

This agreement made in triplicate this \_\_\_\_\_ day of \_\_\_\_\_, 202~~10~~.

BETWEEN:

THE CORPORATION OF THE CITY OF OSHAWA

(“OSHAWA”)

- and -

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON

(“CLARINGTON”)

## RECITALS

- 1) Paragraph 1 of section 207 of the *Municipal Act*, R.S.O. 1990, c. M.45 provides that by-laws may be passed by the councils of all municipalities for entering into agreement with any other municipality or person for the use of the fire-fighting equipment, or any of it, of the municipality or of such other municipality or person upon such terms and conditions and for such consideration based on cost as may be agreed upon but that despite any such agreement, no liability accrues to the municipality or person for failing to supply the use of the fire-fighting equipment, or any of it.

Subsection 2(64) of the *Fire Protection and Prevention Act*, 1997, S.O. 1997, c. 4 provides that

- a) A municipality may enter into an automatic aid agreement to provide or receive the initial or supplemental response to fires, rescues and emergencies.
- 2) There are areas within the geographic boundaries of each of Oshawa and Clarington to which a fire department in the other municipality is capable of responding more quickly than any fire department situated in the municipality.

In consideration of the mutual covenants, provisions and conditions contained herein, and for other good and valuable consideration, Oshawa and Clarington covenant and agree as follows:

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## 1.0 DEFINITIONS/ INTERPRETATION

- 1.01 Definitions: Wherever a term set out below appears in the text of this AGREEMENT in capital letters, the term shall have the meaning set out for it in this Section 1.01. Wherever a term below appears in the text of this AGREEMENT in regular case, it shall be deemed to have the meaning ordinarily attributed to it in the English language.
- a) AGREEMENT means this agreement including its recitals and any schedules which form an integral part of it, as amended from time to time.
  - b) AUTOMATIC AID AREA means any or all of Highway 401 between Harmony Road in Oshawa and ~~Holt~~Courtice Road in Clarington, and Highway 418 north between Highway 401 and Highway 2 in Clarington.
  - c) AUTOMATIC AID RESPONSE means the delivery of INITIAL RESPONSE SERVICES by a PARTICIPATING FIRE SERVICE.
  - d) CLARINGTON means The Corporation of the Municipality of Clarington including its successors and assigns, and, where the context allows, its employees, servants and agents.
  - e) 401 EAST means the eastbound lanes of Highway 401 between Harmony Road, exit 419, Oshawa and ~~Holt~~Courtice Road, exit 42~~5~~8 Clarington, and Highway 418 north between Highway 401 and Highway 2, Clarington. ~~Under special circumstances a response in the eastbound lanes may extend beyond Holt Road.~~
  - f) 401 WEST means the westbound lanes of Highway 401 between Courtice Road, Clarington and Harmony Road, Oshawa.
  - g) HOME FIRE CHIEF means the Fire Chief of the HOME MUNICIPALITY.
  - h) HOME FIRE SERVICE means the fire service within the HOME MUNICIPALITY that, but for the provisions of this AGREEMENT, would be responsible for providing INITIAL RESPONSE SERVICES. For those parts of 401 EAST and 401 WEST within the territorial limits of OSHAWA, HOME FIRE SERVICE means Oshawa Fire Services. For those parts of 401 EAST and 401 WEST within the territorial limits of CLARINGTON, HOME FIRE SERVICE means Clarington Emergency and Fire Services.
  - i) HOME MUNICIPALITY means the municipality to which is provided an AUTOMATIC AID RESPONSE.

