Towards a Model Local Government Service Agreement with Lower Mainland First Nations

A Discussion Paper Prepared by the
LMTAC Technical and Strategic Working Group (TSWG)

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LOWER MAINLAND TREATY ADVISORY COMMITTEE

Lower Mainland Treaty Advisory Committee

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EXECUTIVE SUMMARY

The development of guiding principles, as well as a model for local government service agreements with area First Nations in the Lower Mainland, was recommended by the GVRD Regional Administrative Advisory Committee at its joint workshop on governance with the Lower Mainland Treaty Advisory Committee (LMTAC) in October 2005. However, it must be emphasized that this paper does not address regional governance; nor does this paper reconcile service agreement discussions between First Nations and the GVRD. Instead, this paper is intended to add to future discussions on those two important issues.

The guiding principles presented in this document were developed from discussions held by LMTAC's Technical and Strategic Working Group and previous policy work undertaken by LMTAC. For ease of reference, these are grouped under one or more of the following categories: financial; technical and operational; land use compliance; service levels; local and community interests; regional interests; rights of way; taxation and future expansion of regional facilities. These categories reflect the broad interests that local governments may wish to address when entering into service agreement discussions with area First Nations. Relationship-building initiatives in advance of service agreement negotiations are also emphasized as leading to successful contracts between parties.

The elements of a service agreement outlined in this paper are adapted from the Federation of Canadian Municipalities' (FCM) *Land Management Project* and the Government of Manitoba's *Reference Manual for Municipal Development and Service Agreements*, as well as a review of existing literature and service agreements throughout British Columbia. Featured throughout this document are servicing agreement provisions excerpted from the most current examples and those that most closely match the FCM guidelines. Please refer to Section F (Attachments) of this paper for a complete inventory of service agreements and reference materials used.

Each of the principles and contract provisions discussed in this paper are important elements for local governments to consider in service agreement contracts with First Nations. According to the literature and review conducted for the development of this paper, it is reported that there have been relatively few problems in a long history of service relationships between local governments and First Nations. This history of satisfactory service relationships needs to be continued and is even more likely to be important in the future as First Nation lands – entailing both Reserves and future Treaty Settlement Lands – are developed and expanded. However, if problems do arise, contract deficiencies could have serious consequences and potentially make it more difficult to continue mutually beneficial relationships into the future. The principles and provisions contained in this paper can be considered for inclusion in future negotiations and contracts, thus increasing the possibility of consistent service agreements across the region.

DISCLAIMERS

This discussion paper refers to both individual service agreement provisions and complete service agreements from communities across British Columbia. While these examples are intended to offer guidance on how various issues may be addressed in a service agreement, they will not be appropriate for every agreement. For example, some provisions may be more appropriate for urban service areas, while others may be most applicable in a rural setting. As well, the elements and clauses presented in this paper derive from existing service agreements, pre-treaty; post-treaty situations, as they relate to Treaty Settlement Land, are not available.

Consideration must also be given to the fact that service agreements are also context-sensitive. For example, some service agreements may utilize a Reserve-wide approach; whereas other service agreements may be for large-scale but single developments. There will definitely be different dynamics in negotiations with respect to large versus small developments. As well, the negotiation dynamics will be different if the negotiations pertain to a new service agreement versus renegotiation of an existing service agreement. This paper tries to capture various situations as they exist, so each servicing agreement example must be analyzed with respect to its own unique context and situation (e.g. scale of area to be serviced and relationships that exist among the parties, local government and the First Nation). In addition, as service agreements must be negotiated, no provision can be included within the service agreement without the agreement of both parties.

In addition to the above, equally important is for local governments to recognize that service agreements should be negotiated with the assistance of legal counsel. If a local government wishes to negotiate an agreement without the assistance of legal counsel, then it is recommended that, at a minimum, it should have the agreement reviewed by legal counsel prior to its execution. In the event that any jurisdictional questions arise, it would be prudent to contact the appropriate provincial and federal government agencies.

A. PURPOSE

In order to fulfill a GVRD Board of Directors' request for discussion on four proposed models for First Nations and Regional Governance, the GVRD's Regional Administrative Advisory Committee (RAAC) held both a Special Meeting as well as a Joint Workshop with the Lower Mainland Treaty Advisory Committee (LMTAC). As a result of these discussions, it was determined that consideration of the proposed governance models may be premature at this time. The development of local government principles as well as a regional template for local government service agreements with area First Nations in the Lower Mainland that address both immediate and future needs and pre-treaty bilateral agreements was recommended.

Therefore, the intent and purpose of this paper is to provide the guiding principles and model local government service agreement with First Nations for review and discussion.

B. BACKGROUND

RAAC's Recommendation

At a Special Meeting on October 19, 2005 and Joint Workshop with LMTAC on October 26, 2005, RAAC members considered and discussed the following four governance models proposed by the GVRD Board in April 2005: (1) First Nations joining the existing Electoral Area 'A'; (2) the creation of a Special First Nations' Electoral Area; (3) individual Electoral Areas for each treaty First Nation; and (4) full municipal membership on the GVRD Board.

The following provides a brief summary of the discussions:

- The four governance models proposed by the GVRD may be too rigid and may serve to "lock in" local governments to one approach. A phased-in or evolutionary approach is preferred.
- Pre-treaty bilateral agreements between the Federal or Provincial governments with First Nations give rise to a disincentive to reach treaty settlements.
- Service agreements are a good way of establishing local government-First Nation relationships and may provide leverage for local governments in terms of a global (i.e. both "hard" and "soft") services approach.
- A common template does not currently exist for servicing agreements between local governments and First Nations but is needed and useful to have so that local governments (municipal and regional district) have a common and consistent approach to service provision.
- Local governments have a collective strength at the regional level. The focus should be on developing principles for servicing which will ultimately lead to the development of a new and better governance model that will address issues over a long period of time.

As a result of the discussions, it was recommended:

That RAAC direct LMTAC and GVRD staff to develop principles and a template for local government servicing agreements with area First Nations that will address both immediate and future needs, with consideration to pre-treaty bilateral agreements, and report back to RAAC prior to presenting to the GVRD Board and LMTAC.

First Nation-Local Government Service Agreements

In BC today, many First Nations are putting greater energy into exploring land use development opportunities that will generate economic growth and better meet the needs of their communities. In addition, ongoing Federal legislative and policy changes are increasing the land management powers of many Indian Band governments.

In light of First Nations being delegated greater land management and governance authorities[1], land development activities are accelerating on Indian Reserves and other First Nation lands. The demand for municipal services by First Nations will likely increase as will the need for more agreements/contracts covering a greater number of services. Experience shows that land use and servicing have been some of the most challenging issues in the relationships between neighbouring First Nations and local governments over time. Another reason to support well developed servicing agreements is that while municipal zoning bylaws do not apply to Federal Indian Reserve lands, contract law applies and is enforceable.

Despite the potential challenges, an October 2005 consultant's report – *Treaty Settlement Land: The Fiscal Impacts on Local Governments* – commissioned by the Province and Union of BC Municipalities (UBCM), concludes that service agreements are the best way for local governments to build positive relations with First Nations regarding final treaty agreements.

A workshop by UBCM a few years ago titled *Developing Good Neighbour Relations II* (2004) concluded that cooperative working relationships between First Nations and local governments are an area of huge potential benefit to both parties, yet are relatively untapped, untouched and un-chartered. This is an area that many more local governments and First Nations world explore if only they could establish a collaborative atmosphere to support such an undertaking. Often a brand new relationship must be established; one that involves a departure from the isolation that may have characterized their communities in the past. To be successful, long-term working relations between First Nations and local governments require attention to skill building at both the political and administrative levels. Dialogue cannot be limited to the political level if relationships are going to be strengthened. Practitioners need to be involved to make the relationships work better and effectively address some of the barriers between local governments and First Nations.

What are Service Agreements?

Service agreements are contractual arrangements between Indian Bands and local governments for the provision of services. Agreements typically set out the list of services subject to the agreement, timelines for review, costing/valuation formulas, and termination provisions. The focus of most service agreements is on hard services (e.g. water, sewer, fire protection), rather than soft or regional services such as libraries, recreation centres, growth management or air quality management.

In the Lower Mainland, where current Indian reserves are located near or adjacent to incorporated municipalities, Indian Band administrations have worked to develop agreements with local

[1] For example, recent Federal acts intended to enable increased development on Indian Reserves include: the First Nation Commercial and Industrial Development Act (FNCIDA), the First Nation Fiscal and Statistical Management Act (FNFSMA), and the First Nation Oil and Gas Act and Money Management Act (FNOGMMA).

governments for the delivery of hard and soft services that are often not cost effective for the Aboriginal community to self-deliver. The contractual relationships between Indian Bands and local governments for the provision of services are primarily with municipal governments, instead of the regional districts. For example, the GVRD does not currently provide any direct services to Indian Bands. Under its *Policy Guidelines on the Provision of Water and Sewer Services Outside Municipal Service Areas* (July 1996), requests for utility services on Indian reserves are considered by the applicable member of the Greater Vancouver Sewerage and Drainage District (GVS&DD) for sewerage or the Greater Vancouver Water District (GVWD) for water. In such cases, the GVS&DD member processes and considers the applications and informs the GVRD of its decision(s).

How do First Nations Enter Into Service Agreements?

"Indians and land reserved for Indians" is the subject of Federal jurisdiction under Section 91(24) of the *Constitution Act, 1867*. The Federal *Indian Act* does not explicitly provide the authority for Indian Bands to enter into service agreements. However, Indian and Northern Affairs Canada encourages Indian Bands, as a matter of policy, to enter into agreements with local governments for services.

Neither the Federal Minister of Indian Affairs, nor his appointed delegates, is required to be signatory to service agreements with local government. Servicing agreement negotiations are typically initiated and concluded directly between the Indian Band and local government. Indian and Northern Affairs Canada may, however, provide First Nations with financial support for operations and maintenance of infrastructure subject to the agreements.

What are Local Government Concerns and Interests?

Once treaties are signed and First Nation Treaty Settlement Lands are removed from the municipal boundaries, First Nations will have the opportunity to negotiate and obtain services directly from the Regional District. The process in which this occurs will also be determined by how the First Nation Government decides to participate in regional governance structures post-treaty. A potential outcome may be that while some treaty First Nations can negotiate for services directly with the regional District, non-treaty First Nations will continue to obtain these services through a municipality. Some local government practitioners will argue that once municipal services are provided, it is difficult to discontinue them in the future. The common law obligation is that "reasonable" notice is required, and that reasonable depends on the time it would take and the capacity of the First Nation to provide a reasonable alternative. Both of these local government concerns must be taken into consideration along with the following list of concerns identified in this paper.

Concerns

The following local government concerns with service agreements have been identified by LMTAC both in its Briefing Note (January 2005) and discussion paper, titled *Backgrounder Discussion paper, Services, Service Agreements and Treaty Negotiations* (August 2001):

Coordinated Land Use Planning and Management

Municipal infrastructure is designed to meet long term development forecasts. For this reason, any unforeseen development pressures or land uses can have a significantly negative impact on local and regional service delivery.

Non-payment for Services Rendered
All existing and future service agreements must be respected to ensure local governments receive financial contributions from all users of local government programs, services and infrastructure. Local governments need to ensure that service agreements provide security provisions and default mechanisms.

Treaty Transition
First Nations involved in the treaty process need to clarify if renegotiation of existing service arrangements with local governments will be necessary post-treaty, and whether transition language is needed in the treaty.

Increased Operating Costs, Capital Upgrading Costs and Capacity
Unanticipated development of lands that are transferred for treaty settlements may place a strain upon the transportation corridors and service infrastructure of adjacent municipalities, resulting in increased maintenance, upgrading and/or capacity costs.

Non-Member Representation
In the Lower Mainland, there will likely be a significant population or majority of non-Aboriginal residents living on future Treaty Settlement Lands – residents who seek a voice in how community services are provided – and it is unclear how these residents will be represented within First Nation governments.

Interests

Local government interests, as identified by LMTAC, include *First Principle* #35: "All existing and future service agreements must be honoured to ensure local governments receive financial contributions from all users of local government programs, services and infrastructure."

Further, LMTAC's *Backgrounder Discussion paper, Services, Service Agreements and Treaty Negotiations* (August 2001) states:

> *Where programs, services and/or infrastructure are provided by Local Government, and are used by and benefit residents outside the tax base for that Local Government, a mechanism for fair contribution to those services needs to be in place. This is of particular importance to Lower Mainland area Local Governments since First Nations in urban areas are more likely to rely on the hard and soft services of neighbouring municipalities.*
>
> *Local governments should be compensated for any loss of infrastructure and investments made in Local Governments' lands and assets as a result of treaty settlements.*

During discussions with GVRD RAAC members at its meeting of April 5, 2006, the following additional policy guidelines were identified:

- That the provisions of sewer services is contingent upon prior regional district approval; and
- That the regional district's mandate is to enforce its source control bylaws in order to protect the sewerage system. Therefore, any service agreement with First Nations will require access for bylaw inspections on First Nations' lands and clearly established references to prosecution resulting from source control bylaw violations.

RAAC members also proposed that the following guidelines be considered as policy:

- That municipal governments refrain from negotiating any new service agreements without references to regional issues
- That the regional district not enter into service agreements without existing service agreements at the municipal/local level.

Important Steps in the Process of Developing an Agreement

At the UBCM workshop in October 2004, participants were asked to identify important steps in the process of developing an agreement. The discussion occurred in the context of a hypothetical scenario involving a municipality and an adjacent First Nation in which the two councils wanted to reach an agreement on either economic development or fire protection service provision. (It must be acknowledged, however, that there may be two types of servicing agreements required: one for First Nation lands for Band-member housing and another for First Nation lands where there is commercial development and residences for non-members.) The findings from the UBCM workshop discussion can be summarized as follows:

Create a Supportive Atmosphere and Relationship

- Don't rush, take it slow; be sensitive to meeting locations.
- Develop personal relationships based on trust.
- Establish a government-to-government relationship and acknowledge historical relations or lack thereof.
- Work on creating an atmosphere that supports open communications and opens up dialogue with the broader community (i.e. business interests) and ensure that people of influence become involved.

Ensure Commitment

- Establish a clear, shared understanding of what both communities want to achieve. Identify common interests and explore benefits to each community.
- Work toward articulating a common vision expressed in an operating protocol.

Educate and Inform Internally and Externally

- Develop an understanding of each community's values, philosophy, culture, history, processes and plans.
- Ensure each community understands the goals of the project.
- Develop a complete understanding of one another's roles, responsibilities, authority and capacity. One possibility would be to utilize open houses (open to everyone – not just politicians and staff) within each community: who we are, what we do, who does what?

Develop Capacity
- Identify existing resources and who can contribute what.
- Make presentations on existing economic development plans; focus on what each group sees as important, strengths they bring to the process, capacity, and internal and external resources.
- Pair individuals of similar function from both governments so that they can begin to converse together.

Gather Important Information
- Ascertain what information is required to conclude an agreement.
- Research other service agreements/models from communities of similar size.

Develop a Workplan
- Identify key political players, administrative and technical staff from the First Nation and municipality; form a working group of non-political administrative and technical staff.
- Undertake mutual site visits to all of the lands under consideration.
- Develop an action plan with community consultation that includes: (1) issue identification; (2) presentation of the draft plan; and (3) ratification of the final strategy.
- Prepare a budget and identify sources of funding; consider cost sharing.

The recommended items for inclusion in local government service provision agreements are discussed and summarized in Section D of this paper.

The next section of this paper will focus on the development of guiding principles for local governments entering into service agreements with First Nations.

C. DEVELOPMENT OF GUIDING PRINCIPLES

The purpose of developing guiding principles for a servicing agreement is to offer guidance to LMTAC members in the negotiation of a service agreement. These are principles that serve the greater community interest, and should be referenced by local governments throughout discussions with First Nations. Their development draws from comments provided by staff from Lower Mainland local governments, as well as previous LMTAC and GVRD policy documents. These LMTAC and GVRD documents include:

<u>LMTAC Documents</u>
- the revised November 2005 version of LMTAC's *Considerations* paper; *Dispute Resolution Models and Land Use – Backgrounder to First Principle #30;*
- *Servicing Interests and Treaty Negotiations – Background Briefing Note to LMTAC First Principle #35*;

<u>GVRD Documents</u>
- *GVRD Principles for Treaty Negotiations; Policy Guidelines on the Provision of Water and Sewer Services Outside Municipal Service Area (1996);*
- and a report issued April 2004 entitled *Communication of Procedures for Evaluating Requests for Extensions to the Greater Vancouver Sewer and Drainage District Sewerage Area.*

Input from Lower Mainland municipal staff was provided through the participation of RAAC members at the October 26, 2005 Governance Workshop and ongoing feedback received from members of LMTAC's Technical and Strategic Working Group during regular meetings held in November and December 2005, and February 2006.

The following principles are applicable to many of the provisions and/or sections of a service agreement (Attachment 1). The intent of providing these principles is to assist local governments with the successful completion of a service agreement; meaning the agreement is mutually acceptable and meets the interests of both negotiating parties. Discretion is left to the individual jurisdictions to determine whether or not such principles should be embedded within the actual servicing agreement, therefore addressing local government interests within a legal document. The principles can be grouped under one or more of the following criteria that Regional District staff use to evaluate applications/requests for service extensions:

a) Financial
b) Technical and Operational
c) Land Use Compliance
d) Service Levels
e) Local and Community Interests
f) Regional Interests
g) Rights-of-Way
h) Taxation
i) Future Expansion of Regional Facilities

These principles reflect the broad interests that local governments may wish to address when entering into service agreement discussions with a First Nation.

a) Financial

Cost effectiveness: In the delivery of municipal services and infrastructure, economies of scale bestow benefits upon both the First Nation and the local government.

Cost-recovery for services: Costs need to be clearly outlined in the agreement, and perceived by each party as 'fair.' Since costs also need to be predictable, a mutually accepted valuation formula should be used that addresses increased maintenance and capital replacement costs, infrastructure replacement and capacity.

Dispute resolution: A dispute resolution mechanism/process must be accessible to local governments and First Nations. Agreements should include well-defined exit provisions and conditions so that an unfavourable agreement can be terminated if necessary.

b) Technical and Operational (and Financial)

Certainty: In the interests of protecting financial stability and municipal infrastructure, service agreements must clearly layout the fiscal and technical aspects of service delivery.

c) Land Use Compliance

Coordinated land use and planning: Municipal infrastructure is designed to meet long term development forecasts. For this reason, any unforeseen development pressures or land uses can have a significantly negative impact on local and regional service delivery.

d) Service Levels

Regional servicing standards: Neighbouring local government and First Nation jurisdictions agree to provide infrastructure that meets acceptable health and operational standards for residents and does not compromise the total infrastructure system. With respect to regional sewer services, the regional district must be able to act on its mandate to enforce its source control bylaws in order to protect the sewerage system and the receiving environment.

Global servicing approach to be encouraged: First Nations are encouraged to subscribe to both core and other municipal and/or regional district services. The definition of 'global services' may vary between jurisdictions, but can be expected to include both 'hard' and 'soft' services.

e) Local and Community Interests

Building intergovernmental relations: It is desirable for all parties that the agreement fosters positive intergovernmental relations. Parties may also find it advantageous to initiate positive intergovernmental relations through the development of a protocol agreement or memorandum of understanding in advance of completing a service agreement.

Partnership/Cooperation: Service agreements should lead to First Nation participation in, or partnerships with, local governments for more effective and efficient delivery of programs and services.

Collaboration: Much can be achieved through both parties working together towards their goals. Numerous benefits can emerge from local government – First Nation collaboration, including accelerated economic development and increased infrastructure grants.

Coordination of cross-boundary services: Infrastructure and programs that serve a jurisdictional boundary area (i.e. boundary roads, emergency services) need to be coordinated to ensure the safe and seamless operation of municipal services between boundaries.

f) Regional Interests (and Local and Community Interests)

Contribution towards community/regional costs of development: More often that not, development impacts adjacent jurisdictions. First Nation land development may place pressure on off-reserve/TSL infrastructure and services. This must be acknowledged through First Nation contribution to off-reserve/TSL capital infrastructure investments.

Sustainability: Both parties to an agreement should embrace the principles of sustainability and adherence to the *Regional Growth Strategy* to ensure a thriving natural, social, and economic environment for future generations.

Integration of First Nations into regional initiatives: The non-participation of one community can undermine the efficacy of the entire regional program, particularly for issues such as regional growth planning, air quality control and solid waste management. This principle emphasizes the importance of the various interconnections between urban communities in the Lower Mainland area.

The remaining criteria derive from discussions held by the LMTAC Technical and Strategic Working Group.

g) Rights-Of-Way

Access to local government lands and assets located on First Nation land: There must be continued access (via land, water or air) to local government lands and assets on, between or adjacent to First Nation lands as well as to privately held and leased lands on, between or adjacent to First Nation lands for the purposes of, but not limited to, infrastructure development, maintenance, and access to First Nation lands for bylaw inspections regarding regional sewerage systems.

h) Taxation

No taxation of local government property or assets: First Nation governments participating in intergovernmental and/or regional governance structures, pre- or post-treaty, must comply with existing practice whereby local government jurisdictions will not assess each other property taxes on utilities and related infrastructure, nor the lands or rights-of-way on which they are located.

i) Future Expansion of Regional Facilities

Local government consultation in bilateral agreements: In the spirit of good intergovernmental relations, local government should be consulted when a First Nation enters bilateral discussions with federal or provincial governments. Local governments must be consulted when those discussions will impact the provision of services to the First Nation by local government.

D. TOWARDS A MODEL LOCAL GOVERNMENT SERVICE AGREEMENT

Examples of Service Provision Agreements

After a request for services has been communicated to the municipality, the First Nation and local government officials will begin negotiations regarding the provision of services. The purpose of the negotiations is to establish a municipal service agreement that will outline the payment schedule, the services to be provided, access rights, etc.

