

THE CORPORATION OF THE CITY OF PETERBOROUGH

BY-LAW NUMBER 03-049

BEING A BY-LAW TO AUTHORIZE THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CORPORATION OF THE CITY OF PETERBOROUGH AND HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF PUBLIC SAFETY AND SECURITY (PUBLIC SAFETY DIVISION)

(Memorandum of Understanding to establish and operate a Level 2 Haz Mat/CBRN (Chemical, Biological, Radiological and Nuclear) Response Team)

THE CORPORATION OF THE CITY OF PETERBOROUGH BY THE COUNCIL THEREOF HEREBY ENACTS AS FOLLOWS:

1. That the Mayor and Clerk be and they are hereby authorized to execute an agreement between the Corporation of the City of Peterborough and Her Majesty the Queen in Right of Ontario as Represented by the Minister of Public Safety and Security (Public Safety Division) in the form attached hereby as Schedule "A", and to affix the Seal of the Corporation thereto.

By-law read a first and second time this 31st day of March, 2003

By-law read a third time and finally passed this 31st day of March, 2003

(Sgd.) Sylvia Sutherland, Mayor

(Sgd.) Nancy Wright-Laking, City Clerk

MEMORANDUM OF UNDERSTANDING TO ESTABLISH
A LEVEL 2 HAZ MAT/CBRN RESPONSE TEAM

SCHEDULE "A"

A MEMORANDUM OF UNDERSTANDING MADE AS OF *APRIL 21, 2003* TO
ESTABLISH AND OPERATE A LEVEL 2 CBRNR TEAM

between

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY
THE MINISTER OF PUBLIC SAFETY AND SECURITY (PUBLIC SAFETY
DIVISION) (the "Ministry")

- and

THE CORPORATION OF THE CITY OF PETERBOROUGH

WHEREAS:

- Both the Ministry and the City desire there to be a trained, multi-disciplinary Level 2 CBRNR team located in the City, and available to respond to large-scale or complex natural, or human-caused chemical, biological, radiological and nuclear emergencies in *The City of Peterborough* and possibly elsewhere in the Province;
- The Level 2 CBRNR Team will operate under the auspices of the *Peterborough Fire Department*.
- The Office of the Fire Marshal and Emergency Management Ontario are part of the Ministry, and will provide training, equipment, direction, and coordinate the use of the Level 2 CBRNR Team as set out herein;

NOW THEREFORE the Parties agree as follows:

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 **Definitions** – In this Memorandum of Understanding:

"CBRNR Operating Manual 2003" is a manual of operating procedures concerning the use of the Level 2 CBRNR Team, as it may be amended from time to time;

"Emergency" has the same meaning as in the *Emergency Management Act*;

"EMO" means the Emergency Management Office of the Province of Ontario;

"Equipment" means Equipment supplied by the OFM to the City for use by the Level 2 CBRNR Team pursuant to this Memorandum of Understanding;

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“Level 2 CBRNR Team” means a team of eight (8) emergency responders employed by, and based in the City, with a knowledge and the capacity to respond to large-scale or complex natural or human-caused chemical, biological, radiological and nuclear emergencies, in accordance with the *National Fire Protection Association Standard 472* (Professional Competence of Responders to Hazardous Materials Incidents) as it may be amended from time to time;

“Municipality” means a geographic area whose inhabitants are incorporated;

“OFM” means Office of the Fire Marshal;

“Party” means the City, the EMO or the OFM, and Parties shall mean all of them;

“Unorganized Territory” means a geographic area without municipal organization;

1.2 Headings – The headings in this Memorandum of Understanding are for convenience only and in no manner modify, interpret or construe this Memorandum of Understanding.

1.3 Ministry – A reference to the Ministry in this Memorandum of Understanding shall include both the EMO and the OFM, unless otherwise specified.

