



The Corporation of the Town of LaSalle

Date	Oct. 04, 2017	Report No:	FIRE 17-11
Directed To:	Mayor & Members of Council	Attachments:	Cost Sharing Agreement - Draft
Department:	LaSalle Fire Service	Policy References:	Annual Business Plan & Departmental Goals
Prepared By:	Dave Sutton, Fire Chief		
Subject:	Cost Sharing Agreement – Mobile Live Fire Training Unit		

RECOMMENDATION:

It is recommended that Council authorize administration to execute a formal cost sharing agreement, acceptable to administration, for the joint purchase of a mobile live fire training unit, as previously approved.

REPORT:

Council has previously approved the participation of the LaSalle Fire Service in joint purchase of a mobile live fire training unit, together with the City of Windsor, St. Clair College and Amherstburg Fire Service, subject to a formal cost sharing agreement, including maintenance and repairs. An agreement has been prepared and reviewed by the participating partners, including our administration and solicitor. The proportionate costs as indicated in the agreement, as well as provision for on-going maintenance costs will be appropriately incorporated in subsequent annual budgets. Authorization to proceed with execution of the agreement will confirm participation and expedite the joint purchase.

Final modifications of the unit are currently being completed at the vendor's facility. Delivery and operational instruction training is anticipated in late October or early November.

Respectfully,

Dave Sutton
Fire Chief / C.E.M.C

Reviewed by:							
<input checked="" type="checkbox"/> CAO	Treasury	Clerks	Public Works	Planning	Culture & Rec	Building	Fire

Dated the ____ day of September, 2017

A G R E E M E N T

B E T W E E N:

THE CORPORATION OF THE CITY OF WINDSOR
(the “City”)
OF THE FIRST PART

-and-

THE CORPORATION OF THE TOWN OF
AMHERSTBURG
(“Amherstburg”)
OF THE SECOND PART

-and-

THE CORPORATION OF THE TOWN OF LASALLE
(“LaSalle”)
OF THE THIRD PART

-and-

THE ST. CLAIR COLLEGE OF APPLIED ARTS AND
TECHNOLOGY
(“St. Clair”)
OF THE FOURTH PART

RECITALS

WHEREAS the Parties have the shared goal of improving accessibility to live fire training facilities so that such training can be available in closer proximity to each of the respective the Parties;

AND WHEREAS in furtherance of the above-noted shared goal, the City, Amherstburg, LaSalle and St. Clair have agreed to jointly purchase a Mobile Live Fire Training Simulator from Draeger Canada Ltd.;

AND WHEREAS by City Council Resolution CR438/2017 adopted on August 8, 2017, City Council authorized the City to enter into an agreement with Amherstburg, LaSalle and St. Clair to govern the shared purchase and use of the Fire Simulator.

NOW THEREFORE in consideration of the terms and conditions herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions

- 1.1 “**Applicable Date**” has the meaning ascribed thereto in Subsection 4.1(b);
- 1.2 “**Draeger**” means Draeger Canada Ltd.;
- 1.3 “**Event of Default**” means a breach by a Party of any of its obligations under this Agreement if such breach is not remedied within fifteen (15) days after receiving notice thereof from any other Party;

- 1.4 **"Fair Market Value"** means the price determined in an open and unrestricted market between informed prudent Parties acting at arm's length and under no compulsion to act, expressed in terms of money or money's worth;
- 1.5 **"Fire Simulator"** means the Mobile Live Fire Training Simulator, more particularly described in the drawings attached hereto as Schedule "A";
- 1.6 **"Fire Simulator Schedule"** has the meaning ascribed thereto in Section 5.1;
- 1.7 **"Parties"** means collectively the City, Amherstburg, St. Clair and LaSalle and **"Party"** means any one of them;
- 1.8 **"Proportionate Share"** means with respect to each Party its undivided interest in the Fire Simulator, expressed as a percentage, in accordance with the following:
 - a. The City owns Forty Percent (40%);
 - b. LaSalle owns Twenty Percent (20%);
 - c. Amherstburg owns Twenty Percent (20%); and
 - d. St. Clair owns Twenty Percent (20%).
- 1.9 **"Purchase Price"** has the meaning ascribed thereto in Section 3.1;
- 1.10 **"Renewal Term"** has the meaning ascribed thereto in Section 2.2;
- 1.11 **"Term"** has the meaning ascribed thereto in Section 2.1;
- 1.12 **"Terminating Party"** and **"Terminating Parties"** has the meaning ascribed thereto in Section 4.1;
- 1.13 **"Trailer"** has the meaning ascribed thereto in Section 6.1;
- 1.14 **"Valuation Date"** has the meaning ascribed thereto in Subsection 4.2(a);
- 1.15 **"Transferor"** and **"Transferee"** shall have the meanings ascribed thereto in Subsection 5.2(a);
- 1.16 **"Unavoidable Delay"** has the meaning ascribed thereto in Section 9.7.

