

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2014-42

**By-law authorizing the execution of an agreement between the Corporation of the Town of Amherstburg, the Amherstburg Police Services Board and Her Majesty the Queen in Right of Ontario as represented by the Minister of Community Safety and Correctional Services with respect to a grant for the Safer Community – 1,000 Officers Partnership Program**

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**WHEREAS** under Section 8 of the Municipal Act 2001, S.O., 2001, c. 25, as amended, a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

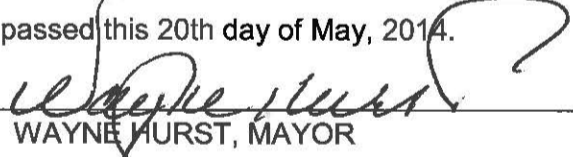
**AND WHEREAS** under Section 9(1) (a) and (b) of the Municipal Act 2001, S.O., 2001, c. 25, as amended, Section 8 shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues;

**AND WHEREAS** the Council of The Corporation of the Town of Amherstburg deems it expedient to enter into an agreement between the Corporation of the Town of Amherstburg, the Amherstburg Police Services Board and Her Majesty the Queen in Right of Ontario as represented by the Minister of Community Safety and Correctional Services with respect to a grant for the Safer Community – 1,000 Officers Partnership Program;

**NOW THEREFORE** the Council of The Corporation of the Town of Amherstburg enacts as follows:

1. That the Council of The Corporation of the Town of Amherstburg agrees to enter into the agreement as attached hereto as Schedule "A" to this By-law.
2. That the Mayor and Clerk are hereby authorized to sign and seal said agreement on behalf of The Corporation of Town of Amherstburg.
3. This By-law shall come into force and take effect immediately upon the final passing thereof.

Read a first, second and third time and finally passed this 20th day of May, 2014.

  
\_\_\_\_\_  
WAYNE HURST, MAYOR

  
\_\_\_\_\_  
PAULA PARKER, DEPUTY CLERK

**THE AGREEMENT** effective as of the 1st day of April, 2014.

**B E T W E E N :**

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO as  
represented by the Minister of Community Safety and  
Correctional Services**

**(the "Ministry")**

**- and -**

**Town of Amherstburg**

**(the "Recipient")**

**- and -**

**Amherstburg Police Services Board**

**(the "Board")**

**WHEREAS** in 2003, the Ministry established the Safer Community - 1,000 Officers Partnership (1,000 Officers) Program (the "Program") as part of the government's commitment to make Ontario communities safer by enhancing police visibility;

**AND WHEREAS** the Ministry wishes to continue to fund the activities of the Board by providing funds to the Recipient for the purposes of supporting its contribution to the Board's budget to maintain the increased number of sworn officers of the **Amherstburg Police Service** for enhanced police visibility;

**NOW THEREFORE** in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Parties agree as follows:

**ARTICLE 1 -- INTERPRETATION AND DEFINITIONS**

1.1 **Interpretation.** For the purposes of interpretation:

- (a) words in the singular include the plural and vice-versa;
- (b) words in one gender include all genders;
- (c) the background and the headings do not form part of the Agreement; they are for reference only and shall not affect the interpretation of the Agreement;
- (d) any reference to dollars or currency shall be to Canadian dollars and currency;  
and

(e) "include", "includes" and "including" shall not denote an exhaustive list.

1.2 **Definitions.** In the Agreement, the following terms shall have the following meanings:

**"Agreement"** means this agreement entered into between the Ministry, the Recipient and the Board and includes all of the schedules listed in section 28.1 and any amending agreement entered into pursuant to section 34.2.

**"BPSAA"** means the *Broader Public Sector Accountability Act, 2010* (Ontario), including any directives issued pursuant to that Act.

**"Budget"** means the budget attached to the Agreement as Schedule "A".

**"Expiry Date"** means March 31, 2016, unless terminated earlier pursuant to this Agreement.

**"Effective Date"** means the date first written above.

**"Event of Default"** has the meaning ascribed to it in section 14.1.

**"Force Majeure"** has the meaning ascribed to it in Article 26.

**"Funding Period"** means: the period commencing on the Effective Date and ending on the Expiry Date.

**"Funding Year"** means any of Funding Year 1, or Funding Year 2.

**"Funding Year 1"** means April 1, 2014 through to March 31, 2015.

**"Funding Year 2"** means April 1, 2015 through to March 31, 2016.

**"Funds"** means the money the Ministry provides to the Recipient pursuant to the Agreement.

**"Indemnified Parties"** means her Majesty the Queen in right of Ontario, her Ministers, agents, appointees and employees.

**"Maximum Funds"** means \$70,000.00.

**"Notice"** means any communication given or required to be given pursuant to the Agreement.

**"Notice Period"** means the period of time within which the Recipient is required to remedy an Event of Default, and includes any such period or periods of time by which the Ministry considers it reasonable to extend that time.

