

REGIONAL DISTRICT OF NANAIMO

**REGULAR BOARD MEETING
TUESDAY, DECEMBER 9, 2008**

**CIRCULATED REPORT
FOR AGENDA**

PAGES

ADMINISTRATOR'S REPORTS

2-26 Fire Protection Agreements with Improvement Districts.



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MEMORANDUM

TO: C. Mason
Chief Administrative Officer

DATE: December 8, 2008

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

FILE:

SUBJECT: Fire Protection agreements with Improvement Districts

PURPOSE:

To obtain approval to execute agreements for fire protection and emergency response services with the Cranberry Fire Protection and the North Cedar Improvement Districts and amend the Yellowpoint Waterloo Fire Protection Service taxation limit for 2009.

BACKGROUND:

On November 15, 2008 residents in the south Cedar/Yellowpoint area voted to be amalgamated with the North Cedar Improvement District for fire protection services. This required the Regional District to implement an alternative form of fire protection for properties located primarily east of the Trans Canada highway in the southern part of the Regional District of Nanaimo. On November 25, 2008 the Board authorized staff to negotiate a service agreement with the Cranberry Fire Protection District for this purpose. At that same meeting Bylaw No. 1388.02 was introduced to provide the necessary taxation limit to cover the cost of a service contract with the Cranberry Fire Protection District and the purchase of a vehicle and equipment for the Hallberg Rd. firehall.

Subsequent to the November 25th meeting, the Province advised staff, that despite the best efforts by all parties, the amendment to the boundaries of the North Cedar Improvement District cannot be done until early in 2009. Boundary amendments for Improvement Districts require Cabinet approval, which is a lengthier process than Regional District bylaws. The Province has advised staff, that a short term service contract with the North Cedar Improvement District will be required until the boundary amendment is approved.

Staff also recently met with residents from the Cassidy area to discuss the overall proposed changes. They requested an opportunity to explore the option of creating a new fire department separate from the Cranberry Fire Protection District. In order to provide some flexibility in responding to the residents and yet reasonable certainty to the Cranberry Fire Protection District, a contract term of two years with an option to renew for a third year has been incorporated into that agreement.

Two service contracts are attached to this report. The North Cedar Improvement District (NCID) contract will cover the period January 1, 2009 to December 31, 2009 or until the boundary amendment is approved by Cabinet. An amount of \$90,000, representing property and parcel taxes which would otherwise be raised by NCID will be raised by the RDN under the existing Yellowpoint/Waterloo bylaw.

The contract with the Cranberry Fire District would transfer \$38,000 for direct operating costs plus the cost of additional liability insurance, with a further \$25,000 available to assist with equipment or the purchase of a second vehicle. The Cranberry Fire District will assist in advising the Regional District on the best use of those funds. The total to be raised for all purposes in 2009 is \$234,000

Staff have met with representatives of both Improvement Districts and each have indicated support of the attached agreements. Each Improvement District will formally consider the agreements in meetings to follow in the next week.

Bylaws No.1388.01 (boundary reduction) and Bylaw No. 1388.02 (Cranberry service contract) were introduced on November 25th. Both bylaws will be rescinded and a new Bylaw 1388.01 is introduced with this report to adjust the taxation limit to that required for 2009. A boundary reduction bylaw will be re-introduced in 2009 when the final boundary for NCID is approved.

ALTERNATIVES:

1. Approve the agreements as presented, rescind Bylaws No. 1388.01 and Bylaw No. 1388.02 and introduce an amended Bylaw No. 1388.01 for approval.
2. Recommend further amendments to the agreements and authorize execution of amended agreements. The changes to the bylaws would proceed in relation to amendments made to the agreements.

FINANCIAL IMPLICATIONS:

Alternative 1

Under either alternative, the Regional District will be responsible for collecting all taxes for 2009.

