

Attachment 1 - Cranberry Fire Service Agreement

FIRE SERVICES AGREEMENT

THIS AGREEMENT made this _____.

BETWEEN:

CRANBERRY FIRE PROTECTION DISTRICT

1555 Morden Road
Nanaimo, BC V9X 1S2

(hereinafter called the "**Fire District**")

OF THE FIRST PART

AND:

REGIONAL DISTRICT OF NANAIMO

6300 Hammond Bay Road
Nanaimo, BC V9T 6N2

(hereinafter called the "**Regional District**")

OF THE SECOND PART

WHEREAS:

- A. The Fire District is authorized by Order in Council No. 371, dated March 30, 2005, to enter into contracts to provide Fire Protection and Emergency Response Services on behalf of other entities;
- B. The Regional District is authorized by its Bylaw No. 1388 and subsequent amendments, to provide Fire Protection Services to properties within the boundaries of the Cassidy Waterloo Fire Protection Service, as shown on the map attached as Schedule 'A' to this Agreement (the "**Properties**");
- C. The Regional District is the registered owner in fee simple of lands (the "**Lands**") legally described as:

PID 002-706-831

Lot 32, District Lot 7, Bright District, Plan 25967;

- D. The Regional District has constructed a building on the Lands for use as a firehall (the "**Building**") and the Lands and Building are, and shall remain the property of the Regional District, its successors and assigns;
- E. The Regional District has purchased and placed in the Building certain firefighting Equipment for the purposes of providing fire protection and emergency response services to the Properties; and

- F. The Parties wish to provide for the use of the Land and Equipment for the purposes of providing Fire Protection Services and Emergency Response Services to the Properties upon the terms and conditions set out herein.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained in this Agreement, the Parties agree as follows:

1.0 DEFINITIONS

- (a) **"Equipment"** means the equipment listed in Schedule 'B' to this Agreement, including the Vehicles;
- (b) **"Fire Protection Services"** means professional fire protection services, including but not limited to:
- i. structural fire suppression;
 - ii. response to all dispatched fire alarms;
 - iii. hazardous material handling;
 - iv. public education programs;
 - v. fire prevention inspection;
 - vi. building permit process plan review;
 - vii. fire investigation; and
 - viii. local assistant fire commissioner duties as described in the *Fire Services Act*, R.S.B.C. 1996, c. 144,
- (c) **"Emergency Response Services"** means vehicle extrication, first responder medical services, road rescue and related activities; and
- (d) **"Services"** means Fire Protection Services and Emergency Response Services.
- (e) **"Vehicles"** means the vehicles listed in Schedule 'B' to this Agreement.

2.0 TERM, TERMINATION AND PAYMENT

- 2.1 The Fire District hereby agrees to provide the Services to the Properties, for a period beginning on or after April 1, 2017 and ending on March 31, 2020 for a three year term (the **"Term"**). This Agreement may be extended for two additional one year terms, upon the mutual agreement of the Parties, ending on March 31, 2022.

- 2.2 The Regional District and the Fire District agree to work cooperatively and within the resources available to the Regional District, to provide the Vehicles and Equipment to be located at the Lands over the Term of this Agreement.
- 2.3 In consideration and payment for the Services to be rendered as provided for herein, the Regional District agrees to pay to the Fire District the following amounts:
- 2017 \$50,900.00;
- 2018 \$53,450.00; and
- 2019 \$56,125
- 2020 \$58,925 (1st one year renewal, subject to mutual agreement)
- 2021 \$61,875 (2nd one year renewal, subject to mutual agreement)
- (the "**Fee Schedule**").
- 2.4 Notwithstanding section 1.0(a) to (c), the Parties agree that on or before August 30th each year, the Fee Schedule in section 2.3 shall be reviewed by the Parties. The review will consider whether there has been a significant change in the number of emergency responses and effort required to provide the Services as outlined in this Agreement (a "**Significant Change**"). A revised Fee Schedule if mutually agreed upon will be communicated in writing and will replace the Fee Schedule in section 2.3. If the Parties are unable to agree on a revised Fee Schedule, the Fee Schedule shall remain as stated in section 2.3.
- 2.5 The amount payable by the Regional District shall be paid in two installments annually, which are payable in April and October of each year at the end of the respective month.

