

CORPORATION OF THE COUNTY OF PERTH

By-Law Number 3239-2011

To Authorize the Execution of a Mutual Assistance Agreement between the Corporation of the County of Huron and the Corporation of the County of Perth

WHEREAS Subsection 13 (3) of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E. 9, as amended (the "*Emergency Management and Civil Protection Act*") authorizes the Council of a municipality to make an Agreement with the Council of any other municipality for the provision of any personnel, service, equipment or material during any emergency;

AND WHEREAS the municipalities described herein agree to provide mutual assistance to each other during times of emergencies;

AND WHEREAS Section 3 of the *Emergency Management and Civil Protection Act*, requires municipalities to have an approved Emergency Response Plan;

AND WHEREAS the municipalities named in this Agreement have approved Emergency Response Plans;

NOW THEREFORE, the Council of the Corporation of the County of Perth enacts as follows:

1. That the Mutual Assistance Agreement between the County of Huron and the County of Perth concerning the provision of mutual assistance to each other be executed;
2. That the said Agreement is attached hereto as Schedule "A" and considered to be a part of this by-law;
3. That the Warden and the Clerk are hereby authorized to execute the said Agreement and to affix the corporate seal thereto;

Read a first and second time this 17th day of March, 2011.

Read a third and finally passed this 17th day of March, 2011.

Julie Behrns, Warden

Kerri Ann O'Rourke, County Clerk

Mutual Assistance Agreement

This Agreement made in duplicate this _____ day of _____, 2011.

BETWEEN THE

THE CORPORATION OF THE COUNTY OF HURON AND THE CORPORATION OF THE COUNTY OF PERTH

Hereinafter called the parties to the agreement

WHEREAS Subsection 13 (3) of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E. 9, as amended (the "*Emergency Management and Civil Protection Act*") authorizes the Council of a municipality to make an agreement with the Council of any other municipality for the provision of any personnel, service, equipment or material during any emergency;

AND WHEREAS the municipalities described herein agree to provide mutual assistance to each other during times of emergencies;

AND WHEREAS Section 3 of the *Emergency Management and Civil Protection Act*, requires municipalities to have an approved Emergency Response Plan;

AND WHEREAS the municipalities named in this agreement have approved Emergency Response Plans;

NOW THEREFORE in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1.0 In this agreement, unless the context otherwise requires:

- a) "Assisted Municipality" means the municipality receiving assistance from a party to this Agreement, pursuant to this Agreement;
- b) "Assisting Municipality" means the municipality providing assistance to a party to this Agreement, pursuant to this Agreement;
- c) "Chief Administrative Officer" means for all parties to this Agreement the Chief Administrative Officer, a Co-Administrator, or a designated alternate of either of them;
- d) "Municipal Emergency Control Group" means the person or persons responsible for coordinating municipal emergency response and recovery activities within their respective municipality;
- e) "Emergency", "Emergency Area" and "Emergency Plan" means as defined in the *Emergency Management and Civil Protection Act*,

- f) "Mutual Assistance Agreement" means this Agreement and the attached Schedule(s);
- g) "Requesting Party" means the municipality asking for assistance from another party to this Agreement, pursuant to this Agreement;
- h) "Workers" mean collectively employees, contractors, servants and agents employed or hired by a party to this Agreement.

2.0 Requesting Assistance

- 2.1 During an emergency, any party may request assistance from any of the other parties in accordance with clause 2.2 hereof and such request may include specialized personnel, services, equipment and/or material.
- 2.2 Each party hereby authorizes the Chief Administrative Officer of the Requesting Party to make the initial request for assistance. Requests to each party shall be made to the Chief Administrative Officer of that party, and the Chief Administrative Officer of that party is authorized to receive the request and to act on the municipality's behalf for all purposes under this Agreement.
- 2.3 The Chief Administrative Officer of the Requesting Party will follow up any oral requests with a request in writing in accordance with Schedule "A" attached hereto within three (3) days of the initial oral request setting out in detail the specific personnel, services, equipment or material that has been requested as assistance. Notwithstanding the requirement for a written request, the Assisting Municipality may provide assistance to the other party upon receipt of the oral request.
- 2.4 The Assisting Municipality shall respond to the request, if possible, within one (1) day, and may at its sole discretion determine the type, scope, nature and amount of assistance it will provide. The Assisting Municipality shall within three (3) days of receiving the request, confirm in writing to the Requesting Party, the assistance it has agreed to provide or, if applicable, that it will not be providing any assistance.
- 2.5 The parties may alter the assistance to be provided to the Assisted Municipality under this Agreement. Amendments to the scope, type, nature or amount of assistance shall be confirmed in writing by the Requesting Party within three (3) days of being agreed upon.

