

FIRE PROTECTION SERVICES AGREEMENT

THIS AGREEMENT is dated for reference this 20 day of January, 2020 (the "**Execution Date**")

BETWEEN:

FRASER VALLEY REGIONAL DISTRICT
(hereinafter called the "**Regional District**")

AND:

Spuzzum First Nation
(hereinafter called Spuzzum)

(each a "**Party**", and collectively the "**Parties**")

WHEREAS Spuzzum wishes the Regional District to provide fire protection services for the owners and occupiers of property situated upon the Lands herein defined;

AND WHEREAS the Regional District has agreed to provide the fire protection services on the terms and conditions set out in this agreement for the owners and occupiers of property situated upon the Lands herein defined;

AND WHEREAS Spuzzum recognizes a financial responsibility to pay for the services provided by the Regional District pursuant to this agreement.

NOW THEREFORE in consideration of the mutual covenants and agreements herein contained and subject to terms and conditions hereinafter set out, the Parties hereto agree as follows:

1. DEFINITIONS

In this agreement:

"Building" means any structure, vacant or occupied, be it for residential, commercial or industrial use, existing in any year covered by the Term and located within the boundaries of the Lands, which Buildings will be set out on an annual basis in a list provided by Spuzzum to the Regional District;

"Fire Chief" means any person, or their lawful deputy, appointed as Chief of the Regional District's Volunteer Fire Department by the Board of Directors of the Regional District;

"Fire Department" means the Yale Volunteer Fire Department;

"Lands" means any of those lands controlled by Spuzzum Administration and upon which Buildings are located; and

"Term" has the meaning provided in section 6.1.

2. SERVICES PROVIDED

- 2.1 In accordance with the terms and conditions of this agreement, the Regional District shall provide fire protection services to the Buildings, and Spuzzum shall pay the Regional District for all such fire protection services.
- 2.2 The Regional District shall provide Spuzzum with the same level of fire protection services, including quantity and quality thereof, as the fire protection services provided within the Yale Fire Protection Local Service Area.
- 2.3 Spuzzum agrees that if during the course of any fire on the Lands, the Fire Chief considers the services of the British Columbia Ministry of Forests, Lands, Natural Resource Operations and Rural Development are warranted, then the Regional District shall promptly request assistance from said Ministry and will promptly notify Spuzzum of such request having been made. In the event the said Ministry assists as aforementioned, the reasonably recoverable costs of such assistance by the Ministry shall be borne by Spuzzum.
- 2.4 The firefighting equipment and personnel of the Fire Department shall remain under the exclusive control of the Fire Chief at all times and Spuzzum will take all reasonable steps to ensure that no Spuzzum member interferes with emergency scene operations.
- 2.5 Spuzzum shall provide copies of a plan showing the location of all streets and their names, all premises and their numbers, and location of all fire hydrants within the Lands to the Regional District. The Regional District is to be notified annually, in writing before the last day of December of any changes applicable to the plan. Spuzzum will name any streets within the Lands and prominently display such names on signposts located at every intersection of such streets, and will require that identifying numbers are affixed to all Buildings within the Lands so that such numbers are easily visible from the street frontage.
- 2.6 Spuzzum will make best reasonable efforts, including adopting any bylaws within its jurisdiction, to require that the proposed design plans of any new Buildings be reviewed by the Regional District. The review by the Regional District pursuant to this section will be carried out promptly and will be for the sole purpose of determining whether the proposed design is such that the Regional District will be able to provide fire protection services to the Buildings and to enable the Regional District to make recommendations to Spuzzum as to reasonable design changes that are strictly required in order that the Regional District can provide those services. In the event that any such recommendations are not implemented and the Regional District is thereby not able to provide fire protection services to such Buildings, the Regional District shall not be responsible for any losses resulting from its inability to provide fire protection services to that Building at the standards referred to in section 2.2. The Regional District's review of proposed plans under this section shall not constitute an approval or assurance as to the safety, construction standards, or compliance with the BC Building Code or any other enactment.
- 2.7 Spuzzum will advise the Regional District of any proposed industrial or commercial activities on the Lands of which Spuzzum becomes aware and which involve the

storage, use or production of flammable materials, chemicals or other materials that may reasonably be expected to constitute a special hazard to firefighters providing fire protection services under this agreement. The purpose of this provision is solely to determine whether the Regional District will be able to provide fire protection services in respect of the activity and to make recommendations to Spuzzum in that regard. The Regional District may make recommendations to Spuzzum with respect to the conduct of such activities on the Lands and may advise Spuzzum that the provision of fire protection services in respect of such activities is beyond the capability of the Regional District given its equipment resources. In that event, the Regional District shall not be responsible for any losses resulting from its inability to provide fire protection services to Buildings in which such activities are conducted.

