

City of Chilliwack

Bylaw No. 3271

**A bylaw to delegate authority to amend, execute and enter into
certain agreements on behalf of the City of Chilliwack**

WHEREAS pursuant to Section 154 of the *Community Charter*, Council may, by bylaw, delegate its powers, duties and functions to officers and employees of the municipality;

NOW THEREFORE the Council of the City of Chilliwack in open meeting assembled enacts as follows:

1. This bylaw may be cited as **“First Nations Sewer and Water Agreement Delegation Bylaw 2006, No. 3271”**.
2. That Council hereby delegates to the Mayor and Clerk the authority to:
 - (1) make such minor amendments to the servicing agreement substantially in the form attached as Schedule “A” as may, in the opinion of the Mayor and Clerk, be necessary or desirable prior to executing the agreement with any First Nation, lessee, and/or occupant; and,
 - (2) sign, execute and deliver on behalf of the Council any servicing agreement substantially in the form attached as Schedule “A” or, as amended pursuant to Subsection 2(2) with any First Nation, lessee and/or occupant,

for the purpose of providing water and sewer services to any reserve or portion thereof within the geographic boundaries of the City of Chilliwack.

3. The authority delegated in Section 2 will continue until such time as it is amended or revoked through amendment or repeal of this bylaw.

Received first reading on the 1st day of May, 2006.

Received second reading on the 1st day of May, 2006.

Received third reading on the 1st day of May, 2006.

Finally passed and adopted on the 15th day of May, 2006.

“Clint Hames”

Mayor

“Karla D. Graham”

Deputy City Clerk

**Schedule “A”
SEWER AND WATER AGREEMENT**

THIS AGREEMENT made this _____ day of _____, 20____.

BETWEEN:

CITY OF CHILLIWACK, a municipal corporation under the *Local Government Act* having its municipal offices and postal address at 8550 Young Road South, Chilliwack, B.C., V2P 8A4

(the "City")

AND:

_____, a company incorporated under the laws of British Columbia with Incorporation No. _____, having its registered and records office at _____

(the "Lessee")

AND:

_____, an Indian Band within the meaning of the *Indian Act*, as represented by its Band Council, having a postal office address at _____

(the "Band")

AND:

_____ of _____

(the "Occupant")

WHEREAS:

- A. The City and the Band have agreed to work together in the spirit of cooperation and good government-to-government relations;
- B. The Lessee is developing the Development on the Lands;
- C. The Occupant is a member of the Band, and has certain rights to the Lands under a Certificate of Possession No. _____ granted under the *Indian Act*;
- D. The Minister, on behalf of the Occupant, leased the Lands to _____ under the Lease, under which the rent is payable to the Minister for the benefit of the Occupant;

- E. The Lease has been assigned by _____ to the Lessee on the application of the Lessee and with the consent of the Occupant and the Minister;
- F. The City owns water supply, storm sewer and sanitary sewer systems by means of which it provides water and sewer services to properties within the geographic boundaries of the City of Chilliwack;
- G. The Lands are not connected to the Services Systems and the Lessee, the Band and the Occupant wish to enter into an agreement with the City to provide the Services to the Lands for the benefit of the Development;
- H. Occupation of the Development requires the provision of water, storm and sanitary sewer systems and so the provision of the Services will be of commercial benefit to the Lessee and the Occupant and other persons using or receiving benefit from the Lands.
- I. The Band has approved this Agreement by Band Council Resolution No. _____ passed on the ____ day of _____, 200__; and
- J. The City Council has approved this Agreement by resolution passed on the ____ day of _____, 20____.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and agreements in this Agreement, the Parties agree as follows:

PART 1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

"Bulk Meter" means the bulk water service meter to measure the total water supplied as part of the Services to the Lands, and includes any ancillary vault structure;

“Capital Cost Payment” means a payment required under Section 9.2 to 9.6;

“City Engineer" means the City Engineer appointed by the Council of the City or any designate or representative appointed by the City Engineer;

"Connection" means the works connecting the Services System to the boundary line of, but not into, the Reserve and includes fixtures and equipment, such as a Bulk Meter and a back flow prevention device or similar device, as may be required as part of these connecting works:

- (a) so that they are consistent with the Master Municipal Standards; or
- (b) by the City Engineer, acting reasonably;

"Development" means:

a building, structure, work or facility constructed, installed, erected or created on the Lands:

- (a) as of the date of the making of this Agreement,
- (b) in progress as of the date of the making of this Agreement; or
- (c) after the date of the making of this Agreement.

“Engineering Standards” means:

- (a) the standards relating to water and sewer systems set out in the Master Municipal Standards, modified as necessary by the City Engineer, acting reasonably, to apply to Development on Reserve lands,
- (b) any variances or equivalencies to the Master Municipal Standards approved by the City Engineer on a case-by-case basis, such variances and equivalencies not to be unreasonably refused,
- (c) other standards agreed upon in writing by the Parties; or
- (d) standards established in accordance with this Agreement as a result of the dispute resolution process under Part 17;

"Extension" means works located on the Reserve which connect Connections to the lands, buildings, structures, works or facilities comprising the Development on the Lands and includes all Individual Meters but not the Bulk Meter;

“Force Majeure” means an act of God, act of Canada’s enemies, sabotage, war, blockades, insurrections, riots, epidemics, lightning, earthquakes, floods, storms, fires, washouts, nuclear and radiation activity or fallout, arrests and restraints of rulers and people, civil disturbances, explosion, expropriation, or any act, omission or event whether of the kind enumerated in this definition or otherwise not within the control of a party, which by the exercise of reasonable due diligence, the party could not have prevented;

"Individual Meter" means a water service meter on the Lands for each individual permitted building within the Development to which water service is supplied under this Agreement;

“Land-Use Concept Plan” means the plan attached as Schedule “A”, and includes any amendment the Band may make from time to time in accordance with this Agreement;

"Lands" means the area in the Reserve described in Schedule “B” ;

"Lease" means the lease of the Lands by the Minister for a term of ___ years registered on _____ under No. _____ in the Indian Land Registry, Ottawa;

