

Specialized Fire Rescue Agreement

This AGREEMENT made this __1st_ day of June, 2023

BETWEEN:

THE CORPORATION OF THE CITY OF OSHAWA
("OSHAWA")

-and-

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON
("CLARINGTON")

RECITALS

1. Subsection 2(5) of the *Fire Protection and Prevention Act, 1997* provides that a municipality may enter into an agreement to:
 - (a) provide such fire protection services as may be specified in the agreement to lands or premises that are situated outside the territorial limits of the municipality, and;
 - (b) receive such fire protection services as may be specified in the agreement from a fire department situated outside the territorial limits of the municipality.

IN CONSIDERATION OF the mutual covenants, provisions and conditions contained herein, the receipt and sufficiency of which each of the parties hereby irrevocably acknowledges, and for other good and valuable consideration, OSHAWA and CLARINGTON agree as follows:

1.0 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 Specialized Fire Rescue Agreement including the recitals and any schedules which form an integral part of it, as amended from time to time.
 - (b) INCIDENT means an emergency operation that occurs within the geographic limits of CLARINGTON, which involves Clarington Emergency and Fire Services as the initial responder.
 - (c) INITIAL RESPONSE SERVICES means the provision of an initial response to an INCIDENT by Clarington Emergency and Fire Services designed to address the adverse effects of the INCIDENT.
 - (d) OSHAWA means The Corporation of the City of Oshawa. Oshawa Fire Services is OSHAWA's fire services department.
 - (e) RESPONSE means the delivery of SPECIALIZED RESCUE SERVICES by Oshawa Fire Services pursuant to a request by Clarington Emergency and Fire Services' Fire Chief or his/her designate.

(f) **SPECIALIZED RESCUE SERVICES** means operations level services as defined by the National Fire Prevention Association, which for greater clarity may involve elevated rope rescue, confined space rescue, trench rescue, building collapse stabilization. For hazardous materials response services, defined by the Ontario Fire Marshall, National Fire Protection Association, which for greater clarity may involve personal protection equipment, mass decontamination, technical decontamination, product control, detection monitoring and public safety sampling, victim rescue and recovery, and illicit laboratory incidents.

(g) **CLARINGTON** means The Corporation of the Municipality of Clarington. Clarington Emergency and Fire Services is CLARINGTON's fire services department.

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 this AGREEMENT shall be for two (2) years commencing on April 20, 2023 and ending on April 19, 2025.

2.02 Commencing April 20, 2025, this AGREEMENT shall automatically renew every year for an additional term of one (1) year until the earlier of the following occurs: (a) April 19, 2032; or (b) either party provides thirty (30) days written notice terminating the Agreement.

2.03 OSHAWA shall be entitled to payment of all costs incurred pursuant to this AGREEMENT prior to the date of termination.

3.0 **UPON OCCURRENCE OF AN INCIDENT**

3.01 **Clarington Emergency and Fire Services:** Upon the occurrence of an INCIDENT, Clarington Emergency and Fire Services shall respond in the first instance. The Clarington Emergency and Fire Services' Fire Chief or his/her designate may, in his/her discretion at any time, make a request for Oshawa Fire Services to provide SPECIALIZED RESCUE SERVICES. The Parties acknowledge and agree that nothing in this AGREEMENT shall relieve or release Clarington Emergency and Fire Services of its responsibility to respond with respect to an INCIDENT.

3.02 **Oshawa Fire Services:** Upon receiving a request from the Clarington Emergency and Fire Services' Fire Chief or his/her designate for SPECIALIZED RESCUE SERVICES, Oshawa Fire Services shall provide a RESPONSE, subject to the availability of Oshawa Fire Services' resources. Accordingly, the Parties acknowledge and agree that Oshawa Fire Services shall have no obligation to respond in circumstances involving equipment failure or malfunction or attendance by Oshawa Fire Services at another INCIDENT or emergency

situation occurring within or outside of the geographic limits of OSHAWA or any other like circumstance.

- 3.03 Command: When Oshawa Fire Services and Clarington Emergency and Fire Services provide a simultaneous or joint response to an INCIDENT, the Incident Commander for Clarington Emergency and Fire Services shall be in charge of and shall assume overall responsibility for the command of the INCIDENT. However, Oshawa Fire Services shall have full autonomy with respect to its provision of SPECIALIZED RESCUE SERVICES. Oshawa Fire Services will communicate through the Clarington Emergency and Fire Services Incident Commander while responding to an INCIDENT.
- 3.04 Incident Management: The Parties acknowledge and agree that the incident management system shall be utilized by Oshawa Fire Services and Clarington Emergency and Fire Services with respect to an INCIDENT.

4.0 COSTS

- 4.01 If Oshawa Fire Services attends to the site of an INCIDENT and provides SPECIALIZED RESCUE SERVICES, CLARINGTON shall pay to OSHAWA the following amounts within sixty (60) days of receiving an invoice from OSHAWA:
- (a) The current remuneration rate for fire response services on provincial highways as established by the Ministry of Transportation (Ontario), plus HST, for the first hour or part thereof wherein SPECIALIZED RESCUE SERVICES are provided by Oshawa Fire Services, per piece of equipment;
 - (b) The current remuneration rate for fire response services on provincial highways as established by the Ministry of Transportation (Ontario), plus HST, for each additional half hour or part thereof, after the first hour, wherein SPECIALIZED RESCUE SERVICES are provided by Oshawa Fire Services, per piece of equipment;
 - (c) The replacement cost for all consumables belonging to Oshawa Fire Services that are used or damaged in providing the RESPONSE;
 - (d) Oshawa Fire Services' backfill staffing costs, inclusive of overtime costs, as per the current collective agreement governing Oshawa Fire Services, which shall apply to all positions and firefighter classes; and,
 - (e) Two Thousand Dollars (\$2000.00).
- 4.02 If Oshawa Fire Services attends to the site of an INCIDENT but provides no SPECIALIZED RESCUE SERVICES, CLARINGTON shall pay to OSHAWA the current remuneration rate for fire response services on provincial highways as established by the Ministry of Transportation (Ontario), plus HST, only with respect to the first hour or part thereof, per piece of equipment, with such payment being due within sixty (60) days of CLARINGTON receiving an invoice from OSHAWA.

