

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BYLAW NO. 2003-11

**Being a Bylaw to authorize an agreement between the
Town of Amherstburg and Ontario One Call Limited**

WHEREAS One Call has established a Call Centre (“the Call Centre”) for the purposes of receipt and transmittal of requests for information concerning the location of the Member’s underground plant;

AND WHEREAS the Member seeks to receive the Service from the Call Centre as defined pursuant to the terms and conditions of the Agreement;

AND WHEREAS the parties hereto-wish to establish the terms and conditions upon which One Call will provide the receipt and transmittal services to the Member and the mutual and respective responsibilities of the parties in connection therewith;

**NOW THEREFORE THE CORPORATION OF THE
TOWN OF AMHERSTBURG ENACTS AS FOLLOWS:**

- (1) That the Mayor and Clerk be authorized to sign the attached agreement dated February 24, 2003.

Read a first, second and third time and finally passed this 24th day of February, 2003.

MAYOR

CLERK

**ONTARIO ONE CALL
SERVICE AGREEMENT**

This Agreement is dated the 24th day of February, 2003.

BETWEEN: THE CORPORATION OF THE TOWN OF AMHERSTBURG.

(hereinafter referred to as "Member")

OF THE FIRST PART

AND:

ONTARIO ONE CALL LTD., a company incorporated pursuant to the laws of the Province of Ontario

(hereinafter referred to as "One Call")

OF THE SECOND PART

WHEREAS One Call has established a Call Centre ("the Call Centre") for the purposes of receipt and transmittal of requests for information concerning the location of the Member's underground plant;

AND WHEREAS the Member seeks to receive the Service from the Call Centre as hereinafter defined pursuant to the terms and conditions of this Agreement;

AND WHEREAS the parties hereto wish to establish the terms and conditions upon which One Call will provide the receipt and transmittal services to the Member and the mutual and respective responsibilities of the parties in connection therewith;

THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. General Provisions

1.1 Definitions - The following words and phrases have the meaning set forth in this paragraph when they are used in this Agreement:

- a) "Call Centre" means all facilities, equipment, machines, telephone lines, operators, labourers and all other things, assets and resources, necessary or desirable for the purposes of performing the Service;
- b) "Excavator" is to be broadly interpreted and its meaning shall include, but not be limited to, a person, an individual company or corporation, a municipal corporation, trust, government agency or department, Crown corporation, utility, unincorporated association, partnership, limited partnership, or other entity known at law who intends to do or has begun the Proposed Work;

- c) **“Excavator Locate Request”** means notification by an Excavator of Proposed Work to the Call Centre, to be by way of facsimile, telephone, hand delivery, electronic transmission by computer, or such other means as One Call and the Member may agree upon from time to time;
- d) **“Members Plant”** means the Member’s underground facilities in existence during the currency of this Agreement;
- e) **“Member’s Service Area”** means that geographical area identified by the Member where they wish to receive the Service.
- f) **“Pricing Structure”** is as set out in Exhibit “B” to this Agreement;
- g) **“Primary Telephone Number”** means the telephone number designated by One Call from time to time to enable an Excavator to make an Excavator Locate Request by telephone, facsimile or such other means of communication which requires the use of a telephone number;
- h) **“Proposed Work”** means any actual or intended excavation, demolition, drilling, blasting, and includes without limitation any disturbance of the surface and/or subsurface of the earth by an Excavator;
- i) **“Service”** is defined as the Call Centre’s receipt, processing and recording of an Excavator Locate Request and communication of Notification of Locate Request to the Member for the Members Service Area;
- j) **“Notification of Locate Request”** means the communication to the Member of an Excavator Locate Request received by the Call Centre;
- k) **“The Specifications”** means One Call’s performance standards and Specifications, which shall be delivered by One Call to the Member along with this Agreement.

1.2 **Exhibits and Paramountcy** - Unless the context requires otherwise, references in this Agreement to Sections or Exhibits are to Sections or Exhibits of this Agreement. The Exhibits to this Agreement are Exhibits A and B. In the event of any inconsistency between the Sections and the Exhibits to this Agreement, the Sections shall prevail.

