity Agreement and the LESSEE providing a certificate of insurance satisfactory to the CITY, the LESSEE shall have possession of the Leased Premises prior to the Commencement Date, subject to the LESSEE paying utility charges set forth in Section 5 herein during the fixturing period.

1.4 In the event the CITY, in its sole discretion, determines that a relocation of the Leased Premises is necessary, the LESSEE agrees to move to a similar size space in an alternative location within the VHWC. Any alternative location would be constructed at the cost of the CITY.

1.5 The LESSEE is granted a licence to service vending machines located within the VHWC designated by the CITY (the “**Vending Machines**”).

## **2.0 Term**

### **INITIAL TERM – YEARS ONE TO FIVE**

2.1 The initial term of this Lease shall commence on August 1<sup>st</sup>, 2023 (the “**Commencement Date**”) and shall terminate five (5) years from the Commencement Date (the “**Initial Term**”).

### **OPTION TO EXTEND TERM**

2.2 Upon the expiry of the Initial Term, the LESSEE and the CITY shall have the option to extend the Initial Term of this Lease for one (1) additional period of five (5) year (the “**Extended Term**”) upon giving notice in writing to the CITY at least six (6) months prior to the expiration of the Initial Term, and the CITY agreeing to the Extended Term prior to the termination of the Initial Term. In the event of the exercise of the renewal option, such extension shall be upon the same terms and conditions as this Lease with the exception of the annual base rent which shall be increased in accordance with Article 7.0 of this Lease. In the event that the CITY or the LESSEE do not agree to the Extended Term, this Lease shall terminate at the end of the Initial Term.

### **OPTION TO TERMINATE LEASE**

2.3 The LESSEE shall have the option of terminating this Lease during the Initial Term upon giving at least three (3) months’ prior notice in writing to the CITY, provided that all amounts due and owing to the CITY pursuant to this Lease are paid in full and the LESSEE is in compliance with all other terms and conditions of this Lease. For greater certainty, the LESSEE shall be entitled to terminate this Lease pursuant to the provisions of this Section 2.3 only during the Initial Term and the LESSEE acknowledges and agrees that it shall not be entitled to terminate this Lease on prior written notice during any Extended Term.

2.4 The CITY shall have the option of terminating this Lease in accordance with the provisions herein provided.

## **3.0 Leased Premises and Use**

3.1 Subject to compliance by the LESSEE with the provisions of this Lease, the LESSEE shall have exclusive use and quiet possession of the Leased Premises. The Leased Premises shall be used by the LESSEE for the operation of a food and beverage business for on and off the Leased Premises consumption operating as “The Kennedy Club” and for no other purposes whatsoever.

3.2 The Common Lounge Area, as highlighted in orange on Appendix ‘C’ is available for use by the LESSEE’s customers, but shall remain accessible to members of the public and shall be controlled by the CITY.

3.3 The CITY acknowledges that the LESSEE’s menu consists of primarily sandwiches, French fries, hot dogs, “grab and go” food, and related items. The LESSEE must submit a listing of all menu items, including pricing, to the CITY for approval. The LESSEE’s menu items must highlight the healthy choice options. Any material changes to the menu items, including pricing, shall require the approval of the CITY. The CITY shall determine what is a material change in its sole discretion. The LESSEE is expressly forbidden from sale of any tobacco or cannabis products of any kind.

3.4 The LESSEE, at its sole cost and expense, may, with the consent of the CITY, which consent may be unreasonably withheld, apply for a licence from the Alcohol and Gaming Commission of Ontario for the sale of alcohol from spaces within in the VHWC and the T.A. Lannan Sports Complex that have subsequently been leased to the LESSEE. Notwithstanding a successful application for a liquor sales licence by the LESSEE, the CITY maintains the right to withdraw their consent to the sale of alcohol by the LESSEE at any time.

3.5 The LESSEE shall supply the Vending Machines and keep supplied the Vending Machines in areas designated by the CITY at prices approved by the CITY. In the event the LESSEE, in the sole discretion of the CITY, fails to adequately service the Vending Machines, the CITY may terminate the licence to service the Vending Machines.

#### **4.0 Rent and Percentage Rent**

4.1 The annual base rent payable by the LESSEE to the CITY for the Initial Term of this Lease is \$7,200.00 per annum for the Leased Premises, plus Sales Taxes (as hereinafter defined) payable in equal monthly installments of \$600.00, plus Sales Taxes, for the Initial Term, subject to the adjustments hereinafter set forth.

Annual base rent for the Leased Premises payable during the Initial Term and any Extended Term thereof is payable by the LESSEE without any prior demand therefor and without deduction, abatement or set off. Annual base rent shall be increased in accordance with the provisions of Section 7.1 herein.

#### **PERCENTAGE RENT**

4.2 In addition to the annual base rent, the LESSEE shall pay further rent to the CITY, in the manner and upon the conditions and at the times hereinafter set forth during each Lease Year (as hereinafter defined), a sum equivalent to the amount of seven percent (7%) of the first \$150,000.00 of Gross Revenue (as hereinafter defined) of the LESSEE for such Lease Year, plus ten percent (10%) of Gross Revenue in excess of \$150,000.00 for such Lease Year (collectively, the “**Percentage Rent**”). Percentage Rent is payable, as hereinafter provided without any prior demand therefor and without any deduction, abatement or set-off whatsoever. Percentage Rent shall be subject to and the LESSEE shall be liable to pay, any and all Sales Taxes attributed thereto. For greater clarity, each Lease year ends May 31<sup>st</sup> and all sales of the Lessee in the VHWC or on the T.A. Lannan Sports Complex property are included in the calculation of Gross Sales for the purposes of calculating Percentage Rent. This includes additional premises the CITY may make available and vending machine sales.

#### **PAYMENT OF PERCENTAGE RENT**

4.3 The LESSEE covenants to pay an amount monthly on account of Percentage Rent within 60 days following the end of each month. The payments will be accompanied by a sales summary of sales by location, by month and year to date with vending machine sales broken out as one location. The payment will be calculated by the applicable rates of Seven Percent (7%) for the first \$150,000.00 of aggregate Gross Sales and Ten Percent (10%) of aggregate Gross Sales greater than \$150,000.00.

#### **LESSEE’S RECORDS**

4.4 For the purposes of ascertaining the amount payable as Percentage Rent, the LESSEE shall prepare and keep on the Leased Premises or at the LESSEE's principal office in the Province of Ontario for at least eighteen (18) months following the end of each Lease Year, adequate books and records which shall show all inventories and receipts of merchandise and goods at the Leased Premises and daily receipts from all sales, charges, services and other transactions on, at or from the Leased Premises and the VHWC made by the LESSEE and any other persons conducting business upon or from the Leased Premises as well as sales tax returns, all pertinent original sales records and such other sales records as the CITY reasonably determines which would normally be examined by an independent chartered professional accountant pursuant to accepted auditing standards in performing a detailed audit of the LESSEE's sales. The LESSEE shall cause all such records to be kept by all sub-tenants, assignees, concessionaires, franchisees, licensees or other persons doing business on or from the Leased Premises and the VHWC. The LESSEE and all other persons conducting business on or from the Leased Premises and the VHWC shall record at the time of sale, in the presence of the customer, all receipts from sale, charges, services or other transactions whether for cash or credit, in a cash register or point of sale system having a sealed cumulative total.

4.5 *Intentionally deleted.*



## RIGHT TO EXAMINE BOOKS

4.6 The receipt or use by the CITY of any statement of Gross Revenue from the LESSEE or any payment of Percentage Rent based thereon, shall neither constitute acceptance of such statement or of the Percentage Rent payable with respect to any period, nor constitute a waiver by the CITY of any obligation by the LESSEE hereunder and shall be without prejudice to the CITY's right to an examination of the LESSEE's books and records relating to the Gross Revenue and inventories of merchandise and goods at the Leased Premises, for the period covered by any statement issued by the LESSEE as above set forth. The CITY and CITY's authorized representatives shall have the right to examine the LESSEE's records and procedures aforesaid during regular business hours and shall have the right to enter the Leased Premises, through its agents, accountants, auditors and officers, to check, verify and tabulate Gross Revenue, or to examine accounting records and procedures including control features affecting the determination of Gross Revenue.

## AUDIT

4.7 The CITY may at any reasonable time cause a complete audit to be made of the LESSEE's entire business affairs and records relating to the Leased Premises and the calculation of Gross Revenue for the period covered by any statement issued by the LESSEE as above set forth. If the auditor or chartered accountant performing such audit reports to the CITY that in his opinion the LESSEE's records and procedures are insufficient to permit a determination of Gross Revenue for any Lease Year, or part thereof, or if the LESSEE is not complying with each of the provisions of this Lease in respect thereto, the LESSEE shall immediately, after notice from the CITY, take such steps as are necessary to remedy such default. If the LESSEE is unable to satisfy forthwith the objections contained in the auditor's report as aforesaid, the CITY may thereafter deliver to the LESSEE an estimate (which shall be final and binding on the LESSEE) made by the CITY of Gross Revenue for the period under consideration (which estimate shall be based on any information or records of the LESSEE that have been made available and such other information as the CITY considers relevant) and the LESSEE shall immediately pay to the CITY any amount shown thereby to be owing on account of Percentage Rent.

If the CITY's auditor or chartered professional accountant reports that the LESSEE is in default pursuant to the requirements of this Article 4 or that in his opinion the LESSEE's records and procedures are insufficient to permit a determination of the LESSEE's Gross Revenue or if such audit discloses that Gross Revenue for the period in question is understated by three percent (3%) or more of Gross Revenue actually received by the LESSEE from the business operations on the Leased Premises and the VHWC, the LESSEE shall forthwith, after notice from the CITY, pay to the CITY the cost of said audit, in addition to the deficiency, which deficiency is payable in any event. If there is any substantial or continuing breach by the LESSEE of the requirements of this Article 4, or if the LESSEE substantially or continually fails to produce records and procedures to permit a determination of Gross Revenue, or if Gross Revenue is understated by three percent (3%) or more as aforesaid, then, in addition to any other remedies of the CITY under this Lease or otherwise, the CITY may terminate this Lease upon five (5) days notice to the LESSEE. The report of the CITY's auditor from time to time is final and binding upon the parties hereto.

## LESSEE'S FAILURE

4.8 If the LESSEE fails to deliver any of the statements to the CITY provided for by this Article 4 and within the time herein provided, the CITY, in addition to any other rights or remedies hereunder, has the right thereafter to employ a chartered professional accountant or auditor to examine such of the LESSEE's books and records as are necessary to certify the amount of Gross Revenue for such period as it related to the statement in question, and the LESSEE shall pay to the CITY on demand the cost of any such examination, together with any and all sums shown to be owing on account of Percentage Rent pursuant thereto.

## DEFINITIONS

4.9 For purposes of this Lease, the following terms shall have the meanings ascribed to them below:

“Gross Revenue” means the entire amount of the sales price, whether for cash or credit or otherwise, of merchandise, goods and services (including amounts received for equipment rental, if any) and all other receipts or receivables whatsoever of all business conducted at, in or upon or from the Leased Premises, the additional space made available at the VHWC, or the T.A. Lannan Sports Complex, including receipts of receivables in respect of orders taken at or received at the Leased Premises (although such orders may be filled elsewhere), by the LESSEE and every sublessee, franchisee, concessionaire and licensee of the LESSEE or otherwise in or from the Leased Premises and all proceeds from vending carts, but shall not include:

- (a) delivery or installation charges;
- (b) the sale price of merchandise or goods returned or exchanged by customers for which a credit or refund is made, to the extent of such refund, provided that the sales price of such merchandise shall have been previously included in Gross Revenue;
- (c) any sums or credits received in settlement of claims for loss or damage to merchandise or goods; and
- (d) taxes which are required to be collected as a direct and separate tax from customers and which are not included in the sales price of such merchandise, goods or services;

“Indemnifier” means the individuals who have executed the Indemnity Agreement attached as Appendix “G” hereto and any replacement Indemnifiers required pursuant to the provisions of this Lease.

