



REGIONAL DISTRICT OF EAST KOOTENAY

Vault Binder: 5-N

File: Ahl 066 001

Term: January 1, 2007 to December 31, 2011

THIS AGREEMENT dated for reference the _____ day of _____, 2007.

BETWEEN:

REGIONAL DISTRICT OF EAST KOOTENAY, a Regional District pursuant to the *Local Government Act*, RSBC 1996, Chapter 323 and incorporated pursuant to the laws of the Province of British Columbia with a place of business at 19 - 24th Avenue South, Cranbrook BC V1C 3H8.

(the "RDEK")

OF THE FIRST PART

AND:

SHUSWAP INDIAN BAND, as represented by the Shuswap Chief and Council, and having its office at Athalmer Highway, Box 790, Invermere BC V0A 1K0

("Shuswap")

OF THE SECOND PART

WHEREAS

- A. The hereinafter defined Reserve has been set aside by Her Majesty the Queen in Right of Canada for the use and benefit of the Shuswap Indian Band.
- B. By certificate given under Section 10 of the *Indian Self Government Enabling Act*, the Minister of Aboriginal Affairs for the Province of British Columbia gave to the RDEK, notice that the Band intends to commence property taxation under the *Indian Act*.
- C. The Reserve is within the geographical boundaries of the RDEK and the Band Council desires to have provided to the Reserve leasehold occupants all the RDEK services provided by the RDEK as hereinafter described.
- D. The Band's Property Taxation Bylaw was enacted on March 6, 1992 and came into force on January 1, 1992, enabling the Band to commence taxation in the year 1992.
- E. The Band Council recognizes a financial responsibility to pay for the services as hereinafter defined and provided by the RDEK to the Reserve leasehold occupants.
- F. The Band Council, pursuant to Band Council Resolution dated _____, 20____, a copy of which is attached to this Agreement as Schedule A, has approved and consented to the terms and conditions hereinafter set out.

NOW THEREFORE, in consideration of the covenants and Agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto covenant and agree with each other as follows:

1. DEFINITIONS

In this Agreement the following expressions will have the meanings herein assigned to them.

- 1.1 **Agreement** means the Agreement including all of the Schedules referred to throughout.
- 1.2 **Band Council** means the Council of the Band within the meaning of the *Indian Act*, or any successor to the Band Council pursuant to legislation enacted by the Parliament of Canada from time to time.
- 1.3 **Fees** for any calendar year during this Agreement means all fees outlined in Section 3.1 hereof.

- 1.4 **Indian Act** means the *Indian Act*, R.S.C. 1985, c.I-5 and any regulation made thereunder, all as amended or replaced from time to time, and any reference to a section of that Act shall include that section as amended or replaced from time to time.
- 1.5 **Non-native interest in the Reserve** shall include all land and improvements in the Reserve other than those:
- (a) land and improvements in the Reserve held in the name of the Band; and
 - (b) land and improvements in the Reserve held by individual members of the Band.
- 1.6 **Party** means a party to this Agreement and **Parties** means all of the parties to this Agreement.
- 1.7 **RDEK** means the Regional District of East Kootenay, East Kootenay Regional Hospital District, and Kootenay East Regional Hospital District.
- 1.8 **Reserve** means the Shuswap Indian Band Reserve, I.R. #7428, more particularly shown in the plan attached as Schedule B to this Agreement, and in the event that the name of the Reserve is changed from time to time pursuant to the *Indian Act* as defined herein, then "Reserve" will mean the Reserve so named.
- 1.9 **Shuswap** means the Shuswap Indian Band, or any successor to the Band pursuant to the *Indian Act* or other legislation enacted by the Parliament of Canada from time to time.

