

THIS AGREEMENT dated for reference the \_\_\_\_\_ day of \_\_\_\_\_ 2024.

**BETWEEN:**

**THE CORPORATION OF THE CITY OF PENTICTON,**  
171 Main Street, Penticton, BC, V2A 5A9

(the "**City**")

**OF THE FIRST PART**

**AND:**

**REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN,**  
101 Martin Street, Penticton, BC, V2A 5J9

(the "**Regional District**")

**OF THE SECOND PART**

**WHEREAS:**

- A. The Regional District has requested the City to provide first responder medical and rescue services ("First Responder Services") to supply and deploy firefighting personnel and equipment for the prevention, extinguishment and containment of fires (the "Fire Suppression Services") in those areas within the Regional District outlined in heavy black on Schedule A (the "Schedule A Area")
- B. The City has, subject to the terms and conditions contained in this Agreement, agreed to provide the aforesaid services.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both the City and the Regional District, the City and the Regional District agree as follows:

## **1. FIRE PROTECTION**

- 1.1 The City agrees to provide First Responder Services and Fire Suppression Services (collectively known as the “Services”) to the Schedule A Area
- 1.2 The City shall provide the Services at a level to that which the City’s fire department provides to properties located within the boundaries of the City but not at a greater level.
- 1.3 The Services to the Schedule A Area shall be subject to the following:
  - (a) the availability of its fire suppression equipment and personnel; and
  - (b) the sole and absolute discretion of the City to determine the priority of use of its fire suppression equipment and personnel as well as the allocation of fire suppression equipment to be employed in regards to providing any of the Services.
  - (c) Fire prevention measures such as fire bans or restrictions that are in effect within the City of Penticton will apply to the areas within the Regional District outlined on Schedule A. If the fire prevention measures are not followed, fire suppression services will be supplied at Actual Cost per fire related incident.
- 1.4 The City shall not be responsible or held liable for any personal injury or loss or damages of any kind to any building, modular home or unit improvement, chattel or chattels or other structures, including the contents thereof which may be sustained by the City while exercising its discretion in Section 1.3 herein.
- 1.5 If and whenever to the extent the City shall be prevented, delayed or restricted from providing any of the Services by reason of civil commotion, war-like operation, or like operation, invasion, rebellion, hostilities, sabotage, strike or work stoppage, or being unable to obtain any material, service, utility or labor required to fill such obligation, or reason by any statute, law, or regulation of, or inability to obtain any information from any governmental authority having lawful jurisdiction preventing, delaying or restricting such fulfillment, by reason of other unavoidable occurrence, the time for fulfillment of the Services shall be postponed or extended during the period in which such circumstances operate to prevent, delay or restrict the fulfillment thereof, and the other party to this agreement shall not be entitled to compensation for any inconvenience, nuisance or damages of any kind thereby occasioned.
- 1.6 The City shall not be obliged to provide water, pipeline, hydrant and similar facilities to the Schedule 1 Area otherwise known as the “Fire Protection Area”.

## **2. TERM**

- 2.1 Subject to section 2.2 and 2.3 herein, the term of this Agreement shall commence on the 1st day of January, 2025 and end on the 31st day of December, 2029.

- 2.2 Notwithstanding anything herein to the contrary, either party to this Agreement may terminate this Agreement by delivering to the other party a written notice of termination before July 1st in any year during the term hereof and this Agreement shall terminate and be of no further force or effect as of December 31 of the year in which the said notice is delivered, save and except for sections 4.3 and 4.4 herein which shall survive the said termination.
- 2.3 Should neither party terminate the agreement prior to the end of the term in section 2.1, the agreement shall stay in force on a year to year basis until such time as renewed or terminated.

### 3. PAYMENT FOR SERVICES

3.1 The City shall provide to the Regional District:

- (a) an estimate of the costs of service in a dollar figure for the subsequent year by the 30<sup>th</sup> of November in each year of this Agreement. It is understood and agreed that the estimate will be based on an annualization of the year to date numbers which may include some inaccuracies; and
- (d) detailed operational and capital financial information for the previous year for the City's Fire Department before the 30<sup>th</sup> of June in each year of this Agreement.

3.2 For each year of this Agreement, the Regional District shall pay to the City an amount equal to:

$$\{[(TAV_{EAF}) \div (TAV_{EAF} + TAV_{CP} + TAV_{FSA})] \times TC\} \text{ where:}$$

- (a)  $TAV_{EAF}$  is the total assessed value before exemptions, as determined by the British Columbia Assessment Authority of the Regional District Land and Improvements that are subject to this Agreement;
- (b) TC is the City's Fire Department's total cost of providing the Fire Services in the Fire Protection Areas within the boundaries of the City and elsewhere in the previous year excluding costs related to services not offered with the protection area or grant related program costs;
- (c)  $TAV_{CP}$  is the total assessed value of all Land and Improvements within the City, after exemptions, as determined by the British Columbia Assessment Authority;
- (d)  $TAV_{FSA}$  is the total assessed value of all Land and Improvements, as determined by the British Columbia Assessment Authority of all areas provided with Fire Services by the City pursuant to other agreements and specifically excludes  $TAV_{EAF}$ ; and

- (e) All assessment values herein shall be based upon the revised assessment rolls for the current taxation year.
- 3.3 For the purposes of subsections 3.2(b) and 3.2(c), the City's Fire Department's cost of operation for the previous year:
  - (a) includes the City's standard administrative support service charge of 18 percent which includes costs for liability and fire insurance, as well as accounting, legal, data processing, personnel, and legislative services and must only be applied to operating costs, including depreciation of equipment; and
  - (b) includes the amortization and depreciation of fire services capital assets as defined by City of Penticton audited annual financial statements with the exception of any watercraft equipment.
- 3.4 The City agrees to advise the Regional District, no later than July 31 of each year during the term of this Agreement, of the payment required for the current year.
- 3.5 The Regional District shall pay to the City the amount payable under this section no later than the first business day of October in each year during the term of this Agreement commencing in the year 2025.
- 3.6 The Regional District shall provide to the City, by the 1<sup>st</sup> day of September of each year of this Agreement, a list of all properties and Improvements in the Identified Lands for which the City is to provide the Fire Services, all related assessment data, and shall provide from time to time to the City an updated list and map(s) of Identified Lands or improvements thereon as and when necessary or requested by the City.

#### **4. INSURANCE AND INDEMNITY**

- 4.1 During the term of this Agreement, the Regional District shall, at its sole cost and expense, maintain comprehensive general liability insurance of at least \$5,000,000.00 against claims for personal injury, death, or property damage occurring on, off, in, or about the Fire Protection Area and arising out of or resulting from the negligence of the Regional District and its elected or appointed officials, officers, servants, employees, members, and agents with respect to its obligations under this Agreement.
- 4.2 During the term of this Agreement, the City must, at its sole cost and expense, maintain comprehensive general liability insurance of at least \$5,000,000.00 against claims for personal injury, death, or property damage occurring on, off, in, or about the Fire Protection Area and arising out of or resulting from the

negligence of the City or its elected or appointed officials, officers, servants, employees, members, and agents in providing the Services under this Agreement.

- 4.3 The insurance referred to in sections 4.1 and 4.2 herein shall include the City or the Regional District as the case may be as an additional named insured with a cross-liability clause and shall protect the City or the Regional District in respective claims by the other as if the other were separately insured. The said policy shall contain a waiver of subrogation clause in favor of the other party as the case may be.
- 4.4 The City hereby releases and covenants to indemnify and save harmless the Regional District and its elected and appointed officials, officers, employees, servants, agents, successors and assigns from and against all claims, demands, losses, costs, damages, actions, suits, proceedings, fines, or assessments, including all legal fees and disbursements associated with same on a solicitor and own client basis, by whomever made, brought, or prosecuted and in any manner based on, arising out of, related to, occasioned by, or attributed to the breach of any provision of this Agreement to be performed by the City or the negligent acts or omissions, gross negligence or malicious or willful misconduct of the City, its elected or appointed officials, officers, servants, employees, agents, or contractors in providing the Services. Provided this indemnity shall be reduced where and to the extent the claim, demands, losses, costs, damages, actions, suits, proceedings, fines or assessments are caused or contributed by the Regional District or by those for whom the Regional District in law is responsible.
- 4.5 The Regional District hereby releases and covenants to indemnify and save harmless the City and its elected and appointed officials, officers, employees, servants, agents, successors and assigns from and against all claims, demands, losses, costs, damages, actions, suits, proceedings, fines, or assessments, including all legal fees and disbursements associated with same on a solicitor and own client basis, by whomever made, brought, or prosecuted and in any manner based on, arising out of, related to, occasioned by, or attributed to the breach of any provision of this Agreement to be performed by the Regional District or the negligent acts or omissions, gross negligence or malicious or willful misconduct of the Regional District, its elected or appointed officials, officers, servants, employees, agents, or contractors in providing the Services . Provided this indemnity shall be reduced where and to the extent the claims, demands, losses, costs, damages, actions, suits, proceedings, fines or assessments are caused or contributed to by the City or by those for whom the City in law is responsible.
- 4.6 Sections 4.4 and 4.5 survive the termination of this Agreement.

## **5. NOTICES, DEMANDS AND OTHER COMMUNICATIONS**

5.1 Where this Agreement requires or permits a notice, demand, or other communication to be given or served by either party to the other, the notice, demand, or other communication must be given or served in writing, personally delivered or forwarded by registered mail, and addressed as follows:

(a) to the City:

THE CORPORATION OF THE CITY OF PENTICTON  
171 Main Street,  
Penticton, B.C., V2A 5A9  
Attention: Corporate Officer;

(b) to the Regional District:

REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN  
101 Martin Street,  
Penticton, B.C., V2A 5J9  
Attention: Deputy Corporate Officer.

5.2 A party may change its address by giving the other party prior written notice of a change of address in accordance with sections 5.1 or 5.3.

5.3 If there is a postal strike or other postal disruption, a notice, demand, or other communication must be personally delivered rather than mailed to the:

Corporate Officer of the City at the offices of the City; or the

Deputy Corporate Officer of the Regional District at the offices of the Regional District.

5.4 A notice, demand, or other communication must be considered to be given or received by the party to whom it is addressed:

(a) on delivery, if delivered personally; or

(b) if mailed, on the second day after it is mailed.

## **6. GENERAL PROVISIONS**

6.1 Time is of the essence in this Agreement.

6.2 The parties hereto acknowledge and agree that this Agreement is intended to be a contract for the Services only and does not create an employer/employee relationship, agency relationship, joint venture or partnership between them and at all times the City is and is intended to be an independent contractor.

6.3 Both parties agree that future discussions may occur that investigate the addition of other protection areas to this service agreement

- 6.4 Both parties agree that future discussions may occur that investigate the option of adding fire inspection or investigations to the services provided by the City
- 6.5 No waiver of any term or condition in this Agreement or breach of any term or condition in this Agreement is effective unless it is in writing, and no waiver of a breach is to be construed as a waiver of any future breach.
- 6.6 This Agreement ensures to the benefit of and binds the parties to it and their successors and permitted assigns.
- 6.7 This Agreement is the entire agreement between the parties and supersedes all prior written and oral agreements, representations, and statements entered or exchanged by the parties.

**IN WITNESS WHEREOF THE PARTIES HERETO** have executed this agreement at Penticton, British Columbia, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

THE CORPORATION OF THE CITY OF PENTICTON, by its  
authorized signatories

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Corporate Officer

REGIONAL DISTRICT OKANAGAN-  
SIMILKAMEEN, by its authorized signatories)

\_\_\_\_\_  
RDOS Board Chair

\_\_\_\_\_  
RDOS CAO



