

MA-A2-1

DATE: January 3, 2002

SUBJECT: **MUTUAL ASSISTANCE AGREEMENTS**

FROM: R. Kent Gillespie, Commissioner of Corporate Services and Regional Solicitor

RECOMMENDATION

That the Chief Administrative Officer (CAO) complete separate Mutual Assistance Agreements between the Regional Municipality of Peel and such other municipalities as the CAO deems appropriate, on substantially the same terms and conditions as those set out in the agreement attached as Appendix "1" to the report of the Commissioner of Corporate Services and Regional Solicitor titled "Mutual Assistance Agreements" dated January 3, 2002.

REPORT HIGHLIGHTS

- By Resolution #2000-1122 dated October 26, 2000, Council authorized the negotiation and execution of three separate mutual assistance agreements between the Region of Peel and each of the municipalities of York, Halton and Toronto.
- Peel concluded an agreement with York in January, 2001. Peel is currently exchanging draft agreements with Halton and Toronto.
- Recently, Peel has been approached by other municipalities – notably Durham and Hamilton to conclude similar agreements.
- Recent events have indicated that it is prudent for Peel to conclude agreements with municipalities beyond those that border Peel.

DISCUSSION

1. Background

a) Legislative Authority

The *Emergency Plans Act* provides for municipalities to enter into agreements which provide for each party to provide assistance, in the form of personnel, services, equipment and/or material, if called upon to do so by a requesting municipality in times of emergency.

b) Nature of Mutual Assistance Agreements

The Emergency Measures Organization of the Solicitor General's Office and Emergency Measures Managers from GTA municipalities have long advocated the use of Mutual Assistance Agreements throughout the province.

MUTUAL ASSISTANCE AGREEMENTS

Pursuant to Council authority given on October 26, 2000, Peel concluded an Agreement with York in January, 2001 and is currently negotiating agreements with Halton and Toronto in a form substantially similar to that attached as Appendix "1".

This form of agreement reflects the input from regional solicitors and regional emergency planning personnel throughout the province. It has been supported in principle by Emergency Measures Ontario. Recent events, including the September 11, 2001 terrorist attacks, indicate that it would be prudent for Peel to reach agreements with municipalities beyond those on its immediate borders. Indeed, both Hamilton and Durham have now separately requested that Peel enter into such an agreement.

Mutual Assistance Agreements enable municipalities, in advance of an emergency, to set the terms and conditions of the assistance which may be requested or provided.

Municipalities requesting and providing assistance are therefore not required to negotiate the basic terms and conditions under stressful conditions and may request, offer and receive assistance according to predetermined sets of relationships.

While the Agreement is executed by the Region, the request or response to a request triggering its effect is made by the CAO or his designate. The Agreement permits quick action and rapid response and maximum flexibility in emergency situations. This forms an integral piece of the emergency planning capability of the Region.

c) Analysis

The Agreement authorizes the CAO to request or offer personnel, equipment, services and material in an emergency. The Agreement authorizes the CAO to determine the nature and scope of assistance to be offered or requested in an emergency situation. Other specific provisions include:

- notifying the Solicitor General that a request has been made under the agreement;
- payment by the Region of the cost of any assistance received from another municipality;
- recovery by the Region of costs for any assistance provided;
- insurance and indemnity provisions;
- information sharing capabilities, including advance information on available personnel services, equipment or material;
- assignment of a liaison officer from the Assisting Region to the Emergency Control Group of the municipality receiving assistance for exchanging information during emergency.

By signing the Mutual Assistance Agreements, the Region will not be obligated or committed to provide assistance if and when a request is made. The Agreement specifically exempts the Region from any liability should it refuse a request for assistance, and further provides that the Region may withdraw assistance once provided.

FINANCIAL IMPLICATIONS

The Agreement provides for payment for services provided to Peel Region and for the Region's recovery of costs when assistance is provided.

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MUTUAL ASSISTANCE AGREEMENTS

CONCLUSION

In approving the completion of Mutual Assistance Agreements with other municipalities, the Region will be completing an integral component of the Emergency Planning Process. In having agreements in place with other municipalities, the Region will enable requests for, and the provision of, assistance without the need to negotiate the terms of that assistance in the course of the emergency.

R. K. Gillespie
Per P.R. O'Connor

R. Kent Gillespie
Commissioner of Corporate Services
and Regional Solicitor

Approved for Submission:

R. Maloney

R. Maloney, Chief Administrative Officer

c. Legislative Services

(mutual assist – 11980)

MUTUAL ASSISTANCE AGREEMENTS

DRAFT

THIS MUTUAL ASSISTANCE AGREEMENT made this day
of ,2000.

