



Agreement: _____
File: _____
Term: _____ to _____

THIS AGREEMENT dated for reference the _____ day of _____, 20____

BETWEEN:

REGIONAL DISTRICT OF EAST KOOTENAY, a Regional District pursuant to the *Local Government Act*, RSBC 1996, Chapter 323 and incorporated pursuant to the laws of the Province of British Columbia with a place of business at 19 - 24th Avenue South, Cranbrook BC V1C 3H8.

("the RDEK")

OF THE FIRST PART

AND:

THE CORPORATION OF THE CITY OF FERNIE, a Municipality incorporated pursuant to the laws of the Province of British Columbia, and having a place of business at 501 – 3rd Avenue, Fernie, BC V0B 1M0.

("the City")

OF THE SECOND PART

WHEREAS:

- A. RDEK Bylaw No. 1386 and amendments thereto, established the Fernie Rural Fire Protection Service Area within Electoral Area A to provide Fire Protection Services on a contract basis within the Service Area;
- B. The RDEK is authorized to make agreements respecting the undertaking, provision and operation of local government services;
- C. The City is authorized to enter into agreements for the furnishing of Fire Protection Services outside of the municipality, and the City has adopted Bylaw No. _____ which authorizes entering into a fire protection service agreement with the RDEK;
- D. The consent of the RDEK is required to provide Fire Protection Services within the Service Area and this Agreement shall be deemed to be consent of the RDEK to provide such service;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the money hereinafter agreed to be paid by the RDEK to the City, the parties hereto agree as follows:

1. DEFINITIONS

In this Agreement the following expressions shall have the meanings herein assigned to them.

- 1.1 **Fire Department** means Fernie Fire/Rescue operated by the City of Fernie.
- 1.2 **Fire Protection Services** means fire protection and associated services including:
 - (a) Fire Suppression;
 - (b) Rescue Services;
 - (c) Medical First Responder;

and such other services as may be agreed to between the parties.

- 1.3 **Service Area** means the Fernie Rural Fire Protection Service Area as outlined in Schedule A attached to and forming part of this Agreement.

2. SERVICES AND AREA

- 2.1 The City agrees to provide Fire Protection Services within the Service Area.
- 2.2 The boundaries of the Service Area may only be expanded or altered by further agreement of the parties.

3. TERM OF AGREEMENT

- 3.1 The term of this Agreement shall commence upon the ____ day of _____ and this Agreement shall be fully ended and complete, except as set forth herein, on the ____ day of _____.

4. FIRE PROTECTION SERVICES

- 4.1 The City shall provide Fire Protection Services within the Service Area on a 24-hour basis using such equipment from such location as the City shall deem appropriate. The Fire Protection Services shall be provided by regular, paid on call auxiliary or volunteer staff, as determined by the City Fire Chief or Officer or Incident Commander, as defined by the City of Fernie Bylaw No. 2029.
- 4.2 The number of staff and type of apparatus and equipment deemed necessary to provide adequate Fire Protection Services to be dispatched for any particular incident shall be at the sole discretion of the Fire Chief or Officer or Incident Commander.
- 4.3 If the Fire Department is attending a fire within the Service Area and another emergency arises which requires the resources of the Fire Department, it shall be at the sole discretion of the City Fire Chief or Officer-In-Charge to remain at the fire or to abandon fighting the fire and attend another emergency. The City shall not be held liable in any manner whatsoever in the event that the City Fire Chief or Officer-In-Charge decides to abandon fighting any fire within the Service Area to attend another emergency.
- 4.4 Fire Protection Services provided by the City shall be dependent on the operating condition and spacing of fire hydrants and the water available at the site of the fire. Neither the City nor its Fire Department shall be responsible for testing and maintenance of the water systems servicing the Service Area, except where the City operates the water system. Under no circumstances shall the City or its Fire Department be liable in any manner whatsoever with regard to the availability, or lack thereof, of sufficient water to fight any fire.

5. ACCESSIBILITY

- 5.1 The Fire Department may not respond to areas where access routes do not provide:
 - (a) a minimum of 6 meters width, clear of any obstruction, sufficiently cleared of snow, to enable safe passage of emergency response vehicles;
 - (b) overhead clearances of not less than 6 meters;
 - (c) a road gradient of less than 1 in 12.5, except for short distances not to exceed 15 metres;
 - (d) access routes with sufficient load bearing capacity to support firefighting equipment, including bridges, culverts and other structures; or
 - (e) turn-around facilities for any dead-end portion of the access route more than 90 meters.

6. LIABILITY

- 6.1 Neither the City nor its Fire Department shall incur any liability for damage to property or buildings arising from its action to suppress or reduce the spread of fire.

7. LEVEL OF SERVICE

- 7.1 The City shall provide a level of Fire Protection Service to the Service Area, except as limited by the availability of fire hydrants, that is similar to the level of service for such services provided within the boundaries of the City.