2. SERVICES PROVIDED

- 2.1 The RDEK shall operate, maintain, repair, and provide all services listed in section 2.2 herein, to the non-native interests in the Reserve to the same level and on the same schedules and time frames and of the same level and quantity as it provides to properties and residences not in the Reserve in the RDEK. The RDEK will use reasonable efforts to provide services so as to comply with all applicable laws, regulations, codes, and orders.
- 2.2 Throughout the term of this Agreement, the RDEK will provide the following services:
- (a) **Dog Control**;
 - (b) **E911** meaning the enhanced 9-1-1 emergency telephone system;
 - (c) **Eddie Mountain Memorial Arena** located in the District of Invermere;
 - (d) **Electoral Area F Parks and Trails** meaning the Windermere Beach Park as well as any other parks or trails designated as Electoral Area F Parks and Trails by the RDEK;
 - (e) **Emergency Response and Recovery Program** covering the Columbia Valley Subregion;
 - (f) **Grants In Aid** meaning grants to organizations and individuals providing services of benefit to the RDEK;
 - (g) **Libraries** meaning providing an annual grant to the Invermere Public Library;
 - (h) **Noxious Weed Control** meaning a weed control program consisting of enforcing the *Weed Act* of British Columbia and an education program;
 - (i) **Regional Hospital District** meaning capital financing provided to hospitals within the East Kootenay Regional Hospital District and Kootenay East Regional Hospital District;
 - (j) **Regional Parks** meaning the Wycliffe, Tie Lake, and Elk Valley Regional Parks and the Old Coach Greenway regional trail as well as any other parks or trails as may be designated as regional parks or trails by the RDEK;
 - (k) **Septage Disposal** meaning providing to properties not connected to a community sewer system access to the Columbia Valley septage disposal system located at the Kinbasket Water & Sewer Company sewer treatment plant;
 - (l) **Solid Waste Disposal** meaning providing access to a place for disposal of solid waste and access to recycling services.

- 2.3 The services listed and defined in section 2.2 (a) to (l) of this Agreement shall hereinafter be referred to as “the services”.

3. PAYMENT FOR USE OF SERVICES

- 3.1 On or before May 1st of each year, the RDEK will invoice Shuswap for the fees due from Shuswap for services provided by the RDEK under the terms of the Agreement. The fees will be equal to the sum of the levies made by RDEK for the services for that calendar year, times the assessment of all non-native interests in the Reserve as determined by the Band. All levies will be equal to those levies as applied to those RDEK lands surrounding the Reserve, and shall be paid on or before August 1st of each year.
- 3.2 For all assessment rolls of the non-native interest in the Reserve that are under taxation jurisdictional dispute and have not made tax payments to Shuswap for the current taxation year, these assessment rolls shall not be included in determining the invoicing as in section 3.1 of this Agreement. Should the tax(es) under dispute and currently in arrears be paid to Shuswap, Shuswap shall notify the RDEK and Shuswap shall forward the appropriate fees to the RDEK within 90 days of receipt of the taxes in dispute. Shuswap shall not be responsible for any penalty, interest or otherwise, for fees applied to the assessment rolls in dispute and not being paid to Shuswap.

4. BUDGETING

- 4.1 On or before April 1st each year, the RDEK shall deliver to Shuswap a copy of the current five-year financial plan. The financial plan for the immediately succeeding year is the provisional budget for that year.
- 4.2 Shuswap shall be given the opportunity to comment on any item set out in the provisional budget as delivered to Shuswap. Shuswap shall, through the Chief Administrative Officer of the RDEK, arrange a joint meeting of the Band Council and the RDEK Board to discuss any item of concern in the financial plan and the RDEK Board shall give reasonable consideration to any submission made by the Band Council in that regard.

5. LIMIT TO CONTRIBUTIONS

- 5.1 Any payments made by Shuswap to the RDEK in excess of that required by the RDEK under its invoices shall be repaid to Shuswap within 30 days of the receipt of overpayment.
- 5.2 If the RDEK defaults in any repayments required to be made to Shuswap under this Agreement for a period in excess of 30 days from the date that the RDEK receives the invoice, the amount owing shall bear interest at the same rate that Shuswap is required to pay its bankers for short term borrowing.