“Master Municipal Standards” means the Master Municipal Construction Document, as amended from time to time, published by the MMCD Association, subject to amendments made by bylaw or resolution of the City Council from time to time;

"Minister" means Her Majesty the Queen in Right of Canada as represented by the Minister of Indian Affairs and Northern Development;

"Operating Fee" means the amount payable under Section 8.2(b) to the City on account of the operation and maintenance costs the City incurs in relation to servicing it provides under this Agreement, and without limitation, are equivalent to the total of all fees, rates, charges, and other amounts lawfully payable, including connection fees, service fees, user fees, maintenance fees, operating fees and charges, under bylaws of the City, as amended from time to time, that would apply to the same class of development if it were on non-Reserve land;

"Reserve" means the _____ Reserve No. _____, set apart for the use and benefit of the Band;

"Services" means the City's storm and sanitary sewer services and the City's water supply services collectively. For greater certainty, the Services will be provided to the Land by way of the Services System and the Connections, and the Services will be provided to individual buildings within the Development by way of the Extension;

"Services System" means the pipes, valves and other plant and equipment which transport sewage, waste water, storm water and domestic water in respect of the provision of the Services.

1.2 In this Agreement, except as otherwise expressly provided:

- (a) "Agreement" means this agreement, including the recitals and schedules, as amended by the parties in writing from time to time;
- (b) the headings and captions used in this Agreement are for convenience only and do not form part of this Agreement and will not be used to interpret, define or limit the scope or intent of this Agreement or any of its provisions;
- (c) a reference to a statute includes every regulation made under the statute, all amendments to the statute or to the regulation in force from time to time, and any statute or regulation that supplements or supersedes the statute or the regulation;
- (d) a word importing the masculine gender includes the feminine or neuter, a word importing the singular includes the plural and, in each case, vice versa; and
- (e) a reference to an approval, authorization, consent, waiver or notice means written approval, authorization, consent, waiver or notice.

1.3 The following schedules to this Agreement are an integral part of this Agreement, except that if there is any inconsistency between a Schedule “A” and this Agreement, the provisions of this Agreement will prevail to the extent of the inconsistency:

- Schedule “A” - Land Use Concept Plan
- Schedule “B” - Lands
- Schedule “C” - Form of Assignment of Rents

PART 2 COORDINATED INFRASTRUCTURE PLANNING

- 2.1 The City and the Band will consult with each other in respect of joint infrastructure planning.
- 2.2 Without limitation, each Party will, at a minimum:
 - (a) inform the other Party of any planned or proposed development which may affect that Party’s lands, infrastructure, or planning processes,
 - (b) provide the other Party with opportunities to participate meaningfully in planning processes relating to land use and infrastructure, including with respect to the Land Use Concept Plans and the City’s Official Community Plan,
 - (c) at least once per year, share its plans, budgets, documents and studies relating to land use and infrastructure planning with the other Party,
 - (d) deliver prior written notice of any infrastructure-related planning being carried out;
 - (e) consider and respond to concerns, recommendations or other comments provided by the other Party,
 - (f) wherever possible, reach consensus with the other Party in respect of plans, priorities, budgets, funding sources, timelines and other matters relating to infrastructure.

PART 3 SERVICES AND CONNECTIONS

- 3.1 Subject to this Agreement, the City must provide the Services to the Development and occupiers on to the Lands through Connections, in the same quantity and quality as the City provides to residents of the City generally.
- 3.2 Despite subsection 3.1, nothing in this Agreement obligates the City to provide Services to any Development on the Reserve developed after the making of this Agreement
 - (a) if at any time the City, acting reasonably, determines
 - (i) it does not have the capacity to provide the Services to any Development;
 - or

- (ii) based on generally accepted engineering practices it is not feasible to provide the Services; or
 - (b) if a matter relating to the Development goes to dispute resolution under this Agreement, unless the dispute is resolved in accordance with the Agreement.
- 3.3 The City’s ability to refuse Services under Section 3.2 does not apply to any Development that was in place prior to the making of this Agreement or that has already been approved in accordance with this Agreement.
- 3.4 The City, acting reasonably, may install a Bulk Meter on a water Connection outside of the Reserve.
- 3.5 If the City installs a Bulk Meter, the Lessee must pay the City the reasonable costs incurred by the City for the Bulk Meter and its installation unless the water service is to three or fewer single-family residential dwelling units.
- 3.6 If at any time a person develops more than three units on a Reserve, the three-unit exception in Section 3.5 applies only to the first three units in the Development.
- 3.7 A Bulk Meter installed under Section 3.4 is the exclusive property of the City.
- 3.8 The Lessee must also pay the City reasonable costs incurred by the City to
- (a) extend its Services System to the boundary line of the Reserve for the purposes contemplated by this Agreement; and
 - (b) install the Connections.

PART 4 EXTENSIONS CONSTRUCTION

- 4.1 The Lessee may, at its sole cost, subject to this Agreement, construct an Extension to connect the Development to the Connections.
- 4.2 The City is not obligated to construct the Extensions.
- 4.3 Extensions constructed under Section 4.1 are the exclusive property of the Lessee.
- 4.4 The Lessee must construct an Extension only in accordance with Engineering Standards.
- 4.5 Prior to commencing construction of an Extension or significant modification to an Extension, the Lessee must deliver to the City Engineer the design and specifications for the proposed Extension. The City Engineer may require changes or modifications to aspects of the Extension if the Extension does not satisfy Engineering Standards.
- 4.6 The Lessee must:
- (a) pay costs reasonably incurred by the City with respect to an Extension;

- (b) if requested by the City Engineer, acting reasonably, install, at its sole cost, an Individual Meter to service a building or facility within the Development that is connected to an Extension.

PART 5 USE OF EXTENSIONS

- 5.1 The Lessee may only construct or use an Extension to enable delivery of the Services to the Lands or to a building, structure, work or facility on the Lands for a use consistent with the the Land-Use Concept Plan, if applicable. Every Extension for new Development must comply with Part 6.
- 5.2 The Lessee must require that every person on the Lands who uses water obtained from the City water supply system act in accordance with orders or bylaws respecting water use restrictions made by the City Engineer or the City Council which would apply if the Development or water use were on lands subject to the jurisdiction of the City.
- 5.3 Within 6 months of signing this Agreement, the Band must make reasonable efforts to consider enacting a bylaw under the *Indian Act*, which:
 - (a) requires all persons using Services provided under this Agreement to comply with all orders, regulations and bylaws referred to in paragraph 5.2, and
 - (b) prohibits use of water obtained from the City water system on the Reserve except for uses permitted under the Land Use Concept Plan, if applicable.

