

THIS Agreement is made as of the 24<sup>th</sup> day of July, 2023.

BETWEEN:

**THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT**  
1229 Esquimalt Road,  
Victoria, B.C.  
V9A 3P1

(hereinafter called "Esquimalt")

OF THE FIRST PART

AND:

**THE CORPORATION OF THE CITY OF VICTORIA**  
1 Centennial Square  
Victoria, B.C.  
V8W 1P6

(hereinafter called "Victoria")

OF THE SECOND PART

**WHEREAS** Esquimalt Fire Rescue Services has established a specialized Confined Space Rescue Service that is capable of servicing their municipality;

**AND WHEREAS** Esquimalt and Victoria wish to establish the terms and conditions under which Esquimalt's Confined Space Rescue Service will be provided to Victoria's employees when working within the boundaries of the Township of Esquimalt;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual promises exchanged herein, and for other good and valuable consideration, the parties agree as follows:

## **1.0 DEFINITIONS**

**1.1** In this Agreement:

- (a) **"Confined Space"** means an area, other than an underground working that:
- I. is enclosed or partially enclosed;
  - II. is not designated or intended for

continuous human occupancy;

- III. has limited or restricted means of entry or exit that may complicate the provision of first aid, evacuation, rescue or other emergency response service; and
  - IV. is large enough and so configured that a worker could enter to perform assigned work.
- (b) **“Confined Space Rescue”** means rescue of persons from a Confined Space.
  - (c) **“Confined Space Rescue Services”** means the services provided by Esquimalt under the terms of this Agreement.
  - (d) **“Rescue Available Service”** means that Esquimalt Fire Rescue Services personnel trained in Confined Space Rescue are on duty and available to respond and perform a Confined Space Rescue but are not necessarily present at or near the Confined Space.
  - (e) **“Rescue Stand-by Service”** means that Esquimalt Fire Rescue Services personnel trained in Confined Space Rescue are deployed to and remain on stand-by at or near a Confined Space that has a high hazard classification while City of Victoria employees are inside that Confined Space.
  - (f) **“Term”** means the term specified in section 2.1 and includes the renewal term if the parties mutually agree to the renewal.

## **2.0 TERM**

**2.1** This Agreement shall be for a five-year term commencing the 24<sup>th</sup> day of July, 2023 and terminating on the 24<sup>th</sup> day of July, 2028. This Agreement may be renewed for a second five-year term commencing July 25<sup>th</sup>, 2028, and terminating July 25<sup>th</sup>, 2033, through mutual agreement of the parties.

**2.2** Either party may terminate this Agreement at any time upon sixty (60) days' notice in writing to the other party.

## **3.0 CONFINED SPACE RESCUE SERVICE**

**3.1** Esquimalt agrees to provide Confined Space Rescue Services within the territorial boundaries of the Township of Esquimalt consisting of the following:

- (a) Rescue Available Service, in accordance with the terms of this Agreement, for Confined Space work performed by Victoria employees in low and moderate hazard Confined Spaces within Esquimalt;

- (b) Rescue Stand-by Service, at the request of Victoria in accordance with the terms of this Agreement, for Confined Space Work performed by Victoria employees in high hazard Confined Spaces.
- 3.2** Esquimalt will provide Confined Space rescue services under this Agreement in accordance with the standards it employs for all other Confined Space rescue services within Esquimalt, unless a variance of such standards is agreed upon between the parties.
- 3.3** The City of Victoria will perform hazard assessments for all of the confined spaces entered in Esquimalt in accordance with the Occupational Health and Safety Regulations under the Workers Compensation Act (British Columbia).
- 3.4** Esquimalt will provide all equipment and personnel necessary for the provision of Confined Space rescue services under this Agreement and will ensure that all personnel are fully trained in the provision of Confined Space rescue services.
- 3.5** Esquimalt will provide Rescue Available Service only, for all Confined Spaces with a low or moderate hazard classification as determined by Victoria.
- 3.6** Prior to employees from the City of Victoria entering into a confined space within the Township of Esquimalt, Victoria shall contact the on-duty Captain to confirm that Esquimalt Fire Rescue Services is available to provide Confined Space Rescue Service. The on-duty Captain shall further be advised of the following:
- Time of entry
  - Location of the Confined Space
  - Number of personnel entering the Confined Space
  - Approximate time of exiting the confined space
  - Name and location of the standby person from Victoria
  - Phone number of the contact person in contact with the standby person
  - Location of the Confined Space entry permit
  - Whether Rescue Stand-by Service is required
- 3.7** City of Victoria personnel shall not enter the Confined Space unless all of the requirements listed in 3.6 have been met and confirmation received that Esquimalt Fire Rescue is available to provide the requested Confined Space Rescue Service.
- 3.8** In the event the City of Victoria personnel have entered a Confined Space and Esquimalt Fire Rescue Services receives and responds to a call for emergency service elsewhere, such that it is no longer able to respond to a call for a Confined Space Rescue, then the on duty Captain will call the Victoria contact person to advise that Rescue Available Service is no longer available. The contact person will notify the on-site standby person and all Victoria personnel shall exit the Confined Space until such time as they are advised by Esquimalt Fire Rescue Services that Rescue Available Service is again available.

- 3.9** Victoria's contact person shall advise Esquimalt Fire Rescue Services when the entry is completed and all personnel are out of the Confined Space.
- 3.10** Victoria will, immediately upon becoming aware of a Confined Space rescue emergency involving Victoria employees, notify Fire Dispatch by calling 911 to request Esquimalt Fire Rescue Services and provide details of the incident.