2. **Scope of this Agreement**

- a) The Call Centre shall be made available by One Call to provide the Service to the Member throughout the term, or renewed term of this Agreement;
- b) The Call Centre’s receipt of an Excavator Locate Request shall enable it to communicate a Notification of Locate Request to the Member, to allow the Member to take whatever action is necessary to prevent damage to the Members Plant;
- c) The Call Centre shall notify the Member of all Notification of Locate Requests pursuant to the Specifications which Specifications may be amended or changed by One Call as it deems

necessary under the circumstances at any time or times, with the Member being notified of any such changes.

d) The parties understand and agree that the Service as herein defined is to be performed only by One Call, its agents and successors. This Agreement shall in no way vest the Member with any proprietary interest in the Service, the Primary Telephone Number, or any trade name or trade work or data records or information relating thereto.

3. **Term and Option to Renew:** - The term of this Agreement shall be for _____ (month) (day), 200 __, and terminating on _____, 200_. The Member shall have, while not in default, the option to renew this Agreement for a renewal term of one (1) year, upon the same terms and conditions, save and except for the pricing structure.

This option to renew shall be exercised in writing by the Member to One Call not less than one (1) month prior to the termination date. One Call shall advise the Member of the pricing structure for the renewal term forthwith upon it being established and in any event not less than two (2) months prior to the date of termination of the original term. In the event that the Member does not exercise its option to renew as set forth herein, said option shall be deemed to be null and void and of no further effect.

4. **Price:** - The Member shall pay for the service performed in accordance with the Pricing Structure. The Pricing Structure does not quote any provincial sales taxes or any GST taxes whatsoever, which taxes in each case are in addition to the prices due from the Member and shall be shown separately on the invoice to the Member during the term of this Agreement.

5. **One Call Obligations:** - One Call agrees to:

- a) Provide and maintain, at its expense, the Call Centre, located within the Province of Ontario and operated pursuant to the terms of this Agreement, utilizing the Primary Telephone Number.
- b) Provide a dictaphone recorder (or equivalent) to record all Excavator Locate Requests. The recording shall identify the date and time of each such recording and tapes of conversations containing Excavator Locate Requests shall be provided upon request of the Member, the Member to pay the cost of producing the tape.
- c) Retain possession of all original tapes, facsimiles and all other records in its possession or control of Excavator Locate Requests relating to the Member for the lesser of the duration of this Agreement or for the period specified in the Specifications. Said tapes, facsimiles and other records shall remain the property of One Call at all times.
- d) Assist the Member in all investigations pertaining to the location of the Member's Plant where damage or claims have occurred with respect to such Members Plant and relate to the activities of the Call Centre. In the event the testimony or evidence of any of One Call's employees or agents is required by any tribunal, arbitrator, hearing or court of law, compensation for time and expenses of any such witness for their testimony shall be negotiated between One Call and the Member at that time, but in any event shall not be greater than the current rate of remuneration.

- e) Provide reasonable and adequate security in connection with all information provided to One Call by the Member and all communications from One Call to the Member.
- f) Ensure that any computer system which it will use to interface or communicate with any of the Member's systems does not contain any pre-programmed devices which could affect the operation and performance of the Member's computer system including, without limitation, disabling such system or remotely accessing such system without Member's authorization. The foregoing includes, without limiting the generality of the foregoing, devices such as viruses, bugs, "time bombs", "drop dead devices", and "Trojan horses".
- g) Ensure that any computer system which will interface or communicate with any of the Member's systems will provide sufficient security to prevent any unauthorized access to the Member's system through One Call's computer system.
- h) ensure the Primary Telephone Number shall be a toll free number.

