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THIS LIBRARY USE AGREEMENT made this 9<sup>th</sup> day of June 2015.

BETWEEN:

THE ARNPRIOR PUBLIC LIBRARY BOARD

(Hereinafter "The Board")

AND:

THE CORPORATION OF THE TOWNSHIP OF MCNAB/BRAESIDE

(Hereinafter "The Township")

AND:

THE CORPORATION OF THE TOWN OF ARNPRIOR

(Hereinafter "The Town")

IN CONSIDERATION of the mutual premises, covenants, agreements and understandings hereinafter expressed the Board and the Township agree as follows:

**1. DEFINITIONS AND SCHEDULES**

- 1.1. Definitions: In this Agreement, unless there is something in the context inconsistent therewith:
  - 1.1.1. "Agreement" means this Agreement including the Schedule hereto attached;
  - 1.1.2. "Arbitration Act" means the Arbitration Act, 1991, S.O. 1991, c.17 as amended;
  - 1.1.3. "Dispute" means any dispute between the parties arising from this Agreement, including but not limited to disputes relating to the interpretation, breach or enforceability of this Agreement;
  - 1.1.4. "Effective Date" means January 1, 2016;
  - 1.1.5. "Interim Agreement" means the agreement between the Township, the Board and the Town dated February 18, 2015 as described in Section 2 hereof;
  - 1.1.6. "Municipal Act" means the Municipal Act, 2001, S.O. 2001, c.25 as amended;
  - 1.1.7. "Municipal Library Committee" means the committee more particularly described in Section 8 hereof.
  - 1.1.8. "Operating Grant" means the grant of monies received by the Board from the Town each year of the Term and any Extended Term Town for the Public Library;
  - 1.1.9. "Population Estimates" means the Renfrew County Population Estimates (or such other estimates satisfactory to the parties if the said Renfrew County estimates are no longer available) in each year of the Term and any Extended Term for the Town and for the Township;
  - 1.1.10. "Public Libraries Act" means the Public Libraries Act, R.S.O. 1990, c. P44 as amended;
  - 1.1.11. "Public Library" means the library building known municipally as 21 Madawaska Street, Arnprior, ON K7S 1R6 and includes the inventory, programs and services carried on and provided therein by the Board during the Term and any Extended Term;
  - 1.1.12. "Renfrew County" means the Corporation of the County of Renfrew;

- 1.1.13. "Term" and "Extended Term" means the term of this Agreement as set out in Section 3 hereof.
- 1.1.14. "Town" means the Corporation of the Town of Amprior;
- 1.1.15. "Town Council" means the Council of the Town of Amprior;
- 1.1.16. "Town Resident" and "Town Residents" means a resident or residents of the Corporation of the Town of Amprior;
- 1.1.17. "Township's Annual Contribution" means the Township's annual payments to the Board during the Term and any Extended Term as set out in Section 4 hereof;
- 1.1.18. "Township Council" means the Council of the Township of McNab/Braeside;
- 1.1.19. "Township Resident" and "Township Residents" means a resident or residents of the Corporation of the Township of McNab/Braeside;
- 1.1.20. "Unavoidable Delay" means a delay in the performance of an act or compliance with a covenant caused by fire, strike, lock-out, inability to procure material, restrictive laws or governmental regulations or other cause of any kind beyond the reasonable control of the party obliged to perform or comply excepting a delay caused by lack of funds or other financial reason.
- 1.2. Schedule: The Schedule to this document is part of this Agreement and consists of:
- 1.2.1. Schedule "A" – Township's Baseline Calculation After Phase-In for 2015 and estimated Township's Annual Contribution for 2016 to 2020.

