

THIS AGREEMENT made in duplicate this 20 day of May, 1992.

BETWEEN: THE HOMALCO INDIAN BAND COUNCIL, on behalf of itself, its individual members, the members of the Homalco Indian Band, and the HOMALCO INDIAN BAND having its offices at 1400 Weiwaikum Road, Campbell River, in the Province of British Columbia

(the "BAND")

AND: THE DISTRICT OF CAMPBELL RIVER, a duly incorporated District Municipality having its offices at 301 St. Anns Road, Campbell River, in the Province of British Columbia

(the "DISTRICT")

WHEREAS:

A. The Band acquired, is entitled to and in lawful possession of certain lands within the District more particularly described as parcel identifier: 015-9005-985, Lot A, Section 17, Township 1, Comox District Plan 50189, comprising 165 acres more or less, and known as Homalco Indian Reserve Number 9 ("the RESERVE").

B. The Band intends to provide housing, community services and other amenities to its members resident on the Reserve.

C. There are no services at present situated on the Reserve or available to the Band within the Reserve and the Band desires to obtain such services as a domestic water system, a sewage disposal system, fire protection and prevention services.

D. The Band and the District wish to enter into an agreement in relation to the services referred to in Paragraph 2.1 hereof which agreement is to be executed in furtherance of the Municipal Agreement entered into by the parties on April 30, 1991.

NOW THEREFORE THIS AGREEMENT witnesses that in consideration of the premises, covenants and agreements hereinafter set out, the parties agree as follows:

1.0 DEFINITIONS

1.1 In this Agreement, including this section, the recitals and schedules hereto, unless the context otherwise requires:

"Band" means the Homalco Indian Band which is a band within the meaning of the Indian Act, R.S.C. 1985, C. I-5.

"Band Council" means the duly elected Homalco Indian Band Council within the meaning of the Indian Act R.S.C., 1985, C. I-5, and its duly authorized representatives, servants, employees, contractors, invitees or other such persons.

"Band Office" means that place designated by the Homalco Indian Band Council to be the office of the Band Council as set out in paragraph 12.8 herein.

"District" means the District of Campbell River, a District Municipality incorporated under and acting pursuant to the Municipal Act, R.S.B.C. 1979, c 290 and its duly authorized representatives, servants, employees, contractors, invitees or other such persons.

"Domestic water" means the water that is to be supplied by the District to the Band as part of the services to be provided under and by virtue of this agreement.

"Fire inspection" means a visual observation of a property or premises conducted by District Fire Services personnel for the purpose of determining compliance with the Fire Services Act RSBC c. 133 and Regulations thereto.

"Labour" means all work related to the construction, operation, repair and maintenance of the Homalco Indian Band's Reserve and Off Reserve Systems, including any labour surcharge, supervision, administrative costs ("costs") which costs on the Reserve are exempt from taxation (GST and PST) pursuant to section 87 of the Indian Act, R.S.C. 1985, c. I-5, and which costs off the Homalco Indian Reserve Number 9 are subject to the Excise Tax Act, S.C. 1990, c.45 ("GST") and the Social Services Tax Act, R.S.B.C. 1979, C.388 ("PST").

"Off Reserve Systems" means the water and sewage systems to be constructed, operated, repaired and maintained by and for the Homalco Indian Band as provided herein which systems are situate within the boundaries of the District of Campbell River but outside the boundaries of the Homalco Indian Reserve Number 9 being more particularly described in Schedule "A" which is attached hereto.

"Reserve" means the Homalco Indian Reserve Number 9 which is a reserve within the meaning of the Indian Act R.S.C. 1985, C.I-5, S.2.

"Repairs and Maintenance" means regular up-keep, cleaning, any and all incidental and necessary repairs, replacements, additions or deletions to the water and sewage systems, and the fire protection, inspection and prevention system which systems are to be constructed, operated, maintained and repaired as provided herein.

"Reserve Systems" means water and sewage systems to be constructed, operated, repaired and maintained by and for the Homalco Indian Band as provided herein which systems are situate within the boundaries of Homalco Indian Reserve Number 9 being more particularly described in Schedules "A" and "B" which are attached hereto.

"Service Connection" means that portion of the Reserve System which connects the service main to individual buildings, residential homes and other properties within the community on the Homalco Indian Reserve Number 9.

"Service Main" means that portion of the Reserve System piping which commonly services individual buildings, residential homes and other properties within the community on the Homalco Indian Reserve Number 9.