PART 6 LAND-USE CONCEPT PLANS AND ASSESSING CAPACITY AND ENGINEERING

- 6.1 The Band may develop a Land-Use Concept Plan that guides development on the Reserve but allows flexibility to change uses and configurations without exceeding the sewer and water capacity set out in the envelope of the Land-Use Concept Plan.
- 6.2 If the Band has a Land-Use Concept Plan that includes the Lands, the Band must deliver the Land-Use Concept Plan to the City prior to commencement of new Development on the Lands.
- 6.3 If the Band does not have a Land-Use Concept Plan that includes the Lands, the Band or the Lessee must deliver to the City the plan for the proposed new Development on the Lands.
- 6.4 The City may request additional detail and documentation respecting the Land-Use Concept Plan in Section 6.2 or the proposed Development plan in Section 6.3, but only such detail as the City requires to assess capacity and engineering issues.
- 6.5 On receipt of the Land-Use Concept Plan or the proposed Development plan the City must review the Plan and within 60 days of receipt either:

- (a) agree that it will provide Services to Development proposed in the Land-Use Concept Plan or the proposed Development plan; or
 - (b) refuse to provide Services to Development proposed in the Land-Use Concept Plan or the proposed Development plan, based on the considerations set out in Section 3.2, and advise the Band in writing of any engineering or capacity concerns.
- 6.6 If further to Section 3.2 the City has engineering concerns relating to provision of the Services, or does not have the infrastructure capacity to supply adequate Services to the Developments proposed in the plan or the Land-Use Concept Plan, the Band and the City will cooperate in an effort to resolve those engineering or capacity concerns.
- 6.7 If the Band and the City:
- (a) are unable to reach an agreement under Section 6.6, or
 - (b) cannot agree on the amount to be paid to the City under this Agreement,
- the matter must be resolved under Part 17 on the basis of this Agreement.
- 6.8 Subject to this Agreement, if the engineering or capacity concerns referred to in Section 3.2 have been resolved and the costs determined, either by agreement or dispute resolution, the City must provide the Services to the Developments in the Land-Use Concept Plan or the proposed Development plan in accordance with this Agreement.

PART 7 INSPECTION AND REPAIR

- 7.1 The City Engineer is at all reasonable times permitted complete and unhindered access onto and across the Lands and the Reserve for the purposes of inspecting the Extensions and the Individual Meters, during and after construction and installation, and performing and exercising the City's rights under this Agreement. In particular, but without limiting the generality of the foregoing, for that purpose the City Engineer may enter on the Lands, with all manner of vehicles, tools and equipment, to dig up the Lands, provided that:
- (a) the City Engineer must exercise his or her rights under this paragraph in a reasonable manner so as to reasonably minimize the inconvenience to residents or other occupants of the Lands and to avoid damage to the Lands;
 - (b) the City Engineer may not exercise such of his or her rights under this paragraph as can be reasonably foreseen to be likely to cause damage to the Lands without first obtaining the written consent of the Band and the Occupant except in an emergency;
 - (c) the City Engineer may only exercise the rights granted to him or her under this paragraph for purposes relating to the provision of the Services to a Development to which the City provides Services under this Agreement;

- (d) subject to subparagraph (e) below, the City Engineer must notify the Band in writing of work to be performed on the Lands at least two working days before exercising the access rights in this paragraph; and
 - (e) if an emergency occurs or unforeseen scheduling problems arise making the notice in subparagraph (d) unreasonable, the City Engineer must provide the Band as much advance oral or written notice as possible, and provide a written report of the work performed on the Lands as soon as possible after the start of such work.
- 7.2 The Extensions and the Individual Meters are, and at all times shall remain, the property of the Lessee, and, unless the City agrees to provide maintenance or inspection services through a separate contract, the City has no obligation or duty of any kind or nature whatsoever to inspect, maintain, repair or replace any portion of the Extensions or any Individual Meter.
- 7.3 Despite paragraph 7.2, the Lessee must comply strictly with all reasonable written directions of the City Engineer concerning the Extensions and Individual Meters, including repairing, altering, maintaining or interrupting Services to the Extensions or Individual Meters as directed by the City Engineer, to Engineering Standards, in a timely manner.
- 7.4 If the Lessee fails to comply strictly with a direction from the Engineer made under paragraph 7.3, then at its option the City Engineer may enter onto the Lands and make the directed repairs, alterations, maintenance or interruptions to the Extensions or Individual Meters, as the case may be, and the Lessee must pay to the City all reasonable related costs incurred by the City as determined by the City Engineer, including all of the City's administrative, supervisory, engineering, legal and design costs.
- 7.5 Except in an emergency or in respect of line flushing required for routine maintenance, the Lessee must not operate any fire hydrant without the prior written consent of the City Engineer, such consent not to be unreasonably withheld.
- 7.6 In an emergency, the Lessee must immediately, without prior direction by the City Engineer or the City, repair or interrupt the use of the Extensions and the Individual Meters or take other reasonable steps to limit any immediate danger to people or property with respect to the Services provided pursuant to this Agreement. In the event the Lessee fails to do so adequately, the Engineer has the right, but not the obligation, to enter on the Lands, in a manner consistent with subparagraph 7.1(e) above, to take such steps as the City Engineer deems appropriate, and the Lessee must pay all reasonable costs incurred by the City as a result, including its administrative, supervisory, engineering, legal and design costs.

PART 8 PAYMENT

- 8.1 It is a fundamental term of this Agreement that the Lessee make all payments for Services as required by this Agreement.

8.2 The Lessee must pay to the City:

- (a) all costs incurred by the City to design and construct the Connections or an extension to the Services System to the Connections (including the Bulk Meter, if any) as determined by the City Engineer, including all design, supervision, materials, construction, installation and inspection costs and all costs of consultants and all reasonable costs of City staff, and the Lessee must provide security for all such payments, or make payments in advance, satisfactory to the City, before the City is obligated to proceed with design and construction of the extension to the Services System and Connections;
- (b) Operating Fees, which subject to paragraph 8.3 will be payable annually, on or before July 31 in each calendar year during the term of this Agreement in such amounts as the City Engineer assesses on account of the Operating Fees and other charges in that calendar year, based on actual billings from the previous calendar year subject to adjustments for the previous calendar year as set out in this paragraph. In addition, the City must, in February of each calendar year, make a final adjustment for the previous calendar year to reflect the actual amounts payable under this Agreement. Any overpayment of Operating Fees for the previous year must be held by the City without allowance for interest and set off against any other payments owing by the Lessee to the City under this Agreement. Any shortfall in the payment of Operating Fees for the previous year must be paid by the Lessee within 30 days of the receipt of the adjustment invoice. The advance payment for Operating Fees for the period from the date of the making of this Agreement until January 1 of the following year must be estimated by the Engineer based on the actual billings in the previous year of other similar developments in the City, and is due and payable on the later of July 31, 2006 or the date of the making of this agreement;
- (c) the additional off-site costs payable under Part 9 ;
- (d) other costs and expenses incurred by the City with respect to the Extensions, which are payable by the Lessee under this Agreement, which costs and expenses must be paid within 30 days of written demand from the City; and
- (e) in respect of arrears of payments owing under this Agreement, interest at the same rate the City may set from time to time by bylaw for arrears of taxes in respect of non-Reserve lands in the City.

8.3 As an exception to the requirement in paragraph 8.2(b), the Lessee may, in its sole discretion, elect to pay bimonthly in advance one-sixth of the Operating Fees payable under that paragraph, in which case the Lessee must pay the City the first payment in any calendar year within 30 days of receipt of written notice from the City Engineer and the remaining payments on March 1, May 1, July 1, September 1 and November 1. For certainty, the amount must be calculated by the City Engineer in accordance with paragraph 8.2(b). In the event the Lessee defaults in payment of any amount payable on any of the aforementioned dates the entire amount payable in respect of the balance of the then current calendar year shall immediately become due and payable and thereafter the Lessee must pay Operating Fees in accordance with paragraph 8.2(b).

PART 9 OFF-SITE COSTS

- 9.1 Without limiting amounts due and owing under other provisions of this Agreement, the Lessee must pay the City additional payments to assist with the payment of off-site works and services costs, as determined by the City Engineer consistent with the City’s treatment of development off-Reserve and with good engineering practices, and as provided in Section 9.2 to 9.6 below.
- 9.2 The Lessee must pay the City a Capital Cost Payment equal to the amount of development cost charges established by City bylaw that would as of the time referred to in paragraph (a) and (b) apply to the same class of development if it were on non-Reserve lands
- (a) prior to constructing any Extensions to connect any land, building, structure or facility on the Reserve to the Services System;
 - (b) for any Development on the Reserve after the date of making this Agreement, prior to the construction, installation, erection or creation of the Development.
- 9.3 Subject to Section 9.2, the initial Capital Cost Payment shall be the amount payable in respect of the entire Development, being the sum of \$_____.
- 9.4 Despite Section 9.2, the City acknowledges that the Lessee has as of the date of the making of this Agreement paid the City the sum of \$_____ in satisfaction of the Lessee's obligation to pay the initial Capital Cost Payment.
- 9.5 Nothing in this Agreement has the effect of removing the option of a phased approach to any Development, or a phased payment of Capital Cost Payments in the manner which would be available to a developer under an enactment applicable to the same class of development if it were off-Reserve.
- 9.6 The City will apply the same exemptions and exclusions, if any, for Capital Cost Payments relating to Extensions or Development on the Lands as would apply to development cost charge payments if the Extensions or development were off-Reserve.
- 9.7 Within 30 days of receiving a payment under this Section the City will, subject to Section 10.3, remit to the Band 25% of the payment received, which amount the Band may use for any purpose.
- 9.8 The City must prior to March 1, 2009, consider in good faith the Band proposal that an additional 25% of all payments received by the City under Section 9.2 to 9.6 be placed into a separate trust fund to be administered jointly by the City and the Band.
- 9.9 Nothing in this Agreement has the effect of removing access to the application of latecomer charges if such charges would otherwise be available.
- 9.10 (a) Any off-Reserve highway works or facilities or any Services required in the reasonable opinion of the City Engineer to be constructed, installed, upgraded or replaced to serve a new Development directly or indirectly; or

(b) charges lawfully imposed by Fraser Valley Regional District, if applicable,

must be paid for by the Lessee, and not the City, at the same time a Capital Cost Payment is due and payable under Section 9.2.

9.11 The City will consult with the Band in identifying and prioritizing works and services designated by City bylaw for the purpose of development cost charges.

PART 10 SECURITY

10.1 As security for all of the debts, liabilities and obligations of the Lessee to the City under this Agreement, in addition to the other rights and obligations of the parties under this agreement:

(a) the Lessee must assign, transfer and set over to the City a portion of the rents and other payments due and payable to the Lessee with respect to the Lands by executing and delivering to the City, as of the date of this Agreement, an Assignment of Rents in the form attached to this Agreement as Schedule “C”; or

(b) the Lessee must provide to the City, as of the date of this Agreement, a clean, irrevocable, unconditional at sight demand letter of credit in the amount of \$_____ (the "Letter of Credit"). The Letter of Credit must be issued in a form, and by a bank, satisfactory to the City. Partial draws shall be permitted. If the Letter of Credit (or any replacement or substitute therefor) will expire prior to the date when all debts, liabilities and obligations of the Lessee to the City hereunder have been satisfied in full, then the Lessee must deliver to the City, at least 30 day prior to its expiry, a replacement or substitute letter of credit issued on like terms and conditions. If the Lessee fails to do so, the City may draw down the full outstanding balance of the Letter of Credit (or any replacement or substitute therefor), and hold the cash in lieu thereof.