“Lease Year” means a period of time, the first lease year commencing on the earlier of the date of possession of the Leased Premises and Commencement Date the last day of the month of May next following. Each subsequent Lease Year commences on the first day following the expiration of the preceding Lease Year and terminates on the earlier of the expiration of twelve (12) months thereafter or on the termination of this Lease.

“LESSEE” means The Kennedy Club and any reference to “LESSEE” includes, where the context allows, (as in, by way of example, but without limitation Section 4.5, Section 4.6, Section 10.2, Section 10.4, Section 10.6, Article 24 and Section 25.5), the directors, officers, servants, employees, contractors, agents, invitees, franchisees, sublessees and licensees of the LESSEE and all other persons or entities over whom the LESSEE: (i) may be expected to exercise control; and (ii) is in law responsible.

“rent” includes base rent, Percentage Rent and any and all sums of money or charges required to be paid by the LESSEE under this Lease whether or not designated as “additional rent” or whether or not payable to the CITY or to any other person or entity.

“Sales Taxes” includes any and all goods and services taxes, sale taxes, value added taxes, harmonized sales taxes, business transfer taxes and any other taxes imposed on the CITY with respect to amounts due under this Lease whether characterized as goods and services taxes, sales taxes, value added taxes, harmonized sales taxes, business transfer taxes or otherwise, it being the intention of the parties that the CITY shall be fully reimbursed by the LESSEE with respect to any and all Sales Taxes payable by the CITY in respect of the rent and other amounts payable by the LESSEE to the CITY under this Lease.

## **5.0 Utility Charges**

5.1 The CITY shall provide the LESSEE with utilities (electricity, potable water, heating and cooling to building standards) on a best efforts basis. The LESSEE is responsible, at its own cost and expense, for all telephone, internet, cable television or other non-building supplied utility-type services required by the LESSEE. The City reserves the right to require the LESSEE to shut down utilities for any reason. In the event a required shut down exceeds 24 hours in any given month, for a reason other than weather, it is anticipated that month’s financial terms will be prorated accordingly.

## **6.0 Intentionally Deleted.**

## **7.0 CPI Increases and Total Lease Payment**

7.1 The annual base rent payable by the LESSEE hereunder shall be increased commencing at the beginning of each Lease Year by the most recent percentage increase in the Consumer Price Index for Ontario (All Items) published by Statistics Canada (the “**Index**”), as hereinafter set forth. It is understood and agreed by the parties that in the event that: (i) there is a reduction in the Index as at the Index Date, the LESSEE shall not be entitled to a reduction in annual base rent for the next succeeding Lease Year of the Initial Term or any Extended Term; and (ii) the Index is no longer published at any time during the Initial Term or any Extended Term, then the CITY shall, in its sole discretion, use such other price index it determines appropriate for the adjustments to be made pursuant to this Section 7.1.

7.2 The LESSEE covenants to make all payments in respect of base rent, in equal monthly installments on the first day of every calendar month in advance, and Percentage Rent in accordance with section 4.3 of this Lease, without deduction, abatement or set off.

Cheques shall be made payable to the Corporation of the City of Port Colborne and delivered to the attention of the Director of Corporate and Community Services of the City of Port Colborne, at 66 Charlotte Street, Port Colborne, Ontario, L3K 3C8.

7.3 Any and all sums of money or charges required to be paid by the LESSEE under this Lease shall be deemed to be and shall be paid as additional rent, whether or not the same be designated “additional rent” hereunder, or whether or not the same be paid to the CITY or otherwise, and all such sums shall be payable in lawful money of Canada without deduction, set-off or abatement whatsoever. Any additional rent provided for in this Lease, unless otherwise provided herein, shall become due with the next installment of monthly base rent and upon default of payment shall be collectable by the CITY as rent, in arrears.

## **8.0 Intentionally Deleted.**

## **9.0 Lessee Leasehold Improvements and Fixtures**

9.1 The LESSEE shall be responsible for the installation, maintenance and replacement of all trade fixtures and leasehold improvements within the Leased Premises, including, but not limited to, all shelves, racks, counters, sinks, oven, freezers and signage. Modifications and improvements, including, but not limited to fixtures and trade fixtures, made by the LESSEE to the VHWC building which are affixed to the VHWC building shall become property of the CITY upon their installation and shall not be removed by the LESSEE at the termination or expiration of this Lease, nor at any other time, unless required by the CITY. During the Initial Term and any Extended Term and provided the LESSEE is not in default of any of its obligations or covenants in this Lease, the LESSEE may remove its trade fixtures provided it replaces such trade fixtures with new or like new trade fixtures and equipment. At the termination or expiration of this Lease the LESSEE must return the Leased Premises to its original condition to the extent required by the CITY, to the complete satisfaction of the CITY and shall immediately repair any damage to the Leased Premises caused by the removal of the LESSEE’s trade fixtures. All leasehold improvements, renovations or redecorating shall be subject to prior written approval by the CITY, as set forth below.

The LESSEE shall not make any repairs, alterations, replacements, decorations or improvements (collectively, the “**Work**”) to the Leased Premises without submitting to the CITY: (i) details of the proposed Work, including drawings and specifications; and (ii) evidence that the LESSEE has obtained the necessary consents, permits, licenses and inspections from the governmental authorities having jurisdiction in relation to the Work to be performed. The Work will be completed (1) at the LESSEE’s sole cost; (2) by competent workmen who are duly qualified or licensed as required by law; (3) in a good and workmanlike manner, using only new or like new materials; (4) in accordance with the drawings and specifications approved by the CITY; and (5) subject to the reasonable restrictions imposed by the CITY.

9.2 The LESSEE will not install any equipment which overloads the capacity of any utility, electrical or mechanical facilities in the Leased Premises or the VHWC or which the CITY does not approve of and the LESSEE will not bring upon the Leased Premises any machinery, equipment or thing which might, in the opinion of the CITY, damage the Leased Premises or overload the floors of the Leased Premises and the LESSEE shall forthwith repair or pay to the CITY, as additional rent, on demand, any damage caused for failure to abide by this provision.

9.3 The LESSEE shall not suffer or permit any liens under the *Construction Act*, or other or similar liens or orders to be filed against the Leased Premises, the VHWC or any parts thereof by reason of work, labour, services or materials holding the Leased Premises or any part thereof through or under the LESSEE. If any such liens or orders as aforesaid shall be at any time filed against the Leased Premises, the VHWC or any part thereof, the LESSEE shall cause same to be discharged from the record and from title to the Leased Premises and the VHWC within ten (10) days after notice to the LESSEE of the filing of the same. If the LESSEE shall fail to discharge such lien or order within such period, the CITY may, in addition to any other right, or remedy of the CITY, but shall not be obligated to, discharge same either by paying the amount claimed to be due or by procuring the discharge of such lien or order by deposit in Court or by bonding. Any amount paid by the CITY for any of the aforesaid purposes and all fees and expenses (including legal fees on a full indemnity basis) and all other expenses of the CITY in defending such action or in procuring the discharge of such lien or order, with all necessary disbursements in connection therewith, shall be repaid by the LESSEE to the CITY on demand, and if unpaid may be treated as rent in arrears. Nothing herein contained shall authorize the LESSEE, or imply any consent or agreement or request on the part of the CITY, to subject the CITY's estate or interest in the Leased Premises or the VHWC to any construction lien or other lien of any nature or kind whatsoever.

9.4 The CITY and its agents, upon prior written notice, at all reasonable times during the Initial Term and any Extended Term of this Lease, shall have the right to enter the Leased Premises and inspect the condition thereof. Where an inspection reveals that repairs or replacements are necessary, the CITY shall give the LESSEE notice in writing, and thereupon the LESSEE will, within thirty (30) days from the date of delivery of the notice, make the necessary repairs and replacements in a good and workmanlike manner. If the LESSEE shall not, within thirty (30) days after the service of such notice, commence to proceed diligently with the execution of the repairs and replacements and work mentioned in such notice, it shall be lawful for the CITY to enter onto the Leased Premises and execute such repairs, replacements and work and the cost thereof shall be collectible as additional rent on demand. Entry by the CITY in accordance with this Section 9.4 shall not be deemed to be a breach of the LESSEE's quiet enjoyment of the Leased Premises and the CITY will not be liable for any damage or injury caused to any property of the LESSEE or others located on the Leased Premises by reason of such entry.

**10.0** *Intentionally deleted.*

## **11.0 Food Services at VHWC**

11.1 The LESSEE acknowledges and agrees that the CITY may permit food vendors, food carts, food kiosks, or stationary food facility other than the LESSEE to operate within the VHWC and the T.A. Lannan Sports Complex.

## **12.0 Conduct and Operating of Business**

12.1 The overall governance of the VHWC will be the responsibility of the CITY. The CITY will develop the facility operations policy and procedures manual. The facility policies and procedures will be adhered to by the LESSEE. The LESSEE agrees to abide by all rules, regulations and facility policies and procedures established and approved from time to time by the CITY.

12.2 The CITY may make reasonable regulations with regard to the use and occupancy of the Leased Premises and the LESSEE shall fully comply with such regulations.

12.3 The LESSEE shall, during the Initial Term and any Extended Term;

- operate its business with due diligence and efficiency and maintain an adequate complement of staff to properly serve its customers;

- obtain and file with the CITY police checks for all staff, including ownership of the LESSEE;
- observe and obey the rules and regulations of the CITY promulgated from time to time for reasons of safety, health or preservation of property or for the maintenance of the good and orderly appearance and operation of the VHWC. The CITY agrees that except in cases of emergency, it will give the LESSEE notice of every new rule or regulations adopted by it at least thirty (30) days before the LESSEE shall be required to comply therewith;
- abide by all rules and regulations and general polices formulated by the CITY from time to time;
- shut down operations for any reason given by the CITY. In the event a required shut down exceeds 24 hours in any given month, for a reason other than weather, it is anticipated that months' base rent shall be prorated accordingly;
- from time to time participate, along with the LESSEE's staff, in CITY training on topics that range from, but not limited to, health and safety to diversity, equity and inclusion. In such situations the CITY shall cover the costs of training and the LESSEE shall be responsible for its staff wages;
- keep the Food Services Area free of hazards and fire dangers at all times;
- encourage patrons to dispose of garbage and recycling in the appropriate receptacles to maintain a clean facility;
- make use of biodegradable packaging when the LESSEE is reasonably able to; and
- meet with and negotiate with other partners and organizations for special events such as birthday parties, tournaments, team parties etc.
- be liable to the CITY to pay for structural repairs that are due to the acts and omissions of the LESSEE, as additional rent due on demand;
- The LESSEE covenants and agrees that it will not use or permit to be used any part of the Leased Premises, or any part of the VHWC and T.A. Lannan Sports Complex so as to cause a nuisance, and will not cause or maintain any nuisance in, at or on the Leased Premises, or any part of the VHWC and T.A. Lannan Sports Complex nor do or permit to be done or omitted anything upon, in or about the Leased Premises, or any part of the VHWC and T.A. Lannan Sports Complex the doing, permission or omission of which shall be, or result in a nuisance; and
- The LESSEE will at its expense promptly, (i) comply with the requirements of all governmental authorities, including, without limitation, federal, provincial and municipal legislative enactments, laws, by-laws, regulations and environmental laws, policies and regulations now or subsequently in force which pertain to the LESSEE's use of the Leased Premises or any part of the VHWC and T.A. Lannan Sports Complex, or the conduct of LESSEE's business in the Leased Premises or any part of the VHWC and T.A. Lannan Sports Complex, or the making of any repairs, replacements, alterations or changes to the Leased Premises or any part of the VHWC and T.A. Lannan Sports Complex, (ii) comply with the policy, fire and sanitary regulations imposed by any governmental authorities or made by fire insurance underwriters, in connection with the LESSEE's use of the Leased Premises or any part of the VHWC and T.A. Lannan Sports Complex, and (iii) carry out all modifications or changes to the Leased Premises or any part of the VHWC and T.A. Lannan Sports Complex and the LESSEE's conduct of business in or use of the Leased Premises or any part of the VHWC and T.A. Lannan Sports Complex which are required by any of those authorities.