3.0 Costs & Payment

- 3.1 The parties agree that any and all actual costs for assistance are to be paid by the Assisted Municipality. Such costs shall include wages, salaries and expenses incurred by the Assisting Municipality while providing the assistance provided said expenses are reasonable in the circumstances.

- 3.2 The Assisted Municipality shall be responsible for providing, if necessary, all food, lodging and accommodation required by the personnel furnished pursuant to this Agreement. Where food and lodging cannot be provided in-kind, the Assisted Municipality shall pay a reasonable *per diem* to personnel for any food and lodging purchased by personnel of the Assisting Municipality. The *per diem* shall be no less than the *per diem* rate that the Assisted Municipality pays to its own employees as a matter of policy or agreement.
- 3.3 The Assisted Municipality shall be responsible for all actual operating costs for all personnel, services, equipment, or material furnished, including, but not limited to, costs of fuel, repairs, parts and any and all other items directly attributable to the operation of equipment and services and material furnished as assistance to the Assisted Municipality under the Agreement. The Assisted Municipality shall be responsible for the cost of repairing or replacing equipment or material furnished by the Assisting Municipality if damaged beyond reasonable repair.
- 3.4 The Assisting Municipality shall provide to the Assisted Municipality, if practical, an estimate of the cost of providing the assistance.
- 3.5 The Assisting Municipality will provide a detailed invoice to the Assisted Municipality for costs incurred for the assistance. Where available, receipts for disbursements shall be forwarded in support of the invoice.
- 3.6 The Assisted Municipality shall remit payment of the amount owing for the assistance provided within ninety (90) days of the termination of the Emergency or the receipt of the Assisting Municipality's invoice, whichever is later.
- 3.7 Any amount remaining unpaid and outstanding after the said ninety (90) day period shall bear interest at the rate stipulated in the Assisting Municipality's invoice, which rate shall not exceed the Bank of Canada bank rate at the date of the invoice plus two (2%) per cent per annum until paid.

4.0 Employment Relationship and Benefits

- 4.1 Despite the fact that workers may be assigned to perform duties for the Assisted Municipality, in all respects, the workers of the Assisting Municipality retain their employment or contractual relationship with the Assisting Municipality. The parties acknowledge and agree that the Assisted Municipality shall not be deemed the employer of the Assisting Municipality's Workers, under any circumstances or for any purpose whatsoever. The Assisting Municipality shall remain responsible for all statutorily required deductions, contributions and/or payments, such as E.I., C.P.P., and WSIB.

5.0 Liaison and Supervision

- 5.1 The Assisting Municipality shall have the right, to be exercised in its sole discretion, to assign an employee or agent (the "Liaison Officer") of the Assisting Municipality to the Municipal Emergency Control Group of the Assisted Municipality. The parties acknowledge that the purpose of the Liaison Officer shall be to facilitate communication between the Assisted and Assisting Municipality. Subject to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended (the "*Municipal Freedom of Information and Protection of Privacy Act*"), the Liaison Officer shall be permitted to inform the Assisting Municipality on the status of the Emergency and the actions taken by the Assisted Municipality. The Liaison Officer shall have the right to obtain information about the Emergency and the use of the assistance provided in order to report to the Assisting Municipality during and after the duration of the assistance provided and the Emergency. Every Assisting Municipality, and every party that is not an Assisting Municipality, shall keep confidential and not disclose to any non-party any information concerning the Emergency or the assistance provided without the prior consent of the Assisted Municipality, except as may be required by law.
- 5.2 Every Assisting Municipality shall remain responsible for supervision of its personnel and equipment, and shall ensure that supervisory personnel are available, either on or off-site, at all times, for consultation with its personnel.
- 5.3 Every Assisting Municipality shall assign its personnel to perform tasks as directed by the Municipal Emergency Control Group of the Assisted Municipality, and shall ensure that any assistance it provides is in accordance with the instructions of the Municipal Emergency Control Group.