B E T W E E N:

THE REGIONAL MUNICIPALITY OF YORK

OF THE FIRST PART

- and -

THE REGIONAL MUNICIPALITY OF PEEL

OF THE SECOND PART

WHEREAS the *Emergency Plans Act*, R.S.O. 1990, c. E. 9. provides that the Council of a municipality or county may make an agreement with another municipality or county for the provision of any personnel, service, equipment or material during an Emergency;

AND WHEREAS the parties wish to provide for mutual aid and assistance to each other through the provision of personnel, services, equipment or material to one or the other within the meaning of the *Emergency Plans Act*;

AND WHEREAS the parties have Emergency Plans pursuant to the *Emergency Plans Act*;

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

1. Definitions

1.1 In this Agreement,

1.1.1 "Assisted Municipality" means the municipality or county receiving aid or assistance pursuant to this Agreement;

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- 1.1.2 “Assisting Municipality” means the municipality or county providing aid or assistance pursuant to this Agreement;
- 1.1.3 “Emergency”, “Emergency Area” and “Emergency Plan” shall have the same meanings as in the *Emergency Plans Act*;
- 1.1.4 “Mutual Assistance Agreement” means this Agreement and the attached Schedule(s) which embody the entire Agreement between the parties;
- 1.1.5 “Requesting Party” means the municipality or county asking for aid, assistance or both pursuant to this Agreement;
- 1.1.6 “Emergency Control Group” means the organizational entity responsible for directing and controlling the Assisted Municipality’s response to an Emergency.

2. Role of the Solicitor General

- 2.1 The parties acknowledge that pursuant to the *Emergency Plans Act* (the “Act”), the Solicitor General for the Province of Ontario is responsible for the administration of the Act and is the principal contact for all Emergencies.
- 2.2 The parties further agree that the Solicitor General should be notified in writing of any request made under this Agreement. The Requesting Party agrees to notify as soon as reasonably practicable, Emergency Measures Ontario (EMO), Ministry of the Solicitor General on the matter of any request for assistance made under this Agreement.

3. Authorization to Request/Offer Assistance

- 3.1 Each party hereby authorizes its Chief Administrative Officer (hereinafter “CAO”), (or such other senior officer of the party as the party has designated by by-law) to request assistance, accept offers to provide, or to offer to provide assistance pursuant to this Agreement on behalf of that party.

4. Requests for Assistance

- 4.1 The parties agree that in an Emergency, a Requesting Party may request assistance in the form of qualified personnel, services, equipment, or material from the other party.
- 4.2 The request for assistance shall be made by the CAO of the Requesting Party to the CAO of the Assisting Municipality. The CAO may make the initial request for assistance orally. However, any request for assistance made orally shall be confirmed in writing by the Requesting Party within three (3) days of the initial oral request. The Assisting Municipality may provide assistance to the other party upon receipt of the oral request.
- 4.3 The request for assistance shall be confirmed in writing as soon as reasonably practicable by the Requesting Party in accordance with Schedule "A" attached hereto. The written request shall set out in detail the specific personnel, services, equipment or material that has been requested as assistance, and which the Assisting Municipality has agreed to provide. The Assisting Municipality may request such reasonable additional information as it considers necessary to confirm the existence of the Emergency and to assess the type, scope, nature and amount of assistance to be provided.
- 4.4 The Assisting Municipality shall respond to the request within 1 day, and may in its sole discretion determine the type and scope, nature and amount of assistance it will provide. The Assisting Municipality shall confirm in writing the assistance it has agreed to provide.
- 4.5 The parties may by mutual agreement amend 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.

5. Limitations on Assistance Provided

- 5.1 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.

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5.2 No liability shall arise against the Assisting Municipality if it fails, for any reason whatsoever, to respond to a request for assistance made under this Agreement.

5.3 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.

5.4 Nothing in this Agreement shall prevent the Assisting Municipality, in its sole discretion, from withdrawing any or all assistance provided to the Assisted Municipality. Any withdrawal of assistance by the Assisting Municipality shall be made only upon at least *forty-eight (48) hours' notice to the Assisted Municipality, unless the Assisting Municipality is responding to an actual or pending Emergency within its own geographical boundaries, in which case it may withdraw assistance from the Assisted Municipality without notice.*

5.5 The Assisted Municipality may determine in its sole discretion that its requirement for assistance has ceased and shall notify the Assisting Municipality of this in writing.

6. Term and Termination

6.1 This Agreement shall be in effect from the date on which the second Party signs the Agreement.

6.2 Despite any other section of this Agreement, either party may terminate this Agreement upon at least sixty (60) days' written notice to the other party.