The elements of a service agreement are outlined in the next section of this paper and are adapted from the Federation of Canadian Municipalities' (FCM) *Land Management Project* and a *Reference*

Manual for Municipal Development and Service Agreements - Government of Manitoba (see also Attachment 2 for a listing of Municipal Service Agreement Provisions) as well as a review of existing literature and service agreements throughout British Columbia.

The most recent service agreements reviewed, and regarded by the authors of this paper as the most pertinent with respect to FCM's recommended service agreement components, are featured as Attachments in this paper. These four agreements include:

- Campbell River First Nations and the City of Campbell River. *Leaseholder Service Agreement.* Campbell River, BC. January 2005 (Attachment 3).
- City of Chilliwack. *Services Agreement* (template for an agreement). Chilliwack, BC., 2005 (Attachment 4).
- Corporation of the City of Coquitlam and the Kwikwetlem First Nation. *Service Agreement.* Coquitlam, BC. April 2005 (Attachment 5).
- Tsleil Waututh Nation (Burrard Indian Band) and District of North Vancouver. *Reserve Servicing Agreement.* North Vancouver, BC. May 2005 (Attachment 6).

A brief comparative summary of these agreements is featured in the matrix on the next page. All service agreements reviewed by the authors are listed in the Attachment section of this paper, under Bibliography (Attachment 7). Copies of all service agreements reviewed and listed in this paper are available from the LMTAC and GVRD offices. Additional Reference material also appears in Attachment 8 of this paper.

A Comparative Summary of the Service Agreements Featured in this Document

Service Agreement	Type of development serviced	Term of Agreement	Charge for Services	Treaty Status of First Nation
Leaseholder Service Agreement – Campbell River First Nations and City of Campbell River, 2005	A comprehensive leaseholder service agreement for a commercial development on Band lands.	5 years	Percentage of the property taxes that would be paid to the city, if the Band was subject to municipal taxes.	The Campbell River Indian Band is a member of the *Laich-Kwil-Tach K'omoks Tlowitsis Council of Chiefs*, currently in stage 4 of the BC treaty process
Service Agreement – City of Coquitlam and Kwikwetlem First Nation, April 1st, 2005	A service agreement for the provision of water, sanitary sewer and fire protection to the residents of Coquitlam Indian Reserve No. 1, with an on reserve population of 26 residents.	5 years	The commercial rate for metered supply of water, or the residential rate for metered supply of water if the bylaws are amended to establish a residential metered rate. For sewer, the charge applicable based on volume of water delivered on a metered rate basis. For fire protection, an amount equivalent to the average cost per residential property in Coquitlam for fire protection services multiplied by the number of Band residences being served.	Kwikwetlem First Nation is not in the treaty process. They had expressed an interest to enter it, but were informed by the BC Treaty Commission that their population was too small and were advised to participate through another First Nation.
City of Chilliwack. Services Agreement (template for an agreement). Chilliwack, BC., 2005	Not applicable.	1 year, with an automatic renewal provision. As it is only a template, agreements based on the template may have a longer term.	Percentage of the property taxes that would be paid to the city, if the Band was subject to municipal taxes.	Not applicable. This is a template agreement, although agreements based upon this template may be with First Nations in the treaty process

Service Agreement	Type of development serviced	Term of Agreement	Charge for Services	Treaty Status of First Nation
Reserve Servicing Agreement – Tsleil 'Waututh Nation and District of North Vancouver, May 31st, 2005	A comprehensive service agreement for Burrard Inlet Indian Reserve No. 3, with an on reserve population of 1,203 residents.	5 years	The First Nation pays a dollar amount specified in the service agreement. The specified amount is adjusted accordingly to reflect changes in the municipal tax rate and increases with the number of units serviced.	The Tsleil 'Waututh Nation is currently at stage 4 of the BC Treaty Process

Elements of a Model Local Government Service Agreement

This section features the FCM recommended elements of a model municipal (or local government) service agreement, according to general headings and terms (see also Attachment 2). Included are the definitions for each term and, where necessary, specific clauses from existing agreements that may be considered as good examples. All service agreement examples utilized are referenced after each clause.

While the service agreements referred to in this document are generally considered as good pre-treaty (or short-term) examples (i.e. Indian Reserves), they can also be applied to a post-treaty (or long-term) environment (i.e. Treaty Settlement Lands). Wherever possible, the authors have suggested specific language for use with respect to Treaty Settlement Lands. Similarly, the term "local governments" when used in this document can refer to either municipalities and/or regional districts.

The service agreement provisions and clauses are grouped under the following headings:

General Terms:	Clauses 1-13
Customary Provisions:	Clauses 14-16
Services:	Clauses 17-25
Additional Recommended Provisions:	Clauses 26-32

General Terms

There are a number of general terms that appear in all servicing agreements. These include:

1. Effective Date

This term refers to when the service agreement will be dated for reference and usually appears at the very top of the first page of the agreement as such:

> *THIS AGREEMENT made as of the _____ day of _____, 200_.*
> (Source: City of Chilliwack. *Services Agreement* (template for an agreement). Chilliwack, BC., 2005)

2. Parties to the Agreement

This term is used to provide a description of the parties and their authority to enter into the agreement (including Acts, Bylaws, Resolutions, etc.). An example of this provision follows:

> *BETWEEN:*
>
> *"First Nation"*
> *(Address)*
> *(hereinafter called the "First Nation")*
>
> *OF THE FIRST PART*
> *AND:*
>
> *City of _____*
> *(Street Number and Address)*
> *(City, British Columbia, Postal Code)*
> *(hereinafter called the "City")*
>
> *OF THE SECOND PART*
> (Source: City of Chilliwack. *Services Agreement* (template for an agreement). Chilliwack, BC., 2005)

Another example using a more descriptive approach follows:

> *BETWEEN:*
>
> *THE CORPORATION OF THE CITY OF _____, a municipality incorporated pursuant to the Local Government Act, having its offices at (Street Number and Address), (City), British Columbia, (Postal Code).*
>
> *(the "City")*
>
> *AND:*
>
> *THE _____ FIRST NATION, being a band pursuant to the Indian Act, represented by its Chief and Council, and having an office at (Street Number and Address), (City), British Columbia, (Postal Code).*
>
> *(the "Band")*
> (Source: Corporation of the City of Coquitlam and the Kwikwetlem First Nation. *Service Agreement*. Coquitlam, BC. April 2005)

3. Preamble / Background Information

A Preamble or Background Information section describes the circumstances that led to the agreement and outlines the purpose of the agreement, in general terms. As an example, the Preamble/Background section could include the following points:

WHEREAS:

A. Her Majesty the Queen in Right of Canada holds legal title to _____ Indian Reserve No. ___ lands (the "Band lands"). The Band Lands have been set apart for use and benefit of the Band, pursuant to the Indian Act;

B. The parties wish to enter into a services agreement to provide for the delivery of certain services by the City to the lands during the term of this Agreement.

C. Pursuant to Section 8 of the Community Charter the City may enter into agreements to provide services to lands;

D. The Band Council of the Band has authorized the execution of this Agreement on behalf of the Band by a Band Council Resolution duly passed at a meeting of the Band Council held on the __th day of _____, 2006, a copy of which is attached hereto as Schedule ___.

NOW THEREFORE THIS AGREEMENT witnesses that for and in consideration of the promises and agreements contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto covenant and agree with each other as follows:

(Source: Corporation of the City of Coquitlam and the Kwikwetlem First Nation. *Service Agreement*. Coquitlam, BC. April 2005)

Once the Preamble/Background section is presented, additional General Terms of the service agreement will then follow.

4. Description of Land

A service agreement should identify the accurate legal description of the land to which the agreement relates. The Description of Land could be included in the Preamble section or incorporated into the body of the agreement. In addition, a legal map of the land, which is the subject of the service requirement, could be incorporated within the agreement as an Appendix or Schedule.

By including an official plan, prepared by the First Nation, as an attachment to the agreement it ensures that services are only provided for the uses negotiated and requires that any new developments or increased service demands be addressed by subsequent negotiations. For example, an effective working relationship between the parties would include dialogue relative to long term build out and stated within the agreement so that there is a limit on service levels contemplated within the duration of the agreement. If the uses or development change then the parties would negotiate an addendum to the existing agreement or negotiate a new agreement.

Parties may also contemplate that any lands currently designated in the Agricultural Land Reserve (ALR) may be subject to servicing in the future should the designation change. As ALR designation

is a matter controlled by the Agricultural Land Commission (ALC) and not the municipality it may be prudent to look at estimated servicing needs in the event of an ALR exclusion to determine whether such changes could be addressed in the current service agreement or as part of a future agreement.

5. Intent of the Agreement

This section identifies a statement(s) of intent from both parties to the service agreement. Some suggested wording for this clause could include the following:

> *The parties agree that the coordination arrangements for the service agreement will be enhanced through the establishment of appropriate intergovernmental planning and coordination.*

6. Definition of Terms

For greater clarity, it is recommended that an agreement contain a separate section that defines important legal terms in the agreement. Such definitions must be clear and consistent with the use of the term throughout the contract. Examples of terms that are often clarified include "Reserve", "leasehold lands", "services", (i.e. a list of the specific services to be supplied may be included here), and details on certain service structures, such as a "Reserve sewage system."

7. Termination Date

Service agreements will typically establish the date when the contract will no longer be effective. Example wording in a contract could include:

> *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.*
> (Source: Homalco Indian Band Council and the District of Campbell River. *Agreement*. Campbell River, BC. May 1992.)

Unintended challenges may arise if provisions related to the termination of the contract are merged into this section. Typical difficulties include a lack of a specific protocol each party must follow when terminating the agreement. Even more troubling are those contracts that confuse the issue by containing several reasons and/or routes by which the agreement may be terminated.

8. Renewal of Agreement

Related to the previous clause, this is a provision for the renewal of the agreement, which can be automatic. The previous example also provides some guidance to this provision. However, because local services are complex (and therefore difficult to stop and start up), and because local governments must balance their budgets on an annual basis, a lengthy notice period is necessary and should be clearly stated. Notice requirements typically range from 2 weeks to 12 months, while some contracts reviewed fail even to address this important issue. Common law also dictates that notice time be "reasonable", which can potentially be several years to replace some kinds of services. Therefore, suggested alternative wording could include the following:

> *The Parties may by agreement in writing entered into prior to December 31, 2008 renew or extend the Term, but if the parties fail to renew this Agreement or to extend the*

Term in the manner described this Agreement shall terminate on December 31, 2008, and the District shall not be obliged to provide any further Municipal Services to the Reserve after the date of termination, notwithstanding any common law rule to the contrary.

(Source: District of Campbell River and Cape Mudge Indian Band. *Service Agreement*. Campbell River/Quathiaski, BC. October 2004.)

9. Term of Agreement

It is important for the parties to a service agreement to know when their obligations and rights under the agreement will begin and when they will end. The parties may want to have the agreement end after a finite period of time. The parties should carefully consider the length of the term of their agreement; there are advantages and disadvantages to both long term and short term agreements. If the local government, for example, intends to invest time and money in the arrangement between the municipality and the First Nation, it may desire a longer term for the agreement. The First Nation may, on the other hand, desire a shorter term contract to provide it with another opportunity to negotiate the terms of the agreement. The parties can specify the term of the agreement in the following way:

The term of this agreement shall commence upon the subject lands becoming Treaty Settlement Lands and shall continue for ____ years following that date.

Where the parties want the agreement to continue indefinitely, they can provide in the agreement that it will remain in effect for so long as the First Nation lands remain as a Reserve.

The term of this Agreement shall be for the same duration as the First Nation lands remains a Reserve.

In this case, more so than where the agreement has a finite term, it is important for the parties to incorporate a voluntary termination provision in their agreement. The parties must determine the notice period for termination by weighing all the factors that are relevant to their particular situation. The following provision could be used as a voluntary termination provision:

The Agreement may be terminated by either party upon _____days notice in writing to the other party. Notwithstanding notice of termination, all obligations that arose prior to the date of termination of the Agreement shall be enforceable under the Agreement.

From a local government perspective, despite the advisability of long term service agreements, consideration must also be given to agreements that are in excess of five years and where municipalities incur liabilities. This relates to Section 175(2) of the *Community Charter* which includes the requirement for electoral approval for liabilities in excess of five years. Section 175(4) exempts certain liabilities relating to (a) employment contracts; (b) agreements under Section 3 of the *Police Act*; and (c) liabilities set out by regulation.

Additionally, Section 6 of the *Municipal Liabilities Regulation* (254/2004) reads: Approval of the electors is not required under section 175(2) of the *Community Charter* unless the liability is one of the following:

(a) a liability of a capital nature, whether or not it is or includes a contingent commitment;

(b) a loan guarantee given by a municipality.

If a municipality is liable to provide services that are of a capital nature, it requires the approval of its electorate. If the service agreement only contemplates services that are not connected to capital works (e.g. the provision of building code inspector services), then a service agreement may not require approval by operation of Section 175(4)(c) and Regulation 254/2004. One means of dealing with these legislative limitations is for parties to consider the creation a longer term operating agreement that is separate from the capital agreement. The advice of legal counsel is recommended in this regard.

10. Applicable Laws

Section 88 of the *Indian Act* provides that, subject to the terms of any treaty or any other federal legislation, all laws of general application from time to time and in force in any province apply to and in respect of Indians in the province, except to the extent that such laws are inconsistent with the *Indian Act* or any other, rule, regulation, or bylaw made under the *Indian Act* and provide for a matter for which provision is made by the *Indian Act.* Therefore, a clause with respect to the concurrency of laws is recommended within a service agreement. The following provides a good example:

> *This Agreement will be governed by and construed in accordance with the laws of British Columbia and Canada and the parties hereby attorn to the Courts of British Columbia and Canada.*
>
> (Source: Corporation of the City of Coquitlam and the Kwikwetlem First Nation. *Service Agreement*. Coquitlam, BC. April 2005)

11. Dispute Resolution

An important part of any contract involves addressing disputes that may arise out of confusion or problems with the contract terms. Commonly referred to as arbitration or dispute resolution clauses, such provisions include mechanisms by which disagreements may be settled (Lower Mainland Treaty Advisory Committee. *Dispute Resolution Models and Land Use – Backgrounder to First Principle #30.* Burnaby, B.C. February 2002).

Such a provision is a safeguard that will allow the parties to work out their differences without having to enter a courtroom. This may save time and litigation costs. It is also more likely to lead to a decision both parties can live with, as they have negotiated the result rather than having one imposed on them.

In general, local governments are encouraged to achieve maximum certainty and predictability within a service agreement. It is far more effective to elaborate upon details of the agreement rather than leave to interpretation by a future arbitrator.

Disagreements may be resolved through one of the following three processes:

- **Conciliation**: Pursuant to this processes, the parties try to work out issues. The parties may try to work out the issues by themselves, such as a joint meeting of the municipal and First Nation

councils. In the alternative, the parties may work out the issues with the assistance of a third party.

- **Mediation**: Pursuant to this process, a third party assists in working out a solution to the problem. A decision is reached by consensus, which may or may not be binding depending on the terms of the mediation.
- **Arbitration**: Pursuant to this process, the matter in dispute is referred to a third party for review. The third party decides on how to settle the disagreement. The arbitration decision may be non-binding, but it is usually binding on all parties.

An alternative to using only one of these dispute resolution processes is for the parties to use a combination of the above processes. For example, the parties could begin the dispute resolution process with conciliation, proceed to mediation if the conciliation is not successful and, as a last resort, have the dispute arbitrated. The following example clause provides some guidance:

> *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.*
>
> *In the event that the parties fail to resolve matters as described [above], the parties shall seek a settlement of the conflict by utilizing an alternative dispute resolution method, such as mediation or arbitration, and recourse to the Courts shall be a means of last resort*
>
> (Source: Campbell River First Nations and the City of Campbell River. *Leaseholder Service Agreement.* Campbell River, BC. January 2005)

Some agreements provide very specific details with respect to dispute resolution. For example:

> *(a) In the event of a dispute between the District and the Band in respect of a matter arising under this Agreement, the matter shall be heard and decided by a three person arbitration board. A request by either of the parties for a board of arbitration shall name that party's appointee to the board of arbitration. The recipient of the notice shall, within 10 days, advise the other party of the name of its appointee to the board of arbitration. The appointees to the board of arbitration shall then meet to decide on the selection of the chairperson of the board. If the parties cannot agree on the selection of the chairperson within 21 days, either party may request a Justice of the Supreme Court of British Columbia to appoint an impartial third member as chairperson. Each person shall bear the expenses of its representatives, participants, witness and of the preparation and presentation of its own case. The fees and expenses of the chairperson or single arbitrator, the hearing room and other expenses incidental to the arbitration hearing shall be borne equally by the parties. The parties agree to use their facilities wherever possible to reduce hearing room and other incidental expenses. The board of arbitration shall have no authority to add to, subtract from, modify, change, alter or ignore in any way the provisions of this Agreement or any express written agreement or supplement or to extend its duration, unless the parties have expressly agreed, in writing, to give it specific authority to do so or to make an award which has such effect.*

(b) The arbitration board must deliver its reasons in writing to the Band and the District.

(Source: Tsleil Waututh Nation (Burrard Indian Band) and District of North Vancouver. *Reserve Servicing Agreement.* North Vancouver, BC. May 2005)

On the subject of arbitration, a literature review of servicing agreement problems/issues reveals that there are a number of common errors that relate to arbitration clauses. The first involves a failure to outline a clear, workable mechanism by which disputes may be solved. A proper arbitration clause should function on its own, over and above the opposition of any one party. A second, more common, oversight involves having an overly broad arbitration clause that refers all disputes that may arise under the agreement to the dispute resolution mechanism. It may be argued that it is of no benefit to refer only rate disputes to the arbitration clause if the agreement breaks down because of a disagreement over payment procedures or expansion provisions.

The *Commercial Arbitration Act* is often cited in agreements as a dispute resolution mechanism that can be utilized by contracting parties. For example:

All matters in dispute under this Agreement other than a dispute as provided by Paragraph ____ may, with the concurrence of both the First Nation and the City, be submitted to arbitration by a single arbitrator appointed and proceeding pursuant to the Commercial Arbitration Act of British Columbia, and the award of the such arbitrator shall be final and binding upon the parties.

(Source: City of Chilliwack. *Services Agreement* (template for an agreement). Chilliwack, BC., 2005)

One approach that avoids both of the difficulties mentioned above is to explicitly refer any disputes that may arise under the agreement to the mechanism found in this Act. The Act provides the means by which an arbitrator may be appointed should the parties fail to agree on an individual clause. It also grants the arbitrator the authority to prescribe remedies, apportion costs, and provides for a variety of administrative procedures.

The two positive characteristics of the *Commercial Arbitration Act* are (1) that it is comprehensive, addressing a wide variety of issues; and (2) the existence of case law that the courts may rely on for interpreting certain provisions. On the negative side, the Act is a large, unwieldy document that is not specifically tailored to the contracting parties' situation. In some cases, the First Nation may want a more customized way of dealing with disputes (e.g. a specific arbitrator (or panel of arbitrators) or a specific cost-sharing arrangement for arbitration may be preferred.

Taking into consideration all of the above points, a good example clause for inclusion in a service agreement contract follows:

If the parties to this Agreement are unable to agree on the interpretation or application of any provision herein, or are unable to resolve any other issue in dispute pertaining to this Agreement, on notice by either party to the other, the parties agree:

(a) first, to promptly, diligently and in good faith take all reasonable measures to negotiate an acceptable resolution to the disagreement in dispute;

(b) second, if the parties are unable to negotiate a resolution pursuant to subparagraph (a) above, within 60 days of the notice of dispute or disagreement, to request the assistance of a skilled commercial mediator, such mediator to be mutually agreed upon by the parties within 30 days of a receipt by a party of written notice requiring the mediation, failing which the mediator will be appointed by the British Columbia International Commercial Arbitration Centre (BCICAC). Such mediation will be conducted under the Commercial Mediation Rules of the BCICAC to resolve a dispute unless otherwise agreed by the parties. If a mediator is appointed under this subparagraph (b), the mediated negotiations will be terminated 60 days after the appointment, unless the parties agree otherwise; and

(c) third, if the parties are unable to resolve the dispute in accordance with subparagraph (b) above, to refer the matter in dispute to arbitration by a single arbitrator pursuant to the Commercial Arbitration Act (British Columbia) 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 the termination of the mediated negotiations as set out in subparagraph (b) above, an arbitrator will be appointed by the BCICAC. Such arbitration will be conducted in accordance with the Commercial Arbitration Act, R.S.B.C. 1996, Ch. 55 and the rules of the BCICAC unless otherwise agreed by the parties.

(Source: Corporation of the City of Coquitlam and the Kwikwetlem First Nation. *Service Agreement*. Coquitlam, BC. April 2005)

Finally, to reiterate one of the principles within this document, *service agreements should include well-defined exit provisions and conditions so that an unfavourable agreement can be terminated if necessary.*

12. Default

The Default or Breach of Agreement clause outlines penalties for a party that does not abide by the Agreement. Although municipal by-laws do not apply to Reserve lands, the contract law can be enforced; furthering the need to develop effective service agreements. A municipality has remedies available to it, to use when municipal residents do not pay their property taxes. For example, a municipality can impose penalties and liens, seize and sell goods, and conduct tax sales of real property. In addition, a municipality can simply not provide further services to municipal residents who do not pay for them.

A municipality will want to have some recourse against a First Nation that does not pay for municipal services as agreed, or that breaches the service agreement. Not all of the remedies that are usually available to a municipality would be available to a municipality in respect to a First Nation, as the title to Reserve lands is held by Canada. Therefore, a provision such as the following, could be used to set out the consequences of a breach of agreement by the First Nation:

If there is a breach of any term of this Agreement by a party, the other party may, at its option, notify the party in breach and give the party responsible for the breach such time as

> *is reasonable in view of the nature of the breach to remedy the breach. If the breach continues after the period of time provided to remedy the breach and the matter has not been referred to dispute resolution pursuant to paragraph ____ hereof, or if the matter has been referred to and resolved by dispute resolution and the breach continues thereafter, the party not in breach may, at its option, terminate this Agreement. Either party may terminate this Agreement on 90 days written notice if the other party fails to fulfil its material obligations hereunder.*
>
> (Source: Corporation of the City of Coquitlam and the Kwikwetlem First Nation. *Service Agreement*. Coquitlam, BC. April 2005)

Furthermore, other mechanisms may be sought by a local government for an effective and secure means for resolving issues related to non-payment of services. For example, local governments could request an "Irrevocable Letter of Credit", pre-billing for municipal services; and / or request the Federal government become a party to service agreements.

