

**THIS AGREEMENT made effective this 13 day of February, 2017.**

**BETWEEN:**

**THE CORPORATION OF THE TOWN OF KINGSVILLE**  
(hereinafter "Kingsville Fire Department")

**OF THE FIRST PART,**

**-and-**

**BRIGHTON BEACH POWER L.P.**  
(hereinafter "Brighton Beach")

**OF THE SECOND PART**

**WHEREAS** Brighton Beach operates a power generating station at 100 Chappus Street, Windsor, ON N9C 4J3, and has identified a need for technical rope rescue services with respect to the steam stacks at this address;

**AND WHEREAS** Brighton Beach has determined that the need for technical rope rescue is best served by procuring the services of a technical rope rescue team;

**AND WHEREAS** Brighton Beach procured the services of a technical rescue consultant to prepare a rescue plan specific to the stacks at the site, and which rescue plan has been provided to Kingsville Fire Department

**AND WHEREAS** Kingsville Fire Department operates a technical rope rescue team trained to National Fire Protection Association Standards;

**NOW THEREFORE** in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the parties hereto mutually covenant, promise and agree as follows:

## **SERVICE**

1. Kingsville Fire Department will provide technical rope rescue services (in the form of an emergency response to the facility that will require high angle rope rescue operations) to Brighton Beach with respect to a steam stack rescue upon request for the same. Any request for Kingsville Fire Department to respond to

Brighton Beach will be made by calling the dispatch centre (519-733-2313).

2. The Kingsville Fire Department will respond as expeditiously as possible but Brighton Beach acknowledges that response times may be affected by factors such as weather conditions, traffic congestion and the possibility of Kingsville Fire Department being engaged at another emergency scene at the time of the request.

## **TERM OF AGREEMENT**

3. This Agreement shall be for a term of 5 years commencing the 13 day of February, 2017 and ending on the 31<sup>st</sup> day of December, 2021 (the "Term").

## **FEES AND COSTS**

4. Brighton Beach agrees to provide an annual retainer fee of five thousand dollars (\$5,000.00), plus H.S.T. per annum payable by the 7<sup>th</sup> day of January each year for the Term of the Agreement. The retainer fee is exclusive of any amounts payable on account of technical rope rescue calls or training sessions, as outlined below.
5. Brighton Beach will compensate Kingsville Fire Department for response to each technical rope rescue as follows:
  - a. Ministry of Transportation rates per hour per vehicle responding to the site to a maximum of three (3) vehicles.
  - b. The wages of the technical rope rescue team members up to a maximum of fifteen (15) staff as per the Town of Kingsville Firefighter Wage Agreement, in effect from time to time.
6. Brighton Beach shall compensate Kingsville Fire Department for the annual training of up to fifteen (15) members of the Rope Rescue Team, for two (2) eight (8) hour training sessions (total 16 hours) per member each calendar year. Brighton Beach shall pay the wages of the Rope Rescue Team members for the training events in accordance with the Town of Kingsville Firefighter Wage Agreement, in effect from time to time. Brighton Beach shall pay a flat rate of \$500 per training session for the use of fire department vehicles. Any increase in the number of members to be trained, or training hours, shall be mutually agreed upon by the parties.
7. All amounts specified in this Agreement are listed in Canadian funds.

## **REPRESENTATIONS, WARRANTIES & COVENANTS**

8. If there are any change to the rescue plan, as identified in the recitals, Brighton Beach will immediately notify Kingsville Fire Department and provide a copy of same.
9. Brighton Beach agrees to provide engineered anchor points on the stacks. Documentation of the same shall be provided to the Kingsville Fire Department. Further, Brighton Beach agrees to inspect and maintain the anchor points as per manufacturer's instructions and in compliance to NFPA 1983 standards for life safety equipment. Documentation of the same shall be provided to the Kingsville Fire Department.
10. The Kingsville Fire Department agrees to maintain the training of its Technical Rescue Team members (specifically NFPA 1006, Chapter 6 – Rope Rescue) through the life of this agreement, and in accordance with NFPA 1006 to an adequate training level (general members to NFPA 1006, Chapter 6 – level I and teams leaders to NFPA 1006, Chapter 6 – level II) to be able to effectively and safely perform an advanced high angle rescue operation on the Brighton Beach facility.
11. Upon request, Kingsville Fire Department will provide the training records of the members of the technical rope rescue team as they relate to technical rope rescue training.
12. Brighton Beach agrees to provide access to its facility for the purposes of training Kingsville Fire Department technical rope rescue team members. Each calendar year, the team members shall have access to the facility for the purposes of site specific training. The dates and times of the training events shall be mutually agreed upon by the parties.
13. The parties agree that the Ontario Incident Management System will be utilized at any emergency scene at Brighton Beach and Brighton Beach staff will be part of the command structure.
14. The parties agree that the Ontario Incident Management System will be utilized at any emergency scene at Brighton Beach and Brighton Beach staff will be part of the command structure, and present in the command post in the position of Liaison to the Incident Commander. Brighton Beach staff will be communicating directly with the Incident Commander in this role as part of the Incident Commanders Staff (Schedule A - Figure 2.2: The Command Staff in the Ontario Incident Management System). It is the responsibility of the attending emergency services to ensure that these roles as stated are established and maintained while the command structure is in effect on site.

15. Kingsville Fire Department will notify the Windsor Fire Department of any rescue requiring the response of the Kingsville Fire Department technical rope rescue team.

## **EARLY TERMINATION**

16. Notwithstanding provision 3 of this Agreement, the parties hereto acknowledge and agree that either party may terminate the Agreement by providing a minimum of six (6) months' written notice to the other party of that party's intention to terminate the Agreement. The notice must contain the date upon which the Agreement terminates.