For 2009 tax revenues will be collected by a combination of parcel taxes and property value taxes. The table below illustrates the approximate tax impact in 2009:

	2008 taxes (actual rate)	2009 Projected Cranberry	2009 Projected North Cedar	2009 revised projection – all Yellowpoint/Waterloo
\$100,000	\$55	\$155	\$136	\$137
\$200,000	\$110	\$219	\$202	\$203
\$300,000	\$165	\$283	\$268	\$270
\$400,000	\$220	\$347	\$334	\$337

Two agreements will be executed with the following primary points:

Cranberry Fire Protection District

- An initial term of two years ending December 31, 2010, with an option by the Regional District to renew for a further one year term ending December 31, 2011
- Following the final renewal term, the agreement may continue on a year to year basis unless terminated

- The Fire Protection District may terminate the agreement upon twelve months notice, ending no earlier than December 31 of the following year
- The Fire Protection District will provide service by combining its equipment and own forces with the equipment supplied by the Regional District of Nanaimo
- The Fire Protection District is entitled to use the firehall and equipment supplied by the Regional District to provide the service and is responsible for maintaining and using the equipment in a reasonable manner
- Both parties will indemnify each other against claims arising from the proper execution of the agreement
- The fee for the base service is set at \$38,000, plus the additional cost of liability insurance and will increase by the rate of inflation for Vancouver Island as published in the prior year

North Cedar Improvement District

- A maximum term from December 31, 2008 to December 31, 2009
- The termination of the agreement will coincide as closely as possible with the approval of the amendment of the boundaries of the Improvement District
- The Improvement District will provide service at the same level with its own forces and equipment and in the same manner as if the properties were part of the Improvement District
- Both parties will indemnify each other against claims arising from the proper execution of the agreement
- The Regional District will collect and transfer the sum of \$90,000, which represents the value of taxes which would have been collected if the boundaries had been amended

Alternative 2

Staff have no further recommendations at this time.

SUSTAINABILITY IMPLICATIONS:

There are no direct sustainability implications arising from these agreements.

SUMMARY/CONCLUSIONS:

Subsequent to the Board meeting held November 25, 2008, staff were advised by the Province that the boundaries of the North Cedar Improvement District cannot be amended before December 31, 2008. As a result, the boundaries of the Yellowpoint Waterloo Fire Protection Service cannot be reduced to remove properties which would otherwise be amalgamated with the North Cedar Improvement District.

The Province has advised us that for 2009 service contracts will be required with both the North Cedar Improvement District and the Cranberry Fire Protection District. The North Cedar Improvement District contract would be coordinated to end as close to the date that their boundary change is formally approved in 2009. The Cranberry Fire District service contract is a continuing one as described above.

The 2009 budget for the function will include the value of both service contracts, as well as the cost to lease finance a vehicle and equipment. Property taxes will be assessed collectively over the whole service area for 2009 only using a combination of parcel taxes and property value taxes.

The primary points of each service contract have been outlined above. Staff recommends that the contracts be approved as presented.

Some housekeeping of the earlier amendment Bylaws No.1388.01 (boundary reduction) and Bylaw No. 1388.02 (Cranberry service contract) are required. Both bylaws will be rescinded and a single revised Bylaw 1388.01 is introduced with the taxation limit required for 2009. A boundary reduction bylaw will be introduced in 2009 when the final boundary for NCID is approved.

RECOMMENDATIONS:

1. That the Chair and the Senior Manager, Corporate Administration be authorized to execute the agreement for fire protection and emergency response services with the Cranberry Fire Protection District as outlined in this report.
2. That the Chair and the Senior Manager, Corporate Administration be authorized to execute the agreement for fire protection and emergency response services with the North Cedar Improvement District as outlined in this report.
3. That "Yellowpoint Waterloo Fire Protection Service Area Amendment Bylaw No. 1388.01, 2008" be rescinded at third reading.
4. That "Yellowpoint Waterloo Fire Protection Service Area Amendment Bylaw No. 1388.02, 2008" be rescinded at third reading.
5. That "Yellowpoint Waterloo Fire Protection Service Area Amendment Bylaw No. 1388.01, 2008" as amended be introduced for three readings and be forwarded to the Ministry of Community Development for approval.