1.4 Supplementary MOUs- Subject to section 1.5 herein, this Memorandum of Understanding shall not prevent the City from entering into agreements with other Municipalities or Unorganized Territories authorizing the use of the Level 2 CBRNR Team in those Municipalities or Unorganized Territories, as the case may be. The Ministry shall not be responsible for paying any costs, where the City has contracted or made arrangements allowing for the use of the Level 2 CBRNR Team in another Municipality or in an Unorganized Territory.

1.5 Conflict/ Other Uses of the Level 2 CBRNR Team – The EMO shall have priority in being able to direct the use of the Level 2 CBRNR Team, including being able to redirect its use, where the Level 2 CBRNR Team is already being used in or outside the City. In the event that the City enters into an agreement with a Municipality or Unauthorized Territory authorizing the use of the Level 2 CBRNR Team in that Municipality or Unauthorized Territory, the City shall be required to notify the Municipality or Unauthorized Territory of the authority of the EMO under this section.

1.6 Severability - If any term of this Memorandum of Understanding shall be held to be illegal, invalid, unenforceable, null, void or inoperative by a court of competent jurisdiction, the remaining terms shall remain in full force and effect.

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1.7 Entire Agreement - This Memorandum of Understanding, including Schedule "A", constitutes the entire agreement of the Parties, with respect to the establishment and operation of the Level 2 CBRNR Team, the supply of Equipment and training and related services, as defined hereunder and supersedes any previous agreement whether written or verbal.

2.0 NOTICES

2.1 Notice - Any notice required pursuant to this Memorandum of Understanding shall be in writing and delivered personally, sent by facsimile transmission or by registered mail to the contact persons at the following addresses:

To the City:

*The Fire Chief City of Peterborough
210 Sherbrooke Street, Peterborough On. K9J2N3
705 745 3283 fax 705 745 2460]*

To the OFM:

Mr. Barry McKinnon, Chief of Emergency Management and Response
2284 Nursery Road Midhurst On L0L 1X0
705 725 7271 fax 705 725 7259

To the EMO:

Mr. Doug Harrison, Deputy Chief, Emergency Management Ontario
Ferguson Block 77 Welsley St. W. PO Box 222 Toronto On M7A 1N3
416 314 8622 fax 416 314 3758

2.2 Notification of Change – Each Party shall provide the other Parties with written notification of any changes to the address or contact information for a Party contained in section 2.1 herein.

ARTICLE 3: ACTIVATING USE OF LEVEL 2 CBRNR TEAM

3.1 Requests for Use of Level 2 CBRNR Team – All requests for the use of the Level 2 CBRNR Team outside of the City pursuant to this Memorandum of Understanding shall be made to the EMO. Only authorized officials of a Municipality, an Unorganized Territory or the Ministry may make such requests.

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3.2 Decision to use Level 2 CBRNR Team – The EMO shall consider the following in directing the use of the Level 2 CBRNR Team outside of the City:

- a) Whether all available resources in the Municipality or Unorganized Territory are being used;
- b) Whether officials in the Municipality or Unorganized Territory have attempted to request assistance pursuant to a mutual aid agreement or arrangement; and
- c) The impact the use of the Level 2 CBRNR Team will have on the safety of the residents of the City.

3.3 Authority of Ministry– The Ministry may, in ordering the use of the Level 2 CBRNR Team:

- a) Order the use of part or all of the Level 2 CBRNR Team;
 - b) Direct the use of the Level 2 CBRNR Team anywhere in *The City of Peterborough* or elsewhere in the Province, and for any length of time;
 - c) Direct whom the Level 2 CBRNR Team is to report to at the scene of the Emergency; or
 - d) Direct the Level 2 CBRNR Team to respond to any Emergency, for which it has the necessary expertise;
- and any orders may be made orally or in writing, but where it is practical to do so, the order shall be in writing and sent by fax transmission to the City.

3.4 Consultation with City – The Ministry shall make best efforts, where practical, to consult with the City prior to ordering the use of the Level 2 CBRNR Team.

3.5 Notification by City – The City shall notify the Ministry of any facts that may assist the EMO in making a decision about ordering the use of the Level 2 CBRNR Team.