### **13.0 Independent Contractor**

13.1 The LESSEE shall act solely as an independent contractor and shall retain complete control over its agents, employees and administrators.

### **14.0 Employees**

14.1 The LESSEE shall provide at all times, a sufficient number of qualified and trained employees to operate the Food Services Area and any other additional space made available to the LESSEE by the CITY. Employed personnel of the LESSEE shall not be employees of the CITY.

### **15.0 Labour**

15.1 The LESSEE shall remain in good standing with the Workers Safety & Insurance Board as well as comply with all other relevant employment statutes, including the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code.

15.2 The LESSEE agrees to implement and comply with all health and safety legislation and regulations.

### **16.0 Sanitation and Housekeeping**

16.1 The LESSEE shall at all times be responsible for the regular housekeeping and sanitation in the preparation, storage and service areas of the Food Service Area and any additional spaces made available to the LESSEE by the CITY.

The LESSEE shall not permit garbage, ash, waste or other objectionable material to accumulate on the Leased Premises. The LESSEE shall, during the Initial Term and any Extended Term, at its own cost and expense, remove all garbage and debris from the Leased Premises and shall comply with all applicable laws and regulations regarding the disposal of same.

16.2 The LESSEE agrees to be responsible for the removal of waste from and cleaning/clearing of tables and the cleaning of minor spills in the Common Lounge Area and any area in the VHWC or on the grounds of the T.A. Lannan Sports Complex impacted by the operations of the LESEE during daily operational hours. For greater certainty this includes space not identified as leased by the LESSEE and includes any adjacent space. The YMCA in agreement with the CITY is responsible for the overall cleaning of the Common Lounge Area of the VHWC.

16.3 The LESSEE is responsible to supply all their own cleaning materials and supplies for their operations.

### **17.0 Waste Management**

17.1 The LESSEE agrees to be responsible for emptying and transporting waste from the Food Services Area and any additional spaces made available to the LESEE by the CITY to the waste confinement and recycling area inside or outside the VHWC as directed by the CITY. The LESSEE shall participate in all recycling programs required by the CITY.

17.2 The CITY shall be responsible, at its expense, for emptying waste containers on a daily basis in the Common Lounge Area and any additional spaces made available to the LESEE by the CITY.

## **18.0 Security and Repairs**

18.1 The LESSEE acknowledges and agrees that the CITY is not responsible for providing security to the Food Services Area. The LESSEE acknowledges that it is responsible for security of the Food Services Area during the Initial Term and any Extended Term of this Lease. The LESSEE will, throughout the Initial Term and any Extended Term, at its sole cost and expense, keep the Leased Premises in good condition and repair, reasonable wear and tear only excepted, and will make, with due diligence and dispatch, all repairs and replacements to the whole of the Leased Premises, including all appurtenances, fixtures and equipment, as would a careful and prudent owner. The LESSEE shall, at its own expense, keep the whole of the Leased Premises in a neat and tidy condition and shall keep the Leased Premises well painted, clean and in a first class condition. The CITY shall not be obligated to repair, replace or maintain any part of the Leased Premises during the Initial Term or any Extended Term of this Lease.

18.2 The CITY shall not be liable to the LESSEE for any interference, disruption or inconvenience caused by repairs, alterations, improvements or construction to the VHWC, provided such are carried out as expeditiously as reasonably possible.

## 19.0 Keys/Alarms

19.1 The LESSEE covenants to provide a key to the Leased Premises to the CITY's facility manager. The LESSEE hereby grants permission to the City of Port Colborne's staff to enter the Leased Premises in case of an emergency. If the CITY enters the Leased Premises in an emergency situation, the facility manager will contact the LESSEE as soon as possible and, as a matter of record, will provide the date, time and entry point for their information.

## **20.0 Washrooms**

20.1 The CITY acknowledges that the LESSEE's staff and customers shall be entitled to use the VHCW public washrooms, in common with others.

## **21.0 Other Taxes**

21.1 The LESSEE shall collect any applicable taxes in respect of the sales to its customers and shall remit the taxes to the appropriate taxing authority as required by applicable laws.

## 22.0 Hours of Operation

22.1 The LESSEE agrees that the hours of operation of the Leased Premises shall be adjusted seasonally to meet the needs of the programs offered at the VHWC. The CITY will be requested to review hours of operation with the LESSEE if any concerns are raised as to hours of operation. The LESSEE acknowledges and agrees to modify the hours of operation for tournaments and other special events.

## BASE HOURS

22.2 The LESSEE covenants to be open for business during the proposed hours of:

Sunday to Saturday 6:00 am to 11:00 pm

The LESSEE acknowledges that the proposed hours are subject to change to meet the demands of the facility.

The CITY will circulate electronically a schedule of all regular program and upcoming events in the VHWC to the LESSEE for scheduling purposes.

## **23.0 Signage**

23.1 The LESSEE shall have the right during the Initial Term and any Extended Term, at its expense, to have signage as follows:

(a) Store name above the Food Services Area on the main floor in size, materials and colours approved by the CITY

(b) Store name on the road pylon sign at a cost of \$1,000.00 per year (plus Sales Taxes) for the Initial Term, payable as additional rent, in equal monthly installments of \$83.33, plus Sales Taxes on the first day of each month during the Initial Term, and \$500.00 per year for each year of an Extended Term, plus Sales Taxes, thereafter payable in equal monthly installments of \$41.67, plus Sales Taxes, payable on the first day of each month during each year of the Extended Term, for advertising in size, materials and colours approved by the CITY.

(c) Store Name above the outside service window in size, materials and colours to be approved by the CITY.

(d) The City of Port Colborne will supply directional signage at all three building entrances indicating The Kennedy Club as the food services provider in size, materials and colours approved by the CITY. The LESSEE shall supply appropriate art work and specifications for text and font.

23.2 All signs purchased by the LESSEE will remain the property of the LESSEE and shall be removed by the LESSEE upon the expiration or termination of the Initial Term or any Extended Term. The LESSEE must return the area where signage was installed to its original condition at its sole expense and shall repair all damage caused by such removal.

23.3 The Lessee shall not affix or maintain upon the glass panes and/or supports or within twelve (12) inches of any opening/window/glass or exterior wall of the Leased Premises, any signs, advertisements, placards, descriptive material, names, logos, insignia, trademark or other such items, except those that have been approved by the CITY in writing as to size, type, color, location, display quantities, copy and nature. The Lessee shall not affix any sign within the common area of the VHWC. This excludes signage pursuant to Section 23.1, an 'OPEN' sign on the outside service window of the Leased Premises (as approved by the CITY), and signage on the LESSEE's vending cart. All signage shall conform to LESSEE's logo.

23.4 Any unauthorized advertising displayed by the LESSEE shall be removed by the CITY, with the cost of removal charged to the LESSEE, as additional rent.

#### **24.0 LESSEE'S Insurance**

24.1 The LESSEE will, throughout the Initial Term and any Extended Term, at its own expense, take out and maintain, in the names of the LESSEE and the CITY, as an additional named insured, the following insurance:

(a) insurance upon all property owned by the LESSEE or for which the LESSEE is legally liable, or which is installed by or on behalf of the LESSEE, and which is located within the Leased Premises including, but not limited to, fittings, installations, alterations, additions, partitions, trade fixtures, fixtures and anything in the nature of a leasehold improvement as well as the LESSEE's stock-in-trade, furniture and personal property, in an amount not less than the full replacement cost thereof with coverage against at least the perils of fire and standard extended coverage, including sprinkler leakages (where applicable), earthquake, flood and collapse. If there is a dispute as to the amount which comprises full replacement cost, the decision of the CITY will be conclusive;

(b) commercial general liability insurance including products liability, personal injury liability and property damage insurance coverage with respect to the Leased Premises, the Second Floor Premises and the LESSEE's use of the common areas, Exterior Sales Area and the VHWC, coverage to include the activities and operations conducted by the LESSEE and any other persons on the Leased Premises, the Second Floor Premises, the Exterior Sales Area and by the LESSEE and any other person performing work on behalf of the LESSEE in the Leased Premises, the Second Floor Premises, the Exterior Sales Area or any other part of the VHWC. Such policies shall: (i) be written on a comprehensive basis with inclusive limits of not less than \$2,000,000.00 per occurrence, \$5,000,000.00 annual aggregate, for product liability, bodily injury or property damage; (ii) contain a severability of interests clause and a cross-liability clause; (iii) have a deductible not greater than five thousand dollars (\$5,000.00); and (iv) not contain any exclusions of liability for damage, etc., to property, building or land arising from the removal or weakening



of support of any property, building or land whether such support be natural or otherwise;

(c) LESSEE's legal liability insurance with limits of not less than \$750,000.00, including loss of use of the Leased Premises thereof;

(d) Standard Automobile Policy on both owned and non-owned vehicles with inclusive limits of not less than five million dollars (\$5,000,000.00) Bodily Injury and Property Damage with a deductible not greater than five thousand dollars (\$5,000.00); and

(e) Professional Liability Insurance in the minimum amount of five million dollars (\$5,000,000.00). The LESSEE shall provide to the City proof of Professional Liability Insurance carried by the LESSEE.

24.2 The LESSEE hereby waives all claims against the CITY whatsoever nature or kind where such claims arise out of, or in consequence of, this Lease.

24.3 The policies mentioned in this Article 24 will contain a waiver of any subrogation rights which the LESSEE's insurers may have against the CITY and against those for whom the CITY is in law responsible, whether the damage is caused by the act, omission or negligence of the CITY and those for whom the CITY is in law responsible.

24.4 All insurance policies: (i) will be in a form satisfactory from time to time to the CITY; (ii) will be non-contributing with, and will apply only as primary and not as excess to any other insurance available to the CITY; and (iii) will not be invalidated as respects the interests of the CITY by reason of any breach or violation of any warranties, representations, declarations or conditions contained in the policies. All policies of insurance will contain an undertaking by the insurers to notify the CITY in writing by registered mail at least thirty (30) days before any material change, cancellation or termination of such policies.

24.5 Certificates of insurance or, if required by the CITY, certified copies of each of the insurance policies will be delivered to the CITY as soon as possible after the placing of the required insurance but in any case before the LESSEE obtains possession or use of the Leased Premises for any purpose. No review or approval of any insurance certificate by the CITY derogates from or diminishes the CITY's right or the LESSEE's obligations in this Lease including, but not limited to, those contained in this Article 24.

24.6 If the LESSEE fails to take out or keep in force any insurance referred to in this Article 24, and should the LESSEE not commence to diligently rectify (and afterwards to proceed diligently to rectify) the situation within forty-eight (48) hours after written notice by the CITY to the LESSEE, the CITY may, without assuming any obligation in connection with its doing so, effect the insurance at the LESSEE's cost and all costs and expenses of the CITY will be immediately paid by the LESSEE to the CITY as additional rent due on demand. This right is without prejudice to the other rights and remedies of the CITY under this Lease.

24.7 If the occupancy of the Leased Premises, the conduct of business in the Leased Premises or within the VHWC, or any acts or omissions of the LESSEE in the Leased Premises, the Exterior Sales Area the VHWC or any part of it cause an increase in premiums for the insurance carried from time to time by the CITY, the LESSEE will pay the increase as additional rent immediately after invoices for the additional premiums are rendered by the CITY.