"Term" means the period of time during which this Agreement remains in force and effect.

1.2 Words otherwise used in this Agreement shall have the same meaning as contained in the Municipal Act, R.S.B.C. 1979, C. 290, S. 1 and the Indian Act, R.S.C. 1985, C. I-5, S. 2.

2.0 MUNICIPAL SERVICES TO BE PROVIDED BY THE DISTRICT

2.1. The District shall provide certain Municipal Services to the Reserve during the term of this Agreement; in particular, the District shall supply:

- (a) domestic water, including the repair and maintenance of a domestic water system, the fire hydrants and the booster pump station for the Reserve,
- (b) sanitary sewage collection and disposal, including the repair and maintenance of the sewage system and lift station,
- (c) fire protection, inspection, and all necessary, incidental and related fire prevention services,

("the services").

2.2 The quality and quantity of the services to be provided by the District on the Reserve shall be substantially the same as the quality and quantity of services provided by the District to all residents within the District.

2.3 The District shall accept all domestic sanitary sewage discharged from the Reserve under this Agreement and any other type of discharge from the Reserve or any dwelling or improvement on the Reserve shall require advance written approval of the Engineer in the employ of the District.

2.4 The District shall supply services described herein to those portions of the Reserve shown cross-hatched on the plan attached as Schedule "A" hereto.

2.5 Paragraph 2.1 shall not restrict or in any way preclude the parties from contracting for the provision of additional Municipal Services ("additional services") from time to time and the parties agree to enter into such further written agreements as shall be necessary for the provision of additional services to the Reserve which agreements shall be attached as an Addendum to this Agreement.

3.0 CONSTRUCTION AND SUPERVISION

3.1 The Band shall construct the Reserve and Off Reserve Systems ("the works") as described in Schedules "A" and "B" which are attached hereto and such construction shall meet the specifications of the District as provided in Subdivision By-Law Number 1340 as at

3.1 (cont'd)

the date of construction ("District Specifications").

3.2 The Band shall retain a Professional Engineer to supervise the construction of the works described in paragraph 3.1 hereof which Engineer shall certify to the District that such works have been constructed to District specifications which certification shall be delivered to the District's Municipal Engineer before such works shall be connected to the District's water and sanitary sewage systems, respectively.

3.3 The Reserve and Off Reserve Systems shall be constructed entirely by and at the expense of the Band.

4.0 REPAIRS AND MAINTENANCE

4.1 The District shall arrange for and provide any and all incidental and necessary repairs to and maintenance of the Reserve and Off Reserve Systems in a diligent and timely manner, including control over and supervision of all such repairs and maintenance.

4.2 The District shall ensure that the repairs and maintenance referred to in paragraph 4.1 hereof meet District specifications and the District shall provide a letter to the Band upon its verbal or written request of such assurance.

4.3 The District shall be responsible for repairs and maintenance of the mains of the Reserve System up to and including the service connections on the Reserve but shall not be responsible for the maintenance and repair of the service connection installed by the Band from the curb stop connections to any non-residential buildings, residential homes and other property on the Reserve to which the services are to be connected.

4.4 Subject to paragraph 4.3 hereof, the Band shall reimburse the District for any and all reasonable and necessary expenses incurred, whether for materials, equipment and labour in relation to the repairs and maintenance of the Reserve and Off Reserve Systems upon receipt of an invoice from the District.

4.5 The Band shall promptly notify the District by verbal or written notice of any interruption of or cessation in any of the services provided herein or of any breakdown requiring repairs and maintenance, and upon receipt of such notification, the District shall restore such services and or initiate any and all incidental and necessary repairs to and

4.5 (cont'd)

maintenance of such services in a timely and diligent manner.

5.0 PAYMENT FOR SERVICES

5.1 The Band shall pay the District for domestic water services at the metered water rate provided by Water Specified Area Rates and Regulation By-Law No. 1990 as amended from time to time for the quantity of water utilized on the Reserve for such purpose.

5.2 The Band shall pay the District for sanitary sewage services based on "Sanitary Sewer System User Fees By-Law Number 1697" as amended from time to time according to the quantity of water as measured by water meters installed with the Reserve Systems. No deduction shall be allowed on account of any waste of water.

5.3 The District shall notify the Band of any changes in rates (increases or decreases) or of any amendments to the By-Laws referred to in paragraph 5.1 and 5.2 hereof in a timely and diligent manner.