13. Indemnity

Services provided by a municipality to a First Nation may be interrupted for reasons other than for suspension or withdrawal of services for non-payment. For example, services may be disrupted because of an accident or the repair or replacement of part of the utility or service. Municipal legislation provides that a municipality will not be liable for loss or damage that result from such a disruption of service. A municipality may want to be afforded the same exemption from liability in regard to its provision of services to a First Nation. For example,

> *The Band shall afford the District and its employees and agents the same protection from liability as is provided under the Municipal Legislation in respect of the District's activities elsewhere in the District of North Vancouver and, without restricting the generality of the foregoing, shall defend, indemnify and save harmless the District from and against any and all claims, demands, actions, causes of action, losses, damages, costs, liabilities and expenses (including legal fees and costs on a solicitor and own client basis) of whatever kind or character on account of any actual or alleged loss, injury or damage to any person or to any property arising out of or in connection with the provision of or failure to provide Municipal Services as required herein, if and to the extent that the District, its employees or agents would have otherwise been excused from liability for such loss, injury or damage pursuant to the terms of the Municipal Legislation but for the fact that such provision or failure to provide Municipal Services is in respect of lands and occupiers of lands on the Reserve.*
>
> (Source: Tsleil Waututh Nation (Burrard Indian Band) and District of North Vancouver. *Reserve Servicing Agreement.* North Vancouver, BC. May 2005)

Service agreement negotiations may also result in each party indemnifying the other, and taking out insurance to protect themselves and the other party against legal actions that may be brought by others. This is especially prudent in multi-party service agreements:

> *Each party hereby indemnifies and holds harmless each of the other parties hereto from and against any loss, cost, damage, liability or expense arising from or being in any way a*

consequence of any breach by that party of the terms of this Agreement.
(Source: Westbank First Nation and the Regional District of Central Okanagan and the Corporation of the City of Kelowna and the Black Mountain Irrigation District and the South East Kelowna Irrigation District. *Master Agreement*. Kelowna, BC. July 2000.)

This would be a positive move toward ensuring that the parties are protected against legal actions that may be brought by the others.

Customary Provisions

The following are customary provisions found in service agreement contracts.

14. Headings

Headings enable readers to easily locate particular provisions. However, a heading does not always accurately reflect the subject matter that follows it. A provision such as the following one should be included in a service agreement to ensure that headings do not affect the interpretation or construction of the agreement or a particular provision of the agreement.

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.

(Source: Campbell River First Nations and the City of Campbell River. *Leaseholder Service Agreement.* Campbell River, BC. January 2005)

A more detailed, alternative clause follows:

The captions and headings throughout this Agreement are for convenience of reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or the scope of intent of this Agreement or in any way affect this Agreement.

(Source: Tsleil Waututh Nation (Burrard Indian Band) and District of North Vancouver. *Reserve Servicing Agreement.* North Vancouver, BC. May 2005)

15. Notice

A Notice provision ensures that the parties clearly understand how they can deliver effective notice to the other party to the agreement. The following provision could be used for this purpose:

All notices and reports given under this Agreement shall be made in writing and may be served personally, by facsimile device or by registered mail or by bonded courier to the parties at the following addresses:

(Address of both parties)

(Source: Campbell River First Nations and the City of Campbell River. *Leaseholder Service Agreement.* Campbell River, BC. January 2005)

A more detailed, alternative example follows:

All notices and other communications given hereunder or with respect to this Agreement shall be given or made in writing and may be delivered personally or sent by pre-paid registered mail or by facsimile transmission as follows:

(a) in the case of the Band, to the Chief of the Band Council, (Street Number and Address, City, British Columbia, Postal Code, Facsimile Number);

(b) in the case of the District, to the Municipal Clerk at the address first above written (Facsimile Number);

(c) at such other address or in care of such other officer or person as the parties may respectively advise the other party by notice in writing; and

(d) the date of receipt of any such notice shall be deemed to be:

(i) the date of delivery, if delivered personally; or

(ii) five days after the date of mailing in Canada, if mailed; or

(iii)if sent by facsimile transmission, on the date sent or if not a business day, the next business day.

(Source: Tsleil Waututh Nation (Burrard Indian Band) and District of North Vancouver. *Reserve Servicing Agreement.* North Vancouver, BC. May 2005)

Finally, another example, identifying possible changing conditions/situations:

Wherever in this Agreement it is required or permitted that notice, demand or other communication be given or served by either party to the other, such notice or demand shall be given and served in writing and forwarded by registered mail, addressed as follows:

(Address of both parties)

provided that a party may change its address by giving to the other party prior notice of a change in 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, not mailed.

(Source: City of Chilliwack. *Services Agreement* (template for an agreement). Chilliwack, BC., 2005)

16. Amendment

An amendment provision represents the parties' agreement about the manner in which future changes can be made to the agreement. The lack of provisions allowing for clarification or change was a notable deficiency in many service agreements reviewed. These include terms that address such issues as the expansion of the number and size of reserve leaseholds, renegotiating payment procedures and/or the rate structure in the future. It is more than likely that the Reserve areas to be serviced by a local government will be expanded over time (e.g. with Additions to Reserve lands or to Treaty Settlement Lands) and, therefore, this should be contemplated by the contract to avoid any

future difficulties. If the provision requires that an amendment must be in writing, it reduces the possibility that oral agreements will be permitted by the courts to amend the original agreement and increases certainty to the agreement. For example, the following provision could be used:

> *No amendment, waiver, termination or variation of the terms, conditions, warranties, covenants, agreements and undertakings set out herein will be of any force or effect unless the same is reduced to writing duly executed by all parties hereto in the same manner and with the same formality as this Agreement, and no waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar) and no waiver will constitute a continuing waiver unless otherwise expressly provided.*
>
> (Source: Corporation of the City of Coquitlam and the Kwikwetlem First Nation. *Service Agreement*. Coquitlam, BC. April 2005)

Services

17. Description of Services

There are generally two types of service agreement contracts: (1) specific service contracts that specify individual services to be delivered to the Reserves (e.g. Corporation of the City of Coquitlam and the Kwikwetlem First Nation, *Service Agreement*, April 2005); and (2) comprehensive service contracts that will indicate all local services and then list significant exceptions not to be delivered (e.g. City of Chilliwack, *Services Agreement* – template for an agreement, 2005; Campbell River First Nations and the City of Campbell River, *Leaseholder Service Agreement*, January 2005; and Tsleil Waututh Nation and District of North Vancouver, *Reserve Servicing Agreement*, May 2005). Such a listing is important for determining the amount that should be paid for the services. However, quite often the description of the services contracted may not be sufficient. One way that more recent service contracts have dealt with this issue has been to simply require the local government to supply *"all municipal services of the City that are ordinarily provided to the City's residents."* Such provisions are simple but will likely be sufficient to ensure that the local government provides services to Reserve lands similar to how it services its own lands.

For clarification, it is worth drawing a distinction between hard (or on-site) and soft (or off-site) services. Hard services are those generally viewed as essential by the community, and tend to be delivered directly to the recipient. Hard services often include:

- road paving and patching, snow clearing, and sanding of icy streets
- provision of drinking water
- operation of a sewage collection and treatment system
- maintenance of a storm water drainage system
- garbage collection and operation of a landfill
- fire fighting and prevention
- traffic control
- enforcement of bylaws and building codes
- policing
- public transit

Soft services often include:

- maintenance of parks
- planning and zoning of the municipality
- operation of recreational and leisure facilities
- special services such as youth programs

In comprehensive service contracts it may be necessary to recognize that not all regional district or municipal services can be legally provided to a Reserve. Services that cannot be provided include planning, zoning, and bylaw enforcement (noise, animal control, firearms, pollution, etc.) unless the First Nation has enacted its own regulatory bylaws and designated local government officials as having enforcement authority. Once again, it is important to highlight that for regional sewer services, the regional district is mandated to enforce its source control bylaws in order to protect the integrity of the sewerage system and must be able to prosecute any source bylaw violations.

The literature reveals that there is no single approach to the treatment of soft (or off-site) services. Most comprehensive contracts include payment of a tax-equivalent share by the First Nation to the local government. Specific service contracts, in contrast, tend to be for a few on-site (or hard) services only and do not include off-site services.

18. Level of Services

As with the previous clause, some municipal service agreements may not specify as to the standard of services to be provided by local government which could lead to future potential disputes between the parties. One way of dealing with this issue is to include a provision such that the services will be delivered/supplied *"at the same frequency and quality as those received by the rest of the area served"* or *"at a similar standard as that received by other areas serviced by the local government."* Again such a simple provision will likely be sufficient to ensure that the level of services to Reserves or Treaty Settlement Lands are comparable to lands in neighbouring local government jurisdictions, unless there is some specific reason for having different service levels.

Local governments may wish to take this provision a step further with a more comprehensive clause that explains that the level of service provided to Reserve/Treaty Settlement Lands will not exceed the service levels provided to City residents. For example,

> *The quality and quantity of the Municipal Services to be provided by the City under this Agreement will be substantially the same as the quality and quantity of Municipal Services provided by the City to the residents of non-Reserve lands within the City. Nothing in this Agreement shall require the City to provide Municipal Services that exceeds the level of Municipal Services provided by the City to the residents of non-Reserve lands within the City.*
>
> (Source: Campbell River First Nations and the City of Campbell River. *Leaseholder Service Agreement.* Campbell River, BC. January 2005)

19. Charges for Services

The Charges for Services clause outlines the costs for providing services and is one of the more important contractual issues in service agreements.

Municipalities are almost totally self-financing. Although they may receive some government grants, most of their revenue is derived from property taxes, as they do not have the power to raise revenue through income tax, gasoline tax or sales tax, as do other levels of government. Each property within a municipality generates property tax revenues. The amount of tax on a particular piece of property is based on factors that include its zoning, location and level of development. For example, a piece of undeveloped/non-serviced land on the edge of an urban area would be taxed at a lower rate than a similarly sized property with a building on it, located in the main business district.

However, Reserve land is specifically excluded from municipal jurisdiction. As such, Reserve land is exempt from taxation by a municipality, even if the Reserve land is bordered on all sides by the municipality. This means that if land that is part of a municipality is acquired and added to a Reserve, it will be exempt from municipal taxation. The removal of land from the municipality's tax base is likely to result in a tax loss for the municipality. The possibility of a tax loss by a municipality that loses part of its property tax base as a result of the setting apart of land within the municipality is recognized as a distinct possibility in an October 2005 independent consultant's report, titled *Treaty Settlement Land: The Fiscal Impacts on Local Governments*, commissioned by, and prepared for, UBCM, the Ministry of Aboriginal Relations and Reconciliation, and the Ministry of Community Services. The First Nation may, therefore, wish to have the municipality expressly agree that it will not ask the First Nation to pay for any tax losses attributable to the land being set apart as Reserve.

Although a municipality cannot tax the Reserve land, it can require the First Nation to pay a reasonable amount for services that the municipality provides to the Reserve and its residents. The fee charged for the services is an amount that will be derived through negotiation between the municipality and the First Nation; it may or may not be equal to the taxes that would have been payable on the land had it not been acquired by the First Nation as part of the Addition-to-Reserve or Addition-to-Treaty Settlement Land. The payment can also be based on different variables according to each situation and therefore acknowledged and treated differently, such as based on the number of parcels or on a *per capita* basis. Several service agreements reviewed in the preparation of this paper utilize the BC Assessment Authority data for the average assessed value of residences in order to ensure equality of assessments both on and off-Reserve. The fee that will be payable by the First Nation for such services will depend upon the type of services that will be provided as well as the level of those services and an agreed upon mechanism for standardizing equality of assessment (such as BC Assessment Authority or other data). The services agreement should set out the details of the amount and the timing of payments for services provided by the municipality to the First Nation.

In the event that a First Nation acquires undeveloped land with the intention of developing it, the municipality and First Nation will have to consider who, as between the municipality, purchaser of the undeveloped land and developer, should be responsible for the cost of development infrastructure. Typically, when land is developed for industrial or commercial purposes, the purchaser pays for on-site infrastructure such as water pipes, sanitary sewer pipes, storm sewer pipes, catch basins, streets, lanes, paving, curbing and boulevards, while the developer of the land pays a one-time off-site levy (usually as a hook-up fee) to offset the cost of off-site infrastructure such as street signs, traffic lights, street lighting, trunk sewers, primary water mains, arterial (main) roads, bridges, and major parks.

The following is an example of provisions that could be used where a municipality provides the same services to the First Nation as it provides to municipal residents and the First Nation agrees to pay for these services by paying a fee that is equivalent to the taxes that a municipal resident would have paid for the same services:

> *The annual fee to be paid by the Band for the Municipal Services provided in Area ___, pursuant to section ___ of the Agreement, is the amount equivalent to seventy-two and one-half percent (72.5%) of the property taxes that, the year of the Agreement for which the fee is paid, would have been requisitioned by the City against the Leaseholders of the Leasehold*
>
> *Lands within Area ___, utilizing the property tax rates established by the City Council for that year, had the Band not adopted the _____ First Nations Property Assessment and Taxation Bylaw No. ___.*
>
> (Source: Campbell River First Nations and the City of Campbell River. *Leaseholder Service Agreement.* Campbell River, BC. January 2005)

This type of arrangement is easily understandable and recognizes that property tax revenues seldom cover the full cost of general services but that Reserve lands generate other revenues such as user charges or revenue sharing due to the population on the Reserve. The tax equivalent approach treats Reserve lands as if they are part of the community within local government jurisdiction.

Furthering the principle of fair cost-recovery for services, parties negotiating an agreement for a commercial or industrial development on First Nation lands should note that under Section 25 of the *Community Charter*, local government councils are prohibited from providing a grant, benefit, advantage or any other form of assistance to a business.

20. User Fees

A User Fees clause denotes the contribution to additional costs of supplying various municipal services (e.g. building inspections, recycling fees, etc.).

A pertinent example follows:

> *The City will charge the Leaseholders a user fee for domestic water supplied to the Leaseholders at the rate established from time to time under the City's bylaws. For the purpose of calculating the amount of water supplied to the Leaseholders, the Band will at its cost install and maintain water meters on the Leasehold Lands.*
>
> *The City will charge the Leaseholders a user fee for Sanitary Sewer Services at a rate established from time to time under the City's bylaws. For the purpose of calculating the fee for Sanitary Sewer Services, the amount of sewage discharged from the Leasehold Lands will be measured according to the quantity of water supplied to the Leaseholders, as measured by the water meters installed under section ___, with no deduction on account of any waste of water.*

The Band agrees that it will pay any user fees for domestic water or sanitary sewer services owed to the City, in the event any of the Leaseholders defaults in payment.

(Source: Campbell River First Nations and the City of Campbell River. *Leaseholder Service Agreement.* Campbell River, BC. January 2005)

Another example clause follows:

Nothing in this Agreement shall exempt occupiers on the Reserve from, and they shall pay to the City as due, all User Fees.

(Source: City of Chilliwack. *Services Agreement* (template for an agreement). Chilliwack, BC., 2005)

21. Bill Payment

This clause includes a procedure for the payment of services. Again, the practices will vary from one community or situation to the next. For example, a simple clause such as the following may suffice some of local governments:

The First Nation shall pay the Net Services Fee by cheque to the City on or before October 1 of each Year of the Term.

(Source: City of Chilliwack. *Services Agreement* (template for an agreement). Chilliwack, BC., 2005)

The clause can be more specific:

The Band shall pay to the District for the Municipal Services

(a) in respect of 2005, the sum of $484,852.15, and

(b) in respect of each subsequent calendar year under this agreement, the sum of

(i) $484,852.15, and

(ii) an increase or decrease in the Annual Service Charge equal to the percentage change in the total resident tax levy imposed generally by the District on ratepayers within the District in respect of single and multi-family residential properties; and

(iii) a percentage increase or decrease in the Annual Service Charge equal to the number of additional completed units of any development as a percent of the total number of units of any development existing the previous calendar year.

(Source: Tsleil Waututh Nation (Burrard Indian Band) and District of North Vancouver. *Reserve Servicing Agreement.* North Vancouver, BC. May 2005)

Alternatively, the clause can be tailored to take into account specific service arrangements within the contract. For example,

The Band will pay to the City the Service Fee which will be payable quarterly, with respect to (a) and (b) below, on delivery of the City's invoice to the Band, and payable annually, with respect to (c) below, on or before March 31 in each year of the Term. The Service Fee will be the aggregate of:

(a) the commercial rate for metered supply of water established under the relevant City bylaws as these rates may be amended from time to time, or the residential rate for metered supply of water if the bylaws are amended to establish a residential metered rate;

(b) the charge applicable based on volume of water delivered on a metered rate basis established under Sewer System Bylaw No. ___ as amended from time to time; and

(c) an amount equivalent to the average cost per residential property in the City for fire protection services multiplied by the number of residences in existence on the Lands on March 1 in the relevant year of the Term.

For certainty, the Service Fee will be payable only in respect of the Services to be provided through this Agreement. In the event the City amends its bylaws so as to change the method of determining cost recovery for the Services for City residents, the parties agree that this Section will be deemed to be amended so as to be consistent with and equitable to, such revised cost recovery methods.

(Source: Corporation of the City of Coquitlam and the Kwikwetlem First Nation. *Service Agreement*. Coquitlam, BC. April 2005)

22. Payment Penalties

This clause refers to a description of the consequences for the non-payment of services. Contract provisions pertaining to payment defaults should be clear, detailing a specific time lapse before a missed payment becomes a default, and any interim penalties. For example,

If the Band fails to pay the Annual Service Charge on or before September 30 of each year under this Agreement the unpaid amount is a debt due and owing to the District and bears interest at the same rate as is payable by District ratepayers under applicable enactments.

(Source: Tsleil Waututh Nation (Burrard Indian Band) and District of North Vancouver. *Reserve Servicing Agreement.* North Vancouver, BC. May 2005)

A further alternative example notes:

Interest shall be payable on any late payments owing by the First Nation to the City pursuant to this Agreement at the rates and according to the terms as set out in the City's Miscellaneous Rates Bylaw, as may be amended from time to time.

If the First Nation is more than 6 months late in making any payment owing to the City pursuant to this Agreement then the City may at its election give the First Nation 10 working days written notice of default, setting out the amounts and interest owing and, if

> *within 10 days the First Nation does not make full payment, then, without prejudice to any other remedy available to it at law or in equity, the City may on further written notice to the First Nation terminate this Agreement.*
>
> (Source: City of Chilliwack. *Services Agreement* (template for an agreement). Chilliwack, BC., 2005)

It would also be advisable to make a clear link or reference to the dispute resolution provisions of the contract, to prevent possible disputes over the existence of a breach. Furthermore, other mechanisms may be sought by a local government for an effective and secure means for resolving issues related to non-payment of services. For example, local governments could request an "Irrevocable Letter of Credit", pre-billing for municipal services; and / or request the Federal government become a party to service agreements.

23. Remedy

The Remedy clause identifies the action to be taken to recover costs for non-payment of services. For example, the following clause could be utilized in a service agreement contract:

> *If all or any portion of the Annual Service Charge, including interest accrued, are in arrears, the District may, after no less than 60 days notice to the Band, and any occupiers affected thereby, suspend the provision of some or all Municipal Services to the Reserve or any portion of it or to any occupier of the Reserve until such time as the Annual Service Charge, and accrued interest, are paid in full.*
>
> (Source: Tsleil Waututh Nation (Burrard Indian Band) and District of North Vancouver. *Reserve Servicing Agreement.* North Vancouver, BC. May 2005)

24. Access and Rights-of-Way

Also important for consideration in a services contract is the need to allow access by the local government providing the services to the Reserve (or future Treaty Settlement Lands). For example, the municipality may want access to inspect improvements for the provision and maintenance of its services and/or to provide assistance in circumstances that may pose a danger to the public's safety. Reserve lands are private lands and a First Nation has the right to restrict access. Therefore, it is important that First Nations extend explicit permission to allow the supplier of services to enter. Such provisions would affirm the First Nation's rights and may prevent subsequent misunderstandings between the two parties. It is also important that local government not be charged a fee or a tax for the right-of-way. This consideration is discussed in more detail in the Taxation clause (Clause #31) of this paper.

It must be emphasized that one of the guiding principles of this paper is *access to local government lands and assets located on First Nation land*: there must be continued access (via land, water or air) to local government lands and assets on, between or adjacent to First Nation lands as well as to privately held and leased lands on, between or adjacent to First Nation lands for the purposes of, but not limited to, infrastructure development and maintenance.