8. EQUIPMENT

- 8.1 In providing the Fire Protection Services under this Agreement, the City covenants to provide and maintain, at their cost, all equipment deemed necessary by the City.
- 8.2 Notwithstanding Section 8.1, the RDEK shall acquire the water tender necessary to provide Fire Protection Services to the portions of the Service Area not serviced by fire hydrants, and shall lease such water tender to the City for an annual amount of \$1.00 on terms as specified in Schedule B hereto. In the event that the water tender requires replacement, and such replacement is not otherwise covered by insurance of the City, except due to negligence or willful omission by the City or its employees, then in such an event, the RDEK acknowledges and agrees that it shall replace the water tender in the same manner as pursuant to this Section. In the event that the RDEK fails to provide the water tender pursuant to this Section, then in such an event, the City shall be under no obligation to provide fire suppression services in areas not serviced by fire hydrants.
- 8.3 The cost of insurance and maintenance of the water tender acquired pursuant to Section 8.2, shall be the responsibility of the City and shall form part of the operating costs of the Fire Department.
- 8.4 Upon expiration of this Agreement or expiration of the lease under Section 8.2, the water tender shall revert to the RDEK at no cost to the RDEK.

9. FIRE HALL RENOVATIONS

- 9.1 The RDEK agrees to reimburse the City of Fernie for debt payments on a five year debenture issue to finance the addition of one bay or other renovations to house the water tender acquired under Section 8.2, the total cost of which is not to exceed \$250,000.
- 9.2 The parties acknowledge and agree that the RDEK's contribution to the costs of adding an additional bay or other renovations to enable housing the water tender is based on understanding that if in the future a replacement fire hall building is required, it shall be deemed and considered for the purposes of apportioning and attributing responsibility for costs for same that the Service Area shall have already contributed up to the amount paid for the additional bay or other renovations to the City's fire hall under Section 9.1 towards such replacement fire hall, such amount to be calculated on the basis of a straight-line depreciation over 25 years. In the event that the City of Fernie constructs an additional fire hall, then in such an event there shall be no deemed contribution to such additional fire hall pursuant to this Section.

10. PAYMENT FOR SERVICES

- 10.1 For the purposes of this Agreement "converted value of land and improvements" means the respective jurisdiction's immediate preceding year's class factors applied to current year preliminary 100% assessments, i.e., the City uses their class multiples and the RDEK uses provincial class multiples.
- 10.2 The RDEK covenants to pay the City for the services, a sum calculated as the RDEK's proportionate share of operating and capital expenses according to the following formula, but not to exceed \$1.35 per \$1,000 on 100% assessment in the Service Area:

$$d = c \times \frac{a \times 1.125}{a + b}$$

where "a" is the hospital converted value of land and improvements for properties in the Service Area;

where "b" is the general converted value of land and improvements for the City;

where “c” is the City’s current year’s provisional budget operating and capital expenses for the Fire Protection Services, plus over/under adjustments for the immediately preceding year based on the:

- (a) actual audited costs for the Fire Protection Services;
- (b) revised assessment roll;
- (c) actual Municipal and Provincial class multiples.

For the purposes of this clause, “capital expenses” shall mean:

- (a) the annual contribution to an equipment reserve fund;
- (b) actual expenditures for other firefighting equipment;
- (c) actual expenditures for fire hall equipment;
- (d) repairs and upgrades to fire halls.

where “d” is the calculated proportionate share of expenditures for the Service Area.

- 10.3 If capital costs in any given year result in an increase of more than 15% over the previous year to the RDEK’s proportionate share of expenditures for the Service Area as calculated in Section 10.2 of this Agreement, the City will allow the RDEK the option to fund these costs over a mutually agreed upon number of years.
- 10.4 No later than February 1 of each year, for the term of this Agreement, the RDEK shall provide the City with assessment totals, separated by assessment class, of all properties situated within the Service Area. The aforementioned totals shall be extracted from the preceding year’s revised assessment roll as at March 31 and the current year’s completed assessment roll.
- 10.5 No later than February 15 of each year for the term of this Agreement, the City shall invoice the RDEK for the Fire Protection Services. This shall be the amount calculated as “d” in Section 10.2 of this Agreement. The RDEK shall pay said invoice by August 10 in each year, for the term of this Agreement.
- 10.6 The payment for services as set forth in this Agreement shall be in addition to, and not included within, or in substitution of, any other payments made by the RDEK to the City for services supplied or made available to residents of the RDEK by the City.

11. MAPPING

- 11.1 The RDEK shall be responsible for providing mapping to show locations of homes and roads within the Service Area and receiving Fire Protection Services and it shall be the RDEK’s responsibility to ensure accuracy and provide updates as new developments occur.
- 11.2 The RDEK shall require that all residential and commercial properties in the Service Area adequately display address numbers that are clearly visible from any fronting road, on a year round basis.