24.8 If any insurance policy on the Leased Premises or any part of it is cancelled or threatened by the insurer to be cancelled, or if the coverage under it is reduced in any way by the insurer because of the use or occupation of any part of the Leased Premises or the VHWC by the LESSEE or by any occupant of the Leased Premises, and if the LESSEE fails to remedy the condition giving rise to the cancellation, threatened cancellation or reduction of coverage within forty-eight (48) hours after notice by the CITY, the CITY may, either: (i) re-enter and take possession of the Leased Premises immediately by leaving upon the Leased Premises a notice of its intention to do so upon which the CITY will have the same rights and remedies as are contained in Article 25; or (ii) enter upon the Leased Premises and remedy the condition giving rise to the cancellation, threatened cancellation or reduction of coverage, and the LESSEE will immediately pay the costs and expenses to the CITY, , which costs and expenses may be collected by the CITY as additional rent

and the CITY will not be liable for any damage or injury caused to any property of the LESSEE or others located on the Leased Premises as the result of the entry. Such an entry by the CITY is not a re-entry or a breach of any covenant for quiet enjoyment.

24.9 The CITY will not be liable for any death or injury from or out of any occurrence in, upon, at, or relating to the Leased Premises, or damage to property of the LESSEE or of others located on the Leased Premises, nor will it be responsible for any loss of or damage to any property of the LESSEE or others from any cause whatsoever. Without limiting the general nature of the previous sentence, the CITY will not be liable for: (i) any injury or damage to persons, or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, flood, snow or leaks from any part of the Leased Premises or from the pipes, appliances, plumbing works, roof, or subsurface of any floor or ceiling or from the street or any other place, or by dampness, or caused by or arising from any interruption or failure in the supply of any utility or service to the Leased Premises; (iii) any interruption of or non-supply of heating, ventilation, air-conditioning or other utilities and services; or (iv) any indirect or consequential damage that may be suffered by the LESSEE. The CITY will not be liable for any damage caused by occupants of adjacent property, or the public, or caused by construction or by any private, public or quasi public work. All of the property of the LESSEE kept or stored on the Leased Premises will be kept or stored at the risk of the LESSEE only and LESSEE will indemnify the CITY and save it harmless from any claims arising out of any damages to that property including, but not limited to, any subrogation claims by the LESSEE's insurers.

## **25.0 Default**

25.1 If during the Initial Term or any Extended Term of this Lease:

- (a) without the written consent of the CITY the Leased Premises shall become and remain vacant or not used for a period of thirty (30) days while the same are suitable for use by the LESSEE; or
- (b) in case the Initial Term or any Extended Term hereby granted or any of the goods and chattels of the LESSEE shall be at any time seized; or
- (c) an order or appointment is made for a receiver or a receiver and manager of the LESSEE's assets or any INDEMNIFIER's assets or any part of them; or
- (d) the LESSEE or any INDEMNIFIER shall make any assignment for the benefit of creditors or give any bill of sale without complying with the *Bulk Sales Act* (Ontario), or becomes bankrupt or insolvent, or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or any order shall be made for the winding up or liquidation of the LESSEE or any INDEMNIFIER; or
- (e) the LESSEE assigns this Lease or sublets the whole or any part of the Leased Premises without the prior written consent of the CITY, except for any permitted assignment or sublease pursuant to this agreement; or
- (f) the LESSEE fails to obtain and deliver to the CITY an executed indemnity required pursuant to the provisions of Sections 26.5(c) within the time period therein prescribed; or
- (g) the LESSEE fails to perform any one (1) or more of the Review Procedures (as such term is defined in Section 26.5(b) herein) prior to an assignment of this Lease or sublet of the Leased Premises in accordance with Section 26.5(b) herein; or
- (h) the LESSEE shall default in payment of base rent, Percentage Rent, additional rent or any other amount required to be paid by the LESSEE by any provision of this Lease, following ten (10) days written notice from LESSOR; or
- (i) the LESSEE shall default in performing or observing any of its other covenants or obligations under this Lease and the CITY shall have given to the LESSEE written notice of such default and, at the expiration of thirty (30) days after the giving of such written notice, the default shall continue to exist (or in the case of such default which cannot, with due diligence, be cured within a period of thirty (30) days, the LESSEE fails to commence to cure such default

within such period and thereafter to continue with due diligence to cure such default as determined by the CITY in its sole discretion),

then, if any of such events occur, the LESSEE shall be deemed to be in default hereunder and the then current month's rent and the next ensuing three months' rent shall immediately become due and payable, and at the option of the CITY this Lease shall cease and determine and the Initial Term or any Extended Term hereby demised shall immediately become forfeited and void, in which event the CITY may re-enter and take possession of the Leased Premises as though the LESSEE or any occupant or occupants of the Leased Premises was or were holding over after the expiration of the Initial Term or any Extended Term hereby demised without any right whatsoever.

25.2 The CITY's right of re-entry hereunder shall become exercisable immediately upon such default being made. Upon such re-entry by the CITY under the terms of this Article 25 or any other provisions of this Lease, the CITY may, in addition to any other remedies which the CITY may be entitled, at its option, at any time and from time to time relet the Leased Premises or any part or parts thereof for the account of the LESSEE or otherwise and receive and collect the rents therefrom, applying the same first to the payment of such expenses as the CITY may have incurred in recovering the possession of the Leased Premises, including legal expenses and solicitor's fees and for putting the same into good order or condition or preparing or altering the same for re-rental and all other reasonable expenses, commissions and charges paid, assumed or incurred by the CITY in or about re-letting the Leased Premises and then to the fulfilment of the covenants of the LESSEE hereunder. Any such re-letting herein provided for may be for the remainder of the Initial Term or any Extended Term as originally granted or for a longer or shorter period. In any such case and whether or not the Leased Premises or any part thereof are re-let, the LESSEE shall pay to the CITY the rent that would have been payable and all other sums required to be paid by the LESSEE up to the time of termination of this Lease or of recovery of possession of the Leased Premises by the CITY, as the case may be, and thereafter the LESSEE covenants and agrees, if required by the CITY, to pay to the CITY until the end of the Initial Term or any Extended Term of this Lease the equivalent of the amount of all of the rent hereby reserved and all other sums required to be paid by the LESSEE hereunder, less the net avails of re-letting, if any, and the same shall be due and payable by the LESSEE to the CITY on the days herein provided for rent, that is to say, upon each of the days herein provided for payment of rent, the LESSEE shall pay to the CITY the amount of the deficiency then existing.

25.3 In the case of the removal by the LESSEE of the goods and chattels of the LESSEE from the Leased Premises in breach of this Lease, the CITY may follow such goods and chattels in the manner as is provided for in the *Commercial Tenancies Act* (Ontario).

25.4 Notwithstanding the benefit of any present or future statute taking away or limiting the CITY's right of distress, none of the goods and chattels of the LESSEE on the Leased Premises, at any time during the Initial Term or any Extended Term, shall be exempt from levy by distress for rent in arrears.

25.5 The LESSEE will indemnify the CITY and save it harmless from and against any and all loss (including, loss of rent, payable by the LESSEE under this Lease) claims, actions, damages, liability and expenses in connection with a breach, violation or non-performance of any covenant to be performed on the part of the LESSEE, the loss of life, personal injury, damage to property or any other loss or injury whatsoever arising from or out of this Lease, or any occurrence in, upon, or at the Leased Premises, the Second Floor Premises, the Exterior Sales Area, the VHWC, or the occupancy or use by the LESSEE of the Leased Premises, the Second Floor Premises, the Exterior Sales Area, the VHWC or any part of them occasioned wholly or in part by any act or omission of the LESSEE, including, without limitation, by anyone permitted to be on the Leased Premises by the LESSEE. If the CITY, without fault on its part, is made a party to any litigation commenced by or against the LESSEE, then the LESSEE will protect, indemnify and hold the CITY harmless and will pay all costs, expenses and legal fees (on a full indemnity basis) incurred or paid by the CITY in connection with that litigation. The LESSEE will also pay all costs, expenses and legal fees (on a full indemnity basis) that may be incurred or paid by the CITY in enforcing the terms, covenants and conditions in this Lease

For good and valuable consideration, the CITY agrees to the following provision: In the event of a default by the LESSEE, the CITY acknowledges an affirmative duty to mitigate damages and shall in no event accelerate rent due to the remainder of the term. Further, CITY and LESSEE agree that LESSEE's liability upon default shall not exceed the lesser of twelve (12) months' rent or the sum of \$20,000.00. Upon the termination of this Lease, whether in accordance with this

section or otherwise, LESSEE shall be permitted access to the Leased Premises to remove any and all logo or trademark items, such items shall include, but shall not be limited to, signage and murals, provided the LESSEE repairs all damage occasioned by such removal to the satisfaction of the CITY.

## **26.0 Conditions**

26.1 This Lease, any assignment of this Lease and any sublet of the Leased Premises in whole or in part is conditional upon: (i) the INDEMNIFIER executing and delivering the Indemnity Agreement attached as Appendix G; and (ii) the LESSEE obtaining all necessary permits, approvals and licenses to construct its leasehold improvements and to operate a business from the Food Services Area on or before the Commencement Date. If the INDEMNIFIER fails to execute and deliver the Indemnity Agreement attached as Appendix G hereto, or the LESSEE is unable to obtain any such necessary permits, licenses and approvals on or before the Commencement Date then the CITY in its discretion shall be entitled to terminate this Lease without any liability whatsoever.

26.2 The LESSEE agrees to ensure all required inspections (i.e. Legislated by Fire, Public Health etc.) and servicing of all equipment shall be conducted on or before the Commencement Date and thereafter according to the frequency at which they are required, all at the expense of the LESSEE. Failure to obtain required inspections and provide proof of inspection if and when requested by the CITY, shall entitle the CITY to terminate this Lease forthwith. Required inspections include, but are not limited to:

- Restaurant Inspection, Niagara Regional Public Health
- Fire Safety Inspection, Port Colborne Fire Department. Annual inspection.
- Fire Protection System Inspection – Semi-annual inspection.
- Portable Fire Extinguisher (Kitchen Type K) Inspection Annually.

26.3 The CITY is responsible for and has committed to complying with the Accessibility Standards for Customer Service, O. Reg. 429/07 to ensure that all persons who deal with members of the public or other third parties on behalf of the CITY shall be trained with respect to the provision of Accessible Customer Service. The LESSEE agrees to provide said training to all staff, volunteers and persons providing customer service to the public or third parties. Disclaimer: The Port Colborne Accessible Customer Service Training Manual is specific to the Corporation of the City of Port Colborne and there may be different requirements for the LESSEE under the legislation and the LESSEE is responsible, at its own cost and expense, to comply with the legislation. For reference purposes, the LESSEE may visit the Ministry of Community and Social Services' website for information and updates regarding accessibility standards applicable to the LESSEE at:

[www.mcass.gov.on.ca](http://www.mcass.gov.on.ca)[www.mcass.gov.ca](http://www.mcass.gov.ca)

26.4 Intentionally deleted.

26.5 The LESSEE shall not assign this Lease or assign or sublet the whole or any part of the Leased Premises without prior written consent of the CITY, which consent shall not be unreasonably withheld. Any attempt to assign any of the rights, duties or obligations of this Lease or sublet the whole or any part of the Leased Premises without prior written consent of the CITY will be void. No assignment of this Lease or sublet of the whole or any part of the Leased Premises shall relieve the LESSEE from the obligation to pay rent, all other amounts due hereunder and to perform all of the terms, covenants and conditions contained herein. Notwithstanding an assignment or sublet as aforesaid, the LESSEE shall not be relieved from the obligation to pay rent, all other amounts due hereunder and to perform the terms, covenants and conditions of this Lease.