10.2 If the Lessee elects to provide security under paragraph (a) above, the Lessee must within six months of the date of the making of this Agreement, register the Assignment of Rents in the Indian Land Registry, Ottawa, if possible, and provide proof of registration to the City, failing which paragraph (b) applies immediately.

10.3 Despite Sections 10.1 and 10.2, the Band may elect in writing, as an alternative to security options in Section 10.1 and 10.2, to provide security to the City in accordance with Section 10.4.

10.4 If the Lessee defaults on a payment under this Agreement and the default cannot be resolved within 60 days of the City providing notice of the default to the Band,

(a) if there is a taxation agreement with the Band, the City may demand and receive from the Band the amount of the payment subject to default in addition to the remission of the portion of the tax split due and owing under the taxation agreement.

- (b) if there is no taxation agreement with the Band, retain the amount of the default in addition to the amount which the City is already entitled to retain under Part 9.
- 10.5 If the Band elects to proceed under Section 10.3 and 10.4, but there is a further default or insufficient funds available to cover outstanding payments, the City may, in its sole discretion, refuse to accept the alternative security under Section 10.3 and 10.4 in respect of any new Development in the next five years following the date of the default or inability to pay.

PART 11 REPRESENTATIONS, WARRANTIES AND COVENANTS OF LESSEE

- 11.1 The Lessee represents and warrants that it:
 - (a) holds the Lease and that it is a valid and binding lease with the Minister for the Lands; and
 - (b) has the authority and legal right to enter into this Agreement.
- 11.2 The Lessee covenants that it will not terminate the Lease without providing at least 60 days' written notice to the City and the Band.
- 11.3
 - (a) Subject to paragraphs (b) to (e), the Lessee covenants that it will not assign the Lease without the written approval of the City and the Band, which approval shall not be unreasonably withheld.
 - (b) The City and the Band may, in considering a request for assignment, consider the financial strength and capability of the proposed assignee, its experience with projects similar to the Development, the references of its representatives who will be responsible for the Development, and other such factors which a contracting party would consider before entering into an agreement.
 - (c) Any dispute between the City and the Band on whether to permit an assignment may, at the request of any Party, be resolved through the dispute resolution process set out in Section 17.
 - (d) If the City gives its consent to an assignment of the Lease pursuant to subparagraph (a) above, then a condition of any assignment of the Lease will be that the assignee and principals enter into a written assumption of this Agreement and the attached Schedules including the assignment of rents (Schedule “C”), and provide a Letter of Credit as referred to in Section 10.1, all on the same terms and conditions as contained in this Agreement, such that there is no reduction or impairment of the security for payment or prejudice to the City as a result of the assignment.

- (e) If the City gives its consent to an assignment of the Lease under paragraph (a), and if the conditions of paragraph (b) are met to the satisfaction of the City, then the Letter of Credit of the Lessee referred to in Section 10.1 must be returned to the Lessee.

PART 12 GENERAL RIGHT OF THE CITY TO ACT

- 12.1 If the Lessee fails to make any payment under this Agreement when due, or if the Lessee, the Band or the Occupant fails to fulfil any obligation under this Agreement, then, subject to the terms and conditions of this Agreement, the City may take such actions as it deems necessary, except that the City will not take any action under Schedule “C” to this Agreement (realizing securities) without first giving sixty days’ written notice of failure to make payments to the Lessee and the Band.
- 12.2 The rights, powers and remedies of the City provided under this Agreement are cumulative and the exercise or enforcement by the City of any right or remedy under this Agreement does not preclude the exercise or enforcement by the City of any other right or remedy under this Agreement or which the City is otherwise entitled by law to enforce.

PART 13 INTERRUPTION OF SERVICES

- 13.1 Without prejudice to any other right or remedy the City may have, the City may, at its sole discretion, and without terminating this Agreement, interrupt the provision of Services to the Lands or to Development on the Lands if:
 - (a) within a reasonable time period specified by the City Engineer the Lessee fails to comply with a direction of the City Engineer which has been given under this Agreement, or if full compliance is not possible for reasons beyond the Lessee’s control, fails to provide the City Engineer with a plan and schedule of compliance and to proceed diligently with the plan in accordance with the schedule;
 - (b) the Lessee fails to pay any of the costs, fees or other amount payable under this Agreement, within 60 days of written notice to the Lessee and the Band;
 - (c) the Lessee, the Band or the Occupant connects or permits the continued connection of an Extension so as to provide the Services in a manner that contravenes this Agreement and fails to remove the connection within 60 days of written notice to discontinue the connection or use;
 - (d) the Lessee, the Band or the Occupant fails in any significant way to comply with its obligations as set out in this Agreement within 60 days of written notice of the failure;
 - (e) the Lessee, the Band or the Occupant fails to comply with the water use restrictions or other regulations under requirements of Section 5.2 or the Band

fails to implement or enforce a bylaw under Section 5.3, but only if the City has provided a at least 2 days’ written notice and the Lessee, Band or Occupant has failed to comply; or

- (f) the City Engineer, acting reasonably, decides that interruption is necessary for public health or safety reasons and, except in the case of an emergency, provides at least 10 days’ written notice to the Lessee and the Band.

13.2 The City may, in accordance with this Agreement, direct the Lessee in writing to interrupt the provision of Services by way of interruption to an Extension or to Individual Meters to the Development. If the Lessee does not so interrupt the provision of the Services within a reasonable time, the City may interrupt the provision of Services to the Lands and for that purpose the City Engineer may enter onto the Reserve and make the directed interruptions to the Extensions or the Individual Meters, as the case may be, and the Lessee shall pay all reasonably related costs incurred by the City.

13.3 Before directing the interruption of services the City must provide the following written notice to the Lessee and the Band:

- (a) in the case of an emergency, no written notice in advance if a phone call is made to the Lessee and the Band;
- (b) in the case of a violation of water use restrictions or other regulations relating to Section 5.2 or failure to implement and enforce a bylaw under Section 5.3, at least 2 days;
- (c) in the case of a health or public safety issue that is not an emergency, at least 10 days; and
- (d) for all other matters, at least 60 days.

13.4 In any instance where the City or the City Engineer has ordered or caused an interruption of Services, the City or the City Engineer will restore or permit the restoration of the Services immediately after the situation that led to the interruption has been resolved.

13.5 If a delay by the City or the City Engineer causes the Lessee or the Band to incur additional costs in restoring Services after the situation that led to the interruption has been resolved, the Lessee or the Band may restore the Services and deduct or offset all reasonable costs from fees or taxes payable to the City.

PART 14 FORCE MAJEURE

14.1 No party will be liable for its failure to perform any of its obligations under this Agreement due to Force Majeure or non-availability of materials or transportation.

PART 15 INDEMNITIES

15.1 The Lessee releases, indemnifies and saves harmless the City and the Band from and against all claims, demands, actions, suits, loss, damage, costs (including legal costs), fines, penalties, charges and expenses (in this Section collectively "Claims") which the City or the Band may incur, suffer or be put to arising out of or in connection with this Agreement or the provision of the Services, including:

- (a) those arising out of or in connection with any loss or damage to persons (including bodily injury and death) or property as a result of or in connection with, directly or indirectly, this Agreement;
- (b) economic losses sustained because of interruption of the provision of Services, inadvertently or advertently, or in accordance with this Agreement;
- (c) those arising from a breach by the Lessee of any of its agreements, representations, warranties or covenants set forth in this Agreement; and
- (d) a claim brought by a resident of the Lands or member of the Band respecting the Services;

provided, however, that this obligation to indemnify the City and the Band shall not apply to Claims to the extent, if any, to which they may arise from the wrongful or negligent act or failure to act of the City or from any breach of this Agreement.

15.2 The Band indemnifies and saves harmless the City (and any related officer, elected official, employee, volunteer or agent thereof) from and against any Claims arising out of any breach by the Band of its obligations under this Agreement.

15.3 The City indemnifies and saves harmless the Band (and any related officer, official, employee, volunteer or agent thereof) from and against any Claims arising out of any breach by the City of its obligations under this Agreement.

15.4 The indemnities in Sections 15.1 to 15.3

- (a) are subject to Section 14 (force majeure), and
- (b) survive the expiration or termination of this Agreement.

PART 16 EFFECTIVE DATE; TERM AND TERMINATION

16.1 This Agreement takes effect immediately upon signing by all Parties.

16.2 Subject to Section 16.4, the term of this Agreement is for a period of twenty-five years, commencing from the date of the making of this Agreement.

16.3 At least one year prior to the end of the term, the Parties will negotiate and make best efforts to reach agreement on an extension or replacement of this Agreement.

- 16.4 In the event that a court of competent jurisdiction determines that any party did not have the necessary legal authority to (a) enter into this Agreement, (b) set the term of this Agreement, or (c) contract any other obligation contained in this Agreement, this Agreement will be deemed to be amended with respect to the relevant term or obligation, the parties will be deemed to have consented to such amendment, and the Agreement, as amended, will continue in force and effect as or, if the amendment is not feasible, the parties agree to forthwith execute a replacement Agreement to the same effect.
- 16.5 The Parties may terminate this Agreement by mutual agreement.
- 16.6 The City may terminate this Agreement by providing at least 120 days’ written notice to the Lessee and the Band if:
- (a) there has been a fundamental breach of the Agreement that has not been resolved through the dispute resolution process set out in Part 17;
 - (b) there has been an interruption of the Services, or a portion of the Services, as a result of an act or omission of the Lessee and the Lessee has failed to comply with an order of the City Engineer relating to the interruption within 60 days of the order, or
 - (c) in cases where full compliance is not possible for reasons beyond the Lessee's control, the Lessee has failed to provide the City Engineer with a plan and schedule of compliance and to proceed diligently with the plan and the schedule.
- 16.7 Despite any other provisions of this Agreement, no Party will terminate the Agreement during any attempt to resolve issues through the dispute resolution process set out in Section 17.
- 16.8 If, for any reason, this Agreement is terminated or comes to an end, there shall be a reconciliation and final adjustment of payments arising from one Party to the other, calculated up to the date of termination, and the obligation to make any adjusting payment will survive the termination of this Agreement.

PART 17 DISPUTE RESOLUTION

- 17.1 If the Parties to this Agreement are unable to agree on the interpretation or application of any provision in the Agreement, or are unable to resolve any other issue relating to this Agreement, the Parties agree to the following process in the order it is set out:
- (a) the Party initiating the process will send written notice to all other Parties;
 - (b) the Parties will promptly, diligently and in good faith take all reasonable measures to negotiate an acceptable resolution to the disagreement or dispute;
 - (c) if the Parties are unable to negotiate a resolution under paragraph (b) within 30 days, any Party may request the Indian Taxation Advisory Board (ITAB) or its successor to assist in resolving the dispute, but not to make a binding decision;

- (d) if the Parties are unable to negotiate a resolution within 60 days of the date the written notice was sent advising of the dispute, the Parties may request the assistance of a skilled mediator agreed to by the Parties within 30 days written notice of a request to appoint a mediator by any Party, failing which the mediator will be appointed by the B.C. International Commercial Arbitration Centre (BCICAC), and unless the Parties agree otherwise, this mediation will follow BCICAC rules and will terminate 60 days after the appointment of the mediator;
- (e) if the Parties are unable to resolve the dispute under paragraph (d) above, the Parties agree to refer the matter to a single arbitrator under the *Commercial Arbitration Act* or any successor legislation and to accept the arbitration ruling as final and binding. If the Parties are unable to agree on a single arbitrator within 60 days following the end of mediation, the BCICAC will appoint an arbitrator. The arbitration will follow the rules of the *Commercial Arbitration Act* unless the Parties agree otherwise.

17.2 Unless otherwise agreed by the Parties or ordered by an arbitrator, each Party will pay an equal share of the costs for the dispute resolution process.