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- j) INCIDENT means fire, emergencies or dangerous conditions that occurs in an AUTOMATIC AID AREA.
  - k) INITIAL RESPONSE SERVICES for the purpose of this AGREEMENT means the provision of an initial response designed to address the adverse effects of an INCIDENT.
  - l) OSHAWA means The Corporation of the City of Oshawa including its successors and assigns, and, where the context allows, its employees, servants and agents.
  - m) PARTICIPATING FIRE SERVICE means the fire service within the PARTICIPATING MUNICIPALITY with responsibility for providing an AUTOMATIC AID RESPONSE. For those parts of 401 EAST and 401 WEST within the territorial limits of Oshawa, PARTICIPATING FIRE SERVICE means Clarington Emergency and Fire Services. For those parts of 401 EAST and 401 WEST within the territorial limits of Clarington, PARTICIPATING FIRE SERVICE means Oshawa Fire Services.
  - n) PARTICIPATING MUNICIPALITY means the municipality that provides an AUTOMATIC AID RESPONSE.
- 1.02 Gender Plural: All words in this AGREEMENT shall be deemed to include any number or gender as the context requires.
- 1.03 Proper Law: This AGREEMENT shall be interpreted according to the laws of the Province of Ontario.
- 1.04 Headings: Article, section, clause and/or paragraph headings are for reference purposes only and shall not in any way modify or limit the statements contained in the following text.
- 1.05 Legislation: Reference to federal or provincial statutes or regulations or municipal by-laws are deemed to refer to the relevant legislation as amended, including successor legislation.

### 2.0 TERM

- 2.01 Term: The term of the AGREEMENT shall be indefinite and will be reviewed yearly by the participating Fire Chiefs.
- 2.02 Termination: This AGREEMENT may be terminated by either party on sixty (60) days' notice in writing to the other.

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## 3.0 AUTOMATIC AID RESPONSE

- 3.01 AUTOMATIC AID RESPONSE: Upon the occurrence of an INCIDENT, an AUTOMATIC AID RESPONSE shall be provided by the PARTICIPATING FIRE SERVICE to the extent that the PARTICIPATING FIRE SERVICE has equipment and staff available.
- 3.02 Response: Upon the occurrence of an INCIDENT, the HOME FIRE SERVICE shall respond.
- 3.03 Command: When a HOME FIRE SERVICE and a PARTICIPATING FIRE SERVICE respond to an INCIDENT, the Incident Commander of the HOME FIRE SERVICE shall assume responsibility for the overall command of and coordination of operations in respect of the INCIDENT.
- 3.04 Incident Management System: The Incident Management System of the HOME FIRE SERVICE shall be utilized.

## 4.0 COST

- 4.01 No-cost Basis: There shall be no cost to the HOME MUNICIPALITY for the provision of an AUTOMATIC AID RESPONSE.

## 5.0 RELEASE AND INDEMNITY

- 5.01 No Claims: Neither party shall have any claim or demand against the other for detriment, damage, accident or injury, of any nature whatsoever or howsoever caused to any person or property, including any buildings, structures, erections, equipment, material, supplies, motor or other vehicles, fixtures and articles, effects and things in any manner based upon, occasioned by or attributable to the execution of the AGREEMENT or any action taken or things done or maintained by virtue of the AGREEMENT, or the exercise in any manner of rights arising under the AGREEMENT.
- 5.02 Indemnification: Each party covenants and agrees that it shall at all times indemnify and save harmless the other from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted, in any manner based upon, occasioned by or attributable to the execution of the AGREEMENT or any action taken or things done or maintained by virtue of the AGREEMENT, or the exercise in any manner of rights arising under the AGREEMENT, except claims for damage resulting from the negligence of any officer, servant or agent of the other while acting within the scope of his or her duties or employment.

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## 6.0 MISCELLANEOUS

6.01 Notice: Any notice to be given under this AGREEMENT shall be sufficiently given if delivered or if sent by prepaid first class mail and addressed

to OSHAWA at:  
Oshawa Fire Chief  
Oshawa Fire Services  
199 Adelaide Avenue West  
Oshawa, Ontario L1J 7B1

or to CLARINGTON at:

Clarington Fire Chief  
Clarington Emergency and Fire Services  
2430 Highway No.2  
Bowmanville, Ontario L1C 6C8

Receipt of notice shall be deemed on the date of delivery, or five (5) days following the date of mailing of the notice, whichever is applicable. Either party may change its address for notice by giving notice of change of address pursuant to this section.