3.6 Employment Relationship – Members of the Level 2 CBRNR Team shall, for the purpose of this Memorandum of Understanding, at all times and for all purposes be employees of the City. The City shall be solely responsible for ensuring that members of the Level 2 CBRNR Team comply with this Memorandum of Understanding, the CBRNR Operating Manual 2003, and any other directives or policies issued by the Ministry.

3.7 Laws – The City warrants that the Level 2 CBRNR Team shall operate in compliance with all federal, provincial or municipal laws or regulations.

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ARTICLE 4: EQUIPMENT

4.1 Supply of Equipment – The OFM shall supply the City with Equipment required by the Level 2 CBRNR Team, as set out in Schedule “A”.

4.2 Maintenance of Equipment – The City shall be responsible for maintaining the Equipment in good order, in compliance with any directions from the manufacturer of the Equipment or the OFM.

4.3 Storage of Equipment – The City shall be responsible for storing the Equipment in a safe and secure environment, so as to protect it from theft and damage.

4.4 Defects in Equipment – The City shall notify the OFM immediately on becoming aware of any defects in the Equipment, which may render it unfit for use. The OFM shall arrange to replace or repair defective Equipment as soon as possible on receiving notification from the City, provided that the damage or defects to the Equipment were, in the opinion of the OFM, caused by the use of the Equipment under the direction of the Ministry, as provided for in this Memorandum of Understanding. The City shall be solely responsible for repairing or replacing damaged or defective Equipment at the City’s expense, where in the opinion of the OFM, the damages or defects were caused by all other uses of the Equipment as authorized by sections 1.4 and 4.5 herein.

4.5 Use of the Equipment – The City may use the Equipment for any purpose consistent with responding to an Emergency, provided that it is always available for use when required by a Level 2 CBRNR Team.

4.6 Title to Equipment – The Ministry shall retain ownership of the Equipment at all times. The City shall not use the Equipment, except as permitted herein, unless the City has obtained the written permission of the OFM. The City shall return the Equipment to the OFM at the termination or expiry of this Memorandum of Understanding, or at the request of the OFM.

ARTICLE 5: TRAINING

5.1 Training – The City shall be responsible for providing members of the Level 2 CBRNR Team with the training required for a Level 2 CBRNR Team, including in the use of all Equipment.

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5.2 OFM – The OFM shall provide training to members of the Level 2 CBRNR Team when the OFM deems it necessary. The City shall be required to ensure that all members of the Level 2 CBRNR Team participate in all training offered by the OFM.

ARTICLE 6: PAYMENT

6.1 Payment of Costs – The EMO shall pay the City for all costs associated with the use of the Level 2 CBRNR Team, where the Level 2 CBRNR Team has been ordered to be used by the EMO, as set out in Schedule “A”.

6.2 No Liability – The EMO shall not be liable for any costs not authorized by Schedule “A”. The EMO shall not be liable for any costs incurred by the City after the termination or expiry of this Memorandum of Understanding.

6.3 Invoices – The City shall issue an invoice to the EMO in the form set out in Schedule “A” for authorized costs incurred by the City for the use of the Level 2 CBRNR Team pursuant to this Memorandum of Understanding. Such invoice shall be issued within thirty (30) days from the date on which the Level 2 CBRNR Team ceases to be used. The City shall supply the EMO with any documentation required by the EMO in support of the invoice.

ARTICLE 7: TERM, TERMINATION AND AMENDMENTS

7.1 Term – This Memorandum of Understanding shall enter into force on the date first above written and shall, subject to section 6.2 herein, remain in effect for a period of five (5) years. Unless a Party gives written notice of termination at least thirty (30) days prior to the end of the five (5) year term, this Memorandum of Understanding shall be automatically renewed for an additional five (5) year period.

7.2 Termination clause – This Memorandum of Understanding may be terminated at any time on one Party giving the other Parties six (6) months written notice.

7.3 Amendments – Any changes to this Memorandum of Understanding and the CBRNR Operating Manual shall be in writing, and shall be agreed to by all Parties before taking effect.

