

REGIONAL DISTRICT OF NANAIMO

**BOARD MEETING
TUESDAY, JUNE 24, 2008**

**CIRCULATED REPORT
FOR AGENDA**

PAGES

ADMINISTRATOR'S REPORTS

2-17 Cranberry Fire Protection Lease & Transfer Agreement. (All Directors –
Weighted Vote)



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MEMORANDUM

TO: C. Mason
Chief Administrative Officer

DATE: June 19, 2008

FROM: N. Avery
General Manager, Finance & Information Services

FILE:

SUBJECT: An Agreement to Lease and Transfer Assets to the Cranberry Fire Protection District

PURPOSE:

To obtain approval to enter into an agreement covering the use of firefighting equipment, land and buildings by the Cranberry Fire Protection District and to provide for the final transfer of assets at the end of the lease term.

BACKGROUND:

The Board received an earlier report which covered bylaws to amend the boundaries of the Yellowpoint/Waterloo Fire Protection Service and to borrow to acquire firefighting vehicles and equipment. The boundaries of the Cranberry Fire Protection District are proposed to be extended to include the Yellowpoint/Waterloo properties and the Cranberry Fire Department will become the operational entity for fire protection purposes.

The Regional District owns the land and firehall building located at 3500 Hallberg Road where the equipment purchased by the Regional District will be located. This arrangement, whereby, a sub-section of taxpayers finances new assets for the use of an existing fire department is not dissimilar to the Meadowood/Dashwood and Extension/Nanaimo River fire service areas. What is different is that the operating fire department is another local government. In this circumstance, the Regional District is acting as a fiscal agent and it is logical that at some point the assets will belong to the other local government, which will have operated and maintained them during their useful life. When the assets need to be replaced, this would be the responsibility of the other local government and its full taxpayer base.

The lease and transfer agreement attached to this report provide the following:

1. The agreement covers a fifteen year period. This is the period during which taxpayers in the Yellowpoint Fire Protection Service will retire debt for the purchase of firefighting vehicles and equipment.
2. During the term of the agreement the Cranberry Fire Protection District will have full and unfettered access to the land, building and firefighting equipment owned by the Regional District and will use those assets for fire protection purposes within the expanded Cranberry Fire District. The land, building and equipment are available to the Cranberry Fire Protection District at a charge of \$20.00 for the term of the agreement.

3. The firefighting assets owned by the Regional District will remain located at the Hallberg Road firehall unless required for emergency response, training or maintenance purposes.
4. The Cranberry Fire Protection District will maintain at its cost the land, buildings and equipment and will pay all costs of any kind related to the assets.
5. At the end of the agreement (which is the end of the debt repayment term) the land, building and equipment will be transferred with clear title to the Cranberry Fire Protection District at a charge of \$20.00. Following this transfer the Yellowpoint/Waterloo Fire Protection Service will cease to be active and the sole provider of fire protection services will be the Cranberry Fire District.

The agreement has been reviewed by our legal counsel and any recommendations have been addressed. The agreement has been forwarded to the Cranberry Fire District for review and no substantive changes are expected.

This agreement requires the approval of the electors in the Yellowpoint Fire Protection Service Area. The recommended method of approval is the alternative approval process. Both the loan authorization bylaw presented earlier (Bylaw 1549) and this lease and transfer agreement will be combined and presented as the subject of the alternative approval process. The number of electors established for this alternative approval process is 1,320 – therefore if 131 or more electors oppose this initiative, the matter must be decided by a referendum.

The timeframe for conducting this AAP is as follows:

Advertise the proposal	August 15 and August 22
Deadline for response	September 22
Board adoption of bylaw/agreement	September 30

The Board must approve an Elector Response Form which is provided on request to an elector who wishes to oppose this initiative. A copy is attached to this report.

ALTERNATIVES:

1. Approve the agreement as presented.
2. Recommend changes to the agreement and approve the agreement as amended.

FINANCIAL IMPLICATIONS:

Alternative 1

The agreement provides that the assets will be of no cost to the Regional District. With respect to conducting the alternative approval process and providing notice to the affected taxpayers, these costs have been provided for in the 2008 budget.

Alternative 2

Staff have no further recommendations with respect to the agreement.

SUMMARY/CONCLUSIONS:


Attached to this report is a lease and transfer of assets agreement between the Regional District of Nanaimo and the Cranberry Fire Protection District. It is the intention that the Cranberry Fire Protection District will be the sole provider of emergency response services to taxpayers in this portion of the Regional District of Nanaimo. The agreement is necessary because funds required to replace assets at a firehall in the Cassidy area must be borrowed through the Regional District of Nanaimo and ownership of the assets must remain with the Regional District of Nanaimo until the debt is retired.

The agreement covers two phases – an initial 15 year lease period during which ownership of the land, buildings and equipment will be retained by the Regional District and during which time, the debt will be retired. The second phase is the transfer of the land, buildings and equipment to the Cranberry Fire Protection District- this will occur on December 29, 2023. The agreement and the loan authorization bylaw will be presented at the same time to the taxpayers through an alternative approval process.

RECOMMENDATIONS:

1. That the agreement between the Cranberry Fire Protection District and the Regional District of Nanaimo covering the use of land, buildings and equipment at 3500 Hallberg Road, including the final transfer of ownership of the land, buildings and equipment to the Cranberry Fire Protection District for a term covering January 1, 2009 to December 29, 2023 be approved as presented.
2. That this agreement be presented for approval of the electors by way of an alternative approval process.
3. That the *Elector Response Form* previously approved for Bylaw No. 1549, which includes an outline of the lease and transfer agreement be used for this alternative approval process.


Report Writer


C.A.O. Concurrence

COMMENTS:

**HALLBERG RD FIREHALL PROPERTY
LEASE AND TRANSFER AGREEMENT**

THIS AGREEMENT signed on the day of, 2008 and effective the 1st day of January 2009.

BETWEEN:

REGIONAL DISTRICT OF NANAIMO
6300 Hammond Bay Road
Nanaimo, B.C.
V9T 6N2

(the "Regional District")

OF THE FIRST PART

AND:

CRANBERRY FIRE PROTECTION DISTRICT
1555 Morden Rd.
Nanaimo, BC
V9X 1S2

(the "Fire District")

OF THE SECOND PART

W H E R E A S:

A. The Regional District is the registered owner in fee simple of lands legally described as:

PID 002-706-831
Lot 32, District Lot 7, Bright District, Plan 25967

(the "Lands").

B. At the expense and instance of the Regional District, the Regional District has constructed a building on the Lands for use as a firehall (the "**Building**") and the Land and Building are, and shall remain until otherwise transferred, during the term of this Agreement, the property of the Regional District, its successors and assigns.

- C. The Regional District has purchased and placed in the Building, for the purposes of providing fire protection and emergency response services to properties in the Yellowpoint/Waterloo Fire Protection Service Area and the Cranberry Fire Protection Districts firefighting vehicles and equipment (the "Equipment").
- D. The Equipment purchased by the Regional District is listed on Schedule "A" to this Agreement.
- E. The parties wish to provide for the lease of the Land and Equipment during the Term and the lease and transfer of the Land and Equipment to the Fire District at the end of the Term upon the terms and conditions set out herein.

NOW THEREFORE THIS INDENTURE WITNESSETH THAT in consideration of the rents, covenants, agreements and conditions hereinafter reserved and contained on the part of the Fire District to be respectively paid, kept, observed and performed, the Regional District hereby leases to the Fire District the Lands and Equipment, to hold the Lands and Equipment for use in providing fire protection and emergency response services for a term of fifteen (15) years less two (2) days from and including January 1, 2009 to and including December 29, 2023 (the "Term"), subject to the terms and conditions herein set forth.

1.00 RENT AND RESPONSIBILITY FOR EXPENSES

- 1.01 Yielding and paying therefor unto the Regional District upon the execution of this Agreement, the rent of Ten (\$10.00) Dollars for the Land for the Term herein granted, and Ten (\$10.00) Dollars for the Equipment for the Term hereby granted the receipt of which is hereby acknowledged.
- 1.02 It is intended by the parties that the Lands and Equipment be of no cost or expense to the Regional District during the Term and accordingly the Fire District agrees to pay, whether on its own behalf or on behalf of the Regional District, all costs of every nature and kind relating to the Lands and Equipment and the Fire District agrees to indemnify the Regional District from and against any such costs and expenses incurred by the Regional District directly.
- 1.03 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 or maintenance purposes.

2.00 INSURANCE, MAINTENANCE, RISK AND INDEMNITY

- 2.01 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 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 \$1,000,000. The Fire District and the Regional District shall both be included as additional named insureds under such liability policy or policies of insurance;

- (b) insurance coverage for the vehicles provided to the Fire District, with the Regional District shown as the Lessor on such policy of insurance .
- 2.02 The Regional District shall at the expense of the Fire District insure the Building and contents, and the Equipment whether the contents are owned by the Regional District or the Fire District, at full replacement cost and shall invoice the Fire District annually for such expense. The Fire District shall pay the cost of such insurance within 30 days of invoice by the Regional District. The policy of insurance shall have a deductible no greater than Ten Thousand (\$10,000) Dollars, which will be the amount payable by the Fire District in the event of damage to the Building or contents.
 - 2.03 The policy or policies of insurance shall 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.
 - 2.04 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.
 - 2.05 Should the Building or Equipment be damaged or destroyed and the policy or policies of insurance under this agreement are not sufficient to cover the cost of replacing the Building or Equipment, the Fire District shall be responsible for the balance of any costs to replace the Building or Equipment.
 - 2.06 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, Buildings 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, provided however that the Fire District shall have no liability to make any improvements, alterations or additions to the Lands, Buildings or Equipment which may be required by authorities or associations unless due to the use made of the Lands, Buildings or Equipment by the Fire District.
 - 2.07 The Fire District agrees to indemnify and save harmless the Regional District, its elected and appointed offices 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, Buildings 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.

- 2.08 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.
- 2.09 The Fire District agrees to maintain the Lands and Building at its cost 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 be or become a nuisance or interfere with the comfort of any person occupying land in the vicinity of the Lands.
- 2.10 The Fire District agrees to maintain the Equipment 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, damage or render the Equipment unusable.
- 2.11 The Fire District shall not commit waste on the Lands.
- 2.12 The Fire District shall not deposit or discharge on the Lands any Contaminants as defined in section 8.11(b) of this Lease.
- 2.13 The Fire District shall provide the Regional District prompt notice of any damage to the Lands or Building or any part of them.

3.00 EQUIPMENT

- 3.01 If the Fire District is not in possession of the Equipment at the Commencement of the Term, it shall advise the Regional District when it receives the Equipment and will be deemed to have accepted the equipment when it authorizes payment by the Regional District.
- 3.02 The Regional District shall at all times have and retain whatever title to the Equipment is acquired by the Regional District from the seller or manufacturer of the Equipment. The Lessee shall have no right, title, or interest in the Equipment other than the right of possession and use in accordance with the terms of this Lease and the right conferred by Section 9 of this Lease to acquire title to the Equipment at the end of the Term.
- 3.03 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 Lessee as its agent for the purpose of such enforcement.
- 3.04 The Equipment shall be at the risk of the Lessee who shall maintain, repair, overhaul, service, and keep the Equipment in a good and substantial manner, and shall maintain the Equipment in a condition equivalent to its condition at the commencement of this lease, fair wear and tear only excepted, 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.
- 3.05 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.

4.00 QUIET ENJOYMENT

- 4.01 The Regional District covenants with the Fire District for quiet enjoyment of the Land, for so long as the Fire District is not in default hereunder.
- 4.02 The Fire District shall have full and unfettered access to the Land, Buildings and Equipment during the Term of this Agreement in order to provide fire protection services.
- 4.03 The Fire District shall permit the Regional District and its servants and agents at all reasonable times, upon twenty-four (24) hours' notice in writing, specifying the time of inspection, during the Term of this Agreement to enter the Lands and every part thereof to examine the condition thereof, and 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.

5.00 USE, ASSIGNMENT AND SUBLETTING

- 5.01 The Fire District agrees that it will not assign, mortgage or encumber this Agreement, or sublet, or suffer or permit the Lands or any part thereof to be used by others by licence or otherwise without the prior written consent of the Regional District in each instance which shall not be arbitrarily or unreasonably withheld.
- 5.02 In no event shall any assignment, or subletting, or sub-licensing 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.
- 5.03 In the sub-Agreement between the Fire District and an assignee or subtenant 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.

6.00 HOLDING OVER

- 6.01 If the Fire District continues to occupy the Lands or to use the Equipment with the consent of the Regional District after the expiration or other termination of the Term without any further written agreement, the Fire District shall be a monthly lessee subject always to all of the provisions of this Agreement insofar as the same are applicable to a month-to-month tenancy and a tenancy from year to year shall not be created by implication of law; provided that nothing herein contained shall preclude the Regional District from taking action for recovery of possession of the Lands or the Equipment.

7.00 APPROVALS

7.01 No provision in this Agreement requiring the Regional District's or the Fire District's consent or approval shall be deemed to have been fulfilled or waived unless the written consent or approval of the Regional District or the Fire 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 Regional 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.

8.00 RELATIONSHIP OF PARTIES

8.01 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 hereto, it being understood and agreed that neither the method of commutation of rent nor any other provision contained herein, nor any acts of the parties herein, shall be deemed to create any relationship between the parties other than the relationship of landlord and tenant.

9.00 TRANSFER

9.01 On the last day of the Term (the "**Completion Date**") the Regional District shall transfer or cause to be transferred to the Fire District title to the Lands and all Equipment listed in Schedule A of which it is the owner on the Completion Date (the "**Transferred Assets**").

9.02 The Regional District shall deliver to the Fire District title to the Lands for so long as they are used for the purposes of a fire protection and emergency response services free and clear of all charges and encumbrances save and except for those listed below:

- (a) Exception and Reservations #M76300 in favour of the Esquimalt and Nanaimo Railway Company;
- (b) Statutory Building Scheme #B44471;
- (c) Possibility of Reverter in favour of the Regional District of Nanaimo referred to above.

9.03 (a) The Regional District shall deliver to the Fire District on or before the Completion Date a conveyance in registrable form by way of a Transfer and other appropriate documents as may be necessary to register the Fire District's interest in the Lands under the provisions of the *Land Title Act* of British Columbia and Bill of Sale in relation to the Equipment to otherwise complete the said purchase and sale (the "**Closing Documents**").

(b) The Fire District shall bear all costs of preparation and registration of the Closing Documents except for any costs, fees or charges associated with the discharge of any encumbrances required to be cleared from title by the Regional District.

9.04 The total Purchase Price shall be:

TEN DOLLARS for the Lands and	\$10.00
TEN DOLLARS for all Equipment	
that forms part of the Transferred Assets	<u>\$10.00</u>
Total	<u>\$20.00</u>

shall be paid by the payment of a cash deposit to be held in trust by Staples McDannold Stewart, subject to adjustments.

9.05 The Fire District will pay the Property Transfer Tax upon closing and Goods and Services Tax, as due, if applicable in respect of the conveyance contemplated in this Agreement.

9.06 The Completion Date shall be 4:00 o'clock p.m. on the 29th day of December, 2023, or such other day as may be agreed by the parties.

9.07 All documents required to transfer title to the Lands shall be delivered by the Regional District to the Fire District's solicitor in registrable form and shall be lodged for registration in the Victoria Land Title Office by the Fire District's solicitor on or before the applicable Completion Date. The Purchase Price and other payments required to be made under this Agreement for the Lands shall be paid by the Fire District's solicitor to the Regional District or to the solicitor representing the Regional District upon the issuance of pending registration numbers for the Transfer of the Lands. In the event that the Regional District does not transfer the Lands to the Fire District on the date and on the terms and conditions set out herein, the Regional District agrees that it will promptly reimburse the Fire District for the full amount of the portion of the Purchase Price paid by the Fire District.