Report Writer



C.A.O. Concurrence



COMMENTS:

REGIONAL DISTRICT OF NANAIMO

BYLAW NO. 1388.01

A BYLAW TO AMEND THE REQUISITION LIMIT FOR THE
YELLOWPOINT/WATERLOO FIRE PROTECTION SERVICE AREA

WHEREAS the Yellowpoint Waterloo Fire Protection Service includes as participating areas portions of Electoral Areas 'A' and 'C';

AND WHEREAS certain properties within Electoral Area 'A' have agreed to become part of the North Cedar Improvement District;

AND WHEREAS it is necessary to continue to provide fire protection and emergency response to the service area until the boundaries of the North Cedar Improvement District are amended;

AND WHEREAS the Board wishes to amend the maximum requisition level to provide this service;

AND WHEREAS in accordance with Section 802(1)(b) of the *Local Government Act*, the Directors for Electoral Areas 'A' and 'C' have consented to the adoption of this bylaw;

AND WHEREAS the approval of the Inspector of Municipalities is required under Section 802(3) of the *Local Government Act*;

NOW THEREFORE the Board of the Regional District of Nanaimo in open meeting assembled, enacts as follows:

Yellowpoint Waterloo Fire Protection Service Area Establishing Bylaw No. 1388 is hereby amended as follows:

1. Section 5 is hereby deleted and replaced with the following:

"5. Maximum Requisition

In accordance with Section 800.1(1)(e) of the *Local Government Act*, the maximum amount that may be requisitioned for the annual costs of the service is the greater of:

- (a) \$234,000; or
- (b) the amount which results by applying the rate of \$0.94 per \$1,000 applied to the net taxable value of land and improvements within the service area."

2. This bylaw may be cited for all purposes as "Yellowpoint Waterloo Fire Protection Service Area Amendment Bylaw No. 1388.01, 2008".

Introduced and read three times this 24th day of June, 2008.

Rescinded at third reading this 9th day of December, 2008.

Introduced as amended and read three times this 9th day of December, 2008.

Received the approval of the Inspector of Municipalities this ____ day of _____, 200_.

Adopted this ____ day of _____, 200_.

CHAIRPERSON

SR. MGR., CORPORATE ADMINISTRATION

FIRE SERVICES AGREEMENT
DRAFT December 2, 2008

THIS AGREEMENT made this day of December, 2008

BETWEEN:

CRANBERRY FIRE PROTECTION DISTRICT
1555 Morden Rd.
Nanaimo, B.C.
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 371, dated March 30, 2005 to provide fire suppression, search and rescue and assistance and response to other classes of emergencies including medical emergencies, hazardous materials incidents and traffic accidents in an area outside of the boundary of the improvement district;
- B. The Regional District is authorized by its Bylaw No. 1388 and subsequent amendments, to provide fire protection services to the properties shown outlined in heavy black on Schedule 'A', which are within the boundaries of the Yellowpoint Waterloo Fire Protection Service (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. 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 the property of the Regional District, its successors and assigns.
- E. The Regional District has purchased and placed in the Building certain firefighting equipment (the "**Equipment**") for the purposes of providing fire protection and emergency response services to the Properties.
- F. The Equipment purchased by the Regional District is listed on Schedule "B" to this Agreement.
- G. The parties wish to provide for the use of the Land and Equipment for the purposes of providing fire protection and emergency response services (the "**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:

1.00 TERM, LEVEL OF SERVICE AND PAYMENT

- 1.01 The Fire District hereby agrees to provide fire protection, fire suppression and emergency assistance services to the Properties, for a period beginning on or after December 31, 2008 and ending on December 31, 2010. This Agreement may be renewed at the option of the Regional District for a further one year period ending on December 31, 2011.
- 1.02 Following the initial and any subsequent renewal period this Agreement shall continue from year to year thereafter unless earlier terminated by notice in writing to be given at least twelve (12) months prior to the expiration of any subsequent Term. Termination shall be in writing and in all cases shall be effective no earlier than December 31st of the year following receipt of the notice.
- 1.03 The Regional District and the Fire District agree to work cooperatively and within the resources available to the Regional District, to provide additional firefighting vehicles and equipment to be located at the Lands over the Term of this Agreement. The Fire District understands and agrees that an amount of \$25,000 is available annually for the purchase of equipment and/or a further vehicle.
- 1.04 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 sum of \$38,000 for each year of the Term plus any additional premium for ensuring the general commercial liability coverage as required under Section 3.01. The amount to be paid for each year of the Term following the initial year, shall be increased by the rate of inflation published for Vancouver Island in the previous year. The parties agree that after the initial Term and the renewal Term, the fee shall be reviewed and may be amended as agreed between the parties.
- 1.05 The amount payable by the Regional District shall be paid in two equal installments on January 31 and July 31 of each year.
- 1.06 The Fire District will ensure that publicity is given in the Properties to 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.

- 1.07 The Fire District will, so far as is reasonably practicable, ensure that its fire fighting equipment and services are available and on call to the Properties at all times and that in addition to the Equipment available at the Building, it will make its own equipment 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 and able to accompany such equipment and use their best endeavours to extinguish any fire or respond to any emergency.
- 1.08 During all times in which this agreement is in effect, the Fire District agrees that the elected Directors of the Regional District representing the Properties 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.
- 1.09 The Regional Districts General Manager, Finance and Information Services shall provide administrative and other support with respect to this agreement.

2.00 RESPONSIBILITY FOR EXPENSES AND MAINTENANCE

- 2.01 It is intended by the parties that the Lands, Buildings 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.
- 2.02 The Fire District agrees to maintain the Lands, Buildings and 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 or become a nuisance or interfere with the comfort of any person occupying land in the vicinity of the Lands.
- 2.03 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.
- 2.04 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.
- 2.05 The Fire District shall not commit waste on the Lands.
- 2.06 The Fire District shall not deposit or discharge on the Lands any Contaminants as defined in section 5.04(b) of this Agreement.
- 2.07 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 INSURANCE, RISK AND INDEMNITY

- 3.01 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 insured's under such liability policy or policies of insurance;
- 3.02 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.
- 3.03 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.
- 3.04 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 due to the negligence of the Fire District, or its officers or employees.
- 3.05 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.
- 3.06 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.
- 3.07 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 fire protection services as outlined in this Agreement during any period in which the Building or Equipment are being replaced as a result of damage or destruction.
- 3.08 Where the cause of the damage or destruction under Section 3.07 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 coverages available to the Regional District under its policies of insurance.

- 3.09 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.

4.00 EQUIPMENT

- 4.01 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 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 and emergency response services within the Cranberry Fire District as well as to the Properties.
- 4.02 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.
- 4.03 The Fire District shall full and unfettered access to, and use of the Buildings and Equipment owned by the Regional District in order to provide fire protection and emergency response, whether the response is within the boundaries of the Cranberry Fire District or within the Properties.
- 4.04 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 Fire District shall have no right, title, or interest in the Equipment other than the right of to use the Equipment in accordance with the terms of this Agreement.
- 4.05 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.
- 4.06 The Fire District 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.
- 4.07 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.

5.00 QUIET ENJOYMENT

- 5.01 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.
- 5.02 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 the Services.
- 5.03 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.
- 5.04 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.

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 Fire District's or the Regional District's consent or approval shall be deemed to have been fulfilled or waived unless the 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.

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 SOLE AGREEMENT

9.01 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.

10.00 ARBITRATION

10.01 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.

11.00 REMOVAL OF IMPROVEMENTS

11.01 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.

11.02 If the Fire District does not remove the property which is removable by the Fire District pursuant to clause 11.01 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.

12.00 DEFAULT AND EARLY TERMINATION

12.01 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 the Regional District 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 there from 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.

12.02 If during the Term hereof or any renewal thereof, 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 order 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 receive or any assignee for the benefit of creditors or otherwise by operation of law.

- 12.03 Either party to this Agreement may terminate the Agreement at any time upon twelve months notice in writing to the other party as described in Sections 1.01 and 1.02. If the Regional District exercises this right of termination then it may recover possession of the Lands in accordance with Sections 11 and 12.

13.00 NOTICE

- 13.01 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 Rd.
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, B.C.
V9T 6N2

Attention: General Manager Finance & Information Services

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

- 13.02 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.
- 13.03 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.
- 13.04 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.

14.00 WAIVER

14.01 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.

14.02 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.

15.00 SUCCESSORS BOND

15.01 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 set their hands and seals as of the day and year first above written.

The Corporate Seal of the)
CRANBERRY FIRE PROTECTION DISTRICT)
was affixed in the presence of:)
)
)
)
)
)
_____)
Chairperson)
)
)
)
)
_____)
Secretary)

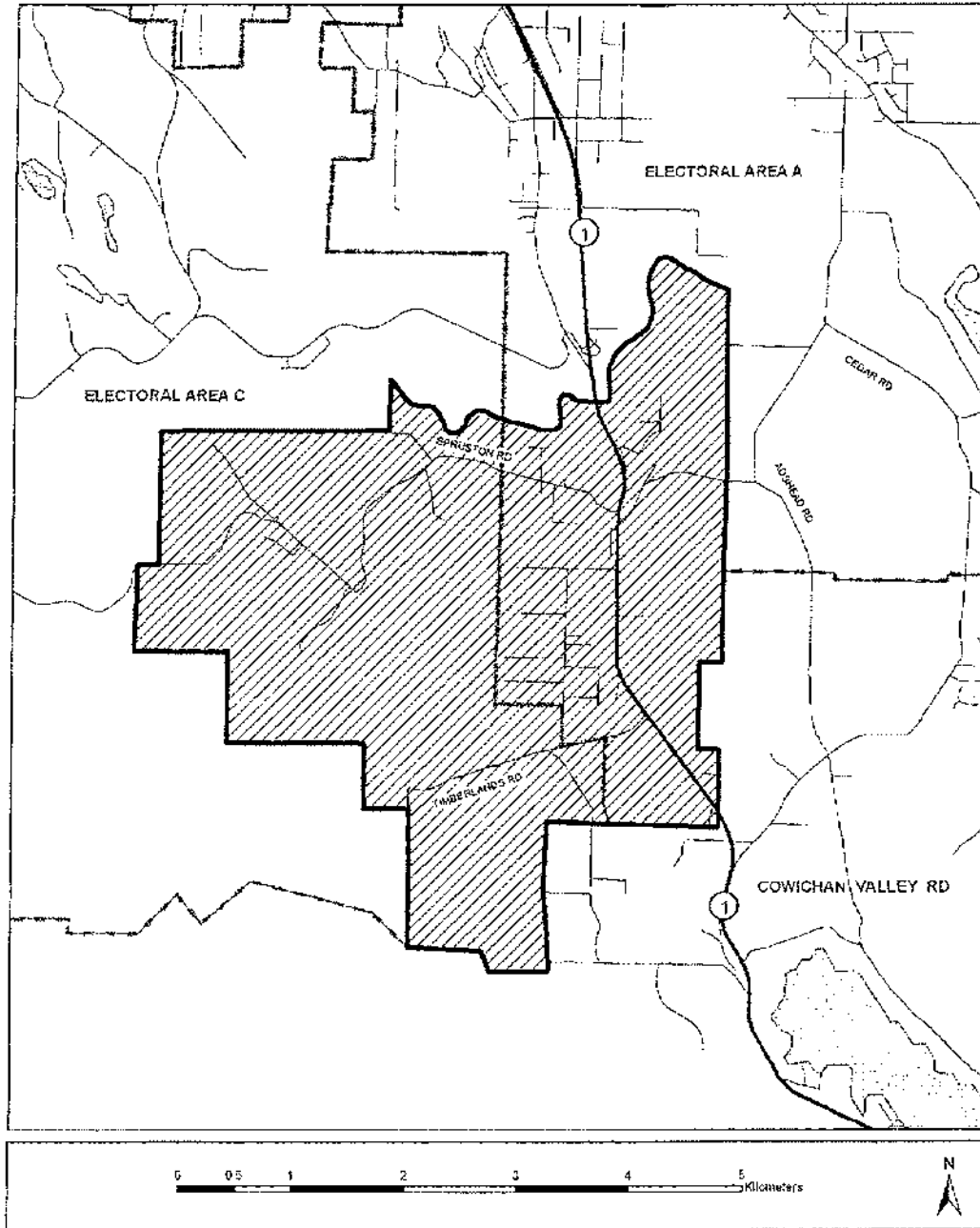
(seal)

The Corporate Seal of the)
REGIONAL DISTRICT OF NANAIMO)
was affixed in the presence of:)
)
)
)
)
)
_____)
Chairperson)
)
)
)
_____)
Senior Manager, Corporate Administration

(seal)

SCHEDULE 'A'

The properties to be served under this agreement are shown outlined below:



SCHEDULE B
LIST OF EQUIPMENT

Vehicle	2008 NFPA Furion Pumper A662
Equipment	

FIRE SERVICES AGREEMENT
DRAFT December 2, 2008

THIS AGREEMENT made this day of December, 2008

BETWEEN:

NORTH CEDAR IMPROVEMENT DISTRICT
2100 Yellow Point Rd.
Cedar, B.C.
V9X 1W1

(hereinafter called the "Improvement 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 Improvement District is authorized by Order in Council 371, dated March 30, 2005 to provide fire suppression, search and rescue and assistance and response to other classes of emergencies including medical emergencies, hazardous materials incidents and traffic accidents in an area outside of the boundary of the improvement district;
- B. The Regional District is authorized by its Bylaw No. 1388 and subsequent amendments, to provide fire protection services to the properties shown outlined in heavy black on Schedule 'A', which are within the boundaries of the Yellowpoint Waterloo Fire Protection Service (the "Properties")
- C. The parties wish to provide fire protection and emergency response services (the "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:

1.00 TERM, PAYMENT AND LEVEL OF SERVICE

- 1.01 The Improvement District hereby agrees to provide fire protection, fire suppression and emergency assistance services to the Properties, for a period beginning on or after December 31, 2008 and ending on or before December 31, 2009. The date of termination of this Agreement will be coordinated between the parties to coincide as closely as possible with the date on which the boundaries of the Improvement District are amended to include the Properties within the boundaries of the Improvement District, as approved in a referendum held November 15, 2008.
- 1.02 In consideration that the boundaries of the Improvement District cannot be amended until after the date on which the Properties can be added to the Improvement District's tax roll for 2009, the Regional District hereby agrees to transfer the sum of \$90,000 which represents the share of operating and parcel taxes that would have been collected if the Properties had been amalgamated.
- 1.03 The amount payable by the Regional District shall be paid in two equal installments with the first installment due and payable on January 31, 2009 and the remainder due and payable within 15 days after the date on which the boundaries of the Improvement District are amended to include the Properties.
- 1.04 The level of service to be provided by the Improvement District to the Properties shall be the same in all respects as the level of service it would provide if the Properties were located within the boundaries of the Improvement District
- 1.05 The Improvement District will ensure that publicity is given in the Properties to 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.
- 1.06 The Improvement District will, so far as is reasonably practicable, ensure that its fire fighting equipment and services are available and on call to the Properties at all times for response to any fire or emergency within the Properties with a sufficient number of personnel who are at all relevant times, ready, willing and able to accompany such equipment and use their best endeavours to extinguish any fire or respond to any emergency.
- 1.07 During all times in which this agreement is in effect, the Improvement District agrees that the elected Director of the Regional District representing the Properties shall be entitled to attend all meetings of the Improvement District so as to provide advice and liaison between the Improvement District and the Regional District.
- 1.08 The Regional District's General Manager, Finance and Information Services shall provide administrative and other support for the Regional District with respect to this agreement.