7. Costs

7.1 The parties agree that any and all *direct and indirect* costs for assistance are to be paid by the Assisted Municipality. The Assisted Municipality shall be responsible to pay for any and all actual costs incurred by the Assisting Municipality in providing the assistance. Such costs shall include *all wages, salaries, overtime, shift premium, and similar charges* and expenses incurred in providing the assistance *including those wages, salaries, overtime and shift premium charges incurred resulting from staffing requirements in its home jurisdiction during the period of the assistance, providing all such costs are reasonable in the circumstances. However, such costs shall not include the*

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Assisting Municipality's cost of employment benefits which includes, for the purposes of this Agreement, Canada Pension Plan, Employment Insurance, OMERS contributions, and/or contributions made to life insurance, health, dental, and/or disability plans or policies.

7.2 The Assisted Municipality shall also be responsible for all actual operating costs for all personnel, services, equipment, machinery 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 machinery, services and material furnished as assistance to the Assisted Municipality under this Agreement. The Assisted Municipality shall be responsible for the cost of replacing equipment or material furnished by the Assisting Municipality if damaged beyond reasonable repair.

7.3 The Assisting Municipality shall provide to the Assisted Municipality, if practical, an estimate of the cost of providing the assistance.

8. Payment

8.1 Payment by the Assisted Municipality for costs incurred for the Assistance provided, shall be subject to the Assisted Municipality's receipt of an invoice from the Assisting Municipality. Such invoice shall set out in sufficient detail the costs actually incurred by the Assisting Municipality in providing assistance, and where practically available, receipts for disbursements shall be forwarded in support of the invoice.

8.2 The Assisted Municipality shall remit payment of the amount owing for the assistance provided within *thirty (30)* days of the receipt of the Assisting Municipality's invoice.

8.3 Any amount remaining unpaid and outstanding after the *thirty (30)* day period referred to in sub-section 8.2 of this Agreement 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.*

9. Employment Relationship

9.1 Despite that the employees, contractors, servants and agents (collectively "the workers") of the Assisting Municipality may be assigned to perform duties for the Assisted Municipality, and that for the duration of the Emergency, the Assisted Municipality shall reimburse the Assisting Municipality for the costs of the wages, salaries and expenses of the workers, in all other 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 is not to be deemed the employer of the Assisting Municipality's employees, agents, or contractors or servants, 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. CPP, *etc.*

10. Indemnity

10.1 The Assisted Municipality shall indemnify and save harmless the Assisting Municipality from all claims, costs, all manner of action or actions, cause and causes of action, accounts, covenants, contracts, demands or other proceedings of every kind or nature whatsoever at law or in equity arising out of this Agreement and out of assistance provided pursuant to this Agreement. The indemnity herein provided shall include all costs, including but not limited to duties, dues, accounts, demands, penalties, fines and fees.

11. Insurance

11.1 During the term of this Agreement, each party shall obtain and maintain in full force and effect, general liability insurance issued by an insurance company authorized by law to carry on business in the Province of Ontario, providing for, without limitation, coverage for personal injury, public liability and property damage. Such policy shall:

11.1.1 have inclusive limits of not less than Five Million Dollars (\$5,000,000) for injury, loss or damage resulting from any one occurrence;

11.1.2 contain a cross-liability clause endorsement *and severability of interests* clause of standard wording;

- 11.1.3 name the other party as an additional insured with respect to any claim arising out of the Assisted Municipality's obligations under this Agreement or the Assisting Municipality's provision of personnel, services, equipment or material pursuant to this Agreement; and
- 11.1.4 upon request of the other party, provide proof of insurance if so required in a form satisfactory to the other party's CAO.
- 11.1.5 *Include a Non-Owned Automobile endorsement.*
- 11.2 *During the term of this Agreement, each party shall obtain and maintain in full force and effect, automobile liability insurance in the amount of Two Million Dollars (\$2,000,000.00) for injury, loss or damage resulting from anyone occurrence.*
- 11.3 *In the case of any conflict between the provisions of this document and any other provisions speaking to contractual indemnity or insurance clauses, the provisions of this Agreement will govern.*

12. Collective Agreements

- 12.1 *Each Party agrees to review the provisions of this Agreement with its appropriate local bargaining units for the purpose of seeking amendments to local agreements, if necessary, to reflect the terms of this Agreement. Each party further agrees to advise the other party as soon as practically possible if it becomes aware of any impediments or obstacles imposed by local agreements to meeting its obligations under this Agreement.*

13. Liaison and Supervision

- 13.1 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 Emergency Control Group of the Assisted Municipality. The Liaison Officer shall provide a liaison between the Assisting Municipality and the Emergency Control Group of the Assisted Municipality. The parties acknowledge that the purpose of the Liaison Officer shall be to permit communication between the Assisted and Assisting

Municipalities. Subject to 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. The Assisting Municipality shall keep confidential and not disclose any information concerning the emergency or the assistance provided without the prior consent of the Assisted Municipality.