Provisions such as the following would entitle the municipality to obtain access to the Reserve for various purposes:

> *Representatives of the City may at any time enter upon the Reserve for the purpose of providing any of the services required in accordance with this Agreement.*
>
> (Source: Campbell River First Nations and the City of Campbell River. *Leaseholder Service Agreement.* Campbell River, BC. January 2005)

Alternatively,

> *The Band will grant to the City permits to access the Lands as are necessary for the provision of Services by the City and inspections. The City will be exempt from taxation under the Band's bylaws in respect of its use or occupation of any easements, rights of way or other access permits. The Band hereby agrees to permit the employees, contractors and agents of the City to enter upon and cross the Lands, with or without personnel, equipment, and materials, for the purpose of inspecting and, without obligation, maintaining and repairing or replacing any Land Infrastructure necessary for the provision of Services hereunder.*
>
> (Source: Corporation of the City of Coquitlam and the Kwikwetlem First Nation. *Service Agreement*. Coquitlam, BC. April 2005)

More specifically,

> *The Band hereby appoints and authorizes the District or its representatives to enter the Reserve and any Improvements on it to:*
>
> *(a) inspect the water supply system in every Improvement on the Reserve, before and during connection of such water supply system to the Reserve Infrastructure;*
>
> *(b) inspect the Reserve Infrastructure and monitor the use and discharge of wastes to the Reserve Infrastructure and monitor the use and discharge of wastes to the Reserve Infrastructure to determine whether the requirements of any bylaws enacted by the Band pursuant to this Agreement are being met and determine whether or not any connections have been made to the Reserve Infrastructure for the provision of Municipal Services;*
>
> *(c) conduct regular maintenance and emergency preparedness inspections of any Improvements on the Reserve as may be considered necessary by the District for the provision of Municipal Services, in the same manner and frequency as conducted by the District generally within the District of _____.*
>
> (Source: Tsleil Waututh Nation (Burrard Indian Band) and District of North Vancouver. *Reserve Servicing Agreement.* North Vancouver, BC. May 2005)

Closely related to the topics of access and rights-of-way is taxation: *no taxation of local government property or assets*. The local government principle reads: First Nation governments participating in

intergovernmental and/or regional governance structures, pre- or post-treaty, must comply with the existing practice whereby local government jurisdictions will not assess each other property taxes on utilities and related infrastructure, nor the lands or rights-of-way on which they are located. The topic of taxation is discussed in a subsequent section of this document.

25. Repair

This provision describes the process for repairing, upgrading or integrating services provided to the First Nation. A couple of alternative clauses from existing servicing agreements provide useful examples in this regard. They include:

> *During the Term, the City will provide all necessary repairs and maintenance of the Reserve Systems, including any preventative maintenance that the City considers necessary.*
>
> *The City will endeavour to repair and maintain the Reserve Systems in a timely manner and in accordance with the City's infrastructure maintenance standards and policies.*
>
> *Upon receipt of an invoice from the City, the Band will reimburse the City for all expenses incurred, whether for materials, equipment or labour, in relation to the repair and maintenance of the Reserve Systems.*
>
> *The Band will promptly notify the City of any breakdown in a Reserve System that requires any repair or maintenance work.*
>
> (Source: Campbell River First Nations and the City of Campbell River. *Leaseholder Service Agreement.* Campbell River, BC. January 2005)

Alternatively:

> *The Band will, at its expense, be responsible for all capital costs and work associated with the construction or replacement of Land Infrastructure. The City will, at the cost of the Band, service, repair and maintain in good working order all water and sanitary sewer infrastructure necessary for the provision of water and sanitary services on the Lands to the standard substantially the same as elsewhere in the City. The Band will pay to the City, within 30 days of receipt of an invoice from the City, all costs incurred by the City for such service, repair or maintenance.*
>
> (Source: Corporation of the City of Coquitlam and the Kwikwetlem First Nation. *Service Agreement*. Coquitlam, BC. April 2005)

Additional Recommended Provisions

The following additional recommended provisions were considered for inclusion as a result of discussions held by the GVRD Board, the GVRD Regional Administrative Advisory Committee (RAAC), LMTAC and its Technical and Strategic Working Group.

26. Compatible Bylaws

A service agreement should provide for the development, adoption, and enforcement of compatible First Nation and municipal bylaws where compatibility is necessary. However, it is important to keep in mind when negotiating the issue of compatible bylaws that, while a municipality obtains its authority to make bylaws from municipal legislation (i.e. *Community Charter* and *Local Government Act*), First Nation Band Councils usually exercise their authority by passing Band Council Resolutions. They also less frequently enact bylaws under the *Indian Act*. In order for a bylaw to be "in force", for bylaws relating to money (e.g. taxation for local purposes of land or interests in land in the reserve and the licensing of businesses), a First Nation must seek approval of the bylaw from the Minister of Indian Affairs and Northern Development; in respect of other bylaws, the First Nation must forward the bylaw to the Minister and it must not be "disallowed" by the Minister.

Thus, when municipal land is acquired by a First Nation and is set apart as Reserve, municipal bylaws that would have applied to the municipal land and residents had the land remained part of the municipality, no longer apply to the Reserve land and its residents. Instead, the First Nation has jurisdiction over the Reserve lands as allowed by the *Indian Act*. The *Indian Act* provides that a Band Council is authorized to make bylaws that are not inconsistent with the *Indian Act* or its regulations.

However, the *Indian Act* does not require a band council to make bylaws that are compatible with neighbouring municipalities. Thus, a First Nation may enact bylaws for various purposes, such as land use and development, the regulation of businesses, keeping of animals, environmental protection and public safety that differ from and perhaps even conflict with those of the neighbouring municipality.

The need for bylaw compatibility is not a new concept for municipalities. Municipalities need bylaw compatibility with neighbouring Municipalities. Where a Reserve is located in an urban Area such as Greater Vancouver, the close proximity and density of development increases the potential for problems and disputes if the Band bylaws and municipal bylaws are significantly different. A compelling reason for a First Nation to work with a neighbouring municipality to achieve compatibility of land use bylaws is that experience has shown that First Nations who work with their neighbours' planning objectives achieve the greatest economic development successes.

The need for compatible bylaws will depend on local circumstances. Each party should identify existing bylaws and compare them to those of the other party to determine how well they fit together. In addition, the authority of each party to pass bylaws must be reviewed, since the authority of each party to pass bylaws is limited by statute. Areas in which the parties may wish to try to achieve compatibility in their bylaws may include:

- land use or zoning standards for use of land (i.e. what activities are allowed in particular plots of land)
- land development standards: lot sizes, widths of streets and sidewalks, servicing standards such as size of water and sewer pipes (to ensure the development is similar in quality, functionality and general appearance to the surrounding areas)
- building and safety standards: quality of construction, fire safety, permits, and inspection
- animal control
- public utilities: connections to water and sewer pipes, design specifications

- health and safety: ambulance, fire and policing, environmental standards, building inspections
- traffic regulation: speed, parking, signage
- business licensing and operation: fees, permits, store hours
- property maintenance and upkeep, including weed control

The following clause may, therefore, be useful in providing some guidance in this regard:

> *(a) This Agreement is subject to the following conditions subsequent:*
>
> *(i) the Band bylaws set forth in Schedule ___ (the "Bylaws") shall not be amended in any manner so that they no longer substantially conform with the standards and provisions set forth in the District's equivalent bylaws,*
>
> *(ii) the Band shall, within 120 days of the execution of this Agreement, amend its Fire Bylaw so that it conforms with the standards and provisions of the District's equivalent bylaw or bylaws, and*
>
> *(iii) the Band shall use reasonable best efforts to enforce the Bylaws*
>
> *(b) and if any of the foregoing conditions subsequent is breached, the District may take action under section ___.*
>
> (Source: Tsleil Waututh Nation (Burrard Indian Band) and District of North Vancouver. *Reserve Servicing Agreement.* North Vancouver, BC. May 2005)

A more general clause may also be appropriate:

> *Subject to paragraph ___, the Band will comply and take all reasonable steps to ensure compliance with all City bylaws referred to in Schedule __ with respect to the Services, and any amendments thereto or replacements thereof.*
> (Source: Corporation of the City of Coquitlam and the Kwikwetlem First Nation. *Service Agreement*. Coquitlam, BC. April 2005)

27. Development Cost Charges (DCC) and Community Benefit Programs

Development Cost Charges (DCC) are monies that are collected from land developers by a municipality to offset some of the infrastructure expenditures incurred, to service the needs of new development. Imposed by bylaw, pursuant to the *Local Government Act*, the charges are intended to facilitate development by providing a method to finance capital projects related to roads, drainage, sewers, water mains and parks.

As many local governments across the Province face significant development pressures, expansion of existing or installation of new infrastructure systems is required, to support new development and its demand on utilities and services. However, the costs associated with these infrastructure requirements create significant public sector burdens. Governments at all levels also face significant constraints in the use of general purpose taxation and have placed increasing emphasis on the "user (or benefactor) pay" principle. In response to these pressures, DCCs have been utilized by local

governments as a cost recovery mechanism for apportioning infrastructure project costs amongst developers of land.

The fact that there is a proven positive relationship between physical infrastructure (i.e. municipal services) and economic development has important implications for First Nations. It means that the development of core public infrastructure such as roads, sewers and water mains should be encouraged on First Nations' lands. Creating economic opportunity for Aboriginal Peoples can reduce poverty in their communities and improve their standard of living. A DCC policy is a financing option that, if designed and regulated properly, will help to provide the core public infrastructure.

While it is clear that investment in infrastructure will improve economic opportunity, it is also clear that there has been little success in providing infrastructure on First Nations' lands. First Nations have limited resources to provide the infrastructure themselves. Physical infrastructure that currently exists on First Nations' lands may be inadequate for industrial, commercial or residential development. Roads, sewer systems, and water treatment and distribution systems may be of poor quality or non-existent. While DCCs have been used as an option in financing infrastructure for over twenty years in municipal jurisdictions, it does not appear as of yet that there is any regulatory framework or support for First Nations who wish to use them.

The following provision may offer some guidance in this regard. However, circumstances such as larger versus smaller-scale proposed development, as well as economic development opportunities (e.g. cruise-ship opportunities in the City of Campbell River), will determine the applicability of relevant clauses in any service agreement contract.

> *The Band further agrees that it will collect on the City's and the Band's behalf, a fee equivalent to the fees established by the City's Development Cost Charge Bylaw, in effect from time to time, for all new development on the Leasehold Lands. The fees will be held in trust until the prescribed capital off site projects are constructed and the Band will transfer the appropriate funds to the City at the time construction or purchase is to start. Further, the Band commits to develop its own Development Cost Charge Bylaw for the establishment of charges for infrastructure projects on Band lands.*
>
> (Source: Campbell River First Nations and the City of Campbell River. *Leaseholder Service Agreement.* Campbell River, BC. January 2005)

The objective with DCC is equity and balance – developers on Reserve lands pay the same as off Reserve, including contribution to capital costs of providing, constructing, altering or expanding sewerage, water, drainage or highway and Provincial parkland to service development on the Reserve. Examples include:

- widening access road(s) to serve a Reserve
- increasing capacity of servicing to serve a Reserve
- looping water or sewer line(s) due to new development on Reserve
- upgrading pumps or other ancillary works for new development on Reserve
- building up a reserve fund in respect of designated works that serve a Reserve
- parkland acquisition and developments

- replacement of civic infrastructure facilities (e.g. recreation centres, libraries, etc.)

A useful example follows, in which the First Nation community agrees to make a contribution to capital projects that benefit its lands:

> *In recognition of the capital cost burden to the City that may result from development on the Reserve, and in recognition of the benefit that the Band may receive from the construction of certain City capital projects, the Band agrees that:*
> *(a) should the City commence construction, alteration, repair or replacement of the City service, or City works located off the Reserve; and*
> *(b) it is agreed by the parties that such construction, alteration, repair or replacement provides a benefit to the Reserve, directly or indirectly; and*
> *(c) the cost of such construction, alteration, repair or replacement is not funded in whole or in part through fees paid by the Band under this Agreement;*
> *the Band will contribute towards the actual total cost that the project or projects, either in a mutually agreed upon negotiated amount, or at the option of the City an amount proportionate to the ratio of the total floor area of all development on the Reserve to the total floor area of all such development within the City.*
>
> (Source: District of Campbell River and Cape Mudge Indian Band. *Service Agreement*. Campbell River/Quathiaski, BC. October 2004.)

Related to DCCs are Community Amenity Contributions or Community Benefit Programs. Most local governments have public amenity objectives and a process for securing amenities or other community benefits in relation to new development that has "amenity status." Examples in BC include: Surrey, Burnaby, Richmond, Langley Township, New Westminster, City of North Vancouver, Whistler, Vancouver, Nanaimo, Abbotsford and Chilliwack. Under municipal policies, new developments contribute to community liveability by providing public amenities and benefits. Municipalities establish policies to identify programs, amenities and benefits for consideration during development negotiations. The provision of amenities is a precondition for rezoning. Redevelopment in some cases has an established amenity objective based on project scope and size. The amount or value of the amenity or benefit is based on the scale and scope of a project and community impacts as well as the project's financial capacity to support the amenity or benefit. The trigger for this would be zoning: zoning does not apply on-Reserves, although the provision of amenities or benefit contributions cannot be done by contract off-Reserve; it can be done on-Reserve.

A service agreement could provide for amenities or benefits based on a municipal public amenity objective or program as a condition of new development on Reserve. Local governments, therefore, are encouraged to consider making a community amenity contribution/community benefit program applicable to new development on-Reserve by applying the same criteria for off-Reserve development to new on-Reserve development by way of a contractual provision under a service agreement. The agreement would provide for a dollar amount per unit based on what developers pay off-Reserve.

28. Regional Integration

One of the principles included in the previous section of this paper is the "*integration of First Nations into regional initiatives*." This principle emphasizes the importance of the various interconnections between urban communities in the Lower Mainland area and is intended to promote compatibility between First Nation lands and neighbouring municipalities and the Greater Vancouver Regional District. Simply stated, the non-participation of one community in this region can undermine the efficacy of the entire regional program, particularly for issues such as, but not limited to, regional growth planning, air quality control and solid waste management. Therefore, regional integration of First Nations is a priority for local governments. This includes adherence to regional standards.

Depending on the scale of development on Reserve lands, the costs for regional integration should also be shared among local governments and neighbouring First Nation communities. A clause dealing with regional integration could include the following as an example:

> *Notwithstanding any other provision of this Agreement, the District may suspend the provision of all or part of the Municipal Services provided hereunder if at any time any person on the Reserve discharges waste into the Reserve Infrastructure or the District's storm or sanitary sewers of a type, quantity or quality that does not meet the standards which apply to waste discharges to the District's sanitary and storm sewers generally, including standards established pursuant to District and Band bylaws (including the Bylaws), bylaws of the Greater Vancouver Sewerage and Drainage District, the Environmental Management Act (British Columbia) and Fisheries Act (Canada) and any regulations passed thereunder, until such time as any damage to the environment caused by such discharge has been remedied at the sole cost of the Band or, to the extent enforceable by the Band, at the sole cost of the party responsible for the breach and appropriate measures have been implemented by the Band at its sole cost to prevent such discharge from recurring.*
>
> (Source: Tsleil Waututh Nation (Burrard Indian Band) and District of North Vancouver. *Reserve Servicing Agreement.* North Vancouver, BC. May 2005)

It is also important to point out that regional integration could include participation in regional initiatives, such as the *Sustainable Region Initiative*. Such initiatives could be considered for inclusion in a "Consultations" section of a services agreement.

For service agreements that deal with only a few residential lots or a small portion of the Reserve land, the above clause or topic of regional integration may not be pertinent and therefore may not be an issue considered for inclusion in contract provisions.

29. "Global Servicing"

One of the recommendations of the GVRD's *First Nations Strategy* (September 2005) is that the strategy be directed "towards the pursuit of GVRD/GVWD/GVS&DD interests in the context of the evolving interpretation of First Nations rights by emphasizing the importance of a global servicing approach." *Global servicing* refers to a subscription to both "hard" and "soft" services, including "optional" local government services. As one of the principles of this paper, *First Nations should be encouraged to subscribe to both core and other municipal and/or regional district services* and,

from a local government perspective, First Nations must demonstrate why they do not need to purchase specific services.

There is a strong expectation that First Nations will participate in the core services that are mandatory for member municipalities within the Regional District. Across British Columbia, these include: the general administration of the regional district and the regional hospital levy. In the GVRD, the regional hospital levy is replaced by the Greater Vancouver Transit Authority Levy. Additionally, GVRD provides the following additional core regional services: regional parks, administration of the Electoral Area, regional planning, and 9-1-1 emergency telephone. These are services that, when provided by the regional government, take advantage of economies of scale and benefit the public broadly. Mandatory services may not be exited.

Sewer and water services are the two critical optional services in GVRD. The key to successful service arrangements are agreements that both parties feel are fair and negotiated at with the fullest understanding of short and long term costs, benefits, limitations and mechanisms to resolve disputes. For water and sewer servicing this would include: the volume or capacity required or realistically expected in the short and long-term, potential limitations of infrastructure, development/land use plans which would impact use of the service, recovery of capital costs, infrastructure upgrades, ongoing maintenance, and how disputes will be resolved.

30. Consultation Clause and Protocol Agreement

Without ongoing communication between First Nations and local governments involved in service agreement contracts, it is likely that there will be conflicting developments and disputes. One of the principles contained within this paper is that *local governments should be consulted when a First Nation enters bilateral discussions with federal or provincial governments.* Local governments must be consulted when those discussions will impact the provision of services to the First Nation by local government. Thus, it is prudent for First Nations and local governments to include a clause within the service contract that establishes a consultation process for addressing bilateral agreements and other issues such as proposed land use and development and bylaw compatibility.

The following clause provides an example of a consultation approach used in a servicing agreement:

> *The parties acknowledge that it may be necessary to modify, extend or supplement the Land Infrastructure or other works outside the Lands to accommodate any new development on the Lands. The Band will provide the City with plans and specifications of development of the Lands as early as possible so as to reduce the need for such modifications and all costs of any such modifications of Land Infrastructure or any off-reserve infrastructure but only to the extent required to serve the Lands will be paid by the Band in the amount or amounts to be agreed in advance between the Band and the City.*
>
> (Source: Corporation of the City of Coquitlam and the Kwikwetlem First Nation. *Service Agreement*. Coquitlam, BC. April 2005)

This next example puts the onus on the First Nation to consult with the City:

> *<u>First Nation to consult with City</u>:*

The First Nation agrees that it will consult with the City with respect to development of the Reserve and agrees that the proposed development will be consistent and compatible with the intent of the City's official community plan.

(Source: City of Chilliwack. *Services Agreement* (template for an agreement). Chilliwack, BC., 2005)

This next alternative example provides a more detailed approach to consultation with respect to new development on First Nation lands:

2.5 The Band and the District agree that in the spirit of good government to government relations:

(a) the Band shall inform the District of any planned New Development on the Reserve and provide plans to the District showing the planned developments and other pertinent information; and

(b) the District shall inform the Band of any planned developments which may affect the District Reserve Infrastructure, the Reserve Infrastructure, or planned developments on the Reserve of which it is aware, and provide plans and other pertinent information to the Band, if requested by the Band.

2.6 On receipt of the plans described in subsection 2.5(a) the District shall review the plans forthwith and within 60 days of receipt

(a) advise the Band with respect to any engineering or other concerns relating to provision of the Municipal Services the District may have with respect to the planned New Development; or

(b) reject the plans based on the considerations set out in Section ___.

2.7 (a) If the District has legitimate engineering or other concerns relating to provision of the Municipal Services, or does not have the infrastructure capacity to supply adequate Municipal Services to the New Development, the Band and the District will cooperate in an effort to resolve those engineering or other concerns. If the Band and the District are unable to reach an agreement in this regard, the matter shall be resolved under Section 3.21.

(b) Without limitation, Additional Infrastructure, and charges lawfully imposed by a Greater Board, shall be paid for by the Band.

(c) If the Band believes a portion of the infrastructure capacity to supply adequate Municipal Services will also supply land other than the Reserve, the Band and the District will cooperate in an effort to resolve the attribution of costs. If the Band and the District are unable to reach an agreement in this regard, the

matter shall be resolved under Section ___ in the same manner as a latecomer apportionment.

2.8 If the engineering or other concerns referred to in Section 2.7 have been resolved and the costs determined, either by agreement or arbitration, the District shall provide the Municipal Services to the New Development pursuant to this Agreement.

(Source: Tsleil Waututh Nation (Burrard Indian Band) and District of North Vancouver. *Reserve Servicing Agreement.* North Vancouver, BC. May 2005)

Options and mechanisms for consultation vary and could include protocol agreements for government-to-government coordination or cross-boundary related issues which express the need for joint meetings (e.g. Community-to-Community Forums or joint Council meetings), the establishment of committees with joint membership, as well as a notification process so that First Nations and local governments can advise one another of emerging issues and other pertinent factors. Depending on the capacity or size of a proposed development and whether it is intended to be a long-term service agreement, a contract provision dealing with consultation will benefit and solidify the relationship between the Parties. Moreover, protocol agreements in advance of servicing contracts have been an approach used by local governments and First Nations to increase the opportunities for the success of servicing contracts. Excellent examples of protocol agreements in place in BC and elsewhere can be found in a recent publication titled *Building Relations with First Nations: A Handbook for Local Governments – A Compendium of Agreements between First Nations and Local Governments* published by UBCM and LMTAC in February 2005 and an updated third edition of the *Handbook* released in September 2006.

31. Taxation

Local governments can have leaseholds on Reserves. Such properties can legally be taxed by the First Nation. There is a long tradition of governments not taxing other governments, however, as long as those properties are used for a public purpose. Properties having a public purpose include water pipes and reservoirs, sewage pipes and disposal systems, roads, parks and recreation facilities.

While such properties are not generally taxed (and cannot be taxed if owned by the Federal and Provincial government), it is common that the government which has ownership pay a “grant in lieu of taxes” to the government whose jurisdiction they are located in if the facilities require any kind of local services. While First Nations can tax such facilities within their territory, positive relations will be maintained with neighbouring jurisdictions if First Nations exempt such facilities and rights-of-way from taxation in exchange for the local government providing all services to those properties.

Therefore, one local government principle is that there should be no taxation of local government property or assets on Reserve or future Treaty Settlement Land. First Nation governments that participate in intergovernmental and/or regional governance structures, pre- or post-treaty, must comply with existing practice whereby local government jurisdictions will not assess each other property taxes on utilities and related infrastructure, nor the lands or rights-of-way on which they are located.