**"Parties"** means the Ministry, the Recipient and the Board, and **"Party"** means any one of them.

**“Project”** means the undertaking described in Schedule “B”.

**“Project Completion Date”** means March 31, 2015 for Funding Year 1 and March 31, 2016 for Funding Year 2.

**“Reports”** means the reports provided in Schedule “C”.

**“Timelines”** means the dates and times set out in Schedule “A”.

## **ARTICLE 2 – REPRESENTATIONS, WARRANTIES AND COVENANTS**

- 2.1 **General.** The Recipient and the Board each represents, warrants and covenants that:
- (a) it is and shall continue to be for the term of the Agreement, a validly existing legal entity with full power to fulfill its obligations under the Agreement;
  - (b) it has, and shall continue to have for the term of the Agreement, the experience and expertise necessary to carry out the Project; and
  - (c) unless otherwise provided for in the Agreement, any information the Recipient provided to the Ministry in support of its request for funds (including information relating to any eligibility requirements) was true and complete at the time the Recipient provided it and shall continue to be true and complete for the term of the Agreement.
- 2.2 **Execution of Agreement.** The Recipient and the Board each represents and warrants that:
- (a) it has the full power and authority to enter into the Agreement; and
  - (b) it has taken all necessary actions to authorize the execution of the Agreement.
- 2.3 **Governance.** The Recipient and the Board each represents, warrants and covenants that upon execution and for the period during which the Agreement is in effect, it:
- (a) (i) is a municipal police service board or a municipality in a municipality that has established a municipal police service or whose council has entered into an agreement under s. 10 of the Police Services Act for the provision of police services by the Ontario Provincial Police (OPP); or (ii) it is a First Nation police services board/commission or a First Nation band council in a First Nation community that has established a First Nation police service pursuant to a policing services agreement between Canada, the Ministry, and the First Nation signatory;

- (b) has made only one (i) request for Program Funds and shall accept the Program Funds under the Agreement and not under any other agreement;
- (c) shall have procedures to enable the preparation and delivery of all Reports required pursuant to Article 7;
- (d) shall have in place, as a condition of funding, such governance and the administrative structures and processes necessary to (i) ensure prudent and effective management of the Funds; (ii) enable the successful completion of the Project and the timely identification of risks to the completion of the Project; and (iv) address the identified risks;
- (e) shall report on the specific expenditures according to established expectations as set out in this Agreement.

2.4 **Supporting Documentation.** Upon request, the Recipient, the Board or both of them shall provide the Ministry with proof of the matters referred to in this Article 2.

### ARTICLE 3 -- TERM OF THE AGREEMENT

3.1 **Term.** The term of the Agreement shall commence on the Effective Date and shall expire on the Expiry Date, unless terminated earlier pursuant to Articles 12, 13 or 14.

### ARTICLE 4 -- FUNDS AND CARRYING OUT THE PROJECT

4.1 **Funds Provided.** The Ministry shall:

- (a) reimburse the Recipient with Funds up to the Maximum Funds for the purpose of carrying out the Project;
- (b) reimburse the Recipient by providing the Funds directly to the Recipient through transfer payments in accordance with the payment schedule attached to the Agreement as Schedule "A"; and
- (c) deposit the Funds into an account designated by the Recipient provided that the account:
  - (i) resides at a Canadian financial institution; and
  - (ii) is in the name of the Recipient.

4.2 **Limitation on Payment of Funds.** Despite section 4.1:

- (a) the Ministry is not obligated to provide any Funds to the Recipient until the Recipient provides the insurance certificate or other proof as provided for in section 11.2;

- (b) the Ministry's payment of Funds is conditional on the Board submitting the Financial Reports in accordance with the requirements of Schedule "C" and Timelines set out in Schedule "A";
- (c) the Ministry is not obligated to provide Funds until it is satisfied with the Reports;
- (d) the Ministry may adjust the amount of Funds it provides to the Recipient in any Funding Year based upon the Ministry's assessment of the information provided by the Recipient pursuant to section 7.1; and
  - (i) if the Recipient identifies that the Funds for the Funding Year are not expected to be used for the Funding purposes, the Ministry may reallocate the Funds to other municipalities; or
  - (ii) if, pursuant to the provisions of the *Financial Administration Act* (Ontario), the Ministry does not receive the necessary appropriation from the Ontario Legislature for payment under the Agreement, the Ministry is not obligated to make any such payment, and, as a consequence, the Ministry may:
    - (a) reduce the amount of the Funds and, in consultation with the Recipient, change the Project; or
    - (b) terminate the Agreement pursuant to section 13.1.

**4.3 Use of Funds and Project.** The Recipient shall:

- (a) carry out the Project:
  - (i) in accordance with the terms and conditions of the Agreement; and
  - (ii) in compliance with all federal and provincial laws and regulations, all municipal by-laws, and any other orders, rules and by-laws related to any aspect of the Project;
- (b) use the Funds only for the purpose of carrying out the Project; and
- (c) spend the Funds only in accordance with the Budget, as approved by the Ministry.

**4.4 No Changes.** The Recipient shall not make any changes to the Project, the Timelines and/or the Budget without the prior written consent of the Ministry.

