

THIS AGREEMENT dated for reference the 1st day of November, 2024 is

BETWEEN:

**THE CORPORATION OF THE CITY OF COURTENAY**, a municipal corporation incorporated under the *Community Charter* and having an address of 830 Cliffe Avenue, Courtenay B.C.

AND:

**K'ómoks First Nation**, in right of the Comox Indian Band, a band within the meaning of the *Indian Act*, registered under FN Band Number 624, with a mailing address of 3320 Comox Road, Courtenay, B.C. V9N 3P8.

**WHEREAS:**

- A. Those lands known as the Pentledge Indian Reserve Number 2, Reserve number 06971 (the "Reserve") are vested in Her Majesty the Queen in Right of Canada for the use and benefit of the Comox Indian Band.
- B. K'ómoks First Nation desires to obtain fire protection services for a portion of the Reserve.
- C. K'ómoks First Nation and the City wish to enter into an agreement in relation to fire protection services.

**NOW THEREFORE THIS AGREEMENT** witnesses that in consideration of the premises, covenants and agreements hereinafter set out, the parties agree as follows:

**DEFINITIONS**

1. In this Agreement, including this section, the recitals and schedules hereto, unless the context otherwise requires:

"Band" means the K'ómoks First Nation which is a band within the meaning of the *Indian Act* registered under FN Band Number 624.

"Band Council" means the duly elected K'ómoks First Nation Council within the meaning of the *Indian Act* and its duly authorized representatives, servants, employees, contractors, invitees or other such persons.

"City" means The Corporation of the City of Courtenay, a municipal corporation incorporated under the *Community Charter* and having an address of 830 Cliffe Avenue, Courtenay B.C and its duly authorized representatives, servants, employees, contractors, invitees or other such persons.

"City Representative" means the Fire Chief of the City of Courtenay.

"Fire Department" means the Fire Department of the Corporation of the City of Courtenay.

"Reserve" means the Pentledge Indian Reserve Number 2 Reserve number 06971, which is a reserve within the meaning of the *Indian Act*.

"Term" means the period of time during which this Agreement remains in force and effect.

#### SERVICES TO BE PROVIDED BY THE CITY

2. The City shall provide fire suppression service (the "Service") during the term of this Agreement to the area of the Reserve identified as "campground" as shown outlined in bold on Schedule "A" to this Agreement ("Campground").
3. The quality and quantity of the Service to be provided by the City on the Campground shall be substantially the same as the quality and quantity of fire suppression services provided by the City to all residents within the City.
4. The City shall not be responsible for and shall not be required to carry out any inspections on any of the structures within the Campground and shall not be responsible for determining whether or not the structures meet Fire Code standards or adequate standards to protect the structures and the owners, occupiers and users of the structures.
5. The Band acknowledges that the provision of fire protection services requires the City to make decisions regarding the allocation of emergency response resources and nothing in this Agreement affects the right of the City's Fire Chief to determine where and in what manner emergency resources are to be deployed. The City is not responsible or liable for any damage sustained by reason of an exercise of the Fire Chief's discretion under this section.
6. The Band shall provide to the City such information as is considered necessary by the City's Fire Chief to enable the City to provide emergency fire suppression services most effectively to the Campground.
7. The City shall have the right by its Fire Chief, officers, firefighters, and other employees access at all times to the Reserve for the purposes of providing the services provided herein and meeting the requirements of any emergency on the Campground that requires the Service.
8. The Band and the City are proceeding on the mutual understanding that the provincial and municipal regulatory provisions that govern the conduct of persons during fire-related emergencies and which authorize the City's fire fighting personnel to implement extraordinary fire suppression measures, including the destruction of buildings and structures to prevent the spreading of fire, are laws of general application that apply to the Reserve and the Campground.

#### MAINTENANCE REQUIRED FOR FIRE STANDPIPE

9. The Band is solely responsible for maintaining the water supply standpipe on the Reserve in working order and providing an adequate flow of water to that standpipe for firefighting purposes. The Band shall ensure that the standpipe is used strictly for firefighting purposes.

#### PAYMENT FOR SERVICES

10. The Band shall pay the City an annual fee of \$1000.00 for the Service each year during the term of this Agreement.
11. The City shall invoice the Band for the Service annually for the upcoming year and such invoice shall be due and payable by the Band by January 31 of the current year.
12. In addition to the annual fee in section 10, the Band shall pay the City the following amounts for responses to the Campground by the Fire Department:
  - (a) Emergency response for fire suppression – equivalent to the apparatus hourly rates established in the most current revision of the Memorandum of Agreement for Inter-Agency Operational Procedures and Reimbursement Rates.
  - (b) Non-Emergency response (Duty Officer only) - \$40.00 per response
13. The City shall invoice the Band for Fire Department responses as outlined in section 12 and such invoice shall be due and payable by the Band within 30 days of the invoice date.
14. Without limiting any right of the City to terminate this Agreement for default in payment by the Band, interest shall accrue on any late payment at the rate of 6% per year.

#### TERM, RENEWAL AND TERMINATION

15. The term of this Agreement is for a period of five (5) years commencing on November 1<sup>st</sup>, 2024 and terminating on November 1<sup>st</sup>, 2029.
16. The parties may renew or extend the term if such renewal or extension is made in writing prior to October 1<sup>st</sup>, 2029 otherwise this Agreement shall expire absolutely on November 1<sup>st</sup>, 2029.
17. This Agreement may be terminated by the Band or the City upon giving to the other party six months notice of its intention to terminate, such notice to be given in writing on the last day of any month.

#### TERMINATION FOR BREACH

18. Upon breach by the Band of any term or condition of this Agreement, the City may give to the Band 30 days notice to commence action to correct such breach to the satisfaction of the City. If such breach is not corrected within an agreed reasonable period, or if the Band fails to begin and diligently pursue steps to cure the breach to the reasonable satisfaction of the City within 30 days after notice of the breach is given by the City, the City may terminate this Agreement by giving notice of termination to the Band.

#### WAIVER FOR NON ACTION

19. Waiver by the City of any breach of any term, covenant or condition of this Agreement by the Band must not be deemed to be a waiver of any subsequent default by the Band. Failure by the City to take any action in respect of any breach of any term, covenant or

condition of this Agreement by the Band must not be deemed to be a waiver of such term, covenant or condition.

#### REMEDIES CUMULATIVE

20. No reference to or exercise of any specific right or remedy by the City prejudices or precludes the City from any other remedy, whether allowed at law or in equity or expressly provided for in this Agreement. No such remedy is exclusive or dependent upon any other such remedy, but the City may from time to time exercise any one or more of such remedies independently or in combination. Without limiting the generality of the foregoing, the City is entitled to commence and maintain an action against the Band to collect any fees not paid when due, without exercising the option to terminate this Agreement.

#### DISPUTES

21. In the interest of co-operation and harmonious co-existence, the parties agree to use their best efforts to avoid any conflict and to settle any disputes arising from or in relation to this Agreement.
22. In the event that the parties fail to resolve matters as described in paragraph 18 hereof, the parties may seek a settlement of the conflict by utilizing an alternative dispute resolution method, mediation or arbitration and recourse to the Courts shall be a means of last resort.

#### LIABILITY

23. The City does not warrant or guarantee any of the Service to the Band under this agreement, which are beyond the reasonable control of the City, including without limitation by enumeration, such events as acts of God, forces of nature, soil erosion, landslides, lightning, washouts, floods, storms, serious accidental damage, strikes or lockouts, vandalism, negligence in the design and supervision or construction of the Service, or in the manufacture of any materials used in the provision of the Service, and other such circumstances.

#### RELEASE

24. The Band releases the City from all claims and demands which the Band may at any time have against it or its elected officials, officers, employees, agents or others, in respect of any matter arising from or related to this Agreement.

#### INDEMNIFICATION OF CITY

25. The Band agrees to indemnify and save the City harmless from and against any loss or damage suffered by the City as a result of an action brought against the City by any person in connection with any fire suppression action taken by the City on the Reserve that would have been lawful if performed on or in respect of non-reserve lands to which the regulatory provisions referred to in section 8 are applicable. For certainty, the reference to the City in this and the previous section refers, where the context so allows, to the City's councilors, officers, employees, agents, contractors, subcontractors and

others for whom it is responsible in law. The indemnities contained in this Agreement will survive the expiration or earlier termination of the Term.

#### LIABILITY INSURANCE

26. At its expense, the Band must provide and maintain throughout the Term:
- (a) comprehensive general liability insurance to protect and indemnify itself and the City against claims for bodily injury, death, property damage, property loss, economic loss and other loss or damage occurring upon, in or about the Reserve in an amount not less than THREE MILLION (\$3,000,000.00) DOLLARS per accident or occurrence or such greater amount as the City may stipulate from time to time; and
  - (b) property insurance against all risks, in a commercially prudent form, against loss or damage to any personal property located on the Campground which insurance must be for replacement cost.