12. INDEMNITY AND INSURANCE

- 12.1 The City shall maintain all risk insurance on its major fire equipment.
- 12.2 The City shall ensure that its liability insurance coverage extends to its activities in the Service Area and that the RDEK is included as additional insured.
- 12.3 The City’s costs of insurance required under this Agreement shall form part of the City’s Fire Protection Services costs.
- 12.4 Both parties shall maintain liability insurance with the Municipal Insurance Association of British Columbia (“MIABC”). In the event that either party’s policy with MIABC is terminated, the other party may terminate this Agreement, subject to the terms of Section 13. Each party shall promptly give notice to the other of any termination of their insurance coverage with MIABC.

13.1 Either party may terminate this Agreement by giving notice of its intention to do so, PROVIDED THAT any such notice given shall only be effective on the 31st day of December of any year of this Agreement, and PROVIDED FURTHER that such notice must be given prior to June 30th of such year. Notice of termination shall be served in writing and delivered by prepaid private courier or hand delivered to the address indicated on the face page of this Agreement, or otherwise transmitted by fax or other means of electronic communication to the usual numbers or addresses of the respective party.

13.2 This Agreement may be amended at the mutual consent of both parties.

C/S

SCHEDULE A

**MAP OF SERVICE AREA
(not included)**

SCHEDULE B
TERMS OF WATER TENDER LEASE

EQUIPMENT

1. The RDEK agrees to lease to the City, and the City agrees to lease from the RDEK, the following described equipment (the "Equipment"):

2009 Fort Gary Freightliner Water Tender (VIN: _____)

TERM

2. The lease shall commence on _____ and shall expire on _____.

RENT

3. The annual rent for the Equipment is One Dollar (\$1.00), the receipt and sufficiency of which is acknowledged.

USE

4. The City shall use the Equipment for the purposes of providing Fire Protection Services, shall do so in a careful and proper manner, and shall comply with and conform to all national, provincial, municipal and other laws, ordinances and regulations in any way relating to the possession, use or maintenance of the Equipment.

REPAIRS

5. The City, at its own cost and expense with such cost and expense forming part of the Fire Department operating budget, shall keep the Equipment in good repair, condition and working order and shall furnish any and all parts, mechanisms and devices required to keep the Equipment in good mechanical working order.

INSURANCE

6. (a) The City shall procure and continuously maintain and pay for:
 - (i) all risk insurance against loss of and damage to the Equipment for not less than the fair market value of the Equipment, naming the RDEK as loss payee; and
 - (ii) combined public liability and property damage insurance, naming the RDEK as additional insured.
- (b) The insurance required under Section 6(a), shall provide at least thirty (30) days advance written notice to the RDEK of any cancellation, change or modification, and shall provide primary coverage for the protection of the City and the RDEK without regard to any other coverage carried by the City of the RDEK protecting against similar risks.
- (c) The City shall provide the RDEK with a copy of the insurance policies required under this Schedule.

TAXES

7. The City shall keep the Equipment free and clear of all levies, liens and encumbrances and shall report, pay and discharge all license and registration fees, assessments, and other taxes, fees and governmental charges similar or dissimilar to the foregoing, together with any penalties or interest thereon, imposed by any federal, provincial or local government or any agency, upon the Equipment or the use, operation or leasing of the Equipment or otherwise in any manner with respect thereto and whether or not the same shall be assessed against or in the name of the RDEK of the City. However, the City shall not be required to pay or discharge any such tax or assessment so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the

RDEK to the Equipment; provided, the City shall reimburse the RDEK for any damages or expenses resulting from such failure to pay or discharge.

FAILURE TO PAY

8. In case of failure of the City to procure or maintain the insurance or to pay fees, assessments, charges and taxes, all as specified in this Schedule B, the RDEK shall have the right, but shall not be obligated, to effect such insurance or pay said fees, assignments, charges and taxes, as the case may be. In that event, the cost thereof shall be repayable by the City to the RDEK within 60 days or receipt of an invoice from the RDEK after which the amount due shall accrue interest at the rate of 10% per annum.

DEFAULT

9. If the City fails to observe, keep or perform any provision contained in this Schedule B, the RDEK shall have the right to exercise any one or more of the following remedies:
 - (a) To take possession of the Equipment, without demand or notice, wherever same may be located, without any court order or other process of law. The City hereby waives any and all damages occasioned by such taking of possession.
 - (b) To terminate the lease of the Equipment.
 - (c) To pursue any other remedy at law or in equity.

OWNERSHIP

10. The Equipment is, and shall at all times be and remain, the sole and exclusive property of the RDEK; and the City shall have no right, title or interest therein or thereto except as expressly set forth in this Schedule B.

SURRENDER

11. Upon the expiration or earlier termination of this Agreement, the City shall return the Equipment to the RDEK in good repair, condition and working order, ordinary wear and tear resulting from proper use thereof alone excepted, by delivering the Equipment at the City's cost and expense to such place as the RDEK shall specify, which place shall be no more than 10 kilometers from the City of Fernie boundary.

ASSIGNMENT

12. The City shall not assign this Agreement or its interest in the Equipment without the prior written consent of the RDEK.