COUNTRY RHODES FIRE PROTECTION

Fire Service Agreement

This agreement made on the _____ day of _____, 2021.

BETWEEN:

CITY OF KELOWNA,
a municipality created pursuant to
the provisions of the Local
Government Act, having its office at
1435 Water Street, Kelowna, British
Columbia, V I Y 1J4 (the "City")

(OF THE FIRST PART)

AND:

REGIONAL DISTRICT OF CENTRAL OKANAGAN
a Regional District created pursuant to the
provisions of the Local Government Act,
having its office at
1450 KLO Road, Kelowna, British Columbia,
V 1W 3Z4 (the "RDCO");

(OF THE SECOND PART)

WHEREAS the City has requested that the RDCO expand their fire protection service to include the certain areas within the boundaries of the City;

AND WHEREAS the RDCO has agreed to provide fire service to such areas;

AND WHEREAS fire services within a portion of the RDCO are provided by the EVFD, as defined herein; and

And Whereas the current agreement is set to expire on December 31st, 2021

AND WHEREAS the parties wish to renew this Agreement to set out the terms and conditions under which the RDCO will provide fire service for such areas.

1. Definitions

1.1 For the purposes of this Agreement, the following words and phrases shall having the meanings prescribed to them:

(i) "Alarm" means any call to the EVFD or any call routed to the EVFD in connection with any request for Fire Services;

(ii) "City" means the City of Kelowna;

(iii) "EVFD" means the Ellison Volunteer Fire Department;

(iv) "Fire Service" means that the EVFD will provide the same declared operational service level in accordance with the Office of the Fire Commissioner's Competency and Training Playbook to the identified contracted area for those fire suppression services typically provided by the EVFD in response to an Alarm and does not include Wildfire or Interface Fire Suppression to Land on which there are no improvements capable of sheltering or supporting a residential, commercial, industrial or institutional use or occupancy";

(v) "RDCO" means the Regional District of Central Okanagan.

2. RDCO Assumption of EVFD Obligations

2.1 The RDCO agrees that wherever this Agreement sets out or defines the responsibilities or obligations of the EVFD, such provisions constitute the responsibilities and obligations of the RDCO under this Agreement.

3. EVFD Response to Alarms

3.1 The EVFD may respond to an Alarm within or stated to be within the Fire Service Area.

3.2 The EVFD reserves a complete and sole discretion in deciding:

(i) whether to respond to an Alarm from or in connection with the Fire Service Area;

(ii) the staff and equipment to be dispatched; and

(iii) whether to reassign staff and equipment in the event an Emergency does or may exist within the Ellison Fire Protection Local Service Area (the "EFPLSA") established under the RDCO Ellison Fire Protection Local Service Establishment Bylaw No. 418, 1990.

3.3 Without limiting the scope of its discretion under section 3.2, the EVFD may consider, in determining whether a response will be made or what level of response will be provided, the following factors:

(i) any emergency within RDCO's geographic limits or the likelihood of same;

(ii) weather conditions, road conditions or other hazards which may jeopardize the safety of personnel or unduly place equipment at risk;

(iii) the availability of staff and the state of readiness of equipment;

(iv) the extent and suitability of road access to the place of a reported emergency; and

(v) the nature, severity and location of the reported emergency.

3.4 The EVFD may respond to an Alarm from or in connection with the Fire Service Area without taking measures to authenticate the Alarm, however the EVFD reserves the right to authenticate an Alarm and to confirm the location of the reported situation prior to dispatching staff and equipment to an Alarm.

3.5 Notwithstanding any other provision of this Agreement, the City acknowledges that the EVFD will only provide Fire Services with respect to structural fire protection where the structure is located within thirty (30) metres of fire department access; such access meaning a public roadway or a private driveway which provides full and sufficient access to EVFD fire fighting vehicles.

3.6 In responding to any Alarm, nothing in this Agreement requires the EVFD's response be in accordance with National Fire Protection Association ("NFPA") regarding the number of staff responding.

3.7 The COK must advise all property owners within the Fire Service Area of the discretionary nature of the Fire Services as set out in this Article 3, and that property owners should advise their insurers accordingly.