6. **Members Obligations:** - The Member hereby agrees to:

- a) Supply and maintain, at Member's sole cost and expense, compatible receiving equipment as specified in the Specifications and to promptly notify One Call of any proposed or actual actions to relocate, move or disconnect any of the Member's receiving equipment;
- b) Pay the cost of installing communication lines on the Member's premises to ensure supply and maintenance of compatible receiving equipment;
- c) Pay all costs associated with dedicated communication lines to receive Notifications of Locate Requests if the Member so chooses to install such facility or facilities;
- d) Make necessary appointments with Excavators for each notification of Locate Request from the Call Centre within a reasonable period of time following receipt of such Notification of Locate Request (except as required by law or in accordance with the terms of this agreement);
- e) Pay the costs set out in the Pricing Structure and other relevant provisions of this agreement;
- f) To furnish to the Call Centre the telephone number(s) of the Member's receiving location or locations to direct and verify Requests to Member and for verbal transmission in the event of failure of One Call's equipment and the Member hereby agrees to up-date this information upon One Call's request or when otherwise necessary or appropriate;
- g) To provide to the Call Centre forthwith upon execution hereof and at all necessary times thereafter with all necessary Members plant location information necessary to complete and maintain One Call's mapping system of Member's Plant and the Member shall be solely responsible for maintaining such Member's Plant location information;
- h) To update, when necessary or periodically, any changes to the Members Service Area;
- i) To pay for the individual services provided to the Member by One Call, including all taxes and other charges or levies pursuant to Federal, Provincial, Municipal laws or regulatory authorities in accordance with the terms of this agreement;

- j) To pay any other charges (including applicable taxes) incurred by the Member as a result of the services provided by One Call to such Member in accordance with this agreement;
- k) To accept sole responsibility for the accuracy and adequacy of any and all information the Member provides to One Call and/or the Call Centre pursuant to this Agreement.
- l) That it has no right, title or interest and shall not at any time, either directly or indirectly, make any claim that it has any right, title or interest in the Primary Telephone Number.
- m) In the event of termination of this agreement the Primary Telephone Number shall remain with One Call and the Member hereby acknowledges that both during the term of this agreement and thereafter it shall have no rights whatsoever with respect thereto and this covenant shall survive the termination of this Agreement.
- n) All information and other data associated with the Service pursuant to this Agreement shall remain the sole exclusive property of One Call.

7. **Changes in Provision of Service:** - The Member may, at any time, without invalidating this Agreement, order extra service or make changes to the Service upon receipt of the prior written consent of One Call. The term and any other changes to this Agreement shall be made in writing between the parties and it shall be the responsibility of the Member to obtain prior written authorization from One Call for extra service or changes or alterations to the existing Service.

8. **Assignment:** - One Call reserves the right, in its sole discretion and without any prior notice to the Member, to subcontract the entirety or any part or parts of their responsibilities and obligations pursuant to this Agreement.

9. **Billing and Invoicing:** - One Call shall invoice the Member for the service provided during the previous month, on a monthly basis. The Member shall pay of the amount set forth in the invoice in full within thirty (30) days from date of receipt of the particular invoice (hereinafter called the "invoice period"). If there are corrections or inaccuracies in the invoice, it is the obligation of the Member to contact One Call.

Interest shall be charged and payable by the Member on all amounts remaining unpaid after the invoice period and interest shall be calculated monthly at the rate of 1.5% per month, which is equivalent to an effective annual rate of 19.56% per annum.

10. **Ethics and Confidentiality:** - Each of the parties agree that all information obtained as a result of this Agreement relating to the business or affairs of another party hereto, which at the time is of a confidential nature, whether or not specifically identified as confidential, other than information generally available to the public is strictly confidential and is to be held in strictest confidence, and shall cause its Representatives (as defined below), to hold all confidential information in strictest confidence.

"Representatives" with respect to any party means its affiliates and their respective directors, officers, employees, agents and other representatives and advisors.