2. Term of Agreement and Renewal Rights

- 2.1 Subject to Section 2.2 and Section 4 of this Agreement, the term of this Agreement shall commence on the ____ day of _____, 2017 and expire on the ____ day of _____, 2022 (the **"Term"**).
- 2.2 Subject to Section 2.3, each of the Parties hereto shall have the option, exercisable on no less than six (6) months' written notice to each of the other Parties hereto prior to the expiry of the Term, to renew this Agreement for an additional term of five (5) years (the **"Renewal Term"**) on the same terms and conditions as the Term save and except:
 - a) there will be no further right to renew the Term beyond the Renewal Term; and
 - b) Section 3.1, Subsection 3.2(d) and Section 4.4 shall be of no further force and effect.
- 2.3 Any Party that has committed an Event of Default shall not have the option to exercise the renewal rights provided for in Section 2.2 herein unless otherwise consented to by the other Parties in writing.

3. Payment of Purchase Price, Maintenance and Operation Costs

- 3.1 The Parties agree that:

- a) the City shall purchase the Fire Simulator from Draeger for a total cost of \$386,383.00, which cost shall include HST and a four (4) year warranty, as further detailed on Table 1 of Schedule “A” attached hereto (the “**Purchase Price**”); and
 - b) Amherstburg, St. Clair and LaSalle shall each repay the City for the total Purchase Price divided in accordance with their respective Proportionate Shares plus interest at a rate of 1.83% per annum, payable in annual installments over the course of the Term in the amounts set out on Table 2 of Schedule “A” attached hereto.
- 3.2 Subject to Section 3.4, the Parties shall be jointly responsible, in accordance with their Proportionate Share, for all costs associated with:
- a) the maintenance and repair of the Fire Simulator, which will be performed by the City and invoiced to the other Parties on an annual basis with supporting documents consisting of parts invoices, certification related documentation and an annual inspection report;
 - b) any applicable certification costs that are not covered by the warranty from Draeger;
 - c) license and registration fees;
 - d) all costs associated with the shipment of the Fire Simulator from Draeger to the City.
- 3.3 The City shall provide notice to the other Parties of any maintenance or repairs performed on the Fire Simulator as they occur, for budgeting purposes. The costs set out in Section 3.2 shall be incurred by the City and invoiced to the other Parties on an annual basis commencing the first (1st) anniversary following the date of this Agreement. The City shall submit any supporting documents in its possession, including the cost break down between the Parties and any copies of invoices paid or proof of purchase. The other Parties shall remit payment to the City within 30 days of receipt of the aforementioned invoice.
- 3.4 Each Party shall be solely responsible for:
- a) all operating costs of the Fire Simulator while in its possession, including but not limited to propane, liquid smoke fluid and any costs associated with transportation of the Fire Simulator to their preferred location in accordance with Section 5.2(a) herein;
 - b) all costs associated with the insurance requirements imposed upon such Party pursuant to Section 6;
 - c) any costs associated with training or the provision of an instructor pursuant to Section 5.
- 3.5 The Parties shall indemnify and hold harmless each other for any amount payable by them under this Agreement which exceeds their share as provided for herein.

4. Termination of Agreement

- 4.1 In the event any Party or Parties do not wish to renew this Agreement after the initial Term (collectively, the “**Terminating Parties**” and each individually a “**Terminating Party**”), the remaining Party or Parties may:
- a) Together, procure one or more third Parties to purchase the Proportionate Share and assume the obligations hereunder of any of any Terminating Party. The remaining Party or Parties shall have six (6) months following receipt of written notice from any Terminating Party to exercise the option under this subsection 4.1(a); or
 - b) Purchase, the Proportionate Share of any Terminating Party for Fair Market Value. The remaining Party or Parties shall have six (6) months following

receipt of written notice from any Terminating Party (the “**Applicable Date**”) to exercise the option under this subsection 4.1(b)

