

SERVICES AGREEMENT

THIS AGREEMENT dated for reference as of the 25 day of November, 2014

BETWEEN:

STZ'UMINUS FIRST NATION
12611 Trans-Canada Highway
Ladysmith, British Columbia, V7T 1A2

(hereinafter called the "Stz'uminus First Nation")

OF THE FIRST PART

AND:

TOWN OF LADYSMITH
PO Box 220, 410 Esplanade
Ladysmith, British Columbia, V9G 1A2

(hereinafter called the "Town")

OF THE SECOND PART

GIVEN THAT:

- A. The Stz'uminus First Nation and the Town have entered into a Memorandum of Understanding, a copy of which is attached as Schedule A, made as of the 22nd day of October, 2012 with respect to the provision of municipal services by the Town to the Stz'uminus First Nation;
- B. The Stz'uminus First Nation has requested the Town to provide municipal services defined in this interim Agreement to persons residing or doing business on its Reserve;
- C. The Stz'uminus First Nation and the Town each have distinct governance authorities and responsibilities toward their residents and members, and acknowledge that the interests of all persons living in their communities are best served by working together in a spirit of cooperation;
- D. By entering into this interim Agreement, the parties do not intend to affect any right or interest of the other party except as expressly set out in this Agreement;
- E. The Town has the authority under section 23 of the *Community Charter* to enter into an agreement to provide Services to the Stz'uminus First Nation;
- F. The Stz'uminus First Nation and the Town recognize that future development on the Reserve will create additional demand for certain services provided by the Town, and wish to enter an interim agreement that defines the obligations of the parties with respect to that future development;
- G. Pursuant to the Memorandum of Understanding between them, the Stz'uminus First Nation and the Town desire to enter into this interim Agreement to provide municipal services as contemplated in the Memorandum of Understanding;

- H. The Stz'uminus First Nation and the Town intend to negotiate and execute a Final Comprehensive Agreement to supplement this Agreement, to provide water and sanitary sewer Services to an additional 900 units on IR 12 and 500 units on IR 13 in accordance with section 3(a) of the Memorandum of Understanding and subject to and in accordance with the terms and conditions of the additional agreement and subject to the Town complying with applicable provincial licences and other approvals;
- I. The Stz'uminus First Nation has approved this interim Agreement by Stz'uminus First Nation Council Resolution No. _____ passed on the 26th day of February, 2014, a copy of which is attached to this interim Agreement as Schedule "B"; and
- J. The Town Council has approved this interim Agreement by resolution passed on the 3rd day of March 2014, a copy of which is attached to this interim Agreement as Schedule "C".

NOW THEREFORE THIS AGREEMENT WITNESSES that for and in consideration of the premises and of the mutual promises and covenants set out in this Agreement the parties covenant and agree each with the other as follows:

PART 1 - DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

- (a) "Agreement" means this interim Agreement including all Schedules hereto, as amended by the parties in writing from time to time, to be in force and effect until expressly replaced by a Final Comprehensive Agreement entered into by the parties under section 3(b) of the Memorandum of Understanding;
- (b) "Boundary Extension" means the Town's proposed boundary extension referenced in section 7 of the Memorandum of Understanding;
- (c) "Bulk Meter" means the bulk water and sewer service meter located on the boundary of the Reserve, to measure the total volume of the Services to the Reserve, and includes any ancillary vault structure;
- (d) "Commercial Retail" does not include a hotel, assisted living facility, or medical care facility;
- (e) "*Community Charter*" means the *Community Charter*, SBC 2003, c. 56, as amended or re-enacted from time to time during the Term of this Agreement;
- (f) "Connection" means the works connecting the Services between the boundary of IR 12 and the boundary at the Town and includes fixtures and equipment, such as a back flow prevention device or similar device, and that portion of the sanitary sewer force main servicing the reserve and located within the boundary of the Town as may be required as part of these connecting works:
 - (i) so that they are consistent with the Town's *Subdivision and Development Servicing Bylaw*; or

- (ii) by the Director of Infrastructure Services, acting reasonably;
- (g) "DCC Costs" means the offsite works and services costs required to be paid by the Stz'uminus First Nation to the Town under Part 10 of this Agreement, in an amount equal to the Development Cost Charges established under the Town's *Development Cost Charges Bylaw , 2011, No. 1762*, as amended from time to time;
- (h) "Development" means the initial 100 Units, subject to section 2.1, on the Reserve that will be connected to or otherwise receiving the Services under this Agreement, subject to this Agreement;
- (i) "Director of Financial Services " means the Town's Director of Financial Services appointed by the Council of the Town or any designate or representative appointed by the Town or the Director of Financial Services;
- (j) "Director of Infrastructure Services " means the Town's Director of Infrastructure Services appointed by the Council of the Town or any designate or representative appointed by the Town or the Director of Infrastructure Services;
- (k) "Engineering Standards" means:
 - (i) the standards relating to water and sewer systems set out in the Town's *Subdivision and Development Servicing Bylaw*, modified as necessary by the Director of Infrastructure Services and approved by Town Council, acting reasonably, to apply to the Development on the Reserve,
 - (ii) any variances or equivalencies to the Town's *Subdivision and Development Servicing Bylaw*, approved by the Director of Infrastructure Services and Town Council on a case-by-case basis, such variances and equivalencies not to be unreasonably refused,
 - (iii) other standards agreed upon in writing by the parties; or
 - (iv) standards established in accordance with this Agreement as a result of the dispute resolution process under Part 19;
- (l) "Environmental Standards" means those standards necessary and desirable to comply with all enactments and requirements of governmental authorities with respect to the natural environment and to protect the water, air, earth, flora and fauna in and on the Town, the Reserve and adjacent Lands and waters;
- (m) "Equivalent Dwelling Unit" or "EDU" means for the purposes of calculating available service capacity, the equivalent of one single family dwelling unit, as calculated under Schedule E, where the unit is all or part of a building, structure or improvement on the Reserve that is connected to or uses the Services;
- (n) "Extension" means that part of the works located inside the boundaries of IR12 which connect the Units, subject to section 2.1, comprising the Development on the

Reserve and includes all Individual Meters if any, to permit delivery of the Services to the Units, subject to section 2.1;

- (o) "Final Comprehensive Agreement" means the agreement between the parties that replaces this Agreement and is intended to be the final agreement between the parties with respect to the provision of Services as detailed in the Memorandum of Understanding between the parties attached as Schedule A;
- (p) "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;
- (q) "Individual Meter" means a water service meter on the Reserve for each individual permitted Unit, subject to section 2.1, within the Development to which Services are supplied under this Agreement;
- (r) "IR 12" means Stz'uminus Indian Reserve No. 12 (Oyster Bay) in British Columbia;
- (s) "IR 13" means Stz'uminus Indian Reserve No. 13 (Kulleet Bay and Shell Beach) in British Columbia
- (t) "Land" means "land" and "improvements" as defined in the *Assessment Act*, R.S.B.C. 1996, c. 20;
- (u) "Lessee" means a person who enters into a Lease with the Stz'uminus First Nation in respect of any part of the Reserve;
- (v) "Liquid Waste Management Plan" means the Town's Liquid Waste Management Plan as detailed in section 2 of the Memorandum of Understanding;
- (w) "*Local Government Act*" means the *Local Government Act*, RSBC 1996, c. 323;
- (x) "Memorandum of Understanding" means the Memorandum of Understanding between the Stz'uminus First Nation and the Town dated the 22nd day of October 2012 and attached as Schedule "A" to this Agreement;
- (y) "Parcel Taxes" means, in relation to each Unit, subject to section 2.1, permitted under section 2.1, an amount equal to:
 - (i) the Water Parcel Tax payable by owners of Land within the Town of Ladysmith pursuant to Town Bylaws established under the authority of section 200 of the *Community Charter* as amended or replaced from time to time, during the Term of this Agreement; and

- (ii) the Sewer Parcel Tax payable by owners of Land within the Town of Ladysmith pursuant to Town's Bylaws established under the authority of section 200 of the *Community Charter* as amended or replaced from time to time, during the Term of this Agreement,

multiplied by the number of Units, subject to section 2.1, on the Reserve connected to or otherwise using the Services;

- (z) "Reference Date" means the Reference Date of this Agreement set out at the top of page 1 of this Agreement;
- (aa) "Reserve" means IR 12;
- (bb) "Sanitary Sewer Service" means the Town's system of sanitary mains and pipes, sewage treatment facilities and ancillary works and facilities owned and operated by the Town and provided to inhabitants and users throughout the Town;
- (cc) "Services" means the Town's Sanitary Sewer Service and the Town's Water Service;
- (dd) "Services Agreement Monitoring Committee" means the Committee established by Part 20 of this Agreement;
- (ee) "*Subdivision and Development Servicing Bylaw*" means the Town's *Subdivision and Development Servicing Bylaw 2013, No. 1834*, as amended or replaced from time to time;
- (ff) "Term" means the term set out in Part 17 of this Agreement;
- (gg) "Unit" means every building, structure or improvement within the Development to be connected to or otherwise use the Services defined in this Agreement that is constructed, installed, erected or created as of the date of this Agreement, or that is to be so constructed, installed, erected or created within the Development in accordance with sections 2.1 and 2.4 of this Agreement;
- (hh) "User Fees" means the aggregate of:
 - (i) the charge applicable based on volume of water delivered on a bulk metered rate for the first 24 months of this Agreement to allow time for the installation of individual meters to serve existing residential and commercial development and to encourage and support conservation education. The bulk meter charge shall, as of the date of this Agreement, be the agreed upon bulk rate of \$.61/cubic metre which shall be billed pursuant to Schedule A of *Waterworks Regulations Bylaw 1999, No. 1298, Amendment Bylaw 2013, No. 1821*, as amended from time to time, subject to the parties' intention to negotiate a stepped metered rate in accordance with section 9.5 of this Agreement; and

- (ii) the charge applicable for sewerage delivered to the Waste Water Treatment Plant as contained in Schedule A of *Sanitary Sewer Rates Bylaw 1999, No. 1299, Amendment Bylaw 2013, No. 1822*, as amended from time to time.

with such volumes to be determined by Individual Meters where applicable , provided that the volume under section 1.1 (hh)(i) may in the discretion of the Town Director of Infrastructure Services, acting reasonably, be determined using the water Bulk Meter volume as a proxy;

- (ii) “Water Service” means the Town’s system of water mains and pipes, pumps and ancillary works and facilities owned and operated by the Town to provide potable water to inhabitants and users throughout the Town;
- (jj) “Year” means calendar year.