5.4 The District shall invoice the Band for its domestic water and sanitary sewage services on a monthly basis or on a more or less frequent basis as is its practice, and such invoice shall be payable by the Band in net 15 days.

5.5 A charge shall be due and payable by the Band in the event that the invoice referred to in paragraph 5.4 hereof is unpaid 35 days after the date of billing which charge shall be in the amount of 10% of the unpaid sum.

5.6 The Band shall pay the District \$90.00 for each residential unit and \$360.00 for each non-residential building for fire protection, inspection and prevention services each year during the term of this Agreement.

5.7 The Band shall advise the District no later than November 15th of each year of:

- (a) the number of residential units on the Reserve; and
- (b) any non-residential buildings on the Reserve.

5.8 For the calendar year 1993 and for each subsequent year thereafter, the annual fee for fire protection, inspection and prevention services set out herein shall be increased or decreased from the fee for the immediately preceding calendar year by a percentage equal to the percentage of the increase or decrease in the official Consumer Price Index for Canada (all items) published by Statistics Canada (1986=100) for the period January 1 to December 31 in the immediately preceding calendar year.

5.9 The District shall invoice the Band for fire protection, inspection and fire prevention services annually and such invoice shall be due and payable by the Band by January 31 of the current year.

6.0 OWNERSHIP OF RESERVE AND OFF RESERVE SYSTEMS

6.1 The Band shall have ownership of the Reserve and the Off Reserve Systems as described in Schedules "A" and "B" hereof and shall be responsible for all reasonable and necessary expenses incurred in relation to the repair and maintenance of such Systems.

6.2 The District shall dedicate that portion of the infrastructure of the Off Reserve water and sewage Systems for the exclusive use of the Band.

6.3 The District shall not utilize the Band's Reserve and Off Reserve Systems or establish any connection thereto without prior written consent of the Band.

6.4 In the event that the Band does provide the consent referred to in paragraph 6.3, the Band shall invoice the District for that use or connection in any manner specified by the Band, the costs of which shall be mutually agreed upon as at the date of use or establishment of the connection.

6.5 No interest in lands over which the Band's Reserve and Off Reserve Systems traverse or are otherwise situate shall be conveyed by either party pursuant to this Agreement.

7.0 ERICKSON ROAD REALIGNMENT

7.1 In the event that Erickson Road is realigned, abandoned or otherwise closed to traffic, the Band shall take such steps as are necessary to obtain a registered easement or statutory right of way on that portion of Erickson Road on which the Band's Off Reserve System traverses or is otherwise situate.

7.2 The cost of such easement or statutory right of way shall be entirely by and at the expense of the Band.

7.3 The District shall not unreasonably withhold its consent to the Band's acquisition of the easement or statutory right of way referred to in paragraph 7.1 and 7.2 hereof.

8.0 TERM, RENEWAL AND TERMINATION

8.1 The term shall be a period of twenty (20) years, commencing January 1, 1992 and terminating on December 31, 2012.

8.2 The parties may renew or extend the term if such renewal or extension is made in writing prior to December 31, 2012 otherwise this Agreement shall expire absolutely on December 31, 2012.

9.0 DEFAULT OR NON-PERFORMANCE

9.1 In the event that either party ("the defaulting party") is in breach of, defaults or otherwise fails to perform or observe any of the covenants or obligations ("the breach") set out herein, the innocent party may deliver written notice of such breach to the defaulting party.

9.2 In the event that the defaulting party does not cure or otherwise perfect the breach and upon the expiry of sixty (60) days from the date of the written notice referred to in paragraph 9.1 hereof, the innocent party may terminate this Agreement and upon such termination, such party shall be released of any and all duties or obligations in relation to this Agreement.

10.0 DISPUTES

10.1 In the interest of co-operation and harmonious co-existence, the parties agree to use their best efforts to avoid any conflict and to settle any disputes arising from or in relation to this Agreement.

10.2 In the event that the parties fail to resolve matters as described in paragraph 10.1 hereof, the parties shall seek a settlement of the conflict by utilizing an alternative dispute resolution method, mediation or arbitration and recourse to the Courts shall be a means of last resort.

11.0 LIABILITY

11.1 The District does not warrant or guarantee any of the Services to the Band under this agreement, which are beyond the reasonable control of the District, including including without limitation by enumeration, such events as acts of Gods, forces of nature, soil erosion, landslides, lightning, washouts, floods, storms, serious accidental damage, strikes or lockouts, vandalism, negligence in the design and supervision or construction of the Services, or in the manufacture of any materials used therein, and other such circumstances.

11.1 (A) The Band hereby releases and indemnifies the District, its servants, agents, contractors and employees from and against all manner of suits, claims, demands and causes of action arising out of or in connection with the provision of services under this Agreement including the construction, operation, repairs to and maintenance of such services provided, however, that such release and indemnity shall not apply in any case where the District, its servants, agents, contractors, employees, invitees or other such parties have been negligent, have behaved in a manner which amounts to wilful misconduct or have otherwise acted unlawfully.

11.2 The Band shall provide a certified copy to the District of its comprehensive all-risk liability insurance policy for a combined limit of no less than \$2,000,000.00 which policy shall protect the District against any action, suit or claim for bodily or personal injury or property damage arising out of the construction, use, operation, repair and maintenance of the Reserve and Off Reserve Systems subject to the proviso contained in paragraph 11.1 hereof which policy is attached hereto as Schedule "C".

11.3 The policy referred to in paragraph 11.2 hereof shall name the District as an "additional named insured" and shall be underwritten with an insurer licensed in Canada which insurer must be acceptable to the District, such acceptance not to be unreasonably withheld.

11.4 The Band shall carry a provision in the insurance policy referred to in paragraph 11.2 and 11.3 hereof that such policy may not lapse or be cancelled without thirty (30) days notice being given to the District.

11.5 The District may require the Band to obtain further or better insurance against those risks to be borne by the Band in excess of \$2,000,000.00 and the Band shall provide evidence of such additional coverage to the District on such occasion provided however that such request for additional coverage shall be reasonable and/or necessary.

12.0 MISCELLANEOUS PROVISIONS

12.1 Whenever the singular or masculine or neuter are used in this Agreement, the same shall be construed as meaning the plural or feminine or body corporate or vice versa where the context so requires.

12.2 The headings of the subsections of this Agreement are inserted for the convenience of reference only and shall not affect the construction or interpretation of this Agreement in any way.

12.3 No waiver by or on behalf of a party of any breach of a provision of this Agreement shall be binding upon that party unless it is expressed in writing and duly executed by the party and such a waiver shall not operate as a waiver of any future breach, whether of a like or different character.

12.4 The parties shall from time to time and at all times do all such further acts and execute and deliver all such further deeds and documents in a timely and diligent manner as shall reasonably be required to fully perform and carry out the terms of this Agreement.

12.5 The parties have expressed their entire understanding and agreement concerning the subject matter of this Agreement and no implied covenant, condition, term or reservation shall be read into this Agreement relating to or concerning such subject matter.

12.6 In the event any term or provision of this Agreement or the Schedules attached hereto is illegal or invalid for any reason whatsoever as determined by a competent court of law, such term or provision shall be severable and the same shall not affect the validity of the remainder of this Agreement and the Schedules attached hereto.

12.7 The parties shall forthwith upon discovery of the illegality or invalidity referred to in paragraph 12.6 hereof either negotiate diligently and in good faith the term or provision to render it legal and valid having regard to its spirit and intent or alter their performance under the term or provision having regard to its spirit and intent to avoid the illegality or invalidity.

12.8 All notices and reports given under this Agreement save and except any verbal notice give under paragraph 4.5 hereof shall be made in writing and may be served personally or by telegram, telex or other telecommunication device or by registered mail or by bonded courier to the parties at the following addresses:

The Homalco Indian Band
1400 Weiwaikum Road
Campbell River, British Columbia
V9W 5W8
ATTENTION: BAND ADMINISTRATOR

THE DISTRICT OF CAMPBELL RIVER
301 St. Ann's Road
Campbell River, British Columbia
V9W 4C7
ATTENTION: MUNICIPAL CLERK

12.9 The parties agree that the Band Council has legal capacity to contract and to sue and each party is estopped from alleging in any legal proceeding arising from or in relation to this Agreement that the Band Council lacks such legal capacity.

12.10 This Agreement shall not be assigned by either party unless the parties obtain prior written consent to such assignment.

12.11 This Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the Execution Date.

SIGNED, SEALED and DELIVERED
on behalf of the Homalco
Indian Band Council in the
presence of:

Witness

Address

Occupation

Chief

Councillor

Councillor

Councillor

THE COMMON SEAL OF THE
DISTRICT OF CAMPBELL RIVER
was affixed hereunto in
the presence of:

Witness

Address

Occupation

Authorized Signatory

Authorized Signatory

CLERK