4. Payment

4.1 For providing the Fire Services hereunder, the City shall pay the RDCO, by July 1st of each year the fire service is provided, a fee equal to the following sum:

(i) the fee shall be calculated using an amount equal to the annual levy amount for Fire Services charged by the RDCO to property owners within the EFPLSA, for each $1,000.00 of assessed value of land and improvements located on such properties (the "Levy"), provided the Levy shall not exceed $1.50 per $1,000.00 of assessed value;

(ii) the Levy shall be multiplied by the total assessed value of lands and improvements divided by $1,000.00, for all properties within the Fire Service Area, which have been separately assessed in the then current calendar year; and to which shall be added;

(iii) the amount calculated in Paragraph 4.1 (ii) multiplied by 0.15 to provide compensation to the RDCO for additional administrative services incurred in providing the Fire Services.

5. Term

5.1 This Agreement shall be for a (5) five-year term for the period January 1, 2022 to December 31, 2026. This Agreement may only be modified and extended as agreed upon in writing between both parties from time to time. Prior to the conclusion of this Agreement December 31, 2026, the City and the RDCO shall begin discussions commencing at least six months in advance, as in by July 1, 2026 regarding options for fire protection to ensure transition issues are effectively dealt with in a timely manner.

6. Release

6.1 The City agrees that the exercise in good faith of the discretion reserved by the EVFD in determining whether to respond to an Alarm, in determining the level of response, or in reassigning dispatched equipment or personnel to an Emergency within the geographic limits of the EFPLSA shall not in any way be the subject of an action, cause of action, demand or claim by the City against the RDCO and that should any action, cause of action, demand or claim be advanced, this provision may be raised as a complete bar thereto.

6.2 The City releases and discharges the RDCO from any and all claims, losses, demands, costs, expense or damages incurred by the City and in any way related to the acts or omissions of the RDCO, its employees and agents in the course of an emergency response,

EXCEPT, and in such event and only to the extent such claims, losses, demands, costs, expense or damages are attributable to acts or omissions in the course of emergency responses, as are actionable and sustainable as against the RDCO, its employees and agents pursuant to law (but so as not to include any matter which is the subject of Article 6.1) in which case the release provisions as provided for in this article shall not apply.

6.3 For greater certainty, it is expressly agreed that the benefit of Article 6.1 and 6.2 extend to employees of the RDCO, including any volunteer members of the EVFD.

7. Indemnification and Insurance

7.1 The City agrees to indemnify and save harmless the RDCO, its elected officials, servants, employees, agents and volunteers, including the volunteer members of the EVFD (collectively known as the "RDCO Releasees"), from and against all claims, losses, demands, costs, expense, damages, actions, causes of action, liabilities, or outlays of any nature whatsoever (collectively known as the "Claims" or "Claim") asse1ied against any of the RDCO Releasees, and arising in any way out of the performance or non-performance of the RDCO under this Agreement, that are, or alleged to, in any way result from or are in any way related to:

(i) the length of time to respond to an Alarm;

(ii) any alleged delay in response to an Alarm;

(iii) any matter which is reserved to the discretion of the EVFD or otherwise referred to in Articles 3.2 to 3.6 of this Agreement; or

(iv) any other decisions, acts or omissions of the RDCO Releasees for which the RDCO Releasees are not liable, in whole or part, as determined by a court or tribunal of competent jurisdiction.

7.2 For greater certainty the City's obligations under this article apply in the case of those matters referred to sub-articles (i) to (iii) above notwithstanding such event, matter or cause of action may give rise to liability on the part of the RDCO Releasees.

7.3 In the event a Claim is asserted against any of the RDCO Releasees as contemplated in section 6.1, the RDCO shall as soon as practical notify the City of the Claim and shall thereafter consult with the City in the course of the investigation, settlement or defense of the Claim. The RDCO agrees that no settlement of the Claim or consent to judgment in connection therewith shall be effected by the RDCO without the prior written consent of the City thereto.