#### **4.0 FEES**

- 4.1** During the Term of this Agreement, Victoria agrees to pay to Esquimalt the following fees for Confined Space rescue services provided to Victoria under this Agreement:
- (a) No fee shall be payable for Rescue Available Services unless Esquimalt is required to respond to an incident where a Confined Space Rescue may be required. In that case Esquimalt's cost of providing response services will be charged back to Victoria on a fee for service basis in accordance with the current Esquimalt / IAFF 4264 Collective Agreement regarding overtime rates for emergency incident call out of personnel. It is recognized that this will encompass a callout for 5 staff to backfill the crew that responds to the rescue in addition to any further personnel required to assist in the rescue; callout is a minimum 3 hours.
  - (b) For Rescue Stand-by Services, Esquimalt's cost of providing services will be charged back to Victoria on a fee for service basis in accordance with the current Esquimalt / IAFF 4264 Collective Agreement regarding overtime rates for emergency incident call out of personnel. It is recognized that this will encompass a callout for 5 staff to backfill the crew that provides Rescue Stand-by Services in addition to any further personnel required to assist in the event a Confined Space Rescue is required; callout is a minimum 3 hours.
  - (c) Expenses related to Esquimalt Fire Department equipment that is damaged or destroyed during the provision of Confined Space rescue operations and/or any specialized equipment and supplies required will be borne by Victoria.

#### **5.0 INDEMNITY**

- 5.1** Esquimalt agrees that it will indemnify and save harmless Victoria from and against any claims, suits, actions, causes of actions, costs, damages or expenses of any kind that result from:
- (a) the negligence of Esquimalt and its employees, contractors and agents in the provision of services under this Agreement; or
  - (b) a breach of this Agreement by Esquimalt.

**5.2** Victoria agrees that it will indemnify and save harmless Esquimalt from and against any claims, suits, actions, causes of actions, costs, damages or expenses of any kind that result from:

- (a) the negligence of Victoria and its employees, contractors and agents in the provision of services under this Agreement; or
- (b) a breach of this Agreement by Victoria.

## **6.0 GENERAL PROVISIONS**

### **6.1 Notice**

It is hereby mutually agreed that any notice required to be given under this Agreement will be deemed to be sufficiently given if:

- (a) delivered at the time of delivery; and
- (c) mailed from any government post office in the Province of British Columbia by prepaid registered mail addressed as follows:

if to Esquimalt:

1229 Esquimalt Road  
Victoria, B.C. V9A 3P1  
Attention: Municipal Clerk

if to Victoria:

1 Centennial Square  
Victoria, B.C. V8W 1P6  
Attention: City Clerk

Unless otherwise specified herein, any notice required to be given under this Agreement by any party will be deemed to have been given if mailed by prepaid registered mail, or delivered to the address of the other parties set forth on the first page of this Agreement or at such other addresses as the other parties may from time to time direct in writing, and any such notice will be deemed to have been received if mailed 72 hours after the time of mailing and, if delivered, upon the date of delivery. If normal mail service or facsimile service is interrupted by strike, slow down, force majeure or other cause, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice must utilize any other such services which have not been so interrupted or must deliver such notice in order to ensure prompt receipt thereof.

## **6.2 Time**

Time is to be the essence of this Agreement.

## **6.3 Binding Effect**

This Agreement will ensure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees.

## **6.4 Waiver**

The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

## **6.5 Headings**

Section and paragraph headings are inserted for identification purposes only and do not form part of this Agreement.

## **6.6 Language**

Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.

## **6.7 Cumulative Remedies**

No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

## **6.8 Law Applicable**

This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

## **6.9 Relationship of Parties**

No provision of this Agreement shall be construed to create a partnership or joint venture relationship, an employer-employee relationship, a landlord-tenant or a principal-agent relationship.

## **6.10 Amendment**

This Agreement may not be modified or amended except by the written agreement of the parties.

### **6.11 Integration**

This Agreement contains the entire agreement and understanding of the parties with respect to the matters contemplated by this Agreement and supersedes all prior and contemporaneous agreements between them with respect to such matters.

### **6.12 Survival**

All representations and warranties set forth in this Agreement and all provisions of this Agreement, the full performance of which is not required prior to a termination of this Agreement, shall survive any such termination and be fully enforceable thereafter.

### **6.13 Notice of Violations**

Each party shall promptly notify the other party of any matter which is likely to continue to give rise to a violation of its obligations under this Agreement.

### **6.14 Settlement**

The parties acknowledge that they have a common goal of providing public service and will attempt to settle any differences arising in the administration of this Agreement amicably through discussion in good faith with a view to providing quality public service at a reasonable cost.

### **6.15 Arbitration**

- (a) Disputes not capable of resolution through discussion under 6.14 shall be submitted to arbitration pursuant to the *Arbitration Act*, SBC 2020 c. 17, to a single arbitrator appointed jointly by the parties.
- (b) No one shall be nominated to act as an arbitrator who is in any way financially interested in this Agreement or in the business affairs of either party.
- (c) If the parties cannot agree on the choice of any arbitrator each party shall select a nominee and the nominees shall jointly appoint an arbitrator.
- (d) The laws of the Province of British Columbia shall govern this Agreement and any arbitration or litigation in respect hereof.
- (e) The award of the arbitrator shall be final and binding upon the parties.

## 7.0 COUNTERPART CLAUSE

This Agreement may be signed in counterpart that

- (a) have the same effect as if the parties had all signed the same documents;
- (b) will be construed together to be an original document; and
- (c) will constitute one and the same agreement.

**IN WITNESS WHEREOF** the parties hereto have set their hands and seals as of the day and year first above written.

Executed by **THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT** this \_\_\_\_ day of \_\_\_\_\_, 2023:

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Authorized Signatory

Executed by **THE CORPORATION OF THE CITY OF VICTORIA** this \_\_\_\_ day of \_\_\_\_\_, 2023:

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Authorized Signatory

**END OF DOCUMENT**