

APPENDIX A

BURLINGTON / OAKVILLE DISPATCH AGREEMENT

THIS AGREEMENT is made this day of , 2011

BETWEEN:

The Corporation of the Town of Oakville

("Town of Oakville")

- and -

The Corporation of the City of Burlington

("City of Burlington")

WHEREAS the Fire Department of the Town of Oakville ("Oakville Fire Department") and the Fire Department of the City of Burlington ("Burlington Fire Department") agree that Burlington Fire Department shall provide dispatch services for both departments.

AND WHEREAS the Burlington Fire Department agrees to provide such services;

AND WHEREAS the costs to staff, operate, maintain, repair, and replace the Centre (as hereinafter defined) will be determined by the City of Burlington using the standards agreed upon under the Inter-municipal Agreement dated February 19, 2001 between the Town of Oakville, the City of Burlington and others, and will be shared between the City of Burlington and the Town of Oakville as set forth herein;

NOW THEREFORE in consideration of the mutual benefits and covenants contained herein, and for other good and valuable consideration, the sufficiency of which is mutually acknowledged, the parties hereto agree as follows:

1. The City of Burlington shall provide fire dispatch services in accordance with this Agreement.

2. The Burlington Fire Department and the Oakville Fire Department shall form a committee to oversee the provision of services at the Centre (“Senior Steering Committee”). The Senior Steering Committee will consist of the following members: the General Manager of Development and Infrastructure of the City of Burlington, the Commissioner of Community Services of the Town of Oakville, the Fire Chief of the Burlington Fire Department, and the Fire Chief of the Oakville Fire Department.
3. The Burlington Fire Department and the Oakville Fire Department shall form a committee to oversee the standard operating guidelines and the performance targets for the Centre (“Joint Operating Committee”). The Joint Operating Committee will consist of the following members: the Fire Chief of the Burlington Fire Department, the Fire Chief of the Oakville Fire Department, a Deputy Fire Chief of the Burlington Fire Department, and a Deputy Fire Chief of the Oakville Fire Department.
4. The Burlington Fire Department shall provide efficient and effective emergency call taking and dispatching of fire services from a facility known as the Burlington Dispatch Centre (“Centre”) in the following manner:
 - (a) The hours of operation of the Centre will be twenty-four (24) hours a day, seven (7) days a week throughout the year;
 - (b) Effective as of the date first above written, a minimum of two (2) Communicators will be present at the Centre at all times;
 - (c) The overall responsibility of the Communication Division of the Burlington Fire Department will be under the direction of a senior (non-union) member of the Burlington Fire Department’s management team. The day-to-day supervision of the Centre, its staff and operations, will be the responsibility of a Communications Coordinator who is hired by the City of Burlington;
 - (d) Unless agreed to otherwise, direct supervision of the Centre will be provided by a Communications Coordinator whose hours of work will be from 08:00 to 16:00 hrs. and from Monday to Friday, excluding Ontario statutory holidays, vacation, or absence due to professional development or other assignment, illness or injury; and

- (e) On an ongoing basis, the Joint Operating Committee shall review the staffing and service levels at the Centre and shall recommend to the Senior Steering Committee adjustments to such levels as necessary.
5. The parties acknowledge that, for ninety-five per cent (95%) of the emergency calls which are received by the Centre, the performance target will be to answer incoming emergency calls, to process the appropriate information, and to dispatch the appropriate apparatus within ninety (90) seconds of receiving the emergency call. For greater certainty, the parties acknowledge that such performance target is a target only and not an obligation of the Burlington Fire Department. The Joint Operating Committee and the Senior Steering Committee shall review the performance target from time to time. With the consent of the Fire Chief of the Burlington Fire Department and of the Fire Chief of the Oakville Fire Department, such performance target may be amended to reflect prevailing industry standards which dictate such fire dispatch services.
6. The parties agree that the costs to staff, operate, maintain, repair, and replace the Centre ("Centre Costs") will be determined by the City of Burlington using the standards agreed upon under the Inter-municipal Agreement dated February 19, 2001 between the Town of Oakville, the City of Burlington and others.
7. From January 1, 2011 to the termination or expiration of this Agreement, the Town of Oakville and the City of Burlington shall share the Centre Costs based on the percentage of emergency call volume for each municipality from the previous year. For greater certainty, the City of Burlington's share of the Centre Costs will be calculated by multiplying the fraction which has as its numerator the number of emergency calls received for the City of Burlington from the previous year and as its denominator the total number of emergency calls received by the Centre for the previous year by the Centre Costs and the Town of Oakville's share of the Centre Costs will be calculated by multiplying the fraction which has as its numerator the number of emergency calls received for the Town of Oakville from the previous year and as its denominator the total number of emergency calls received by the Centre for the previous year by the Centre Costs. For 2011, the percentage for the Town of Oakville will be 47.7% and the percentage for the City of Burlington will be 52.3% based upon 2010 emergency call volumes.