1.2 In this Agreement:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) a reference to an approval, authorization, consent, waiver or notice means written approval, authorization, consent, waiver or notice; and,
- (e) the provisions of the *Interpretation Act*, R.S.B.C. 1996. c. 238 shall be deemed to apply to this Agreement as though it were an enactment of the Town.

1.3 The following Schedules are attached and form part of this Agreement:

- (a) Schedule “A” – Memorandum of Understanding,
- (b) Schedule “B” - Stz’uminus First Nation Council Resolution No. _____,
- (c) Schedule “C” – Ladysmith Town Council Resolution No. CS 2014-096,
- (d) Schedule “D” – Services System Drawing, and
- (e) Schedule “E” – Equivalent Dwelling Units.

PART 2 - SERVICES AND PAYMENT FOR SERVICES

INTERIM SERVICES

- 2.1 The Town must provide the Services to the Development commencing upon the execution of this Agreement and upon the Stz'uminus First Nation entering into a works and services agreement with the Town for IR 12 in the form and with the content of the works and services agreement used by the Town from time to time, provided that:
- (a) the Development is limited to 100 EDU's, and
 - (b) in any event the annual supply of potable water is limited to a maximum of 25,400 cubic metres per calendar year.
- 2.2 The Town shall proceed in a reasonable manner to upgrade its infrastructure, plant and equipment necessary to provide additional capacity to its Services to permit the orderly development of IR 12 and IR 13 and for the provision of Services as detailed in a Final Comprehensive Agreement for the provision of Services for the additional 900 Units on IR 12 and 500 Units on IR 13.

PROVISION OF SERVICES

- 2.3 Subject to this Agreement, the quality and quantity of the Services to be provided by the Town under this Agreement will be substantially the same as the quality and quantity of Services provided by the Town to the users of such Services on non-Reserve lands within the Town. The Town is not obliged to provide Services at a greater level or degree than the level or degree to which the same Service is provided elsewhere within the Town. The Town makes no representation or warranty that the level or degree of Services provided under this Agreement will be maintained or continued to any particular standard, other than as stated expressly herein. Stz'uminus First Nation acknowledges and agrees that there may be from time to time interruptions or reductions in the level of Services, and that the Town will not be held liable for any losses, costs, damages, claims or expenses arising from or connected with a temporary interruption or reduction in the level of a Service provided under this Agreement.
- 2.4 For greater certainty, until the parties have entered into a Final Comprehensive Agreement, the Stz'uminus First Nation shall limit the Development to be connected to or otherwise receiving the Services on IR 12 to a maximum of 100 Units, subject to section 2.1, unless otherwise agreed in writing by the Town.
- 2.5 In accordance with the intent of the parties as set out in section 3(c) of the Memorandum of Understanding regarding the provision of the Services, the Stz'uminus First Nation has delivered, and the Town acknowledges the receipt and sufficiency of,
- (1) a letter to the Province of British Columbia and the Town supporting the Town's Liquid Waste Management Plan and
 - (2) a letter to the Province of British Columbia in support of the Town's proposed Boundary Extension in form and content acceptable to the Town and as described in the Memorandum of Understanding as further detailed in section 2.12 of this Agreement; and

- (3) a letter to the Province of British Columbia in form and content acceptable to the Town in support of the Town's proposal to expand the Town Water Service and as detailed in the Memorandum of Understanding.

PAYMENT FOR SERVICES

- 2.6 The Stz'uminus First Nation shall pay all fees, rates, charges, levies or other amounts detailed in section 9.2 on the terms and conditions set out in section 9.2. Late payments shall be subject to penalty in accordance with the rates established by the Town's *Water, Sewer, Garbage, Penalty Rates Bylaw 1998, No. 1283*, as amended or re-enacted from time to time.
- 2.7 If the Stz'uminus First Nation is more than 6 months late in making any payment owing to the Town under section 2.6 then the Town may at its election give the Stz'uminus First Nation one year's notice of default, setting out the amounts and interest owing and if within the one year after delivery of the notice the Stz'uminus First Nation does not make full payment, then, without prejudice to any other remedy available to it at law or in equity, the Town may on further written notice to the Stz'uminus First Nation terminate this Agreement. Provided that the running of the notice shall be suspended, and this Agreement may not be terminated, if notice has been given under Part 19 until such time as the Dispute Resolution Process has concluded.
- 2.8 Despite any other provision of this Agreement, if the Town upgrades Town water or sewer infrastructure required primarily to provide services to the Reserve the Stz'uminus First Nation must pay the Town the cost pro rata of the portion of the upgrade that serves the Reserve, and section 10.4 applies in relation to the recovery of any applicable portion of the cost of the upgrade.

DCC COSTS

- 2.9 Nothing in this Agreement shall exempt the Stz'uminus First Nation from, and the Stz'uminus First Nation shall pay to the Town as due, all DCC Costs in accordance with Part 10.

EFFECT OF NEW LAWS AND TREATY

- 2.10 If any laws or regulations of Canada and British Columbia having the force of law are promulgated, amended or repealed, or the Stz'uminus First Nation enters into a legally binding treaty with Canada and British Columbia, the effect of which is that substantial portions of the Agreement are no longer effective or incapable of being performed in the opinion of the Stz'uminus First Nation or the Town, acting reasonably, in that event the process set forth in section 2.11 will be undertaken immediately upon either the Stz'uminus First Nation or the Town becoming aware of the laws or regulations of Canada or British Columbia or the Stz'uminus First Nation signing a Final Agreement with Canada and British Columbia.
- 2.11 The Stz'uminus First Nation and the Town agree to use their reasonable best efforts to negotiate such amendments to this Agreement as are necessary to mitigate the effects of the laws, regulations or treaty provisions referred to in section 2.10. To this end, the parties

will meet commencing within two months of either the Stz'uminus First Nation or the Town becoming aware of such laws or regulations or a Final Agreement being signed and such meetings will continue on a regular basis. Should negotiations fail to result in an agreement being reached within one year of the date of the first meeting, either the Stz'uminus First Nation or the Town shall have the option of giving the other one year's notice of termination of this Agreement, subject to any laws, regulations or directives of British Columbia precluding the Town from doing so.

2.12 In consideration for the provision of Services under this Agreement, the Stz'uminus First Nation has before or concurrent with the execution of this Agreement:

- (a) prepared and delivered to the Province of British Columbia a letter in form and content acceptable to the Town in support of the Town's Liquid Waste Management Plan and as detailed in the Memorandum of Understanding;
- (b) prepared and delivered to the Province of British Columbia a letter in form and content acceptable to the Town in support of the Town's proposal to expand the Town Water Service and as detailed in the Memorandum of Understanding;
- (c) prepared and delivered to the Province of British Columbia a letter in form and content acceptable to the Town in support of the Town's proposed Boundary Extension and as detailed in the Memorandum of Understanding;
- (d) agreed to the relocation of the Midden from the Town's facilities to accommodate the plans of the Town for construction of the Wastewater Treatment Plant upgrade and use of the former site of the Midden.

in accordance with the intent of the parties as set out in sections 2, 4 and 7 of the Memorandum of Understanding.

PROVISION OF FURTHER SERVICES

2.13 The Town and the Stz'uminus First Nation acknowledge and agree that they will negotiate in good faith a Final Comprehensive Agreement that will replace or supplement this Agreement and which will incorporate the terms of the Memorandum of Understanding. Upon execution of the Final Comprehensive Agreement, subject to the Town complying with applicable provincial licenses and other approvals and having sufficient capacity, the Town agrees to provide water and sanitary sewer Services to IR 12 and IR 13 in accordance with section 3(a) of the Memorandum of Understanding and subject to and in accordance with the terms and conditions of the Final Comprehensive Agreement. The parties will conclude the good faith negotiations and use best reasonable efforts to enter into the Final Agreement no later than 24 months after the date of execution of this Agreement.

PART 3 - COORDINATED INFRASTRUCTURE AND LAND USE PLANNING

3.1 The Town and the Stz'uminus First Nation will consult with each other in respect of joint infrastructure and planning, related directly or indirectly to the provision of Services under this Agreement.

3.2 Without limitation, at a minimum, in relation to the consultation referred to in section 3.1:

- (a) each party will inform the other party of any planned or proposed development which may affect infrastructure or Land use in relation to the Reserve;
 - (b) the Town will consult with the Stz'uminus First Nation on amendments to the Town's *Official Community Plan* by providing early and ongoing opportunities to make submissions to the Town in relation to the preparation of an *Official Community Plan* amendment, to attend a meeting with the Town's staff if desired by the Stz'uminus First Nation and to make submissions at the formal public hearing if the Stz'uminus First Nation so desires;
 - (c) the parties will work together toward Land use policy harmonization in the context of the Town's *Official Community Plan*, the Stz'uminus First Nation's Oyster Bay Land Use Plan and Smart Growth principles, recognizing that each party is subject to laws and statutory requirements and each is an independent government whose discretion cannot be fettered;
 - (d) consider and communicate with each other with respect to concerns, recommendations or other comments provided by the other party; and
 - (e) wherever possible, reach consensus with the other party in respect of plans, priorities, budgets, funding sources, timelines and other matters relating to this Agreement.
- 3.3 The Town acknowledges the land use jurisdiction of the Stz'uminus First Nation in respect of the reserve.
- 3.4 Despite section 3.3, the Services are agreed to be delivered in a manner that is consistent with the shared community values of the parties and it is therefore mutually agreed that the Services:
- (a) shall not be connected to or used for any Commercial Retail building having a gross footprint or floor area exceeding 2090m²,
 - (b) shall not be resold to any person or other entity, directly or indirectly, except in respect of connection to and use by a Unit, subject to section 2.1, located on the Reserve.
- 3.5 Despite section 3.4(a), the parties agree to consider amending that section to increase the maximum gross floor area if the Town's Council delivers notice to the Stz'uminus First Nation that it has legislated an increase in a permitted gross footprint or floor area exceeding 2090m² within the Town boundaries.