## **NOTICE**

17. Any notice required or permitted to be given under this Agreement shall be in writing and provided by way of:
- a. Hand delivery, in which case notice shall be effective on the date of delivery.
  - b. Electronic mail, in which case notice shall be effective on the day in which the electronic mail is received; or
  - c. Regular letter mail, in which case notice shall be effective on the fifth day following the date of mailing.

18. The notice, described above, shall be provided to the Parties as follows:

**Town of Kingsville Fire Department**

1720 Division Road N.,  
Kingsville, ON. N9Y 3S2

Email: applicable email address in effect at the time the notice is given

Attention: Fire Chief

**Brighton Beach**

100 Chappus Street,  
Windsor, ON. N9C 4J3

Email: Neil.Finnerty@Brightonbeachpower.com

Attention: Facility Manager

19. If the day upon which the notice is effective is not a business day, the notice shall be deemed to be received on the next business day.

## **INDEMNITY**

20. Brighton Beach hereby agrees to indemnify Kingsville Fire Department, its servants, agents, members of Council, and permitted assigns and to save each of them harmless from all actions, causes of action, claims, demands and costs of any nature whatsoever for any loss of property, injury or death, to or for any person or persons, which occur as a result of the negligence of Brighton Beach, its servants, agents or others for whom it is in law responsible, in the implementation of the terms and procedures to be followed under the provisions of this Agreement, but under no circumstances shall this indemnification extend to actions, causes of action, claims, demands and costs which are the result of the negligence of Kingsville Fire Department, its servants, agents or others for whom it is in law responsible.
21. Kingsville Fire Department hereby agrees to indemnify Brighton Beach, its servants, agents, board members and permitted assigns and to save each of them harmless from all actions, causes of action, claims, demands and costs of any nature whatsoever, for any loss of property, injury or death, to or for any person or persons, which occur as a result of the negligence of Kingsville, its servants, agents and others for whom it is at law responsible in the implementation of the terms and procedures to be followed under the provisions of this Agreement, but under no circumstances shall this indemnification extend to actions, causes of action, claims, demands and costs which are the result of the negligence of Brighton Beach, its servants, agents or other for whom it is in law responsible for.

## **INSURANCE**

22. Brighton Beach covenants and agrees to, at its own expense, maintain in full force and effect insurance policies of a minimum five million dollars (\$5,000,000.00) for property damage and public liability coverage, including any special or additional insurance that may be required as a result of Kingsville Fire Department agreeing to provide technical rope rescue service to Brighton Beach pursuant to the terms of this Agreement, and name The Corporation of the Town of Kingsville as an additional insured.

## **GOVERNING LAW**

23. This Agreement is governed by the laws of the Province of Ontario and the federal laws of Canada, as applicable.

## **AMENDMENT AND ASSIGNMENT**

24. No change or modification of this Agreement shall be valid unless it is in writing and signed by each Party hereto.

25. This Agreement shall ensure to the benefit of Brighton Beach and Kingsville Fire Department and shall be binding upon the parties hereto and their respective successors and permitted assigns.

## **ENTIRE AGREEMENT**

26. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter of this Agreement. The Parties hereto acknowledge that there is no representation, warranty, and agreement or understanding between them, whether express or implied, which has induced any of the Parties hereto to enter into this Agreement except as expressly stated herein.

**IN WITNESS WHEREOF** the parties hereto have set their corporate seals attested to by the hands of the appropriate officers.

### **BRIGHTON BEACH POWER L.P.**

\_\_\_\_\_  
Name:  
Position:

\_\_\_\_\_  
Name:  
Position:

I/we have authority to bind the Corporation

**THE CORPORATION OF THE  
TOWN OF KINGSVILLE**

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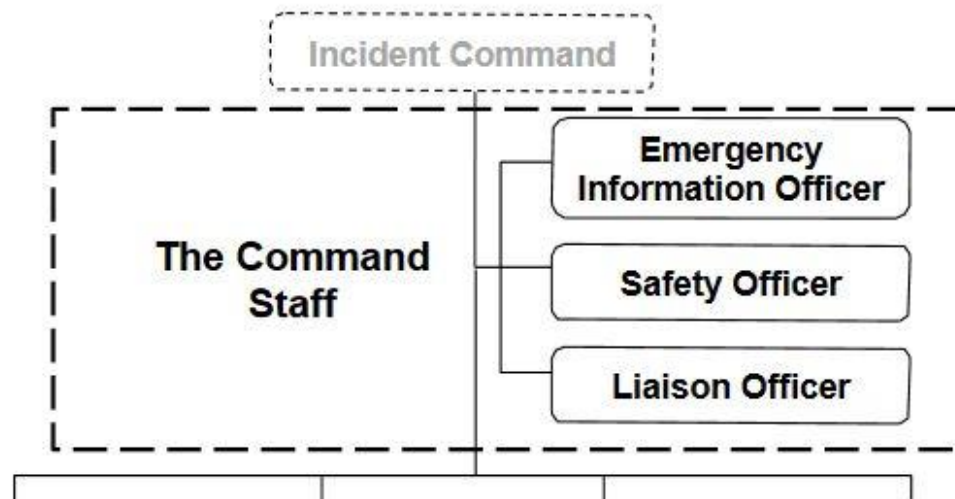
N. SANTOS - MAYOR

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J. ASTROLOGO - CLERK

## SCHEDULE A

**Figure 2.2: The Command Staff**



(Taken from the Incident Management System (IMS) for Ontario, December 2008)