PART 18 TAXATION

- 18.1 The City and the Band agree, in relation to this Agreement, to follow the model agreement on sharing tax revenues for developments on Reserves.
- 18.2 Unless otherwise agreed by the City and the Band, if there is no model agreement on sharing tax revenues in place, the City and the Band will use the same sharing formula committed to in the most recent letter from the City or applied in the most recent agreement between the City and any Band or First Nation Community with a Reserve within City boundaries.
- 18.3 The City and the Band agree that the tax sharing formula as of February 28, 2006 is 75% to the City and 25% retained by the Band.
- 18.4 The City and the Band may agree to share tax revenues for a Development despite the fact that the Band may not yet have implemented a tax bylaw and in such cases, if the Band requests, the City will provide to the Band the agreed-upon portion of the tax revenue as if the Band had already implemented a tax bylaw.

PART 19 NOTICES

- 19.1 All notices, bills and other correspondence delivered under this Agreement must be in writing, mailed or otherwise delivered to the respective parties at the addresses given on page one. Any notice, bill or other correspondence so delivered will be deemed to have been given and received, if delivered by hand, on the date of delivery, and if sent by mail, telex, telecopier, telegram or other similar form of transmission, on the first business day after dispatch.

19.2 The Lessee must give notice of this Agreement and a copy of this Agreement to each sub-lessee of the Lessee.

PART 20 BAND DEVELOPMENT

20.1 If in respect of Development there is no Lessee, every reference in this Agreement to the Lessee is a reference to the Band.

PART 21 GENERAL

21.1 This Agreement enures to the benefit of and is binding on the parties and their respective successors and permitted assigns.

21.2 Except as specifically provided, nothing in this Agreement affects the rights and powers of either the City or the Band in the exercise of their functions, rights, power or authority under any enactments, which may be fully and effectively exercised as if this Agreement had not been made.

21.3 Except as specifically provided, this Agreement shall not be construed so as to prejudice or in any way affect the Band's interest in and over the Reserve or provide, in any manner, the City with any jurisdiction it otherwise does not have over the Reserve.

21.4 Each party executes, or cause to be executed, such further and other documents and instruments, and do, or cause to be done, such further and other things as they are authorized to do and as may be necessary to implement and carry out the intent of this Agreement.

21.5 Except for related agreements on taxation and land use, this Agreement contains the entire agreement between the parties and supersedes all prior written and oral communication with respect to the subject matter of this Agreement.

21.6 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia, or, to the extent that matters of paramount federal jurisdiction are involved, the laws of Canada.

21.7 Neither this Agreement nor any part of it may be assigned by any party without the consent of both the Band and the City.

21.8 No amendment or variation of the terms, conditions, warranties, covenants, agreements or undertakings set out in this Agreement will be of any force or effect unless the same is reduced to writing, and duly executed by all of the Parties .

21.9 No consent or waiver, express or implied, by any Part of any breach or default by another under this Agreement will:

- (a) be valid unless it is in writing and stated to be a consent or waiver pursuant to this paragraph;

- (b) be relied on as a consent to or waiver of any other breach or default of the same or any other nature;
- (c) constitute a general waiver under this Agreement; or
- (d) eliminate or modify the need for a specific consent or waiver under this paragraph in any other or subsequent instance.

21.10 Time is of the essence in the performance of each obligation under this Agreement.

21.11 Each provision of this Agreement is intended to be severable, and accordingly:

- (a) the unenforceability or invalidity of any particular provision under any applicable law will not affect the validity of any other provision, except that if, on the reasonable construction of this Agreement as a whole, the other provision is expressly stated, or is by reasonable implication intended by the parties, to be dependent on the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable;
- (b) if any provision of this Agreement is invalid or unenforceable, the balance of this Agreement will be construed and enforced as if all invalid or unenforceable provisions and all provisions so deemed to be invalid or unenforceable were not contained in this Agreement; and
- (c) if, as a result of a determination by a court of competent jurisdiction that any part of this Agreement is unenforceable or invalid, and of any application of this Section 21.11, the basic intentions of the parties, as evidenced by this Agreement, are entirely frustrated, the parties will use all reasonable efforts to amend, supplement or otherwise vary this Agreement in order that it more closely conforms with their mutual intentions in entering into this Agreement.

SCHEDULE “A”

Land Use Concept Plan

(to be inserted)

SCHEDULE “B”

Description of Lands

(to be inserted)

SCHEDULE “C”

Assignment of Rents

THIS ASSIGNMENT dated for reference this _____ day of _____, 20_____.

BETWEEN:

_____, a company duly incorporated under the laws of British Columbia under Incorporation No. _____, having its registered and records office at _____.

(the "Lessee")

AND:

CITY OF CHILLIWACK, a municipal corporation under the *local Government Act* having its municipal offices and postal address at 8550 Young Road South, Chilliwack, B.C., V2P 8A4

(the "City")

WHEREAS:

A. The Lessee has entered into a development servicing agreement with the City, the _____ Indian Band and _____ dated _____, 199__ (the "Servicing Agreement") whereby the Lessee agrees to provide servicing to the lands and premises described in Appendix "A" (the "Lands") and the Lessee agrees to pay for the same;

B. The Lessee has agreed with the City to execute and deliver to the City this assignment as security for the debts, liabilities and obligations of the Lessee (collectively the "Obligations") to the City pursuant to the Servicing Agreement; and

C. The Lessee proposes to enter into agreement to sublease parts of the Lands pursuant to which the sub-lessees will pay to the Lessee

- (a) a sum for the rental of a part of the Lands (the "Base Rents"),
- (b) a further sum for the sublessee's proportionate share of the cost of maintaining and repairing the common facilities, and
- (c) the cost of providing utilities and services such as sewer and water (the last two categories of costs being hereinafter collectively referred to as the "Additional Rents").

WITNESSES THAT in consideration of the premises and of the sum of \$10.00 now paid by the City to the Lessee and other good and valuable consideration, (the receipt and sufficiency of

which the Lessee acknowledges), the Lessee hereby covenants and agrees with, and warrants and represents to, the City, during the existence of this assignment, that:

1. The Lessee on demand from time to time, will promptly deliver to the City a true copy of each and every written lease, sublease, lease renewal, tenancy agreement, licence and right of use or occupancy of every nature and kind whatsoever made or to be made, or granted or to be granted, with respect to the Lands or any part thereof, and on demand from time to time, will promptly give to the City full information relating to each and every unwritten lease, sublease, lease renewal, tenancy agreement, licence and right of use or occupancy made or to be made, or granted or to be granted, with respect to the Lands or any part thereof, (all of which written and unwritten leases, subleases, lease renewals, tenancy agreements, licences and rights of use or occupancy are herein called the "Sub-Leases").

2. The Lessee hereby irrevocably assigns, transfers and sets over to the City all Additional Rents and twenty-five percent (25%) of the Base Rents (the "Rents") due or accruing due or at any time hereafter to become due pursuant to the Sub-Leases, and the benefit of its interest in and to all guarantees of payment and all covenants to pay therein set forth, for the City to have and to hold until the Obligations have been fully paid and satisfied.

3. The Lessee hereby grants to the City full power and authority, with or without entry upon the Lands, to demand, collect, sue for, distrain for, recover, receive and give receipts for its interest in and to the Rents, and to enforce payment of its interest in and to the Rents and performance of guarantees of payment and covenants to pay set forth in the Sub-Leases, in the City's own name or in the name of and as agent for the Lessee, as the City may elect, and the Lessee hereby grants to the City irrevocable authority to join the Lessee in any such proceedings or actions, whether judicial or extra-judicial.

4. Although this assignment is present and absolute (subject to defeasance on satisfaction of the Obligations), the Lessee, as agent for the City, may collect and retain its interest in and to the Rents as and when they become due and payable according to the terms of the Sub-Leases unless and until the Lessee defaults in observance or performance of any term, covenant, agreement, proviso or condition of the Servicing Agreement or of this assignment or of any other security collateral to the Servicing Agreement; but this paragraph will not relieve the Lessee from the observance or performance of any of its obligations hereunder. Any default by the Lessee in observance or performance of its obligations hereunder will be deemed to be a default under the Servicing Agreement, in which event the City may exercise all or any of its rights, powers and remedies under the Servicing Agreement, this assignment and any other security collateral to the Servicing Agreement or under any of them. In the event of any such default the City its agent may give notice to any guarantors or covenantors under all or any of the Sub-Leases requiring such persons to pay the Lessee's interest in and to the Rents and other payments to the City, and the Lessee, at the City's request, will join with the City in each such notice, and the Lessee hereby irrevocably appoints the City as its attorney to join the Lessee in each such notice.

5. Notwithstanding any variation of the terms of the Servicing Agreement or of any other collateral security or any agreement or arrangement with the Lessee or any extension of time for payment or any release of part or parts of the Lands, this assignment and the benefits assigned hereunder will continue as collateral security until the Payments and all the Lessee's obligations under the Servicing Agreement have been fully paid and satisfied.

6. Nothing herein set forth will be deemed to make the City responsible for the collection of the Lessee's interest in and to the Rents or for observance or performance of any of the provisions of the Sub-Leases either by the Lessee or by any holders of the Sub-Leases, or to render the City a mortgagee in possession of the Lessee's interest in and to the Lands or in any way accountable or liable as such or to impose any obligation on the City to take any action or to exercise any remedy on the collection or recovery of the Lessee's interest in and to the Rents or to sell to or enforce the performance of the obligations and liabilities of any person under or in respect of all or any of the Sub-Leases.

7. The City will be liable to account for only such moneys as it actually receives in its hands pursuant to this assignment, after deduction of any collection charges, inspection fees, costs as between solicitor and client, and other expenses to which the City may be put in respect thereof, and the balance of such moneys, when so received by the City, will be applied on account of the Obligations.

8. The giving of this assignment is by way of additional and collateral security for the Obligations and not in substitution for or in satisfaction of the Servicing Agreement or of any other collateral security, and will not in any way derogate from or delay or prejudice any rights or remedies to which the City may be entitled under the Servicing Agreement or under any other security collateral thereto or at law or at equity, and will not in any way prejudice or limit the Lessee's obligations under the Servicing Agreement or under any such other security.

9. The Lessee will not at any time during the existence of the Servicing Agreement, without the prior written consent of the City, assign, pledge, hypothecate or otherwise encumber its interest in and to the Rents, or any of them.

10. The Lessee will execute such further assurances as the City may reasonably require from time to time to perfect this assignment and, without limiting the generality of the foregoing, the Lessee, upon demand by the City from time to time, will deliver to the City forthwith a specific assignment, similar to this assignment, of its interest in and to the rents or other payments under any present or future Sub-Leases or will assign, transfer and set over to the City its interest in and to any or all Sub-Leases as the City may require, and the Lessee hereby irrevocably appoints the City as its attorney to effect and execute any such assignment.

11. At the request of the City from time to time, the Lessee will give any other party to any of the Sub-Leases written notice of this assignment or any specific assignment of any Sub-Lease, and will use its best efforts to obtain from such party an acknowledgement of any such notice.

12. Where the context so admits all references herein to the singular will be construed to include the plural, the masculine to include the feminine and neuter genders and, where necessary, a body corporation, and vice versa.

13. The Lessee represents and warrants that the Sub-Leases are not in default, there are no rights of set off or pre-payment or similar rights with respect to the Rents and that the Rents have not previously been assigned.

14. The Lessee will at all times observe and perform all its obligations under the Sub-Leases.

15. Time will be of the essence hereof.

16. This assignment will enure to the benefit of and be binding upon the Lessee and the City and their respective heirs, executors, administrators, successors, and assigns.

17. Notwithstanding anything to the contrary indicated above, the City agrees not to exercise its rights to collect any Rents pursuant to this assignment, unless it first gives the Lessee 60 days' written notice of a failure by the Lessee to make any payments due to the City under the Servicing Agreement.

IN WITNESS WHEREOF this Assignment has been executed under seal as of the date and year first above written.

The Corporate Seal of CITY OF)
CHILLIWACK was hereunto affixed in)
the presence of:)

_____)

Mayor)

_____)
Clerk)

(c/s)

The Corporate Seal of _____)
_____)
_____ was hereunto)
affixed in the presence of:)

_____)

Authorized Signatory)

_____)
Authorized Signatory)

(c/s)

APPENDIX "A"
to the Assignment of Rents

(Description of Lands), as shown on Plan of Survey No. _____
deposited in Canada Lands Surveys Records at Ottawa, Ontario