**4.5 Interest Bearing Account.** If the Ministry provides Funds to the Recipient prior to the Recipient's immediate need for the Funds, the Recipient shall place the Funds in an interest bearing account in the name of the Recipient at a Canadian financial institution.

**4.6 Interest.** If the Recipient earns any interest on the Funds:



- (a) the Ministry may deduct an amount equal to the interest from any further instalments of Funds; or
- (b) the Recipient shall pay an amount equal to the interest to the Ministry as directed by the Ministry.

4.7 **Maximum Funds.** The Recipient acknowledges that the Funds available to it pursuant to the Agreement shall not exceed the Maximum Funds.

4.8 **Rebates, Credits and Refunds.** The Recipient acknowledges that the amount of Funds available to it pursuant to the Agreement is based on the actual costs to the Recipient, less any costs (including taxes) for which the Recipient has received, will receive, or is eligible to receive, a rebate, credit or refund.

#### ARTICLE 5 – ACQUISITION OF GOODS AND SERVICES

5.1 **Acquisition.** If the Recipient acquires supplies, equipment or services with the Funds, it shall do so through a process that promotes the best value for money.

#### ARTICLE 6 -- CONFLICT OF INTEREST

6.1 **No Conflict of Interest.** The Recipient shall carry out the Project and use the Funds without an actual, potential or perceived conflict of interest.

6.2 **Conflict of Interest Includes.** For the purposes of this Article, a conflict of interest includes any circumstances where:

- (a) the Recipient; or
- (b) any person who has the capacity to influence the Recipient's decisions,

has outside commitments, relationships or financial interests that could, or could be seen to, interfere with the Recipient's objective, unbiased and impartial judgment relating to the Project and the use of the Funds.

6.3 **Disclosure to Ministry.** The Recipient shall:

- (a) disclose to the Ministry, without delay, any situation that a reasonable person would interpret as either an actual, potential or perceived conflict of interest; and
- (b) comply with any terms and conditions that the Ministry may prescribe as a result of the disclosure.

#### ARTICLE 7 -- REPORTING, ACCOUNTING AND REVIEW

7.1 **Preparation and Submission.** The Board shall:

- (a) submit to the Ministry at the address provided in section 18.1, Reports, as set out in Schedule "C", in accordance with the requirements and Timelines set out in Schedule "A";
- (b) submit to the Ministry at the address provided in section 18.1, any other reports as may be requested by the Ministry in accordance with the Timelines and content requirements specified by the Ministry;
- (c) ensure that all Reports and other reports are completed to the satisfaction of the Ministry; and
- (d) ensure that all Reports and other reports are signed on behalf of the Board by an authorized signing officer.

7.2 **Record Maintenance.** The Recipient and the Board shall keep and maintain:

- (a) all financial records (including invoices) relating to the Funds or otherwise to the Project in a manner consistent with generally accepted accounting principles; and
- (b) all non-financial documents and records relating to the Funds or otherwise to the Project.

7.3 **Inspection.** The Ministry, its authorized representatives, or an independent auditor identified by the Ministry may, at its own expense, upon twenty-four (24) hours' Notice to the Recipient or the Board and during normal business hours, enter upon the Recipient's or the Board's premises to review the progress of the Project and the Board's expenditure of the Funds and, for these purposes, the Ministry, its authorized representatives, or an independent auditor identified by the Ministry may:

- (a) inspect and copy the records and documents referred to in section 7.2; and
- (b) conduct an audit or investigation of the Board in respect of the expenditure of the Funds and/or the Project.

7.4 **Disclosure.** To assist in respect of the rights set out in section 7.3, the Recipient shall disclose any information requested by the Ministry, its authorized representatives, or an independent auditor identified by the Ministry, and shall do so in a form requested by the Ministry, its authorized representatives or an independent auditor identified by the Ministry, as the case may be.

7.5 **No Control of Records.** No provision of the Agreement shall be construed so as to give the Ministry any control whatsoever over the Recipient's records.

7.6 **Auditor General.** For greater certainty, the Ministry's rights under this Article are in addition to any rights provided to the Auditor General pursuant to section 9.1 of the *Auditor General Act* (Ontario).



## ARTICLE 8 – CREDIT AND PUBLICITY

- 8.1 **Acknowledge Support.** Unless otherwise directed by the Ministry, the Recipient and the Board shall, in a form approved by the Ministry, acknowledge the support of the Ministry in any publication of any kind, written or oral, relating to the Project, including for greater certainty, press releases, published reports, radio and television programs and public meetings, using the following standard:

***“This Project has been made possible by a grant from the Ministry of Community Safety and Correctional Services.”***

- 8.2 **Prior Written Approval.** The Recipient and the Board agree to obtain prior written approval from the Ministry before using any Province of Ontario or Ministry logo or symbol in any communications including press releases, published reports, television programs, public or private meetings, or in any other type of promotional material, relating to the Project or this Agreement.
- 8.3 **Publication.** The Recipient and the Board shall indicate, in any of their publications, of any kind, written or oral, relating to the Project, that the views expressed in the publication are the views of the Recipient and do not necessarily reflect those of the Ministry.