PART 4 - SERVICES AND CONNECTIONS

- 4.1 The Town must provide the Services to the Development and occupiers on the Reserve, as required by section 2.1, except as otherwise agreed by the parties.
- 4.2 Despite section 4.1, nothing in this Agreement obligates the Town to provide Services to any Unit, subject to section 2.1, on the Reserve that is not part of the Development until the parties have entered into a Final Comprehensive Agreement.
- 4.3 Subject to section 9.2 and Part 10, the Stz'uminus First Nation will at its own cost construct, or pay to the Town costs incurred by the Town, to:

- (a) extend the Town's Services to the boundary line of the Reserve for the purposes contemplated by this Agreement;
 - (b) install the Bulk Meter in the Reserve, at the boundary of the Reserve; and
 - (c) install the Extensions.
- 4.4 The Stz'uminus First Nation must provide for operations, flushing, maintenance and repairs in relation to the Services outside of the Town boundaries.
- 4.5 Without limitation,
- (a) the Town owns that portion of the water main works constructed by Stz'uminus First Nation and located within the boundaries of the Town;
 - (b) the Stz'uminus First Nation owns the works comprising the Services located outside of the Town boundaries, and without limitation includes its own Bulk Meter installed on the boundary of the Reserve, the Extensions and the Individual Meters;
 - (c) the Stz'uminus First Nation must not connect or allow a person to connect to the Services located between the Town boundaries and the boundary of the Reserve; and
 - (d) the Stz'uminus First Nation owns the Sanitary Sewer portions of the Connections, and the Extensions.
- 4.6 Stz'uminus First Nation agrees to indemnify and hold harmless the Town from and against any claims or actions against the Town by the Province of British Columbia if a court of competent jurisdiction determines that Stz'uminus First Nation has or is acting in breach of the *Water Act* or other provincial or federal enactment in relation to the connection located between the boundaries of the Town and the boundary of the Reserve for conveying potable water to the Reserve.

PART 5 - EXTENSIONS CONSTRUCTION

- 5.1 The Stz'uminus First Nation will, at its sole cost, subject to this Agreement, construct the Extensions in accordance with the Engineering Standards.
- 5.2 Extensions constructed under section 5.1 are the exclusive property of the Stz'uminus First Nation and the Stz'uminus First Nation shall be responsible for all costs associated with the installation, maintenance, repair and replacement of the Extensions.
- 5.3 Prior to construction of an Extension or significant modification to an Extension, the Stz'uminus First Nation must deliver to the Director of Infrastructure Services the design and specifications for the proposed Extension. The Director of Infrastructure Services may require changes or modifications to aspects of the Extension if the Extension does not satisfy the Engineering Standards.
- 5.4 The Stz'uminus First Nation must install, at its sole cost, an Individual Meter to service any or all Units, subject to section 2.1, within the Development that are connected to an Extension.

PART 6 - USE OF EXTENSIONS

- 6.1 The Stz'uminus First Nation will construct and use the Extensions only for the purpose of enabling delivery of the Services to the Reserve and to a Unit, subject to section 2.1, within the Development. For greater certainty, the Extensions cannot be used for any building, structure or improvement off-Reserve or that is not part of the Development permitted under section 2.4 of this Agreement. Every Extension for new Units, subject to section 2.1, of Development must comply with Part 5 and Part 6.
- 6.2 The Stz'uminus First Nation must require that every person on the Reserve who uses the Services acts in accordance with orders, policies or bylaws made by the Town with respect to the Services, including orders, policies or bylaws respecting water use restrictions made by the Director of Infrastructure Services or the Town Council which would apply if the Development or water use were on Land subject to the jurisdiction of the Town.
- 6.3 If the Director of Infrastructure Services, Town Fire Chief or Town Council amends orders or bylaws referred to in section 6.2, the Stz'uminus First Nation must make reasonable efforts to consider amending its bylaws to be consistent with the orders or bylaws referred to in section 6.2. The Town may enforce this section 6.3 by referring the matter to the monitoring process under Part 20 or dispute resolution under Part 19.
- 6.4 The Stz'uminus First Nation must enforce its bylaws in relation to the matters referred to in sections 6.2 and 6.3.

PART 7 - ENVIRONMENTAL PROTECTION

- 7.1 (a) The Stz'uminus First Nation and the Town will consult on the desirability of harmonizing and making uniform their respective regulatory bylaws with respect to Environmental Standards and the following: harmonization of their respective bylaws in order to fully satisfy all commitments and requirements under the Liquid Waste Management Plan; and
- (b) harmonize their respective bylaws so that all users of Water Services on Reserve comply with the same requirements, restrictions and orders with respect to water use, fire protection and building safety as do users within the Town.
- 7.2 The Town and Stz'uminus First Nation will cooperate in an effort to resolve any issues relating to Environmental Standards or harmonization of the parties' bylaws, or both, including through use of the mechanisms and process outlined in Part 19 and Part 20.