8. The City of Burlington shall prepare an estimate of the annual costs to staff, operate, maintain, repair, and replace the Centre (“Estimated Centre Costs”), and shall provide the Estimated Centre Costs to the Senior Steering Committee in time for the local budget processes of each municipality. The Town of Oakville shall pay to the City of Burlington its share of the Estimated Centre Costs on a quarterly basis starting on March 31st of each year. Each quarterly instalment will reflect one quarter of the Town of Oakville’s share of the Estimated Centre Costs for the calendar year. As soon as practicable after the end of each calendar year, the City of Burlington shall prepare an accounting of the Centre Costs (“Statement”) and shall provide such Statement to the Town of Oakville.

9. In the event that the quarterly instalment amounts paid by the Town of Oakville are more than the amount required pursuant to the Statement so that there is a positive net year-end balance, then such positive net year-end balance will be transferred to a capital reserve fund that is maintained by the City of Burlington (“Capital Reserve Fund”). In the event that the quarterly instalment amounts paid by the Town of Oakville are less than the amount required pursuant to the Statement so that there is a negative net year-end balance, then such negative net year-end balance will be offset by any funds in the Capital Reserve Fund. If the funds in the Capital Reserve Fund are insufficient to offset such negative net year-end balance, then the City of Burlington will forward to the Town of Oakville an invoice for such negative net year-end balance and the Town of Oakville will pay such invoice within thirty (30) days of the date of such invoice. The parties agree that any funds in the Capital Reserve Fund will be used to offset future operating expenses or capital costs for the Centre. Any decisions to use any funds in the Capital Reserve Fund will be made by the Senior Steering Committee. On an annual basis, the City of Burlington shall provide to the Town of Oakville financial statements that identifies when the funds have been transferred to or from the Capital Reserve Fund.

10. The Senior Steering Committee may determine whether an audit of the Centre Costs will be conducted at the year-end. If an audit is to be conducted, then the Senior Steering Committee will appoint an auditor and the cost of such audit will be included as a Centre Cost. The results of such audit will be provided to the parties.

11. This Agreement, unless terminated earlier as hereinafter provided, commences on the date first above written and will remain in force for a period of five (5) years. This Agreement may be renewed for such further term and on such terms and conditions as may be mutually agreed to by the parties.
12. Unless otherwise indicated herein, all right, title, and interest to and in the Centre and any improvements thereto will be and vest solely with the City of Burlington.
13. All records, data, and other computerized information in connection with an emergency call ("Data") will belong to the party to which that emergency call relates. If requested by the Town of Oakville, the City of Burlington will provide access to the Town of Oakville's Data and will provide a method to extract the Town of Oakville's Data. In the event of the termination or expiration of this Agreement, the City of Burlington will provide to the Town of Oakville its Data in a readable format.
14. Either party may terminate this Agreement upon two (2) years written notice to the other party for whatever reason. Such notice will be delivered to the Fire Chief of the applicable party. In the event of the termination or expiration of this Agreement, the City of Burlington will pay to the Town of Oakville an amount equal to one-half of the depreciated value, as determined in accordance with generally accepted accounting principles, of the assets of the Centre, after any encumbrances have been deducted from such assets, as at the time of the termination or expiration of this Agreement.
15. No person may be added as a party to this Agreement without the consent of the Town of Oakville and of the City of Burlington and only on such terms and conditions as are agreed to by both parties.
16. The Town of Oakville acknowledges that the City of Burlington will negotiate and amend its collective agreement with its firefighters without the consent of the Town of Oakville, and that any amendments may affect the operation of the Centre.
17. In the event of any dispute or disagreement between the parties hereto as to the meaning or interpretation of anything contained in this Agreement or as to the performance or non-

performance hereof or as to the respective rights and obligations of the parties hereunder, such dispute or disagreement may be dealt with as follows:

- (a) the dispute or disagreement will first be referred to the Joint Operating Committee;
- (b) should the dispute or disagreement not be resolved within fourteen (14) days of its referral to the Joint Operating Committee, the dispute or disagreement will be escalated to the Senior Steering Committee; and
- (c) should the dispute or disagreement not be resolved within fourteen (14) days of its referral to the Senior Steering Committee, either party may exercise its rights available at law.