The following clause captures the essence of this principle:

> *The Band will grant to the City permits to access the Lands as are necessary for the provision of Services by the City and inspections. The City will be exempt from taxation under the Band's bylaws in respect of its use or occupation of any easements, rights of way or other access permits. The Band hereby agrees to permit the employees, contractors and agents of the City to enter upon and cross the Lands, with or without personnel, equipment, and materials, for the purpose of inspecting and, without obligation, maintaining and repairing or replacing any Land Infrastructure necessary for the provision of Services hereunder.*
>
> (Source: Corporation of the City of Coquitlam and the Kwikwetlem First Nation. *Service Agreement*. Coquitlam, BC. April 2005)

The next example captures the same message in a more succinct way:

> *Maintain regulatory harmony by ensuring that rules similar to those of the local government are applied to the area of First Nation tax authority;*
>
> (Source: Campbell River First Nations and the City of Campbell River. *Leaseholder Service Agreement.* Campbell River, BC. January 2005)

Members of the LMTAC Technical and Strategic Working Group also suggest that Lower Mainland local governments work together to consider developing financial models and reports for the purpose of determining how taxation on future Treaty Settlement Lands (including GST and other sales taxes) may impact major developments in the surrounding urban areas of the Lower Mainland. Taxation, in all its forms, is one of the key issues at the treaty negotiation tables.

32. Other

Finally, there are other minor issues that should be addressed within the agreement. These can include such things as forbidding the assignment of the contract to third parties (to prevent contractual actions being brought by some party not privy to the agreement) and provisions allowing information sharing between the local government and the First Nation. There are, of course, a plethora of other minor, conventional terms that should be included in any contract, but these should be addressed by legal counsel drafting the contract and will not really be of any concern to either party (e.g. these include provisions stipulating that "time be of the essence", forbidding waiver of contractual terms by either party without the consent of the other, etc.).

E. CONCLUDING REMARKS

While the discussion on servicing at the regional level emerged from discussions on governance models, this paper does not address regional governance nor does the paper reconcile service agreement discussions between First Nations and the GVRD. Instead, this paper is intended to add to future discussions on those two important issues.

Each of the principles and contract provisions discussed in this paper are important elements for local governments to consider in service agreement contracts with First Nations. According to the literature and review conducted for the development of this paper, it is reported that there have been relatively few problems in a long history of service relationships between local governments and First Nations. This history of satisfactory service relationships needs to be continued and is even more likely to be important in the future as First Nation lands – entailing both Reserves and future Treaty Settlement Lands – are developed and expanded. However, if problems do arise, contract deficiencies could have serious consequences and potentially make it more difficult to continue mutually beneficial relationships into the future. The principles and provisions contained in this paper can be considered for inclusion in future negotiations and contracts, thus increasing the possibility of consistent service agreements across the region.

F. ATTACHMENTS

Attachment 1
Matrix of Principles Development

Regional Consideration	Regional Consideration Definition	Source of the Regional Consideration	Suggested Servicing Principle	Source of the Servicing Principle	Applicable Service Agreement Component(s)
a) Financial	To determine the financial impact that can result from the extension of sewer services or as a consequence of development, such as the cost of new facilities or upgrades to existing infrastructure.	*Policy Guidelines on the Provision of Water and Sewer Services Outside Municipal Service Areas* (GVS&DD, July 1996)	Cost effectiveness Cost-recovery for services Binding dispute resolution Certainty	Principle #15 *GVRD Principles for Treaty Negotiations* (July 2002) Interest 4.5.2, *Cost Recovery* Interest 4.4.4, *Program and Service Delivery* *Dispute Resolution and Land Use: Backgrounder to LMTAC First Principle #30* (LMTAC, Feb 2002) *Servicing Interests and Treaty Negotiations. Background Briefing Note to LMTAC First Principle #35.*	Charges for Services Bill Payment Payment Penalties Dispute Resolution Remedy Default Indemnity Term of Agreement Definition of Terms Termination Date Renewal of Agreement Amendment
b) Technical and Operational	To assess capacity of existing infrastructure to meet current and future demand, suitability of the proposed connection point, or source control issues for industrial discharges.	*Policy Guidelines on the Provision of Water and Sewer Services Outside Municipal Service Areas* (GVS&DD, July 1996)	Certainty	*Servicing Interests and Treaty Negotiations. Background Briefing Note to LMTAC First Principle #35.*	Description of land Description of Services Repair
c) Land Use Compliance	To confirm compliance to existing municipal community plans and the regional Livable Region Strategic Plan.	*Policy Guidelines on the Provision of Water and Sewer Services Outside Municipal Service Areas* (GVS&DD, July 1996)	Coordinated land use and planning	Interest 4.2.8, *Land Management* Principle #3 *GVRD Principles for Treaty Negotiations* (July 2002)	Regional Integration Consultation Compatible Bylaws
d) Service Levels	To ensure that the extension of sewer services does not degrade service levels for existing serviced areas.	*Policy Guidelines on the Provision of Water and Sewer Services Outside Municipal Service Areas* (GVS&DD, July 1996)	Regional servicing standards "Global servicing" approach to be encouraged	*Servicing Interests and Treaty Negotiations. Background Briefing Note to LMTAC First Principle #35.*	Level of Services "Global Servicing"

Regional Consideration	Regional Consideration Definition	Source of the Regional Consideration	Suggested Servicing Principle	Source of the Servicing Principle	Applicable Service Agreement Component(s)
e) Local and Community Interests	To evaluate the potential encouragement of further development and the impact to adjacent municipalities or communities.	*Policy Guidelines on the Provision of Water and Sewer Services Outside Municipal Service Areas* (GVS&DD, July 1996)	Building inter-governmental relations. Partnership/Cooperation Collaboration Coordination of cross-boundary services	First Principle #28, *Delivery of Local Programs/Services*	Consultation Intent of the Agreement
			Contribution towards community costs of development	*Servicing Interests and Treaty Negotiations. Background Briefing Note to LMTAC First Principle #35.*	Development Cost Charges (DCCs) User Fees
f) Regional Interests	To consider the regional interest of extending sewer service to residents because of social benefits, such as public health, that result from a clean environment.	*Policy Guidelines on the Provision of Water and Sewer Services Outside Municipal Service Areas* (GVS&DD, July 1996)	Sustainability Integration of First Nations into Regional Initiatives Contribution towards regional costs of development	First Principle #16, *Consistent Environmental Regulatory Controls* First Principle #33, *Participation in and Delivery of Regional Programs/Services* *Servicing Interests and Treaty Negotiations. Background Briefing Note to LMTAC First Principle #35.*	Regional Integration Consultation "Global Servicing" Development Cost Charges (DCCs)
g) Rights-of-Way		*Policy Guidelines on the Provision of Water and Sewer Services Outside Municipal Service Areas* (GVS&DD, July 1996)	Access to local government lands and assets located on First Nation land	First Principle #14, *Importance of Access* Interest 4.2.7, *Access* Principle #18 *GVRD Principles for Treaty Negotiations* (July 2002)	Access and Rights-of-way Compatible Bylaws
h) Taxation			No taxation of local government property or assets	First Principle #43, *Assessment and Taxation Between Local Government Bodies* Interest 4.5.3, *Taxation and Local Government Tax Bases*	Taxation
i) Future Expansion of Regional Facilities			Local government consultation in bilateral agreements	*Servicing Interests and Treaty Negotiations. Background Briefing Note to LMTAC First Principle #35.*	Consultation

Attachment 2
Municipal Service Agreement Provisions

(Adapted from FCM *Land Management Project* and *A Reference Manual for Municipal Development and Services Agreements – Government of Manitoba*)

GENERAL TERMS	PURPOSE	SOURCES FOR EXAMPLE PROVISIONS
1. Effective Date	When the agreement will be dated for reference	*City of Chilliwack. Services Agreement (template for an agreement). Chilliwack, BC., 2005*
2. Parties to the Agreement	A description of the parties and authority to enter the agreement (acts, bylaws, resolutions, etc.)	*Service Agreement – City of Coquitlam and Kwikwetlem First Nation, April 1st, 2005* *City of Chilliwack. Services Agreement (template for an agreement). Chilliwack, BC., 2005*
3. Preamble / Background Information	A description of circumstances that led to agreement [can include guiding principles]	*Service Agreement – City of Coquitlam and Kwikwetlem First Nation, April 1st, 2005*
4. Description of Land	Area and legal description	*Service Agreement – City of Coquitlam and Kwikwetlem First Nation, April 1st, 2005* *Reserve Servicing Agreement – Tsleil 'Waututh Nation and District of North Vancouver, May 31st, 2005*
5. Intent of the Agreement	A statement of intent from both parties	*Reserve Servicing Agreement – Tsleil 'Waututh Nation and District of North Vancouver, May 31st, 2005*
6. Definition of Terms	Include legal definitions wherever possible	*Service Agreement – City of Coquitlam and Kwikwetlem First Nation, April 1st, 2005* *Leaseholder Service Agreement – Campbell River First Nations and City of Campbell River, 2005*
7. Termination Date	When the Agreement will no longer be effective	*Homalco Indian Band Council and the District of Campbell River. Agreement. Campbell River, BC. May 1992.*
8. Renewal of Agreement	Provision for renewal of the agreement (can be automatic)	*Service Agreement – District of Campbell River and Cape Mudge Indian Band, October 24th, 2004*
9. Term of Agreement	Agreement can be effective for a set period of time	*Service Agreement – District of Campbell River and Cape Mudge Indian Band, October 24th, 2004*
10. Applicable Laws	A description of any federal/provincial laws that apply	*Service Agreement – City of Coquitlam and Kwikwetlem First Nation, April 1st, 2005*

GENERAL TERMS	PURPOSE	SOURCES FOR EXAMPLE PROVISIONS
11. Dispute Resolution	A provision dictating how disputes will be resolved	*Leaseholder Service Agreement – Campbell River First Nations and City of Campbell River, 2005* *Service Agreement – City of Coquitlam and Kwikwetlem First Nation, April 1st, 2005* *City of Chilliwack. Services Agreement (template for an agreement). Chilliwack, BC., 2005* *Reserve Servicing Agreement – Tsleil 'Waututh Nation and District of North Vancouver, May 31st, 2005*
12. Default	Outlines penalties for a party that does not abide by the agreement	*Service Agreement – City of Coquitlam and Kwikwetlem First Nation, April 1st, 2005*
13. Indemnity	Reciprocal protection against liabilities that arise from the implementation of agreement	*Westbank First Nation and the Regional District of Central Okanagan and the Corporation of the City of Kelowna and the Black Mountain Irrigation District and the South East Kelowna Irrigation District. Master Agreement. Kelowna, BC. July 2000.* *Reserve Servicing Agreement – Tsleil 'Waututh Nation and District of North Vancouver, May 31st, 2005*
CUSTOMARY PROVISIONS	**PURPOSE**	**SOURCES FOR EXAMPLE PROVISIONS**
14. Headings	Clarify that headings are for ease of reference only, and are not to be interpreted legally	*Reserve Servicing Agreement – Tsleil 'Waututh Nation and District of North Vancouver, May 31st, 2005* *Leaseholder Service Agreement – Campbell River First Nations and City of Campbell River, 2005*
15. Notice	The process by which both parties can give notice to each other	*Leaseholder Service Agreement – Campbell River First Nations and City of Campbell River, 2005* *Model First Nation Services Agreement – City of Chilliwack, 2005* *Reserve Servicing Agreement – Tsleil 'Waututh Nation and District of North Vancouver, May 31st, 2005*

CUSTOMARY PROVISIONS	PURPOSE	SOURCES FOR EXAMPLE PROVISIONS
16. Amendment	Description of process for making changes to the agreement	*Service Agreement – City of Coquitlam and Kwikwetlem First Nation, April 1st, 2005*
SERVICES	**PURPOSE**	**SOURCES FOR EXAMPLE PROVISIONS**
17. Description of Services	What the municipality is willing and able to supply to First Nation and that First Nation is willing to purchase from municipality	*Leaseholder Service Agreement – Campbell River First Nations and City of Campbell River, 2005* *Service Agreement – City of Coquitlam and Kwikwetlem First Nation, April 1st, 2005* *City of Chilliwack. Services Agreement (template for an agreement). Chilliwack, BC., 2005* *Reserve Servicing Agreement – Tsleil 'Waututh Nation and District of North Vancouver, May 31st, 2005*
18. Level of Services	Description of standard level of services (e.g., similar to other municipal residents)	*Leaseholder Service Agreement – Campbell River First Nations and City of Campbell River, 2005*
19. Charges for Services	Outline costs for providing services	*Leaseholder Service Agreement – Campbell River First Nations and City of Campbell River, 2005*
20. User Fees	Contribute to additional costs of supplying various municipal services (i.e. Building Inspections, Recycling Fees)	*Model First Nation Services Agreement – City of Chilliwack, 2005* *Leaseholder Service Agreement – Campbell River First Nations and City of Campbell River, 2005*
21. Bill Payment	Procedure for bill payment	*Service Agreement – City of Coquitlam and Kwikwetlem First Nation, April 1st, 2005* *City of Chilliwack. Services Agreement (template for an agreement). Chilliwack, BC., 2005* *Reserve Servicing Agreement – Tsleil 'Waututh Nation and District of North Vancouver, May 31st, 2005*

SERVICES	PURPOSE	SOURCES FOR EXAMPLE PROVISIONS
22. Payment Penalties	Description of consequences for non-payment	*Reserve Servicing Agreement – Tsleil 'Waututh Nation and District of North Vancouver, May 31st, 2005* *City of Chilliwack. Services Agreement (template for an agreement). Chilliwack, BC., 2005*
23. Remedy	Action taken to recover costs	*Reserve Servicing Agreement – Tsleil 'Waututh Nation and District of North Vancouver, May 31st, 2005*
24. Access and Rights-of-Way	By municipality on reserve land for emergency services and maintenance	*Service Agreement – City of Coquitlam and Kwikwetlem First Nation, April 1st, 2005* *Reserve Servicing Agreement – Tsleil 'Waututh Nation and District of North Vancouver, May 31st, 2005* *Leaseholder Service Agreement – Campbell River First Nations and City of Campbell River, 2005*
25. Repair	Description of process for repairing, upgrading or integrating services provided to First Nation	*Service Agreement – City of Coquitlam and Kwikwetlem First Nation, April 1st, 2005* *Leaseholder Service Agreement – Campbell River First Nations and City of Campbell River, 2005*
ADDITIONAL RECOMMENDED PROVISIONS	**PURPOSE**	**SOURCES FOR EXAMPLE PROVISIONS**
26. Compatible Bylaws	Development, adoption, and enforcement of compatible First Nation – municipal bylaws where compatibility is necessary	*Service Agreement – City of Coquitlam and Kwikwetlem First Nation, April 1st, 2005* *Reserve Servicing Agreement – Tsleil 'Waututh Nation and District of North Vancouver, May 31st, 2005*
27. Development Cost Charges (DCC) and Community Benefit Programs	Contribution to off-site improvements needed as a result of reserve development	*Leaseholder Service Agreement – Campbell River First Nations and City of Campbell River, 2005* *Service Agreement – District of Campbell River and Cape Mudge Indian Band, October 24th, 2004*

ADDITIONAL RECOMMENDED PROVISIONS	PURPOSE	SOURCES FOR EXAMPLE PROVISIONS
28. Regional Integration	Adherence to regional standards and participation in regional initiatives, such as the *Sustainable Region Initiative*	*Reserve Servicing Agreement – Tsleil 'Waututh Nation and District of North Vancouver, May 31st, 2005*
29. "Global Servicing"	Subscription to core municipal services	*Leaseholder Service Agreement – Campbell River First Nations and City of Campbell River, 2005*
30. Consultation Clause and Protocol Agreement	Joint consultation process to address proposed land use and development and participation in the Regional Growth Strategy	*Model First Nation Services Agreement – City of Chilliwack, 2005* *Service Agreement – City of Coquitlam and Kwikwetlem First Nation, April 1st, 2005* *Reserve Servicing Agreement – Tsleil 'Waututh Nation and District of North Vancouver, May 31st, 2005*
31. Taxation	Honour existing intergovernmental taxation protocol	*Service Agreement – City of Coquitlam and Kwikwetlem First Nation, April 1st, 2005* *Leaseholder Service Agreement – Campbell River First Nations and City of Campbell River, 2005*
32. Other	Any other minor issues that should be addressed within the agreement	*Leaseholder Service Agreement – Campbell River First Nations and City of Campbell River, 2005* *Model First Nation Services Agreement – City of Chilliwack, 2005* *Service Agreement – City of Coquitlam and Kwikwetlem First Nation, April 1st, 2005* *Reserve Servicing Agreement – Tsleil 'Waututh Nation and District of North Vancouver, May 31st, 2005*

Attachment 3
Campbell River First Nations and the City of Campbell River. Leaseholder Service Agreement. Campbell River, BC. January 2005
(reproduced from the original version)

LEASEHOLDER SERVICE AGREEMENT
CAMPBELL RIVER FIRST NATIONS
AND
CITY OF CAMPBELL RIVER

This AGREEMENT made in duplicate this day of , 2005.

BETWEEN: **CAMPBELL RIVER INDIAN BAND COUNCIL**, on behalf of itself, its individual members, the members of the Campbell River Indian Band, and the CAMPBELL RIVER INDIAN BAND having its offices at P.O. 1400 Weiwaikum Road, Campbell River, in the Province of British Columbia (the "**BAND**")

AND: **CITY OF CAMPBELL RIVER**, a duly incorporated City having its offices at 301 St. Ann's Road, Campbell River, in the Province of British Columbia (the "**CITY**")

WHEREAS the Campbell River Indian Band has adopted a Campbell River First Nations Property Assessment and Taxation Bylaw and will assume taxation authority to collect property taxes from leaseholders on the Reserve (as defined herein);

AND WHEREAS there is a desire by both parties to continue the provision of municipal services to the Reserve;

AND WHEREAS the City has the authority to enter into this Agreement pursuant to Section 8(1) of the *Community Charter*;

AND WHEREAS the parties to this Agreement embrace the following principles:

- Affirm First Nation authority and delivery of services to each other in a most cost effective manner;
- Pay fair price for services;
- Respect the authorities of each other;
- Maintain regulatory harmony by ensuring that rules similar to those of the local government are applied to the area of First Nation tax authority;
- Develop a competitive investment climate to promote economic development, and maintain an open communication on economic development matters including specific economic opportunities of interest to the region, including relevant government funding programs;
- Support and encourage positive communication and co-operation among economic stakeholders in the region;

- Co-operate with other stakeholders in the development of such economic studies on infrastructure, economic opportunity and strategy, and marketing as may be appropriate in keeping with the principles of this Agreement;

AND WHEREAS the Chief and Council of the Campbell River Indian Band and the Mayor and Council of the City of Campbell River have established formal meetings between the two bodies.

AND WHEREAS the Chief and Council of the Campbell River Indian Band and the Mayor and Council of the City of Campbell River on behalf of the citizens of each, declare their mutual intentions to pursue a renewed and lasting relationship based upon mutual respect and honour.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein contained, the PARTIES hereto agree as follows:

1.0 DEFINITIONS

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

"**City Specifications**" means the specifications and standards for the construction of utility and road works established by the City's Subdivision Bylaw.

"**Leasehold Lands**" means the areas of the Reserve Commercial Lands that are leased by the Band to non-Band members at any time during the Term.

"**Leaseholders**" means the tenants or occupiers of the Leasehold Lands.

"**Municipal Services**" means all municipal services of the City that are ordinarily provided to the City's residents.

"**Reserve**" means the Campbell River Indian Reserve Number 11, which is a reserve within the meaning of the *Indian Act* R.S.C. 1985, c. 1-5.

"**Reserve Commercial Lands**" means the parts of the Reserve that are referred to in section 2.2, as well as other parts of the Reserve that may be leased to non-Band members during the Term, as contemplated under section 2.3.

"**Reserve Systems**" means the sewer, water and fire protection systems constructed by the Band on the Reserve for the purpose of the supply of Municipal Services to the Leaseholders under this Agreement, and includes the curb stop connections on the Reserve that service the Leasehold Lands, but does not include any service connection installed by the Band from those curb stop connections to any residential or non-residential improvement located on the Leasehold Lands.

"**Sanitary Sewer Services**" means the collection, conveyance, treatment and disposal of sanitary waste.

"**Term**" means the period of time during which this Agreement remains in force and effect, as described in section 12.1.

1.2 Words otherwise used in this Agreement shall have the same meaning as contained in the Community Charter, R.S.B.C. 1996, c. 26, the Local Government Act, R.S.B.C. 1996, c. 323, and the *Indian Act*, R.S.C. 1985, C. 1-5.

2.0 APPLICATION

2.1 Except where expressly stated, this Agreement does not derogate from, limit or otherwise affect the jurisdiction of the City or the Band.

2.2 This Agreement applies to the portion of the Reserve shown on the Plan attached as Schedule A, with services to be provided to various parts of the Reserve as described in Schedules B,C and D.

2.3 This Agreement will also apply to any other part of the Reserve that is leased by the Band to non-Band members during the Term.

2.4 The Band agrees to provide the City with notice of any new Leaseholders of the Reserve Commercial Lands granted by the Band during the Term.

3.0 APPLICATION OF BUILDING BYLAW

3.1 The Band agrees that the construction of any complex [Part 3] building as defined by the B.C. Building Code on the Leasehold Lands will be subject to the pertinent sections of the City Building Bylaw, as amended or replaced from time to time, as it applies to complex [Part 3] building as defined by the B.C. Building Code, including performance of inspections, which will be paid on a fee for service basis [as set in Schedule A of the City Building Bylaw] except to the extent that the City's Bylaw is inconsistent with:

(a) any bylaw of the Band, adopted pursuant to section 81(1)(h) of the *Indian Act*, that regulates the construction of buildings on the Reserve; or

(b) the *Indian Act* or any regulations thereunder.

3.2 The Band agrees that it will provide the City with a copy of any bylaw regulating building construction adopted by the Band pursuant to Section 81(1)(h) of the *Indian Act*, within 14 days of the bylaw's adoption.

3.3 Compliance with Section 3.1 is optional for buildings where the Band will be the owner.

4.0 MUNICIPAL SERVICES TO BE PROVIDED BY THE CITY

4.1 During the Term, the City will provide Municipal Services to the Leaseholders, subject to the

limitations and exceptions set out in each of Schedules B,C and D.

4.2 The quality and quantity of the Municipal Services to be provided by the City under this Agreement will be substantially the same as the quality and quantity of Municipal Services provided by the City to the residents of non-Reserve lands within the City. Nothing in this Agreement shall require the City to provide Municipal Services that exceeds the level of Municipal Services provide by the City to the residents of non-Reserve lands within the City.

5.0 CONSTRUCTION OF NEW RESERVE SYSTEMS

5.1 Any new Reserve System must be constructed at the sole cost of the Band and will meet the specifications and standards of the City as provided in the City's Subdivision Control Bylaw as at the date of construction ("City Specifications").

5.2 The Band will retain a Professional Engineer to design and to provide construction engineering services of any new Reserve System, which Engineer shall certify to the City that such works have been constructed to City Specifications. The Engineer's certification must be delivered to the City's Engineering Services Manager along with all inspection records "as built" drawings in both digital and hard copy format before any Reserve System may be connected to the City's water or sanitary sewer systems, respectively.

6.0 REPAIRS AND MAINTENANCE

6.1 During the Term, the City will provide all necessary repairs and maintenance of the Reserve Systems, including any preventative maintenance that the City considers necessary.

6.2 The City will endeavour to repair and maintain the Reserve Systems in a timely manner and in accordance with the City's infrastructure maintenance standards and policies.

6.3 Upon receipt of an invoice from the City, the Band will reimburse the City for all expenses incurred, whether for materials, equipment or labour, in relation to the repair and maintenance of the Reserve Systems.

6.4 The Band will promptly notify the City of any breakdown in a Reserve System that requires any repair or maintenance work.

7.0 OWNERSHP OF RESERVE SYSTEMS

7.1 The Band shall at all times retain ownership of the Reserve Systems, and non interest, right or title to the Reserve Systems shall be conveyed to the City under this Agreement unless mutually agreed to by both parties.

7.2 The City will not, from the date of this Agreement, utilize the Reserve Systems or establish any connection thereto, except for the purpose of providing Municipal Services under this Agreement, without the prior written consent of the Band.

8.0 RIGHT OF ACCESS

8.1 Representatives of the City may at any time enter upon the Reserve for the purpose of providing any of the services required in accordance with this Agreement.

9.0 LEASEHOLDER USER FEES

9.1 The City will charge the Leaseholders a user fee for domestic water supplied to the Leaseholders at the rate established from time to time under the City's bylaws. For the purpose of calculating the amount of water supplied to the Leaseholders, the Band will at its cost install and maintain water meters on the Leasehold Lands.

9.2 The City will charge the Leaseholders a user fee for Sanitary Sewer Services at a rate established from time to time under the City's bylaws. For the purpose of calculating the fee for Sanitary Sewer Services, the amount of sewage discharged from the Leasehold Lands will be measured according to the quantity of water supplied to the Leaseholders, as measured by the water meters installed under section 9.1, with no deduction on account of any waste of water.

9.3 The Band agrees that it will pay any user fees for domestic water or sanitary sewer services owed to the City, in the event any of the Leaseholders defaults in payment.

10.0 FEE FOR MUNICIPAL SERVICES

10.1 The Band will pay a fee for the Municipal Services provided by the City in accordance with the provisions of Schedules B, C and D.

10.2 For the purpose of calculating the fee payable under Schedules B,C and D, the Band agrees that during the term it will contract with the British Columbia Assessment Authority to provide assessment services pertaining to those parts of the Reserve to which this Agreement applies. The Band further agrees that it shall provide the City with a copy of the annual assessment roll prepared by the British Columbia Assessment Authority on behalf of the Band, and with any updates, amendments or changes to that roll as they are received by the Band from time to time.

The Band agrees that it will collect by adding to the following year's Leaseholders taxes the amounts of any fees owed to the City by Leaseholders on December 31st.

10.3 The City agrees to provide notice of the property tax rates established by the City Council by May 16th of each year.

11.0 DEVELOPMENT COST CHARGES

11.1 The Band further agrees that it will collect on the City's and the Band's behalf, a fee equivalent to the fees established by the City's Development Cost Charge Bylaw, in effect from time to time, for all new development on the Leasehold Lands. The fees will be held in

trust until the prescribed capital off-site projects are constructed and the Band will transfer the appropriate funds to the City at the time construction or purchase is to start. Further, the Band commits to develop it's own Development Cost Charge Bylaw for the establishment of charges for infrastructure projects on Band lands.

12.0 TERM, RENEWAL AND TERMINATION

12.1 The term of this Agreement shall be a period of five (5) years, commencing January 1, 2005 and terminating on December 31, 2009.

12.2 The parties may by agreement in writing entered into prior to December 31, 2009 renew or extend the Term, but if the parties fail to renew this Agreement or to extend the Term in the manner described this Agreement shall terminate on December 31, 2009, and the City shall not be obliged to provide any further Municipal Services to the Leaseholders after the date of termination.

13.0 DEFAULT OR NON-PERFORMANCE

13.1 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.

13.2 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 13.1 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.

14.0 LIABILITY

14.1 The City does not warrant or guarantee the continuance or quality of any of the services provided under this Agreement, for any reason which is beyond the reasonable control of the City, including without limitation the acts of God, 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 Reserve Systems, or in the manufacture of any materials used therein, and other similar circumstances.

14.2 The Band hereby releases and indemnifies the City, 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 and maintenance of such services, provided, however, that such release and indemnity shall not apply in any case where the City, 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.

14.3 The Band shall provide a certified copy to the City of its comprehensive all-risk liability insurance policy for a combined limit of not less than $3,000,000 which policy shall protect

the City against any action, suit or claim for bodily or personal injury or property damage arising out of the provision of the services under this Agreement.

14.4 The policy referred to in section 14.3 shall name the City as an additional named insured with respect to liability arising vicariously out of their operations in conjunction with the Band specific to the Leaseholder Services Agreement, and shall be underwritten with an insurer licensed in Canada which insurer must be acceptable to the City, such acceptance not be unreasonably withheld.

14.5 The Band shall carry a provision in the insurance policy referred to in section 14.3 hereof that such policy must not lapse or be cancelled by the insurer without thirty (30) days notice being given to the City.

14.6 The City may require the Band to obtain further or better insurance against those risks to be borne by the Band in excess of $3,000,000 and the Band shall provide evidence of such additional coverage to the City on such occasion provided however that such request for additional coverage shall be reasonable and/or necessary.

15.0 DISPUTES

15.1 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.

15.2 In the event that the parties fail to resolve matters as described in paragraph 15.1 hereof, the parties shall seek a settlement of the conflict by utilizing an alternative dispute resolution method, such as mediation or arbitration, and recourse to the Courts shall be a means of last resort.

16.0 MISCELLANEOUS PROVISIONS

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

16.2 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.

16.3 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.

16.4 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.

16.5 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.

16.6 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.

16.7 The parties shall forthwith upon discovery of the illegality or invalidity referred to in paragraph 16.6 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.

16.8 All notices and reports given under this Agreement shall be made in writing and may be served personally, by facsimile device or by registered mail or by bonded courier to the parties at the following addresses:

CAMPBELL RIVER INDIAN BAND COUNCIL
1400 Weiwaikum Road,
Campbell River, British Columbia
V9W 5W8
ATTENTION: BAND ADMINISTRATOR

CITY OF CAMPBELL RIVER
301 St. Ann’s Road
Campbell River, British Columbia
V9W 4C7
ATTENTION: CITY CLERK

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

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

16.11 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:
CAMPBELL RIVER INDIAN BAND COUNCIL in the presence of

_____	_____
Witness	Chief
_____	_____
Address	Councillor
_____	_____
Occupation	Councillor
	_____
	Councillor
	_____
	Councillor
	_____
	Councillor

CITY OF CAMPBELL RIVER by its authorized signatories:

_____
Mayor

_____
Clerk

SCHEDULE A

LANDS

Map of the Reserve Lands

SCHEDULE B

1. The area of the Reserve Commercial Lands included in the Reserve portion of the shopping center, which is on that part of the Reserve legally described as Lots 136 CLSR Plan 78317 and outlined in bold and identified as “Area A” on the map that is attached as Schedule A to this Agreement.

2. The City shall provide all Municipal Services to the Leaseholders within Area A.

3. The annual fee to be paid by the Band for the Municipal Services provided in Area A, pursuant to section 10.1 of the Agreement, is the amount equivalent to seventy-two and one-half percent (72.5%) of the property taxes that, the year of the Agreement for which the fee is paid, would have been requisitioned by the City against the Leaseholders of the Leasehold Lands within Area A, utilizing the property tax rates established by the City Council for that year, had the Band not adopted the Campbell River First Nations Property Assessment and Taxation Bylaw No. 1.

SCHEDULE C

1. The area of the Reserve Commercial Lands included is the portion of the Reserve generally referred to as the Argonaut Wharf, which is on that part of the Reserve legally described as Lot M IASR Plan 3423 and Lot 1505 and outlined in bold and identified as "Area B" on the map that is attached as Schedule A to this Agreement.

2. The City shall provide all Municipal Services to the Leaseholders within Area B.

3. The annual fee to be paid by the Band for the Municipal Services provided in Area B, pursuant to section 10.1 of the Agreement, is the amount equivalent to seventy-two and one-half percent (72.5%) of the property taxes that the year of the Agreement for which the fee is paid, would have been requisitioned by the City against the Leaseholders of the Leasehold Lands within Area B, utilizing the property tax rates established by the City Council for that year, had the Band not adopted the Campbell River First Nations Property Assessment and Taxation Bylaw No. 1.

SCHEDULE D

1. The area of the Reserve Commercial Lands included is the portion of the Reserve generally referred to as the Telus site, which is on that part of the Reserve legally described as Lot E CLSR Plan 53678 and outlined in bold and identified as "Area C" on the map that is attached as Schedule A to this Agreement.

2. The City shall provide all Municipal Services to the Leaseholders within Area C.

3. The annual fee to be paid by the Band for the Municipal Services provided in Area C, pursuant to section 10.1 of the Agreement, is the amount equivalent to seventy-two and one-half percent (72.5%) of the property taxes that, the year of the Agreement for which the fee is paid, would have been requisitioned by the City against the Leaseholders of the Leasehold Lands within Area C, utilizing the property tax rates established by the City Council for that year, had the Band not adopted the Campbell River First Nations Property Assessment and Taxation Bylaw No. 1.

Development Cost Charges Bylaw No. 2957, 2003

Attachment 4
City of Chilliwack. Services Agreement (template for an agreement). Chilliwack, BC., 2005
(reproduced from the original version)

SERVICES AGREEMENT

THIS AGREEMENT made as of the _____ day of _____, 200_
BETWEEN:

"First Nation"

(Address)
(hereinafter called the "First Nation")

OF THE FIRST PART
AND:

CITY OF CHILLIWACK
8550 Young Road
Chilliwack, BC., V2P 8A4
(hereinafter called the "City")

OF THE SECOND PART
WHEREAS:

A. Pursuant to Section 83 of the *Indian Act* R.S.C. 1985 c.1-5, the First Nation has exercised its authority to pass a taxation by-law.

B. By a certificate given under Section 10 of the *Indian Self Government Enabling Act*, R.S.B.C. 1996, c.219, the Minister of Native Affairs for the Province of British Columbia gave to the City notice that the First Nation intends to commence property taxation under the *Indian Act*, R.S.C. 1970, c.1-6;

B. Under Section 37 of the *Indian Self Government Enabling Act*, R.S.B.C. 1996, c.219, the City may contract with the First Nation to provide to the First Nation for the area to which an Indian land taxation law applies, and its residents or occupants, any services that the City is obligated or permitted to provide under its usual mandate;

C. In entering into this Agreement , the parties do not intend to affect any right or interest of the other party except as expressly set out in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that for and in consideration of the premises and of the mutual promises and covenants hereinafter appearing the parties hereto covenant and agree each with the other as follows:

DEFINITIONS
In this Agreement, unless the context otherwise requires:

"Agreement" means this Agreement and all Schedules hereto.

"First Nation Administration Cost" means the total of all costs to the First Nation of administrating the collection of taxes with respect to the Lands within the area of Reserve to which the Notice applies.

"Credit for First Nation Administration Cost" means an allowance on account of the First Nation Administration Cost calculated in any year as follows:

____% of the Equivalent Municipal Taxes equals the Credits for First Nation Administration Cost.

The ____% figure shall remain fixed during the entire Term, regardless of the actual First Nation Administration Cost in any year, and shall change only with the written agreement of both the First Nation and the City, which agreement neither party is in any way obligated to give.

"Credit for Non-Delivered Services" means an allowance on account of the total cost which the City avoids by not providing the Non-Delivered Services to the Reserve and to the occupiers thereof, and shall be calculated in any year as follows:
CNDS = EMT * ($NDS/DTB)

where

CNDS means Credit For Non-Delivered Services in the year;
EMT means the Equivalent Municipal Taxes in the year;
$NDS means the City's total budgeted costs, as identified or as determined based on the City's annual budget in the year, of delivering the Non-Delivered Services to lands and occupants throughout the City;
DTB means the City's total annual budget.

As of the date of this Agreement the fraction in the above equation of ($NDS/DTB) expressed as a percent.
The Percent may be changed as follows:

(a) either party may in any year prior to September 30 give written notice to the other party that the Percent should change for the calculation of the Net Services Fee which will be owing on October 1 in the year following:

(b) after receiving such written notice the parties shall in a timely manner enter into good faith negotiations to reach agreement on the Percent;

(c) if within 6 months of the date of receiving the written notice a Percent has not been agreed to, then the matter shall be determined by a single arbitrator, who shall be a person experienced in such valuation, who shall determine the Percent upon receipt of written submissions only from the parties, without holding an oral hearing. If the parties cannot agree upon an arbitrator, the arbitrator shall be appointed pursuant to the Rules of the International Arbitration Centre. The arbitrator shall make a ruling within 12 months of the date of the written notice referred to in subparagraph (a).

A written notice given pursuant to subparagraph (a) shall not change or affect the calculation of the Net Services Fee, or the payment thereof, owing on the October 1 which occurs next after the written notice.

"Enabling Act" means the *Indian Self Government Enabling Act*, R.S.B.C. 1996, c. 219.

"Equivalent Municipal Taxes" in any year means the sum equal to the total of all taxes in respect of which the owners or occupiers of all the Lands in the Reserve to which the Notice applies would have been liable for taxation under the *Community Charter* but for the provisions of the Enabling Act, which includes such taxes that would have been payable with respect to all property classes as defined and prescribed pursuant to section 26(8) of the *Assessment Act*, R.S.B.C. 1979, c. 21, but does not include any taxes that would have been payable by a utility company pursuant to the *Community Charter*, or any grants in lieu of such taxes that a utility company would have made.

"First Nation" means the First Nations, all bands within the meaning of the *Indian Act*, R.S.C. 1985, c.1-5 and Regulations, as amended, who constitute the _____ Nation, whose respective memberships vote in favour of the Lands set aside as Reserve for their use and benefit jointly with the other _____ Nation First Nations whose respective memberships similarly vote in favour of the Co-Management Agreement;

"Land" means "land" and "improvements" as defined in the *Assessment Act*, R.S.B.C. 1979, c. 21.

"Net Services Fee" means a sum calculated annually during the Term in the following manner:

Equivalent Municipal Taxes minus Credit for Non-Delivered Services minus Credit for Band Administration Cost equals Net Services Fee.

"Non-Delivered Services" means:

all of the services coming within the "Planning", "Business Development", "Weed Control", and "Building Inspection" budget items as set out in the City's annual budget; and

any other service agreed to in writing between the parties as being Non-Delivered Services.

The City will give reasonable consideration to a request from the First Nation during the Term that a Service be re-classified as a Non-Delivered Service if:

the First Nation provides such Service to the Lands in the Reserve to which the Notice applies; and

the City's total costs of providing the Services are thereby reduced.

"Notice" means the notice given by the Minister of Native Affairs for the Province of British Columbia referred to in paragraph B.

"Reserve" means _____.

"Services" means the services which the City provides to lands and occupants throughout the City and includes utilities, facilities and works owned and operated by the City, but does not include Non-Delivered Services, and does not include Water, Sanitary Sewer and Storm Sewer Services.

"Term" means the term set out in clause 8.1 of this Agreement.

"User Fees" includes any fee, charge or levy imposed by the City under the *Local Government Act* or other enabling authority in respect of Services but does not include rates imposed under the *Community Charter*.

The provisions of the Interpretation Act, R.S.B.C. 1979, c. 206 shall be deemed to apply to this Agreement as though it were an enactment of the City.

"Water, Sanitary Sewer and Storm Sewer Services" means water, sanitary or storm services which the City provides to properties within the City. The City is not providing Water, Sanitary Sewer or Storm Sewer Services to the First Nation or to the Reserve pursuant to this Agreement.

"Year" means calendar year.

PROVISION OF SERVICES

Subject to the terms hereof, the City shall provide Services to the Reserve and to the occupiers thereof generally on the same terms and conditions, and subject in all respects to the same limitations, as are applicable to the provision of Services to other lands in the City and to the occupiers thereof.

If the First Nation provides any Non-Delivered Services, as defined in this Agreement as of the date of execution thereof, or as may be agreed to pursuant to clause 1.10(b), then the First Nation will make such Non-Delivered Services available to property owners, tenants, occupiers and members of the public (the "Users"), as the case may be, generally on the same basis, and subject to the same limitations, as does the City with respect to similar services it provides to Users within the City.

PAYMENT FOR SERVICES

The First Nation shall pay the Net Services Fee by cheque to the City on or before October 1 in each Year of the Term.

Interest shall be payable on any late payments owing by the First Nation to the City pursuant to this Agreement at the rates and according to the terms as set out in the City's Miscellaneous Rates Bylaw, as may be amended from time to time.

If the First Nation is more than 6 months late in making any payment owing to the City pursuant to this Agreement then the City may at its election give the First Nation 10 working days written notice of default, setting out the amounts and interest owing and, if within the 10 days the First Nation does not make full payment, then, without prejudice to any other

remedy available to it at law or in equity, the City may on further written notice to the First Nation terminate this Agreement.

EVENTS OF DEFAULT

Municipal services are being provided by the City to the Reserve and the occupants thereof under several separate agreements including, by way of illustration, this Agreement and a separate agreement for the provision of Water, Storm Sewer and Sanitary Sewer Services. While for convenience these agreements are being entered into separately, they are related. If any other agreement for the provision of services to the Reserve or the occupants thereof between the City and any other person is terminated for any reason then the City or the First Nation may at its election, and in accordance with its judgment of its best interests, give 10 days written notice to the other party that this Agreement is terminated, in which event this Agreement shall be terminated, except that any payment obligations owing by the First Nation to the City shall survive such termination, and the First Nation shall on the next following October 1 owe the pro rata portion of the Net Services Fee calculated based on the date of termination.

USER FEES

Nothing in this Agreement shall exempt occupiers on the Reserve from, and they shall pay to the City as due, all User Fees.

EFFECT OF NEW LAWS

In the event any laws, regulations, rules or policies having the force of law are promulgated, amended or repealed and such promulgation, amendment or repeal has the effect of eliminating the City's annual Net Services Fee or reducing it by an amount which exceeds _____% of what it would have been without the above promulgation, amendment or repeal, this Agreement, at the option of the City, and by written notice from the City to the First Nation, shall be, and shall be deemed to be, of no further force and effect and the City shall thereupon be discharged from providing Services hereunder, except that any payment obligations owing by the First Nation to the City shall survive each termination, and the First Nation shall on the next following October 1 owe the pro rata portion of the Net Services Fee calculated based on the date of termination.

In the event any laws, regulations, rules or policies having the force of law are promulgated, amended or repealed and such promulgation, amendment or repeal has the effect of increasing the City's annual Net Services Fee amendment by an amount which exceeds _____% of what it would have been without the above promulgation, amendment or repeal, this Agreement, at the option of the First Nation, and by written notice from the First Nation to the City, shall be, and be deemed to be, of no further force and effect and the First Nation shall thereupon be discharged from its obligations hereunder, except that any payment obligations owing by the First Nation to the City shall survive such termination, and the First Nation shall on the next following October 1 own the pro rata portion of the Net Services Fee calculated based on the date of termination.

DISPUTE RESOLUTION

All matters in dispute under this Agreement other than a dispute as provided by Paragraph 1.4(c) may, with the concurrence of both the First Nation and the City, be submitted to arbitration by a single arbitrator appointed and proceeding pursuant to the *Commercial Arbitration Act of British Columbia*, and the award of the such arbitrator shall be final and binding upon the parties.

TERM

This Agreement shall be deemed to have come into effect as of January 1, 200_ and shall be for an indefinite Term, remaining in force from year to year unless pursuant to clause 4.0 hereof or by notice in writing given by one party to the other on or before October 31 in any year and where such notice is given it shall take effect and this Agreement shall terminate on December 31 in the year following the year in which notice is given.

MISCELLANEOUS

Wherever in this Agreement it is required or permitted that notice, demand or other communication be given or served by either party to the other, such notice or demand shall be given and served in writing and forwarded by registered mail, addressed as follows:

To the City:

City of Chilliwack
8550 Young Road
Chilliwack, B.C.
V2P 8A4
Attention: Chief Administrative Officer

To the First Nation:

Name and Address
Attention: First Nation Chief
provided that a party may change its address by giving to the other party prior notice of a change in 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, not mailed.

This Agreement shall not be assigned by either party hereto.

(a) Nothing contained or implied herein shall prejudice or affect the rights and powers of the City in the exercise of its function under any public or private statutes, bylaws, orders or regulations, all of which may be fully and effectively exercised in relation to the services as if this Agreement had not been executed and delivered.

(b) Nothing contained or implied herein shall prejudice or affect the rights and powers of the First Nation in the exercise of its functions under Section 35 of the Constitution Act, 1982 (R.S.C. 1985 Appendix II, No. 44), the *Indian Act* or any bylaw passed pursuant thereto, all of which may be fully and effectively exercised as if this Agreement had not been executed and delivered.