Furthermore, the parties agree as follows:

- a) To hold all confidential information as obtained as a result of this Agreement in strict confidence. One Call shall not disclose any information pertaining to or regarding the Member to

any other Member or third party unless otherwise agreed to in writing by the relevant party or unless compelled to do so by process of law or, if such information is publicly available or is rightfully obtained by third parties.

b) To make no use of any confidential information except as expressly contemplated in this Agreement.

c) Upon termination of this Agreement, each party shall deliver to the other all necessary information owned by the respective party, including any written materials and any copies of information in the immediate form pertaining or relating to such information;

d) One Call shall be entitled to perform statistical analysis of Member's information in its possession provided that no report, compilation or statistical analysis shall reveal Member's accounts or otherwise identify the Member;

e) The Member agrees to keep all information relating to the Service, program, any manuals or procedures, or documentation relating thereto strictly confidential;

f) Each party acknowledges and agrees that the breach by it of any of the provisions of this Section 11 would cause serious irreparable harm which could not be adequately compensated for in damages and, in the event of a breach or threatened breach of any such provisions, each party hereby consents to an injunction being issued against it restraining it from any further breach of such provisions, but such actions shall not be construed so as to be in derogation of any other remedy which any other party may have in the event of such a breach.

g) This Section 11 shall survive the termination or expiration of this Agreement.

11. Personnel: - In the event that One Call's personnel are unable to perform the Service as a result of any job action by Member's personnel, One Call shall then advise the Member on the nature, form and substance of Service to be provided.

12. Quality Assurance: - In the event the Member is in any way dissatisfied with any aspect of the Service, it may make a formal written complaint to One Call, which written complaint shall include the causes of the deficiency or complaint and One Call shall forthwith investigate said complaint and take immediate steps to prevent any recurrence.

In the event that One Call considers the performance or the obligations of the Member hereunder to be unsatisfactory or deficient, but not necessarily in default, it may issue a written complaint to the Member, setting forth any problems or deficiencies and upon receipt of said complaint, the Member shall investigate the complaint and take immediate steps to deal with all of the said problems and deficiencies in a commercially reasonable manner to prevent a recurrence.

13. Care of Property: - The Member and One Call agree that each shall take proper care of any and all property owned by one party which is from time to time in the custody, care, or control of the other party and each party shall be responsible for any loss of, or damage to, such property until such time as it is returned to the custody, care, or control of its rightful owner.

14. Termination:-

a) The Member, while not in default of any of its payment obligations pursuant to this Agreement, may terminate this Agreement upon delivery of thirty (30) days prior written notice to One Call.

b) In the event the Member is deemed by One Call to be in default under any of the terms and conditions of this Agreement, the following provisions shall apply:

i) One Call shall notify the Member, in writing, as to the Member's default and upon receipt of such notice the Member shall satisfactorily cure said default within 10 days of receipt of written notice;

ii) In the event the Member does not satisfactorily cure the default of which it has been notified, then One Call may, upon delivery of thirty days prior written notice, terminate this Agreement. In that event the Member agrees it will be responsible for and it shall pay immediately all outstanding invoices, amounts, surcharges, charges, costs, expenses, fees or taxes due by the Member up to and including the effective date of termination of this Agreement.

c) Notwithstanding the receipt by any party of a written notice of termination, the parties agree that the Agreement shall continue and all obligations, rights and responsibilities of each party hereto shall survive intact until the end of the applicable notice period. On the last day of the notice period, the defaulting party shall reconcile and pay in full all outstanding invoices, amounts, surcharges, charges, costs, expenses, fees, or taxes due to the date of termination, including all invoices issued and due during the applicable notice period.

15. Deemed Default: - The parties hereto shall be deemed in default upon the occurrence of any of the following:

a) If any party becomes insolvent, or makes an assignment for the general benefit of creditors;

b) Any proceedings are commenced by or against a party under any bankruptcy or insolvency laws for proceedings for the appointment of a custodian, receiver, or a receiver-manager or any other official with similar powers for a party, which proceedings are not dismissed or withdrawn within sixty (60) days;

c) If a party ceases to carry on business.

16. Indemnity: - The Member shall fully indemnify and save harmless One Call, its shareholders and respective directors, officers and employees in respect of any claim, demand, action, cause of action, loss, liability, damages, cost charge or expense which may be made or brought against One Call or which it may suffer or incur or indirectly as a result of, in respect of and arising out of:

(a) any incorrectness in or breach of any representation or warranty of the Member hereunder;

(b) any breach of any non-fulfillment of any covenant or agreement on the part of the Member hereunder; or

(c) any act or omission directly or indirectly related to the Agreement, (except to the extent of any negligence of One Call) which contributes to such act or omission;

17. **Proprietary Rights:** - One Call assumes no liability for infringement of patent or copyright claims based upon: (i) non-One Call supplied equipment into which a computer system is incorporated; (ii) any assembly, circuit, combination, method or process in which any of the computer systems may be used other than those specified by One Call; (iii) any compliance with Member's detailed specifications against the advice of One Call; or (iv) the modification of any computer system or any part thereof, unless such modification was made or authorized by One Call.

18. **Insurance By Member:** - The Member shall, during the term of this Agreement, maintain a policy of comprehensive general liability insurance with a minimum coverage against bodily injury and property damage caused by the negligence of the Member in an amount of not less than _____million dollars (\$____,000,000.00) per occurrence. The Member shall, after entering into this Agreement and from time to time thereafter, at One Call's request, furnish forthwith to One Call a memorandum of insurance or an insurance certificate setting out the terms and conditions of each policy maintained by the Member in order to satisfy the requirements of this section.

The Member shall not cancel, terminate or materially alter the terms of the insurance policy without giving prior notice in writing to One Call. A Member shall cause or arrange for its insurer to oblige itself contractually in writing to One Call to provide 30 days prior notice in writing before canceling or terminating the insurance policy under which it is an insurer.

19. **Interruption of Service:** - The Member acknowledges that telephone and facsimile communications may, from time to time be partially or wholly interrupted or inaccurate as a result of a telecommunication interruption. In that event the parties agree that:

- a) One Call shall not be required to maintain the Service at levels set forth in the Specifications;
- b) One Call shall execute measures and practices designed to aid the Member and to provide timely and accurate restoration of the Service;
- c) One Call shall not be liable for any loss or damage of any kind whatsoever arising as a result of such telecommunication interruption;

20. **Improvements:** - In order to continuously improve the quality of service to the Member, One Call reserves the right to make changes to the Service and Specifications or any part thereof, including without limitation, changes to rules of operation, accessibility periods, customer identification procedures and types of equipment.

21. **Excusable Delays:**- Except as otherwise expressly provided for in this Agreement, neither of the One Call nor the Member shall be responsible for delays or failures to perform resulting from acts beyond its reasonable control. Such acts shall include but not be limited to riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other disasters. The dates and times for performance (other than for the payment of money) shall, in conformity herewith, be postponed to the extent and for the period of time that One Call, or the Member, as the case may be, is prevented from meeting them by reason of the above-mentioned causes.

If a party relies on this Section 22 to excuse its delay or failure to perform any of its obligations under this Agreement, it shall use its commercially reasonable efforts to remedy the situation or remove so far as possible with reasonable dispatch the cause of its delay or inability to perform any of its obligations under this Agreement. If a party relies on this Section 22 to excuse its delay or failure to perform with any of its obligations under this Agreement, and such reliance continues for a period of more than one (1) day, or for more than three (3) days in aggregate in any period of one hundred eighty (180) successive days, any other party may terminate this Agreement.

22. Limitation of Liability: - Except as specifically provided in this Agreement, there are no warranties or conditions, expressed or implied, including but not limited to any implied warranties or conditions as to quality or fitness for a particular purpose, made by One Call with respect to the Service or any other items provided hereunder or any transaction contemplated herein.

The Member acknowledges that One Call does not warrant the accuracy of any information provided by an Excavator, be it contained in any Excavator Locate Request or any other information provided by an Excavator whatsoever and One Call shall not be liable for any loss to the Member as a result of inaccuracies provided by an Excavator in any such information.

One Call shall not be in any manner liable whatsoever to the Member, or any party claiming through the Member, for any losses, costs, damages due to errors in or failing of mapping software licensed from independent third parties which is used by One Call in the provision of service under this Agreement.