18. All negotiations and settlement discussions to resolve a dispute or disagreement pursuant to Section 17 will be treated as compromise and settlement negotiations between the parties and will not be subject to disclosure through discovery or any other process and will not be admissible into evidence in any proceeding. Except where clearly prevented by the nature of the dispute or disagreement, the parties agree to continue performing their respective obligations under this Agreement.

19. (a) The Town of Oakville will not be liable to the City of Burlington, to anyone claiming by, through or under the City of Burlington, or to any third party for any loss, cost, damages, injury, liability, claim, penalty, fine, interest or cause of action whatsoever resulting howsoever from any act or omission (including negligence or misconduct) on the part of the City of Burlington in the provision of fire dispatch services from the point of time that the emergency call is initiated up to and including the point of time at which the City of Burlington properly notifies the Town of Oakville to respond to the emergency call or to dispatch fire services.
- (b) The City of Burlington will not be liable to the Town of Oakville, to anyone claiming by, through or under the Town of Oakville, or to any third party for any loss, cost, damages, injury, liability, claim, penalty, fine, interest or cause of action whatsoever resulting howsoever from any act or omission (including negligence or misconduct) on the part of the Town of Oakville in responding to the emergency call or dispatching fire services after the point of time at which the City of Burlington properly notifies the Town of Oakville to respond to the emergency call or to dispatch fire services.

- (c) To the extent that a third party initiates a claim against a party and that party is not responsible for the claim pursuant to clause (a) or clause (b), then the party that is responsible for the claim will indemnify, defend and hold harmless the party that is not responsible for the claim.

20. The parties will do or cause to be done, from time to time, all such things, and will execute and deliver all such documents, agreements and instruments reasonably requested by the other party, as may be necessary or desirable to carry out the provisions and intention of this Agreement.

21. Neither party has authority or power to bind the other or to contract in the name of, or create a liability against, the other in any way or for any purpose.

22. Except as may otherwise be contained herein, this Agreement will enure to the benefit of and be binding upon the parties hereto and their personal or legal representatives, heirs, executors, administrators, successors and permitted assigns, as the case may be.

23. Neither party will assign or transfer any or all of its rights or its duties or obligations hereunder without the prior written consent of the other party, which consent may be unreasonably withheld. Any attempted assignment or transfer without such prior consent will be void.

24. Any notice provided for under this Agreement will be in writing and will be sufficiently given if delivered personally, or if transmitted by facsimile with an original signed copy sent by prepaid registered mail within forty-eight (48) hours thereafter, or if mailed by prepaid registered mail to the parties, as follows:

- (a) if to the City of Burlington, at: The Corporation of the City of Burlington
426 Brant Street, P.O. Box 5013
Burlington, ON L7R 3Z6
Attention: Fire Chief
Facsimile: 905-333-8727

- (b) if to the Town of Oakville, at: The Corporation of the Town of Oakville
1225 Trafalgar Road, P.O. Box 310
Oakville, ON L6J 5A6
Attention: Fire Chief

Facsimile: 905-338-4403

or at such other address or facsimile number as the party to whom such notice is to be given otherwise directs in writing. Any notice delivered aforesaid will be effective on the date of personal delivery, or on the date of facsimile transmission, and any notice mailed as aforesaid will be effective three (3) days after the mailing thereof, provided that where interruption of mail services is likely by reason of any strike or other labour dispute, notice will be given by personal delivery or facsimile transmission.

25. This Agreement is governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Each of the parties hereto irrevocably conforms to the non-exclusive jurisdiction of the courts of such Province.

26. No consent or waiver, express or implied, by any party hereto of any breach or default by any other party hereto in the performance of its obligations hereunder will be deemed to or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of any party to complain of any act or failure to act of any other party or to declare the other party in default, irrespective of how long such failure continues, will not constitute a waiver by the first-mentioned party of its rights hereunder.

27. Time is of the essence of this Agreement and of every part hereof, and no extension or variation of this Agreement will operate as a waiver of this provision.

28. All references to a day or days in this Agreement mean a calendar day or calendar days.

29. If any provision of this Agreement is held to be invalid, void or unenforceable, then the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.

30. This Agreement, and any documents incorporated by reference herein, constitute the entire agreement between the parties pertaining to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions with respect to the subject

matter hereof whether oral or written. No supplement, modification or waiver of this Agreement will be binding upon the parties unless executed in writing by them.

31. The parties hereto understand, agree, and acknowledge that: (a) this Agreement has been freely negotiated by both parties; and (b) in any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Agreement or any of its terms or conditions, there will be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date first above written.

The Corporation of the Town of Oakville

Mayor Rob Burton

Town Clerk Cathie Best

The Corporation of the City of Burlington

Mayor Rick Goldring

City Clerk Angela Morgan