5.0 RELEASE AND INDEMNITY

- 5.01 No Claims: Neither party shall have any claim, demand, action, charge, cost, damage, liability, loss, proceeding, suit or expense (including legal fees) against the other party (inclusive of its respective fire services department, elected officials, employees, servants and agents) for detriment, damage, loss, accident or injury of any nature whatsoever or howsoever caused to any person or property, including employees, 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 the exercise in any manner of rights arising under the AGREEMENT (“Claim(s)”), except with respect to such Claim(s) related to or resulting from the negligent act or omission of the other party (inclusive of its respective fire services department, elected officials, employees, servants and agents). Paragraph 5.01 shall survive termination of this AGREEMENT.
- 5.02 Indemnification: Each party shall at all times indemnify and save harmless the other party (inclusive of its respective fire services department, elected officials, employees, servants and agents) from and against any Claim(s) made against the other party only if and to the extent that such Claim(s) is caused by or results from the negligent act or omission of the first party (inclusive of its respective fire services department, elected officials, employees, servants and agents). Paragraph 5.02 shall survive termination of this AGREEMENT.
- 5.03 Insurance: For the duration of this AGREEMENT, each party shall procure and maintain a General Liability (GL) insurance policy written on an occurrence basis with a liability limit of not less than fifteen million dollars (\$15,000,000) in respect of any one accident or occurrence with the other party named on the policy as Additional Insured without subrogation, and shall contain a cross liability and/or severability clause which protects the other party to the same extent as if it was separately insured. The policy coverage shall include, but is not limited to, third party bodily injury including death, property damage, personal injury, products and completed operations. The policy coverage shall be taken out with an insurance company licensed to carry on the business of insurance in Ontario and shall be endorsed to provide that the other party is to receive not less than sixty (60) days’ notice in writing in advance of any cancellation, material amendment or change restricting coverage. Upon execution of the AGREEMENT, each party shall verify that valid insurance coverage as set out in this AGREEMENT is in place by submitting an Insurance Certificate to the other party that must be acceptable in all respects to the other party.

6.0 MISCELLANEOUS

- 6.01 Notice: Notice or communication to be given pursuant to this AGREEMENT shall be in writing, and delivered either personally, by prepaid courier or by facsimile, to the following address, or to such other address as may be designated by such party by notice given to the other party in accordance with this section:

In the case of Oshawa, to:

Oshawa Fire Services
Attn.: Oshawa Fire Chief
199 Adelaide Avenue West
Oshawa ON, L1J 7B1

Facsimile: 905-433-0276

In the case of Clarington, to:

Clarington Emergency and Fire Services
Attn: *Clarington Fire Chief*
2430 Highway 2
Bowmanville, ON L1C 6C8

Facsimile: 905-623-4840

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: 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 the 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 material or service, or any cause beyond the reasonable control of the party. Otherwise, time shall be of the essence in this AGREEMENT and with respect to all the obligations contained herein.
- 6.03 Arbitration: All disputes 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 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 competing interest of the parties to the arbitration in accordance with this AGREEMENT, and she or he shall not be bound by the provisions of the *Arbitration Act, 1991*, S.O. 1991, c. 17 in respect of his or her 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: This AGREEMENT may not be assigned.
- 6.05 No Successors: This AGREEMENT shall only enure to the benefit of and be binding upon the parties.
- 6.06 MFIPPA: This AGREEMENT may be disclosed in response to a request for records pursuant to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, Chapter M.56, as amended from time to time.
- 6.07 Entire Agreement: This AGREEMENT contains the entire agreement between the parties relating to the SPECIALIZED RESCUE SERVICES identified within this AGREEMENT 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 previous agreements in existence at the time of execution and delivery of this AGREEMENT. This AGREEMENT is not part of the Durham Region Mutual Aid Plan.

6.08 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 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.

6.09 Waiver: No supplement, amendment or waiver of or under this AGREEMENT (excepting notice of change of address as contemplated in section 6.01) shall be binding unless executed in writing by the party or parties 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.

6.10 No Joint Venture: This AGREEMENT shall not be construed as creating a joint venture between OSHAWA and CLARINGTON.

IN WITNESS WHEREOF each of the parties hereto has affixed its corporate seal by the hands of its proper officers on the date inscribed on the first page of this Agreement.

SIGNED, SEALED AND DELIVERED) **THE CORPORATION OF THE CITY**
) **OF OSHAWA**
)
)
)
) _____
) Name: Derrick Clark
) Title: Fire Chief
)
) *I have authority to bind the City*
) *Pursuant to section 63 of the By-law 29-*
) *2009, as amended.*

) **THE CORPORATION OF THE MUNICIPALITY**
) **OF CLARINGTON**
)
)
)
) _____
) Name: Adrian Foster
) Title: Mayor
)
)
) _____
) Name: June Gallagher
) Title: Municipal Clerk
)
)
) *I have the authority to bind the Municipality*