7.4 The RDCO agrees to indemnify and save harmless the City, its elected officials, servants,

employees and agents (collectively known as the "City Releasees"), from and against all claims, losses, demands, costs, expense, damages, actions, causes of action, liabilities, or outlays of any nature whatsoever (collectively known as the "Claims" or "Claim") asserted against any of the City Releasees, and arising in any way out of the performance or non-performance of the City under this Agreement, EXCEPTING any matter that is the subject of the City's indemnification and save harmless obligations under Article 7.1 or in any case where the Costs are attributable to decisions, acts or omissions of the City Releasees as are actionable and sustainable as against the City Releasees as determined by a court or tribunal of competent jurisdiction, in which case the indemnification as provided for in this article shall not apply. Unless otherwise first agreed to in writing by the RDCO, the City shall be responsible for, and pay all legal costs, disbursements, and expenses related to the defense of any Claim against the City Releasees (the "Defense Costs"), subject to its right to be indemnified and held harmless by the RDCO against any Claim as provided for above, following the final judgment or award of a court of tribunal of competent jurisdiction.

7.5 In the event a Claim is asse1ied against any of the City Releasees as contemplated in section 6.2, the City shall as soon as practical notify the RDCO of the Claim and shall thereafter consult with the RDCO in the course of the investigation, settlement or defense of the Claim. The City agrees that no settlement of the Claim or consent to judgment in connection therewith shall be effected by the City without the prior written consent of the RDCO thereto.

7.6 The indemnities granted in this Article extend to and include any legal fees incurred by the indemnified party, on a solicitor and client basis.

7.7 Each party covenants with the other that it shall secure and maintain in force during the currency of this Agreement such policy or policies of liability insurance to limits as would be secured and maintained by prudent parties in such circumstances, having limits in any event of not less than $5,000,000 per occurrence.

7.8 Each party shall, on request, provide the other party with copies of insurance policies or other suitable evidence that such policies have been secured, renewed or replaced, as the case may be.

8. Termination

This Agreement may be terminated by either party upon giving six (6) months written notice to the other party, delivered to the office of the RDCO Chief Administrative Officer or the City Clerk of the City, whichever is applicable. In the event that the Agreement is terminated so that the City has paid the RDCO for the Fire Services for an entire year period, there shall be a pro-ration of the payment up to the effective date of termination of this Agreement, and a reimbursement by the RDCO to the City of such excess monies.

9. Dispute Resolution

9.1 Unless this Agreement provides otherwise, any disagreement between the RDCO and the City that arises out of this Agreement or in regard to the interpretation of this Agreement shall be resolved pursuant to this Article. Where such a disagreement arises, either party may give written notice to the other that it wishes to resolve the disagreement through the process set out in this Article (the "Dispute Resolution Notice") which notice shall set out:

(i) the matter which the issuer wishes to have resolved pursuant to this Article; and

(ii) the position of the issuer in respect of the matter which is the subject of the dispute.

9.2 Upon receipt of a Dispute Resolution Notice by either party, the City Manager, and the Fire Chief of the City and the Chief Administrative Officer and Fire Services Manager of the RDCO, and shall meet together in an attempt to settle the disagreement through negotiation. If the disagreement cannot be so settled within thirty (30) working days of delivery of a Dispute Resolution Notice (the "Negotiation Period"), then the same shall be submitted to an arbitrator agreed upon between the City and the RDCO whose decision shall be handed down with in thirty (30) working days of appointment.

9.3 Should the City and the RDCO fail to resolve the dispute through negotiations held pursuant to Section 9.2 and fail to agree on an arbitrator within fifteen (15) working days of the expiry of the Negotiation Period, a sole arbitrator may be appointed by a Judge of the Supreme Court of British Columbia upon application by either the City or the RDCO, provided that the applicant shall give to the other party five (5) working days' notice of its application for such an appointment.

10. Extension of Fire Service Area

10.1 In the event the parties agree to expand area that is subject to this Agreement, they may do so by amending the definition of "Fire Service Area" in Article 1.1(iv) and replacing Schedule "A" with a new schedule showing the expanded service area, and thereafter all provisions of the Agreement shall apply to the provision of Fire Services to the area to which the service is extended.

11. General Provisions

11.l Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF KELOWNA
Per:

_____
Authorized Signatory

_____
Authorized Signatory

REGIONAL DISTRICT OF CENTRAL OKANAGAN
Per:

_____
Authorized Signatory

_____
Authorized Signatory

SCHEDULE "A"
COUNTRY RHODES FIRE PROTECTION AREA