26.6 The LESSEE covenants and agrees that the Indemnifiers will be jointly and severally liable with the LESSEE, as principal obligors and not as sureties, in respect of all the LESSEE's obligations under this Lease, and that the Indemnifiers will execute the Indemnity Agreement in

the form attached as Appendix G. If the Indemnifiers fail to execute and deliver to the CITY the Indemnity Agreement contemporaneously with the execution and delivery of this Lease by the LESSEE, or in the event of a sale, sublease or assignment contemplated in Section 26.5(c) herein, the indemnity agreement is not executed and delivered in accordance with all of the provisions and the time period specified in Section 26.5(c), then the CITY shall be entitled to terminate this Lease without any liability to the LESSEE whatsoever.

## **27.0 Damage to Leased Premises**

27.1 If during the Initial Term or any Extended Term, the Leased Premises are damaged by fire or any of the perils insured against by the CITY, then and in every such event if the damage or destruction is such that the Leased Premises are rendered wholly unfit for occupancy, or it is impossible or unsafe to use and occupy it, and if in either event the damage, in the opinion of the CITY, acting reasonably to be given to the LESSEE within ten (10) days of the happening of the damage:

- (a) cannot be repaired with reasonable diligence within one hundred and eighty (180) days from the happening of the damage, either party may within five (5) days next succeeding the giving of the opinion terminate this Lease by giving to the other notice in writing, in which event this Lease shall cease as of the date of the damage and the rent and all other payments for which the LESSEE is liable under this Lease shall be apportioned and paid in full to the date of damage. If neither the CITY nor the LESSEE terminates this Lease, then the CITY shall repair the Leased Premises with all reasonable speed and the rent shall abate from the date of the happening of the damage until the damage shall be made good and the LESSEE can again use and occupy the Leased Premises; or
- (b) can be repaired with reasonable diligence within one hundred and eighty (180) days from the happening of the damage, then the rent shall abate from the date of the happening of the damage until the damage shall be made good and the LESSEE can again use the Leased Premises and the CITY shall repair the damage with all reasonable speed; or
- (c) is such that the Leased Premises are capable of being partially used for the purposes for which they are leased, then until the damage has been repaired the rent shall be reduced by the fraction that the area of that part of the Leased Premises which is rendered unfit for occupancy is to the area of the Leased Premises, and the CITY shall repair the damage with all reasonable speed.

Notwithstanding anything in this Lease, the CITY shall only be required to expend funds to repair and replace the Leased Premises in the amounts received by the CITY under the proceeds of insurance maintained by the CITY.

## **28.0 Mediation and Arbitration**

- (a) General operational issues with respect to this Lease shall be resolved through the CITY.
- (b) The parties agree that should a significant dispute arise as to any matters contained in this Lease, the first step to resolve the issue shall be a meeting between the CITY's CAO and the LESSEE. The second step shall be the appointment of a third party mediator and they will attempt to mediate a resolution. This will not limit or otherwise change any legal rights of the parties. The mediator will be chosen by and acceptable to both parties. The parties agree to equally split the cost of the mediation. If the parties are unable to reach a resolution within thirty (30) days of the appointment of a mediator, then the matter shall be referred to arbitration as set out below.
- (c) In the event any dispute between the parties hereto, arising out of the interpretation, performance or observance hereof or any portion hereof, cannot be resolved through mediation, then such dispute shall be submitted to arbitration by the giving of a written notice by either party to the other party. In the event of arbitration, the arbitrator shall be such person as the parties may agree to on or before thirty (30) days from the submission by either party of the dispute to arbitration; in default of agreement on or before the expiration of such thirty (30) days, then within ten (10) days thereafter the LESSEE shall

appoint an arbitrator, the CITY shall appoint an arbitrator, and the two so chosen shall appoint a third arbitrator. If either party defaults in such appointment within the said ten (10) days, the arbitrator appointed by the other party shall act as sole arbitrator as if appointed by both parties. The arbitrator or arbitrators, as the case may be, shall have all the powers given by the *Arbitration Act* (Ontario) to arbitrators and may at any time and from time to time proceed in such manner as she, he or they may think fit on such notice as she, he or they may deem reasonable and after notice in the absence of either party, the award and determination of the arbitrator or a majority of the arbitrators shall be final and binding and each party agrees not to appeal from such award or determination. The costs of any such arbitration shall be borne equally by the parties.

## **29.0 Notice**

29.1 Any notice or communication required or permitted to be given to the LESSEE or to the CITY under terms of this Lease shall be in writing and shall be served personally, delivered by courier or sent by registered mail, postage prepaid with return receipt requested, addressed to the parties and the Indemnifiers as follows:

Notice to the CITY:

The Corporation of the City of Port Colborne  
66 Charlotte Street  
Port Colborne, ON L3K 3C8  
Attention: City Clerk

Notice to the LESSEE:

The Kennedy Club

Notice to the INDEMNIFIERS:

the Leased Premises  
Attention: Geoff Black, Christopher Bruno and Brent Barnai (or such other parties as may become Indemnifiers under the provisions of this Lease)

29.2 Any notice required to be given under the terms of this Lease shall be deemed to have been received on the date of its delivery in person, or in the case of mailing or by courier, two (2) days after the date of mailing or delivery to the courier, as the case may be. A party or the Indemnifiers may change its address for service from time to time by notice given in accordance with the provisions of this Lease.

## **30.0 Consent**

30.1 If at any time under the provisions of this Lease the consent of the CITY is required, it may be unreasonably withheld.

## **31.0 Governing Law**

31.1 This Lease and the rights, obligations and relations of the parties hereto shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in that Province without regard to the principles of conflicts of law and each party irrevocably attorns to the jurisdiction of the courts of the Province of Ontario. In addition, both parties hereby waive their rights to a trial by jury.

### **32.0 Severability**

32.1 If any term or provision of this Lease or the application thereof to any person or circumstances shall to any extent or for any reason be held invalid or unenforceable, the remainder of this Lease and the application of such term or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

### **33.0 Whole Agreement**

33.1 This Lease and the Schedules attached hereto contains the whole agreement between the parties with respect to the subject matter of this agreement. There is no representation, warranty, collateral agreement (express or implied) affecting this Lease or the Leased Premises. The Schedules attached hereto form part of this Lease. This Lease may not be amended or altered except by instrument in writing signed by the CITY and LESSEE.

### **34.0 General Provisions**

34.1 The LESSEE shall from time to time at the request of the CITY produce to the CITY satisfactory evidence of the due payment by the LESSEE of all payments required to be made by the LESSEE under this Lease.

34.2 Other than expressly set forth herein, it is the explicit intention of this Lease that the rent herein provided to be paid shall be on a completely carefree and net basis to the CITY and clear of all taxes, cost and charges arising from or relating to the Leased Premises and the LESSEE shall pay all charges, impositions, expenses of every nature and kind relating to the Leased Premises and the LESSEE covenants with the CITY accordingly.

34.3 The LESSEE acknowledges that the CITY or its agents, shall have the right upon at least twenty-four (24) hours written notice to enter the Leased Premises at all reasonable times, to be arranged with the LESSEE acting reasonably, and without unreasonably interfering with the operation of the LESSEE's business, to show them to prospective purchasers, encumbrancers, lessees or assignees, and may also, during the six (6) months preceding the termination of the Initial Term or any Extended Term of this Lease, place upon the Leased Premises the usual type of notice to the effect that the Leased Premises are for rent, which notice the LESSEE shall permit to remain thereon.

34.4 The parties hereto expressly disclaim any intention to create hereby a joint venture or partnership relationship or any relationship, except that of lessor and lessee. The provisions of this Lease relating to Percentage Rent are included solely for the purpose of providing a method whereby such rent is to be measured and ascertained.

34.5 In the event the LESSEE shall hold over or continue to occupy the Leased Premises after the expiration of the Initial Term or any Extended Term, with or without the consent of the CITY and without any further written agreement, the LESSEE shall be a month-to-month tenant only on the terms and conditions herein set forth, and such holding over shall have no greater effect, any custom, statute, law or ordinance to the contrary notwithstanding.

34.6 The failure of the CITY to insist upon a strict performance of any of the agreements, terms, covenants and conditions herein shall not be deemed a waiver of any rights or remedies that the CITY may have and shall not be deemed a waiver of any subsequent breach or default in any such agreements, terms, covenants and conditions. Notwithstanding any other provision of this Lease to the contrary, the CITY may from time to time resort to any or all of the rights and remedies available to it in the event of default by the LESSEE, either by any provision of this Lease or by statute or common law, all of which rights and remedies are intended to be cumulative and not alternative. The express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the CITY by statute or common law.

34.7 No payment by the LESSEE or receipt by the CITY of a lesser amount than the payment of the rent herein stipulated is deemed to be other than on account of the earliest stipulated rent, nor is any endorsement or statement on any cheque or any letter accompanying any cheque or payment as rent deemed an acknowledgement of the full payment or an accord and satisfaction, and the CITY may accept and cash such cheque or payment without prejudice to the CITY's right to recover the balance

of such rent or pursue any other remedy provided in this Lease.

34.8 In the event that it shall be necessary for the CITY to commence an action for the collection of the rent, or any other payment, herein reserved, or any portion thereof, or if the same must be collected upon the demand of a solicitor, or if in the event that it becomes necessary for the CITY to commence an action to compel performance of any of the terms, conditions, obligations, covenants and agreements contained herein, then it shall be entitled to collect from the LESSEE all legal fees and disbursements in respect thereof on a full indemnity basis as if the same were rent reserved and in arrears hereunder.

34.9 Where the context so requires, words importing the singular number only shall include the plural and vice versa, and words importing the masculine gender shall include the feminine gender and neuter and words importing persons shall include firms and corporations and vice versa.

34.10 Except as herein expressly provided, this Lease and everything herein contained shall extend to and bind and enure to the benefit of the respective heirs, executors, personal representatives, administrators, successors and permitted assigns (as the case may be) of each and every one of the parties hereto. All rights and powers reserved to the CITY hereunder may be exercised by either the CITY or its agents or representatives.

34.11 The headings in this Lease are included for convenience only and shall not be taken into consideration in any construction or interpretation of this Lease or any of its provisions.

34.12 The CITY, within twenty (20) days of the LESSEE's request and at the LESSEE's expense, shall deliver to the LESSEE an executed, written, estoppel certificate identifying the LESSEE and this Lease and certifying and confirming, in addition to any information or confirmation the LESSEE may reasonably require, the following:

- (a) That this Lease is either unmodified since its execution and in full force and effect, or modified since its execution but still in full force and effect as modified;
- (b) That the LESSEE is not in default of any of its obligations under this Lease or the details of any default of any of the LESSEE's obligations under this Lease, as the case may be; and
- (c) The term, commencement date, expiration date, rent, renewal periods remaining as to the Leased Premises for which the estoppel certificate applies.

34.13 Time shall be of the essence of this Lease and every part thereof.

**(the following page is the signature page)**



**IN WITNESS WHEREOF** the parties hereto have duly executed this Lease as of the date first above written under the hands of their proper signing officers duly authorized in that behalf.