6.0 Information Sharing

- 6.1 If requested, each party shall respond to another party's request for information regarding specified types of personnel, services, equipment or material in the possession of each party that may be used in the provision of assistance under this Agreement. All such information shall be provided without any warranty of any kind as to its accuracy, reliability, usefulness or other characteristics.

Personal Information

- 6.2 a) Section 6.1 shall not require any party to provide personal information, as defined in the *Municipal Freedom of Information and Protection of Privacy Act*.

- b) The parties agree to comply with the provisions of the *Municipal Freedom of Information and Protection of Privacy Act* in respect of all personal information.
- c) Without limiting (b), if any personal information is shared between the parties pursuant to this Agreement, or in relation to the matters set out in this Agreement, the receiving party shall:
 - i) use the information only for the purposes specifically indicated by the providing party;
 - ii) not disclose such information except in accordance with the *Municipal Freedom of Information and Protection of Privacy Act* and with any other applicable legislation, or as may be otherwise required by law from time to time; and
 - iii) notify the party providing the information immediately if it becomes aware of any disclosure of the personal information contrary to the provisions of this Agreement, the *Municipal Freedom of Information and Protection of Privacy Act* or any other applicable legislation

7.0 Insurance and Limitations

- 7.1 The parties shall, during the term of this Agreement, maintain general commercial liability insurance in an amount of not less than \$2,000,000.00 per occurrence, to cover their respective obligations under this Agreement. The policy shall name each other party as additional named insured persons. Each party shall, upon request, provide evidence of the same to all other parties, or if any party is self insured, it shall provide evidence that is satisfactory to the other parties that the Municipality is and shall be at all times, in a position to satisfy its monetary obligations arising from liability under this Agreement.
- 7.2 Nothing in this Agreement shall require or obligate or be construed to require or obligate a party to provide assistance. Each party shall retain the right to refuse the request to provide assistance, and the right to offer options to the assistance that has been requested.
- 7.3 Notwithstanding anything contained herein, no liability shall attach or accrue to the Assisting Municipality for any reason whatsoever, for failing to provide or continue to provide any assistance under this Agreement.
- 7.4 When assistance has been offered or provided by the Assisting Municipality, the Assisting Municipality shall not be obligated to provide any further assistance or to do anything or take any action beyond that which is specifically agreed to by the acceptance of the request for assistance.
- 7.5 Nothing in this Agreement shall prevent the Assisting Municipality, in its sole discretion, through its Chief Administrative Officer from withdrawing any or all assistance provided to the Assisted Municipality, immediately upon giving written or verbal notice to the Assisted Municipality.

- 7.6 Without limiting 7.5, upon verbally notifying the Assisted Municipality, any Assisting Municipality, through its supervisory personnel, may refuse to carry out any work, in whole or in part, or to take any step with which it disagrees. During any time while a Worker of an Assisting Municipality is attempting to contact supervisory personnel on such a matter, the Worker is not required to carry out the work or take the steps with which he or she disagrees.
- 7.7 Should an Assisting Municipality exercise its option under either 7.5 or 7.6, the services to be provided by that party shall be diminished accordingly, and the Assisted Municipality shall notify any other Assisting Municipalities as soon as practicable.
- 7.8 The Assisted Municipality may determine in its sole discretion that its requirement for assistance has ceased and shall notify the Assisting Municipality of this verbally and shall confirm in writing. Upon receipt of such verbal or written notification, the Assisting Municipality shall terminate the provision of all such assistance.

8.0 Indemnity

- 8.1 The Assisted Municipality shall indemnify and save harmless the Assisting Municipality, its elects, appointees, officials, employees, and agents from all claims, costs, all manner of action or actions, cause and causes of action, duties, dues, accounts, covenants, contracts, demands or other proceeding of every kind or nature whatsoever at law or in equity arising out of the Agreement and out of the provision of any assistance pursuant to this Agreement, including, without limitation, any losses sustained by the Assisting Municipality as a result of any costs or damages incurred by a local board of the Assisting Municipality, or the elects, appointees, officials, employees or agents of such local board (collectively, "Losses"), except to the extent that such Losses arise from the negligence of the Assisting Municipality or its local board, or the elects, appointees, officials, employees or agents of either of them.