## ARTICLE 9 – FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- 9.1 **FIPPA.** The Recipient and the Board acknowledge that the Ministry is bound by the *Freedom of Information and Protection of Privacy Act* (Ontario) and that any information provided to the Ministry in connection with the Project or otherwise in connection with the Agreement may be subject to disclosure in accordance with that Act.

## ARTICLE 10 -- INDEMNITY

- 10.1 **Indemnification.** The Recipient and the Board hereby agree to indemnify and hold harmless the Indemnified Parties from and against any and all liability, loss, costs, damages and expenses (including legal, expert and consultant fees), causes of action, actions, claims, demands, lawsuits or other proceedings, by whomever made, sustained, incurred, brought or prosecuted, in any way arising out of or in connection with the Project or otherwise in connection with the Agreement, unless solely caused by the negligence or wilful misconduct of the Ministry.

## ARTICLE 11 -- INSURANCE

- 11.1 **Recipient's Insurance.** The Recipient represents and warrants that it has and shall maintain for the term of the Agreement, at its own cost and expense, with insurers having a secure A.M. Best rating of B+ or greater, or the equivalent, all the necessary and appropriate insurance that a prudent person carrying out a project similar to the Project would maintain, including commercial general liability insurance on an occurrence basis for third party bodily injury, personal injury and property damage, to an inclusive limit of not less than five million dollars (\$5,000,000) per occurrence. The policy shall include the following:

- (a) the Indemnified Parties as additional insureds with respect to liability arising in the course of performance of the Recipient's obligations under, or otherwise in connection with, the Agreement;
- (b) a cross-liability clause;
- (c) contractual liability coverage; and
- (d) a thirty (30) day written notice of cancellation, termination or material change.

11.2 ***Proof of Insurance.*** The Recipient shall provide the Ministry with certificates of insurance, or other proof as may be requested by the Ministry, that confirms the insurance coverage as provided for in section 11.1. Upon the request of the Ministry, the Recipient shall make available to the Ministry a copy of each insurance policy.

#### ARTICLE 12 -- TERMINATION ON NOTICE

12.1 ***Termination on Notice.*** The Ministry may terminate the Agreement at any time upon giving at least sixty (60) days Notice to the Recipient and the Board.

12.2 ***Consequences of Termination on Notice by the Ministry.*** If the Ministry terminates the Agreement pursuant to section 12.1, the Ministry may:

- (a) cancel all further instalments of Funds;
- (b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and/or
- (c) determine the reasonable costs for the Recipient to wind down the Project, and:
  - (i) permit the Recipient to offset the costs determined pursuant to section 12.2(c), against the amount owing pursuant to section 12.2(b); and/or
  - (ii) subject to section 4.7, provide Funds to the Recipient to cover the costs determined pursuant to section 12.2(c).

#### ARTICLE 13 – TERMINATION WHERE NO APPROPRIATION

13.1 ***Termination Where No Appropriation.*** If, as provided for in section 4.2(d), the Ministry does not receive the necessary appropriation from the Ontario Legislature for any payment the Ministry is to make pursuant to the Agreement, the Ministry may terminate the Agreement immediately by giving Notice to the Recipient.

13.2 ***Consequences of Termination Where No Appropriation.*** If the Ministry terminates the Agreement pursuant to section 13.1, the Ministry may:

- (a) cancel all further instalments of Funds;

- (b) demand the repayment of any Funds remaining in the possession or under the control of the Recipient; and/or
  - (c) determine the reasonable costs for the Recipient to wind down the Project and permit the Recipient to offset such costs against the amount owing pursuant to section 13.2(b).
- 13.3 **No Additional Funds.** For purposes of clarity, if the costs determined pursuant to section 13.2(c) exceed the Funds remaining in the possession or under the control of the Recipient, the Ministry shall not provide additional Funds to the Recipient.

#### **ARTICLE 14 – EVENT OF DEFAULT, CORRECTIVE ACTION AND TERMINATION FOR DEFAULT**

- 14.1 **Events of Default.** Each of the following events shall constitute an Event of Default:
- (a) in the opinion of the Ministry, the Recipient or the Board breaches any representation, warranty, covenant or other material term of the Agreement, including failing to do any of the following in accordance with the terms and conditions of the Agreement:
    - (i) carry out the Project;
    - (ii) use or spend Funds; and/or
    - (iii) provide, in accordance with section 7.1, Reports or such other reports as may have been requested pursuant to section 7.1(b);
  - (b) the Recipient's or the Board's operations, or its organizational structure, changes such that it no longer meets one or more of the applicable eligibility requirements of the program under which the Ministry provides the Funds;
  - (c) the Recipient makes an assignment, proposal, compromise, or arrangement for the benefit of creditors, or is petitioned into bankruptcy, or files for the appointment of a receiver;
  - (d) the Recipient or the Board ceases to operate; or
  - (e) an event of Force Majeure that continues for a period of sixty (60) days or more.
- 14.2 **Consequences of Events of Default and Corrective Action.** If an Event of Default occurs, the Ministry may, at any time, take one or more of the following actions:
- (a) initiate any action the Ministry considers necessary in order to facilitate

the successful continuation or completion of the Project;