2.00 INSURANCE, RISK AND INDEMNITY

- 2.01 The Improvement District agrees to take out and keep in full force and effect throughout the Term at the expense of the Improvement 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 Improvement 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 Improvement District and the Regional District shall both be included as additional named insureds under such liability policy or policies of insurance;

- 2.02 The policy or policies of insurance shall provide for notification to the Regional District at least thirty (30) days prior to cancellation. If the Improvement District fails to provide the insurance required by this Agreement, it may be provided by the Regional District at the cost of the Improvement District.
- 2.03 The Improvement 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 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.
- 2.04 The Regional District agrees to indemnify and save harmless the Improvement District from any and all actions, claims, suits or judgments arising out of or in connection with the performance by the Improvement District, or its officers or employees, of the obligations of the Improvement District under this Agreement, except where such action, claim, suit or judgment is due to the negligence of the Improvement District, or its officers or employees.

3.00 ASSIGNMENT AND SUBLETTING

- 3.01 The Improvement District agrees that it will not assign, mortgage or encumber this Agreement, without the prior written consent of the Regional District in each instance which shall not be arbitrarily or unreasonably withheld.
- 3.02 In no event shall any assignment or sub-licensing to which the Regional District may have consented release or relieve the Improvement District from its obligations to fully perform all the terms, covenants and conditions of this Agreement on its part to be performed.
- 3.03 In the sub-Agreement between the Improvement District and an assignee under any assignment or sub-Agreement consented to by the Regional District; the Improvement District shall require that the assignee agree to be bound by all of the Improvement District's obligations under this Agreement.

4.00 APPROVALS

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

5.00 RELATIONSHIP OF PARTIES

- 5.01 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.

6.00 SOLE AGREEMENT

- 6.01 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.

7.00 ARBITRATION

- 7.01 In the event of a bona fide dispute arising between the Improvement 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 Improvement 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.

8.00 DEFAULT AND EARLY TERMINATION

- 8.01 The Improvement District further covenants with the Regional District that if the Improvement 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 Improvement District shall continue for thirty (30) days after written notice thereof to the Improvement District by the Regional District, the Regional District MAY terminate this Agreement without further notice.

9.00 NOTICE

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

North Cedar Improvement District
2100 Yellow Point Rd.
Cedar, BC
V9X 1W1

Attention: Administrator

All payments or correspondence to the Regional District from the Improvement 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

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

- 9.02 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.
- 9.03 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.
- 9.04 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.

10.00 WAIVER

- 10.01 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.
- 10.02 The acceptance by the Improvement 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.

11.00 SUCCESSORS BOND

- 11.01 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 Improvement District unless the assignment to such assignee has been first approved by the Regional District in accordance with Section 3.

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

The Corporate Seal of the)
NORTH CEDAR IMPROVEMENT DISTRICT)
was affixed in the presence of:)

_____)
Chairperson)

_____)
Secretary)

(seal)

The Corporate Seal of the)
REGIONAL DISTRICT OF NANAIMO)
was affixed in the presence of:)

_____)
Chairperson)

_____)
Senior Manager, Corporate Administration)

(seal)

SCHEDULE 'A'

The properties to be served under this agreement are shown outlined below:

