

TRENCH RESCUE SERVICES AGREEMENT

This Agreement made this ____ day of ____ 2017

BETWEEN:

THE CORPORATION OF THE CITY OF BURLINGTON

hereinafter referred to as "Burlington"

-and-

THE CORPORATION OF THE CITY OF MISSISSAUGA

hereinafter referred to as "Mississauga"

WHEREAS pursuant to the provisions of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c.4, as amended 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 limit 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;

AND WHEREAS Burlington wishes to receive rescue and emergency services in the form of technical trench rescue services from Mississauga (hereinafter the "Parties");

AND WHEREAS Mississauga has agreed to provide technical trench rescue services, subject to the terms and conditions as set out in this agreement;

IN CONSIDERATION of the covenants and agreements hereinafter contained, the parties covenant and agree that:

1. Definitions

- a) **"Act"** shall mean the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c.4, as amended;
- b) **"Agreement"** shall mean this agreement and all schedules and documents incorporated in it by reference as the same may be amended from time to time;
- c) **"Burlington Fire Department"** shall mean Burlington's Fire and Emergency Services established pursuant to the *Act*;
- d) **"Council"** shall mean the Council for Mississauga;
- e) **"Equipment"** shall mean all technical trench rescue apparatus and technical trench rescue equipment owned and/or operated by Mississauga;

- f) **“Fire Chief”** shall mean the fire chief for Mississauga appointed pursuant to the provisions of the *Act*;
- g) **“Joint Fire Communications Centre” (JFCC)** shall mean the operational call centre for Mississauga that receives fire and emergency calls and dispatches fire apparatus and personnel for the City of Brampton’s, City of Mississauga’s and Town of Caledon’s fire stations; and
- h) **“Mississauga Fire and Emergency Services”** shall mean Mississauga’s Fire and Emergency Services established pursuant to the *Act*;
- i) **“Operational Support”** shall mean operational support as further described in Schedule B of this *Agreement*;
- j) **“Trench Rescue Area”** shall mean the geographic area described by the boundaries illustrated in Schedule "A" of this *Agreement*;
- k) **“Trench Rescue Services”** shall mean services operating at a technical level as per the *NFPA 1670 – Standard on Operations and Training for Technical Search and Rescue Incidents* with respect to incidents located both inside and outside a trench or excavation as further described in Schedule B to this *Agreement*;

2. Term and Renewal

- 2.1 The term of this *Agreement* shall be for a period of five (5) years commencing on _____ and terminating on _____.
- 2.2 The *Agreement* shall automatically renew, for one (1) further term of five (5) years unless written notice is given by either Party six (6) months before the expiry date of the term of the Party’s intention not to renew the *Agreement*.

3. Trench Rescue Services

- 3.1 Subject to the terms of this *Agreement*, *Mississauga Fire and Emergency Services* shall be responsible for providing *Trench Rescue Services* in the *Trench Rescue Area*.
- 3.2 All requests for *Trench Rescue Services* shall be made by Burlington to the *Joint Fire Communication Centre*. In the event that Mississauga cannot accept a request for *Trench Rescue Services*, the *Fire Chief* or *Joint Fire Communication Centre* representative shall inform Burlington at the time of request that the *Trench Rescue Services* cannot be provided.
- 3.3 Notwithstanding section 3.1 of this *Agreement*, the nature, type, scope and amount of the *Trench Rescue Services* provided by Mississauga shall be determined by the *Fire Chief* in which shall include but not be limited to the ability to:

- (a) accept or refuse to provide *Trench Rescue Services*;
 - (b) cease, alter, discontinue or suspend *Trench Rescue Services* provided at any time; or
 - (c) determine the priority of providing *Trench Rescue Services*.
- 3.4 The *Fire Chief* may delegate any or all of his or her responsibilities under this *Agreement*, subject to the provisions of the *Act*.
- 3.5 Where the *Fire Chief* accepts a request for *Trench Rescue Services*, *Mississauga Fire and Emergency Services* shall be responsible for:
- (a) providing *Trench Rescue Services*; and/or
 - (b) dispatching Equipment and firefighters as promptly as possible to answer calls for *Trench Rescue Services* as per the relevant policies and procedures of the *Mississauga Fire and Emergency Services*.
- 3.6 Notwithstanding Section 3.3, where *Mississauga Fire and Emergency Services* is providing *Trench Rescue Services*, the Parties shall cooperate with each other and operate under a unified command system. This system will consist of *Burlington Fire Department* taking a supervisory role at the location where the *Trench Rescue Services* is required by providing updates, direction and support to *Mississauga Fire and Emergency Services*
- 3.7 *Mississauga Fire and Emergency Services* shall not withdraw any *Trench Rescue Services* that has commenced, however it may suspend, cease or discontinue any *Trench Rescue Services* if the senior officer for *Mississauga Fire and Emergency Services* does not agree, acting reasonably, with the *Operational Support* provided by *Burlington Fire Department*.
- 3.8 All *decisions* related to *Trench Rescue Services* shall be first communicated to *Burlington Fire Department* save and except where *Mississauga Fire and Emergency Services* has determined that the circumstances warrant immediate action, acting reasonably.

4. Investigations

- 4.1 When providing *Trench Rescue Services*, *Mississauga Fire and Emergency Services* will assist *Burlington Fire Department* in conducting investigations in the *Trench Rescue Area*, as deemed necessary by the *Fire Chief* pursuant to the requirements of the *Act*.
- 4.2 Where extensive investigation is deemed to be warranted by the *Fire Chief* or any condition requiring notification to the Office of the Fire Marshal, the Ministry of

Labour or any other relevant authority, the *Fire Chief* shall notify *Burlington Fire Department* to assume full responsibility for the investigation.

5. Burlington Responsibilities

- 5.1 Burlington shall be responsible for initiating and communicating requests for *Trench Rescue Services* in accordance with Section 3.2 of this *Agreement*.
- 5.2 Burlington shall establish and maintain suitable emergency plans to respond to calls in the *Trench Rescue Area* for *Trench Rescue Services* in the event that the *Fire Chief* determines that *Mississauga Fire and Emergency Services* cannot provide *Trench Rescue Services*.
- 5.3 Burlington will at all times maintain a supervisory role at the location where the *Trench Rescue Services* are being provided and provide all necessary *Operational Support* to *Mississauga Fire and Emergency Services*.

6. Fees

- 6.1 Burlington shall pay to Mississauga the following hourly fees for *Trench Rescue Services* which will be invoiced to Burlington on a monthly basis no later than the 15th day of each month for the month prior. Burlington shall pay the amount invoiced plus applicable tax within thirty (30) days of the invoice date:

(a) Trench Rescue Incident \$1,845.00 per hour

- 6.2 The Fee amount outlined in section 6.1 is subject to change according to the applicable Mississauga Fees and Charges By-law. Mississauga shall notify Burlington of any change to this fee.
- 6.3 Where *Trench Rescue Services* are provided on provincial highways supported by a cost recovery program, Mississauga will directly invoice the cost recovery program at the rate set by the program. Should a cost recovery program not be available, Burlington will be responsible for payment for the response at the rates as set out in the *Agreement*.
- 6.4 Notwithstanding the Fee structure in section 6.1, Burlington shall be responsible for any extraordinary costs associated with the *Trench Rescue Services* such as but not limited to: costs for lumber for sheeting and shoring to replace present inventory, depreciated cost of replacement of *Equipment*. The amount of these costs shall be determined by Mississauga.

7. Representations and Warranties

- 7.1 The Parties represent, warrant and covenant (and acknowledge that the Parties, in entering into this *Agreement*, are relying thereon) that:
 - (a) both Parties are municipal corporations and have all necessary corporate power, authority and capacity to enter into this *Agreement* and to perform and

fulfill all of their obligations under this *Agreement*;

- (b) the execution and delivery of this *Agreement* and the consummation of the transactions contemplated under it have been duly authorized by the Parties' respective municipal councils; and
- (c) this *Agreement* constitutes a valid and binding obligation of the Parties enforceable against them in accordance with the terms of this *Agreement*.

7.2 Burlington agrees to notify Mississauga immediately of any material change in any of the conditions described in 9.1.

8. Employment Status

8.1 The personnel of *Mississauga Fire and Emergency Services* are and shall remain employees of Mississauga notwithstanding any provision of this *Agreement* and are not, and shall not be deemed to be agents or employees of Burlington for any purpose.

9. Collective Agreements

9.1 Each Party agrees to review the provisions of this *Agreement* with its appropriate local bargaining units for the purpose of seeking amendments to local agreements, if necessary, to reflect the terms of this *Agreement*.

9.2 Each Party further agrees to advise the other Party as soon as practically possible if it becomes aware of any impediments or obstacles imposed by local agreements to meeting its obligations under this *Agreement*.

10. Indemnity

10.1 Burlington shall defend, indemnify and save harmless Mississauga, and all of its elected officials, officers and employees (the "Indemnified Parties"), from and against all claims, costs, all manner of action or actions, cause and causes of action, accounts, covenants, contracts, demands or other proceedings of every kind or nature whatsoever at law or in equity arising under this *Agreement* including the *Trench Rescue Services* provided under this *Agreement*, save and except to the extent that the same are attributable to the negligence or willful misconduct of the Indemnified Parties.

10.2 Mississauga shall not be liable to Burlington or any other person or entity for any liability, claim, damage, cost, suit or action in respect of any property damage or personal injury, including death, howsoever caused relating in any way whatsoever to the provision of or failure to provide *Trench Rescue Services* by Mississauga or arising directly or indirectly from this *Agreement* except where any damage or injury is due to Mississauga's negligence or that of its officers, employees or agents or for whom they are responsible for in law. The provisions of the *Act* respecting protection from personal liability and non-relief from liability shall apply,

notwithstanding any provisions of this *Agreement*.

11. Insurance

11.1 Burlington shall at its sole cost and expense, obtain and maintain in full force and effect at all times throughout the term or extended term(s) of this *Agreement*, insurance satisfactory to Mississauga with financially sound and reputable insurance companies licensed to underwrite insurance in the Province of Ontario. Burlington shall be responsible for payment of all amounts within the deductible or self-insured retention under each policy of insurance. All Insurance policies required pursuant to this clause shall be primary and shall not call into contribution any insurance available to Mississauga. The insurance shall include but not be limited to:

(a) Commercial general liability insurance in respect of the operations of Burlington against claims for bodily injury, including personal injury and death, and property damage or loss, indemnifying and protecting Burlington and its respective employees, servants, agents, contractors, invitees or licensees, to the inclusive limit of not less than Ten (\$10,000,000.00) Million Dollars. Such insurance shall specifically state by its wording or by endorsement that the following extensions of coverage are included:

- (i) Mississauga is included as additional insured under the policy with respect to the operations and obligations of Burlington as outlined in this *Agreement*;
- (ii) contractual liability, non-owned automobile liability, owner's and contractor's protective liability, products and completed operations coverage, contingent employer's liability, and employees as additional insured;
- (iii) a cross-liability clause which shall have the effect of insuring each person, firm or corporation named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;
- (iv) medical malpractice liability;
- (v) tenants legal liability and advertising liability coverage; and

11.2 Burlington shall deliver to Mississauga a City of Mississauga Certificate of Insurance Form evidencing the insurance required under this *Agreement*. A PDF fillable Certificate of Insurance form can be obtained at www.mississauga.ca/certificateofinsurance which shall be completed by a broker.

12. Termination

12.1 This *Agreement* may be terminated by either Party at any time without further obligation, liability or penalty, upon giving not less than one hundred and twenty

(120) days notice in writing to the other Party.

12.2 *Notwithstanding* section 12.1, Mississauga may terminate this *Agreement* without further liability or obligation to Burlington, in the event of non-payment by Burlington of any invoice which has remained outstanding and unpaid for ninety (90) days or more. Prior to exercising any rights of termination under this section Mississauga agrees to provide Burlington with written notice of any unpaid amounts and a reasonable opportunity to satisfy those amounts.

13. Confidentiality and Protection of Privacy

13.1 The Parties acknowledge and agree that, in the performance of this *Agreement*, each Party may be required to have access to information that is confidential or proprietary in nature to the other party ("*Confidential Information*"). Confidential Information will not include any information that:

- (a) was in the public domain or was created or disclosed for the purpose of being in the public domain;
- (b) was disclosed to a party by a third party, without breach of any duty of confidentiality;
- (c) was approved in writing for disclosure, without restriction, by the disclosing party;
- (d) is required to be disclosed by operation of law or regulation to which either party is subject, notice of such requirement of disclosure to first be provided to the party which owns the *Confidential Information*, wherever possible; or

13.2 Neither Party shall disclose *Confidential Information* to anyone other than to a designated representative of the Party who requires the *Confidential Information* to perform the *Trench Rescue Services*. Wherever possible, prior to releasing any *Confidential Information* to the other, the disclosing party shall obtain from the designated representative of the other party an undertaking to comply with the obligations under this *Agreement* pertaining to the protection of *Confidential Information*. Where required by the disclosing party, the other party shall provide written confirmation, satisfactory to the disclosing party, that such designated representatives have agreed to be bound by the terms of this Section.

13.3 All *Confidential Information* disclosed by one party to the other party, or to the other party's designated representatives, shall remain the sole and exclusive property of the disclosing party, regardless of how the *Confidential Information* is represented, stored, produced or acquired.

13.4 Upon completion of the *Trench Rescue Services*, the termination of this *Agreement* or at the request of either party, all *Confidential Information* of the disclosing party shall be promptly returned, or if requested and not prohibited by a legal requirement, destroyed, including all copies, notes and summaries in the receiving party's

possession or in the possession of any of its designated persons. The receiving party shall then certify in writing to the disclosing party that all *Confidential Information*, including all copies or partial copies, have been returned or destroyed.

13.5 Where either Party or any of their respective employees, officers or agents will have access to any personal information or personal health information in the possession of the other party, as those terms are defined in the *Municipal Freedom of Information and Protection of Privacy Act* and *The Freedom of Information and Protection of Privacy Act* and *The Personal Health Information Act*, when performing the *Trench Rescue Services*, then either Party, as the case may be, agrees to comply with, and have its employees, officers or agents comply with, any Protection of Personal Information and Personal Health Information rules, directions and requirements as the other party may impose from time to time, acting reasonably.

14. Further Assurances

14.1 Each party agrees to make such further assurances in writing as may be reasonably required from time to time by the other to more fully implement the true intent of this *Agreement*.

15. Survival of Obligations

15.1 Any obligation of a party which is unfulfilled on the termination of this *Agreement* shall survive until fulfilled.

16. Notice

16.1 Where notice is required to be given to a party under this *Agreement*, the notice shall be in writing and shall be given,

a) in the case of notice to Mississauga, to:

Mississauga Fire Chief
City of Mississauga
Mississauga Fire and Emergency Services
15 Fairview Road West
Mississauga, ON L5B 1K7
Facsimile No.: (905) 615 4579
Telephone No.: (905) 615 3750

b) in the case of notice to Burlington, to:

Fire Chief
City of Burlington Fire Department
1255 Fairview Street
Burlington, ON L7S 1Y3
tel 905-333-0772
fax 905-333-8727

17. Assignment

17.1 Neither party shall assign this *Agreement*, in whole or in part, or subcontract any portion of the services to be provided under this *Agreement*, without the written permission of the governing body of the other party.

18. Binding

18.1 This *Agreement* ensures to the benefit of and is binding upon Burlington and Mississauga and its successors.

19. Entire Agreement

19.1 This *Agreement* contains the entire agreement and understanding of the parties of the matters contained in it, and supersedes all prior agreements and understandings on these matters.

20. Amendment

20.1 Except where expressly provided otherwise, this *Agreement* shall not be amended, in any way, unless such amendment is in writing and is executed by all the parties.

21.0 Governing Law

21.1 This *Agreement* shall be governed by the laws of the Province of Ontario and the laws of Canada applicable in the Province, and shall be treated in all respects as an Ontario contract. The parties submit to the exclusive jurisdiction of the courts of Ontario for the resolution of any and all disputes relating to this *Agreement* or any of its terms.

22.0 Time is of the Essence

22.1 Time shall be deemed to be of the essence with respect to all time limits mentioned in this *Agreement*.

23.0 Counterparts

23.1 This *Agreement* may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

24.0 Headings For Convenience Only

24.1 The *division* of this *Agreement* into sections is for convenience only and shall not affect the interpretation or construction of this *Agreement*.

IN WITNESS WHEREOF the parties have affixed their respective corporate seals attests by the hands of their respective officers duly authorized in that behalf.

**The Corporation of the
City of Burlington**

**The Corporation of the City of
Mississauga**

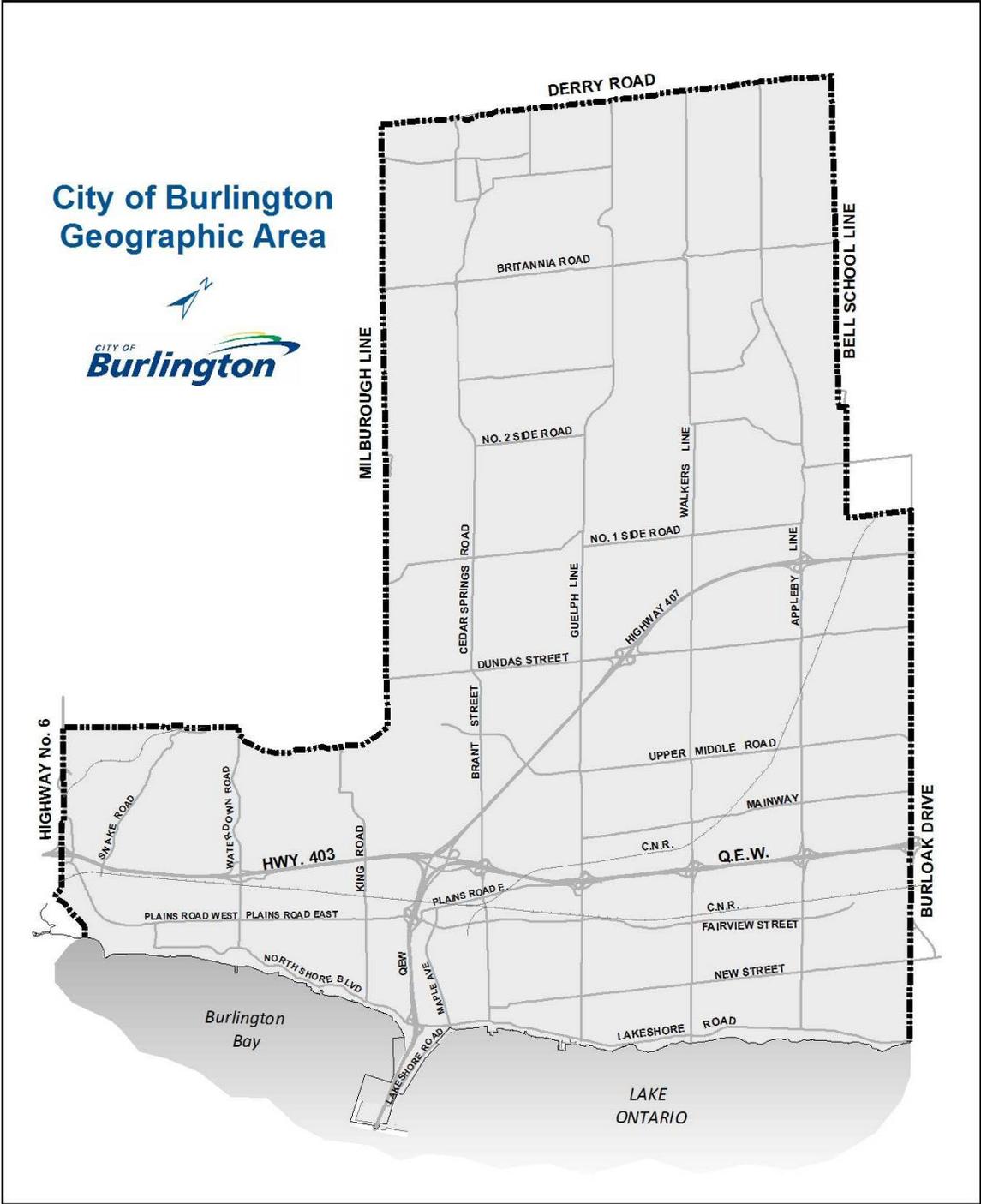
Tim Beckett, Fire Chief

Authorized by By-law No.:

Crystal Greer, City Clerk
Authorized by By-law No.:

Schedule "A"

TRENCH RESCUE AREA



Schedule "B"

TRENCH RESCUE SERVICES AND OPERATIONAL SUPPORT

For the purposes of this *Agreement*, Operational Support shall include but not be limited to:

- awareness trench level training as per NFPA requirements
- assessment of emergency scenes prior to the arrival of Miss
- assessment of victims present prior to the arrival of Miss
- stabilizing scene (ie. shut off back hoe, gas lines, hydro)
- providing air monitoring through hazardous materials team as per the NFPA
- notifying utility companies for locates
- providing additional materials for a trench rescue (ie. lumber)
- providing rehabilitation services for Burlington and Mississauga (ie. rest stations, provide water)
- establishing an "Incident Command System" – a standardized on-scene incident management system designed to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries

For the purposes of this *Agreement*, Trench Rescue Services shall mean services operating at a technical level as per the *NFPA 1670 – Standard on Operations and Training for Technical Search and Rescue Incidents* including but not be limited to:

- conducting a size-up of collapsed trench
- implementing a trench emergency action plan
- implementing support operations at trench emergencies
- constructing Load stabilization systems
- lifting a load (excluding crane rigging)
- coordinating the use of heavy equipment
- supporting various trench configurations
- installing supplemental sheeting and shoring as required
- releasing a victim from entrapment by components of collapsed trench
- removing a victim from a trench
- terminating of trench emergency operations