3.0 SERVICES TO BE PROVIDED

- 3.1 The Fire District agrees when providing the Services to the Properties, it will provide at least the same level of service as it provides to properties within the Fire District. Notwithstanding the foregoing, the Fire District shall ensure that:
- (a) it is equipped and that its staff have completed the appropriate training identified in the British Columbia Fire Services Minimum Training Standards Structure Firefighters Competency and Training Playbook (the "**Playbook**") for the Fire District to achieve and maintain a minimum level of Exterior Operations, as that term is defined in the Playbook;
 - (b) it abides by all enactments that apply to the provision of the Services, including all applicable bylaws of the Regional District, as amended or replaced from time to time;
 - (c) it maintains records of all training it conducts for any firefighters that are used to provide the Services, and shall make those records available to the Regional District upon request;

- (d) it abides by all policies of the Regional District that govern the manner in which the Services are to be provided, or that specify the level of the Service, as such policies may be amended or replaced from time to time;
 - (e) it abides by the standard of the fire fighting and emergency services for volunteer fire departments generally accepted in the Province of British Columbia; and
 - (f) it abides by the requirements of the *Workers Compensation Act* and the Occupational Health and Safety Regulation under that Act.
- 3.2 The Regional District hereby makes available to the Fire District, for the initial Term and subsequent renewals of the Term of this Agreement, the Lands, Building and Equipment for the purposes of providing the Services to the Properties. The intent of this section is that the Fire District may use any combination of its own equipment and the Equipment provided by the Regional District to provide Fire Protection Services and Emergency Response Services within the Fire District as well as to the Properties.
- 3.3 In addition to the Equipment available at the Building, the Fire District will use their best efforts to make its equipment and vehicles available for response to any fire or emergency within the Properties with a sufficient number of personnel who are at all relevant times, ready, willing, trained and able to accompany such equipment and vehicles and use their best efforts to extinguish any fire or respond to any emergency within the Properties.
- 3.4 The Fire District will ensure that the location of its fire hall and the phone numbers to be used in order that prompt notification can be given where necessary of the occurrence of a fire or other emergency are widely publicized within the Properties.
- 3.5 The Fire District shall keep the Equipment purchased by the Regional District at the Building when not in use by the Fire District, for fire protection, emergency response, training and/or maintenance purposes, unless the Fire District has received written authorization from the Regional District.
- 3.6 The Fire District shall have full and unfettered access to, and use of the Building and Equipment owned by the Regional District in order to provide Fire Protection and Emergency Response Services, whether the response is within the boundaries of the Fire District or within the Properties.
- 3.7 The Regional District shall at all times have and retain title to the Equipment. The Fire District shall have no right, title or interest in the Equipment other than the right to use the Equipment in accordance with the terms of this Agreement.
- 3.8 The Fire District shall cooperate with the Regional District in the enforcement of any warranties relating to the Equipment, and, if necessary, the Regional District shall appoint the Fire District as its agent for the purpose of such enforcement.

- 3.9 The Fire District shall maintain, repair, overhaul, service and keep the Equipment in a condition equivalent to its condition at the commencement of this Agreement, reasonable wear and tear only accepted, and in a fully operative condition in conformity with any recommendations for maintenance or otherwise that may from time to time be made by any manufacturer or seller of the Equipment and in conformity with all applicable laws, orders, rules, regulations and directives of any government departments, boards or authorities.
- 3.10 The Fire District shall provide to the Regional District prompt notice of any damage to or loss of the Equipment or any part of it in accordance with section 15.0 of this Agreement.