- (b) provide the Recipient with an opportunity to remedy the Event of Default;
- (c) suspend the payment of Funds for such period as the Ministry determines appropriate;
- (d) reduce the amount of the Funds;
- (e) cancel all further installments of Funds;
- (f) demand the repayment of any Funds remaining in the possession or under the control of the Recipient;
- (g) demand the repayment of an amount equal to any Funds the Recipient used, but did not use in accordance with the Agreement;
- (h) demand the repayment of an amount equal to any Funds the Ministry provided to the Recipient; and/or
- (i) terminate the Agreement at any time, including immediately, upon giving Notice to the Recipient.

14.3 **Opportunity to Remedy.** If, in accordance with section 14.2(b), the Ministry provides the Recipient with an opportunity to remedy the Event of Default, the Ministry shall provide Notice to the Recipient of:

- (a) the particulars of the Event of Default; and
- (b) the Notice Period.

14.4 **Recipient not Remediating.** If the Ministry has provided the Recipient with an opportunity to remedy the Event of Default pursuant to section 14.2(b), and:

- (a) the Recipient does not remedy the Event of Default within the Notice Period;
- (b) it becomes apparent to the Ministry that the Recipient cannot completely remedy the Event of Default within the Notice Period; or
- (c) the Recipient is not proceeding to remedy the Event of Default in a way that is satisfactory to the Ministry,

the Ministry may extend the Notice Period, or initiate any one or more of the actions provided for in sections 14.2(a), (c), (d), (e), (f), (g), (h) and (i).

14.5 **When Termination Effective.** Termination under this Article shall take effect as set out in the Notice.

## ARTICLE 15 -- FUNDS AT THE END OF A FUNDING YEAR

15.1 **Funds at the End of a Funding Year.** Without limiting any rights of the Ministry under Article 14, if the Recipient has not spent all of the Funds allocated for the Funding Year as provided for in the Budget, the Ministry may:

- (a) demand the return of the unspent Funds; or
- (b) adjust the amount of any further instalments of Funds accordingly.

## ARTICLE 16 -- FUNDS UPON EXPIRY

16.1 **Funds upon Expiry.** Without limiting any rights of the Ministry under Article 14, the Recipient shall, upon expiry of the Agreement, return to the Ministry any Funds remaining in its possession or under its control.

## ARTICLE 17 -- REPAYMENT

17.1 **Debt Due.** If:

- (a) the Ministry demands the payment of any Funds or any other money from the Recipient; or
- (b) the Recipient owes any Funds or any other money to the Ministry, whether or not their return or repayment has been demanded by the Ministry,

such Funds or other money shall be deemed to be a debt due and owing to the Ministry by the Recipient, and the Recipient shall pay or return the amount to the Ministry immediately, unless the Ministry directs otherwise.

17.2 **Interest Rate.** The Ministry may charge the Recipient interest on any money owing by the Recipient at the then current interest rate charged by the Province of Ontario on accounts receivable.

17.3 **Payment of Money to Ministry.** The Recipient shall pay any money owing to the Ministry by cheque payable to the "Ontario Minister of Finance" and mailed to the Ministry at the address provided in section 18.1.

## ARTICLE 18 -- NOTICE

18.1 **Notice in Writing.** Notices and communications shall be in writing and shall be delivered by email, postage-prepaid mail, personal delivery or fax, and shall be addressed to the Ministry Contact, the Recipient or the Board, respectively, as set out below, or as any Party later designates to the other by Notice:

**To the Ministry:**

Ministry of Community Safety  
and Correctional Services  
25 Grosvenor Street, 12<sup>th</sup> Floor  
Toronto, ON  
M7A 2H3

**Attention:**

Oscar Mosquera, Manager  
Program Development Section  
External Relations Branch  
Public Safety Division

Tel : 416-326-5624

Fax: 416-314-3092

E-mail: Oscar.Mosquera@ontario.ca

**To the Recipient:**

Mayor Wayne Hurst  
Town of Amherstburg  
271 Sandwich Street South  
Amherstburg, ON, N9V 2A5

Tel: 519-736-0012

Fax: 519-736-5403

**To the Board:**

Chair John Sutton  
Amherstburg Police Services Board  
532 Sandwich Street South  
Amherstburg, ON, N9V 2Z3

Tel: 519-736-8559

Fax: 519-736-8310

E-mail: jsutton@amherstburg.ca

18.2 **Notice Given.** Notice shall be deemed to have been received:

- (a) in the case of postage-prepaid mail, seven (7) days after a Party mails the Notice; or
- (b) in the case of email, personal delivery or fax, at the time the other Party receives the Notice.

