

HAMILTON POLICE SERVICES BOARD

- RECOMMENDATION -

DATE: June 11, 2020
REPORT TO: Chairman and Members
Hamilton Police Services Board
FROM: Eric Girt
Chief of Police
SUBJECT: *Hamilton Accident Support Services Ltd. – Collision Reporting Centre:
Five (5) Year Agreement
PSB 03-015f*

RECOMMENDATIONS:

- a) That the Hamilton Police Services Board enter into an Agreement with Hamilton Accident Support Services Ltd. (HASSL), by which HASSL will provide collision reporting services to the Hamilton Police Service (HPS) as defined in the said Agreement, for a five (5) year period, commencing on July 1, 2020 and ending June 30, 2025.
- b) That the Chair and Administrator of the Board be authorized and directed to enter into said Agreement in a form satisfactory to Legal Counsel.



Eric Girt
Chief of Police

FINANCIAL / STAFFING / LEGAL IMPLICATIONS:

FINANCIAL – HASSL shall be responsible for all costs associated with the furnishing of each Collision Reporting Centre (CRC) with respect to computers, telephones, faxes and other equipment necessary to effectively provide their services, and training of their staff as defined in the Agreement.

STAFFING – n/a

LEGAL – n/a

BACKGROUND:

In 2003 the HPS and HASSL entered into a six-month Pilot Project for the provision of a CRC, which ran from June 30, 2003 to December 30, 2003. Initial concerns relative to compliance with the *Personal Information Protection and Electronic Documents Act* were satisfactorily addressed by HASSL, and the pilot project was deemed a success. In 2005 a new agreement was entered into. This agreement was for a five-year term and included two five-year extension provisions that expire on June 30, 2020.

Initial research in 2003 demonstrated that employing the use of an alternative collision reporting procedure resulted in the annual savings of approximately 4,500 front line patrol officer hours. Since that time the diversion of collision investigations that previously would have required a mobile police response continues to effectively enhance HPS response to other public safety priorities. Since 2015 an average of 7,519 investigations has been diverted to the HASSL CRCs at three HPS locations. By comparison for the same five-year period, the HPS continues to provide a mobile respond to an average of 2,929 personal injury and property damage collisions annually. These collisions require on-scene investigations due to injury and/or severity of the collision, rendering the vehicles inoperable.

The HASSL will continue to report all collisions to the Ministry of Transportation within the timelines set out in the *Highway Traffic Act*. This workflow also contributes to time savings for the HPS. The updated agreement features two changes to the benefit of the HPS.

- The first change will address the traffic congestion and space needs challenges of Division 10 by reducing the total CRC locations from three to two. The Central location at 155 King William Street will be closed with a future consideration for an alternate site located on the western side of the city. The remaining two sites at Division 20 and 30 will have adequate HASSL staffing and parking to accommodate this transition.
- HASSL will provide the HPS an upgraded Collision Occurrence Management System (CROMS) package that will facilitate electronic collision reports and analytics. This will minimize data entry errors and enhance customer service by enabling the electronic transmission of collision reports to involved road users.

The HASSL continues to offer a valuable service to the HPS and the City of Hamilton

Attachment: Agreement – HPSB and HASSL

cc: Ryan Diodati, Deputy Chief – Support
Marty Schulenberg, Superintendent – Support Services Division
Paul Evans, Inspector – Support Services Division
Marco Visentini, Legal Counsel

AGREEMENT

THIS AGREEMENT made in quadruplicate this 1st day of July, 2020

BETWEEN:

HAMILTON POLICE SERVICES BOARD

(hereinafter called "the Board")

- and -

HAMILTON ACCIDENT SUPPORT SERVICES LTD.