9.0 Termination

- 9.1 Any party may terminate its participation in this Agreement upon written notice to all other parties.

10.0 Notice

- 10.1 Unless otherwise provided in this Agreement or advised in writing by the party, written notice given pursuant to this Agreement shall be addressed to:

Clerk of the County of Huron
1 Court House Square
Goderich, ON N7A 1M2

Clerk of the County of Perth
1 Huron Street
Stratford, Ontario N5A 5S4

11.0 Rights and Remedies

- 11.1 Nothing contained in this Agreement shall be construed as restricting or preventing either party from relying on any right or remedy otherwise available to it under this Agreement, at law or in equity in the event of any breach of this Agreement.

12.0 Entire Agreement and Miscellaneous

- 12.1 Except as may otherwise be stated herein, this Agreement and the attached Schedule "A", constitutes the entire Agreement of the parties and supersede any and all prior understandings or agreements, written or verbal, otherwise existing between the parties. Should any provision of this Agreement be declared null and void or inoperative, the remainder of the Agreement will remain in full force and effect
- 12.2 This Agreement shall enure to the benefit of, and be binding upon the parties and their respective successors and assigns.
- 12.3 This Agreement shall not be construed as or deemed to be an agreement for the benefit of any third parties, and no third party shall have any right of action arising in any way or manner under this Agreement for any cause whatsoever.
- 12.4 The parties agree that Sections 8 and 11 of this Agreement shall survive and remain in force notwithstanding the termination by any party of its participation in this Agreement, in respect of any matter occurring prior to the termination by such party of its participation herein.
- 12.5 The parties hereto acknowledge and agree that this Agreement does not apply to the services covered under any Mutual Aid Plan or agreement developed under the authority of the *Fire Protection and Prevention Act, 1997, S.O. 1997, c.4*, as amended, or the direction of the Ontario Fire Marshal, to facilitate provision of fire protection services.
- 12.6 The parties acknowledge that each party may have its own local boards that have emergency management or response capabilities or responsibilities or both. Each party shall inform these local boards of the existence of this Agreement and offer such local boards the opportunity to participate in this Agreement.
- 12.7 This Agreement shall be governed by the laws of the Province of Ontario and Canada.
- 12.8 This agreement may be executed in counterparts.

13.0 Arbitration

13.1 The parties hereby agree that in the event of any dispute arising under or pursuant to this Agreement and which dispute cannot be resolved by the mutual agreement of the affected Chief Administrative Officers, the dispute shall be referred to the respective heads of Council of the parties for resolution. In the event that the heads of Council cannot resolve the dispute, the same shall be submitted to arbitration under the provisions of the *Municipal Arbitrations Act*, R.S.O., 1990, c. M. 48, as amended, and the decision rendered in respect of the proceedings shall be final and binding upon the parties to this Agreement.

IN WITNESS WHEREOF the said Corporations have hereunto affixed their corporate seals duly attested by the hands of their proper officers.

THE CORPORATION OF THE COUNTY OF HURON

Per: _____
Warden, Neil Vincent

Per: _____
Clerk, Barb L. Wilson

Dated: _____.

THE CORPORATION OF THE COUNTY OF PERTH

Per: _____
Warden, Julie Behrns

Per: _____
Clerk, Kerri Ann O'Rourke

Dated: _____.

Schedule "A"
Mutual Assistance Agreement between
THE CORPORATIONS OF THE COUNTY OF HURON, and THE COUNTY OF PERTH

I, _____, CAO /
/Designated Alternate of _____
_____, duly authorized to do so by the Council of _____
_____, do hereby request of The
to provide assistance in the form of :

_____ PERSONNEL
_____ SERVICES
_____ EQUIPMENT
_____ MATERIAL

AS IS MORE PARTICULARLY SET OUT IN DETAIL AS FOLLOWS:

The above confirms the assistance verbally requested on _____.
(date) and, which assistance the _____ has
agreed to provide.

Dated this _____ day of _____, 2_____.

Name:

Position:
(CAO//Designated Alternate)