18.3 **Postal Disruption.** Despite section 18.2(a), in the event of a postal disruption:

- (a) Notice by postage-prepaid mail shall not be deemed to be received; and
- (b) the Party giving Notice shall provide Notice by email, personal delivery or by fax.

**ARTICLE 19 -- CONSENT BY MINISTRY**

19.1 **Consent.** The Ministry may impose any terms and/or conditions on any consent the Ministry may grant pursuant to the Agreement.

**ARTICLE 20 -- SEVERABILITY OF PROVISIONS**

20.1 **Invalidity or Unenforceability of Any Provision.** The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement. Any invalid or unenforceable provision shall be deemed to be severed.



## ARTICLE 21 – WAIVER

- 21.1 **Waivers in Writing.** If a Party fails to comply with any term of the Agreement, that Party may only rely on a waiver of the other Party if the other Party has provided a written waiver in accordance with the Notice provisions in Article 18. Any waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failures to comply.

## ARTICLE 22 – INDEPENDENT PARTIES

- 22.1 **Parties Independent.** The Recipient acknowledges that it is not an agent, joint venturer, partner or employee of the Ministry, and the Recipient shall not take any actions that could establish or imply such a relationship.

## ARTICLE 23 – ASSIGNMENT OF AGREEMENT OR FUNDS

- 23.1 **No Assignment.** The Recipient shall not assign any part of the Agreement or the Funds without the prior written consent of the Ministry.
- 23.2 **Agreement to Extend.** All rights and obligations contained in the Agreement shall extend to and be binding on the Parties' respective heirs, executors, administrators, successors and permitted assigns.

## ARTICLE 24 – GOVERNING LAW

- 24.1 **Governing Law.** The Agreement and the rights, obligations and relations of the Parties shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable federal laws of Canada. Any actions or proceedings arising in connection with the Agreement shall be conducted in Ontario.
- 24.2 **BPSAA.** For the purposes of clarity, if the Recipient or the Board is subject to the BPSAA and there is a conflict between any of the requirements of the Agreement and the requirements of the BPSAA, the BPSAA shall prevail.

## ARTICLE 25 – FURTHER ASSURANCES

- 25.1 **Agreement into Effect.** The Recipient and the Board shall do or cause to be done all acts or things necessary to implement and carry into effect the terms and conditions of the Agreement to their full extent.

## ARTICLE 26 – CIRCUMSTANCES BEYOND THE CONTROL OF EITHER PARTY

- 26.1 **Force Majeure.** Subject to section 26.3, Force Majeure means an event that:
- (a) is beyond the reasonable control of a Party; and
  - (b) makes a Party's performance of its obligations under the Agreement impossible, or so impracticable as reasonably to be considered impossible in the circumstances.

26.2 **Force Majeure Includes.** Force Majeure includes:

- (a) infectious diseases, war, riots and civil disorder;
- (b) storm, flood, earthquake and other severely adverse weather conditions;
- (c) lawful act by a public authority; and
- (d) strikes, lockouts and other labour actions,

if such events meet the test set out in section 26.1.

26.3 **Force Majeure Shall Not Include.** Force Majeure shall not include:

- (a) any event that is caused by the negligence or intentional action of a Party or such Party's agents or employees; or
- (b) any event that a diligent Party could reasonably have been expected to:
  - (i) take into account at the time of the execution of the Agreement; and
  - (ii) avoid or overcome in the carrying out of its obligations under the Agreement.

26.4 **Failure to Fulfil Obligations.** Subject to section 14.1(e), the failure of either Party to fulfil any of its obligations under the Agreement shall not be considered to be a breach of, or Event of Default under, the Agreement to the extent that such failure to fulfill the obligation arose from an event of Force Majeure, if the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of the Agreement.

## ARTICLE 27 – SURVIVAL

27.1 **Survival.** The provisions in Article 1, any other applicable definitions, sections 4.6(b), 7.1 (to the extent that the Recipient/Board has not provided the Reports or other reports as may be requested by the Ministry to the satisfaction of the Ministry), 7.2, 7.3, 7.4, 7.5, 7.6, Articles 8 and 10, sections 12.2, 13.2, 13.3, 14.1, 14.2(d), (e), (f), (g) and (h), Articles 16, 17, 18, 20, 24, 27, 28, 29, 30, 31, 32, 33 and 34, and all applicable cross-referenced provisions and schedules shall continue in full force and effect for a period of seven (7) years from the date of expiry or termination of the Agreement.

## ARTICLE 28 -- SCHEDULES

28.1 **Schedules.** The Agreement includes the following schedules:

- (a) Schedule "A" – FUNDING AND PROJECT TIMELINE;
- (b) Schedule "B" – ORIGINAL GRANT APPLICATION;
- (c) Schedule "C" – INTERIM/FINAL REPORT;
- (d) Schedule "D" – REPORTING INSTRUCTIONS.

## ARTICLE 29 -- FURTHER FUNDS

29.1 **Further Funds.** It is agreed and understood that the provision of the Funds in no way commits or obligates the Ministry to provide other or additional payments now or in the future.