## 2. RECITALS

- 2.1. The Board was established by by-law of the Town Council pursuant to Section 3 of the Public Libraries Act to manage and control the Public Library.
- 2.2. Under the Interim Agreement, the Township has paid to the Board a contribution to the expenses incurred by the Board for the Public Library based on the amount of the Operating Grant budgeted for 2015 based upon the service levels in place for the calendar year 2013.
- 2.3. The Township and the Board intend to update the basis for the cost-sharing of the Public Library's services by way of a phased-in scheme over the first four (4) years of the Term, as more particularly described in this Agreement.
- 2.4. Town Residents enjoy rights, benefits, privileges and access to the Public Library on such terms and conditions as are determined from time to time by the Board.
- 2.5. The Township desires to have Township Residents enjoy the same rights, benefits, privileges and access to the Public Library as may be enjoyed by the Town Residents during the Term and any Extended Term.
- 2.6. The Board agrees to allow the Township Residents to enjoy the same rights, benefits, privileges and access to the Public Library as may be enjoyed by the Town Residents during the Term and any Extended Term, subject to the provisions of this Agreement.
- 2.7. The Township and the Board covenant and agree that the within Agreement shall supercede and replace the Interim Agreement as of the Effective Date.
- 2.8. The Board and the Township acknowledge and agree that this Agreement is a contract for library services within the meaning of Section 29(1) of the Public Libraries Act.
- 2.9. The Town is signing this Agreement to evidence the Towns' approval of the Agreement and in particular to evidence the Town's commitment to the appointment of membership of the Board under Section 7 hereof;
- 2.10. This Agreement is a joint undertaking between the Township and the Board as provided for under Section 20(1) of the Municipal Act.

3. **TERM AND EXTENDED TERMS**

- 3.1. The Term of this Agreement shall be five (5) years commencing on the Effective Date, unless terminated earlier pursuant to the provisions of this Agreement.
- 3.2. The Term of this Agreement shall be automatically extended for further five (5) year periods (Extended Term) to a maximum of three (3) such extensions unless either the Board or the Township shall give written notice to the other in accordance with Section 11 hereof that this Agreement shall be terminated, such written notice to be given on or before June 30<sup>th</sup> for termination of this Agreement effective December 31<sup>st</sup> in the year of the Term in which such notice of termination is given.

4. **TOWNSHIP'S ANNUAL CONTRIBUTION**

- 4.1. The Township shall pay to the Board in each year during the Term and any Extended Term the Township's Annual Contribution as and for the Township's share of the expenses incurred by the Board for the Public Library as determined under this Agreement.
- 4.2. The Board and the Township acknowledge and agree that the Township's Annual Contribution in each year of the Term and any Extended Term shall be based on the Population Estimates, using a weight factor of one hundred (100%) percent for Town Residents and sixty (60%) percent for Township Residents, as applied to the Operating Grant.
- 4.3. By way of illustration of the application of Section 4.2 above, for the first year of the Term (2015) the Township's percentage contribution would be calculated as follows:

	<u>Population</u>	<u>Weight Factor</u>	<u>Weighted Population</u>	<u>Percentage</u>
Town	8,939	100%	8939	66.1%
Township	7,649	60%	4589	33.9%
	16,588		13,528	

- 4.4. The Board and the Township acknowledge and agree that such increasing costs shall be phased in for each year of the Term and the estimates for the Township's Annual Contribution for each year of the Term are as set out in Schedule "A" hereof.
- 4.5. The Board and the Township acknowledge and agree that the Township's Annual Contribution payments to the Board during the Term and any Extended Term under Section 4 hereof shall be due and payable as follows:
  - 4.5.1. On March 30<sup>th</sup> in each year of the Term and any Extended Term, an amount equal to fifty (50%) percent of the Township's Annual Contribution for the previous calendar year; and
  - 4.5.2. On July 31<sup>st</sup> and September 30<sup>th</sup>, in each year of the Term and any Extended Term, the Township's Annual Contribution as updated pursuant to Section 5 hereof, less the March 30<sup>th</sup> payment made pursuant to Section 4.6.1 hereof, in two (2) equal payments.

5. **ADJUSTMENTS TO TOWNSHIP'S ANNUAL CONTRIBUTION**

- 5.1. The Board and the Township agree that:
  - 5.1.1. As reflected in Schedule "A" hereto, for each year of the Term (2016 to 2020) the annual increase to the Board's Operating Grant requirements shall be capped at a maximum accumulated annual increase of one (1%) percent.
  - 5.1.2. Commencing for 2016 and in each subsequent year of the Term and any Extended Term prior to May 31<sup>st</sup> in each such year, the Board and the Township shall update the calculations under Section 4.2 having regard to the Population Estimates for the then current calendar year.
  - 5.1.3. Prior to June 30<sup>th</sup> in each of the fifth (5<sup>th</sup>) year of the Term (2020), the fifth (5<sup>th</sup>) year of the first Extended Term (2025), the fifth (5<sup>th</sup>) year of the second Extended Term (2030) and in the fifth (5<sup>th</sup>) year of the final Extended Term .

