

THIS AGREEMENT effective on _____, 2024 BETWEEN:

THE CORPORATION OF THE TOWN OF AJAX
(“AJAX”)
AND

THE CORPORATION OF THE TOWN WHITBY
(“WHITBY”)

WHEREAS Section. 20(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25 provides that a municipality may enter into an agreement with one or more municipalities or local bodies, as defined in section 19, or combination of both to jointly provide, for their joint benefit, any matter which any of them have the power to make within their own boundaries;

AND WHEREAS Section 2(6) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4 authorizes a municipality to enter into an automatic aid agreement with other municipalities, as defined under Section 1(4) of the Act, to provide or receive the initial or supplemental response to a fire, rescues and emergencies;

AND WHEREAS, there are areas in each of Ajax and Whitby in which a fire department in the other municipality is capable of responding to the areas more quickly than any fire department situated within the municipality.

NOW THEREFORE in consideration of the mutual covenants, provisions and conditions contained herein, and for other good and valuable consideration, Ajax and Whitby covenant and agree as follows:

1. DEFINITIONS/INTERPRETATION

- a. “AFES” means Ajax Fire and Emergency Services, a department of Ajax.
- b. "Agreement" means this agreement including its recitals and any schedules, which form part of it, as amended.
- c. "Ajax" means The Corporation of the Town of Ajax including its successors and assigns, and, where the context allows, its employees, servants, agents, officers and elected officials.
- d. "Automatic Aid Area" means any or all of the areas as described in Appendix A to this Agreement.
- e. "Automatic Aid Response" means the delivery of Initial Response Services by a Participating Fire Service.
- f. "Home Fire Chief" means the Fire Chief of the Home Municipality.
- g. "Home Fire Service" means the fire service within the Home Municipality that, but for the provisions of this Agreement, would be responsible for providing Initial Response Services.
- h. "Home Municipality" means the municipality whose fire service would be responsible for providing initial response services.
- i. "Incident" means fire, emergencies or dangerous conditions that occur in the Automatic Aid Areas as described in Appendix A.
- j. “Incident Command System” means an Incident Management System with a common organizational structure with responsibility of assigned resources to effectively accomplish stated objectives pertaining to an incident.
- k. "Initial Response Services" for the purpose of this Agreement means the provision of an initial response designed to address the adverse effects of an Incident.
- l. “Officer” the first arriving Captain or Platoon Chief from either responding fire service who is deemed to be in command of the emergency scene.
- m. "Participating Fire Service" means the fire service within the participating municipality with responsibility for providing an Automatic Aid Response.

- n. "Participating Municipality" means the municipality that provides an Automatic Aid Response.
- o. "WFES" means Whitby Fire & Emergency Services, a department of Whitby.
- p. "Whitby" means The Corporation of the Town of Whitby including its successors and assigns, and, where the context allows, its employees, servants, agents, officers and elected officials.

2. INTERPRETATION

- a. Gender, Plural: All words in this Agreement shall be deemed to include any number or gender, as the context requires.
- b. Applicable Law: This Agreement shall be interpreted according to the laws of the Province of Ontario.
- c. Headings: Article, section, clause and/or paragraph headings are for reference purposes only and shall not in any way modify or limit the statements contained in the following text.
- d. Legislation: Reference to federal or provincial statutes or regulations or municipal by-laws are deemed to refer to the relevant legislation as amended, including successor legislation.

2 TERM

- 2.01 Term: The term of the Agreement shall be indefinite and will be reviewed yearly by the Fire Chiefs of Whitby and Ajax.
- 2.02 Termination: This Agreement may be terminated by either party on ninety (90) days' notice in writing to the other.

3 AUTOMATIC AID RESPONSE

- 3.01 Automatic Aid Response: Upon the occurrence of an Incident, an Automatic Aid Response shall be provided by the Participating Fire Service to the extent that the Participating Fire Service has equipment and staff available.
- 3.02 Response: Upon the occurrence of an Incident, the Home Fire Service shall respond.
- 3.03 Command: When a Home Fire Service and a Participating Fire Service respond to an Incident, the Incident Commander of the Home Fire Service shall assume responsibility as soon as practicable for the overall command of and coordination of operations in respect of the Incident.
- 3.04 Incident Command System: The first arriving officer, regardless of the location of the Incident and regardless of rank, shall assume Incident command and implement strategy and tactics appropriate to control the incident.

4 COST

- 4.01 No-cost Basis: There shall be no cost to the Home Municipality for the provision of an Automatic Aid Response.

5 RELEASE AND INDEMNITY

- 5.01 No Claims: Neither party shall have any claim or demand against the other for detriment, damage, accident or injury, of any nature whatsoever or howsoever caused to any person or property, including any buildings, structures, erections, equipment, material, supplies, motor or other vehicles, fixtures and articles, effects and things in any manner based upon, occasioned by or attributable to the execution of the Agreement or any action taken or things done or maintained by virtue of the Agreement, or the exercise in any manner of rights arising under the Agreement.
- 5.02 Indemnification: Each party covenants and agrees that it shall at all times indemnify and save harmless the other from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted, in any manner based upon, occasioned by or attributable

to the execution of the Agreement or any action taken or things done or maintained by virtue of the Agreement, or the exercise in any manner of rights arising under the Agreement, except claims for damage resulting from the negligence of any officer, servant or agent of the other while acting within the scope of his or her duties or employment.