This Agreement shall not be construed so as to create any greater standard of care or liability on the part of the City in respect of the supplying of Services to residents and occupants on the Reserve than that which applies to the supply of such Services to other occupants within the City.

Nothing in this Agreement shall be interpreted as creating an agency, partnership or joint ventureship among or between the City and the First Nation.

Time shall be of the essence of this Agreement.

Headings are inserted in this Agreement for convenience only and shall not be construed as affecting the meaning of this Agreement.

No waiver of any term or condition of this Agreement or a breach of any term or condition of this Agreement by either party hereto shall be effective unless it is in writing and no waiver of breach, even if it is in writing, shall be construed as a waiver of any future breach.

Wherever the singular and 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 so require.

This Agreement shall enure to the benefit of and binding upon the parties hereto and their permitted successors and assigns.

FIRST NATION TO consult WITH CITY

The First Nation agrees that it will consult with the City with respect to development of the Reserve and agrees that the proposed development will be consistent and compatible with the intent of the City's official community plan.

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

THE CORPORATE SEAL of the)
CITY OF CHILLIWACK have hereunder affixed in the)
presence of:) (C/S)

_____)
MAYOR)
)
)
_____)
CLERK)
)

SIGNED, SEALED & DELIVERED by _____ pursuant to the content of a majority of the Councillors of the First Nation present at a Council meeting duly convened at which authority was given for the _____ to enter into this Agreement:	)	
_____ Name	)	_____ CHIEF
_____ Address	)	_____ COUNCILLOR
_____ Occupation	)	_____ COUNCILLOR

Attachment 5
Corporation of the City of Coquitlam and the Kwikwetlem First Nation. Service Agreement.
Coquitlam, BC. April 2005

SERVICE AGREEMENT

THIS AGREEMENT made as of the 1st day of April, 2005.

BETWEEN:

> **THE CORPORATION OF THE CITY OF COQUITLAM**, a municipality incorporated pursuant to the *Local Government Act*, having its offices at 3000 Guildford Way, Coquitlam, British Columbia, V3B 7N2
>
> (the "City")

AND:

> **THE KWIKWETLEM FIRST NATION,** being a band pursuant to the *Indian Act*, represented by its Chief and Council, and having an office at 65 Colony Farm Road, Coquitlam, British Columbia, V3C 5X9
>
> (the "Band")

WHEREAS:

A Her Majesty the Queen in Right of Canada holds legal title to Coquitlam Indian Reserve No. 1 lands (the "Band Lands"). The Band Lands have been set apart for the use and benefit of the Band, pursuant to the *Indian Act*;

B The parties wish to enter into a services agreement to provide for the delivery of certain services by the City to the Lands during the term of this Agreement.

C. Pursuant to Section 8 of the *Community Charter* the City may enter into agreements to provide services to lands;

D. The Band Council of the Band has authorized the execution of this Agreement on behalf of the Band by a Band Council Resolution duly passed at a meeting of the Band Council held on the 16th day of March, 2005, a copy of which is attached hereto as Schedule A.

NOW THEREFORE THIS AGREEMENT witnesses that for and in consideration of the promises and agreements contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto covenant and agree with each other as follows:

1. DEFINITIONS

1.1 Definitions

In this agreement, except as expressly provided or as the context otherwise requires:

(a) "**Agreement**" means this agreement, including the recitals and schedules hereto, as amended and supplemented from time to time;

(b) "**Improvements**" means improvements as defined in the *Assessment Act*, R.S.B.C. 1996 c. 20, s. 1, as amended from time to time;

(c) **"Land Infrastructure**" means any and all streets, roadways, bridges and associated streetlights and sidewalks, traffic lights and traffic control signs on the Lands for the provision of access to or from the Lands and all storm and sanitary sewers, water lines, hydrants, connections and associated works on or under the Lands constructed for the purpose of providing Services to the Lands or Improvements thereon,

(d) "**Lands**" mean that portion of the Band Lands identified in Schedule B hereof;

(e) "**Services**" means the following City services:

(1) water services;

(2) sanitary sewer services; and

(3) fire protection services;

(f) **"Service Fee**" means the annual amount payable in this Agreement for the Services to be delivered.

1.2 Governing Law

This Agreement will be governed by and construed in accordance with the laws of British Columbia and Canada and the parties hereby attorn to the Courts of British Columbia and Canada.

1.3 Severability

If any provision of this Agreement, or part thereof, is judged invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions will continue in full force and effect, provided that if the intent of the parties is not thereby preserved then either party may require the other party to negotiate in good faith a replacement for the invalid, illegal or unenforceable provision that is consistent with the intent of the parties hereto. If a replacement provision is not agreed within 90 days, then either party may terminate this Agreement on six (6) month's notice to the other.

1.4 Gender

Wherever the singular or masculine is used in this Agreement, the same will be deemed to include the plural, the feminine or the body corporate or politic where the context so requires, and vice versa.

1.5 Schedules

The following schedules are incorporated into and form a part of this Agreement:

Schedule A	-	Band Council Resolution
Schedule B	-	Lands
Schedule C	-	City Bylaws

2. PROVISION OF SERVICES

2.1 Services

Subject to the terms and conditions of this Agreement, the City will provide Services to the Lands for the benefit of the Band.

2.2 Standard of Services

The City will provide the Services required by this Agreement to the same standard and quality as such services are ordinarily provided by the City to the residents of immediately adjacent areas receiving those services.

2.3 Limitation

Notwithstanding the foregoing, nothing in this Agreement will:

(a) require the City to provide Services to the Lands or any part thereof if at any time the City, acting reasonably, determines:

(1) that it does not have the capacity or foreseeable capacity to provide such Services; or

(2) the provision of such Services would require the extension or upgrading of existing Services or infrastructure and the City and the Band are unable to conclude an agreement acceptable to them whereby the cost of the extension or upgrading is paid by or on behalf of the Band (to the extent it benefits the Band or the Lands);

(b) impose upon the City any greater duty to supply Services to the Lands than it has to other residents of the City receiving those Services;

(c) require the City to provide Services to the Lands where the Lands or any Improvement thereon is or will be used for any purpose which, in the opinion of the City, is dangerous or obnoxious or would reasonably be considered to be inconsistent with any environmental protection regulations of the Province of British Columbia, or bylaws of the City or the Band then in force for similar lands or improvements; or

(d) require the City to provide Services that are delivered in whole or in part by means of Land Infrastructure or works on the Lands that do not meet the safety, engineering and environmental standards of the City generally applicable to such works.

3. PAYMENT FOR SERVICES

3.1 Collection and Payment

The Band will pay to the City the Service Fee which will be payable quarterly, with respect to (a) and (b) below, on delivery of the City's invoice to the Band, and payable annually, with respect to (c) below, on or before March 31 in each year of the Term. The Service Fee will be the aggregate of:

(a) the commercial rate for metered supply of water established under the relevant City bylaws as these rates may be amended from time to time, or the residential rate for metered supply of water if the bylaws are amended to establish a residential metered rate;

(b) the charge applicable based on volume of water delivered on a metered rate basis established under Sewer System Bylaw No. 3151 as amended from time to time; and

(c) an amount equivalent to the average cost per residential property in the City for fire protection services multiplied by the number of residences in existence on the Lands on March 1 in the relevant year of the Term.

For certainty, the Service Fee will be payable only in respect of the Services to be provided through this Agreement. In the event the City amends its bylaws so as to change the method of determining cost recovery for the Services for City residents, the parties agree that this Section will be deemed to be amended so as to be consistent with and equitable to, such revised cost recovery methods.

3.2 Assessment

Where applicable, the value of the Lands and Improvements will be determined as equivalent to the average assessed values of adjoining and nearby properties and improvements of a similar size and use, taking into account as appropriate that the Lands are reserve lands. The Band may retain the British Columbia Assessment Authority or an appraiser to value the properties and Improvements on the Lands using comparable assessment principles as are applied to assess similar properties and Improvements within such proximity to the Lands, taking into account as appropriate that the Lands are reserve lands. If the Band chooses to retain the British Columbia Assessment Authority, then the

Band will provide all reasonable assistance and information to the British Columbia Assessment Authority, or any successor authority providing assessment services to the Band, for the purpose of the assessment of the Lands and Improvements thereon and will provide to the City a copy of the assessment roll for the Lands within 30 days of preparation of the assessment roll for each calendar year of the term of this Agreement. The Band may, at its election, retain the services of an independent qualified appraiser to prepare an appraisal of the Lands for the purposes of this Agreement, and such appraisal may apply for the purposes of paragraph 3.1 for a period not exceeding five (5) years. The Band will provide to the City, within 30 days of receipt, a copy of any appraisal prepared pursuant to this paragraph.

4. INFRASTRUCTURE

4.1 Construction of New Infrastructure and Connections

The Band will supply all Land Infrastructure and connections necessary for the provision of Services on the Lands, and all such Land Infrastructure will be and remain the sole property of the Band and will be constructed to and conform with the health, safety and engineering standards and specifications established from time to time by the City or by the provincial or federal government, whichever is the higher standard. The Band will allow the City to inspect the Land Infrastructure from time to time as necessary for the purpose of determining whether the Land Infrastructure conforms with such standards and specifications. No connection will be made from the Lands or any Improvement thereon to the Land Infrastructure or from the Land Infrastructure to the City's works until the Band has supplied the City with a certificate of a qualified professional engineer approved by the City, which certificate will confirm that the proposed connection and the applicable Land Infrastructure has been inspected by the engineer and the engineer is satisfied that such connection and Land Infrastructure conforms with the standards and specifications required herein.

4.2 Maintenance of Infrastructure

The Band will, at its expense, be responsible for all capital costs and work associated with the construction or replacement of Land Infrastructure. The City will, at the cost of the Band, service, repair and maintain in good working order all water and sanitary sewer infrastructure necessary for the provision of water and sanitary services on the Lands to the standard substantially the same as elsewhere in the City. The Band will pay to the City, within 30 days of receipt of an invoice from the City, all costs incurred by the City for such service, repair or maintenance.

5. BYLAWS AND EXISTING REGULATIONS

5.1 Compliance With Existing Regulations

Subject to paragraph 6.2, the Band will comply and take all reasonable steps to ensure compliance with all City bylaws referred to in Schedule C with respect to the Services, and any amendments thereto or replacements thereof.

6. FIRE PROTECTION SERVICES

6.1 Limitation

The City is not obliged to provide fire protection services to any occupier or Improvement on the Lands if there is an outstanding stop work or fire prevention order in respect of the Improvement that has not been remedied to the satisfaction of the City's Fire Chief or if the Land Infrastructure necessary for the provision of the fire protection service, including hydrants and water mains, does not meet the applicable safety and engineering standards for such works in the City.

6.2 Fire Protection Bylaw

The Band will, within 120 days of execution of this Agreement, adopt and seek approval of the Minister of Indian Affairs and Northern Development to a Band fire regulation bylaw substantially the same in form and effect as City Bylaw #1503 as amended. The Band bylaw will provide for necessary authority for the City Fire Chief and fire department to perform the fire protection services described herein. Pending approval of the Band fire bylaw, the Band acknowledges and agrees that City Bylaw #1503 as amended applies.

6.3 Hydrant and Infrastructure Maintenance

The City will, at the cost of the Band, service, repair and maintain in good working order all fire hydrants, water distribution lines and other Land Infrastructure necessary for the provision of fire protection services on the Lands to the standard substantially the same as elsewhere in the City and the Band will permit the City's Fire Chief or his or her representatives to inspect and operate all such water distribution lines, fire hydrants and related Land Infrastructure. The Band will pay to the City, within 30 days of receipt of an invoice from the City, all costs incurred by the City for such service, repair and maintenance. The Band will be responsible for all capital costs and work associated with the construction or replacement of the infrastructure.

6.4 Building Plans and Standards

The Band will ensure that all existing and new Improvements constructed or installed on the Lands comply with all of the statutes, regulations and standards of Canada and that all new construction after the date of this Agreement will be inspected for such compliance.

6.5 Fire Inspections and Orders

The Band will appoint and authorize the City's Fire Chief or his or her representatives to enter the Lands and any Improvements thereon to conduct regular maintenance and emergency preparedness inspections as may be necessary for the provision of fire protection services, in the same manner and frequency as conducted by the City generally. The Band will comply with any stop work or fire prevention order issued against it by the City's Fire Chief, or in his or her capacity as the Band's Fire Prevention Officer under the Band's Fire Protection Bylaw, once adopted, issued as a consequence of such inspection and will use reasonable efforts to enforce any stop work or fire prevention order issued under such bylaw, once adopted, against any other person.

6.6 Indemnity

The Band will indemnify and hold harmless the City from any loss, damage, expense or cost suffered or incurred by the City directly or indirectly as a consequence of any fire at or in Improvements on the Lands to the extent caused by the failure of such Improvements to meet the fire codes and fire safety regulations applicable elsewhere in the City or the failure by the Band or its administration to:

(a) maintain fire hydrants and water distribution lines to the standards required by this Agreement;

(b) provide the City with reasonable and sufficient access to the Lands to deliver fire protection services;

6.7 Explosives

The Band will take such steps as are necessary to ensure that the manufacture, storage, transportation, and display of High Hazard Fire Works (class 7, division 2, subdivision 2, *Canada Explosive Act* and Regulations or any replacement of the same effect) does not take place on the Lands.

7. PLANNING

7.1 Planning and Development

The parties acknowledge that it may be necessary to modify, extend or supplement the Land Infrastructure or other works outside the Lands to accommodate any new development on the Lands. The Band will provide the City with plans and specifications of development of the Lands as early as possible so as to reduce the need for such modifications and all costs of any such modifications of Land Infrastructure or any off-reserve infrastructure but only to the extent required to serve the Lands will be paid by the Band in the amount or amounts to be agreed in advance between the Band and the City.

8. TERM AND TERMINATION

8.1 Term

The term of this Agreement (the "Term") will be a period of 5 years commencing on the date first written above.

8.2 Termination for Default

If there is a breach of any term of this Agreement by a party, the other party may, at its option, notify the party in breach and give the party responsible for the breach such time as is reasonable in view of

the nature of the breach to remedy the breach. If the breach continues after the period of time provided to remedy the breach and the matter has not been referred to dispute resolution pursuant to paragraph 9.4 hereof, or if the matter has been referred to and resolved by dispute resolution and the breach continues thereafter, the party not in breach may, at its option, terminate this Agreement. Either party may terminate this Agreement on 90 days written notice if the other party fails to fulfil its material obligations hereunder.

9. GENERAL PROVISIONS

9.1 Amendment

No amendment, waiver, termination or variation of the terms, conditions, warranties, covenants, agreements and undertakings set out herein will be of any force or effect unless the same is reduced to writing duly executed by all parties hereto in the same manner and with the same formality as this Agreement, and no waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar) and no waiver will constitute a continuing waiver unless otherwise expressly provided.

9.2 Force Majeure

No party will be liable for its failure to perform any of its obligations under this Agreement due to a cause beyond its reasonable control including acts of God, fire, flood, explosion, strikes, lockouts or other industrial disturbances, laws, rules and regulations or orders of any duly constituted governmental authority or non-availability of materials or transportation, each of which will be a force majeure event.

9.3 Access

The Band will grant to the City permits to access the Lands as are necessary for the provision of Services by the City and inspections. The City will be exempt from taxation under the Band's bylaws in respect of its use or occupation of any easements, rights of way or other access permits. The Band hereby agrees to permit the employees, contractors and agents of the City to enter upon and cross the Lands, with or without personnel, equipment, and materials, for the purpose of inspecting and, without obligation, maintaining and repairing or replacing any Land Infrastructure necessary for the provision of Services hereunder.

9.4 Dispute Resolution

If the parties to this Agreement are unable to agree on the interpretation or application of any provision herein, or are unable to resolve any other issue in dispute pertaining to this Agreement, on notice by either party to the other, the parties agree:

(a) first, to promptly, diligently and in good faith take all reasonable measures to negotiate an acceptable resolution to the disagreement in dispute;

(b) second, if the parties are unable to negotiate a resolution pursuant to subparagraph (a) above, within 60 days of the notice of dispute or disagreement, to request the assistance of a skilled commercial mediator, such mediator to be mutually agreed upon by the parties within 30 days of a receipt by a party of written notice requiring the mediation, failing which the mediator will be appointed by the British Columbia International Commercial Arbitration Centre (BCICAC). Such mediation will be conducted under the Commerical Mediation Rules of the BCICAC to resolve a dispute unless otherwise agreed by the parties. If a mediator is appointed under this subparagraph (b), the mediated negotiations will be terminated 60 days after the appointment, unless the parties agree otherwise; and

(c) third, if the parties are unable to resolve the dispute in accordance with subparagraph (b) above, to refer the matter in dispute to arbitration by a single arbitrator pursuant to the *Commercial Arbitration Act* (British Columbia) 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 the termination of the mediated negotiations as set out in subparagraph (b) above, an arbitrator will be appointed by the BCICAC. Such arbitration will be conducted in accordance with the *Commercial Arbitration Act*, R.S.B.C. 1996, Ch. 55 and the rules of the BCICAC unless otherwise agreed by the parties.

9.5 Costs of Dispute Resolution

The parties agree that the arbitrator may determine costs of any arbitration and, failing such determination, each party will bear its own costs and expenses incurred in respect of the dispute resolution processes in paragraph 9.4 above, and neither party will seek recovery against the other party for any of those costs and expenses.

9.6 Reciprocal Indemnities

The parties covenant and agree with each other as follows:

(a) the Band will, subject to paragraph 9.2 above, indemnify and save harmless the City (and any related officer, official, employee, volunteer or agent thereof) from and against any and all losses, damages, costs, liabilities, suits, claims or expenses arising out of any breach by the Band of any of its obligations under this Agreement. This covenant of indemnity will survive the expiration or termination of this Agreement; and

(b) the City will, subject to paragraph 9.2 above, indemnify and save harmless the Band (and any officer or employee thereof) from and against any and all losses, damages, costs, liabilities, suits, claims or expenses arising out of any breach by the City of any of its obligations under this Agreement. This covenant of indemnity will survive the expiration or termination of this Agreement.

9.7 Execution in Counterpart

This Agreement may be executed in counterpart and copies of the execution pages delivered by each party to the other by facsimile or any other reasonable method, and such copies together will be deemed as effective as if a single Agreement had been executed by each party.

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

THE CORPORATE SEAL OF THE CORPORATION OF THE CITY OF COQUITLAM was hereunto affixed in the presence of:

_____

Authorized Signatory

_____

Authorized Signatory

C/S

Signed, Sealed and Delivered by the **KWIKWETLEM FIRST NATION COUNCIL** on behalf of the KWIKWETLEM FIRST NATION pursuant to the consent of a majority of the Councillors of the Band present at a Council meeting duly convened:

_____

WITNESS

_____

ADDRESS

_____

_____

CHIEF

_____

COUNCILLOR

_____

COUNCILLOR

SCHEDULE A

BAND COUNCIL AND CITY COUNCIL RESOLUTIONS

SCHEDULE B

LANDS

Coquitlam Indian Reserve No. 1

SCHEDULE C

CITY BYLAWS

Fire Prevention Bylaw No. 1503, 1985

Water Distribution Bylaw No. 2973, 1995

Sewerage and Drainage System Bylaw No. 3151, 1997

Attachment 6
Tsleil Waututh Nation (Burrard Indian Band) and District of North Vancouver. Reserve Servicing Agreement. North Vancouver, BC. May 2005

RESERVE SERVICING AGREEMENT

THIS AGREEMENT dated for reference the 31st day of May, 2005 is

BETWEEN:

TSLEIL 'WAUTUTH NATION, also known as
THE BURRARD INDIAN BAND
as represented by the Council of the Burrard Indian Band,
3075 Takaya Drive, North Vancouver, B.C., V7H 1B3

(the "Band")

AND:

DISTRICT OF NORTH VANCOUVER
having its municipal offices at
355 West Queens Road, North Vancouver, B.C., V7N 4N5

(the "District")

WHEREAS:

A. The Burrard Inlet Indian Reserve No. 3 (the "Reserve") is a reserve set apart for the use and benefit of the Band under the *Indian Act*.

B. The District provides municipal services to the Reserve pursuant to a Reserve Servicing Agreement dated for reference the 31st day of December, 2000 (the "First Servicing Agreement").

C. The First Servicing Agreement commenced on the 1st day of January, 2000 and was scheduled to expire on the 31st day of December, 2004, but for its extension by the Parties pending the entering into of this Agreement.

D. The parties wish to enter a new service agreement to replace the First Servicing Agreement, such that the District will continue:

   a. to provide fire fighting services to the Reserve,

b. to permit storm water and sanitary sewage from properties on the Reserve, other than those properties used for industrial purposes, to be discharged through Band-constructed infrastructure works into the District's municipal system,

c. to supply water through Band-constructed infrastructure work to properties on the Reserve, other than those properties used for industrial purposes, and

d. to provide other works and services to the Reserve and its occupants as are provided to other residents of the District.

E. The District has authorized the execution of this Agreement by a resolution duly passed on the 20th day of June, 2005, a copy of which is attached hereto as Schedule A.

F. The Band Council has authorized the execution of this Agreement on behalf of the Band by a Band Council Resolution duly passed at a meeting of the Band Council held on the 28th day of June, 2005, a copy of which is attached hereto as Schedule B.