MB4

the Board and the Township shall review the methodology and related information used for the purposes of this Agreement and shall discuss and, if agreed to by the Town and the Board, shall implement such amendments to this Agreement as may be acceptable to the Board and the Township.

- 5.1.4. Without limiting the generality of the foregoing, section 5.1.3 hereof, the Board and the Township covenant and agree that minor adjustments to the calculation of the Township's Annual Contribution may be made by revising the estimated Operating Grant which is capped at a one percent (1%) level for the purposes of Schedule "A" and Section 5.1 hereof.
- 5.2. The Board and the Township covenant and agree that the Township's Annual Contribution for the years 2016 to 2020 as illustrated in Schedule "A" hereto are based in part on the Township receiving a grant from the Province of Ontario in each such year of the Term as and for library services in the approximate amount of Eleven Thousand (\$11,000.00) Dollars per annum.
- 5.3. The Board and the Township further covenant and agree that in the event, during the Term or any Extended Term and at no fault of the Township, the Township receives a lesser sum than the Eleven Thousand (\$11,000.00) Dollars described in Section 5.2 hereof, or if the said grant from the Province of Ontario to the Township is cancelled by the Province of Ontario, then in that event the Board and the Township shall adjust and reduce the Township's Annual Contribution for such year of the Term or any Extended Term in the same amount as the amount of the reduction of the said grant from the Province of Ontario to the Township.
- 5.4. The Board and the Township further covenant and agree that in the event the Township does not receive a grant from the Province of Ontario in 2015, then in that event and in addition to the adjustments contemplated by Section 5.3 hereof, the Township's Annual Contribution in 2016 and 2017 shall each be reduced in the amount of Five Thousand Five Hundred (\$5,500.00) dollars.
- 5.5. The Board and the Township further covenant and agree that during the Term and any Extended Term, the cost to the Board for the implementation of additional programs or service levels for the Public Library beyond the programs or service levels in place as of the Effective Date must be approved in writing by the Township before the cost of such additional programs or service levels may be included in the calculation of the Township's Annual Contribution.

**6. OPERATION OF PUBLIC LIBRARY**

- 6.1. The Board and the Township covenant and agree that notwithstanding Section 5.4 hereof, the Board during the Term and any Extended Term the Board shall be solely responsible for the operation of the Public Library including but not limited to the determination and implementation of such programs, service levels, procedures, rules and regulations as the Board at its sole discretion deems appropriate.
- 6.2. The Township acknowledges and agrees that as is the case with the Town's Residents, Township Residents using the Public Library shall be subject to such rules and regulations of the Board as may be in force during the Term and any Extended Term.

**7. BOARD MEMBERSHIP**

- 7.1. The Board, the Township and the Town covenant and agree that during the Term and any Extended Term, membership on the Board shall include one member who is a Township Resident provided that such Township Resident must otherwise qualify to be appointed a member of the Board under the Public Libraries Act.

**8. MUNICIPAL LIBRARY USE COMMITTEE**

- 8.1. The Board and the Township acknowledge and agree that each party desires to have the Agreement continue beyond the Term and the Extended Terms and to have the operation of this Agreement successfully meet the expectations of the Board and the Township and the needs of the Town Residents and the Township Residents.
- 8.2. The Board and the Township further acknowledge and agree that to achieve the desires, expectations and needs described in Section 8.1 above, it is necessary to revisit and

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review periodically the operation and performance of the Agreement so as to ensure the methodology and relevant assumptions which formed the basis of the Agreement are current and working to the satisfaction of the parties during the Term and any Extended Term.

- 8.3. In order to undertake the reviews described in Section 8.2 above, the parties hereto agree to establish the Municipal Library Committee to carry out such reviews.
- 8.4. The Board, the Township and the Town acknowledge and agree that the Municipal Library Committee shall consist of:
  - 8.4.1. Two (2) members appointed by the Board;
  - 8.4.2. One (1) member appointed by the Township Council; and
  - 8.4.3. One (1) member appointed by the Town Council.
- 8.5. The Municipal Library Committee shall operate during the Term and any Extended Term and each party may from time to time remove and substitute that party's representatives on the Use Committee by giving forty-eight (48) hours advance notice in writing of any such change in representation to the other parties.
- 8.6. The Municipal Library Committee shall meet on at least one (1) occasion prior to May 31<sup>st</sup> in each calendar year of the Term and any Extended Term, at which time the adjustments under Section 5.1.2 hereof shall be undertaken.
- 8.7. The Municipal Library Committee shall act under Section 10.1 in the event of a Dispute.