Those insurance policies must be in the standard form carried by the City, and approved through the City Representative. The policies must provide for 30 days notice to the City before cancellation and should a policy lapse or be cancelled, the City may, at the cost of the Band, place insurance as provided in this section.

#### CERTIFICATE OF INSURANCE

27. Upon the City's written request from time to time, the Band must furnish the City with a certificate or certificates of insurance as evidence that the insurance required by this Part is in force, including any insurance renewal policy or policies. If the Band fails to secure or maintain insurance as required by this Agreement, then the City will have the right, but not the duty or obligation, to secure and maintain such insurance and the Band must pay the cost thereof to the City on demand.

#### AMENDMENTS

28. All amendments proposed to the terms and conditions of this Agreement must be submitted in writing and not be effective until signed by both parties.

#### MISCELLANEOUS PROVISIONS

29. Whenever the singular or masculine are used in this Agreement, the same shall be construed as meaning the plural or feminine or body corporate or vice versa where the context so requires.
30. The headings of the subsections of this Agreement are inserted for the convenience of reference only and shall not affect the construction or interpretation of this Agreement in any way.

31. The parties shall from time to time and at all times do all such further acts and execute and deliver all such further deeds and documents in a timely and diligent manner as shall reasonably be required to fully perform and carry out the terms of this Agreement.
32. (a) Nothing contained or implied herein shall prejudice or affect the rights and powers of the City in the exercise of its function under any public or private statute, bylaws, orders or regulations, all of which may be fully and effectively exercised in relation to the Service as if this Agreement had not been executed and delivered.  
  
(b) Nothing contained or implied herein shall prejudice or affect the rights and powers of the Band in the exercise of its function under Section 35 of the *Constitution Act, 1982* (R.S.C. 1985 Appendix II, No. 44), the *Indian Act* or any bylaw passed pursuant thereto, all of which may be fully and effectively exercised as if this Agreement had not been executed and delivered.
33. This Agreement shall not be construed so as to create any greater standard of care or liability on the part of the City in respect of the supplying of the Service to the Campground and occupants on the Campground than that which applies to the supply of such Service to other occupants within the City.
34. The parties have expressed their entire understanding and agreement concerning the subject matter of this Agreement and no implied covenant, condition, term or reservation shall be read into this Agreement relating to or concerning such subject matter.
35. In the event any term or provision of this Agreement or the Schedules attached hereto is illegal or invalid for any reason whatsoever as determined by a competent court of law, such term or provision shall be severable and the same shall not affect the validity of the remainder of this Agreement and the Schedules attached hereto.
36. The parties shall forthwith upon discovery of the illegality or invalidity referred to in section 32 hereof either negotiate diligently and in good faith the term or provision to render it legal and valid having regard to its spirit and intent or alter their performance under the term or provision having regard to its spirit and intent to avoid the illegality or invalidity.

## NOTICES

37. Any notice herein provided or permitted to be given by the Band to the City will be sufficiently given if delivered to the City at:

**The Corporation of the City of Courtenay**  
830 Cliffe Avenue  
Courtenay BC, V9N 2J7  
Attention: Director of Legislative Services

Any notice herein provided or permitted to be given by the City to the Band will be sufficiently given if delivered to the Band addressed to:

**K'ómoks First Nation**

3320 Comox Road

Courtenay, B.C.

V9N 3P8

Attention: Band Manager

Either party may at any time give notice in writing to the other of any change of address of the party giving such notice and from and after the giving of such notice the address therein specified will be deemed to be the address for such party for the giving of notice hereunder. The word "notice" in this paragraph will be deemed to include any request, statement or other writing in this Agreement provided or permitted to be given by the City to the Band or by the Band to the City. Such notices may be given by personal delivery, mail, or by fax and if given by mail will be deemed to have been received five days after the date of mailing, and if delivered personally or by fax will be deemed to have been received on the day of delivery or faxing.

- 38. This Agreement shall not be assigned by either party unless the parties obtain prior written consent to such assignment.
- 39. This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.

**IN WITNESS WHEREOF** the Parties hereto have caused their presence to be executed on the dates stated below:

**THE CORPORATION OF THE  
CITY OF COURTENAY** by its  
authorized signatories:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Director of Corporate Services

\_\_\_\_\_  
Date

**THE COUNCIL OF K'OMOKS FIRST NATION**  
on behalf of the K'ómoks First Nation, by its authorized signatories:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Date