4.0 MEETINGS AND REPORTING

- 4.1 During all times in which this Agreement is in effect, the Fire District agrees that the Regional District's representative, shall be entitled to attend all meetings of the Fire District so as to provide advice and liaison between the Fire District and the Regional District.
- 4.2 The Regional District's representative shall provide administrative and other support with respect to this Agreement.
- 4.3 The Fire District and the Regional District shall meet at least twice annually (ie. mid-year and year end) and the Fire District shall provide reports covering the activities of the Fire District with respect to this Agreement, for the year to date reporting period. The report shall cover at a minimum the following:
- (a) expenses of the Fire District compared to budget;
 - (b) summary of recruitment, training and public education activities; and
 - (c) the type and quantity of emergency responses in the Fire District and the Properties.

5.0 RESPONSIBILITY FOR EXPENSES AND MAINTENANCE

- 5.1 It is intended by the Parties that the Lands, Building and Equipment are of no cost or expense to the Fire District during the Term, and, accordingly, the Regional District agrees to pay, whether on its own behalf or on behalf of the Fire District, all costs of every nature and kind relating to the Lands and Equipment.
- 5.2 The Fire District agrees to maintain the Lands and Building in good repair and in a neat and tidy condition and to not do or permit any act or neglect which may in any manner directly or indirectly endanger and person or land in the vicinity of the Lands, damage and land in the vicinity of the Lands, or create become a nuisance or interfere with the comfort of any person occupying land in the vicinity of the Lands.
- 5.3 The Fire District shall provide itemized invoices for repairs and maintenance with respect to the Lands, Buildings and Equipment to the Regional District and the Regional District shall promptly pay the invoices directly or shall reimburse the Fire District as the case may be.

- 5.4 The Fire District shall not construct or place on the Lands any improvements without first obtaining the prior written consent of the Regional District and obtaining all required building or development permits.
- 5.5 The Fire District shall not commit waste on the Lands.
- 5.6 The Fire District shall not deposit or discharge on the Lands any Contaminants as defined in section 7.5(b) of this Agreement.
- 5.7 The Fire District shall provide the Regional District prompt notice of any damage to the Lands or Building or any part of them in accordance with section 15 of this Agreement.

6.0 INSURANCE, RISK AND INDEMNITY

- 6.1 The Fire District agrees to indemnify and save harmless the Regional District, its elected and appointed officers and employees, from any and all claims, suits, actions, costs, fees and expenses of any kind whatsoever brought against or incurred by the Regional District or its elected and appointed officers and employees in any way relating to the Fire District 's use of the Lands, Building, or Equipment, during the Term of this Agreement. Such indemnity shall extend to legal expenses incurred by the Regional District in defending against such liability or alleged liability or in enforcing this right of indemnity.
- 6.2 The Fire District agrees to take out and keep in full force and effect throughout the Term at the expense of the Fire District:
 - (a) comprehensive general liability insurance, including without limitation non-owned automobile insurance, against claims for personal injury, death or property damage howsoever rising out of the operations of the Fire District, whether on the Lands, in the Building or elsewhere, and its use of the Lands and Building, to the limit as may be reasonably required by the Regional District from time to time but, in any case, of not less than Five Million (\$5,000,000.00) Dollars in respect to injury or death to a person or persons and in respect of any one accident concerning property damage. The policy of insurance shall include tenant's legal liability coverage for property damage in the amount of One Million (\$1,000,000.00) Dollars.
- 6.3 The policy or policies of insurance shall name the Regional District as an additional insured, shall include a cross-liability clause and shall be on terms acceptable to the Regional District. The policy or policies shall also provide for notification to the Regional District at least thirty (30) days prior to cancellation. If the Fire District fails to provide the insurance required by this Agreement, it may be provided by the Regional District at the cost of the Fire District.
- 6.4 The Regional District agrees to indemnify and save harmless the Fire District from any and all actions, claims, suits or judgments arising out of or in connection with the performance by the Fire District, or its officers or employees, of the obligations of the Fire District under this Agreement, except where such action, claim, suit or judgment is related to:
 - (a) a negligent act or omission;
 - (b) a breach of this Agreement; or

(c) a willful, fraudulent or illegal act

of the Fire District, its officers or employees.

- 6.5 The Regional District shall, at its sole expense, insure the Building and its contents, whether the contents are owned by the Regional District or the Fire District, at full replacement cost.
- 6.6 Should the Building or Equipment be damaged or destroyed, the Fire District and the Regional District shall work diligently together to pursue any remedies contained in the policies of insurance under this section.
- 6.7 Should the Building or Equipment be damaged or destroyed, the Regional District will repair or replace the Building or Equipment as soon as is practical, given any requirements to make a claim for damages under the policies of insurance held by the Regional District as outlined in this section and/or requirements to obtain financial support under the *Local Government Act*. The Fire District agrees to maintain the Services during any period in which the Building or Equipment are being replaced as a result of damage or destruction.
- 6.8 Where the cause of the damage or destruction under section 6.7 is determined to be due to negligence on the part of the Fire District, the Fire District will be responsible for any difference between the cost to repair or replace the Building or Equipment and any coverage available to the Regional District under its policies of insurance.
- 6.9 The Fire District agrees to comply promptly at its expense with all laws, bylaws, regulations, requirements and recommendations, which may be applicable to the manner of use of the Lands, Building or Equipment, made by any and all federal, provincial, local government and other authorities or association of insurance underwriters or agents and all notices in pursuance of same.
- 6.10 The Fire District agrees to indemnify the Regional District from and against any builder's liens and must, upon the request of the Regional District, immediately cause any registered lien to be discharged from title to the Lands.

7.0 LICENCE OF USE

- 7.1 The Regional District, subject to the performance and observance by the Fire District of the terms, conditions, covenants and agreements contained in this Agreement, and to earlier termination as provided in this Agreement, grants to the Fire District a licence for the Fire District to use the Lands and Building for the purposes of providing the Services and for providing fire protection services within the boundaries of the Fire District and for no other purpose.
- 7.2 This Agreement does not grant any interest in the Lands or Building to the Fire District.
- 7.3 The Regional District hereby reserves, to itself from the grant and covenants made by it to the Fire District in section 7.1 above, the right for the Regional District, its agents, employees, contractors and subcontractors to have full and complete access to the Lands and Building to carry out any operations associated with the Regional District's use of the Lands or Building and to determine whether the Fire District is complying with the terms of this Agreement. The Regional District shall only access the Lands and Building for the purposes of determining whether the Fire District is

complying with the terms of this Agreement at reasonable times, upon twenty-four (24) hours' notice in writing, specifying the time of inspection. If any want or repair shall be found on such examination and notice thereof is given, the Fire District will, within ninety (90) days of the giving of that notice, well and truly repair in accordance with that notice.

7.4 The Regional District hereby warrants and represents to the Fire District that:

- (a) the Regional District has fully disclosed to the Fire District all environmental reports, site assessments, audits, studies, permits, licences and records in the possession or control of the Regional District with respect to the Lands and relating to the Contaminants or Environmental Laws, and, the Regional District has not obtained or performed any environmental reports, site assessments, audits or other studies with respect to the Lands and Equipment except as disclosed in writing to the Fire District; and
- (b) for the purposes of this section:
 - i. "**Contaminants**" means explosives, radioactive materials, asbestos materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous goods or substances, hazardous, corrosive or toxic substances, special waste or waste of any kind, or any other substance, the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or release into the environment of which is prohibited, controlled, regulated or licensed under Environmental Laws; and
 - ii. "**Environmental Laws**" means any and all statutes, laws, regulations, orders, bylaws, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Lands, now or hereafter in force relating to the environment, health, occupational health and safety, product liability or transportation of dangerous goods, including all applicable guidelines and standards with respect to the foregoing as adopted by any of those governmental authorities from time to time and the principles of common law and equity.

8.0 USE, ASSIGNMENT AND SUBLETTING

- 8.1 The Fire District agrees that it will not assign, mortgage or encumber this Agreement, or sublicense its interest in the Lands or Building, or suffer or permit the Lands or Building or any part thereof to be used by others without the prior written consent of the Regional District in each instance, which shall not be arbitrarily or unreasonably withheld.
- 8.2 In no event shall any assignment or sub-licencing to which the Regional District may have consented, release or relieve the Fire District from its obligations to fully perform all the terms, covenants and conditions of this Agreement on its part to be performed.
- 8.3 In the sub-agreement between the Fire District and an assignee or sublicensee under any assignment or sub-Agreement consented to by the Regional District, the Fire District shall require that the subtenant or assignee agree to be bound by all of the Fire District's obligations under this Agreement.

9.0 APPROVALS

- 9.1 No provision in this Agreement requiring the Fire District's or the Regional District's consent or approval shall be deemed to have been fulfilled or waived unless the prior written consent or approval of the Fire District or the Regional District relating to the particular matter or instance has first been obtained and, without limiting the generality of the foregoing, no prior consent or approval and no condoning, excusing or overlooking by the Fire District on previous occasions when such a consent or approval was required, shall be taken to operate as a waiver of the necessity of such consent or approval whenever required under this Agreement.

10.0 RELATIONSHIP OF PARTIES

- 10.1 Nothing contained herein shall be deemed or construed by the Parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the Parties.

11.0 SOLE AGREEMENT

- 11.1 This Agreement sets forth all of the warranties, representations, covenants, promises, agreements, conditions and understandings between the Parties concerning the Lands and there are no warranties, representations, covenants, promises, agreements, conditions or understanding, either oral or written, express or implied, between them other than as set forth in this Agreement.

12.0 ARBITRATION

- 12.1 In the event of a bona fide dispute arising between the Fire District and the Regional District as to any matter, question or determination arising or required to be made under this Agreement, such dispute shall immediately be referred to an arbitrator agreed upon by the Fire District and the Regional District or, in the event that they cannot agree upon such arbitrator, then the question shall be referred to the arbitration of one arbitrator under the *Commercial Arbitration Act* of British Columbia, and amendments thereof, or such other Statute or Statutes of like effect being in force in British Columbia, and such arbitrator, whether agreed upon or appointed under the said Statute shall have access to such records of the Parties as may be reasonably necessary and the decision of the Arbitrator shall be final and binding upon the Parties. Except as otherwise provided for in this Agreement, the costs of the arbitration shall follow the award, unless otherwise determined by the Arbitrator.

13.0 REMOVAL OF IMPROVEMENTS

- 13.1 All improvements authorized by the Regional District and all articles of personal property constructed, owned or installed by the Fire District at the expense of the Fire District on the Lands shall remain the property of the Fire District and may be removed by the Fire District at any time until the end of the Term or earlier termination of this Agreement. The Fire District agrees that it will, at its expense, repair any damage to the Lands caused by the construction, installation, existence, use or removal thereof (the "**Restoration**"). Before removing such property, the Fire District shall notify the Regional District of its intention to do so and shall, if required by the Regional District, post a bond in an amount and form satisfactory to the Regional District as security for performance of the Fire District's obligations for the Restoration.

- 13.2 If the Fire District does not remove the property which is removable by the Fire District pursuant to section 13.1 prior to the end of the Term or the sooner termination of this Agreement, such property shall, if the Regional District elects, be deemed to become the Regional District's property and the Regional District may remove the same at the expense of the Fire District, and the cost of such removal will be paid by the Fire District forthwith to the Regional District on demand.

14.0 DEFAULT AND EARLY TERMINATION

- 14.1 If the Fire District violates or neglects any covenant, agreement or stipulation herein contained on its part to be kept, performed or observed and any such default on the part of the Fire District shall continue for thirty (30) days after written notice thereof to the Fire District by the Regional District, the Regional District may terminate this Agreement, including the Licence of Use contained in section 7.0 and re-enter and take possession of the Lands, and the rights of the Fire District with respect to the this Agreement, the Lands and the Building lapse and are absolutely forfeit immediately. The Regional District may by reasonable force if necessary without any previous notice of intention to re-enter and may remove any persons and property from the Lands and Building and may use such force and assistance in making such removal as the Regional District may deem advisable to recover at once full and exclusive possession of the Lands and Building.
- 14.2 If during the Term hereof or any renewal thereof, any of the goods or chattels of the Fire District shall at any time be seized or taken in execution or attachment by any creditor of the Fire District or if the Fire District shall make any assignment for the benefit of creditors or commit any other act of bankruptcy or shall become bankrupt or insolvent or shall take the benefit of any bankruptcy or insolvency legislation or if a receiver be appointed by a court or any person or in the case that the Lands are used by any other person or for any other purpose than is herein provided without the prior written consent of the Regional District or if any order shall be made for the winding up or dissolution of the Fire District or it should otherwise cease to exist then the Term hereof or any renewal thereof shall become forfeit and void, and it shall be lawful for the Regional District any time thereafter to re-enter into or upon the Lands and Building or any part thereof in the name of the whole, to have again, repossess and enjoy as of its former estate, notwithstanding anything herein contained to the contrary and neither this Agreement nor any interest therein nor any estate hereby created shall pass to or enure to the benefit of any trustee in bankruptcy or any receiver or any assignee for the benefit of creditors or otherwise by operation of law.
- 14.3 If the Regional District exercises its right of termination as outlined in sections 14.1 or 14.2, then it may recover possession of the Lands and Building in accordance with sections 12 and 13.

15.0 NOTICE

- 15.1 All payments or correspondence to the Fire District from the Regional District shall be sent to the Fire District at the following address:

Cranberry Fire Protection District
1555 Morden Road
Nanaimo, BC V9X 1S2

Attention: Chairperson

All payments or correspondence to the Regional District from the Fire District shall be sent to the Regional District at the following address:

Regional District of Nanaimo
6300 Hammond Bay Road
Nanaimo, BC V9T 6N2

Attention: Corporate Officer

or such other places as the Regional District and the Fire District may designate from time to time in writing to each other.

- 15.2 Any notice to be given hereunder shall be in writing and may be either delivered personally or sent by prepaid, registered or certified mail and, if so mailed, shall be deemed to have been given three (3) days following the date upon which it was mailed.
- 15.3 Any notice or service required to be given or affected under any statutory provision or rules of court from time to time in effect in the Province of British Columbia shall be sufficiently given or served if mailed or delivered at the addresses as aforesaid.
- 15.4 Any party hereto may at any time give notice in writing to any other of any change of address of the party giving such notice and from and after the second day after the giving of such notice, the address herein specified shall be deemed to be the address of such party for the giving of notices hereunder.

16.0 WAIVER

- 16.1 The failure of either Party to insist upon strict performance of any covenant or condition contained in this Agreement or to exercise any right or option hereunder shall not be construed as a waiver or relinquishment for the future of any such covenant, condition, right or option.
- 16.2 The acceptance by the Regional District of a part payment of any sum required to be paid hereunder shall not constitute waiver or restriction of the right of the Regional District to payment in full of such sum.

17.0 SUCCESSORS BOND

17.1 All rights and liabilities herein given to, or imposed upon, the respective Parties hereto shall extend to and bind the respective successors and assigns of the said Parties. No rights, however, shall enure to the benefit of any assignee of the Fire District unless the assignment to such assignee has been first approved by the Regional District in accordance with section 7.

IN WITNESS WHEREOF, the Parties hereto have set their hands as of the day and year first above written.

Cranberry Fire Protection District)
by its authorized signatories:)

_____)
Name:)

_____)
Name:)

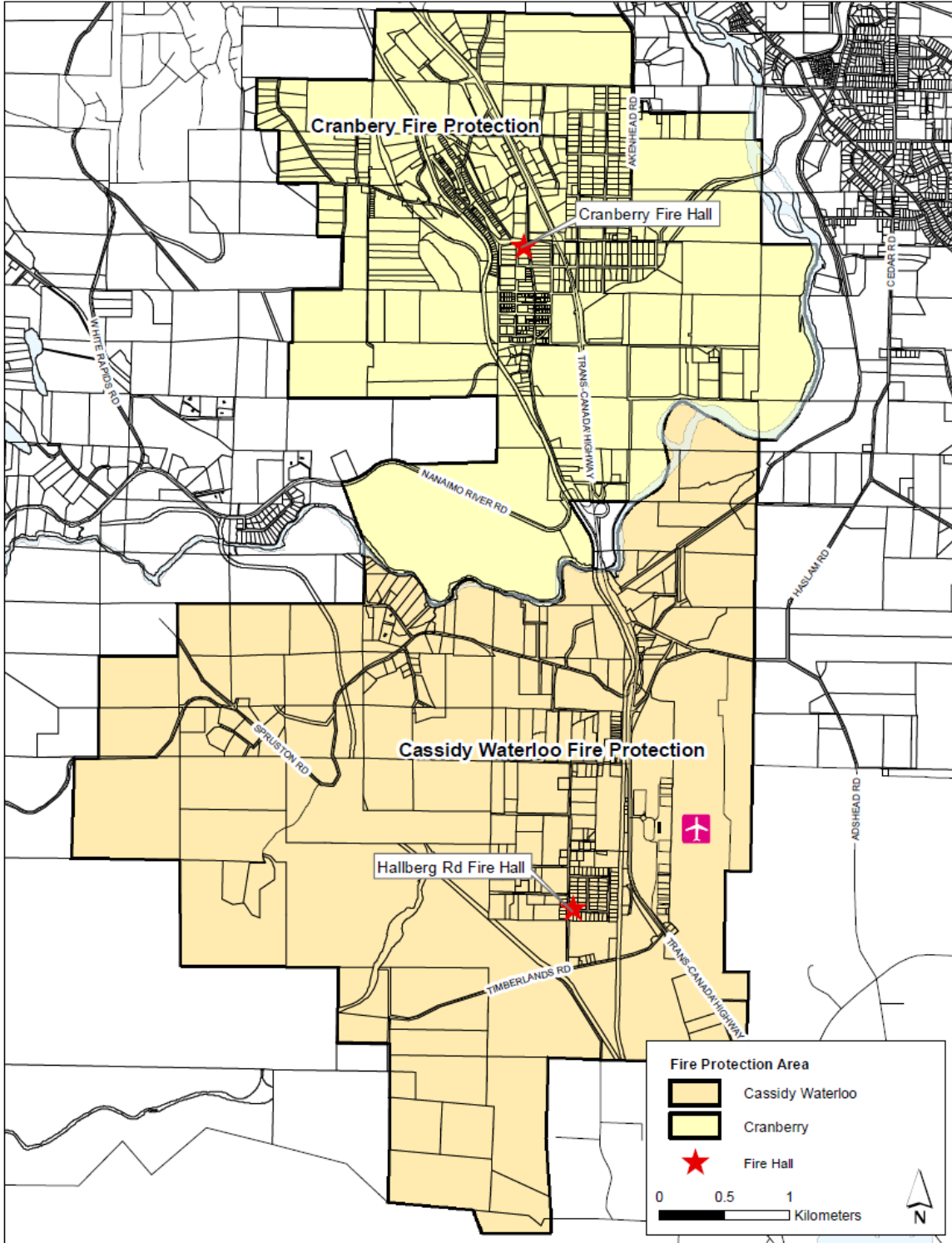
Regional District of Nanaimo)
by its authorized signatories:)

_____)
Name:)

_____)
Name:)

SCHEDULE 'A'

Properties to be served under this Agreement



SCHEDULE 'B'

List of Equipment

Vehicles:

1. 2008 NFPA Furion Pumper A662
2. 2010 Freightliner Tanker

Equipment

The Parties acknowledge that at the date of this Agreement a formal inventory of Equipment is not available but that items in the Building have been purchased and belong to the Regional District. In addition to items typically stored in the Building, portable radios and pagers sufficient to equip the typical complement of volunteers at the Building are the property of the Regional District.

Equipment includes but is not limited to:

- (a) all furniture and fixtures attached to and/or placed within the Building;
- (b) all uniforms and personal protective Equipment purchased by the Regional District;
- (c) movable Equipment such as fans, generators, axes, ladders and similar Equipment which may be stored on the Vehicles from time to time; and
- (d) stationary radio Equipment, portable radios and pagers used by the typical complement of volunteers at the Building.