9. **INTEREST**

- 9.1. Interest calculated at a rate that is two percent (2%) higher than the then current chartered bank prime lending rate shall be payable by the Township to the Board on all sums of money payable to the Board pursuant to this Agreement which are not paid on the due dates calculated from such due dates.

10. **DISPUTE RESOLUTION**

- 10.1. In the event of a Dispute between the parties with respect to the interpretation of this Agreement or their obligations thereunder, the parties shall make good faith efforts to resolve the Dispute by negotiation.
- 10.2. In the event that negotiations do not lead to a resolution of the Dispute, the parties agree that alternative dispute resolution processes such as mediation, appointment of a neutral third party evaluator or arbitration are preferable to litigation as a way to resolve Disputes that may arise under this Agreement and they agree to give good faith consideration to having resort to an alternative dispute resolution process before initiating legal proceedings to deal with any such Disputes.
- 10.3. Either party may, at any time, give written notice of a Dispute to the other.
- 10.4. No later than ten (10) days after the delivery of a notice of a Dispute, the parties shall meet and attempt, in good faith, to resolve the Dispute.
- 10.5. If the Dispute is not resolved within thirty (30) days of the delivery of a notice of a Dispute any party may, by giving written notice to the other party, require that the Dispute be submitted to mediation or arbitration and the parties agree that notice requiring arbitration may be given whether or not a mediation is ongoing. If notice requiring arbitration is given while mediation is ongoing, the parties shall cease all mediation activities and proceed with arbitration.
- 10.6. Mediation of a Dispute shall be subject to the following terms and conditions:
  - 10.6.1. The party giving a notice of mediation shall include the names of two (2) individuals to act as mediator in the notice. After receiving the notice of mediation, the other party shall within five (5) business days submit the names of two (2) individuals to act as mediator. If the party fails to submit names within five (5) business days that party shall be deemed to accept as a

M136

mediator, the persons selected by the other party. Individuals submitted to act as mediator shall be qualified and experienced professional mediators whose mediation practice is based in Ontario.

- 10.6.2. A single individual shall be unanimously chosen by the parties from the names submitted, provided however that if the parties are unable to reach agreement on the selection of a mediator within five (5) days after the last party has provided the names of its proposed mediators, the mediator shall be selected at random by draw from among the mediators proposed by the parties.
  - 10.6.3. Not more than ten (10) days after the date of the appointment of the mediator, each party shall submit to the mediator and to the other party a without prejudice written mediation brief of not more than ten (10) pages in length setting out the party's position concerning the matters involved in the Dispute.
  - 10.6.4. The mediation shall be attended by the representatives of the parties with full authority to settle the Dispute. A party may be accompanied to the mediation by its lawyer provided that it gives the other party written notice at least three (3) business days in advance of its intention to do so.
  - 10.6.5. Any party or the mediator shall be entitled to withdraw from the mediation at any time.
  - 10.6.6. The mediation shall end on the earlier of (a) the date that the parties enter into a binding settlement agreement with respect to the Dispute (b) the date that any party or the mediator withdraws from the mediation, or (c) at 5:00 p.m. (Eastern time) on the day that is the 30<sup>th</sup> day after the notice of mediation was received in accordance with the terms of this Agreement; and
  - 10.6.7. The fees and expenses of the mediation shall be borne as specified in a settlement, if a settlement is obtained. If no settlement is obtained, the mediator's fees and expenses shall be as specified in the notice issued by the mediator stating that the mediation has failed. Each party shall bear its own expenses of the mediation whether or not it is successful.
- 10.7. Arbitration of a Dispute shall be subject to the following terms and conditions:
- 10.7.1. The Dispute shall be determined by the provisions of the Arbitrations Act by a sole arbitrator agreed upon by the parties, or failing agreement, appointed by a judge of the Ontario Superior Court of Justice upon the application of either of the parties; and
  - 10.7.2. Any determination by arbitration shall include a determination as to payment of the costs of the arbitration and shall be binding upon the parties, who shall not have any right of appeal from such determination.
- 10.8. The negotiations and other settlement efforts of the parties shall, in all respects, be kept confidential and shall be strictly without prejudice. All information provided, documents disclosed or statements made in the course of those negotiations and settlement efforts, including without limitation, any admission, view, suggestion, notice, response, discussion, position or settlement proposal, shall be held in strict confidence by the parties and, unless there is a legal requirement that such information be revealed, it shall not be subject to disclosure through discovery or any other process or relied upon by any party and shall not be admissible into evidence for any purpose, including impeaching credibility, in any subsequent proceedings except as required by law.