PART 8 - INSPECTION AND REPAIR

INSPECTION AND REPAIR

- 8.1 Despite any other provision of this Part 8, the Stz'uminus First Nation at its own cost shall be solely responsible for the repair, maintenance, replacement, and alteration or modification, in a timely manner, of the Extensions and Individual Meters in the Development to the Engineering Standards.

- 8.2 The Stz'uminus First Nation must comply with all directions of the Director of Infrastructure Services concerning the Extensions and Individual Meters, including repairing, altering, maintaining or interrupting Services to the Extensions or Individual Meters as directed by the Director of Infrastructure Services, to Engineering Standards, in a timely manner. The Stz'uminus First Nation shall use their best reasonable efforts to implement these requests.
- 8.3 The Town shall not be liable for any costs, damages, loss or claims, or any consequential loss, arising from or due to failure of the Stz'uminus First Nation to fulfill its obligations under this Part 8, and the Town has no responsibility or liability for the repair, maintenance, replacement, alteration or modification of the Extensions or Individual Meters on the Reserve.
- 8.4 The Town may at any time enter on the Reserve for the purpose of inspecting any Individual Meter.

OWNERSHIP OF EXTENSIONS AND INDIVIDUAL METERS

- 8.5 The Stz'uminus First Nation must at its sole cost install to the satisfaction of the Director of Infrastructure Services an Individual Meter for each Unit, subject to section 2.1, to be connected to or otherwise using Water Services. The Extensions and the Individual and Bulk Meters are, and at all times shall remain, the property of the Stz'uminus First Nation, provided that the Town may, but is not obligated to, inspect, maintain, repair or replace the Extensions and Individual and Bulk Meters at the cost of the Stz'uminus First Nation, as the Town considers necessary to ensure the proper delivery and operation of the Services and satisfaction of the terms of this Agreement if Stz'uminus First Nation fails or neglects to maintain, repair and replace the Extensions and Individual and Bulk Meters as required under this Agreement. The standard of inspection and maintenance of all meters shall be to a standard consistent with good industry practice.

GENERAL

- 8.6 Except in an emergency or in respect of line flushing required for routine maintenance, the Stz'uminus First Nation must not operate any fire hydrant without first notifying the Director of Infrastructure Services or Fire Chief.
- 8.7 In an emergency, the Stz'uminus First Nation will immediately, without a prior request by the Director of Infrastructure Services or the Town, repair or interrupt the use of the Services, including the Extensions, Connections and Individual and Bulk 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 Stz'uminus First Nation fails to do so, the Director of Infrastructure Services has the right, but not the obligation, to enter on the Reserve, to take such steps as the Director of Infrastructure Services deems appropriate, and the Stz'uminus First Nation must pay all reasonable costs incurred by the Town as a result, including its administrative, supervisory, engineering, legal and design costs which the Town will evidence in writing.

- 8.8 The Stz'uminus First Nation shall provide in every agreement it makes with a Lessee that every obligation of the Stz'uminus First Nation under Part 4, Part 5, Part 6, and Part 8 are also an obligation of the Lessee to the Town.
- 8.9 The Stz'uminus First Nation shall assume responsibility for all provincial water quality regulations and reporting requirements between the boundary of the Town and the boundary of the Reserve.

PART 9 – PAYMENT

- 9.1 It is a fundamental term of this Agreement that the Stz'uminus First Nation make all payments for Services as required by this Agreement. The parties agree the payments shall be paid, without duplication, for those Services provided or costs actually incurred by the Town.
- 9.2 The Stz'uminus First Nation must pay to the Town:
- (a) one hundred per cent of the Parcel Taxes under section 2.6 which will be payable annually, on or before June 30th in each Year during the Term of this Agreement;
 - (b) the User Fees which will be payable quarterly, on or before March 31, June 30, September 30 and December 31 in each Year during the Term of this Agreement;
 - (c) the DCC Costs payable under Part 10 for water and sanitary sewer;
 - (d) other costs and expenses incurred by the Town with respect to the Extensions and Bulk Meter, which are payable by the Stz'uminus First Nation under this Agreement, which costs and expenses must be paid within 30 days of written demand from the Town; and
 - (e) penalties in respect of arrears of payments owing under this Agreement payable at the rates and according to the terms as set out in the *Town of Ladysmith Water, Sewer, Garbage, Penalty Rates Bylaw 1998, No. 1283*, as may be amended or re-enacted from time to time;
- provided that the frequency and timing for any of the aforementioned payments may be changed by the Town as it decides necessary in its sole discretion and for greater certainty, the Town may require all amounts payable under this Agreement to be paid on the same terms and at the same times as if payable for Services provided within the Town of Ladysmith.
- 9.3 If the Stz'uminus First Nation and the Town cannot agree on an amount to be paid to the Town under this Agreement, the matter may be resolved under Part 19 on the basis of this Agreement.
- 9.4 The Town must make available at the request of the Stz'uminus First Nation the calculation and factors that substantiate the fees.
- 9.5 The parties acknowledge and agree that it is their intention to negotiate a stepped metered rate similar to that charged for Town of Ladysmith residents during the first 24 months of this Agreement which will be applied to this Agreement or any replacement or new agreement.

PART 10 - DCC COSTS

- 10.1 Without limiting amounts due and owing under other provisions of this Agreement, the Stz'uminus First Nation must pay the Town water and sewer DCC Costs to assist with the payment of off-site works and services costs related to the Services, as determined by the Director of Infrastructure Services consistent with the Town's treatment of development off-Reserve and with good engineering practices, and as provided in section 10.2 to 10.4 below.
- 10.2 The Stz'uminus First Nation must pay the Town the DCC Costs established by Town bylaw that would apply to the same class of development for the Services if it were on non-Reserve Land prior to constructing any Extensions to connect any Unit, subject to section 2.1, including existing Unit, subject to section 2.1, on the Reserve to the Services.
- 10.3 The Town will apply the same exemptions and exclusions, if any, for DCC Costs relating to Extensions or Development on the Reserve as would apply to development cost charge payments if the Extensions or development were off-Reserve.
- 10.4 Nothing in this Agreement has the effect of removing access to the application of latecomer charges if such charges would otherwise be available. Stz'uminus First Nation must make a Formal Application to the Town to receive any latecomer benefits.
- 10.5 (a) Any off-Reserve works or facilities which are required in the reasonable opinion of the Director of Infrastructure Services to be constructed, installed, upgraded or replaced for the Services contemplated under this Agreement; or
- (b) charges imposed by the Town arising directly or indirectly in relation to the Development on the Reserve, if the charges would otherwise be paid by the Town, must be paid for by the Stz'uminus First Nation, and not the Town, at the same time as the DCC Costs payment is due and payable under section 10.2.
- 10.6 The Town will consult with the Stz'uminus First Nation in identifying and prioritizing works and services designated by Town bylaw for the purpose of charges under this Part.
- 10.7 The Stz'uminus First Nation shall provide in every agreement it makes with a Lessee that every obligation of the Stz'uminus First Nation under this Part 10 is also an obligation of the Lessee to the Town.

PART 11 - REPRESENTATIONS, WARRANTIES AND COVENANTS

- 11.1 (a) The Stz'uminus First Nation and the Town represent and warrant to each other and covenant with each other that they have the legal capacity and power to enter into this Agreement and comply with and perform every term and condition of this Agreement;
- (b) all necessary corporate proceedings have been taken to authorize each party to enter into this Agreement and to execute and deliver this Agreement;
- (c) this Agreement has been properly executed and delivered.

PART 12 - GENERAL RIGHT OF THE TOWN TO ACT

- 12.1 If the Stz'uminus First Nation fails to make any payment under this Agreement when due, or if the Stz'uminus First Nation fails to fulfill any obligation under this Agreement, then, subject to the terms and conditions of this Agreement, the Town may take such actions as it deems necessary.
- 12.2 The rights, powers and remedies of the Town provided under section 12.1 are cumulative and the exercise of enforcement of any right or remedy under this Agreement does not preclude the exercise or enforcement by the Town of any other right or remedy under this Agreement or which the Town is otherwise entitled by law to enforce.

PART 13 - INTERRUPTION OF SERVICES

- 13.1 Without prejudice to any other right or remedy the Town may have, the Town may, at its sole discretion, and without terminating this Agreement, interrupt the provision of Services to the Reserve or to a Unit or Units, subject to section 2.1, within the Development if:
- (a) within a reasonable time period specified by the Director of Infrastructure Services the Stz'uminus First Nation fails to comply with the request of the Director of Infrastructure Services which has been given under this Agreement, or if full compliance is not possible for reasons beyond the Stz'uminus First Nation's control, the Stz'uminus First Nation cannot meet its obligation in relation to the request of the Director of Infrastructure Services with a plan and schedule of compliance and to proceed diligently with the plan in accordance with the schedule;
 - (b) the Stz'uminus First Nation fails to pay any of the costs, fees or other amount payable under this Agreement, within 60 days of written notice to the Stz'uminus First Nation;
 - (c) the Stz'uminus First Nation 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 Stz'uminus First Nation 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 Stz'uminus First Nation fails to comply with the water use restrictions or other regulations or requirements under Part 6, but only if the Town has provided at least 7 days' written notice and the Stz'uminus First Nation has failed to comply; or
 - (f) the Director of Infrastructure Services, 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 Stz'uminus First Nation.
- 13.2 The Town may, in accordance with this Agreement, direct the Stz'uminus First Nation in writing to interrupt the provision of Services by way of interruption to an Extension or to Individual Meters to the Development. If the Stz'uminus First Nation does not so interrupt the provision of the Services within a reasonable time, the Town may interrupt the provision of Services to the Reserve and for that purpose the Director of Infrastructure Services may enter onto the Reserve and make the requested interruptions to the

Extensions or the Individual Meters, as the case may be, and the Stz'uminus First Nation shall pay all reasonably related costs incurred by the Town.

