

DESERT COVE FIRE PROTECTION SERVICES AGREEMENT

THIS AGREEMENT dated for reference the 1st day of October, 2019,

BETWEEN:

DESERT COVE ESTATES LTD. BC 0333891

3005 - 30 Street, #200

Vernon, BC, V1T 2M1

Canada

(**“Developer”**)

AND

OKANAGAN INDIAN BAND

Okanagan Indian Reserve # 1

12420 Westside Road

Vernon BC V1H 2A4

(**“OKIB”**)

RECITALS:

WHEREAS the Developer wishes to have the OKIB fire department provide fire protection services to homes and other buildings within the boundaries of the residential development known as the Desert Cove Estates, with an address of No. 1 Desert Cove Estates, Vernon, B.C. (**“Desert Cove”**), and which is located within the boundaries of the Okanagan Indian Reserve No. 1 (**“OKIB IR #1”**);

AND WHEREAS OKIB has agreed to provide the fire protection services on the terms and conditions set out in this Agreement to certain homes and buildings situated in Desert Cove;

AND WHEREAS the Developer recognizes a financial responsibility to pay for the fire protection services provided by the OKIB pursuant to this Agreement;

AND WHEREAS OKIB is unable to provide fire protection services without payment for these services;

AND WHEREAS OKIB provided fire protection services to Desert Cove throughout the month of October 2019 and until the execution of this Agreement on the understanding that the Developer would pay for fire protection services as of October 1, 2019;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and the mutual covenants and agreements set out in this Agreement, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. FIRE PROTECTION SERVICES

1.1 Subject to s. 1.4 of this Agreement, OKIB shall provide the Fire Protection Services, as defined and described below, to the improvements within Desert Cove assessed by BC Assessment at the start of an Assessment Year, as shown in the Breakdown (the “**Properties**”), in the same manner and to the same extent as the OKIB fire services department provides fire protection and control services to and for OKIB communities. Without limiting (or extending) the generality of the foregoing, the services supplied by OKIB will be as follows:

- (a) **Fire response:** the OKIB fire department will answer all fire emergency calls from the Properties and attend at fire emergencies at the Properties with necessary equipment for the purpose of controlling and extinguishing wildland, building and motor vehicle fires;
- (b) **First medical responder/ BC ambulance assistance:** the OKIB fire department is trained to first responder level 3 and will provide those services until BC Ambulance Service (“**BCAS**”) arrives and will also respond when BCAS requests assistance;
- (c) **Motor vehicle incidents:** the OKIB fire department will respond to motor vehicle incidents and if needed will obtain the assistance of other services to facilitate rescues from motor vehicles; and
- (d) **Technical rescue:** while the OKIB fire department does not have this training or certification it will respond to all calls and take the lead during any incidents and call in support from other agencies as needed.

(Collectively, the “**Fire Protection Services**”)

1.2 OKIB will use reasonable due diligence in providing the Fire Protection Services to the Properties through its fire department in accordance with the terms of this Agreement. At the discretion of the OKIB fire department, OKIB will permit fire services to be delivered by neighbouring municipal jurisdictions to Desert Cove, when such assistance is required.

1.3 OKIB will provide the Fire Protection Services on a 24-hour basis.

1.4 The Developer acknowledges and agrees that:

- (a) The OKIB fire department is not currently a certified fire department;
- (b) OKIB does not and has never represented that it is a certified fire department or that it can provide Fire Protection Services to a greater degree than that to which it provides fire protection services to other communities on OKIB IR #1;
- (c) OKIB’s response time may be subject to capacity constraints caused by concurrent or simultaneous incidents;

- (d) OKIB has not independently verified the accuracy or completeness of the scale map provided by the Developer in accordance with s. 1.6 (a) of this Agreement and the Developer covenants, warrants and agrees that OKIB is entitled to rely on the accuracy of the map in the provision of the Fire Protection Services, and despite any wording in s. 1.6 (a) of this Agreement, nothing in this Agreement obligates OKIB to request any updates to or confirm any aspect of the scale map provided by the Developer;
- (e) OKIB's fire response capability is contingent on the Developer's obligations under s. 1.6 (b) of this Agreement, including the obligation to provide adequate water capacity; and
- (f) OKIB makes no representations or warranties that the level or degree of the Fire Protection Services will be maintained or continued to any particular standard, other than as stated expressly in the Agreement.