(hereinafter called "the Operator")

WHEREAS the Board approved entering into an agreement with the Operator for the provision of services to the Hamilton Police Service (the "Service") at the Hamilton Collision Reporting Centre (the "Centre") at no cost to the Board or the Service, for the purpose of the Service participation in the Centre;

AND WHEREAS the Board is the owner of the buildings and property located at 2825 King Street East and 400 Rymal Road East in Hamilton, Ontario (the "Property") and the Board is prepared to authorize the Operator to use a portion of the buildings and property for the purpose of the Centre and for the purposes of this Agreement;

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

A. PARTICIPATION IN THE CENTRE

- (a) The Operator shall occupy the space within the property (the "Space"), for the purpose of providing insurance services for the operation of the Centre as a reporting centre for a five (5) year term, commencing July 1, 2020, up to and including June 30, 2025 (the "Initial Term"). The occupancy of the Space as provided for herein

shall be by way of a licence only and specifically shall not amount to a lease or any other manner of right.

- (b) Upon the completion of the Initial Term, the Board, in its sole discretion, may extend this Agreement for a further five (5) year term, commencing on July 1, 2025 , up to and including June 30, 2030 (the "Renewal Term"), on giving 90 days written notice to the Operator prior to the end of the Initial Term.
- (c) Upon completion of the Renewal Term, the Board may, in its sole discretion, extend the term of this Agreement for a further five (5) year term, commencing July 1, 2030, up to and including June 30, 2035, on giving 90 days written notice to the Operator prior to the end of the Renewal Term.
- (d) The Board and the Service agree to provide exclusively to the Operator, in printed form (or in any other form that the City, the Service and the Operator all agree to), all information relating to accident related occurrences occurring within the jurisdiction of the Board and the Service. The provision of such information shall not in any way restrict the provision of information to any other government department for their use, or as required by law.

B. GENERAL OBLIGATION OF THE OPERATOR REGARDING THE CENTRE

- 1. During the term of the Agreement, the Operator shall:
 - (a) provide all the equipment and staff necessary to provide insurance services and to obtain information as required pursuant to the *Highway Traffic Act* from customers at no cost to the Board and the Service;
 - (b) pay all taxes, including any Goods and Services Tax and/or Commercial Concentration Tax if applicable, rates, duties, levies, assessments and impositions whatsoever, whether municipal, parliamentary or otherwise levied, charged or assessed upon the Centre;

- (c) pay to the Board all applicable business taxes, if any, in respect of the business carried on by the Operator at the Centre;
- (d) comply with all federal, provincial and municipal laws, by-laws, rules and regulations affecting the Centre;
- (e) ensure that the Centres are fully functional within the dates and times set out in Schedule "A", and that the determination of dates and times of operation be at the discretion of the Service;
- (f) ensure that employees of the Operator do not enter the Service's area without the express permission of a member of the Service;
- (g) ensure that employees of the Operator, while on duty at the Centre, wear a uniform of a style to be approved by the Service, and an identification tag that indicates the name of the employee and the name of the Operator;
- (h) ensure that employees of the Operator act in a courteous and professional manner and maintain a neat and tidy appearance when providing services at the Centre;
- (i) ensure that all interior and exterior signage installed or in use at the Centre is approved by the Service prior to installation or use, and
- (j) pay to the Service the amount of \$2,026.22 annually (for the centre located at 2825 King Street East) and the amount of \$1951.59 annually (for the centre located at 400 Rymal Road East), with an annual increase for each centre based on the C.P.I. (Consumer Price Index) as the Operators' share of costs of general maintenance and utilities.

C. OBLIGATION OF OPERATOR REGARDING COLLISION REPORTING SERVICES

1. During the term of this Agreement, the Operator shall:

- (a) provide only those services at the Centre for which it contracts with an insurance company and information processing services, and shall not allow any other services to be provided on the premises of the Centre;
- (b) only offer or make available to a customer of the Centre, the names of companies, groups or individuals that are recommended by the insurance company of the customer, provided that the Operator is not prohibited from contacting, on behalf of the customer, companies, groups or individuals that are recommended by such insurance company;
- (c) respect the right of the customers of the Centre to choose to avail or not avail themselves of any or all of the services of the Operator provided on behalf of an insurance company and shall not, at any time, use unlawful or misleading information or tactics or pressure a customer, in order to convince the customer to use any of the offered services;
- (d) post signage, the content and location which shall be approved by the Service, advising customers of the Centre of their right of choice regarding services offered by the Operator on behalf of an insurance company and the independence of the services provided from that of the Service;
- (e) be permitted to offer advice and assistance to a customer of the Centre respecting matters arising from the incident being reported, but shall provide such advice and assistance only in accordance with the policy requirements of the insurance company of the customer and any other legal restrictions or requirements. The Operator shall not provide legal advice or legal assistance to a customer at any time;
- (f) not permit the display of advertising for any commercial vendors at the Centre, which shall not be construed to restrict the availability of materials provided by the Government or the insurance industry or the advertising of

the services provided by the Operator on behalf of insurance companies;