- 5.03 Limitation of liability clause: Further to Sections 3.01 and 5.01 of this Agreement, no liability shall attach or accrue to the participating municipality for failing to provide an automatic aid response in the event that the participating fire service does not have equipment and staff available at the time of the incident.

6 MISCELLANEOUS

- 6.01 Notice: Any notice to be given under this Agreement shall be sufficiently given via email to:

Ajax Fire & Emergency Services – fireadmin@ajax.ca

Whitby Fire & Emergency Services –

fireadministration@whitby.ca

Receipt of notice shall be deemed on the date of delivery.

- 6.02 Force Majeure/Time: Notwithstanding anything in this Agreement, neither party shall be in default with respect to the performance of any of the terms of this Agreement if any non-performance is due to any force majeure, strike, lock-out, labour dispute, civil commotion, war or similar event, invasion, the exercise of military power, act of God, government regulations or controls, inability to obtain any material or service, or any cause beyond the reasonable control of the party (unless such lack of control results from a deficiency in financial resources). Otherwise, time shall be of the essence of this Agreement and all the obligations contained herein.
- 6.03 Arbitration: All matters of differences arising between Ajax and Whitby in any matter connected with or arising out of this Agreement shall be referred to a single arbitrator if the parties agree upon the arbitrator's identity. Should the parties be unable to agree upon the identity of an arbitrator, then the matter shall be referred to a single arbitrator, to be appointed by a Justice of the Superior Court of Justice. The arbitrator shall conduct the arbitration pursuant to the *Arbitration Act, 1991*, S.O. 1991 c. 17 and every award or determination shall be final and binding on the parties and their successors and assigns and shall not be subject to appeal. The arbitrator shall be allowed unfettered and unlimited discretion to determine in each case the solution which best balances the competing interests of the parties to the arbitration in accordance with this Agreement, and she or he shall not be bound by any legal precedent in such determination. The arbitrator shall not be bound by the provisions of the *Arbitration Act, 1991*, S.O. 1991 c. 17 in respect of her or his fees. The arbitrator shall be entitled to award all or part of her or his fees against any party in accordance with the principles which govern an award of costs against a non-successful party in a contested matter before the Superior Court of Justice. In the absence of such an award by the arbitrator, the arbitrator's costs shall be borne equally by both parties, without regard to their involvement in the arbitration.
- 6.04 No Assignment: Neither party shall make any assignment of this Agreement without obtaining the prior consent in writing of the other to such assignment.
- 6.05 Successors: The rights and liabilities of the parties shall ensure to the benefit of and be binding upon the parties and their respective successors and approved assigns.
- 6.06 Entire Agreement: This Agreement contains the entire agreement between the parties relating to Automatic Aid Response and it is agreed that there is no covenant, promise, agreement, condition precedent or subsequent, warranty or representation or understanding, whether oral or written, other than as set forth in this Agreement and this Agreement fully replaces and supersedes any letter, letter of intent, or other contractual arrangement between the parties related to Automatic Aid Response in existence at the time of execution and delivery of this Agreement. This agreement is not part

of the Durham Region Emergency Fire Services Plan [Mutual Aid].

- 6.07 Severability: If any article, section, subsection, paragraph, clause or sub-clause or any of the words contained in this Agreement shall be held wholly or partially illegal, invalid or unenforceable by any court of competent jurisdiction, Ajax and Whitby agree that the remainder of this Agreement shall not be affected by the judicial holding but shall remain in full force and effect. The provisions of this Agreement shall have effect, notwithstanding any statute to the contrary.
- 6.08 Waivers: No supplement, amendment, or waiver of or under this Agreement shall be binding unless executed in writing by the party to be bound thereby and no waiver by a party of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision or a continuing waiver unless otherwise expressly provided.
- 6.09 This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which taken together constitute an original agreement, and will be effective when one or more counterparts have been signed by each of the parties to the Agreement and delivered to each of the parties.

IN WITNESS WHEREOF the Parties hereto have herein affixed their Corporate Seals duly attested to by the hands of their authorized officers.

THE CORPORATION OF THE TOWN OF AJAX

Shaun Collier, Mayor

Jason McWilliam, Deputy Clerk

THE CORPORATION OF THE TOWN WHITBY

Elizabeth Roy, Mayor

Chris Harris, Town Clerk

Appendix A

AUTOMATIC AID AREAS – TOWN OF AJAX AND TOWN OF Whitby

The areas identified in this appendix can be altered or increased as necessary with the approval of both Fire Chiefs and the Chief Administrative Officers for Whitby and Ajax.

The areas authorized to participate in the Automatic Aid Programs are as follows:

(a) Ajax/Whitby Situation 1:

For responses on Highway 401 westbound between Lakeridge Road and Salem Road, WFES will respond with a minimum of one unit. AFES will respond according to their Initial Response Guidelines.

(b) Ajax/Whitby Situation 2:

For responses on Highway eastbound between Lakeridge Road and Brock Street, AFES will respond with a minimum of one unit. WFES will respond according to their Initial Response Guidelines.

(c) Ajax/Whitby Situation 3:

For responses on the northbound Highway 412 on-ramp from the eastbound Highway 401, AFES will respond with a minimum of one unit. WFES will respond according to their Initial Response Guidelines.