- 13.2 The Assisting Municipality shall assign its personnel to perform tasks as directed by the Emergency Control Group of the Assisted Municipality. The Assisting Municipality shall have the right to assign supervisory personnel to operate or supervise the operation of any of the Assisting Municipality's personnel and or equipment furnished as assistance to the Assisted Municipality. Such supervision shall be in accordance with the instructions of the Emergency Control Group.

14. Information Sharing

- 14.1 Subject to the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), the parties agree to share with each other, information lists or databases detailing the amount, type, capability, and characteristics of personnel, services, equipment or material in the possession of each party, which may be available to the requesting party under this agreement. Such sharing of information shall occur upon the execution of this Agreement and the parties, on mutual agreement, shall update these information lists from time to time.

15. Food and Lodging

- 15.1 For the duration of the assistance provided under this Agreement, the Assisted Municipality shall be responsible for providing 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 Assisted Municipality pays to its own employees as a matter of policy or agreement.

16. Notice

- 16.1 If not otherwise provided in this Agreement, written notice given pursuant to this Agreement must be addressed,

in the case of notice to the Region of York, to:

The Chief Administrative Officer
The Regional Municipality of York
17250 Yonge Street,
Newmarket, Ontario
L3Y 6Z1

- and -

in the case of notice to the Region of Peel to:

The Chief Administrative Officer
The Regional Municipality of Peel
10 Peel Centre Drive
Brampton, Ontario
L6T 4B9

- 16.2 If hand delivered, the notice is effective on the date of delivery; if faxed, the notice is effective on the date and time the fax is sent; if sent by electronic mail, the notice is effective on the date sent; and if mailed, the notice is deemed to be effective on the fifth business day following the day of mailing.

- 16.3 Any notice given shall be sufficiently given if signed by the CAO or by a person authorized by or acting under the direction or control of the CAO.

17. Rights and Remedies

- 17.1 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.

18. Binding Effect

18.1 This Agreement shall enure to the benefit of, and be binding upon the parties and their respective successors, administrators and assigns.

18.2 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.

19. Incorporation of Schedules

19.1 This Agreement and the attached Schedule "A", (together with the lists and information exchanged pursuant to Section 14) embody the entire Agreement and supersede any other understanding or agreement, collateral, oral or otherwise, existing between the parties prior to or at the date of execution.

20. [INTENTIONALLY DELETED]

21. Provisions Surviving Termination

21.1 Sections 2, 5.2, 7, 8, 9, 10, 11, 16, 17, 21, 22 and 23 of this Agreement shall survive termination of this Agreement.

22. Governing law

22.1 The parties agree to be governed by the laws of the Province of Ontario and Canada.

23. Arbitration [NEW]

23.1 *The Parties herein agree that in the event of any dispute arising under or pursuant to this Agreement, which dispute cannot be resolved by the mutual agreement of the Parties' C.A.O.s, the C.A.O.s shall refer the dispute to the respective Chairs of the Parties for resolution. In the event that the Chairs cannot resolve the dispute, either Party may, on providing ninety (90) days' written notice to the other, refer the dispute to a third party arbitrator of their mutual choice for*

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resolution. Such arbitration shall be conducted pursuant to the Arbitration Act, 1991, S.O. 1991 c. 17, as amended.

IN WITNESS WHEREOF the parties have executed this Agreement.

**SIGNED SEALED AND)
DELIVERED**

In the presence of:

Witness

Authorised by Report No. __ of the
Commissioner of Corporate and
Legal Services, adopted by Council
on the _____, 2000

Witness

Authorised by

**THE REGIONAL MUNICIPALITY
OF YORK**

Chair

Clerk

**THE REGIONAL MUNICIPALITY
OF PEEL**

Chair/Regional Solicitor

Clerk

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SCHEDULE "A"

Mutual Assistance Agreement

I, _____, Chief Administrative Officer / Designated Official of
The Regional Municipality of _____, duly authorised to do so by
the Council of The Regional Municipality of _____, do hereby
request of The Regional Municipality of _____, 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 _____, and
which assistance The Regional Municipality of _____ has agreed
to provide.

Dated at _____ this _____ day of _____, _____,

Chief Administrative Officer
The Regional Municipality of