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ARTICLE 8: DISPUTE RESOLUTION

8.1 Dispute Resolution - Subject to Article 7 and section 8.2 herein, if any dispute arises between the Parties as to their respective rights and obligations under this Memorandum of Understanding, the representatives of the Parties named in section 2.1 herein shall attempt to settle the dispute within fourteen (14) business days of the dispute arising. If the representatives of the Parties are unable to resolve the dispute within fourteen (14) business days, the dispute shall be referred to the Fire Chief of the City, the Fire Marshal, and the Chief of Emergency Management Ontario or one or more of their delegates for resolution.

8.2 Dispute During Emergency – A dispute that arises while a Level 2 CBRNR Team has been ordered to be used by the EMO, or where an Emergency has arisen in the Province of Ontario, shall be resolved as prescribed in section 8.1 herein after the Level 2 CBRNR Team is no longer being used as directed by the EMO, or once the Emergency has ended, as the case may be.

ARTICLE 9: MEETINGS AND REPORTS

9.1 Annual Meeting – The Ministry and the City shall meet at least once a year, or more frequently as they require, at a mutually agreed upon location to:

- a) Review any use of the Level 2 CBRNR Team,
- b) Ensure that operating procedures, policies and strategies are current and consistent;
- c) Review all reports provided by the City under section 9.2 herein;
- d) Discuss any amendments required to the CBRNR Operating Manual 2003; and
- e) Anything else agreed upon by the Ministry and the City.

9.2 Reports - The City shall be required to provide the Ministry with a written report at least once a year, or more frequently as the Ministry directs containing:

- a) The condition of the Equipment that the OFM has provided to the City;
- b) Training that the City has provided to members of the Level 2 CBRNR Team;
- c) An account of all occasions on which the Level 2 CBRNR Team and the Equipment has been used;
- d) An account of all occasions when technical advice has been provided to other municipalities by members of the Level 2 team and
- e) Anything else reasonably requested by the Ministry.

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ARTICLE 10: GENERAL

10.1 Records - The City shall keep and maintain all records, reports, invoices and other documents relating to the use of the Level 2 CBRNR Team, the Equipment, training and costs incurred under this Memorandum of Understanding, in a manner consistent with generally accepted accounting principles and clerical practices, and shall maintain such records and keep them available for review by the Ministry and its agents for a period of seven (7) years from the date this Memorandum of Understanding expires or is terminated. The Ministry shall be able to inspect and copy such records, invoices or other documents, as the case may be, on providing five (5) business days notice to the City.

10.2 Insurance - The City shall, during the term of this Memorandum of Understanding, maintain sufficient insurance to cover its obligations and all uses of the Level 2 CBRNR Team authorized under this Memorandum of Understanding, and shall provide evidence of such insurance to the Ministry at the Ministry's request.

10.3 Confidential Information – All Parties agree that except where required by law, or for the purpose of performing duties or obligations under this Memorandum of Understanding, no Party shall directly or indirectly disclose, destroy, exploit or use, either during or after the term of this Memorandum of Understanding, any confidential information belonging to the other Parties, unless the other Parties have provided their written consent. All Parties further agree that when this Memorandum of Understanding terminates or expires, they shall return all confidential information belonging to the other Parties.

10.4 Media – The City agrees that the City shall not at any time directly or indirectly communicate with the media in relation to this Memorandum of Understanding unless they first provide written notice to the Ministry. The City shall not publicize or issue any publications related to this Memorandum of Understanding unless they first notify the Ministry.

10.5 No Waiver - The failure of the Ministry or the City to enforce at any time any of the provisions of this Memorandum of Understanding or any of its rights in respect thereto or to insist upon strict adherence to any term of this Memorandum of Understanding shall not be considered to be a waiver of such provision, right or term or in any way affect the validity of this Memorandum of Understanding.

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IN WITNESS WHEREOF the Ministry, and the City hereto have executed the Memorandum of Understanding effective as of the date first above written.