- (g) not permit commercial vendors to operate at the Centre, which shall not be construed to restrict the representation of an insurance company at the Centre or the provision of services which an insurance company has purchased, and nothing in this Agreement shall be construed to prevent an insurance company from recommending the use of specific vendors which have been approved by the insurance company;
- (h) ensure that the operating name of the Operator shall not be a name that is likely to lead a person to reasonably believe the Operator is an agency of the Board, the Service or the City of Hamilton;
- (i) report quarterly, in writing, to the Service on the activity of the Centre during the preceding months, which report shall include, but not to be limited to, information respecting the number of persons which have used the services of the Centre, the range and type of services offered by the Centre, the number and type of complaints received about service at the Centre and any action taken in response to such complaints;
- (j) notify the Service, in writing, of any oral or written complaints received from members of the public and customers of the Centre, about the operation or services of the Centre within seventy-two (72) hours of receipt of the complaint, each such notice to be accompanied by a copy of any materials submitted by the complainant;
- (k) attempt, in good faith, to resolve the matter giving rise to the complaint in accordance with any procedure for complaint resolution established by the Service or the Board; and resolve the matter giving rise to the complaint to the satisfaction of the Service;

- (l) use any information, reports or data supplied by the Service or the Board only in accordance with any restrictions imposed by either or both of them on such use, and in accordance with any applicable legislation;
- (m) make available, for the Service's use, the Collision Occurrence Management System (CROMS), which will include Police Portal, Analytics and Mobile Program, at no cost to the Service; and
- (n) validate and upload all collision reports in the City of Hamilton to the Ministry of Transportation on behalf of the Hamilton Police Service, at no cost to the Service.

D. CONFLICT OF INTEREST OBLIGATIONS OF OPERATOR

1. During the term of this Agreement, the Operator shall not:
 - (a) operate or have any direct or indirect interest in or control over any automobile body repair shop, or automobile rental facility or insurance company and shall ensure that no director, officer or employee of the Operator or any of its affiliated companies operates or has any direct or indirect interest in or control over any automobile body repair shop or automobile rental facility or insurance company. For the purpose of this subsection, ownership of shares in a publicly traded insurance Company shall not constitute a direct or indirect interest;
 - (b) employ, or be wholly or partly owned by, an officer or employee of a police service, the Board, or any other municipal or provincial officer or employee, an officer or employee of an insurance company or an officer or employee of an automobile body repair shop or automobile rental facility;
 - (c) replace any officers or directors of the Operator, or add any additional officers or directors, without the prior written permission of the Service.

E. INDEMNIFICATION

1. The Operator shall at all times and does hereby indemnify and save harmless the Board, the Service and all their officers, employees, agents and representatives of and from any and all manner of claims, demands, losses, costs, charges, actions and other proceedings whatsoever, made or brought against, suffered by or imposed on either or both of them in respect to any loss, damages, or injury (including fatal injury) to any person or property directly or indirectly arising out of, resulting from or sustained as a result of the Operator's provision of services, including advice and assistance provided under this Agreement and its occupation or use of or any operation in connection with, the Centre or any fixtures or chattels thereon.

2. The Board shall at all times and does hereby indemnify and save harmless the Operator and all its officers, employees, agents and representatives of and from any and all manner of claims, demands, losses, costs, charges, actions and other proceedings whatsoever, made or brought against, suffered by or imposed on it in respect of any loss, damage or injury (including fatal injury) imposed on it in respect of any loss, damage or injury (including fatal injury) to any person or property directly or indirectly arising out of, resulting from or sustained as a result of the Service's occupation or use in the Centre.
3. The right of indemnification granted to the parties under subsection 1 and 2 shall extend to any amount paid by that party in the settlement of any claim against it, and in entering into any such settlement, that party may exercise its reasonable discretion as to the amount to be paid, but that party shall serve prior notice of any intended settlement on the other party, at least 5 Business Days prior to agreeing to any such settlement.
4. The rights to indemnity provided for in this section shall be deemed to be in addition to any rights with respect to insurance in favour of each party provided under this Agreement.
5. The rights to indemnity provided for in this section shall survive the expiration or any termination of this Agreement.