1.5 Except and to the extent resulting from negligent or willful misconduct of OKIB or a default of OKIB under this Agreement, OKIB will not be deemed to be in default of its obligations in section 1.1 if an interruption or reduction in the level of Fire Protection Services results from one or more of the following:

- (a) A default by the Developer under this Agreement;
- (b) An event originating outside the OKIB IR #1;
- (c) An inadequate fire hydrant system or maintenance thereof, including a lack of fire hydrants or standpipes, inadequate operation or fire hydrants or standpipes, or lack of water pressure or fire flows in Desert Cove;
- (d) Failure by the Developer to provide to OKIB a scale map, or an accurate scale map, in accordance with s. 1.6 (a) of this Agreement;
- (e) Any industrial or commercial activities which involve the storage, use or production of flammable materials, chemicals or other materials that may reasonably be expected to constitute a special hazard to or otherwise interfere with those providing Fire Protection Services under this Agreement;
- (f) Incompatibility of improvements in Desert Cove with the provision of the BC Fire Code or BC Building Code;
- (g) Inadequate width, grading, construction, clearance, or maintenance of access roads or driveways in Desert Cove; or
- (h) Failure of the Developer to demolish or otherwise remediate derelict or hazardous buildings.

1.6 The Developer shall:

- (a) Provide to OKIB copies of a scale map satisfactory to OKIB showing all access roads in and to Desert Cove, all fire hydrants and other water access points, and designating the residences and other buildings to be protected pursuant to this Agreement, and to update that map as required from time to time or as requested by OKIB;
- (b) Install and maintain access roads, driveways, and a hydrant system with sufficient water capacity, pressure and flow for fire service emergencies in a state of fire service readiness to the standards required by all applicable laws, including the BC Fire Code and the BC Building Code and in any bulletins, guidelines or manuals published by the Office of the Fire Commissioner for British Columbia; and
- (c) Pay to OKIB the Monthly Fees for Fire Protection Services in accordance with Article 3 of this Agreement.

2. TERM AND TERMINATION OF AGREEMENT

- 2.1 The term of this Agreement shall commence on October 1, 2019 and shall expire on September 30, 2024, unless otherwise terminated in accordance with this Agreement.
- 2.2 Either of the parties to this Agreement may terminate this Agreement by giving to the other party, on or before the last day of November of any year during the term of the Agreement, a notice of termination in writing and if notice is given in that manner this Agreement shall terminate on the earlier of the last day of December in the next Calendar Year immediately following the giving of that notice, or on the date the term of this Agreement would ordinarily expire through passage of time.
- 2.3 Subject to s. 3.3 and s. 6.2 of this Agreement, if either party is in default of any obligation under this Agreement, the other party (the “**Non-Defaulting Party**”) shall provide written notice thereof in accordance with Article 8 of this Agreement. A party that receives notice of a default shall rectify the default as soon as possible after the date such notice is received, and in any event not later than sixty days after receiving notice of the default. Should the default not be rectified within sixty days of the date of notice of the default, this Agreement shall terminate at the option of the Non-Defaulting Party at the expiration of that sixty day period.
- 2.4 Upon the imposition by OKIB of a service tax law on Desert Cove’s interests in OKIB IR #1 for fire services, Desert Cove may terminate this Agreement by delivering notice thereof to OKIB, provided that any such termination of the Fire Protection Services shall terminate on the day before any such service tax law is brought into force by OKIB.
- 2.5 If, for any reason, this Agreement is terminated or comes to an end, there will be a reconciliation and final adjustment of payments arising from one party to the other, calculated up to the date of termination, and the obligation to make any adjusting payment will survive the termination of this Agreement.

3. PAYMENT FOR FIRE PROTECTION SERVICES

3.1 The fee for the Fire Protection Services delivered by OKIB to the Developer shall be calculated annually, and due and owing at the start of each Assessment Year (the “**Annual Amount**”), and paid by the Developer to OKIB as follows:

- (a) During the term of this Agreement, BC Assessment will provide to OKIB the assessed values of the Properties, whether occupied or not, within Desert Cove (the “**Assessed Values**”) and OKIB will multiply the Assessed Values by the amount of 0.0015 to determine the amount due and owing on July 1st of each Assessment Year by the Developer to OKIB for the Fire Protection Services (the “**Assessment Calculation**”);
- (b) The Assessed Values will be determined by BC Assessment each year for the period of time between July 1st and June 30th of the following year (the “**Assessment Year**”) and a new Assessment Year will begin July 1st of each year during the term of this Agreement;
- (c) OKIB will divide the amount determined by the Assessment Calculation by twelve (12) resulting in a monthly payment amount to be paid to OKIB herein, and such monthly payments shall be exclusive of any applicable interest owing or tax, and such monthly payment amount and any applicable interest or tax will represent the monthly fees payable by the Developer to OKIB every month for the Fire Protection Services for that Assessment Year (the “**Monthly Fees**”);
- (d) Effective July 1st of each Assessment Year, subject to s. 3.4 of this Agreement, OKIB will deliver to the Developer an invoice (on or within two weeks after July 1st of each Assessment Year) setting out the Annual Amount and the Monthly Fees for such Assessment Year (the “**Invoice**”);
- (e) In July of each Assessment Year, subject to s. 3.4 of this Agreement, OKIB shall provide the Developer a breakdown of the assessed values of the Properties in Desert Cove, as represented in information provided by BC Assessment to OKIB (the “**Breakdown**”), which will be enclosed with the Invoice;
- (f) For greater certainty, the Developer is responsible for paying the Monthly Fees and OKIB is only responsible for providing the Breakdown it receives from BC Assessment to the Developer; and
- (g) The Annual Amount and the Monthly Fees are based on the OKIB fire department providing Fire Protection Services to the Properties and should the Developer request that OKIB provide Fire Protection Services to any new developments not accounted for in the Assessment Calculation, such developments will be subject to additional service fees, as determined by OKIB acting reasonably, until the next Assessment Year.

3.2 On the first day of each month during the term of this Agreement, the Developer shall pay to OKIB, in advance, the amount of the Monthly Fees, save and except for the month

of July wherein the Developer shall pay the Monthly Fees within 7 days of receipt of the Invoice;

3.3 If the Developer fails to make any payment due to OKIB under this Agreement (the “**Payment Default**”), OKIB will provide notice in writing of the Payment Default to the Developer and the Developer shall correct the Payment Default within 7 days of the date of the written notice, provided that:

(a) If the Developer fails to correct the Payment Default within 7 days of the date of the written notice, OKIB may immediately terminate this Agreement, in its sole and absolute discretion;

(b) Without limiting the foregoing, if there are 3 payment defaults within an Assessment Year, in lieu of immediately terminating this Agreement, OKIB may require that the Developer pay the entire Annual Amount immediately, prorated for the remainder of the Assessment Year and including any applicable interest, and that the Annual Amount be paid annually in full in each subsequent Assessment Year, following delivery of an invoice for the Annual Amount, and should the Developer fail to pay the Annual Amount, OKIB may immediately terminate this Agreement in accordance with s. 3.3 (a); and,

(c) All Payment Defaults shall bear interest at 7% per annum calculated based on a 365-day year for the actual number of days elapsed from the first day of the month until payment is made in full.

3.4 Within 7 days of execution of this Agreement, OKIB will provide the Developer with an Invoice for the amount of the Monthly Fees (and the Breakdown that governs such Monthly Fees) payable by the Developer to OKIB every month for the initial period of this Agreement commencing October 1, 2019, until the Assessment Year starting July 1, 2020, and the Developer shall pay the first installment of these Monthly Fees within 7 days of OKIB providing the Developer with such Invoice;

3.5 OKIB will use the Monthly Fees for matters connected to the Fire Department and OKIB will share an annual budget concerning the Monthly Fees with Desert Cove once revenues collected for fire protection services have stabilized, as determined by OKIB acting reasonably.

4. ASSIGNMENT

4.1 OKIB may at any time on thirty days written notice to the Developer assign its rights and obligations under this Agreement to an entity wholly owned and controlled, directly or indirectly, by OKIB or a society established by OKIB, after which OKIB will be released from its obligations and any further liability under this Agreement. OKIB shall provide the Developer with notice in writing of the assignment and will include confirmation that all rights and obligations under the Agreement have been duly assigned.