Approved for

Her Majesty The Queen In Right Of
The Province Of Ontario As
Represented By Public Safety
Division Of The Ministry of Public
Safety and Security

Corporation of the City of
Peterborough

Dr. James G. Young, Commissioner
Public Security

Dated: _____

I have the authority to bind the Province.

S. Sutherland
N. Wright-Laking

S. Sutherland, Mayor

N. Wright-Laking: Clerk

Dated: April 1/03

We have the authority to bind the
Corporation

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**SCHEDULE "A" TO A MEMORANDUM OF
UNDERSTANDING BETWEEN HER MAJESTY THE
QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY
THE MINISTER OF PUBLIC SAFETY AND SECURITY
AND THE CORPORATION OF THE CITY OF
PETERBOROUGH**

**EQUIPMENT AND TRAINING TO BE PROVIDED
BY THE OFM**

Upon both parties signing Memorandum of Understanding (MOU), the will provide the City's Fire Department with the following equipment subject to the provisions outlined in the MOU.

- 4 Level "A" suits
- 4 Level "B" suits
- 1 Chemical Agent Monitor
- 1 Radiological Monitor
- 1 Air supported shelter
- 1 Decontamination Line

The OFM will evaluate the current level of training within the fire department and a training program based on "train the trainer" will be developed in conjunction with the fire department personnel. The OFM will assign a Program Specialist to this task and the assigned person will regularly monitor the effectiveness of the training and the departments HazMat/CBRN response capability.

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COST RECOVERY RATES

A Level 2 team provided by the City consists of 8 personnel trained and equipped to the NFPA 472 Operations Level responding on an appropriate fire department vehicle. The Ministry will reimburse the City for the salaries of 8 personnel in accordance with the rates they are subject to in the current collective agreement. Incidents requiring cost recovery for more than 8 personnel must be approved in advance by the OFM. The Ministry, upon approval of the City's invoice, will immediately submit it for payment.

All other costs and expenses must have prior written approval of the Ministry.

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Cost Recovery Process

SAMPLE COVER LETTER

(DATE)

Chief of Emergency Management and Response
Office of the Fire Marshal
2284 Nursery Rd.
Midhurst, Ontario
L0L 1X0

Dear Chief:

Subject: Invoice for response to emergency at request of province

The following is a statement of charges for the CBRN related incident on (date) located at (location) in (municipality).

Part a - response of staff and apparatus:

Response of (indicate number) personnel and apparatus for (indicate number) hours as per the agreed to costs in the memorandum of understanding with the Province of Ontario.	\$000.00
Cost incurred by the department to recall additional(indicate number) personnel for (indicate number) hours as per the agreed to costs in the memorandum of understanding with the Province of Ontario.	\$000.00
Total costs for part "a"	\$000.00

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Part b – costs incurred at the scene of the emergency as authorized by the OFM:

Vehicles/apparatus costs	\$000.00
Equipment costs	\$000.00
Materials costs	\$000.00
Communications costs	\$000.00
Other costs	\$000.00
Total costs for part "b"	\$000.00

Please make payment to:

(Name of department to whom payment will be made)

(Street or mailing address)

(City, province and postal code)

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LOCAL CALL-BACK PERSONNEL COSTS
(for inclusion in Part "a" of invoice to province)

Name / title	Hours
Reason for call-back of personnel:	

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VEHICLE AND APPARATUS COSTS

(for inclusion in Part "b" of invoice to province)

Vehicle/Apparatus Type	Hrs.	Rate	Cost
Totals:			

EQUIPMENT COSTS

(for inclusion in Part "b" of invoice to province)

Item	Hrs.	Rate	Cost
Totals:			

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MATERIAL COSTS

(for inclusion in Part "b" of invoice to province)

Item	Hrs.	Rate	Cost
Totals:			

COMMUNICATIONS COSTS

(for inclusion in Part "b" of invoice to province)

Item	Hrs.	Rate	Cost
Totals:			

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OTHER COSTS

(for inclusion in Part "b" of invoice to province)

Item	Hrs.	Rate	Cost
Totals:			