F. INSURANCE

1. The Operator and the Board shall and each separately, and only with respect to its occupancy, use and operations of the Centre, effect and maintain during the term of this Agreement or any extension or renewal thereof, the following insurance coverage.

Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily and personal injury liability, property damage, products liability, completed operations liability, owners & contractors protective liability, blanket contractual liability, premises liability, and contingent employers liability

coverage, having an inclusive limit of not less than \$3,000,000.00 per occurrence;

2. The Board reserves the right to request such higher limits of insurance or otherwise alter the types of coverage as the Board may reasonably require from time to time.
3. Any insurance coverage acquired under this Agreement shall in no manner discharge, restrict or limit the liabilities assumed by the Operator.
4. The Operator shall pay all premiums on the policies as they become due.

G. PROOF OF INSURANCE

1. (a) Prior to commencing the provision of service under this Agreement, the Operator shall provide evidence of the insurance required under the provisions of this Agreement by providing the Board with an original certificate of insurance originally signed by an authorized insurance representative or, at the Board's election, a certified copy of the insurance policy or policies required; and;
- (b) Should the Board require any new policy of insurance in accordance with the terms of this Agreement, the Operator shall provide evidence of the new insurance required within 30 days of such requirement, in accordance with the provisions of this Agreement by providing the Board with an original certificate of insurance originally signed by an authorized insurance representative or, at the Board's election, a certified copy of the insurance policy or policies required.
- (c) No later than 30 days prior to the renewal date of each applicable policy, the Operator shall provide evidence for the policy to be renewed by providing the Board with an original certificate of insurance originally signed by an authorized insurance representative or, at the Board's

election, a certified copy of the insurance policy or policies required.

2. The Operator shall not do or omit to do anything that would impair or invalidate the insurance policies.
3. Delivery to and examination or approval by the Board of any certificates of insurance or policies of insurance or other evidence of insurance shall not relieve the Operator of any of its indemnification or insurance obligations under this Agreement. The Board shall be under no duty either to ascertain the existence of or to examine such certificates of insurance or policies of insurance or to advise the Operator in the event such insurance coverage is not in compliance with the requirements set out in this Agreement.

H. NOTICE

1. Any notice pursuant to any of the provisions of this Agreement shall be deemed to have been properly given if delivered in person, or mailed by prepaid registered post addressed:

- (a) in the case of notice to the Board, to:

Chief of Police
Hamilton Police Service
155 King William Street
Hamilton, Ontario
L8N 4C1

- (b) in the case of notice to the Operator, to:

Mr. Steve Sanderson
Hamilton Accident Support Services Ltd.
111 Toryork Drive
Toronto, Ontario
M9L 1X9

or to such other address as either party may notify the other of, and in case of mailing as aforesaid such notice shall be deemed to have

been received by the addressee, in the absence of a major interruption in postal service affecting the handling / delivery thereof, on the seventh business day next following the date of mailing.

2. Where either party to this Agreement has notified the other in writing of a change of address for the purposes of subparagraphs above, the address set out in the latest such notice of change of address, shall replace and supersede any prior address of the notifying party for such purposes.

I. LEGAL COSTS

The Operator shall pay to the Board all the Board's legal costs, on a solicitor-and-client basis, of all actions or other proceedings in which the Board participates in connection with, or arising out of the failure of the Operator to comply with its obligations under this Agreement.