9.08 The Regional District shall deliver vacant possession of the Lands to the Fire District at 4:00 o'clock p.m. on the Completion Date.

9.09 (a) Adjustment of taxes, insurance premiums, water, sewer, electrical and garbage rates, rentals and other items subject to adjustment shall be made as of the Completion Date.

(b) All taxes (including penalty taxes), rates, local improvements and other charges of a like nature that are not payable by the Fire District under this Agreement prior to the applicable Completion Date shall be paid by the Regional District.

9.10 The Transferred Assets shall be at the risk of the Regional District until 12:00 o'clock a.m. on the Completion Date and in the event of loss or damage to the same occurring before such date and time by reason of fire, tempest, lightning, earthquake, flood or other Act of God, explosion, riot, civil commotion, insurrection or war, the Fire District may, at its option, cancel this Agreement and shall thereupon be entitled to the return of any monies paid. After

12:00 o'clock a.m. on the Completion Date, the Lands shall be at the risk of the Fire District.

9.11 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.
- (b) for the purposes of this section:
 - (i) "Contaminants" means explosives, radio active 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.
 - (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.

9.12 The Fire District shall take title to the Transferred Assets on an "as is where is" basis and acknowledges and agrees that the Regional District makes no representation regarding the environmental condition of the Lands. From and after the Completion Date the Fire District shall indemnify and save harmless the Regional District from any and all costs, claims, fines, fees, expenses, actions or causes of action connected with the environmental condition of the Lands or the presence of Contaminants on the Lands.

10.00 SOLE AGREEMENT

10.01 This Agreement sets forth all of the warranties, representations, covenants, promises, agreements, conditions and understandings between 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.

11.00 ARBITRATION

- 11.01 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.

12.00 BUILDERS LIENS

- 12.01 The Fire District shall promptly pay as and when the same falls due any and all accounts for work done or material supplied in respect of improvements made to the Lands where such improvements are made at the request of and on the credit of, or on behalf, or with the privity or consent of, or for the direct benefit of, the Fire District. The Fire District will not cause, suffer or permit any encumbrance (including personal property security agreements of any type, liens or charges), lien or charge to arise or exist or be claimed upon the Lands or in respect thereof, provided that should any such claim of lien arise or exist, the Fire District shall immediately post with the Regional District sufficient security in the form of cash or a bank draft to discharge the same and shall further immediately proceed to a court of competent jurisdiction to cause the validity of such claim of lien to be determined and shall upon such determination cause the registration of such claim of lien against the title to the Lands to be terminated, and in that regard, shall satisfy the lien if it is found valid. Should the Fire District, at any time after the granting of security, fail, upon the request of the Regional District, to provide the Regional District with proof of its diligent pursuit of a determination of the validity of the claim, lien or the discharge thereof, the Regional District may utilize the security provided by the Fire District to discharge the claim of lien or liens upon five (5) days' notice in writing of its intention. Should the Fire District fail to immediately post with the Regional District sufficient security in the form of cash or bank draft to discharge the claim of lien, or should the Fire District fail to immediately discharge any lien, the Regional District in addition to any right or remedy may, but shall not be obligated to, discharge the claim of lien or liens by paying the amount claimed to be due or the amount due, together with a reasonable amount for costs and the amount paid by the Regional District shall be paid by the Fire District to the Regional District forthwith upon demand. In no case shall the Regional District be required to investigate the validity of the claim of lien or liens prior to discharging the same in accordance with this clause. The Regional District shall be entitled at all times during the Term to place notices on the Lands pursuant to section 13 of the *Builders Lien Act*, R.S.B.C. 1996, or successor or similar legislation.

13.00 REMOVAL OF IMPROVEMENTS

- 13.01 All improvements 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.
- 13.02 If the Fire District does not remove the property which is removable by the Fire District pursuant to clause 13.01 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.

