



Governance and Priorities Committee Report

For the June 4, 2015 Meeting

To: Governance and Priorities Committee **Date:** May 29, 2015
From: Brad Dellebuur, Acting Assistant Director, Transportation and Parking Services
Subject: Confined Space Rescue Agreement with The Township of Esquimalt

The purpose of this report is to receive Council approval to extend the existing agreement with the Township of Esquimalt for their Fire Department to provide Confined Space Rescue Service to City of Victoria employees when working on the water distribution system within the boundaries of the Township of Esquimalt.

The City of Victoria owns and operates the water distribution system that provides service to the residents and businesses in the Township of Esquimalt. As part of this system, there are five primary, and numerous secondary, confined spaces City staff are required to enter periodically to conduct system maintenance. As part of WorkSafeBC requirements, the City of Victoria must have an agency provide Confined Space Rescue service. The City of Victoria's Fire Department provides this service for confined spaces within the City of Victoria. Esquimalt Fire Department provides this service in their municipality.

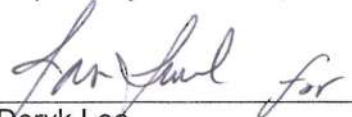
Esquimalt's Fire Department has been providing this service in Esquimalt since 2011. The service consists of being on standby when required, and having trained staff on shift when City staff are required to enter these spaces. There is no charge for the stand-by service; the City of Victoria only pays a fee if there is a rescue incident (no incidents 2011-2014).

The existing agreement expired in June 2014, however, both parties wish to extend the agreement (attached) to June 30, 2019.


Recommendation:

That Council authorize staff to execute an agreement with the Corporation of Esquimalt, for their Fire Department to continue to provide Confined Space Rescue Service to the City of Victoria's employees when working on the water distribution system within the boundaries of the Township of Esquimalt.

Respectfully submitted,



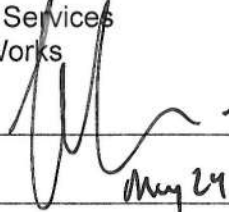
Deryk Lee
Manager
Underground Utilities Operations
Engineering and Public Works



Brad Dellebuur
A/Assistant Director
Transportation & Parking Services
Engineering and Public Works

Report accepted and recommended by the City Manager:

Date: _____


May 29, 2015

THIS Agreement is made as of the ____ day of June, 2015.

BETWEEN:

THE CORPORATION 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 on June 10, 2011, Esquimalt and Victoria entered in to an agreement 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 (hereafter the "**2011 Agreement**");

AND WHEREAS the 2011 Agreement expired on June 30, 2014 but both Esquimalt and Victoria wish to extend it for a further five year period;

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 EFFECTIVE DATE

The provisions of this Agreement are effective as of July 1, 2014 (the "**Effective Date**"), notwithstanding the date of execution of this Agreement by the parties.

2.0 EXTENSION

Pursuant to section 2.1 of the 2011 Agreement, the parties agree to extend the operation of the 2011 Agreement by five years from the Effective Date, expiring on June 30, 2019.

3.0 RATIFICATION

Except for the extension of the term in accordance with section 2.0 of this Agreement, the parties ratify and confirm the terms of the 2011 Agreement and agree to continue to operate in accordance with all the terms of the 2011 Agreement.

4.0 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 June, 2015)
)
____)
Authorized Signatory)
)
____)
Authorized Signatory)

Witness

Executed by **THE CORPORATION OF**)
THE CITY OF VICTORIA this ____ day)
of June, 2015)
)
____)
Authorized Signatory)
)
____)
Authorized Signatory)

Witness

THIS Agreement is made as of the 10th day of June, 2011.

BETWEEN:

THE CORPORATION 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 the Esquimalt Fire Department has established a specialized Confined Space Rescue Service that is capable of servicing the Township of Esquimalt;

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 is enclosed or partially enclosed, is not designated or intended for continuous human occupancy, 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, is large enough and so configured that a worker could enter to perform assigned work.

- (b) **"Confined Space Rescue"** means rescues of persons from Confined Spaces.
- (c) **"Rescue Available Service"** means personnel trained in Confined Space Rescue are on duty and available but are not necessarily present at or near the Confined Space and are not otherwise committed to activities that would preclude a Confined Space rescue response.
- (d) **"Rescue Stand-by Service"** means personnel trained in Confined Space Rescue are on duty and present at or near the Confined Space and are not available for other emergency duties.

2.0 TERM

- 2.1 This Agreement shall be for a 36 month term commencing July 1st, 2011 and terminating June 30th, 2014. This agreement may be extended 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 the following service to Victoria within the territorial boundaries of the Township of Esquimalt:
 - (a) Rescue Available Service, in accordance with the terms of this Agreement, for all Confined Space work assessed by Victoria as low or moderate hazard; and
 - (b) Rescue Stand-by Service, upon request, in accordance with the terms of this Agreement, for all Confined Space work assessed by Victoria as requiring such service.
- 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, provided however that the Confined Space rescue response team deployed under the Agreement shall consist of not less than five persons trained in Confined Space Rescue.
- 3.3 The City of Victoria will provide hazard assessments for all of the confined spaces entered in Esquimalt classifying them as low, moderate, or high hazard.