**THE CORPORATION OF THE CITY OF  
PORT COLBORNE**  
Per:

\_\_\_\_\_  
Mayor

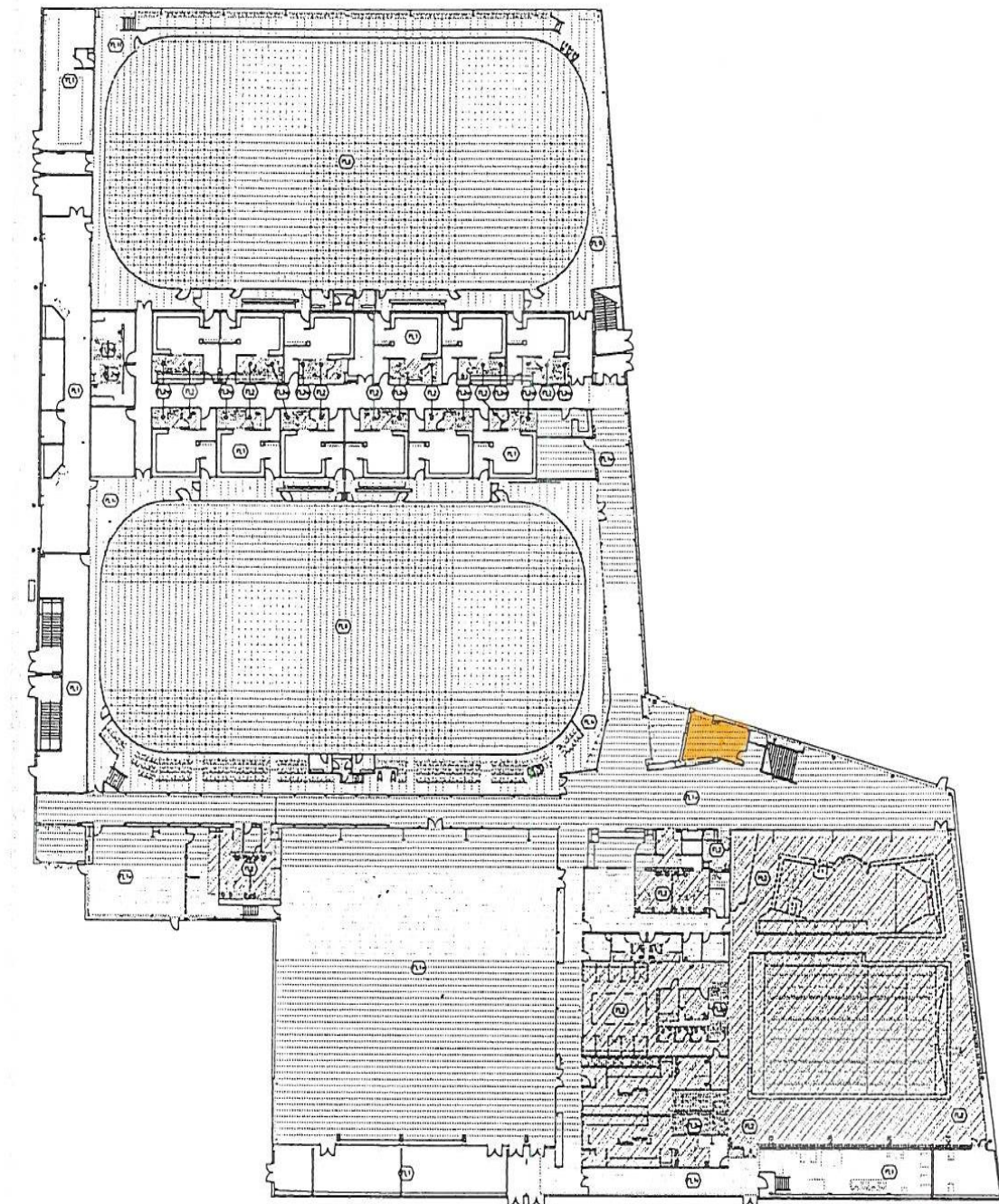
\_\_\_\_\_  
Clerk

THE **KENNEDY CLUB**  
Per:

\_\_\_\_\_  
Name:  
Title:  
I have authority to bind the Corporation

APPENDIX A

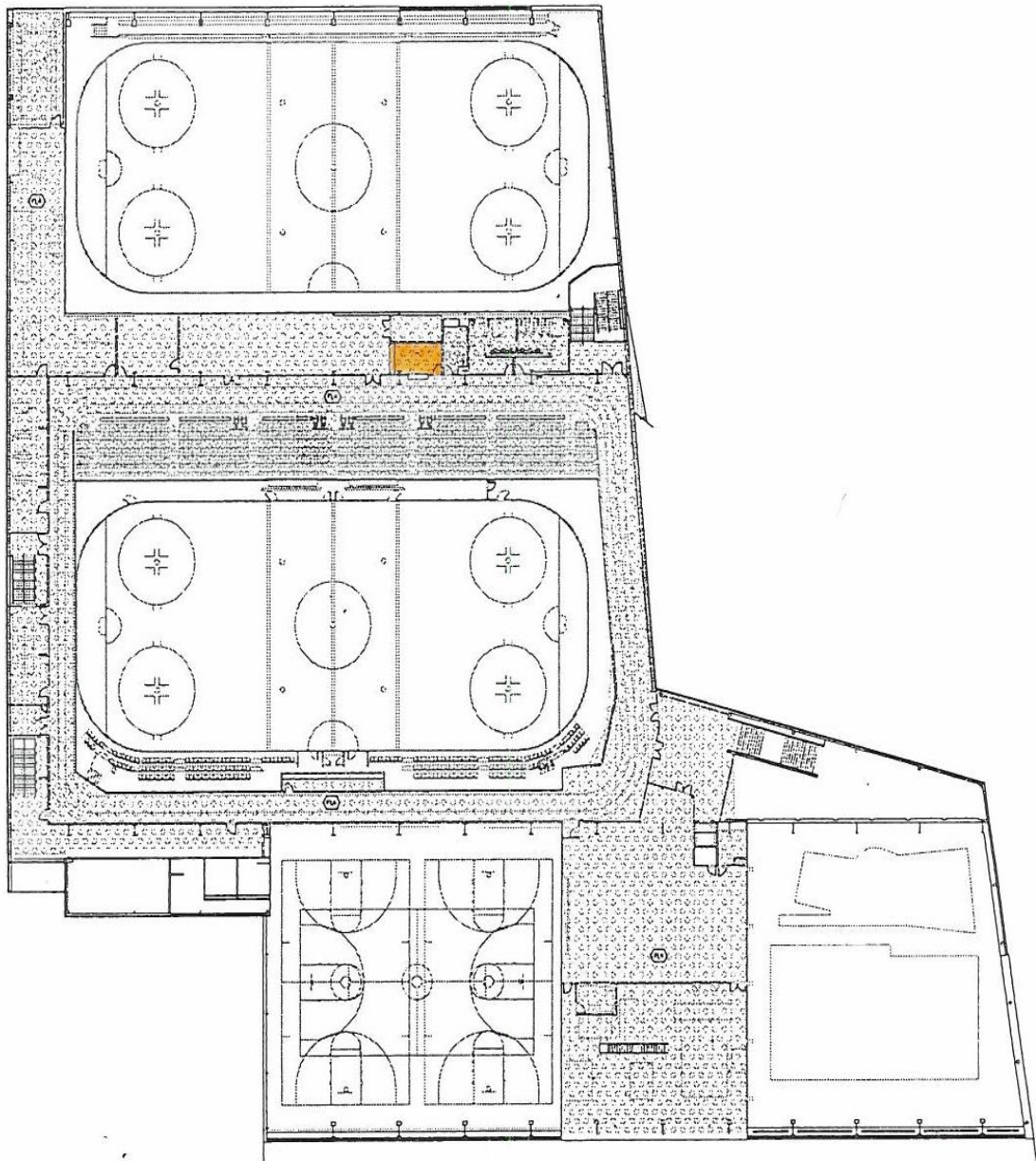
FIRST FLOOR PREMISES



- GROUND FLOOR PLAN

## APPENDIX B

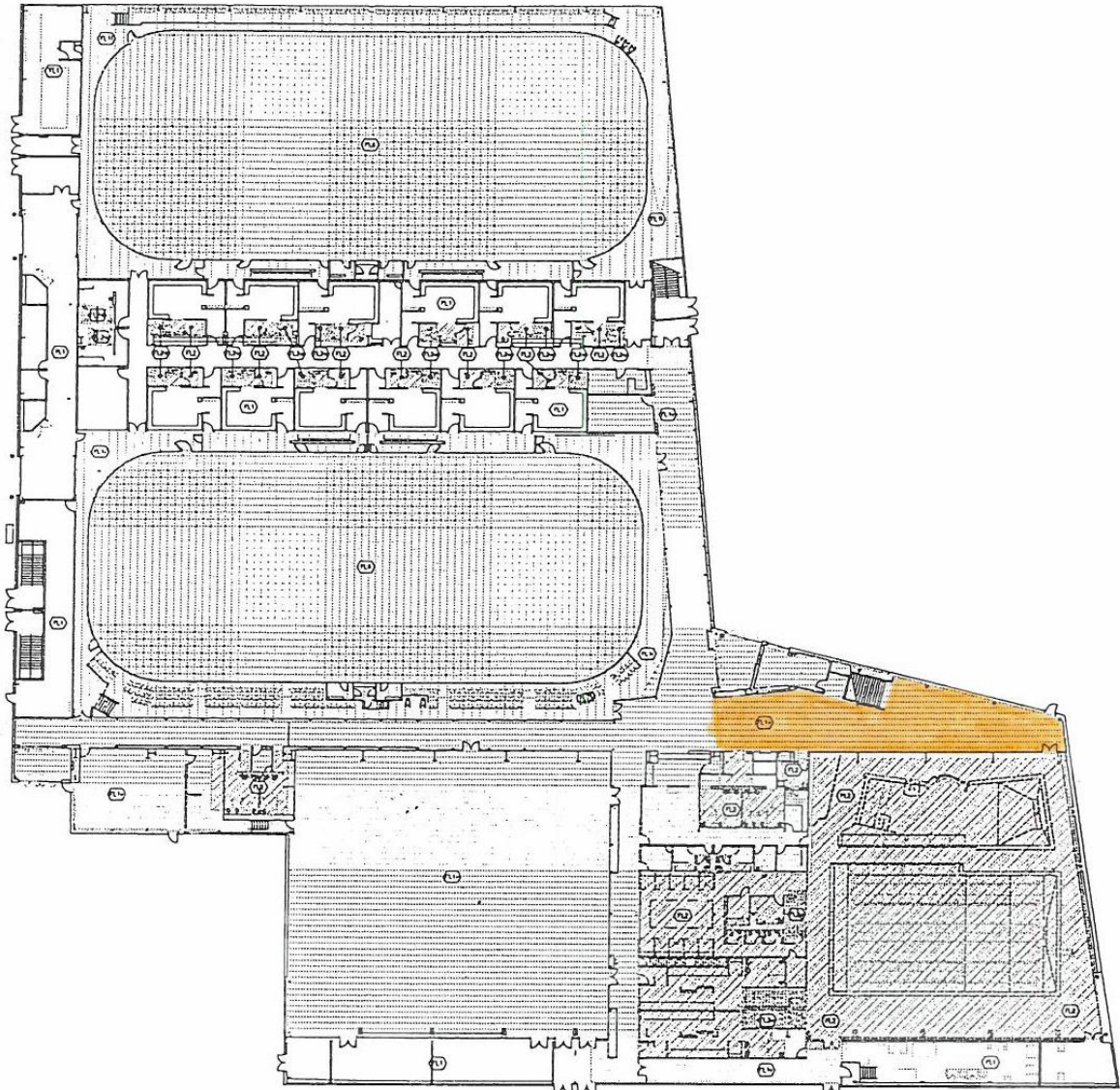
### SECOND FLOOR PREMISES





APPENDIX C

COMMON LOUNGE AREA

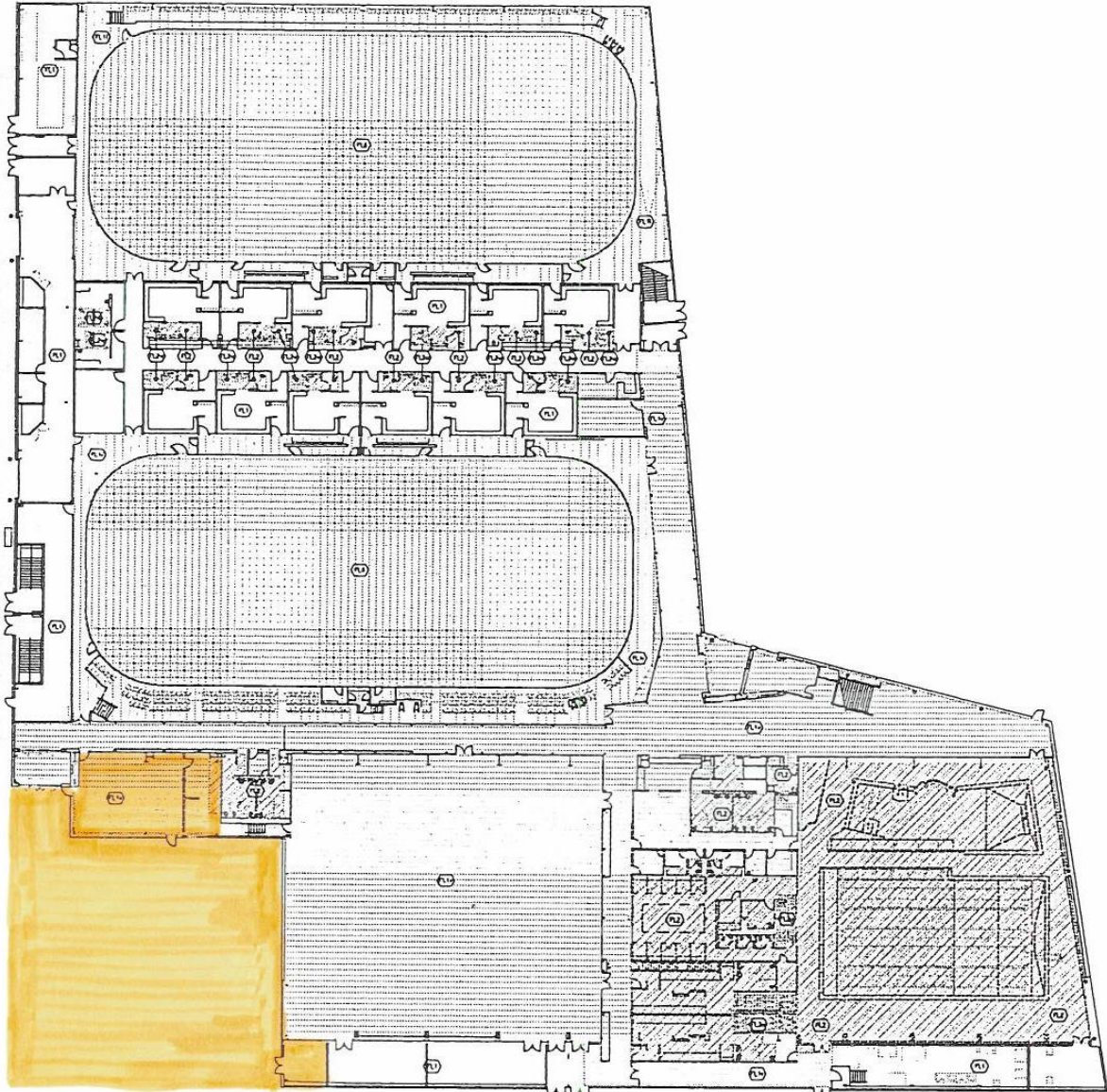


**APPENDIX ‘D’**

**Intentionally Deleted.**

APPENDIX E

**BOCCE CLUB PREMISES**







**APPENDIX G**  
**INDEMNITY AGREEMENT**



## **INDEMNITY AGREEMENT**

THIS INDEMNITY AGREEMENT is made as of the 13<sup>th</sup> day of July, 2023 between Geoff Black, Christopher Bruno and Brent Barnai (hereinafter collectively called the "**Indemnifier**") and THE CORPORATION OF THE CITY OF PORT COLBORNE (hereinafter called the "**City**").

**WHEREAS** the City is the owner of the lands and premises known municipally as 550 Elizabeth Street, in the City of Port Colborne;

**AND WHEREAS** Geoff Black, Christopher Bruno and Brent Barnai own all of the issued and outstanding shares of "The Kennedy Club" (the "LESSEE");

**AND WHEREAS** the LESSEE and the INDEMNIFIER have requested the City to enter into a lease (the "**Lease**") of even date between the City, as landlord, and the Lessee, as tenant, relating to the Leased Premises, and the City has agreed to do so only if the Indemnifier executes and delivers this Indemnity under seal in favour of the City;

**NOW THEREFORE** in consideration of the sum of One (\$1.00) Dollar and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by the Indemnifier) the Indemnifier agrees with the City as follows:

1. The Indemnifier hereby agrees with the City that, at all times during (i) the Initial Term; and (ii) any Extended Term, the Indemnifier shall be bound to the City for the performance of all the obligations of the Lessee and that it shall be jointly and severally liable with the Lessee for all the obligations of the Lessee, as if named as a tenant under the Lease, and the Indemnifier's liability shall be that of a direct and primary obligor (and not as surety), and, in this regard, Indemnifier shall: (a) make due and punctual payment of all base rent, Percentage Rent, additional rent, moneys, charges and other amounts of any kind whatsoever due and payable under the Lease by the Lessee (collectively, hereinafter referred to as "**Rent**"), whether to the City or to any other Person and whether the Lease has been disaffirmed, disclaimed, terminated or surrendered and irrespective of the fact that the Lessee's liability may be limited under the terms of the Lease; (b) effect prompt and complete performance of all the terms, covenants and conditions contained in the Lease on the part of the Lessee to be kept, observed and performed; and (c) promptly indemnify and save the City harmless from and against any and all Claims arising out of any failure by Lessee to pay all Rent or resulting from any failure by the Lessee to observe or perform any of the terms, covenants and conditions contained in the Lease on the part of the Lessee to be kept, observed and performed.

2. This Indemnity is an absolute and unconditional indemnity with respect to all Claims of any nature or kind incurred by the City as a result of non-payment of the Rent or the failure to perform and observe any terms, covenants and conditions contained in the Lease by the Lessee. This Indemnity shall be enforceable against the Indemnifier without the necessity of any suit or proceedings on the City's part of any kind or nature whatsoever against the Lessee, its successors and assigns, and without the necessity of any notice of non-payment, non-performance or non-observance or any notice of acceptance of this Indemnity or of any other notice or demand to which the Indemnifier might otherwise be entitled, all of which the Indemnifier hereby expressly waives; and the Indemnifier hereby expressly agrees that the validity of this Indemnity and the obligations of the Indemnifier hereunder shall, in no way, be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by the City against the Lessee, or against the Lessee's successor and assigns, of any of the rights or remedies reserved to the City pursuant to the provisions of the Lease or allowed at law or in equity or by the relief of the Lessee or variation, reduction, suspension or waiver of any of the Lessee's obligations under the Lease or otherwise by:

- (a) the release or discharge of the Lessee in any creditor's proceedings, receivership, bankruptcy or other proceedings;
- (b) the impairment, limitation or modification of the liability of the Lessee or the estate of the Lessee in bankruptcy, or of any remedy for the enforcement of the Lessee's said liability under the Lease resulting from the operation of any present or future bankruptcy or insolvency legislation or legislation of benefit or potential benefit to debtors or other statutes or laws or from the decision in any court or tribunal;
- (c) the occurrence of any of the events mentioned in paragraph 3 hereof; or

- (d) the compromise, variation, reduction, suspension or waiver of any of the Lessee's obligations under the Lease either pursuant to the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada) or pursuant to any other statute or law for the benefit of debtors or dealing with the relations of debtors and their creditors.

3. The Indemnifier hereby expressly acknowledges and agrees that this Indemnity is absolute and unconditional and the obligations of Indemnifier shall not be released, discharged, mitigated, impaired or affected (whether or not the Indemnifier has notice thereof or is a party thereto) by: (a) any extension of time, indulgences or modifications which the City extends to or makes with the Lessee in respect of the performance of any of the obligations of the Lessee under the Lease; (b) any waiver by or failure of the City to enforce any of the terms, covenants, agreements, stipulations, provisos, conditions and rules and regulations contained in or made pursuant to the Lease; (c) any Transfer of the Lease, any sublease, or of all or any part of the Leased Premises by Lessee or by any Transferee, by any trustee, receiver, receiver-manager or liquidator; (d) any change in the ownership of the capital stock or partnership interests or other interests in the Lessee or of any assignee of the Lease, any sublessee or any other Person (collectively a "Change of Control"); (e) any consent which the City gives to any Transfer or Change of Control; (f) any relocation, expansion or reduction of the Leased Premises, the VHWC and any changes to the Lease resulting therefrom; (g) any amendment, modification or variation to the Lease (whether such amendment, modification or variation is made between the City and the Lessee, or between the City and any Transferee); (h) any waiver by the Lessee or any Transferee of any of its rights under the Lease; (i) any alteration, modification or physical change in, to or for the Leased Premises, the VHWC, or any part thereof; (j) the expiration of the Initial Term, any Extended Term or termination of the Lease; (k) any overholding by the Lessee or Transferee of the Leased Premises or any part thereof; (l) any renewal or extension of the Lease pursuant to any option or right of the Lessee or otherwise, it being understood and agreed that this Indemnity shall extend throughout the Initial Term and any Extended Term; (m) any loss of, or any loss in respect of, any security received or intended to have been received by the City from the Lessee or any other Person, whether or not occasioned or contributed to by or through the act, omission, default or neglect of the City or those for whom the City is in law responsible; (n) any act, omission, default or neglect of the City or any other Person whereby: (i) the Lessee (or any one or more Persons comprising the Lessee) or (ii) the Indemnifier (or any one or more Persons comprising Indemnifiers) is released or has its obligations under the Lease or this Indemnity, as the case may be, discharged, mitigated, impaired or affected in any way whatsoever; (o) any present or future statute or any existing or future common law under which: (i) the Lessee (or any one or more Persons comprising the Lessee); or (ii) the Indemnifier (or any one or more Persons comprising the Indemnifier) is released or has its obligations under the Lease or this Indemnity (as the case may be) discharged, mitigated, impaired or affected in any way whatsoever; or (p) any limitation of the Lessee's liability contained in the Lease. Nothing but payment and satisfaction in full of all Rent and the due performance and observance of all terms, covenants and conditions on the part of the Lessee to be paid and performed under the Lease shall release the Indemnifier from its obligations under the Lease or this Indemnity, as the case may be.

4. No dealings between the City and the Lessee of any kind whatsoever shall exonerate, release or discharge the Indemnifier, in whole or in part hereunder, or diminish, affect or reduce the liability of the Indemnifier under this Indemnity provided notice thereof is provided to the Indemnifier. Without limiting the generality of the foregoing, this Indemnity shall be a continuing indemnity and the liability of the Indemnifier shall, in no way, be affected, modified or diminished by reason of any modification or waiver of or change in any of the terms, covenants, conditions or provisions of the Lease or by reason of any indulgence, release, postponement, extension of time, waiver of any covenant or provision of the Lease or any obligation of the Lessee which may be granted by the City to the Lessee, its successors or assigns, or by reason of the City taking or releasing any security or securities or other indemnities for performance by the Lessee or by reason of any dealings or transactions or matters or things occurring between the City and the Lessee, its successors and assigns.

5. In the event of termination of the Lease, except by surrender accepted by the City in writing, or in the event of termination, rejection, disaffirmance or disclaimer of the Lease by any trustee in bankruptcy or by any receiver or receiver and manager or in any proceedings whatsoever or pursuant to or in or as a result of any proceeding or order under any statute or law, then, at the option of the City, the Indemnifier shall execute and deliver a new lease of the Leased Premises between the City, as landlord, and the Indemnifier, as tenant, for a term equal in duration to the remainder of the unexpired portion of the Initial Term or any Extended Term of the Lease as it may be extended, from

time to time. Such new lease shall contain the same City and Lessee obligations, respectively, and the same covenants, obligations and agreements, terms and conditions, in all respects, including the provisos for re-entry on non-payment of Rent or non-performance or observance of covenants as are contained in the Lease, save and except that the Indemnifier, as tenant, shall accept the Leased Premises in a then "as is" condition and the City shall have no obligation to pay or to provide to the Indemnifier, as tenant, any allowance, concession or inducement of any nature, or to pay or provide any Rent free or Rent reduced periods or any fixturing period or to perform any work in or in respect of the Leased Premises. Such lease shall be prepared by the City, at the expense of the Indemnifier and shall be promptly executed by the Indemnifier forthwith upon presentation thereof by the City. The liability of the Indemnifier shall not be affected by any re-possession of the Leased Premises by the City.