## ARTICLE 30 -- INSPECTION

30.1 **Inspection.** The Ministry reserves the right to inspect any aspect of the Project at any time.

## ARTICLE 31 -- MANAGEMENT BOARD/TREASURY BOARD APPROVAL

31.1 **Management Board Approval.** This Agreement may be subject to approval by the Management Board/Treasury Board Secretariat of the Province of Ontario.

## ARTICLE 32 -- JOINT AND SEVERAL LIABILITY

32.1 **Joint and Several Liability.** Where the Recipient is comprised of more than one entity, all such entities shall be jointly and severally liable to the Ministry for the fulfillment of the obligations of the Recipient under the Agreement.

## ARTICLE 33 -- RIGHTS AND REMEDIES CUMULATIVE

33.1 **Rights and Remedies Cumulative.** The rights and remedies of the Ministry under the Agreement are cumulative and are in addition to, and not in substitution for, any of its rights and remedies provided by law or in equity.

## ARTICLE 34 -- ENTIRE AGREEMENT

34.1 **Entire Agreement.** The Agreement constitutes the entire agreement between the Parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements.

34.2 **Modification of Agreement.** The Agreement may only be amended by a written agreement duly executed by the Parties.

## **ARTICLE 35 – FAILURE TO COMPLY WITH OTHER AGREEMENTS**

### **35.1 *Other Agreements.* If the Recipient:**

- (a) has failed to comply with any term, condition or obligation under any other agreement with Her Majesty the Queen in right of Ontario or a Crown agency (a “Failure”);
- (b) has been provided with notice of such Failure in accordance with the requirements of such other agreement;
- (c) has, if applicable, failed to rectify such Failure in accordance with the requirements of such other agreement; and
- (d) such Failure is continuing,

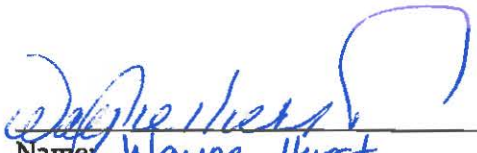
the Ministry may suspend the payment of Funds for such period as the Ministry determines appropriate.

THE PARTIES HAVE EXECUTED THE AGREEMENT ON THE DATES SET OUT BELOW.

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO  
as represented by the Minister of Community Safety and Correctional Services

  
Name: Oscar Nesequera Date: July 23, 2014  
Title: Manager, Program Development

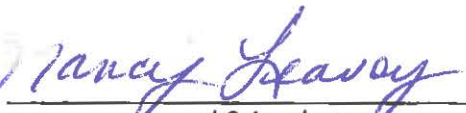
**Town of Amherstburg**

  
Name: Wayne Hurst Date: May 26/14  
Title: MAYOR  
*I/We have authority to bind the Board.*

  
Witness Name: Paula Parker Date: May 26/14  
Title: Deputy Clerk

**Amherstburg Police Services Board**

  
Name: JOHN SUTTON Date: MAY 13, 2014  
Title: CHAIR  
*I/We have authority to bind the Board.*

  
Witness Name: NANCY LEAVOY Date: May 13, 2014  
Title: SECRETARY TO BOARD

**SCHEDULE "A"**  
**FUNDING AND PROJECT TIMELINE**

Attached to and forming part of the Agreement between the **Ministry of Community Safety and Correctional Services** and **City of Town of Amherstburg**, and **Amherstburg Police Services Board** dated the 1<sup>st</sup> day of April, 2014.

**Allocation**

1. The Ministry agrees to cost share 1 police officer(s) of which 1 have been allocated to community policing and 1 to the targeted areas/court efficiencies as follows:

A Category	B Total Allocation (C + D)	C Hires Between October 2003 & March 31, 2006	D Hires from April 1, 2006 to October 2007
Community Policing	1	0	1
<b>Targeted Areas:</b>			
Youth Crime	0	0	0
Guns and Gangs	0	0	0
Organized Crime (marijuana grow operations)	0	0	0
Dangerous Offenders	0	0	0
Domestic Violence	0	0	0
Protecting Children from Internet Luring and Child Pornography	0	0	0
Court Efficiencies	0	0	0
Sub Total (Targeted Areas)	0	0	0
<b>Total</b>	<b>1</b>	<b>0</b>	<b>1</b>

2. The Ministry will provide the Funds in accordance with the Project, under the terms of which the Board will maintain visible front-line and/or targeted areas/court efficiencies policing activities ("1,000 Officers Activities") as outlined in the original grant application, submitted as Schedule "B".
3. The Funds shall be used by the Board and the Recipient solely for the purposes of maintaining the increased complement of front-line, uniformed police officers and for no other purposes. The Funds shall not be used for purposes related to maintaining the existing complement of front-line police officers, as defined by the October 23, 2003 Benchmark, due to the assignment of front-line police officers to non-1,000 Officers Activities.