- 4.2 At the end of the Renewal Term, or in the event none of the Parties wish to agree to a Renewal Term the City shall take steps to sell the Fire Simulator for such value determined by the City, in consultation with the Parties, and divide the proceeds amongst the Parties in accordance with each Party’s Proportionate Share. The City shall have two (2) months following the end of the Renewal Term to advertise the Fire Simulator for sale, and shall have the period of time required in order to receive an offer for purchase, to complete the sale, satisfactory to the City and as approved by a majority of all Parties.
- 4.3 Notwithstanding Section 4.2, in the event of any of the Parties wish to continue to use the Fire Simulator after the Renewal term, those Parties shall have the right to retain ownership interest in the Fire Simulator, and to purchase the ownership interest from any Party who does not wish to continue with its ownership. The Parties who wish to continue their use of the Fire Simulator shall then negotiate a new agreement setting out the terms and conditions of the shared use and ownership as between them.
- 4.4 Notwithstanding the provisions of Subsection 4.1(b) hereof, if the Parties are unable to agree on the Fair Market Value of the Fire Simulator within twenty five (25) days following the Applicable Date, then an independent valuator, chosen by the City in its sole discretion, shall determine the Fair Market Value of the Fire Simulator in question as at the Applicable Date (the “**Valuation Date**”).
- 4.5 Should an Event of Default occur, then without prejudice to any other rights of the non-defaulting Parties, either pursuant to this Agreement or at law, the non-defaulting Parties together shall have the following rights which are cumulative and not alternative:
 - a) terminate this Agreement, and enter into a new Agreement, if appropriate;
 - b) to remedy or attempt to remedy any default for the account of the defaulting Party; and the non-defaulting Parties shall not be liable to the defaulting Party for any loss, injury or damages caused by acts of the non-defaulting Parties in remedying or attempting to remedy such default and the defaulting Party shall pay to the non-defaulting parties all expenses incurred by them in connection therewith;
 - c) to recover from the defaulting Party all damages, costs and expenses incurred by the non-defaulting Parties as a result of any default by the defaulting Party. Unless the City has become the owner of the Proportionate Share of the defaulting Party’s interest under Section 4.6 herein, such damages shall first be applied towards any amount owing to the City for any remaining portion of the defaulting Party’s Purchase Price as detailed on Table 1 of Schedule “A”, if any, with any excess amount of said damages being divided among the non-defaulting Parties in the same percentages as their Proportionate Share of ownership.
- 4.6 Notwithstanding Section 4.5, if the Event of Default relates to default of the payment provisions provided for in Section 3.1, unless otherwise agreed to by the City in writing, the defaulting Party shall be deemed to have forfeited all of its Proportionate Share of ownership in the Fire Simulator to the City.

5. Operation

- 5.1 Use of the Fire Simulator amongst the Parties shall be divided on a monthly basis each year. The number of consecutive months each Party shall be entitled to use the Fire Simulator shall be determined in accordance with their Proportionate Share, as detailed more particularly on Schedule “C” (the “**Fire Simulator Schedule**”). The Fire Simulator Schedule may be amended upon written consent of all Parties.

5.2 Each Party shall be responsible for:

- a) transferring the Fire Simulator from the location of the Party who currently has possession of the Fire Simulator (the “**Transferor**”) to the location of the Party entitled to use the Fire Simulator (the “**Transferee**”) on the first day of the period that the Transferee is scheduled to have possession of the Fire Simulator, all in accordance with the Fire Simulator Schedule. The Transferor and Transferee shall be jointly responsible for all costs associated with such transfer;
- b) providing an instructor(s) that is certified for live fire training in accordance with NFP 1403.

6. Insurance, Liability and Indemnification

6.1 Amherstburg, St. Clair and LaSalle shall each:

- a) obtain automobile insurance for the vehicle towing the Fire Simulator (the “**Trailer**”), in respect of any accident or occurrence resulting in bodily injury, death, property damage, or other liability;
- b) obtain general liability insurance for the Fire Simulator when parked, with limits of not less than \$5,000,000 per occurrence, in which “The Corporation of the City of Windsor” shall be named as additional insured and said insurance must include a severability of interest or cross-liability provision,
- c) add the Trailer to the Party’s property insurance policy, in which the City shall be named as a loss payee with sufficient coverage to cover the full replacement cost of the Trailer. In the event the Trailer is uninsurable, each Party agrees to (i) to notify the City forthwith; and (ii) to self-insure for the full replacement cost of the Trailer.

6.2 The insurance policies obtained by each Amherstburg, St. Clair and LaSalle in satisfaction of each of Section 6.1 shall be issued in form reasonably satisfactory to the City’s Manager of Risk and Insurance and shall provide for at least thirty (30) days’ written notice of cancellation. Each Party shall furnish the City with evidence of such policies prior to the commencement of the Term.