14.00 EXPROPRIATION

- 14.01 If the whole of the Lands shall be acquired or expropriated by an authority having the power of such acquisition or expropriation, the Term of this Agreement shall cease from the date of entry by such authority. If only a portion of the Lands shall be so acquired or expropriated, this Agreement shall cease and terminate at the Regional District's option, or at the Fire District's option. In either event, however, and whether all or only a portion of the Lands shall be so acquired or expropriated, nothing herein contained shall prevent the Regional District or the Fire District or both from recovering damages from such authority for the value of their respective interest or for such other damages and expenses allowed by law, but in such event neither party shall have an action against the other in respect of any breach of this Agreement caused directly or indirectly by such event.

15.00 DEFAULT AND EARLY TERMINATION

- 15.01 The Fire District further covenants with the Regional District that if the Fire District shall violate or neglect 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, or in case the Lands shall be vacated or become vacated or remain unoccupied or unused for ninety (90) days, then by law may at its option forthwith re-enter and take possession of the Lands immediately and by reasonable force if necessary without any previous notice of intention to re-enter and may remove any persons and property therefrom 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.

- 15.02 If the Term hereof or any renewal therefor or any of the goods or chattel 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 of any part of the business or property of the Fire District 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 written consent of the Regional District or if any other shall be made for the winding up or dissolution of the Fire District or it should otherwise cease to exist or if the purposes of the Fire District are altered without the prior written consent of the Regional District, 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 or any part thereof in the name of the whole and the same 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.
- 15.03 Either party to this Agreement may terminate the Agreement at any time upon twelve months' notice in writing to the other party. If the Regional District exercises this right of termination then it may recover possession of the Lands in accordance with paragraph 13.02.

16.00 REGISTRATION

- 16.01 If the Fire District shall cause this Agreement or any provision hereof to be registered pursuant to the *Land Title Act*, the Fire District will pay all expenses incurred for that purpose including registration fees, procurement of any sketch or plan or other description which may be required, and to indemnify the Regional District for all expenses incurred in cancelling that registration upon the termination or expiration of the Term of this Agreement.

17.00 APPLICABLE LAW, COURT LANGUAGE

- 17.01 This Agreement shall be governed and construed by the laws of the Province of British Columbia.
- 17.02 The venue of any proceedings taken in respect of this Agreement shall be at Nanaimo, British Columbia, so long as such venue is permitted by law, and the Fire District shall consent to any applications by the Regional District to change the venue of any proceedings taken elsewhere to Nanaimo, British Columbia.

18.00 CONSTRUED COVENANT, SEVERABILITY

- 18.01 All of the provisions of this Agreement are to be construed as covenants and agreements. Should any provision of this Agreement be or become illegal, invalid or not enforceable, it shall be considered separate and severable from this Agreement and the remaining provisions shall remain in force and be binding upon the parties hereto and be enforceable to the fullest extent of the law.

19.00 TIME

19.01 Time shall be of the essence hereof.

20.00 NOTICE

20.01 All payment from the Fire District to the Regional District shall be sent to the Regional District at the following address:

Regional District of Nanaimo
6300 Hammond Bay Road
Nanaimo, B.C.
V9T 6N2

Attention: General Manager Finance & Information Services

and all payments from the Regional District to the Fire District shall be sent to the Fire District at the following address:

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

Attention: Chairperson

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

- 20.02 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.
- 20.03 Any notice or service required to be given or effected 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.
- 20.04 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.

21.00 WAIVER

- 21.01 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.
- 21.02 The acceptance by the Regional District of a part payment of any sum required to be paid hereunder shall not constitute waiver or reAgreement of the right of the Regional District to payment in full of such sum.

22.00 SUCCESSORS BOND

- 22.01 All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, 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 Article 4.

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

REGIONAL DISTRICT OF NANAIMO

by its authorized signatories)
)
)
)
 _____)
 Chairperson)
)
 _____)
 Sr. Mgr., Corporate Administration)

CRANBERRY FIRE PROTECTION DISTRICT

by its authorized signatories)
)
)
)
 _____)
 Chairperson)
)
 _____)
 Secretary)