4.2 The Developer may not assign this Agreement or any portion herein without the written consent of OKIB.

5. INDEMNITY AND RELEASE

- 5.1 The Developer shall indemnify and save harmless OKIB, its Chief and Council, employees, servants, agents, contractors, subcontractors, work persons, officials, licensees, volunteers, successors and assigns from and against any and all manner of claims, suits, losses, proceedings, liability, actions, demands, damages, costs, including in respect of bodily injury and bodily injury resulting in death, damage to property, and expenses (including without limitation, all legal fees on a solicitor client basis and other professional fees and disbursements) in relation to and arising out of the provision by OKIB of the Fire Protection Services provided under this Agreement, except to the extent any such claims are the result of the negligence or willful misconduct of OKIB or a breach of this Agreement by OKIB.
- 5.2 The Developer releases OKIB, its Chief and Council, employees, servants, agents, contractors, subcontractors, work persons, officials, licensees, volunteers, successors and assigns from any and all direct, indirect and consequential losses, damages, liabilities, deficiencies, costs and expenses (including without limitation, all legal fees on a solicitor client basis and other professional fees and disbursements) claims, suits, actions, and demands whatsoever suffered or incurred by the Developer or that the Developer may have by reason of or arising directly or indirectly out of provision by OKIB of the Fire Protection Services provided under this Agreement, except to the extent any such losses are the result of the negligence or willful misconduct of OKIB or a breach of this Agreement by OKIB.
- 5.3 OKIB shall indemnify the Developer from and against any and all manner of claims, suits, losses, proceedings, liability, actions, demands, damages, costs, including in respect of bodily injury and bodily injury resulting in death, damage to property, and expenses (including without limitation, all legal fees on a solicitor client basis and other professional fees and disbursements) arising from OKIB's breach of its obligations under this Agreement.
- 5.4 Without limiting anything else in this Agreement, OKIB shall not be liable for any damages, expenses or losses occurring by reason of suspension or cessation of the Fire Protection Services, where such suspension or cessation is caused by circumstances beyond the control of OKIB, or in accordance with the terms and conditions in this Agreement. If and to the extent that OKIB is prevented from executing the Fire Protection Services by circumstances beyond its control, it shall be relieved of its obligations under this Agreement.
- 5.5 Without limiting anything else in this Agreement, this Agreement shall not be construed as placing any greater standard of care or liability on OKIB in respect of the supply of Fire Protection Services to the Developer or the Properties than that which applies between OKIB and any other person who receives Fire Protection Services from OKIB.
- 5.6 The Indemnity and Release provisions under this Article 5 shall survive the expiration or earlier termination of this Agreement.

6. THE DEVELOPER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 The Developer represents, warrants and covenants to OKIB that as of the date of this Agreement:

- (a) The Developer is a Corporation duly organized, validly existing and legally entitled to perform its obligations under this Agreement and is in good standing with respect to filings of annual reports according to the records of the Registrar of Companies of British Columbia;
- (b) The Developer has the power and capacity to enter into this Agreement, and any other agreement contemplated by this Agreement, and to comply with every term and condition of this Agreement;
- (c) All necessary proceedings have been taken to authorize the Developer to enter into this Agreement, and any other agreement contemplated by this Agreement, and to execute and deliver this Agreement;
- (d) This Agreement has been properly executed by the Developer and is enforceable against the Developer in accordance with its terms;
- (e) Any statement, representation or information, whether oral or written, made, furnished or given by the Developer, its directors, officers, legal counsel or anyone acting on behalf of the Developer to OKIB in connection with this Agreement is materially correct and accurate;
- (f) The Developer has no knowledge of any fact that materially adversely affects or, so far as is it can be foreseen, might materially adversely affect its ability to fulfill its obligations under this Agreement; and
- (g) The observance and performance of the terms and conditions of this Agreement will not constitute a breach by the Developer or a default by it under any statute, regulation or bylaw of Canada, or of the Province of British Columbia applicable to or binding on it, its establishing documents, or any contract or agreement to which it is a party.

6.2 The Developer acknowledges and agrees that OKIB is entitled to rely on the representations, warranties and covenants made in this Article 6 and that they shall survive the execution of this Agreement. The Developer acknowledges and agrees that if the Developer breaches one of its warranties or covenants or if one of its representations becomes inaccurate at any time during the term of this Agreement, OKIB may immediately terminate this Agreement.

7. GOOD FAITH NEGOTIATION

7.1 The Parties agree that in the performance of each of their responsibilities under this Agreement, each of them will:

- (a) Make bona fide efforts to resolve any disputes arising between them by amicable negotiations; and
 - (b) Provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate those negotiations.
- 7.2 The Parties further agree to use their best efforts to resolve any disputes under this Agreement as efficiently and cost effectively as possible.

8. NOTICE

- 8.1 All notices, requests, demands, consents, or other communications required or permitted to be given or made under this Agreement will be in writing and will be deemed to be well and sufficiently given if hand delivered or mailed by registered mail as follows:

If to **OKIB:**

Okanagan Indian Band
12420 Westside Road
Vernon, BC, V1H 2A4
Attention: **Executive Director**

If to the **Developer:**

Desert Cove Estates Ltd.
No. 1 Desert Cove Estates
Vernon, B.C. Canada
V1H 1Z1
Attention: **Donald Westgate and Gary Westgate**

- 8.2 All notices or other communication so given or made will be conclusively deemed to have been given and received:
- (a) If delivered personally, at the actual time of delivery; and,
 - (b) If mailed by registered mail, on the third business day following the date of mailing, except in the case of disruption of postal services, then in such event notice will be delivered personally.
- 8.3 The parties may change the address for service by notifying the other party of the change in accordance with this section.

9. GENERAL PROVISIONS

- 9.1 Each of the parties will do all such further acts and execute and deliver all such further documents in a timely manner as reasonably required from time to time in order to fully perform and carry out the terms and intent of this Agreement.


- 9.2 The parties covenant and agree that they have taken all necessary actions and obtained any necessary authorization to enable them to enter into and perform the terms of this Agreement.
- 9.3 This Agreement constitutes the entire agreement between the parties with respect to the Fire Protection Services and supersedes all prior written and oral communication with respect to the subject matter of this Agreement and there are no other terms, conditions, representations or warranties in this Agreement, express or implied, statutory or otherwise, except for those expressly set forth herein.
- 9.4 All payments to be made shall be in lawful currency of Canada.
- 9.5 Nothing in this Agreement or in the parties' dealings with each other is intended to be or interpreted or construed as creating an agency relationship, joint venture or partnership of any kind between the parties or as imposing on any of the parties any partnership duty, obligation or liability to any other party or to any other person.
- 9.6 This Agreement may only be amended by written agreement of the parties.
- 9.7 No waiver of any term or condition of this Agreement or of a breach of any term or condition of this Agreement by any party hereto shall be effective unless it is in writing and no waiver or breach even if in writing shall be construed as a waiver of any future breach, and waiver is construed as including acquiescence.
- 9.8 Time shall be of the essence of this Agreement.
- 9.9 Reference to a "day," "month," or "year" is a reference to a calendar day, calendar month, or calendar year, as the case may be, unless otherwise expressly provided.
- 9.10 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.
- 9.11 This Agreement shall be to the benefit of and be binding upon the respective parties and their heirs, executors, administrators, successors and permitted assigns.
- 9.12 Whenever the singular or masculine is used, the same shall be construed as meaning the plural or feminine or body politic or corporate as the context so requires.
- 9.13 Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of OKIB in the exercise of its functions under any public or private statute, bylaw, order or regulation all of which may be fully and effectively exercised in relation to each other and their assets as if this Agreement had not been executed.
- 9.14 Reference in this Agreement to any legislation, regulation or policy, whether federal, provincial or municipal, shall be deemed as reference to such as amended, consolidated or replaced.

9.15 If any covenant or provision of this Agreement is held to be invalid, void, illegal or unenforceable in whole or in part, such covenant or provision shall be severable from all other covenants and provisions herein and the validity, legality and enforceability of the remaining covenants and provisions of this Agreement shall not be in any way affected or impaired.

9.16 This Agreement may be executed in counterparts and be delivered by fax or email with a PDF attachment, each of which when executed and delivered will constitute and original, and all of which together will constitute one and the same Agreement.

IN WITNESS WHEREOF this Agreement has been executed on the 12th day of November, 2019, by the parties hereto:

EXECUTED by **DESERT COVE ESTATES**)
LTD., by its duly authorized signatory:)
)
)
DONALD WESTGATE)
Authorized Signatory)

EXECUTED for and on behalf of the)
OKANAGAN INDIAN BAND by:)
)
VICTOR RUMBOLT)
Executive Director)

9.15 If any covenant or provision of this Agreement is held to be invalid, void, illegal or unenforceable in whole or in part, such covenant or provision shall be severable from all other covenants and provisions herein and the validity, legality and enforceability of the remaining covenants and provisions of this Agreement shall not be in any way affected or impaired.

9.16 This Agreement may be executed in counterparts and be delivered by fax or email with a PDF attachment, each of which when executed and delivered will constitute an original, and all of which together will constitute one and the same Agreement.

IN WITNESS WHEREOF this Agreement has been executed on the ____ day of _____, 2019, by the parties hereto:

EXECUTED by **DESERT COVE ESTATES**)
LTD., by its duly authorized signatory:)
)
DONALD WESTGATE)
Authorized Signatory)

EXECUTED for and on behalf of the)
OKANAGAN INDIAN BAND by:)
)
_____)
VICTOR RUMBOLT)
Executive Director)