- 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.
- 3.5 Esquimalt will provide "Rescue Available Service" only for all low and moderate hazard classification Confined Spaces.
- 3.6 Prior to Victoria employees entering into a Confined Space within the Township of Esquimalt, Victoria shall contact the Esquimalt on duty Assistant Chief to confirm the Esquimalt Fire Rescue is available to provide:
- (a) Rescue Available Service for work in Confined Spaces classified under section 3.3 as a low or moderate hazard Confined Space; or
 - (b) Rescue Stand-by Service for work in Confined Spaces where such service is being requested by Victoria.
- 3.7 Victoria shall provide the following information to the Esquimalt on duty Assistant Chief:
- 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
- 3.8 Victoria personnel shall not enter the Confined Space unless all of the requirements listed in section 3.7 have been met and Esquimalt has confirmed that Esquimalt Fire Rescue is available to provide the necessary services in accordance with section 3.1.
- 3.9 In the event the Victoria personnel have entered a low or moderate hazard Confined Space and Esquimalt Fire Rescue receives and responds to a separate call for service such that it can no longer provide the Rescue Available Service, then the Esquimalt on duty Assistant Chief 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 that coverage is again available.
- 3.10 In the event the Victoria personnel have entered a Confined Space (section 3.6(b)), Esquimalt shall not discontinue to provide the Rescue Stand-by Service until and unless all Victoria personnel have exited the Confined Space.

- 3.11 The Victoria contact person shall advise Esquimalt Fire Rescue when the entry is completed and all personnel are out of the Confined Space.
- 3.12 Victoria will, immediately upon becoming aware of a Confined Space emergency involving Victoria employees, notify Saanich Fire Dispatch at (250) 475-6155 to request Esquimalt Fire Rescue and provide details of the incident.
- 3.13 Despite any other term of this Agreement:
- (a) Esquimalt does not guarantee the availability of Confined Space Rescue services at all times; and
 - (b) Esquimalt's on-duty Assistant Chief may, at any time, refuse to make Confined Space Rescue services available to Victoria or, after deploying Esquimalt Fire Rescue personnel to provide Confined Space Rescue services, re-assign Esquimalt Fire Rescue personnel to other duties.
 - (c) Section 3.13 (b) would conform to the requirements of section 3.10 in the event such action is required.

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 Service unless there is a rescue incident in which case, Victoria shall pay to Esquimalt, on a fee for service basis, Esquimalt's costs calculated in accordance with the current Esquimalt / IAFF 4264 Collective Agreement regarding overtime rates for emergency incident call out of personnel, based on a call out of a crew of five to backfill the crew that responds to the rescue incident for a minimum of three hours and any further personnel required to assist in the actual rescue.
 - (b) Victoria shall pay to Esquimalt for Rescue Stand-by Service, on a fee for service basis, Esquimalt's costs calculated in accordance with the current Esquimalt / IAFF 4264 Collective Agreement regarding overtime rates for emergency incident call out of personnel, based on a call out of a crew of five to backfill the crew providing Rescue Stand-by Service for a minimum of three hours and reasonable costs that are related to the callout of any additional personnel that are required to assist in the event of a rescue being required.
 - (c) Except for losses due to negligence of Esquimalt or its employees, Victoria shall reimburse Esquimalt for Esquimalt Fire Department

equipment that is damaged or destroyed, or any specialized equipment and supplies required, during the provision of Confined Space rescue operations of Victoria employees under this Agreement.

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
- (b) 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: Corporate Administrator

if to Victoria:

1 Centennial Square
Victoria, B.C. V8W 1P6
Attention: Municipal 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 sent by facsimile transmission, 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 or faxed, 72 hours after the time of mailing or faxing 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 of the essence to this Agreement.

6.3 Binding Effect

This Agreement will enure 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 *Commercial Arbitration Act*, R.S.B.C. 1996, c. 55, 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.

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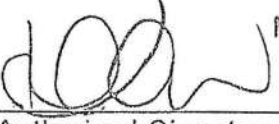
Executed by THE CORPORATION OF
THE TOWNSHIP OF ESQUIMALT this
11th day of July, 2010: ML


Authorized Signatory

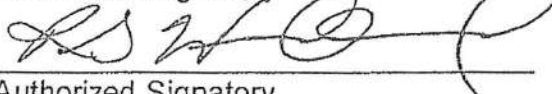

Authorized Signatory


Witness

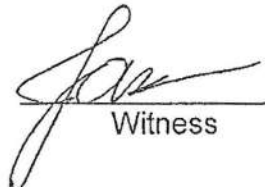
Executed by THE CORPORATION OF
THE CITY OF VICTORIA this 10th day
of June, 2010: RN


Authorized Signatory

MAYOR DEAN FORTIN
#1 Centennial Square
Victoria BC V8W 1P6


Authorized Signatory

Robert G. Woodland
Corporate Administrator
City of Victoria
#1 Centennial Square
Victoria BC V8W 1P6


Witness

END OF DOCUMENT