6. RECORDS

- 6.1 The RDEK shall, upon written request of Shuswap, make available to Shuswap, for its inspection and copying, records and financial data of the RDEK which would allow Shuswap to confirm by independent audit that all contributions made hereunder were duly expended under the *Local Government Act* for the purposes for which they were determined and levied.

7. ASSESSMENT

- 7.1 Shuswap agrees that all non-native interests in the Reserve shall be assessed by the Band's assessors as if the same were located within the RDEK, but not in the Reserve. Nothing in this Agreement shall preclude Shuswap or the RDEK or any individual owner or occupier of the lands within the Reserve from appealing or taking lawful steps to change any assessment made with regard to any lands within the Reserve.

- 7.2 Assessments used for calculating the invoice for fees under section 3.1 of this Agreement shall be based on Shuswap's assessment roll for the Reserve for all non-native interests, less those assessment rolls that are under jurisdictional dispute and have not been paid in full to Shuswap.
- 7.3 By April 15th of each year, Shuswap and the RDEK shall review and update assessment rolls in the Reserve for the purpose of fee invoicing under section 3.1 of this Agreement. Assessment rolls added to the Reserve's assessment roll after the assessment notices are sent out by May 1st in each year, shall apply to the following year's review.
- 7.4 Shuswap hereby grants its consent to the Shuswap Assessor to assess the non-native interests in the Reserve following the same processes and to the same extent as if they were located within the RDEK and not within the Reserve.

8. INSURANCE AND INDEMNITY

- 8.1 Shuswap covenants to obtain and keep in force during the term of this Agreement, at its sole expense, insurance satisfactory to the RDEK protecting the RDEK and Shuswap (without any rights of cross-claim or subrogation against the RDEK) against claims for personal injury, death, property damage or third party or public liability claims arising out of, in connection with, or in any way related to the service provided under this Agreement, in an amount not less than \$2,000,000.
- 8.2 Shuswap shall indemnify and save harmless the RDEK from and against all claims, demands, losses, costs, damages, actions, suits or proceedings by whomever made, brought or prosecuted and in any manner based upon, arising out of, related to, occasioned by or attributed to the breach of any provision of this Agreement to be performed by Shuswap and the officials, servants, employees, members, agents and contractors of Shuswap.
- 8.3 The RDEK shall indemnify and save harmless Shuswap from and against all claims, demands, losses, damages, actions, suits or proceedings by whomever made, brought or prosecuted against Shuswap and in any manner based upon, arising out of, related to, occasioned by or attributed to any negligence of any servant or agent of the RDEK in accordance with the provisions of this Agreement.

9. TERMINATION

- 9.1 Should Shuswap fail to perform any covenant or condition required under this Agreement, the RDEK may, at its option, terminate this Agreement and all services provided. The termination of this Agreement by the RDEK shall not preclude the RDEK from bringing action against Shuswap for money owed by Shuswap during the terms of this Agreement and up to the date of such termination.
- 9.2 Should the RDEK fail to perform any covenant or condition required under this Agreement, Shuswap may, at its option, terminate this Agreement and all services provided. The termination of this Agreement by Shuswap shall not preclude Shuswap from bringing action against the RDEK for money owed for services not being delivered by the RDEK during the terms of this Agreement and up to the date of such termination.
- 9.3 This Agreement may be terminated by either party giving to the other, by registered mail, 30-day written notice to that effect; however, such notice of termination of this Agreement shall be provided prior to June 30th to take effect December 31st of that same year. Notice of Termination may be served by either party to the address indicated on the face page of this Agreement.

10. TERM OF AGREEMENT

- 10.1 The term of this Agreement is January 1, 2007 to December 31, 2011.

11. DISPUTE RESOLUTION

- 11.1 Unless this Agreement provides otherwise, any disagreement between Shuswap and the RDEK that arises out of this Agreement or in regard to the interpretation of this

Agreement shall be resolved pursuant to this article and, where such a disagreement arises, either party may give written notice to the other that it wishes to resolve the disagreement through the process set out in the article (hereinafter called the "Dispute Resolution Notice") which shall set out:

- (a) the matter which the issuer wishes to have resolved,
- (b) the position of the issuer in respect of the matter which is the subject of the dispute.