6.3 Each Party shall be liable during the course of this Agreement and after this Agreement has expired, for any negligence, wrongful acts, or omissions committed by such Party arising from its use of the Fire Simulator and each Party shall indemnify and save harmless the other Parties from all manner of actions, causes of action, suits, debts, dues, accounts, covenants, claims and demands whatsoever arising out of such acts or omissions of such Party.

Without limiting the generality of the foregoing, in the event the Fire Simulator is damaged or suffers loss the Party in possession of the Fire Simulator shall be responsible to restore or replace the Fire Simulator, as the case may be, unless such damage or loss is as a result of the negligence, wrongful acts, or omissions, of another Party. The Party in possession of the Fire Simulator shall be solely responsible for submitting an insurance claim under such Party’s Property policy (including payment of any applicable deductible) or funding the loss through self-insurance, as applicable.

7. Responsible Person

7.1 Each of the Parties shall designate an individual responsible to act as a liaison among the other Parties. This designation as well as any changes or substitutions shall be made in writing from each Party to the other. The following individuals are designated as the responsible persons under this section by the Parties:

City designate: Stephen Laforet, Fire Chief

Amherstburg designate: []

St. Clair designate: []

La Salle designate: Dave Sutton, Fire Chief

8. Dispute Resolution

- 8.1 Save and except for Section 4.4 of this Agreement, if the Parties are unable to resolve any dispute between the Parties in respect of this Agreement, the matter shall be submitted to arbitration in accordance with the provisions of the *Arbitration Act*, S.O. 1991, c.17, as amended, or any successor act. Each of the Parties involved in the dispute shall collectively appoint one arbitrator, the decision of whom shall be binding upon the Parties. If the said Parties shall fail to agree upon an arbitrator within thirty (30) days of being served with written notice of arbitration by any one of Parties, the arbitrator shall be appointed by a Judge of the Superior Court of Ontario. The arbitrator shall receive and consider written or oral submissions from each of the Parties involved in this dispute. Each Party involved in the dispute shall share the fees and expenses of the arbitrator. Notwithstanding the foregoing, any dispute arising among the Parties in respect of any one or more of the following matters shall not be subject to arbitration:
- i. the withholding of any consent or approval by any Party in situations where the Agreement expressly provides that the consent or approval may be withheld in the sole discretion of the Party;
 - ii. any question of law pertaining to any aspect of this Agreement, other than a question of interpretation of this Agreement;
 - iii. the making of any determination, decision or exercise of discretion or the taking of any action by a Party to this Agreement in situations where this Agreement expressly provides that such determination, decision or exercise of discretion or the taking of such action may be made in such party's sole discretion; or
 - iv. where the Parties have stipulated that the matter or issue in question is not subject to arbitration, or where an alternative mode of dispute resolution is prescribed herein.

The decision of the arbitrator shall be final. There shall be no appeal from the decision of the arbitrator.

9. General Provisions

- 9.1 Nothing in this Agreement nor any acts of the Parties hereto shall be deemed to create any relationship between the Parties other than the relationship specifically defined herein. This Agreement shall not be construed as constituting a joint venture or other partnership or association between the Parties.
- 9.2 If any covenant or obligation in this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such covenant or obligation to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby and each covenant and obligation in this Agreement shall be separately valid and enforceable to the fullest extent permitted.
- 9.3 All notices required to be given hereunder shall be in writing and shall be given by prepaid first class mail, by facsimile or other means of electronic

communication or by delivery as hereafter provided. Any such notice, if mailed by prepaid first class mail at any time other than during a general discontinuance of postal services due to strike, lockout or otherwise, shall be deemed to have been received on the fifth (5th) business day following the sending, or, if delivered by hand or by facsimile or electronic communications shall be deemed to have been received at the time of delivery. In the event of a general discontinuance of postal service due to strike, lock out or otherwise, notice or other communications shall be delivered by hand or sent by facsimile or other means of electronic communications and shall be deemed to have been received in accordance with this section. Notice and other communications shall be addressed as follows:

If to LaSalle:

The Corporation of the Town of LaSalle
5950 Malden Rd.
LaSalle, ON N9H 1S4
Attention: Clerk
Facsimile: (519) 969-4469

With a copy to:

LaSalle Fire Service
1900 Normandy St.
LaSalle, ON N9H 1P8
Attention: Fire Chief

[REDACTED]

Attention:
Facsimile:

If to Amherstburg:

[REDACTED]

Attention:
Facsimile:

If to St. Clair:

[REDACTED]

Attention:
Facsimile:

If to the City:

The Corporation of the City of Windsor
350 City Hall Square West
Windsor, Ontario N9A 6S1
Attention: City Clerk
Facsimile: (519) 255-6868

With a copy to:

Windsor Fire & Rescue Services
815 Goyeau St.
Windsor, ON N9A 1H7

Attention: Fire Chief

- 9.4 This Agreement and everything contained herein shall ensure to the benefit of and be binding upon the Parties hereto, their respective successors and permitted assigns.
- 9.5 The failure of either Party to insist on the strict performance of any covenant of this Agreement shall not be deemed to constitute a waiver of such covenant, and the waiver by any -Party of any breach of this Agreement shall not be deemed a waiver of any future or other breach.
- 9.6 This Agreement cannot be assigned without the express written consent of the Parties, which consent shall not be unreasonably or arbitrarily withheld.
- 9.7 If any _Party shall be prevented or delayed from punctually performing any obligation or satisfying any condition under this Agreement, as a result of any strike, labour dispute, inability to obtain labour or materials, Act of God, governmental restriction, regulation or control, insurrection, sabotage, fire or other casualty or by any other event beyond the control of such party (herein called “**Unavoidable Delay**”) then the time to perform such obligation, satisfy such condition or exercise such right or option shall be postponed by the period of time consumed by the Unavoidable Delay. Financial instability, inconvenience or embarrassment shall not be considered events causing Unavoidable Delay.
- 9.8 The Parties agree that no Party shall permit any other person to use or have access to the Fire Simulator without the prior written consent of all Parties.
- 9.9 The recitals hereto are true and form part of this Agreement.
- 9.10 This Agreement shall be interpreted pursuant to the laws of Ontario.
- 9.11 This Agreement shall be read with all changes of gender and number required by the context, and the terms “Party” and “Parties” shall include all servants, agents and employees of the respective Parties to which the terms refer.

[remainder of the page left intentionally blank; signatures to follow]

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their corporate seals duly attested by their proper officers in that behalf, respectively, as of the year and date above written.

**THE CORPORATION OF THE TOWN OF
AMHERSTBURG**

Per: _____

Per: _____

I/We have authority to bind the Corporation

**THE CORPORATION OF THE TOWN OF
LASALLE**

Per: _____
Mayor – Ken Antaya

Per: _____
Clerk – Brenda Andreatta

I/We have authority to bind the Corporation

**THE ST. CLAIR COLLEGE OF APPLIED
ARTS AND TECHNOLOGY**

Per: _____

Per: _____

I/We have authority to bind the Corporation

**THE COPORATION OF THE CITY OF
WINDSOR**

Per: _____
Onorio Colucci
Chief Administrative Officer

Per: _____
Valerie Critchley
City Clerk

We have authority to bind the Corporation

Schedule “A”

Fire Simulator

See attached.

Schedule “B”

Fire Simulator Costs

I. TABLE 1 – Breakdown of Purchase Price

<u>Breakdown</u>	<u>Cost</u>
Capital Cost (includes upfit 1 st year warranty)	\$363,500.00
Warranty (years 2-4)	\$16,200.00
Non- recoverable HST	\$6,683.00
<u>TOTAL</u>	<u>\$386,383.00</u>

II. TABLE 2 – Payment Schedule

<u>Municipality</u>	<u>Year 1</u> (September ____, 2017)	<u>Year 2</u> (September ____, 2018)	<u>Year 3</u> (September ____, 2019)	<u>Year 4</u> (September ____, 2020)	<u>Year 5</u> (September ____, 2021)	<u>Total Repayment</u>
Amherstburg	\$16,318.00	\$16,318.00	\$16,318.00	\$16,318.00	\$16,318.00	\$81,590.00
St. Clair College	\$16,318.00	\$16,318.00	\$16,318.00	\$16,318.00	\$16,318.00	\$81,590.00
LaSalle	\$16,318.00	\$16,318.00	\$16,318.00	\$16,318.00	\$16,318.00	\$81,590.00
<u>TOTAL</u>						<u>\$244,770.00</u>

Schedule “C”

Schedule for Use of Fire Simulator

Weeks	Party entitled to use
Weeks 1-10	
Weeks 11-20	
Weeks 21-30	
Weeks 31-40	
Weeks 41-50	
Weeks 51-52	MAINTENANCE

[note to draft: to be determined by the Parties]