**11. NOTICE**

Any demand or notice to be given pursuant to this Agreement shall be properly made and given if made in writing and either delivered to the party for whom it is intended to the address as set out below or sent by prepaid registered mail addressed to such party as follows:

where the Board is the intended recipient:

21 Madawaska Street  
Amprior, Ontario  
K7S 1R6  
Attention: Chief Executive Officer

where the Township is the intended recipient:

2508 Russett Drive  
R.R. #2  
Amprior, Ontario  
K7S 3G8

Attention: CAO/Clerk

where the Town is the intended recipient:

105 Elgin Street W.  
Amprior, ON  
K7S 0A8

Attention: Chief Administrative Officer

Or such other addresses as the parties may from time to time notify in writing, and any demand or notice so made or given shall be deemed to have been properly made or given and received on the day on which it shall have been so delivered or, if mailed, then, in the absence of any interruption in postal service affecting the delivery or handling thereof, on the day following five business days following the date of mailing.

**12. FURTHER ASSURANCES**

12.1. Each party shall execute and deliver such further documents and do such other things as reasonably may be required from time to time to give effect to this Agreement.

**13. WAIVER**

13.1. The failure of any party to this Agreement to enforce any provision or any rights in respect thereof or to insist upon strict compliance or adherence to any term of this Agreement shall not be considered a waiver of such provision, right, term, covenant or obligation or in any way affect the validity of this Agreement or deprive the applicable party of the right to insist upon strict compliance or adherence to that provision, right term, covenant or obligation.

13.2. The exercise of any right under this Agreement shall not preclude or prejudice any party from exercising any other right it may have under this Agreement, irrespective of any previous action or proceeding taken by it hereunder.

13.3. Any waiver by any party of the performance of any provision, right, term, covenant or obligation in this Agreement shall be effective only if it is in writing and notice is provided in accordance with Clause 11 hereof.

**14. NO JOINT VENTURE OR PARTNERSHIP**

14.1. Nothing contained herein shall create or be deemed to create a joint venture or partnership between the parties hereto.

**15. SEVERABILITY**

15.1. If any provision of this Agreement is illegal or unenforceable, such provision shall be deemed to be severable from the remaining provisions of this Agreement and shall not invalidate or render unenforceable the remainder of this Agreement.



16. **AMENDMENTS, MODIFICATION BY WRITTEN AGREEMENT**

- 16.1. No amendment, supplement, waiver or consent provided for by the provisions of this Agreement shall be effective unless in writing and signed by the parties against whom enforcement of the amendment, supplement, waiver or consent is sought.
- 16.2. Without limiting the generality of the foregoing Section 16.1, the parties acknowledge and agree that no amendment or modification of the Agreement shall be effective unless consented to by the Board, the Township Council and the Town Council.

17. **TIME OF ESSENCE**

- 17.1. Time shall be of the essence of this Agreement.

18. **UNAVOIDABLE DELAY**

- 18.1. If there is an Unavoidable Delay in the performance of an act or compliance with a covenant or condition, performance or compliance during the period of Unavoidable Delay shall be excused and the period for the performance or compliance shall be extended for a period equal to the period of the Unavoidable Delay.

19. **GOVERNING LAW**

- 19.1. This Agreement shall be construed under the laws of the Province of Ontario.

20. **ENTIRE AGREEMENT**

- 20.1. The parties acknowledge and agree that this Agreement constitutes the entire agreement between the parties hereto and there are no representations or warranties, oral or otherwise, except as are herein contained.

21. **SUCCESSORS**

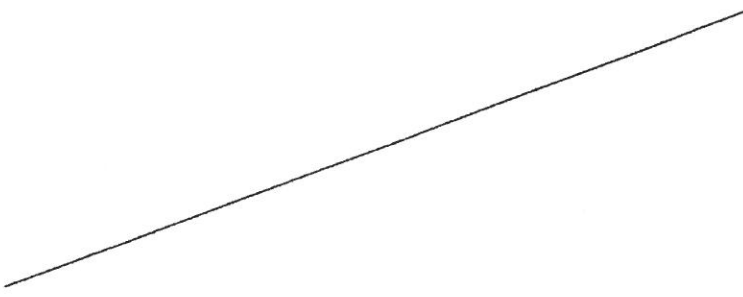
- 21.1. This Agreement shall bind and benefit the parties hereto and the parties' successors.