- 11.2 Upon receipt of a Dispute Resolution Notice by either Shuswap or the RDEK, the Administrator of Shuswap, the Chief Administrative Officer of the RDEK, the Chair of RDEK, and the Chief of Shuswap or an appointee of the Band Council, shall meet together to attempt to settle the disagreement through negotiation and, if the disagreement cannot be so settled and ratified by Shuswap and the RDEK Board within 30 working days of receipt of the Dispute Resolution Notice by the party to whom it was issued, the same shall be submitted to an arbitrator agreed upon between Shuswap and the RDEK whose decision shall be handed down within 30 days of appointment.
- 11.3 Should Shuswap and the RDEK fail to resolve the dispute through negotiations held pursuant to section 11.2 and fail to agree on an arbitrator as provided in section 11.2 within 50 days of the Dispute Resolution Notice by the party to whom it was issued, a sole arbitrator may be appointed by a Judge of the Supreme Court of British Columbia upon application by either Shuswap or the RDEK, provided that the applicant shall give the other party five working days notice of its application for such an appointment.
- 11.4 The decision of the arbitrator appointed pursuant to the Agreement will be considered final and binding upon the parties.
- 11.5 The cost of an arbitrator shall be borne equally by Shuswap and the RDEK unless otherwise ordered by the arbitrator.
- 11.6 If upon a reference to it, an arbitrator refuses jurisdiction or otherwise fails to determine the questions, then the question may be referred by either party to any court of competent jurisdiction and the parties may exercise any other right or remedy they may have under this Agreement or otherwise.

12. NOTICE

- 12.1 Whenever in this Agreement it is required or permitted that notice, demand or communication be given or served by any party on the other party, such notice or demand shall be given and served in writing and forwarded by registered mail addressed as follows:

To the RDEK: Chief Administrative Officer
Regional District of East Kootenay
19 - 24 Avenue South
Cranbrook BC V1C 3H8

To the Band Council: Chief and Council
Shuswap Indian Band
Box 790
Invermere BC V0A 1K0

- 12.2 A party may change its address by giving the other party prior notice of a change of address in accordance with this section and provided further that, if there is a postal strike or other postal disruption, notice shall be personally delivered and not mailed.

13. ASSIGNMENT

- 13.1 This Agreement shall not be assigned by any party hereto, except with the prior written consent of all parties hereto, which consent shall not be unreasonably withheld.

14. INTERPRETATION

- 14.1 Nothing contained or implied herein shall prejudice or affect the rights and powers of the RDEK or Shuswap in the exercise of their functions under any public or private statutes, bylaws, orders or regulations, 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 and delivered by all of the parties to this Agreement.
- 14.2 This Agreement shall not be construed so as to create any greater standard of care of liability on the part of the RDEK in respect of the supplying of any services hereunder to occupants of the Reserve or to land or facilities within the Reserve than that which applies to the supply of such services to other occupants, lands or facilities within the RDEK.
- 14.3 The parties acknowledge that this Agreement is not intended to create 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.
- 14.4 Headings are inserted in this Agreement for convenience only and shall not be construed as affecting the meaning of this Agreement.
- 14.5 No waiver of any term or condition of this Agreement or waiver 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.
- 14.6 This Agreement constitutes the entire Agreement amongst the parties and there are no terms, conditions, representations, or warranties, expressed or implied, statutory or otherwise, except for those expressly set forth herein.
- 14.7 Whenever the singular or masculine is used herein, the same shall be construed as meaning the plural or feminine or body politic or corporate where the context of the parties hereto so require.
- 14.8 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their permitted successors and assigns.

The Corporate Seal of **REGIONAL DISTRICT OF**)
EAST KOOTENAY was hereunto affixed in)
the presence of:)

Gregory Deck, Chair

Lee-Ann Crane, Chief Administrative Officer

Signed by **SHUSWAP INDIAN BAND** in the presence of:

Witness Name

Witness Address

Chief Paul Sam

Councillor

Councillor