In no event shall either One Call be liable, or the Member have a remedy for, the recovery of any special, indirect or consequential damages, even if One Call has been advised of the possibility thereof, including, but not limited to loss of profit, loss of revenue, failure to realize expected savings, other commercial or economic losses of any kind or any damages caused by the Members failure to meet the Members responsibilities.

23. Member Assignment:- The Member agrees that it may not assign or subcontract in whole or in part any part of this Agreement without the prior written consent of One Call, which consent shall not be unreasonably withheld.

24. Survival and Non-Merger: - Notwithstanding the termination or expiration of this Agreement for any reason whatsoever, including expiry at the end of the term or extended term, those clauses pertaining to price, billing and invoicing, insurance, indemnity, ethics, confidentiality, and limitation of liability, shall forever survive the termination of this Agreement, in addition to any other clause which survives by operation of law or which expressly or by implication remain in full force and effect on and after the termination or expiration of this Agreement.

25. Time of the Essence: - Time is of the essence in any matter relating to the performance of this Agreement.

26. Governing Law:- This Agreement shall be governed and interpreted in accordance with the provisions of the laws of the Province of Ontario.

27. **Notice:** - Any notice to the Member shall be given at the address of the Member as shown in Exhibit "A". Any notice to be given to One Call is to be given at its office below, or such other address designated by One Call from time to time.

ONTARIO ONE CALL LTD.
335 Laird Road, Unit 8
Guelph, ON N1G 4P7

Any notice required under this Agreement shall be given in writing and delivered by registered mail, by facsimile, or by hand delivery to any address of which either party may notify the other in accordance with this paragraph, or to any other person or address which either party may designate from time to time. Notice shall be deemed to have been delivered upon the date of personal delivery or of receipt by facsimile or by hand of the same, and on the next business day after mailing by registered mail.

28. **Severability and Waiver:** In the event that any one or more of the provisions contained in the Agreement shall be held to be unenforceable under the laws in force in the Province of Ontario, such provision(s) shall be deemed not to have been written and shall not affect any other provisions of the Agreement.

The failure of either party to insist upon strict performance of this Agreement, or to exercise any option herein, shall not act as a waiver of any right, proviso or option, but the same shall continue to be in full force and effect. No waiver by One Call and/or Member of any breach shall be effective unless expressed in writing.

29. **Entire Agreement:-** This Agreement, including the attached Exhibits and other documents incorporated by reference, shall constitute the entire Agreement between One Call and the Member with respect to subject matter hereof, and shall replace any and all prior written or verbal promises, representations, collateral agreements or undertakings.

This Agreement supersedes all prior agreements between and among the parties hereto regarding the subjects herein and all prior and concurrent agreements are merged herewith, there being no other agreements except as expressed herein.

30. **Counterparts:** - This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed

form and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties; provided, however, that any party providing its signature in such manner shall promptly forward to the other party an original of the signed copy of this Agreement which was so faxed.

IN WITNESS WHEREOF the undersigned have hereunto affixed their hands and seals on the date first mentioned above.

SIGNED, SEALED AND DELIVERED

in the presence of

Witness as to the signature
of MEMBER


)
)
)
)
)
) _____ (s)
) (MEMBER)
)
)
)
) ONTARIO ONE CALL LTD.
)
)
) Per:  (c/s)
) Authorized Signing Officer

Exhibit "A" - Address of Member

Corporate Name: _____

Address: _____

Contact Name: _____

Telephone Number: _____

Fax. Number: _____

E-Mail Address: _____

Please provide following information for billing (if different than above)

Address: _____

Contact Name: _____

Telephone Number: _____

Fax. Number: _____

E-Mail Address: _____

Exhibit "B" – Pricing Structure for Ontario One Call

Cost per notification (effective April 1, 2003)	\$1.80
Additional cost per notification for a follow-up phone call (where requested by Member)	\$2.75
Cost per "All Clear" (screened/cleared through Selective Sending or Depth Selective Sending) provided by Ontario One Call to the excavator on behalf of the Member	\$0.50