22. **CAPTIONS**

- 22.1. The captions and headings of this Agreement are for convenience and reference only and shall not affect the interpretation of this Agreement.

23. **INTERPRETATION**

- 23.1. In this Agreement, unless the context requires otherwise, words imputing the singular include the plural, any reference to the Board includes the servants, employees, agents, officers and invitees of the Board and all others over whom the Board might reasonably be expected to exercise control; any reference to the Township includes the servants, employees, agents, officers and invitees of the Township and all others over whom the Township might reasonably be expected to exercise control any reference to the Town includes the servants, employees, agents, officers and invitees of the Town and all others over whom the Town might reasonably be expected to exercise control; person





includes any individual, firm or corporation; hereof, herein, hereunder and similar expressions used in any Section relate to the whole of this Agreement and not that Section only.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement.

Dated at Arnprior, Ontario this      day of      , 2015

**THE ARNPRIOR PUBLIC LIBRARY BOARD**

Per: \_\_\_\_\_  
Name:  
Title: Library Board Chair

Per: \_\_\_\_\_  
Name: Karen DeLuca  
Title: Chief Executive Officer

We have authority to bind the Board

Dated at Arnprior, Ontario, this      day of      , 2015

**THE CORPORATION OF THE TOWNSHIP OF McNAB/BRAESIDE**

Per: \_\_\_\_\_  
Name: Tom Peckett  
Title: Mayor

Per: \_\_\_\_\_  
Name: Lindsey Parkes  
Title: CAO/Clerk

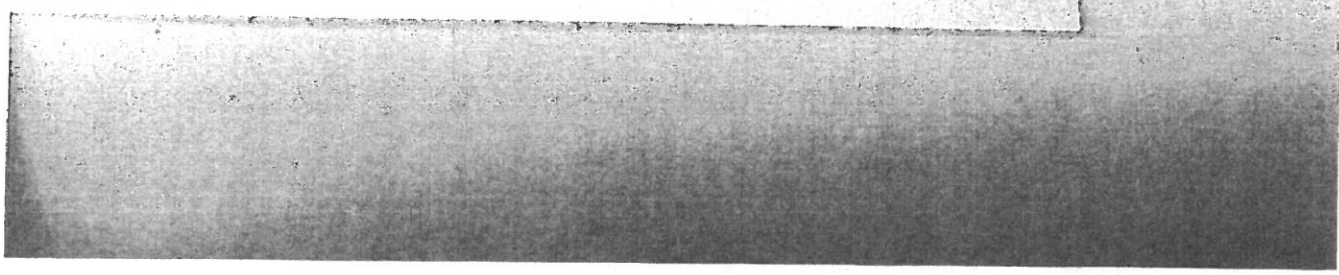
We have authority to bind the Township.

Dated at Arnprior, Ontario, this      day of      , 2015

**THE CORPORATION OF THE TOWN OF ARNPRIOR**

Per: \_\_\_\_\_  
Name: David Reid  
Title: Mayor

Per: \_\_\_\_\_  
Name: Maureen Spratt  
Title: Town Clerk  
We have authority to bind the Town



**SCHEDULE "A"**

1. Township's Baseline Calculation for 2015:

Operating Grant: \$386,415.00

Town Portion: (66.1%): \$255,420.00

Township Portion Before Phase-In (33.9%): \$130,995.00

Township's Baseline Calculation After Phase-in (75% x \$130,995.00) = \$98,246.00

2. Calculation of Estimated Township's Annual Contribution for years 2016 to and including 2020 (subject to Section 5 Adjustments) each year:

<u>Year</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>
Operating Grant	\$390,279.00	\$394,182.00	\$398,124.00	\$402,105.00	\$406,126.00
Town Portion (66.1%)	\$257,974.00	\$260,554.00	\$263,160.00	\$265,791.00	\$268,449.00
Township Portion before Phase-in (33.9%)	\$132,305.00	\$133,628.08	\$134,964.00	\$136,314.00	\$137,677.00
Township Annual Contribution After Phase-In	(80% x \$132,505) \$105,844.00	(85% x \$133,628) \$113,584.00	(90% x \$134,628) =\$121,468.00	(95% x \$136,314) =\$129,498.00	(100% x \$137,677) =\$137,677.00