

THIS AGREEMENT made this ____ day of _____, 2004.

BETWEEN

CITY OF KELOWNA

1435 Water Street
Kelowna, B.C. V1Y 1J4

(the "City")

OF THE FIRST PART

AND

WESTSIDE FIRE PROTECTION DISTRICT

3651 Old Okanagan Highway
Westbank, B.C. V4T 1P6

(the "District")

OF THE SECOND PART

WHEREAS the City owns and operates a ladder truck which is ordinarily stationed at the City's Water Street Fire Hall (the "Ladder Truck"), as well as a ladder truck which is ordinarily stationed at the City's Enterprise Way Fire Hall (the "Alternate Ladder Truck"); and

WHEREAS the District has requested that the City provide a ladder truck to perform emergency fire suppression work on an as needed basis within the District; and

WHEREAS it is anticipated that any request for dispatch of a ladder truck should be expedited as quickly as possible;

NOW THEREFORE in consideration of the terms and conditions set out in this Agreement the parties agree as follows:

Emergency Calls

1. The District's Fire Officer in charge of a fire suppression incident within the District's boundaries may request that the City dispatch the Ladder Truck to perform emergency fire suppression work, where the District's own available resources are not sufficient to effectively perform the task alone.
2. Upon receipt of a request from the District, as outlined in section 1 above, and in the opinion of the City's Fire Chief so long as the Ladder Truck is available, the City shall dispatch the Ladder Truck to the District immediately. Along with the Ladder Truck, the City shall also provide and dispatch with it three qualified employees to operate the Ladder Truck within the boundaries of the District.
3. The District's Fire Officer in command of an incident to which the Ladder Truck has been dispatched shall remain in command and shall direct the Ladder Truck's usage in addition to directing the use of the District's resources. Where technical matters related to the operation of the Ladder Truck arise, the District's Fire Officer in command and the City's employee(s) dispatched with the Ladder Truck shall co-operate in the best interests of all parties and bystanders.
4. As soon as the emergency to which the Ladder Truck has been dispatched has been brought under control the Ladder Truck and the City's employees shall be released before any District resources are released.

5. The City shall not be liable for any loss, costs, damages and expenses whatsoever in connection with failure to supply the Ladder Truck for any reason whatsoever, or for any delay in arrival of the Ladder Truck for any reason whatsoever. The City shall not be liable for any damages in the event of a mechanical breakdown or malfunction of the Ladder Truck, or in the event of a bridge or road closure or natural disaster which delays or completely prevents the City's response to a request from the District for assistance under this Agreement.
6. Despite sections 2 – 5 above, the Ladder Truck shall remain available for emergency use by the City and may be called upon, if deemed necessary at the discretion of the City's Fire Chief, to perform emergency work in the City at any time during use by the District pursuant to those sections. If the Ladder Truck is called upon by the City to leave an emergency the City shall not be liable for any loss, costs, damages and expenses whatsoever in connection with leaving an emergency.

Training Events

7. In addition to emergency fire suppression work, the City shall provide the Ladder Truck with two qualified employees at one two-hour training event within the District during each calendar year. The Ladder Truck and the two employees shall be available to the District for the training event at no cost.
8. Despite section 7 above, the Ladder Truck shall remain available for emergency use by the City and may be called upon, if deemed necessary at the discretion of the City's Fire Chief, to perform emergency work in the City at any time during use by the District pursuant to that section.

Use of Alternate Ladder Truck

9. If at any time:
 - (i) the District requests that the City dispatch the Ladder Truck and it is not available, or
 - (ii) the Ladder Truck is called back to the City while a fire suppression incident is ongoing in the District;

the City will dispatch the Alternate Ladder Truck, so long as it is available, and two qualified employees to operate it. For clarification, the Ladder Truck must be requested first, before the Alternate Ladder Truck.

10. In the event that the Alternate Ladder Truck is dispatched, all provisions of this Agreement shall apply except that, other than in section 9 above, "Ladder Truck" shall be read as "Alternate Ladder Truck".

Fees

11. The District shall pay to the City a standby charge of **\$17,749.00** for the one-year term of the contract (the "Standby Charge").
12. In addition to the Standby Charge, the District shall pay to the City an amount of \$560.00 for the first two hours that the Ladder Truck spends on dispatch to the District to perform emergency fire suppression, plus \$260.00 per hour for every hour or part thereafter.

Termination

13. The City and the District shall each have the right to terminate this Agreement by giving the other six months written notice.

General

14. The District shall keep in force public liability and property damage insurance coverage in an amount of not less the TEN MILLION DOLLARS (\$10,000,000.00) against liabilities and damages in respect to injuries to persons (including injuries resulting in death) and in respect to property damage arising out of this Agreement. The deductible in this policy shall not exceed FIVE THOUSAND DOLLARS (\$5,000.00) per occurrence, deductible shall be for the sole account of The District. The City shall be named additional insured on the policy and at no cost to the City. The policy shall preclude subrogation claims by the insurer against anyone insured thereunder. In addition, such insurance policy shall include the following Cross Liability clause: "The insurance afforded by this policy shall apply in the same manner, as though separate policies were issued, to any action brought against any of the named insured by or on behalf of any other named insured." Confirmation from the District that requisite coverage is in place is part of this agreement.
15. The District shall be liable for all loss, costs, damages and expenses whatsoever incurred or suffered by the City, its elected officials, officers, employees and agents (the "Indemnities") including but not limited to damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with the performance, purported performance, or non-performance of this Agreement, excepting only where such loss, costs, damages and expenses are as a result of the sole negligence of the Indemnities.
- The District shall defend, indemnify and hold harmless, the Indemnities from and against all claims, demands, actions, proceedings, and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the performance, purported performance, or non-performance of this Agreement, expressly including all claims, demands, actions, proceedings, and liabilities whatsoever in connection with the conditions in sections 5 & 6 of this Agreement, excepting only where such claim, demand, action, proceeding or liability is based on the sole negligence of the Indemnities.
16. The term of this Agreement shall be one year from the date of execution, unless terminated earlier by either party pursuant to section 13.
17. Whenever in this Agreement it is required that written notice be given by either party to the other, the notice shall be sufficiently communicated is sent by registered mail, to the District at the following address:

WESTSIDE FIRE PROTECTION DISTRICT
3651 Old Okanagan Highway
Westbank, BC
V4P 1P6

Attention: Clerk

And to the City at the following address:

CITY OF KELOWNA
1435 Water Street
Kelowna, BC
V1Y 1J4

Attention: City Clerk

and, if forwarded by registered mail, shall be deemed to have been served on the fifth business day following the date it was mailed.

IN WITNESS WHEREOF the parties have executed this agreement:

CITY OF KELOWNA by its authorized
signatories:

Mayor

Clerk

WESTSIDE FIRE PROTECTION DISTRICT
by its
authorized signatories:

Board Chairperson

Clerk