J. TERMINATION

1. The Board may terminate this Agreement on written notice to the Operator in the event that:
 - (a) legal requirements, in the Board's sole opinion, prohibit the Service from continuing its participation in the Centre, or;
 - (b) the Operator makes an assignment for the benefit of creditors, or becomes insolvent or commits an act of bankruptcy as defined by the *Bankruptcy and Insolvency Act*, or if the Operator is subject to voluntary or compulsory liquidation or winding-up, or if the Centre becomes abandoned.
2. The Board may terminate this Agreement following 30 days written notice to the Operator from the Board that the Operator has breached any of the provisions of this Agreement; provided however, that the Operator shall have the opportunity to correct the situation giving rise to the breach to the satisfaction of the Chief of Police within the 30 day notice period.

3. Either party may terminate this Agreement, without cause, on 6 months written notice to the other party, during which time the Operator shall continue to be permitted to occupy and utilize the Centre in accordance with the terms and conditions of this Agreement; provided however that the Board shall not terminate this Agreement under this subparagraph:
 - (a) for the sole purpose of entering into an arrangement or agreement with another person to operate a reporting centre; or
 - (b) for the sole purpose of entering into an arrangement or agreement with another person to sell information to third parties; or
 - (c) for the sole purpose of operating an information vending service; or
 - (d) for the sole purpose of operating a business which uses the information contained in the accident reporting computing records and produces reports which can be sold to third parties.

K. WAIVER AND REMEDIES

1. No condonation, excusing or overlooking by the Board of any default, breach or non-observance of any of the Operator's obligations under this Agreement at any time or times, shall affect the Board's remedies or rights with respect to any subsequent (even if by way of continuation) default, breach or non-observance.
2. No waiver shall be inferred from or implied by anything done or omitted to be done by the Board or the Service.
3. Any written waiver by the Board shall have effect only in accordance with its express terms.
4. All rights and remedies of the Board under this Agreement shall be cumulative and not alternative.

L. ENTIRE AGREEMENT AND SUCCESSORS

1. The Operator and the Board acknowledge that there are no covenants, representations, warranties, agreements or conditions express or implied, collateral or otherwise forming part of or in any way affecting or relating to this Agreement other than as set out in this Agreement which constitutes the entire Agreement between the parties.
2. The provisions of this Agreement shall be binding upon, and enure to the benefit of, the parties hereto and their respective successors and assigns.
3. Neither this Agreement nor any part thereof shall be assigned by the Operator without the prior consent in writing of the Board, which consent may be arbitrarily and unreasonably withheld. In the event that the Operator is a corporation, any transfer or encumbrance of 10% or more of the issued capital of the corporation or the issuance of capital stock which amounts to 10% of the issued capital shall be deemed to be an assignment which requires the consent of the Board.

M. WAIVER

No action or failure to act by the Board or the Service shall constitute a waiver of any right afforded to the Board or the Service under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

N. SEVERABILITY

The invalidity or unenforceability of any provision or part of any provision of this Agreement or any covenant shall not affect the validity or enforceability of any other provision or part of any provision and any such invalid provision or part thereto, or covenant shall be deemed to be severable.

O. AMENDMENTS

This Agreement may be amended only by written agreement, signed by the authorized representatives of the Parties, which agreement is supplemental to this Agreement and thereafter forms part of this Agreement.

P. APPLICABLE LAW

This Agreement shall be interpreted in accordance with the laws of the Province of Ontario.

Q. OVERALL PERFORMANCE

The Operator will supply to the Chief, on an annual review basis, statistical data and information regarding the Collision Reporting Centre.

R. SIGNATORIES

IN WITNESS THEREOF the parties hereto have executed this Agreement.

HAMILTON ACCIDENT SUPPORT SERVICES LTD.

Steven A. Sanderson
Steven A. Sanderson
President

Norgie Williams
Witness NORGIE WILLIAMS

I have authority to bind the Corporation

May 15, 2020
Date

NORGIE WILLIAMS
Name of Witness (Please Print)

HAMILTON POLICE SERVICES BOARD

Fred Eisenberger, Chair

Witness

Date

Name of Witness (Please Print)

Administrator

Witness

Date

Name of Witness (Please Print)

SCHEDULE "A"

HOURS OF OPERATION

1. FOR THE 2825 KING STREET EAST LOCATION:

To be mutually determined.

2. FOR THE 400 RYMAL ROAD EAST LOCATION:

To be mutually determined.