**October 23, 2003 Benchmark**

4. The Project will continue to share the cost of increases to the actual total number of sworn officers above the October 23, 2003 figures submitted to Statistics Canada. The purpose of this benchmark is to ensure that the Ministry is not paying the salaries of new officers hired to replace officers who have resigned, retired or been terminated. In addition, the Project will not cover civilianization or the hiring of existing officers who increase the complement due to amalgamations. Officers funded through the Program must increase the complement above the combined complement of the amalgamated police service.



### **Use of the Funds**

5. The Funds shall be used only to pay half the costs of salaries, overtime and payroll benefits to a maximum of \$70,000 for the 60 officers allocated to Northern and First Nations police services, and \$35,000.00 per officer for the remaining 940 officers hired under the 1,000 Officers Program who are engaged in full time 1,000 Officers Activities. The Ministry's share of overtime will not exceed \$5,000.00 per officer.

### **Reporting Requirements**

6. The Board shall, by September 30<sup>th</sup> of each Funding Year that the Agreement is in effect, submit the 1,000 Officers Program Interim Report, in the form provided in Schedule "C". The Interim Report shall include the following information:
  - (a) an update/confirm if all the information in the contact page is up-to-date.
  - (b) the number of sworn officer(s) to date.
  - (c) name of existing front-line police officer(s), overtime rate, total overtime hours (actual), overtime requested.
7. The Board shall, by March 10<sup>th</sup> of each Funding Year that the Agreement is in effect, submit the 1,000 Officers Program Final Report, in the form provided in Schedule "C". The Final Report shall include the following information:
  - (a) update/confirm if all the information in the contact page is up-to-date.
  - (b) the number of sworn officer(s) to date.
  - (c) name of existing front-line police officer(s), overtime rate, total overtime hours (actual), overtime requested.

### **Payment Schedule**

8. The Ministry will reimburse the Recipient semi-annually subject to the Ministry receiving and approving the interim and final 1,000 Officers Program reports. Overtime will be paid annually after the 1,000 Officers Program Final Report, in the form provided in Schedule "C", is received and approved by the Ministry.
9. The Recipient and/or the Board may be required to provide such further or additional information as the Ministry, acting reasonably, deems appropriate in approving the 1,000 Officers Program interim and final reports.
10. Approval of the interim and final reports is at the sole discretion of the Ministry.

### **Return of Unused Funds**

11. The Recipient shall return to the Ministry by cheque payable to "Ontario Minister of Finance" any balance of the Funds that is not spent in accordance with this Agreement

## Schedule "D"

### Reporting Instructions

Please follow these instructions when completing the interim/final reports:

- i) ensure that all information on the contact sheet is correct/updated.
- ii) column A (#): starting with the number 1, insert the number of officers your police service received funding for under the program. Do not put a number exceeding your allocation amount.
- iii) column B (officer's badge #): indicate the officer's badge number.
- iv) column C (replaced): only use this column if an officer is being replaced during the time you are claiming. Put a 1 in this column for the officer who is replacing an existing officer. Put the replacing officer's name and information at the bottom of the list of officers with the number of the officer who he/she is replacing in column A.

Police Service Name:					Total officers Allocated				
Total Interim Eligible					Total Amount Allocated				
Total Final Eligible					Total Amount Remaining (after interim payment)				
#	Officer's Badge #	Replaced (if YES = 1)	Alpha	Surname	First Name	Community (C) or Target Area (T) Initiative	Interim Salary (From April 1 - September 30)	Interim Salary Requested	F C
1	12234			Smith	John	C	\$20,000.00	\$10,000.00	
2	12456			Tenuta	Amanda	T		\$0.00	
3	54321			Perry	Robert	T	\$20,000.00	\$10,000.00	
4	54367			McLean	Sarah	C	\$20,000.00	\$10,000.00	
2	86433	1	A	James	Chris	C		\$0.00	
2	67889	1	B	Rothensack	Eva	C	\$20,000.00	\$10,000.00	
								\$0.00	
								\$0.00	
								\$0.00	
								\$0.00	

Replaced officer

- i) column D (alpha): only use this column when an officer is being replaced more than once for the reporting period. Input an A for the first replacing officer, a B for the second replacing officer, etc.
- ii) column E (surname): insert the officer's surname.
- iii) column F (first name): insert the officer's first name.
- iv) column G (community or target area initiative): indicate if the officer was hired under the community initiative (C) or under the target area initiative (T).
- v) column H (interim salary): indicate the salary and benefits of each officer for the period of April 1 to September 30. NOTE: only complete for interim report. Column I (interim salary requested) will automatically populate.
- vi) column J (final salary): indicate the salary and benefits of each officer for the period of October 1 to March 31. NOTE: only complete for final report. Column K (final salary requested) will automatically populate.
- vii) column L (total overtime hours worked): indicate the total number of overtime hours the officer worked that year (April 1 to March 31). NOTE: only complete for final report.
- viii) column M (overtime paid/hour): indicate the hourly rate paid for each officer while working overtime. NOTE: only complete for final report. Columns N (total overtime paid), O (overtime eligible), and P (total final salary requested) will automatically populate.