NOW THEREFORE in consideration of the terms and conditions set out below, and other good and valuable consideration, the sufficiency and receipt of which are acknowledged by both parties, the parties covenant and agree as follows:

Definitions

In this Agreement (including the recitals), except as expressly provided or as the context otherwise requires,

"Additional Infrastructure" means any sewer, water, drainage, park or highway works or services required according to good engineering practices to be constructed and installed, upgraded or replaced in order to service New Development directly or indirectly;

"Agreement" means this Agreement, including the recitals and schedules hereto, as amended and supplemented from time to time in the manner required by paragraph 3.8;

"Annual Service Charge" means the annual charge referred to in paragraph 2.1;

"Band" means the Burrard Indian Band (Tsleil 'Waututh Nation), being a "band" as defined in the *Indian Act*, and all the lawful members of the Burrard Indian Band (Tsleil 'Waututh Nation);

"Band Bylaw" means any bylaw enacted by the Band Council pursuant to the *Indian Act*;

"Band Council" means the Chief and Council of the Band elected pursuant to section 74 of the *Indian Act*;

"Commencement Date" means the 1st day of January, 2005;

"District Reserve Infrastructure" means that part of the Reserve Infrastructure, which meets the following conditions:

(a) it has been constructed or installed by or on behalf of the Band from the boundary of the Reserve to the point of curb stop connection servicing a property on the Reserve,

(b) there has been granted to the District and the Band, if required, valid and enforceable statutory rights of way, easements or similar rights of way established pursuant to the *Indian Act* or any authority or right granted thereunder for the purpose of constructing, accommodating, maintaining and operating such works; and

(c) it has been constructed to and complies with the applicable health, safety and engineering standards and specifications established by the District from time to time for such works within the District of North Vancouver, despite the fact that such compliance may not have been required by law;

"Force Majeure Event" means an event defined in paragraph 3.7 herein;

"Greater Board" means a corporate body, incorporated by an Act of the British Columbia Legislative Assembly, which body has responsibility for the provision of water or sewage and drainage services.

"Improvements" means improvements as defined in the *Assessment Act,* R.S.B.C. 1996, c. 21, section 1, as amended from time to time;

"*Indian Act*" means the *Indian Act,* R.S.C. 1985, c. I-5, as amended or re-enacted from time to time;

"*Municipal Legislation*" means the *Community Charter and the Local Government Act*, as amended from time to time;

"Municipal Services" means the services funded out of the District's operating funds and its capital funds, as ordinarily provided from time to time by the District to land and Improvements within the District of North Vancouver, including:

(a) discharge of storm water and sanitary sewage from the Reserve, other than those properties used for industrial purposes, through District Reserve Infrastructure into the District's system;

(b) provision of water from the District's system, through District Reserve Infrastructure, to the Reserve, other than those properties used for industrial purposes;

(c) fire fighting protection to the Reserve;

(d) maintenance and repair of District Reserve Infrastructure as provided herein; and

(e) other works and services the District provides other residents of the District.

"New Development" means any development occurring on the Reserve after the Commencement Date in respect of which a building permit or subdivision approval would be lawfully required by the District if the Reserve were not Reserve land, not including the phased residential development known as the "Seasons" being undertaken by and on behalf of the Band on lots 79-2-1, 79-2-2 and 79-2-3 on the Reserve;

"Reserve" means Burrard Inlet Indian Reserve No. 3, as the geographic boundaries of that reserve exist as of the date of the making of this Agreement;

"Reserve Infrastructure" means any and all storm and sanitary sewer mains and lines, drainage works, water lines and associated works on or under the Reserve where and to the extent such works are constructed for the purpose of providing services to the Reserve or Improvements on the Reserve excluding any services or utilities ordinarily provided to the lands and Improvements within the District of North Vancouver by any person other than the District.

Municipal Services

1.1 Subject to the terms and conditions of this Agreement, the District shall provide the Municipal Services to the Reserve and the occupiers of it.

Limitations

1.2 Nothing in this Agreement shall, or shall be deemed to

(a) require the District to provide Municipal Services to any new Development on the Reserve

(i) if any time the District, acting reasonably, determines it does not have the capacity to provide the Municipal Services to any New Development; or

(ii) until the matters referred to in subsection 2.7(a) have been resolved or determined by agreement or arbitration.

(b) impose upon the District any greater duty to supply Municipal Services to the Reserve or any occupiers than the District supplies to inhabitants of the District of North Vancouver generally. Nothing in this subsection (b) authorizes or enables the District to refuse Municipal Services to New Development for the reason only that the New Development does not comply with the District's zoning bylaw.

Standards

1.3 Subject to this Agreement, the District shall provide the same quantity and quality of Municipal Services required by this Agreement as such services are provided by the District to residents of the District generally.

Maintenance of District Reserve Infrastructure

1.4

(a) The District shall maintain the District Reserve Infrastructure in the ordinary course, where deemed necessary by the District and to no greater or no lesser standard than the District maintains similar works generally. Despite the foregoing, the District shall not be obligated to repair any District Reserve Infrastructure situated beneath any Improvement situated on the Reserve, save and except for normal maintenance by rodding or flushing to maintain flow of water and sewage and such other maintenance as can be performed by the District at reasonable cost and without excavation beneath or through the foundation of any Improvement.

(b) The Band shall replace the District Reserve Infrastructure in the ordinary course, where deemed necessary by the District and to no greater or lesser standard than the District replaces similar Works generally.

(c) For clarity and without limiting the effect of section 3.7, if, due to earthquake, fire, flood, or other Act of God, the District Reserve Infrastructure is damaged or destroyed, the Band shall at its sole cost replace such Infrastructure, except to the extent that it is not necessary, based on good engineering practice, to replace the Infrastructure, in which case the District shall, at its sole cost, repair the Infrastructure to the extent that it is required.

Annual Service Charge

2.1 The Band shall pay to the District for the Municipal Services

(a) in respect of 2005, the sum of $484,852.15, and

(b) in respect of each subsequent calendar year under this agreement, the sum of

(i) $484,852.15, and

(ii) an increase or decrease in the Annual Service Charge equal to the percentage change in the total resident tax levy imposed generally by the District on ratepayers within the District in respect of single and multi-family residential properties; and

(iii) a percentage increase or decrease in the Annual Service Charge equal to the number of additional completed units of any development as a percent of the total number of units of any development existing the previous calendar year.

Supplying of Information to the District

2.2. The District agrees to provide to the Band:

(a) the District's finalized tax rate; and

(b) the percentage change in the total residential tax levy imposed generally by the District on ratepayers within the District in respect of single and multi-family residential properties;

on the earlier of 48 hours after the approval of same by the Council of the District or the 16th day of May in each year of this Agreement.

Non-Payment of Annual Service Charge

2.3 If the Band fails to pay the Annual Service Charge on or before September 30 of each year under this Agreement the unpaid amount is a debt due and owing to the District and bears interest at the same rate as is payable by District ratepayers under applicable enactments.

Suspension of Services for Non-Payment

2.4 If all or any portion of the Annual Service Charge, including interest accrued, are in arrears, the District may, after no less than 60 days notice to the Band, and any occupiers affected thereby, suspend the provision of some or all Municipal Services to the Reserve or any portion of it or to any occupier of the Reserve until such time as the Annual Service Charge, and accrued interest, are paid in full.

New Development

2.5 The Band and the District agree that in the spirit of good government to government relations:

(a) the Band shall inform the District of any planned New Development on the Reserve and provide plans to the District showing the planned developments and other pertinent information; and

(b) the District shall inform the Band of any planned developments which may affect the District Reserve Infrastructure, the Reserve Infrastructure, or planned developments on the Reserve of which it is aware, and provide plans and other pertinent information to the Band, if requested by the Band.

2.6 On receipt of the plans described in subsection 2.5(a) the District shall review the plans forthwith and within 60 days of receipt

(a) advise the Band with respect to any engineering or other concerns relating to provision of the Municipal Services the District may have with respect to the planned New Development; or

(b) reject the plans based on the considerations set out in Section 1.2.

2.7 (a) If the District has legitimate engineering or other concerns relating to provision of the Municipal Services, or does not have the infrastructure capacity to supply adequate Municipal Services to the New Development, the Band and the District will cooperate in an effort to resolve those engineering or other concerns. If the Band and the District are unable to reach an agreement in this regard, the matter shall be resolved under Section 3.21.

(b) Without limitation, Additional Infrastructure, and charges lawfully imposed by a Greater Board, shall be paid for by the Band.

(c) If the Band believes a portion of the infrastructure capacity to supply adequate Municipal Services will also supply land other than the Reserve, the Band and the District will cooperate in an effort to resolve the attribution of costs. If the Band and the District are unable to reach an agreement in this regard, the matter shall be resolved under Section 3.21 in the same manner as a latecomer apportionment.

2.8 If the engineering or other concerns referred to in Section 2.7 have been resolved and the costs determined, either by agreement or arbitration, the District shall provide the Municipal Services to the New Development pursuant to this Agreement.

Termination of Agreement

2.9 During the term or any renewal of this Agreement, without limiting any other remedy available to the District, if the Band breaches any material term of this Agreement and fails to remedy that breach within three months of written notice to do so from the District, the District may terminate this Agreement on one years' written notice to the Band.

Information

2.10 The Band shall provide the District with all information reasonably required by the District to permit the District to determine the appropriate scale of Municipal Services for the Reserve from time to time.

Easements

2.11 The Band shall use reasonable best efforts to cause Her Majesty the Queen as represented by the Minister of Indian Affairs and Northern Development to grant to the District, at no cost or liability to the District, such statutory rights of way, easements, licenses or other rights of way on, under or across the Reserve as are required by the District, acting reasonably, to permit the District to maintain and repair the District Reserve Infrastructure and otherwise necessary for the District to provide Municipal Services to the Reserve or the occupiers of it.

Ownership of Works

2.12 Notwithstanding that the District may accept statutory rights of way and other rights described in the preceding paragraph, the Band acknowledges and agrees that the Band is the owner of the Reserve Infrastructure.

2.13 No Reserve Infrastructure shall be the property of the District

Access

2.14 The Band shall provide the District and its employees, agents and contractors all necessary access to the Reserve for the provision of the Municipal Services and the maintenance, repair and replacement of the District Reserve Infrastructure.

Construction of Reserve Infrastructure

2.15 The Band shall, at its expense, construct and install or cause to be constructed and installed all Reserve Infrastructure necessary for the provision of the Municipal Services by the District under this Agreement.

2.16 The Reserve Infrastructure shall be constructed to and conform with the health, safety and engineering standards and specifications established from time to time by the District.

2.17 The Band shall allow the District to inspect the Reserve Infrastructure from time to time as considered necessary by the District for the purpose of determining whether the Reserve Infrastructure conforms with such standards and specifications. The cost of inspections is included in the Annual Service Charges.

2.18 No connection shall be made from any Improvement to the Reserve Infrastructure or from the Reserve Infrastructure to any works or services owned or held by the District until the proposed connection has been inspected by the District and the District has certified that such connection conforms with the standards and specifications established by the District and the Band has paid all amounts required to be paid under this Agreement.

Use of Reserve Infrastructure

2.19 The District shall not make use of any Reserve Infrastructure for the provision of services to land or occupiers of land outside the boundaries of the Reserve without the prior written consent of the Band.

2.20 Without limiting the preceding paragraph, the Band shall not use or permit the use of any Reserve Infrastructure to provide services to any New Development without the prior written consent of the District and a formal agreement with the District regarding payment for any Municipal Services provided by the District in connection therewith.

Bylaws

2.21

(a) This Agreement is subject to the following conditions subsequent:

(iv) the Band bylaws set forth in Schedule C (the "Bylaws") shall not be amended in any manner so that they no longer substantially conform with the standards and provisions set forth in the District's equivalent bylaws,

(v) the Band shall, within 120 days of the execution of this Agreement, amend its Fire Bylaw so that it conforms with the standards and provisions of the District's equivalent bylaw or bylaws, and

(vi) the Band shall use reasonable best efforts to enforce the Bylaws

(b) and if any of the foregoing conditions subsequent is breached, the District may take action under section 3.2.

Entry to Inspect

2.22 The Band hereby appoints and authorizes the District or its representatives to enter the Reserve and any Improvements on it to:

(a) inspect the water supply system in every Improvement on the Reserve, before and during connection of such water supply system to the Reserve Infrastructure;

(b) inspect the Reserve Infrastructure and monitor the use and discharge of wastes to the Reserve Infrastructure and monitor the use and discharge of wastes to the Reserve Infrastructure to determine whether the requirements of any bylaws enacted by the Band pursuant to this Agreement are being met and determine whether or not any connections have been made to the Reserve Infrastructure for the provision of Municipal Services;

(c) conduct regular maintenance and emergency preparedness inspections of any Improvements on the Reserve as may be considered necessary by the District for the provision of Municipal Services, in the same manner and frequency as conducted by the District generally within the District of North Vancouver.

2.23 The costs of the inspections referred to in section 2.22 are included in the Annual Service Charge payable under this Agreement.

Term

3.1 The Term of this Agreement shall be a period of 5 years commencing on the Commencement Date.

Defaults by the Band

3.2 If there is a breach of the terms of this Agreement by the Band or Band Council, the District may, at its option, notify the Band Council of such breach and give the Band such time as is reasonable in view of the nature of the breach to remedy the breach. If the breach continues after the period of time provided to remedy the breach, the District may, at its option, suspend the provision of all or part of the Municipal Services provided hereunder until such time as the breach of this Agreement has been remedied or the District may terminate this Agreement.

Discharge of Wastes

3.3 Notwithstanding any other provision of this Agreement, the District may suspend the provision of all or part of the Municipal Services provided hereunder if at any time any person on the Reserve discharges waste into the Reserve Infrastructure or the District's storm or sanitary sewers of a type, quantity or quality that does not meet the standards which apply to waste discharges to the District's sanitary and storm sewers generally, including standards established pursuant to District and Band bylaws (including the Bylaws), bylaws of the Greater Vancouver Sewerage and Drainage District, the *Environmental Management Act* (British Columbia) and *Fisheries Act* (Canada) and any regulations passed thereunder, until

such time as any damage to the environment caused by such discharge has been remedied at the sole cost of the Band or, to the extent enforceable by the Band, at the sole cost of the party responsible for the breach and appropriate measures have been implemented by the Band at its sole cost to prevent such discharge from recurring.

Further Agreements

3.4 The Band and the District shall execute such further agreements, authorities and assurances and enact such bylaws as may be necessary to give effect to their covenants herein.

Notices

3.5 All notices and other communications given hereunder or with respect to this Agreement shall be given or made in writing and may be delivered personally or sent by pre-paid registered mail or by facsimile transmission as follows:

(a) in the case of the Band, to the Chief of the Band Council, 3075 Takaya Drive, North Vancouver, British Columbia, V7H 1B3, facsimile number (604) 924-2338;

(b) in the case of the District, to the Municipal Clerk at the address first above written, facsimile number (604) 984-9637;

(c) at such other address or in care of such other officer or person as the parties may respectively advise the other party by notice in writing; and

(d) the date of receipt of any such notice shall be deemed to be:

(i) the date of delivery, if delivered personally; or

(ii) five days after the date of mailing in Canada, if mailed; or

(iii) if sent by facsimile transmission, on the date sent or if not a business day, the next business day.

Agreement Binding

3.6 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

Force Majeure

3.7 No party will be liable for its failure to perform any of its obligations under this Agreement due to a cause beyond its reasonable control including acts of God, fire, flood, explosion, strikes, lockouts or other industrial disturbances, laws, rules and regulations or orders of any duly constituted governmental authority or non-availability of materials or transportation. Lack of funds is not a Force Majeure Event.

Amendment

3.8 No amendment, waiver, termination or variation of the terms, conditions, warranties, covenants, agreements and undertakings set out herein shall be of any force or effect unless the same is reduced to writing duly executed by all parties hereto in the same manner and with the same formality as this Agreement, and no waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar) and no waiver will constitute a continuing waiver unless otherwise expressly provided.

Indemnity

3.9 The Band shall afford the District and its employees and agents the same protection from liability as is provided under the *Municipal Legislation* in respect of the District's activities elsewhere in the District of North Vancouver and, without restricting the generality of the foregoing, shall defend, indemnify and save harmless the District from and against any and all claims, demands, actions, causes of action, losses, damages, costs, liabilities and expenses (including legal fees and costs on a solicitor and own client basis) of whatever kind or character on account of any actual or alleged loss, injury or damage to any person or to any property arising out of or in connection with the provision of or failure to provide Municipal Services as required herein, if and to the extent that the District, its employees or agents would have otherwise been excused from liability for such loss, injury or damage pursuant to the terms of the *Municipal Legislation* but for the fact that such provision or failure to provide Municipal Services is in respect of lands and occupiers of lands on the Reserve.

Indemnity for Suspension or Termination

3.10 Without limiting the preceding paragraph, the Band shall release and indemnify and save the District harmless from and against any and all claims, demands, actions, causes of action, losses, damages, costs, liabilities and expenses (including legal fees and costs on a solicitor and own client basis) arising as a result of the District lawfully suspending or terminating the provision of Municipal Services under this Agreement.

Time

3.11 Subject to a Force Majeure Event, time shall be of the essence of this Agreement.

Notice in the Event of Damage

3.12 In the event of any damage or destruction of any District Reserve Infrastructure or any works owned by the District which has, or may have, the effect of interrupting the provision of Municipal Services to the Reserve pursuant to this Agreement, the party first becoming aware of such damage or destruction shall forthwith notify the other party to this Agreement and the District and the Band shall then jointly and diligently proceed to take such action as may be necessary to repair such damage or destruction.

Costs of Repair

3.13 All costs to repair damage or destruction of District Reserve Infrastructure referred to in the preceding section shall be paid by the District to the extent such damage or destruction does not arise in connection with or is not attributable to the negligence or wilful act of the Band or any occupier of the Reserve or both of them or any contractor, employee, servant, agent or member of the Band or any occupier of the Reserve or both of them. To the extent the District is not responsible for costs of repair to District Reserve Infrastructure, such cost shall be paid by the person or persons whose negligence or wilful act caused or contributed to such damage or destruction, failing which the Band shall be liable for such costs.

Assignment

3.14 This Agreement and any right or benefit hereunder may not be assigned by any party without the prior written consent of the other party.

Status of the Parties

3.15 The parties acknowledge and agree that for the purpose of enforcement of this Agreement or the recovery of damages for the breach of this Agreement, the Band Council has the right to contract and to bring or defend legal actions in its own name and on behalf of the Band, and each of the parties agree that they are estopped from claiming that the Band lacks status in any such proceeding. The District and the Band acknowledge and agree that the Chief and the other Councillors of the Band shall execute this Agreement in their capacity as representatives of the Band and not in their personal capacity, and that they shall have no personal liability arising from their execution of this Agreement on behalf of the Band except as members of the Band.

Governing Law

3.16 This Agreement is to be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein, and the parties attorn to the courts of the Province of British Columbia.

Severability

3.17 If a provision of this Agreement, or part of it, should be adjudged invalid, illegal or unenforceable in any respect in any jurisdiction, the remaining provisions of this Agreement or part thereof shall continue in full force and effect, provided that if the intent of the parties is not thereby preserved then any party may terminate this Agreement on 30 days notice to the other party.

Included Words

3.18 Wherever the singular or masculine is used in this Agreement, the same shall be deemed to include the plural, the feminine or the body corporate or politic where the context or the parties so require, and vice versa.

Schedules

3.19 The following schedules are incorporated into and form a part of this Agreement:
Schedule A – District Resolution
Schedule B – Band Resolution
Schedule C – Bylaws

Headings

3.20 The captions and headings throughout this Agreement are for convenience of reference only, and the words contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or the scope of intent of this Agreement or in any way affect this Agreement.

Disputes

3.21

(a) In the event of a dispute between the District and the Band in respect of a matter arising under this Agreement, the matter shall be heard and decided by a three person arbitration board. A request by either of the parties for a board of arbitration shall name that party's appointee to the board of arbitration. The recipient of the notice shall, within 10 days, advise the other party of the name of its appointee to the board of arbitration. The appointees to the board of arbitration shall then meet to decide on the selection of the chairperson of the board. If the parties cannot agree on the selection of the chairperson within 21 days, either party may request a Justice of the Supreme Court of British Columbia to appoint an impartial third member as chairperson. Each person shall bear the expenses of its representatives, participants, witness and of the preparation and presentation of its own case. The fees and expenses of the chairperson or single arbitrator, the hearing room and other expenses incidental to the arbitration hearing shall be borne equally by the parties. The parties agree to use their facilities wherever
possible to reduce hearing room and other incidental expenses. The board of arbitration shall have no authority to add to, subtract from, modify, change, alter or ignore in any way the provisions of this Agreement or any expressly written agreement or supplement or to extend its duration, unless the parties have expressly agreed, in writing, to give it specific authority to do so or to make an award which has such effect.

(b) The arbitration board must deliver its reasons in writing to the Band and the District.

Counterparts

This Agreement may be executed in any number of counterparts with the same effect as if both parties had all signed the same document and all counterparts and adopting instruments will be construed together and will constitute one and the same agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date below.

EXECUTED THE ____ DAY OF _____, 2005

The Corporate Seal of **THE CORPORATION OF THE DISTRICT OF NORTH VANCOUVER** was hereunto affixed in the presence of:)

C/S

_____)
Authorized Signatory:

_____)
Authorized Signatory:

EXECUTED THE ____ DAY OF _____, 2005

Signed, Sealed and Delivered by the **TSLEIL WAUTUTH NATION BAND** COUNCIL on behalf of the TSLEIL WAUTUTH NATION (BURRARD INDIAN BAND) pursuant to the consent of a majority of the Councillors of the Band present at a Council meeting duly convened:

_____
Witness:

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Address:

_____
Occupation

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Chief:

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Councillor:

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Councillor:

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Councillor:

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Councillor:

List of Schedules

Schedule A – District Resolution
Schedule B – Band Council Resolution
Schedule C –Bylaws

SCHEDULE "A"

Resolution of the Council of The Corporation of the District of North Vancouver resolving to enter into the Reserve Servicing Agreement with the Tsleil 'Waututh Nation, also known as the Burrard Indian Band, attached hereto.

SCHEDULE "B"

Resolution of the Band Council of the Tsleil 'Waututh Nation, also known as the Burrard Indian Band, resolving to enter into the Reserve Servicing Agreement with The Corporation of the District of North Vancouver, attached hereto.

SCHEDULE "C"

Fire Bylaw

Building Bylaw

Sewer Bylaw

Street and Traffic Bylaw

Waterworks Bylaw

Waste Removal Bylaw

Attachment 7
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