6.02 Force Majeure/Time: Notwithstanding anything in this AGREEMENT, neither party shall be in default with respect to the performance of any of the terms of this AGREEMENT if any non-performance is due to any force majeure, strike, lock-out, labour dispute, civil commotion, war or similar event, invasion, the exercise of military power, act of God, government regulations or controls, inability to obtain any material or service, or any cause beyond the reasonable control of the party (unless such lack of control results from a deficiency in financial resources). Otherwise, time shall be of the essence of this AGREEMENT and all the obligations contained herein.

6.03 Arbitration: All matters of differences arising between OSHAWA and CLARINGTON in any matter connected with or arising out of this AGREEMENT shall be referred to a single arbitrator, if the parties agree upon the arbitrator's identity. Should the parties be unable to agree upon the identity of an arbitrator, then the matter shall be referred to a single arbitrator, to be appointed by a Justice of the Superior Court of Justice. The arbitrator shall conduct the arbitration pursuant to the Arbitration Act, 1991, S.O. 1991 c. 17 and every award or determination shall be final and binding on the parties and their successors and assigns, and shall not be subject to appeal. The arbitrator shall be allowed unfettered and unlimited discretion to determine in each and every case the solution which best balances the

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competing interests of the parties to the arbitration in accordance with this AGREEMENT, and she or he shall not be bound by any legal precedent in such determination. The arbitrator shall not be bound by the provisions of the Arbitration Act, 1991, S.O. 1991 c. 17 in respect of her or his fees. The arbitrator shall be entitled to award all or part of her or his fees against any party in accordance with the principles which govern an award of costs against a non-successful party in a contested matter before the Superior Court of Justice. In the absence of such an award by the arbitrator, the arbitrator's costs shall be borne equally by both parties, without regard to their involvement in the arbitration.

- 6.04 No Assignment: Neither party shall make any assignment of this AGREEMENT without obtaining the prior consent in writing of the other to such assignment.
- 6.05 Successors: The rights and liabilities of the parties shall enure to the benefit of and be binding upon the parties and their respective successors and approved assigns.
- 6.06 Entire Agreement: This AGREEMENT contains the entire agreement between the parties relating to AUTOMATIC AID RESPONSE and it is agreed that there is no covenant, promise, agreement, condition precedent or subsequent, warranty or representation or understanding, whether oral or written, other than as set forth in this AGREEMENT and this AGREEMENT fully replaces and supersedes any letter, letter of intent, or other contractual arrangement between the parties related to AUTOMATIC AID RESPONSE in existence at the time of execution and delivery of this AGREEMENT. This agreement is not part of the Durham Region Emergency Fire Services Plan [Mutual Aid].
- 6.07 Partial Invalidity: If any article, section, subsection, paragraph, clause or subclause or any of the words contained in this AGREEMENT shall be held wholly or partially illegal, invalid or unenforceable by any court of competent jurisdiction, OSHAWA and CLARINGTON agree that the remainder of this AGREEMENT shall not be affected by the judicial holding, but shall remain in full force and effect. The provisions of this AGREEMENT shall have effect, notwithstanding any statute to the contrary.

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6.08 Waivers: No supplement, amendment or waiver of or under this AGREEMENT shall be binding unless executed in writing by the party to be bound thereby and no waiver by a party of any provision of this AGREEMENT shall be deemed or shall constitute a waiver of any other provision or a continuing waiver unless otherwise expressly provided.

Witness whereof the parties hereto have hereunto affixed their corporate seals duly attested by the proper signing officers in that behalf.

THE CORPORATION OF THE CITY OF OSHAWA

\_\_\_\_\_  
FIRE CHIEF

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK