

**AGREEMENT**

**THIS AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

BETWEEN:

**CAPITAL REGIONAL DISTRICT**

524 Yates Street  
Victoria, B.C.  
V8W 1K8  
("CRD")

OF THE FIRST PART

AND:

**CITY OF SURREY**

14245 - 56 Avenue  
Surrey, B.C.  
V3X 3A2  
("Surrey")

OF THE SECOND PART

**WHEREAS**

- A. Section 23 of the *Community Charter*, S.B.C. 2003, c. 26, as amended, gives a municipality the power to make agreements with a public authority respecting activities, works and services within the powers of a party to the agreement, including agreements respecting the undertaking, provision and operation of activities, works and services;
- B. Section 176 of the *Local Government Act*, R.S.B.C. 1996, c. 323, as amended, gives regional districts the power to make agreements with a public authority respecting activities, works and services within the powers of a party to the agreement, including agreements respecting the undertaking, provision and operation of activities, works and services;
- C. The CRD intends to establish a service by bylaw adopted under the *Local Government Act* for the provision of a hazardous materials incident response service within the service area to be defined in the establishing bylaw;
- D. Surrey has agreed to provide hazardous materials response services ("**HAZMAT**") to the CRD.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the mutual covenants and agreements herein contained and subject to the terms and conditions hereinafter set out, the parties mutually agree as follows:

## **1.0 Definitions**

1.1 In this Agreement the following words have the following meanings, unless the context otherwise requires:

**"Effective Date"** means the 1st day of \_\_\_\_\_, 2005;

**"HAZMAT Equipment"** means the Equipment to be provided by the CRD in accordance with Schedule B to this Agreement.

**"HAZMAT Services"** means the services set out in Schedule "A" that forms part of this Agreement.

**"Municipality"** means a municipality participating in the service established by Capital Regional District Hazardous Materials Incident Response Service Establishment Bylaw No. 1, 2006.

## **2.0 Services**

2.1 The City of Surrey shall, through its Fire Services Department, provide the HAZMAT Services.

2.2 Surrey shall provide HAZMAT Services to a standard consistent with the level of hazardous material incident response services provided within Surrey.

## **3.0 CRD Provide Equipment**

3.1 The CRD will provide HAZMAT Equipment deployed in a cache provided by the CRD at its cost in accordance with Schedule "B" that forms part of this Agreement.

## **4.0 Term**

4.1 The term of this Agreement shall be for five (5) years commencing on the Effective Date and terminating on the 31st day of \_\_\_\_\_, 2010.

## **5.0 Start-up and Annual Payments**

5.1 The CRD shall pay to Surrey the sum of Twenty Thousand (\$20,000.00) Dollars upon the execution of this Agreement to offset Surrey's start-up costs of the HAZMAT Services.

5.2 Upon execution of this Agreement and on each anniversary of the effective date, the CRD shall pay to Surrey an annual payment of Fifty Thousand (\$50,000.00) Dollars to offset Surrey's costs of maintaining its HAZMAT staff and providing ongoing technical information to the CRD.

5.3 The annual payment payable under section 5.2 shall be reviewed annually by Surrey and the CRD with a view to determining whether any change in the amount of the annual payment should be made.

## **6.0 Payments for Service and Training**

6.1 In addition to the amounts payable under section 5.0, when Surrey provides HAZMAT Services to the CRD under this Agreement:

- (a) Surrey may, within sixty (60) days after providing those Services, render to the CRD an account for the cost of the HAZMAT Services provided, calculated and determined in accordance with the Table of Costs set out in Schedule "C" that forms part of this Agreement; and
- (b) subject to section 10.0, the CRD shall pay the account rendered under section 7.1 (a) within forty-five (45) days of receiving the account.

6.2 CRD shall pay Surrey the costs of providing training to emergency response personnel within the CRD.

6.3 The amounts set out in Schedule "C" shall be reviewed annually by Surrey and the CRD.

## **7.0 GST**

7.1 The fees payable under sections 5.0 and 6.0 shall be inclusive of all applicable taxes, including Goods and Services Tax and any other tax that may replace the Goods and Services Tax.

## **8.0 Financial Records**

8.1 Surrey will provide to the CRD, upon request, copies of the financial records of Surrey relating to the provision of the HAZMAT Services.

## **9.0 Inspection of Records and Equipment**

9.1 Surrey will permit the CRD at any time and from time to time to enter Surrey's premises to inspect its books of account and other records, premises, machinery, equipment, goods and chattels used in connection with the HAZMAT Services.

## **10.0 Review of Service Payment**

10.1 If the CRD disputes the amount of an account submitted by Surrey under section 6.0, it may within forty-five (45) days of receiving the account request that the disputed account be reviewed and resolved by arbitration under section 14.0.

## **11.0 Compliance with Enactments**

11.1 In providing the HAZMAT Services, Surrey shall comply with all enactments relating to the provision of the HAZMAT Services including, without limitation, the *Transportation of Dangerous Goods Act* (Canada) and Regulations under that Act.

## **12.0 Termination**

12.1 Either party may terminate this Agreement by giving the other party six (6) months' written notice of termination to the address above written, or such other address as a party may provide from time to time.

## **13.0 Insurance and Indemnity**

13.1 The parties to this Agreement covenant and agree that they will not initiate an action or third party proceedings against the other party to this Agreement, based on provision or failure to provide HAZMAT Services or resources except as provided in this Agreement.

13.2 The parties agree to obtain and maintain insurance coverage, as it is available, in the amount of Five Million Dollars (\$5,000,000) with a deductible not greater than Fifty Thousand Dollars (\$50,000) for losses arising out of this Agreement. The premium for the insurance will be split equally among Surrey, the CRD and the subscribing municipalities.

13.3 Subject to section 13.5, losses within the deductible portion of the insurance policy, and losses in excess of the limits of the insurance proceeds will be paid by the CRD.

13.4 The CRD shall:

- (a) defend the action on behalf of itself and Surrey, where Surrey and the CRD or a Municipality are named as defendants in the action, and
- (b) release, indemnify and save harmless Surrey, its elected and appointed officials, employees and agents from and against any and all liability, actions, causes of actions, claims, damages, expenses, costs, debts,

demands or losses suffered or incurred by Surrey arising from the granting or existence of this Agreement, including, without limitation, negligence on the part of the CRD, or a Municipality, their elected or appointed officials, employees, and volunteers, to the extent of the apportionment of liability to the CRD or a Municipality by a court of competent jurisdiction or as agreed to through alternative dispute resolution where the CRD or a Municipality is named as a defendant in the action.

- 13.5 Section 13.3 does not apply to claims arising as a result of the negligent or willful misconduct by Surrey, or any party to the agreement. Parties are responsible for their apportionment of liability beyond the insurance coverage.

#### **14.0 Dispute Resolution**

- 14.1 Any claims as between the parties to this Agreement arising out of provision or failure to provide HAZMAT Services or resources or any dispute arising respecting the parties' rights or obligations shall be referred to and finally resolved by arbitration under the Rules of the British Columbia International Commercial Arbitration Centre and shall be administered in accordance with its "Procedures for Cases Under the BCIAC Rules". Provided the arbitrator in this procedure is satisfied the dispute arises from negligence or willful misconduct, the arbitrator has jurisdiction to provide relief against the indemnity herein and may allocate responsibility among the parties in whatever manner the arbitrator deems appropriate.

#### **15.0 Assignment**

- 15.1 Neither party may assign this Agreement without the written consent of the other.

#### **16.0 Establishment of Service**

- 16.1 This Agreement shall not come into effect until the CRD has adopted a bylaw under the *Local Government Act* establishing HAZMAT Services as a function of the CRD.
- 16.2 Despite anything in this Agreement, Surrey shall only be required to provide HAZMAT Services within the Service Area defined in the bylaw referred to in section 16.1.

#### **17.0 General Provisions**

##### **17.1 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 the Capital Regional District:

524 Yates Street  
Victoria, B.C. V8W 1K8  
Attention: [Insert name]  
Fax No.: [Insert number]

if to the City of Surrey:

14245 - 56 Avenue  
Surrey, B.C. V3X 3A2  
Attention: [Insert name]  
Fax No.: [Insert number]

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 party set forth on the first page of this Agreement or at such other address as the other party 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.

## 17.2 Time

Time is to be the essence of this Agreement.

## 17.3 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.

17.4 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.

17.5 Entire Agreement

This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date hereof with respect to the subject matter hereof and supersede all prior agreements and understandings among the parties with respect to the subject matter hereof and there are no oral or written agreements, promises, warranties, terms, conditions, representations or collateral agreements whatsoever, express or implied, other than those contained in this Agreement.

17.6 Further Assurances

Each of the parties will do, execute or deliver or cause to be done, executed and delivered all such further acts, documents and things as may be reasonably required from time to time to give effect to this Agreement.

17.7 Amendment

No amendment, waiver, termination or variation of the terms, conditions, warranties, covenants, agreements and undertakings set out herein will be of any force or effect unless they are reduced to in writing and duly executed by all parties to this Agreement.

17.8 Law Applicable

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

17.9 Payment Date

If the date upon which any act or payment hereunder is required to be done or made falls on a day which is not a business day, then such act or payment shall be performed or made on the preceding business day.

17.10 Severability

If one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect in any jurisdiction, the validity, legality and enforceability of such provision shall not in any way be affected or impaired thereby in any other jurisdiction and the validity, legality and enforceability of the

remaining provisions contained herein shall not in any way be affected or impaired thereby.

17.11 Independent Contractor

Nothing in this Agreement makes CRD and Surrey joint venturers or partners. In all respects, Surrey is an independent contractor entitled to use its own methods to carry out the HAZMAT Services to be provided to the CRD. In relation to the HAZMAT Services, Surrey shall inform the other contracting party that is entering into the contract on its own behalf and not on behalf of the CRD.

17.12 Binding Effect

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors, and permitted assigns.

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

**CAPITAL REGIONAL DISTRICT** by its )  
 authorized signatories: )  
 )  
 )  
 )  
 \_\_\_\_\_ )  
 Name: )  
 )  
 )  
 )  
 \_\_\_\_\_ )  
 Name: )



**CITY OF SURREY** by its authorized )  
signatories: )  
 )  
 )  
\_\_\_\_\_)  
Len Garis, )  
FIRE CHIEF )  
 )  
 )  
\_\_\_\_\_)  
Margaret Jones )  
CITY CLERK )

## **SCHEDULE "A"**

### **HAZMAT RESPONSE SERVICES**

1. Surrey will provide 24/7 HAZMAT response coverage to the CRD. This will be provided by on duty crews. The response will include a complement of Haz Mat Technician Responders as determined by the CRD Incident Commander up to a maximum complement of:
  - (a) Six Firefighters,
  - (b) Two Captains, and
  - (c) One Battalion Chief
2. As a first choice of transportation, Surrey will make best efforts to respond by air either by chartered helicopter or fixed wing aircraft. If first choice transportation is not available, Surrey will make best efforts to respond by air in most timely fashion and will consider the use of seaplanes in addition to landings at Victoria International Airport, other options such as the B.C. Ferry or Hovercraft will be explored and communicated with the CRD representative for approval.
3. Surrey will be responsible for all Hot Zone activities. Surrey HAZMAT will develop a Hot Zone plan.
4. Surrey will stabilize and mitigate the incident. Surrey will not provide site remediation, cleanup and disposal functions.
5. Surrey will provide input into the overall Incident Action Plan and the Public Protection Plan. Surrey will assist the CRD to liaison with the public and private sector response agencies.
6. The Surrey Battalion Chief will be a member of the Unified Command Team. The Surrey HAZMAT Captain will assume the HAZMAT Group Supervisor function.
7. Surrey will provide accredited HAZMAT Technician training at Surrey to a minimum of nine CRD personnel with the tuition fees only included in the \$20,000 start-up costs. Travel, salaries and accommodation will be the responsibility of the CRD. Surrey will also provide any necessary ongoing and refresher training to these personnel but course tuition fees or other expenses will not be included in the \$20,000 start-up costs or the \$50,000 annual retainer fee. The intention is that these individuals will:
  - (a) Provide an initial assessment at an incident scene;

- (b) Begin the action planning process;
  - (c) Be in phone contact with Surrey HAZMAT; and
  - (d) Oversee the routine maintenance of equipment caches.
8. Under the supervision of Surrey HAZMAT the CRD will provide:
- (a) Basic decon functions;
  - (b) Dressers;
  - (c) Fire protection; and
  - (d) Rehab and other support functions (non-Hot Zone).

## **INCIDENT ESCALATION**

NFPA 471 Chapter 3 Table 3-1 "Planning Guide for Determining Incident Levels, Response and Training" and NFPA 472 "Standard for Professional Competence of Responders to Hazardous Materials Incidents" are to be utilized to assist the user in determining the incident level for response by Surrey Haz Mat Technicians.

### **Level One Incident**

This type of incident can be mitigated by CRD first responders. Surrey will provide technical advice by telephone.

### **Level Two Incident**

This type of incident may require Surrey Fire Service Haz Mat Technician response as determine in consultation with the CRD Incident Commander. The team will respond in accordance with the provisions Section 1 of Schedule A. The CRD will transport or arrange for transport of Surrey personnel to the incident scene.

### **Level Three Incident**

Surrey Fire Service Haz Mat Technician response to the maximum as specified in Section 1 of Schedule A.

## **SCHEDULE "B"**

### **HAZMAT EQUIPMENT**

1. HAZMAT equipment will be deployed in a cache by the CRD. The location of the cache is to be determined by the CRD and the CRD may, in its discretion, use more than one cache. The cost of the equipment will be the responsibility of the CRD.
2. The HAZMAT Equipment shall mean the following equipment and such other equipment as Surrey and CRD, acting reasonably, from time to time determines in accordance with Schedule C to this Agreement as being necessary to the proper provision of the HAZMAT Services:

*[Preliminary list to be included in Schedule B]*

3. CRD will provide a method of storing this equipment and will transport the equipment to the emergency scene, in a timely manner.
4. Surrey will provide advice regarding the purchase of the HAZMAT Equipment.

## **SCHEDULE "C"**

### **COSTS**

#### **1.0 INITIAL PLANNING COSTS**

1.1 The cost of developing the plan and an appropriate response model will be \$20,000. This cost will include:

- (a) An equipment list and purchasing advice;
- (b) Development of a strategic and tactical deployment plan;
- (c) Inter-jurisdictional planning meeting;
- (d) Development of a unified command structure; and
- (e) Training of a minimum of nine CRD personnel to the Tech Level that includes tuition fees only.

#### **2.0 RETAINER**

2.1 The cost for the retainer will be \$50,000 per year (to be re-evaluated annually). This cost will include:

- (a) The cost of retaining Surrey HAZMAT at a high state of readiness to respond to the CRD;
- (b) The provision of technical advice by telephone or e-mail; and
- (c) Meetings between CRD personnel and Surrey (at locations alternating between CRD and Surrey).

#### **3.0 SERVICE PAYMENT**

3.1 The CRD shall reimburse Surrey for all eligible costs incurred in connection with a response by Surrey to an incident within the CRD in accordance with this Agreement.

3.2 In this section "**eligible costs**" means:

- (a) personnel costs at unit rates for personnel which shall be set at the following rates at the commencement of this Agreement:
- (b) transportation costs for the transport of personnel provided by Surrey to respond to an incident in accordance with this Agreement;
- (c) reasonable food, lodging and incidental costs incurred by or on behalf of the personnel provided by Surrey to respond to an incident in accordance with this Agreement; and
- (d) all other reasonable miscellaneous costs necessarily or reasonably incurred by Surrey in order to respond to an incident under this Agreement, to the extent that such costs relate directly to the service provided by Surrey under this Agreement.

#### **4.0 TRAINING COSTS**

4.1 The CRD shall reimburse Surrey for all eligible costs incurred in connection with the training of CRD personnel or personnel of the fire departments of municipalities that participate in the hazardous materials response service of the CRD.

4.2 In this section "**eligible costs**" means:

- (a) personnel costs at unit rates for personnel which shall be set at the following rates at the commencement of this Agreement:
- (b) transportation costs for the transport of training personnel to the training location;
- (c) reasonable food, lodging and incidental costs incurred by or on behalf of the personnel where appropriate; and
- (d) all other reasonable miscellaneous costs necessarily or reasonably incurred by Surrey in order to carry out the training services provided by Surrey under this Agreement.