- 2.8 The Fire Chief or their deputy in charge at any fire may cause the demolition of any premises on the Lands or any part thereof, when reasonably deemed necessary to prevent the spread of fire, damage to property, injury or loss of life, and Spuzzum shall not permit any of its members to prevent such action. The costs associated with any such demolition shall be borne by Spuzzum.
- 2.9 Nothing in this agreement shall be construed to impose a duty on the Regional District to provide fire protection services to any hazardous or derelict Buildings that the Fire Chief, in their sole and absolute discretion, determines may constitute a hazard to members of the fire department.
- 2.10 The Fire Chief or their deputy in charge at any fire may make any order they consider necessary for the provision of fire protection services or for the safety of the Fire Department and Spuzzum shall ensure that such orders are abided by and followed.
- 2.11 Spuzzum shall permit any member of the Fire Department to enter into or upon any premises within the Lands regarding which a fire alarm was received or for which a member of the Fire Department has reasonable grounds to suspect that a fire exists.
- 2.12 Spuzzum shall provide all reasonably available information with respect to any fire on the Lands to any member of the Fire Department, and information and access to the site of any fire on the Lands for investigation purposes to any person acting under the authority of the Regional District's fire commissioner.
- 2.13 Spuzzum members may become members of the Fire Department on the same terms and conditions as all other volunteers and shall be subject to the same controls.

3. CHARGES

- 3.1 Spuzzum shall annually provide to the Regional District on or before December 1st of each year covered by the Term a statement of the current number of Buildings.
- 3.2 On or before December 31st of each year of the Term, the Regional District shall invoice Spuzzum for the provision of fire protection services provided by the Regional District to Buildings. The amount to be invoiced shall be the amount calculated from the following formula, with the invoice setting out the figures used for each factor in the formula:

$$\frac{BB \times Cost}{TB}$$

Where:

BB = the number of Buildings reported to the Regional District under this agreement, or the Regional District's reasonable estimate of that number if Spuzzum has not so reported;

TB = the total number of Buildings, whether occupied or not, within the Yale Fire Protection Service Area.

Cost = the amount identified in the Regional District's annual budget for fire protection.

- 3.3 All accounts for the provision of fire protection services to Spuzzum shall be due and payable at the Regional District offices within 30 days of the receipt of such invoices by Spuzzum.
- 3.4 If the Fire Chief contracts for the hire of special equipment, reasonably required in accordance with generally accepted firefighting practice in order to suppress or contain a fire on the Lands, including without limitation any wildfire on the Lands, then, and subject to any existing agreements or protocols between the Province of British Columbia and Canada (ISC), Spuzzum will pay the Regional District's reasonable actual costs. The Regional District will include such costs in the next invoice provided to Spuzzum pursuant to section 3.2.

4.0 CAPITAL IMPROVEMENTS

- 4.1 Spuzzum acknowledges that the development on the Lands of Buildings and land uses not in existence on the Execution Date may necessitate capital improvements in order for the Regional District to provide fire protection services to such Buildings and land uses to the standard required by this agreement. Spuzzum acknowledges that the provision of fire protection services to particular types of Buildings and land uses that may be proposed on the Lands may be beyond the capacity of the Regional District regardless of whether capital improvements are undertaken, and agrees that in such circumstances, the Regional District shall not be responsible for provision of fire protection services to such buildings or areas of the Land affected by such land uses.
- 4.2 Spuzzum shall provide to the Regional District plans of any Buildings proposed for construction on the Lands, other than single-family residential Buildings, for review under this section 4.0. Such plans shall be provided, at the latest, before any construction activity is undertaken in respect of such Building, and Spuzzum shall endeavour to provide such plans at the earliest date that is consistent with its commercial interests other than its interests in this agreement.
- 4.3 The Regional District shall review plans provided under this section 4.0 in relation to its

capacity to provide fire protection services to the standard required by this agreement, and within sixty (60) days of receipt of such plans shall advise Spuzzum either:

- (a) that the Regional District lacks the capacity to provide fire protection services to such Building and does not wish to undertake capital improvements, firefighter training or other changes to its fire protection services so as to be able to provide fire protection services to such Building, in which case this agreement shall not apply to the provision of fire protection services to the Building if it is constructed and section 10 of this agreement shall not apply to the Regional District's decision; or
 - (b) that the Regional District will provide fire protection services to such Building if Spuzzum pays, prior to the occupancy of the Building, a specified amount in respect of such capital improvements as the Regional District may reasonably determine and identify in writing, in which case this agreement shall not apply to the provision of fire protection services to the Building unless Spuzzum pays the specified amount to the Regional District.
- 4.4 If the Regional District does not provide advice to Spuzzum pursuant to section 4.3 within the 60-day period, it shall be deemed to require no capital improvements under this section 4.0, unless it has requested Spuzzum in writing to allow additional time for review of the plans, which request Spuzzum, shall not unreasonably refuse.
- 4.5 Without limiting the generality of section 4.3(b), the Regional District may identify as capital improvements any of the following: specialized firefighting equipment; construction or alteration of fire halls including the cost of land acquisition and design; construction or alteration of water supply mains or fire hydrant systems; and payments for water supply or distribution.
- 4.6 Notwithstanding section 4.3(b), the Regional District may require payment in respect of particular capital improvements to be made by a specified date prior to the occupancy of a Building if, in the opinion of its Fire Chief, the improvements in question should be in place during the construction of the Building or additional lead time is required to implement the reasonably necessary capital improvement.
- 4.7 Without limiting section 4.3(b), if the Regional District is not able to provide a specific cost figure in advising Spuzzum under section 4.3(b) it may identify the required capital improvement by description to enable Spuzzum to engage in negotiations with third parties for payment of the cost of the improvement.
- 4.8 In lieu of making payments to the Regional District under this section 4.0, Spuzzum may cause any third party proposing to construct a Building or undertake a land use on the Lands to enter into a separate agreement with the Regional District to provide the required capital improvement, and in that event the Regional District shall make reasonable efforts to conclude a separate agreement with the third party for that purpose, and any such Building will be excluded from this agreement.
- 4.9 If any capital improvement funded by Spuzzum pursuant to this section 4.0 benefits lands and/or Buildings other than the Lands, and Spuzzum has not made separate

arrangements to recover a portion of the cost from the owners of such lands and/or Buildings, and the Regional District has statutory powers to recover a portion of the cost from such land and/or Building owners, the Parties will make best reasonable efforts to recover such portion in a similar manner as they would be recovered under s. 507 and 508 of the *Local Government Act*, but Spuzzum acknowledges that it is not a "developer" for the purposes of these sections. Nothing in this agreement prevents Spuzzum from making separate arrangements to recover a portion of its costs from such land and/or Building owners.

- 4.10 Neither Spuzzum nor any other party other than the Regional District shall have any ownership interest in any capital improvement acquired or made by the Regional District pursuant to this section.

5. RELEASE AND INDEMNITY

- 5.1 Spuzzum will indemnify and save harmless the Regional District, its servants, agents, contractors, subcontractors, work persons, officials, licensees, volunteers, successors and assigns against all actions, proceedings, liability, claims, damages, costs, and expenses, including legal fees, in relation to and arising out of provision by the Regional District of the fire protection services provided under this agreement, provided such person(s) act(s) without negligence and/or willful misconduct.
- 5.2 Spuzzum releases the Regional District its servants, agents, contractors, subcontractors, work persons, officials, licensees, volunteers, successors and assigns from any and all direct, indirect and consequential losses, damages, liabilities, deficiencies, costs and expenses (including without limitation, all reasonable legal and other professional fees and disbursements) claims, suits, actions, and demands whatsoever suffered or incurred by Spuzzum or that Spuzzum may have by reason of or arising directly or indirectly out of provision by the Regional District of the Services provided under this Agreement, provided such person(s) act(s) without negligence and/or willful misconduct.
- 5.3 The Regional District shall not be liable for any damages, expenses or losses occurring by reason of suspension or cessation of fire protection services, where such suspension or cessation is caused by circumstances beyond the control of the Regional District.
- 5.4 Notwithstanding anything to the contrary contained in this agreement, Spuzzum agrees that the maximum liability of the Regional District for its failure to carry out and fulfill its obligations under this agreement, shall be a refund, with interest of those sums paid by Spuzzum to the Regional District for the services provided under this agreement, provided that this limitation of liability shall only apply where such failure occurs, despite the good faith and best efforts of the Regional District to diligently carry out and fulfill its obligations.
- 5.5 This agreement shall not be construed as placing a greater liability on the Regional District in respect to Spuzzum than the liability which exists in law between the Regional District and a property owner elsewhere in the Yale Fire Protection Service Area.

5.6 Except and to the extent resulting from negligent or wilful misconduct of the Regional District, or a default of the Regional District under this agreement, the Regional District will not be deemed to be in default of its obligations if the interruption or reduction in the level of services results from any of the following:

- a default of Spuzzum under this agreement;
- an event originating outside of the Yale Fire Protection Service Area or the Lands;
- inadequate number of fire hydrants, water supply or water pressure on the Lands;
- incompatibility of Buildings with the provisions of the BC Fire Code or BC Building Code;
- inadequate road maintenance or access on the Lands.

5.7 The indemnity and release provisions under this section shall survive the expiration or earlier termination of this agreement.

6.0 COMMENCEMENT AND TERM OF AGREEMENT

6.1 This agreement shall commence on the Execution Date and shall terminate 5 years from the Execution Date of this agreement, unless terminated earlier under the terms of this agreement (the "Term").

6.2 The Parties agree to begin meeting no later than January 1st, 2023 to negotiate in good faith, using their best reasonable efforts, the terms and conditions under which a new fire protection agreement may be entered into between the Parties.

7.0 DISCONTINUANCE

7.1 Should Spuzzum fail to perform any covenant or condition to be performed by it or fail to make any payment required to be made under this agreement, Spuzzum will, as soon as possible after the date of receipt of notice in writing from the Regional District of such breach, rectify the breach. Should the breach not be rectified within 60 days after the date of receipt of such notice, the Regional District may at its option discontinue the provision of fire protection services until such time as the default is rectified, which would include payment in full by Spuzzum of any outstanding amounts together with interest on any balance owing at the rate set out in the Regional Districts General Administration Rates, Fees and Charges Bylaw.

7.2 Should the Regional District fail to perform any covenant or condition to be performed by it pursuant to this agreement, the Regional District will, as soon as possible after the date of receipt of notice in writing from Spuzzum of such breach, rectify the breach. Should the breach not be rectified within 60 days after the receipt of such notice, Spuzzum may discontinue the payment for services until such time as the default is

rectified, and the Regional District will remain responsible for carrying out its obligations under this agreement throughout this time.

- 7.3 Should the Regional District, under section 7.1, discontinue the provision of services, or Spuzzum,, under section 7.2, discontinue the payment for services, after the prepayment by Spuzzum pursuant to section 3.2, then and in that event, the Regional District shall within 30 days, rebate to Spuzzum that portion of the prepayment for fire protection services received by the Regional District for the balance of the calendar year following the date of such discontinuation of services.

8. TERMINATION

- 8.1 The Parties may terminate this agreement prior to its expiry by mutual agreement in writing.
- 8.2 Either Party may terminate this agreement for any reason upon giving a 12 months' written notice to the other Party.
- 8.3 Despite any provisions to the contrary, neither party will terminate this agreement without first trying in good faith to resolve the issues arising out of this agreement through the dispute resolution process set out in section 10.
- 8.4 If, for any reason, this agreement is terminated or comes to an end, there will be a reconciliation and final adjustment of payments arising from one Party to the other, calculated up to the date of termination, and the obligation to make any adjusting payment will survive the termination of this agreement.

9. NOTIFICATION

- 9.1 If at any time during the Term the Parties deem it necessary or expedient to make any alteration or addition to this agreement, they may do so by a written agreement between them signed in duplicate on behalf of each of them, which alterations or additions shall become effective on the date that both Parties have signed the written agreement.
- 9.2 All notices, requests, demands, consents, or other communications required or permitted to be given or made under this agreement will be in writing and will be deemed to be well and sufficiently given if hand delivered, mailed by registered mail, or sent by facsimile as follows:

If to Spuzzum:

Attention: Spuzzum First Nation Chief and Council
Spuzzum First Nation
36500 Main Road
Spuzzum, BC VOK 2S1

If to the Regional District:

Attention: Chairperson and Board
Fraser Valley Regional District
45950 Cheam Drive
Chilliwack, BC V2P 1N6

- 9.3 All notices or other communication so given or made will be conclusively deemed to have been given and received:
- (a) if delivered personally, at the actual time of delivery;
 - (b) if mailed by registered mail, on the fourth business day following the date of mailing, except in the case of disruption of postal services, then in such event notice will be delivered personally or by facsimile; and
 - (c) if sent by facsimile, on the day of the transmission.
- 9.4 Addresses or facsimile numbers for service under this section may be changed from time to time by the Party making such a change by notifying the other Party thereof in accordance with this section.

10. DISPUTE RESOLUTION

- 10.1 The Parties agree that during the Term and in the performance of each of their responsibilities under this agreement, each of them will:
- (a) make bona fide efforts to resolve any disputes arising between them by amicable negotiations; and
 - (b) provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate those negotiations.
- 10.2 The Parties further agree to use their best efforts to conduct any dispute resolution procedure under this agreement as efficiently and cost effectively as possible.
- 10.3 The Parties agree to attempt to resolve all disputes arising out of or in connection with this agreement, or in respect of any defined legal relationship associated with it or from it, by mediated negotiation with the assistance of a neutral person mutually agreed upon, or should the Parties be unable to agree upon such person within 30 days of either Party serving notice of its intention to proceed to mediation, a neutral person appointed by the British Columbia International Commercial Arbitration Centre administered under its Mediation Rules.
- 10.4 If the dispute cannot be settled within 30 days after the mediator has been appointed or such lesser or longer period otherwise agreed to in writing by the Parties, the dispute will be referred to and finally resolved by arbitration administered by the British Columbia International Commercial Arbitration Centre, under its Rules.
- 10.5 Except where otherwise specified in this agreement, any and all disputes between or among the Parties to this agreement arising under, out of or in any way relating to this

agreement will be determined under this section.

- 10.6 Subject to any ruling or recommendation to the contrary by the Arbitrator or Mediator respectively, the Parties agree that the costs of such mediation or arbitration shall be shared equally between them. Costs in this context shall not include any costs incurred by a Party in preparation for and attending upon or settling a matter through mediation or arbitration.

11. GENERAL TERMS

- 11.1 This agreement constitutes the entire agreement between the Parties pertaining to the subject matter thereof, supersedes all prior written and oral communication with respect to the subject matter of this agreement and there are no other terms, conditions, representations or warranties in this agreement, express or imply, statutory or otherwise, except for those expressly set forth herein.
- 11.2 This agreement ensures to the benefit of and be binding upon the Parties hereto and their respecting successors and permitted assigns.
- 11.3 This agreement shall not be assigned by any Party hereto, except with the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- 11.4 Nothing in this agreement or in the Parties' dealings with each other is intended to be or interpreted or construed as creating an agency relationship, joint venture or partnership of any kind between the Parties or as imposing on any of the parties any partnership duty, obligation or liability to any other Party or to any other person
- 11.5 Each of the Parties covenants and agrees to execute such further and other documents and instruments, and to do such further and other things as they are authorized to do and as may be necessary to implement and carry out the intent of this agreement.
- 11.6 The Parties agree that they shall not challenge the validity of this agreement, in whole or in part. If any part of this agreement is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder, which will continue in full force and effect and be construed as if this agreement had been executed without the invalid part. In the event that a part of this agreement is declared or held invalid, the Parties agree to use their best efforts to reach agreement on terms which substantially achieve the intent of the invalid part and that will be enforceable.
- 1 1.7 The division of this agreement into articles and sections, and the insertion of headings are for convenience only and shall not affect the construction or interpretation of this agreement.
- 11.8 No waiver of any term or condition of this agreement or of a breach of any term or condition of this agreement by any Party hereto shall be effective unless it is in writing and no waiver or breach even if in writing shall be construed as a waiver of any future

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- 11.6 The Parties agree that they shall not challenge the validity of this agreement, in whole or in part. If any part of this agreement is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder, which will continue in full force and effect and be construed as if this agreement had been executed without the invalid part. In the event that a part of this agreement is declared or held invalid, the Parties agree to use their best efforts to reach agreement on terms which substantially achieve the intent of the invalid part and that will be enforceable.
- 1 1.7 The division of this agreement into articles and sections, and the insertion of headings are for convenience only and shall not affect the construction or interpretation of this agreement.
- 11.8 No waiver of any term or condition of this agreement or of a breach of any term or condition of this agreement by any Party hereto shall be effective unless it is in writing and no waiver or breach even if in writing shall be construed as a waiver of any future breach.

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IN WITNESS WHEREOF the Parties have caused this agreement to be executed on the Execution Date.

SPUZZUM FIRST NATION
By its authorized signatories

FRASER VALLEY REGIONAL DISTRICT
By its authorized signatories

Chief

Chief Administrative Officer

Councillor

Chief Financial Officer

Councillor