6. Notwithstanding any provision in this Indemnity to the contrary, the Indemnifier shall be released from its obligations under this Indemnity if the City receives an executed replacement indemnity in accordance with all of the provisions specified in Section 26.5(c) of the Lease and within the time period therein specified. For greater certainty, if the Lessee retakes possession of the Leased Premises from a licensee, franchisee, sublessee or an assignee that is comprised of one or more of the Indemnifiers, the obligations of the Indemnifier under this Indemnity shall not be released, discharged, mitigated, impaired or affected in any way whatsoever and they shall remain and continue to be liable under this Indemnity until a new indemnity is signed and delivered to the City in accordance with Section 26.5(c) of the Lease.

7. All of the City's rights and remedies under the Lease or under this Indemnity shall be distinct, separate and cumulative and no such right or remedy in the Lease or herein mentioned, whether exercised by the City or not, shall operate as an exclusion of a waiver of any of the other such rights or remedies. The obligation of the Indemnifier hereunder shall not be released by the City's receipt, application or release of security given for the performance and observance of any covenants and conditions required to be performed or observed by the Lessee under the Lease or shall the Indemnifier be released by the maintenance of or execution upon any lien which the City may have or assert against the Lessee and/or the Lessee's assets.

8. In the event of the occurrence of any circumstances defined within the Lease as an event of default and if both the City and the Indemnifier shall have Claims against the Lessee, and while the Claim of the City is or remains unsatisfied, in whole or in part, as to the Rent, then the Indemnifier:

- (a) shall not enforce any right of subrogation against the Lessee by reason of any payments or acts of performance by the Indemnifier in compliance with the obligations of the Indemnifier hereunder;
- (b) shall not enforce any remedy which the Indemnifier now or hereafter shall have against the Lessee by reason of any one or more payments or acts of performance in compliance with the obligations of the Indemnifier hereunder; and
- (c) subordinates all liabilities or indebtedness of the Lessee now or hereafter held by the Indemnifier to the obligations of the Lessee to the City under the Lease.

9. The Indemnifier hereby covenants to and agrees with the City, its successors and assigns, that the Indemnifier may be joined in any action against the Lessee in connection with the Lease and that recovery may be obtained against the Indemnifier in such action or any independent action against the Indemnifier without the City, its successors and assigns, first pursuing or exhausting any remedy or Claim against the Lessee, its successors or assigns, and the City shall not be obliged to resort to or realize upon any security or other indemnities which the City may, from time to time, have before being entitled to Claim against the Indemnifier.

10. If more than one individual, corporation, partnership or other entity (or any combination of them) execute this Indemnity as Indemnifiers, the liability of each such individual, corporation, partnership or other entity hereunder is joint and several. In like manner, if the Indemnifier named in this Indemnity is a partnership or other business association, the members of which are by virtue of statutory or common law subject to personal liability, the liability of each such member is joint and several. If two (2) or more Persons are named as Indemnifiers in this Indemnity, the release of one or more of such Persons does not release any remaining Person named as an Indemnifier in this Indemnity.

11. Any account or debt settled or stated or any other settlement made between the City and the Lessee shall be binding upon the Indemnifier even though the Indemnifier was not a party to such settlement or statement or had no notice thereof.

12. If any term or provision of this Indemnity or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Indemnity, or the application of the terms or provisions to Persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Indemnity shall be valid and enforced to the fullest extent permitted by law.

13. This Indemnity sets forth all of the promises, inducements, agreements, conditions and understandings between the City and the Indemnifier relative to the Indemnity of the Lease and there are no promises, agreements, conditions or understandings either oral or written, expressed or implied between them, other than as expressly set forth herein.

14. The Indemnifier shall, without charge and at any time and from time to time, within ten (10) days after request therefor by the City, certify, by written instrument, duly executed by the Indemnifier and addressed to or delivered to any party specified by the City that this Indemnity has been duly authorized, executed and delivered and is a valid and binding obligation upon the Indemnifier, enforceable in accordance with its terms and provisions and is unmodified and in full force and effect (or, if there has been modifications, then stating that the same is in full force and effect as modified and describing the modifications).

15. Any notice or communication required or permitted to be given to the City or the Indemnifier under terms of this Indemnity shall be in writing and shall be served personally, delivered by courier or sent by registered mail, postage prepaid with return receipt requested, addressed to the parties as follows:

Notice to the City:

The Corporation of the City of Port Colborne  
66 Charlotte Street  
Port Colborne, ON L3K 3C8  
Attention: City Clerk

Notice to the Indemnifier:

the Leased Premises  
Attention: Geoff Black, Christopher Bruno and Brent Barnai

Any notice required to be given under the terms of this Lease shall be deemed to have been received on the date of its delivery in person, or in the case of mailing or by courier, two (2) days after the date of mailing or delivery to the courier, as the case may be. A party may change its address for service from time to time by notice given in accordance with the provisions of this Indemnity.

16. This Indemnity shall enure to the benefit of the City and the City's successors and assigns and shall be binding upon and enforceable against the Indemnifier and the Indemnifier's heirs, executors, administrators, personal representatives, successors and assigns.

17. The Indemnifier hereby submits itself and attorns to the exclusive jurisdiction of the courts of the Province of Ontario. The Indemnifier further covenants and agrees that any final judgment or order of the Courts of the Province of Ontario shall be final, binding and conclusive as against the Indemnifier.

18. The Indemnifier acknowledges that it has received a true copy of the Lease and is familiar with the terms, covenants and conditions contained therein.

19. The words "the City", "the Lessee", "Initial Term" or "Extended Term" and "Leased Premises" and all other words and phrases used in this Indemnity that are defined in the Lease are used in this Indemnity as so defined in the Lease unless otherwise defined in this Indemnity, or the

context otherwise requires. For the purposes hereof, the following words shall have the following meanings set forth below:

- (a) “Claims” means claims, losses, actions, suits, proceedings, causes of action, demands, damages (incidental, direct, indirect, special, consequential or otherwise), fines, duties, interest, penalties, judgments, executions, liabilities, responsibilities, costs, charges, payments and expenses including, without limitation, any professional, consultant and legal fees (on a full indemnity basis).
- (b) “Person” includes any individual, partnership, firm, company, corporation, incorporated or unincorporated association, co-tenancy, joint venture, syndicate, fiduciary, estate, trust, government, governmental or quasi-governmental agency, board, commission or authority, organization or any other form of entity howsoever designated or constituted, or any group, combination or aggregation of any of them.
- (c) “Transfer” means (a) an assignment, sale, conveyance, sublease, licensing or other disposition, or a mortgage, charge or debenture (floating or otherwise) or other encumbrance of the Lease or any interest in it or all or any part of the Leased Premises (whether by operation of law or otherwise), or of any interest in a partnership that is a Lessee under the Lease; (b) a parting with or sharing of possession of all or part of the Leased Premises; (c) a transfer or issue by sale, subscription, assignment, bequest, inheritance, operation of law or other disposition, of all or part of the shares of the Lessee or any of its affiliates (as currently defined under the *Canada Business Corporations Act*) which results in a change in the effective voting control of the Lessee; or (d) a merger, amalgamation or other similar corporate reorganization involving the Lessee. “Transferor” and “Transferee” have corresponding meanings.

20. Each party acknowledges that it has reviewed and participated in settling the terms of this Indemnity, and each of 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 Indemnity.

21. The Indemnifier declares and represents that it has had an opportunity to obtain and has obtained independent legal advice in respect of this Indemnity and that the terms of this Indemnity have been completely read by it and that those terms are fully understood and voluntarily accepted by the Indemnifier.

22. In this Indemnity words importing the singular number only shall include the plural and vice versa words importing the masculine gender shall include the feminine gender and neuter and vice versa.

**(the following page is the signature page)**

**IN WITNESS WHEREOF** the parties hereto have duly executed this Indemnity as of the date first above written, under the hands of their proper signing officers duly authorized in that behalf or by setting their respective hands and seals in their personal capacity, as the case may be.

**SIGNED, SEALED AND DELIVERED**

in the presence of

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)

1/s

Geoff Black

1/s

Christopher Bruno

1/s

Christopher Bruno

**THE CORPORATION OF THE CITY OF  
PORT COLBORNE**

Per:

Mayor

Clerk

The Corporation of the City of Port Colborne

By-Law No. \_\_\_\_\_

Being a By-law to Appoint a Building Inspector

Whereas Section 3(2) of *The Building Code Act, 1992, S.O. 1992, c.23* (the Act) provides that the council of each municipality shall appoint a Chief Building Official and such inspectors as are necessary for the enforcement of the Act in the areas in which the municipality has jurisdiction; and

Now therefore the Council of The Corporation of the City of Port Colborne enacts as follows:

1. That Matt Roy be appointed as a Building Inspector for the City of Port Colborne;
2. That this by-law shall be repealed on the date that the appointee ceases to be an employee of the City of Port Colborne; and
3. That this by-law shall come into force and take effect on the date of passing.

Enacted and passed this 18th day of July, 2023.

---

William C. Steele  
Mayor

---

Charlotte Madden  
City Clerk

The Corporation of the City of Port Colborne

By-Law No. \_\_\_\_\_

Being a By-law to Appoint Building Inspectors

Whereas Section 3(2) of *The Building Code Act, 1992, S.O. 1992, c.23* (the Act) provides that the council of each municipality shall appoint a Chief Building Official and such inspectors as are necessary for the enforcement of the Act in the areas in which the municipality has jurisdiction; and

Now therefore the Council of The Corporation of the City of Port Colborne enacts as follows:

1. That Laura Elliott, Margaret Lawson and Gage Sachs be appointed as Building Inspectors for the City of Port Colborne;
2. That this by-law shall be repealed on the date that the appointees cease to be employees of the City of Port Colborne; and
3. That this by-law shall come into force and take effect on the date of passing.

Enacted and passed this 18th day of July, 2023.

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William C. Steele  
Mayor

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Charlotte Madden  
City Clerk



The Corporation of the City of Port Colborne

By-Law No. \_\_\_\_\_

Being a by-law to adopt, ratify and confirm the proceedings of the Council of The Corporation of the City of Port Colborne at its Regular Meeting of July 18, 2023

Whereas Section 5(1) of the *Municipal Act, 2001*, provides that the powers of a municipality shall be exercised by its council; and

Whereas Section 5(3) of the *Municipal Act, 2001*, provides that a municipal power, including a municipality's capacity rights, powers and privileges under section 9, shall be exercised by by-law unless the municipality is specifically authorized to do otherwise; and

Whereas it is deemed expedient that the proceedings of the Council of The Corporation of the City of Port Colborne be confirmed and adopted by by-law;

Now therefore the Council of The Corporation of the City of Port Colborne enacts as follows:

1. Every action of the Council of The Corporation of the City of Port Colborne taken at its Regular Meeting of July 18, 2023 upon which a vote was taken and passed whether a resolution, recommendations, adoption by reference, or other means, is hereby enacted as a by-law of the City to take effect upon the passing hereof; and further
2. That the Mayor and City Clerk are authorized to execute any documents required on behalf of the City and affix the corporate seal of the City and the Mayor and Clerk, and such other persons as the action directs, are authorized and directed to take the necessary steps to implement the action.

Enacted and passed this 18<sup>th</sup> day of July, 2023.

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William C. Steele  
Mayor

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Charlotte Madden  
City Clerk