

**LOWER NICOLA INDIAN BAND
CITY OF MERRITT
STRUCTURAL FIRE PROTECTION SERVICE AGREEMENT**

This AGREEMENT is dated for reference the _____ day of _____, 202_

BETWEEN: LOWER NICOLA INDIAN BAND
a "Band" within the meaning of the *Indian Act*, RSC 1985, c I-5
181 Nawishaskin Lane
Merritt, BC V1K 0A7

(the "**Band**")

AND: CITY OF MERRITT
2185 Voght Street
PO Box 189
Merritt, BC V1K 1B8

(the "**Municipality**")

WHEREAS:

- A. The residents within Lower Nicola Indian Reserve No.1 (Lindley Creek Road), No.2 (Joeyaska) and No.4 (Zoht) (collectively, "**IR#1, 2 and 4**" or the "**Reserve**" as detailed in Schedule "C" attached hereto) desire the provision of fire suppression services.
- B. The Band has requested the Municipality provide these fire suppression services to IR#1, 2 and 4, given the Municipal Fire Station is closest to these residents.
- C. The Municipality is authorized to enter into an agreement with the Band to provide fire suppression services pursuant to Section 13(2) of the *Community Charter*, SBC 2003, c 26.
- D. The Band and the Municipality have resolved to enter into this Agreement that sets out the terms and conditions pursuant to which the Municipality will provide fire suppression services to the Band.

1. INTERPRETATION

1.1. In this Agreement:

- (a) "**Annual Fee**" means the fee the Band must pay to the Municipality under this Agreement, as set out in Schedule "B";
- (b) "**Arbitration Act**" means the *Arbitration Act*, SBC 2020, c 2;
- (c) "**Band Council**" means the Council of the Lower Nicola Indian Band;

- (d) **“Band Infrastructure”** means any and all streets, roadways, bridges and associated streetlights and sidewalks, traffic lights and traffic control signs within the Service Area for the provision of access to or from the Reserve, driveways for access to or from Buildings all as necessary for the purpose of providing the Services to the Service Area and Buildings;
- (e) **“BC Structure Firefighting Minimum Standards”** means the British Columbia Structure Firefighter Minimum Training Standards manual published by British Columbia’s Office of the Fire Commissioner, as amended or replaced from time to time;
- (f) **“BCICAC”** has the meaning assigned to it in section 8.2;
- (g) **“Building”** means a residential building, mobile home, or a structure, whether occupied or not;
- (h) **“City Council”** means the Council duly elected for the Municipality;
- (i) **“Claims and Expenses”** means liabilities, actions, damages, claims, losses, orders, fines, penalties, costs, and expenses, including the full amount of all legal fees and expenses on a solicitor to client basis;
- (j) **“Dispute Notice”** has the meaning assigned to it in section 8.1(a);
- (k) **“Fire Chief”** means the person appointed from time to time as the Fire Chief of the Municipality or their designate;
- (l) **“Fire Department”** means the Municipality Fire Department;
- (m) **“Fire Safety Legislation”** means any provincial fire safety legislation, as amended or replaced from time to time, that governs the Fire Department and Fire Protection Services, including, without limitation, the *Fire Safety Act*, SBC 2016, c 19 or the *Fire Services Act*, RSBC 1996, c 144;
- (n) **“Force Majeure”** means an event beyond the reasonable control of a party that impairs the party’s ability to carry out its usual functions, but not limited to:
 - i. acts of nature, such as floods, droughts, and fire;
 - ii. explosions, wars, acts of terrorism, or insurrection;
 - iii. pandemic;
 - iv. riots, strikes, lockouts, or other labour disruptions; and
 - v. laws, rules, regulations, or order of a duly constituted governmental authority,

but excluding financial difficulties (such as lack of funds or funding).

For clarity, an event that the Municipality has agreed to respond to pursuant to this Agreement is not a Force Majeure event;

- (o) “**Municipality**” means the City of Merritt and includes, where context requires, the Fire Department;
 - (p) “**Services**” means firefighting response services to residential structures and incipient wildland incidents;
 - (q) “**Service Area**” means the areas outlined by the thick red line on the map attached at Schedule “C”; and
 - (r) “**Workers Compensation Act**” means the *Workers Compensation Act*, RSBC 2019, c 1.
- 1.2. In this Agreement:
- (a) words importing the singular number include the plural and vice versa and words importing the neuter gender include the masculine and the feminine genders;
 - (b) the division of this Agreement into articles and sections and the insertion of headings are for convenience only and will not affect the construction or the interpretation of this Agreement;
 - (c) references to any article, section, or schedule will, unless the context otherwise requires, mean that article, section, or schedule of this Agreement;
 - (d) every reference to each party is deemed to include the elected and appointed officials, officers, representatives, successors, servants, employees, agents, contractors, licensees, and invitees of such party, wherever the context so requires or allows;
 - (e) all payments to be made will be deemed to be payments in lawful currency of Canada;
 - (f) reference to “party” and “parties” means the one or more parties to this Agreement, as the context demands;
 - (g) reference to a whole, for example, the “Lands” or the “Building”, includes reference to a portion thereof; and
 - (h) unless expressly stated otherwise, references to a statute includes every regulation made under the statute (including Municipality bylaws), as amended or replaced from time to time.
- 1.3. This Agreement is to be governed by and construed in accordance with the applicable laws of the Province of British Columbia and of Canada, and the parties attorn to the courts of the Province of British Columbia.
- 1.4. The following schedules are incorporated into and form a part of this Agreement, except that if there is any inconsistency between a schedule and this Agreement, the terms of the Agreement will prevail to the extent of the inconsistency:

- (a) Schedule “A” – Services and Special Provisions
- (b) Schedule “B” – Annual Fee
- (c) Schedule “C” – Service Area Map

2. PROVISION OF SERVICES

- 2.1. During the Term (hereafter defined), the Municipality will provide the Services in the Service Area in accordance with the terms and conditions of this Agreement.
- 2.2. Residents in the Service Area may request Services by calling **911**.
- 2.3. The Municipality will provide the Services at the “Exterior Operations” service level, as set out in the BC Structure Firefighting Minimum Standards and in accordance with Schedule “A” hereto. For greater certainty:
 - (a) the Municipality is not obligated to provide the Services at a greater level or degree than the level or degree to which equivalent services are provided elsewhere within the Municipality’s boundaries;
 - (b) the Municipality will provide the Services in the Service Area during the Term except where the Municipality is:
 - i. experiencing a labour shortage that results in the Municipality not having enough firefighting personnel available to provide the Services;
 - ii. experiencing a breakdown in equipment that results in the Municipality not having enough equipment available to provide the Services;
 - iii. fighting a simultaneous fire emergency that requires all the Municipality’s firefighting personnel, apparatus, and equipment; or
 - iv. at the Chief’s discretion when unforeseen, exceptional circumstances occur,in any of which case the Municipality will alert the Band as soon as practicable of the interruption in Services;
 - (c) the Municipality makes no representations or warranties that the level or degree of the Services provided will be maintained or continued to any particular standard, other than as stated expressly herein; and
 - (d) the Band acknowledges and agrees that, in accordance with section 2.3(b) above, there may be from time to time interruptions or reductions in the level of the Services provided, and the Municipality will not be held liable for any Claims

and Expenses arising from or connected with a temporary interruption or reduction in the level of the Services.

- 2.4. Subject to the other terms of this Agreement, the Fire Chief will have exclusive control of and discretion regarding the provision of the Services. Without limiting the generality of the foregoing, the Fire Chief will have sole decision-making authority as to:
- (a) demolition of a Building when necessary to fight fire;
 - (b) level of response during a fire;
 - (c) accessing and entering private property for the purposes of providing the Services;
 - (d) electing not to respond to provide the Services, including, without limitation, where:
 - i. access routes do not provide roads, culverts, bridges or other infrastructure sufficient to support firefighting apparatus;
 - ii. access routes are not maintained clear of ice, snow, or over-head obstructions; or
 - iii. there is a lack of turn around facilities for any dead-end portion of an access road more than ninety (90) metres in length.

Covenants and Acknowledgements of the Band

- 2.5. In order to facilitate the effective delivery of the Services by the Municipality, the Band will:
- (a) waive any right that it may have to enforce a penalty for trespass under section 30 of the *Indian Act*, RSC 1985, c I-5 against the Municipality, and grant to the Municipality, its officers, agents, contractors, employees, workmen with or without vehicles and equipment and supplies, the right to enter on the Service Area for the purpose of providing the Services and for the purpose of serving notices or communications related to the provision of the Services. All such officers, employees, agents, workmen and contractors entering on the Service Area will sufficiently identify themselves as such;
 - (b) the Band will service and maintain in good working order all Band Infrastructure necessary for the provision of the Services on the Service Area to a standard substantially similar to that in the Municipality and will permit the Municipality's fire personnel to inspect all Band Infrastructure;
 - (c) give the Municipality maps and other information required by the Municipality in order to enable the Municipality to identify the location of all existing Buildings, streets, water distribution lines and fire hydrants located on the Service Area on

the commencement date of the Agreement. The Band shall number each Building and shall indicate each Building's number on the map required above. The Band shall, upon request of the Municipality, guide the Fire Chief on an inspection of the Service Area to confirm the location of all Buildings, water distribution lines and fire hydrants on the Service Area;

(d) notify the Municipality of:

- a. any inspection reports and orders that are issued to the occupants or owners of any Buildings on the Service Area as they occur;
- b. any new Buildings which have been constructed, erected, or placed on the Service Area no later than the first day of the following month; and
- c. immediately notify the Municipality in writing of any malfunctioning fire hydrants the Band becomes aware of; and

(e) immediately advise the Fire Chief of any obstruction, impediment or obstacle in the Service Area that is likely to affect the Municipality's delivery of Services.

3. OWNERSHIP

- 3.1. The Municipality and the Band acknowledge that neither party has jurisdiction with respect to the standard of construction or maintenance of the water supply system in the Service Area, or financial responsibility for the installation or maintenance of water supply systems or hydrants in the Service Area.

4. FIRE INSPECTIONS

- 4.1. The parties agree the Municipality is not responsible for inspecting any Buildings within the Service Area or enforcing the British Columbia Fire Code, British Columbia Building Code, or any Fire Safety Legislation in the Service Area.

5. PAYMENT FOR SERVICES

- 5.1. On or before August 31st of each calendar year during the Term, the Band will pay the Annual Fee to the Municipality in the amount set out in Schedule "B" for that calendar year.

6. REDUCTION OR INTERRUPTION OF SERVICE

- 6.1. Without prejudice to any other right or remedy, the Municipality may, at its sole discretion, and without terminating this Agreement, reduce or interrupt the provision of the Services to the Service Area if:

(a) the Band fails to pay the Annual Fee or any other amounts payable under this Agreement; or

- (b) the Band fails to comply with this Agreement.
- 6.2. Before reducing or interrupting the Services under section 6.1, the Municipality will specify the reason for the reduction or interruption and provide the Band 60 days' written notice or, if the default cannot be remedied within 60 days, such period as may reasonably be required to remedy the default on the conditions that:
- (a) the Band provide the Municipality a plan of action and schedule acceptable to the Municipality, acting reasonably, and
 - (b) the Band acts with dispatch to remedy the default in accordance with such schedule.

7. TERM AND TERMINATION

- 7.1. This Agreement will be valid for an initial term of five years, commencing on January 1, 2023 and ending on December 31, 2027 (the "**Term**").
- 7.2. At the end of the Term or earlier termination of the Agreement, there will be a reconciliation and final adjustment of payments from the Band to the Municipality, calculated up to the date of termination, and the obligation to make any adjusting payment will survive the termination of this Agreement.

8. DISPUTE RESOLUTION

- 8.1. If the parties to this Agreement are unable to agree on the interpretation or application of any provision in the Agreement, or are unable to resolve any other issue relating to this Agreement, then the parties agree to the following process in the order it is set out:
 - (a) the party initiating the process will send written notice to the other party (the "**Dispute Notice**"); and
 - (b) the parties will promptly, diligently, and in good faith take all reasonable measures to negotiate an acceptable resolution to the disagreement or dispute.
- 8.2. If the parties are unable to negotiate a resolution within 90 days of the Dispute Notice, the parties may request the assistance of a mediator agreed to by the parties within 30 days written notice of a request to appoint a mediator by any party, failing which the mediator will be appointed by the B.C. International Commercial Arbitration Centre ("**BCICAC**"), and unless the parties agree otherwise, this mediation will follow BCICAC rules and will terminate 60 days after the appointment of the mediator.
- 8.3. If the parties are unable to resolve the dispute pursuant to section 8.2, the matter will then be referred to arbitration by a single arbitrator pursuant to the *Arbitration Act* or any successor legislation on the understanding and agreement that the decision of the arbitrator will be final and binding on the parties. If the parties are unable to agree on a single arbitrator to hear the dispute within 60 days following termination of the mediation as set out in section 8.2, an arbitrator will be appointed by the BCICAC.

Such arbitration will be conducted in accordance with the *Arbitration Act* and the rules of the BCICAC unless otherwise agreed by the parties.

- 8.4. With the exception of the arbitrator appointed under section 8.3 determining the costs of arbitration, the parties agree to bear their own costs and expenses in respect of the dispute resolution process set out in this Part 8. The parties also agree that neither will seek recovery against the other party for any costs and expenses incurred with respect to this dispute resolution process.
- 8.5. Any right of action either party may have against the other arising from any breach of this Agreement will not be prejudiced by termination of this Agreement.

9. WORKSAFE BC COVERAGE

- 9.1. The Municipality acknowledges and agrees that they have reviewed and understand the occupational health and safety obligations pursuant to the *Workers Compensation Act* and related regulations.
- 9.2. The Municipality is responsible for obtaining and maintaining Workers Compensation coverage and will abide by all provisions of the *Workers Compensation Act* and related regulations applicable to the provision of the Services.
- 9.3. Prior to undertaking the Services outlined in this Agreement, the Municipality will provide the Band with their Workers' Compensation Board Number and a clearance letter from WorkSafeBC.

10. INSURANCE

- 10.1. The Band and the Municipality, at all times during the Term of this Agreement, will each obtain and maintain commercial general liability insurance on an occurrence basis for any and all third-party claims for bodily injury, death, or property damage of not less than Five Million (\$5,000,000.00) Dollars per occurrence.
- 10.2. The Municipality at all times during the Term of this Agreement, will each obtain and maintain, automobile liability insurance on an occurrence basis, of not less than Five Million (\$5,000,000.00) Dollars per occurrence, with respect to all vehicles it will use to carry out the Services.
- 10.3. All policies of insurance required to be taken out under this Agreement must:
 - (a) name the other party as an additional insured;
 - (b) include that the other party is protected notwithstanding any act, neglect, or misrepresentation by the insured party which might otherwise result in the avoidance of a claim and that such policies are not affected or invalidated by any act, omission, or negligence of any third party which is not within the knowledge or control of the insureds;
 - (c) be issued by an insurance company entitled to carry on the business of insurance under the laws of British Columbia;

- (d) be primary and non-contributing with respect to any policies carried by the other party and provide that any coverage carried by the other party is in excess coverage;
 - (e) not be cancelled or materially altered without the insurer providing the other party with 30 clear days written notice stating when such cancellation or alteration is to be effective;
 - (f) be maintained for a period of 12 months per occurrence; and
 - (g) include a cross liability clause.
- 10.4. Prior to the commencement of the Term, each party will forward to the other a certificate of insurance for the policies outlined above. Should the insurance policies under which the insurance certificate is drawn expire during the Term of this Agreement or any extension or renewal thereof, the insured party will forward a renewal insurance certificate to the other 30 days prior to the expiry of said insurance policies.
- 10.5. Should a party fail to supply the insurance certificate prescribed by this Agreement, then this Agreement may be immediately terminated by the other party, for cause.

11. INDEMNIFICATION

- 11.1. Each party (the “**Indemnifying Party**”) will indemnify, defend, and hold harmless the other party, and its officers, employees, agents, successors, and assigns (collectively, the “**Indemnified Party**”), from any and all Claims and Expenses that may be brought against, or suffered or incurred by, the Indemnified Party in any way directly or indirectly arising from or in connection with this Agreement, including, without limiting the generality of the foregoing:
- (a) the activities, actions, or omissions of the Indemnifying Party and any of their officers, employees, contractors, consultants, agents, licensees, servants, invitees, or anyone for whom the Indemnifying Party is in law responsible in relation to the provision of the Services or otherwise in connection with this Agreement; and
 - (b) the Indemnifying Party’s breach of any of its obligations or covenants under this Agreement.

The indemnities set out in this paragraph do not include indemnifications for negligence or wilful or malicious misconduct on the part of the Indemnified Party. This paragraph will survive the expiry or earlier termination of this Agreement.

12. REPRESENTATIONS AND WARRANTIES

- 12.1. The parties represent and warrant to each other and covenant with each other that:

- (a) they each have the legal capacity and power to enter into this Agreement and to comply with and perform every term and condition of this Agreement;
- (b) all necessary proceedings have been taken to authorize each party to enter into this Agreement and to execute and deliver this Agreement; and
- (c) this Agreement has been properly executed and delivered.

13. FORCE MAJEURE

- 13.1. No party will be liable for any loss or damage suffered or incurred by the other party arising from the first party's delay in performing or failure to perform any of its obligations under this Agreement to the extent that and for so long as such delay or failure results from an event of Force Majeure, provided that:
 - (a) the same arises without the fault or negligence of the affected party and the affected party notifies the other party within three days of becoming aware of such event and the manner and extent to which its performance of its obligations are likely to be prevented or delayed; and
 - (b) the occurrence of a Force Majeure event will have the effect of discharging or postponing the affected party's payment obligations hereunder.
- 13.2. Each party will use its reasonable efforts to minimize the effects of any event of Force Majeure.
- 13.3. If an event of Force Majeure lasts for twelve or more months, either party may terminate this Agreement effective immediately.

14. NOTICES

- 14.1. Any notice, report or other document that either party may be required or may wish to give to the other pursuant to this Agreement must be in writing, unless otherwise provided for, and will be deemed to be validly given to and received by the addressee, if served personally, on the date of the such personal service or, if delivery by mail, fax, or email, when received. Subject to section 14.2, the address for delivery will be as follows:

<p>Kari Reilander, Executive Director LOWER NICOLA INDIAN BAND 181 Nawishaskin Lane Merritt, B.C. V1K 0A7 Ph: 250-378-5157 Email: kari.reilander@lnib.net</p>	<p>David Tomkinson, Fire Chief CITY OF MERRITT 1799 Nicola Avenue PO Box 189 Merritt, BC V1K 1B8 Ph: 250-378-5626 Email: dtomkinson@merritt.ca</p>
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- 14.2. Either party may change its address by giving the other party prior notice of a change of address.

15. CONFIDENTIALITY AND PROTECTION OF PRIVACY

- 15.1. The parties acknowledge and agree that, in the performance of this Agreement, each may be required to have access to information that is confidential or proprietary in nature to the other party ("**Confidential Information**"). Confidential Information will not include any information that:
- (a) was in the public domain or was created or disclosed for the purpose of being in the public domain;
 - (b) was disclosed to a party by a third party, without breach of any duty of confidentiality;
 - (c) was approved in writing for disclosure, without restriction, by the disclosing party;
 - (d) is required to be disclosed by operation of law or regulation to which either party is subject, notice of such requirement of disclosure to first be provided to the party which owns the Confidential Information, wherever possible; or
 - (e) was developed by either party independently, without a breach of any duty of confidence.
- 15.2. Neither party will disclose Confidential Information to anyone other than to a designated representative of the party who requires the Confidential Information to perform the Services described in this Agreement.
- 15.3. All Confidential Information disclosed by one party to the other party, or to the other party's designated representatives, shall remain the sole and exclusive property of the disclosing party, regardless of how the Confidential Information is represented, stored, produced or acquired.
- 15.4. Upon completion of the Services, the termination of this Agreement or at the request of either party, all Confidential Information of the disclosing party shall be promptly returned, or if requested and not prohibited by a legal requirement, destroyed, including all copies, notes and summaries in the receiving party's possession or in the possession of any of its designated persons.

16. GENERAL PROVISIONS

- 16.1. This Agreement will enure to the benefit of and be binding upon the parties and their respective successors, heirs, executors, administrators, representatives, and permitted assigns.
- 16.2. No amendment or variation of the terms, conditions, covenants, agreements or undertakings in this Agreement will be of any force or effect unless it is in writing and executed by the authorized signatories of each party.

- 16.3. The rights, powers, and remedies of the parties provided in this Agreement are cumulative and not exclusive of any right, power, or remedy that may be available to the parties at law or in equity.
- 16.4. Each party agrees to execute such further and other documents and instruments and will do such further and other things as they are authorized to do and as may be necessary to implement and carry out the intent of this Agreement.
- 16.5. Nothing contained in this Agreement may be construed to create or constitute a partnership between the parties or authorize one party to act as an agent for the other party except as specifically expressed herein.
- 16.6. If any provision of this Agreement is judged invalid, illegal, or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect, provided that if the intent of the parties is not thereby preserved then the parties will negotiate in good faith a replacement for the invalid, illegal, or unenforceable provision that is consistent with the original intent of the parties.
- 16.7. Time will be of the essence in the performance of each obligation under this Agreement.
- 16.8. This Agreement may not be assigned by a party without the prior written consent of the other party.
- 16.9. No consent or waiver, express or implied, by a party of any breach or default by another under this Agreement will:
 - (a) be valid unless it is in writing and stated to be a consent or waiver pursuant to this section;
 - (b) be relied on as a consent to or waiver of any other breach or default of the same or any other nature;
 - (c) constitute a general waiver under this Agreement; or
 - (d) eliminate or modify the need for a specific consent or waiver under this section in any other or subsequent instance.

[Signature page follows]

16.10. This Agreement may be executed in any number of counterparts and delivered electronically.

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

LOWER NICOLA INDIAN BAND,
by its authorized signatories:

CITY OF MERRITT
by its authorized signatories:

MICHAEL GOETZ, MAYOR

CYNTHIA WHITE,
CHIEF ADMINISTRATIVE OFFICER

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SCHEDULE "A"

SERVICES AND SPECIAL PROVISIONS

The Municipality's provision of the Services is subject to the following additional terms and conditions:

1. The Services shall be provided within the Service Area on a 24-hour basis from the Municipality Fire Hall, utilizing apparatus and equipment contained therein and provided by the Municipality Fire Department.
2. The Services do not include response to forest fires or fires at commercial or industrial properties.
3. The number of firefighters and the type of apparatus and equipment deemed necessary to provide adequate fire protection service is at the sole discretion of the Municipality Fire Chief. Provision of additional fire apparatus or equipment shall be at the sole discretion of the Fire Chief and may be limited in such a manner not to breach the responsibility to residents and property owners within the Municipality or its insurers.
4. The Fire Chief will have control, direction, and management of all firefighting personnel and apparatus and of all fire protection and safety measures at a fire in the Service Area. Without limiting the generality of the foregoing, the Fire Chief may order the evacuation of a Building or area in the Service Area in an emergency arising from an imminent fire or explosion, where in the Fire Chief's sole discretion there is a danger to life or property, and may order the demolition of any Building or part of a Building in order to prevent the spread of a fire or damage to person or property.
5. The Fire Chief may order the suspension of the use of water in the Service Area for purposes other than firefighting during an emergency.
6. In the event of simultaneous fire emergencies, the Fire Chief will have sole discretion as to the deployment and recall of personnel and apparatus of the Municipality. The Municipality shall not be held liable in any manner whatsoever for the decision of the Fire Chief concerning this provision.
7. The level of Services provided by the Municipality will be dependent on the water available at the site of the fire incident.
8. The Fire Chief, by request to the Band and on approval of the Band, may inspect property for hazardous conditions.

SCHEDULE "B"
ANNUAL FEES

Throughout the Term of this Agreement the Lower Nicola Indian Band shall pay to the City of Merritt by August 31st, the following operating contributions:

Annual Fee	
Year 2023	\$10,200.00
Year 2024	\$10,812.00
Year 2025	\$11,460.72
Year 2026	\$12,148.36
Year 2027	\$12,877.26

SCHEDULE "C" MAP - SERVICE AREA

