

**THIS AGREEMENT** dated for reference the 16<sup>th</sup>, day of December, 2018 is

BETWEEN:

THE CORPORATION OF THE CITY OF KELOWNA  
1435 Water Street  
Kelowna, B.C. V1Y 1J4

(hereinafter called “Kelowna”)

OF THE FIRST PART

AND:

WESTBANK FIRST NATION  
301 – 515 Highway 97 S  
Kelowna, B.C. V1Z 3J2

(hereinafter called the “WFN”)

OF THE SECOND PART

WHEREAS:

- A: Kelowna acknowledges it is on the traditional territory of the WFN and is proud to be a part of making WFN Law Enforcement Officers (LEO) safer;
- B: The *Community Charter* provides that the corporate powers of a local government include the power to make agreements respecting the undertaking, provision and operation of activities, works and services;
- C: In May, 2013, the WFN approached the Kelowna Fire Department (KFD) to request the provision of monitoring services for their LEOs;
- D: Kelowna and WFN entered into an agreement for the Services effective May 1<sup>st</sup>, 2014 with an expiry date of December 15<sup>th</sup>, 2018 (the “Existing Agreement”);
- E: Both parties wish to renew the Existing Agreement for a five (5) year term; and
- F: Kelowna has agreed to provide law enforcement monitoring services to the WFN in accordance with the terms set out herein.

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 hereto mutually agree as follows:

## 1. Definitions

### 1.1 In this agreement:

**“CAD”** means the computer-aided dispatch system maintained and used by Kelowna;

**“COFRS Manual”** means the Central Okanagan Fire Radio System Field Guide;

**“Fire Dispatch Centre”** means the Fire Dispatch Centre maintained by the KFD;

**“KFD”** means the Kelowna Fire Department;

**“Law Enforcement Officers”** means those persons authorized by the WFN to provide law enforcement services within the boundaries of the WFN and identified in Schedule “B” which is attached to and forms part of this Agreement, and any other persons authorized by the WFN from time to time, provided the identities of such persons are communicated by the WFN to the KFD and that the number of Law Enforcement Officers does not at any time exceed three;

**“Person Check”** means a procedure for checking on the well-being of employees who are working alone or in isolation at intervals based on the level of risk to which an employee is exposed;

**“Services”** means the services provided by Kelowna to the WFN in accordance with this Agreement;

**“Term”** means the term of this Agreement as provided under section 4.

## 2. Services

### 2.1 Throughout the Term, Kelowna shall provide WFN with the following law enforcement monitoring services:

- (a) Radio Monitoring: The KFD shall monitor the radio frequencies used by the Law Enforcement Officers;

- (b) Person Checks: The KFD shall perform Person Checks via radio, CAD, or both, for all Law Enforcement Officers on duty, to a maximum of 15 checks per Law Enforcement Officer per day;
  - (c) Ad Hoc Timers: The KFD shall initiate (upon radio request, CAD request, or both) timers for Law Enforcement Officers on duty (average of 10 per day); and
  - (d) Requests for Assistance: As required, the KFD shall forward radio requests made by Law Enforcement Officers for URGENT RCMP assistance (average of 5 per day).
- 2.2 Kelowna shall provide the Services in accordance with the standards and operating procedures utilized by the KFD unless a variance of such standards or operating procedures is mutually agreed between the Parties.
  - 2.3 Kelowna shall ensure that Fire Dispatch Centre personnel communicate with LEOs using the common language terminology prescribed by the COFRS Manual.
  - 2.4 Kelowna shall not be responsible for taking calls from public or other agencies, providing direct dispatch services, or performing call tracking, monitoring, or following.
  - 2.5 The parties shall meet 3 months after the commencement of the Term, and thereafter bi-annually (every 6 months) or such other frequency as may be mutually agreed, for the purposes of resolving issues, sharing information and identifying procedural communications or equipment changes.
  - 2.6 Kelowna agrees that neither Kelowna nor any person for whom Kelowna is responsible at law shall disclose to any person any information learned about the WFN, its servants, employees, agents or persons who are subject of an emergency including any information provided in accordance with the requirements of this Agreement. Kelowna acknowledges and agrees that all such information is confidential and shall not be released except in accordance with the requirements of the *Freedom of Information and Protection of Privacy Act* (British Columbia).

### **3. WFN Obligations**

- 3.1 The WFN shall provide to Kelowna all information necessary, in the opinion of the KFD Fire Chief or his or her designate, to enable Kelowna to provide the Services. The WFN shall update such information regularly, as required. The WFN acknowledges that such information is necessary for optimal delivery of the Services, and where such information is not provided or is out of date the Services may be negatively impacted.

- 3.2 The WFN shall ensure that LEOs communicate with the Fire Dispatch Centre in the common language terminology prescribed by the COFRS Manual.
- 3.3 The WFN shall provide a single point of contact for all administration and operational matters relating to the delivery of the Services.
- 3.4 The WFN shall purchase, license and maintain all radio equipment, including repeaters, base stations, mobile and portable radios, pagers and any other hardware and software required to give effect to this Agreement, with the exception of equipment within the Fire Dispatch Centre.
- 3.5 The WFN shall pay all telecommunications and radio communications costs related to maintaining the Services, including
  - (a) all ongoing telecommunications costs, including equipment operation, site rental, licensing and upgrading costs;
  - (b) all ongoing costs related to redundant internet, telephone connections, or both at a site within or near WFN territory to provide a link between the LEOs radio system and the Fire Dispatch Centre;
  - (c) all costs related to a site within or near the boundaries of the WFN suitable for housing communications equipment; and
  - (d) other costs related to the construction, configuration and maintenance of radio communication links required for the Services.
- 3.6 The WFN shall ensure that,
  - (a) all Industry Canada requirements are met with respect to radio licenses; and
  - (b) all communications equipment and installations meet the NFPA 1221 Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems.
- 3.7 The WFN shall ensure that a preventive maintenance service agreement is in place for all communications equipment and that the equipment is regularly maintained to accepted emergency equipment standards.
- 3.8 The WFN is responsible for any further costs related to mobile equipment, software, and data connection, including CAD, not otherwise provided for in this Agreement.

#### **4. Term**

- 4.1 The term of this Agreement shall commence on the 16<sup>th</sup>, day of December, 2018 and terminate on the 15<sup>th</sup> day of December 2024.

## **5. Fees**

- 5.1 The WFN shall pay Kelowna the fees and charges as prescribed in Schedule "A" attached hereto and forming part of this Agreement.

## **6. Indemnities**

- 6.1 The WFN agrees that it shall indemnify and save harmless Kelowna, its, Council members, employees, and agents from and against any claims, suits, actions, causes of action, costs, damages or expense of any kind that result from:

(a) the negligence of the WFN and its employees, contractors and agents; and

(b) a breach of this Agreement by the WFN.

- 6.2 Kelowna agrees it shall indemnify and save harmless the WFN, its Council members, directors, employees and agents, from and against any claims, suits, actions, causes of action, costs, damages or expense of any kind that result from:

(a) the negligence of Kelowna and its employees, contractors and agents in the provision of the Services; and

(b) a breach of this Agreement by Kelowna.

## **7. Default and Early Termination**

- 7.1 If either party is in breach of this Agreement and the breach is not corrected within thirty (30) days after notice of the breach provided to that party, the party not in breach may terminate this Agreement.

- 7.2 Should the City no longer provide fire dispatch operations, this contract shall become null and void and Kelowna shall provide the WFN a refund for the Services in accordance with section 7.3.

- 7.3 By notice in writing delivered any time after January 1, 2019, either party may elect to terminate this Agreement, in which case the arrangement for Services provided hereunder shall be terminated effective twelve (12) months from the date of the said notice. In the event of early termination under this provision, Kelowna shall refund a prorated amount of the fees paid to Kelowna for the year of the Term in which such termination takes effect.

## **8. Dispute Resolution**

- 8.1 Both WFN and Kelowna agree to co-operate and use their best efforts to resolve any dispute which may arise regarding this Agreement or the Services contemplated within this Agreement or the responsibilities or rights of each party under it, including the candid and timely disclosure of all relevant information and documentation to each other. If the dispute cannot be resolved, it shall be first referred to each party's managing director responsible for fire dispatch services in order that they may attempt to resolve the dispute. In the event the two representatives are unable to reach agreement regarding the dispute, may be submitted to arbitration by delivery of a Notice of Arbitration in writing to the other party. The arbitration must be conducted by a three-person panel comprised of one appropriately qualified staff person appointed by each party and one person chosen jointly by the two appointed staff persons, who shall be the chair of the arbitration panel. If the two staff appointees cannot agree on the choice of the chair of the arbitration panel then the chair must be appointed by a Judge of the Supreme Court of British Columbia. The arbitration shall be governed by the *Commercial Arbitration Act* (British Columbia). The place of arbitration shall be Kelowna, British Columbia, Canada, and the costs shall be borne equally by the parties.

## **9. No Joint Venture**

- 9.1 Nothing contained in this Agreement creates a relationship of principal and agent, partnership, joint venture or business enterprise between the parties or gives either party any power or authority to bind or control the other.

## **10. Notices**

- 10.1 Where any notice, request, direction, consent, approval or other communication (any of which is a "Notice") must be given or made by a party under this Agreement, it must be in writing and is effective if delivered in person, sent by registered mail addressed to the party for whom it is intended at the address set forth above in this Agreement, or sent by electronic means or fax to Kelowna at its fax number (250) 862-3371, to the attention of the Fire Chief; or sent by electronic means or fax to the WFN at its fax number (250) 769-4377, to the attention of the Legal Services Supervisor. Any Notice is deemed to have been given:
- (a) if delivered in person, when delivered;
  - (b) if sent by registered mail, when the postal receipt is acknowledged by the other party; and
  - (c) if by electronic means or fax, 72 hours after the time of faxing or emailing.

A party may change its contact information by Notice in the manner set out in this provision.

## **11. General Provisions**

- 11.1 If any provision of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the provision that is invalid shall not affect the validity of the remainder of this Agreement.
- 11.2 Time is of the essence in this Agreement.
- 11.3 This Agreement shall endure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
- 11.4 A waiver by a party of any failure on the part of the other party to abide by 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.
- 11.5 No remedy under this Agreement shall be deemed to be exclusive but shall, where possible, be cumulative, as shall all other remedies at law or in equity.
- 11.6 Whenever the singular, masculine or neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.
- 11.7 This Agreement shall be construed in accordance with and governed by the laws of the Province of British Columbia.
- 11.8 Section and paragraph headings are inserted for identification purposes only and do not form part of this Agreement.
- 11.9 Neither party may assign this Agreement without the written consent of the other party.
- 11.10 This Agreement may not be modified or amended except by written agreement of the parties.
- 11.11 This Agreement is the entire agreement and understanding of the parties with respect to matters contemplated by this Agreement and supersedes all prior and contemporaneous agreements between the parties with respect to such matters.

- 11.12 All representations and warranties set forth in this Agreement and all provisions of this Agreement, the full performance of which is not required prior to a termination of this Agreement, shall survive any such termination and be fully enforceable thereunder.
- 11.13 This Agreement may be executed in as many counterparts as may be necessary or by facsimile, each of which shall together, for all purposes, constitute one and the same instrument, binding on the parties and each of which shall together be deemed to be an original, notwithstanding that all parties are not signatory to the same counterpart or facsimile.

IN WITNESS WHEREOF this Agreement has been executed as of the day and year first above written.

THE CORPORATION OF THE CITY OF KELOWNA  
by its authorized signatories:

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Witness

WESTBANK FIRST NATION  
by its authorized signatories:

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Patrick Fosbery, WFN Director of Operations/CAO

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Witness



### Schedule - A

1. The cost schedule, including the adjustment factor of 3.5% annually, applicable to each year of the Term of this Agreement is as follows:

Year	2019	2020	2021	2022	2023
Service Fees	\$ 19,681.31	\$ 20,370.15	\$ 21,083.10	\$ 21,821.00	\$ 22,584.74

2. Kelowna shall invoice the WFN:
  - a. For \$19,681.31 payable upon execution of this Agreement
  - b. On or before December 15, 2020, \$20,370.15 for the provision of the Services from December 15, 2020 to December 14, 2021;
  - c. On or before December 15, 2021, \$21,083.10 for the provision of the Services from December 15, 2021 to December 14, 2022;
  - d. On or before December 15, 2022, \$21,821.00 for the provision of the Services from December 15, 2022 to December 14, 2023, and
  - e. On or before December 15, 2023, \$22,584.74 for the provision of the Services from December 15, 2023 to December 15, 2024.
3. The WFN shall pay all invoices, bills and charges rendered by Kelowna within 30 days of receipt.

**Schedule - B**

Approved Law Enforcement Officers:

1. Richard Johns
2. Dan Heaton
3. Wayne Murdock