- 13.3 Before directing the interruption of services the Town must provide the following written notice to the Stz'uminus First Nation:
- (a) in the case of an emergency, no written notice in advance if a phone call is made to the Stz'uminus First Nation Administrator or his or her designate;
 - (b) in the case of a violation of water use restrictions or other regulations relating to section 6.2 or failure to implement and enforce a bylaw under section 6.3, 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 Town or the Director of Infrastructure Services has requested or caused an interruption of Services, the Town or the Director of Infrastructure Services will restore or permit the restoration of the Services immediately after the situation that led to the interruption has been resolved.

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 Stz'uminus First Nation releases, indemnifies and saves harmless the Town and its elected officials, officers, employees, contractors, assigns and agents 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 Town or the Stz'uminus First Nation 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 Stz'uminus First Nation of any of its agreements, representations, warranties or covenants set forth in this Agreement; and
 - (d) a claim brought by a resident of the Reserve or member of the Stz'uminus First Nation respecting the Services;

provided, however, that this obligation to indemnify the Town and the Stz'uminus First Nation 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 Town or from any breach of this Agreement.

15.2 The indemnities in section 15.1:

- (a) are subject to Part 14 (Force Majeure), and
- (b) survive the expiration or termination of this Agreement.

PART 16 - EFFECTIVE DATE

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

PART 17 - TERM AND TERMINATION

17.1 Subject to section 17.3, the initial Term of this Agreement is for the period of 10 years commencing on the Reference Date and ending on the tenth anniversary of the Reference Date or until replaced by a Comprehensive Final Agreement, whichever occurs first.

17.2 At least one year prior to the end of the Term, the parties will negotiate and make best efforts to reach agreement on a renewal or replacement of this Agreement.

17.3 The parties may terminate this Agreement by mutual agreement.

17.4 The Town may terminate this Agreement by providing at least one year's written notice to the Stz'uminus First Nation if:

- (a) there has been a breach of this Agreement that has not been resolved through the dispute resolution process set out in Part 19;
- (b) there has been an interruption of the Services, or a portion of the Services, under Part 13 as a result of an act or omission of the Stz'uminus First Nation and the Stz'uminus First Nation has failed to comply with an obligation further to a request of the Director of Infrastructure Services relating to the interruption within 60 days of the order; or in cases where full compliance is not possible for reasons beyond the Stz'uminus First Nation's control, the Stz'uminus First Nation has failed to provide the Director of Infrastructure Services with a plan and schedule of compliance and to proceed diligently with the plan and the schedule;
- (c) the Town's planning, engineering or infrastructure concerns relating to the provision of the Services under section 8.2 of this Agreement or otherwise have not been resolved through the dispute resolution process set out in Part 19; or
- (d) if the Stz'uminus First Nation is more than 6 months late in making any payment owing to the Town under section 2.6.

17.5 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 Part 19.

17.6 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.

17.7 For greater certainty, nothing in the Agreement imposes a capital liability on the Town.

PART 18 - SECURITY

- 18.1 As security for all of the debts, liabilities and obligations of the Stz'uminus First Nation to the Town under this Agreement, in addition to the other rights and obligations of the parties under this Agreement including service interruption and termination, the Stz'uminus First Nation shall provide to the Town, as of the date of this Agreement and thereafter annually on or before the anniversary date of this Agreement, a clean, irrevocable, unconditional at sight demand letter of credit in an amount approximately equal to 115% of the ensuing year's total Parcel Taxes and User Fees (the "Letter of Credit") which amount shall be determined by the Town's Director of Financial Services acting reasonably. The Letter of Credit shall be issued in a form, and by a bank, satisfactory to the Town. Partial draws shall be permitted. If the Letter of Credit (or any replacement or substitute therefor) will expire before the date when all debts, liabilities and obligations of the Stz'uminus First Nation to the Town hereunder have been satisfied in full, then the Stz'uminus First Nation shall deliver to the Town, at least 30 days prior to its expiry, a replacement or substitute letter of credit issued on like terms and conditions. If the Stz'uminus First Nation fails to do so, the Town 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.
- 18.2 Without limiting section 2.7, if the Stz'uminus First Nation defaults on a payment under this Agreement and the default cannot be resolved within 30 days of the Town providing notice of the default to the Stz'uminus First Nation, the Town may draw down the Letter of Credit and apply it to the amount of the default in addition to the amounts which the Town is already or additionally entitled to retain under Part 9.

PART 19 - DISPUTE RESOLUTION

- 19.1 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 the other party;
 - (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 refer the matter to:
 - (i) the Services Agreement Monitoring Committee for administrative resolution;
 - (ii) settlement by a peer panel composed of three persons selected from a list agreeable to both parties as of the Reference Date of this Agreement, and revised from time to time under Part 20 of this Agreement, the panel must give written reasons for its decision if this is requested by the proposing Town or Stz'uminus First Nation before the panel retires to make its decision;

(iii) conciliation, using the services of a conciliator agreeable to both parties;

- 19.2 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.
- 19.3 If the parties are unable to resolve the dispute under section 19.2 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.
- 19.4 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.
- 19.5 Despite any other provision of this Agreement, no party will interrupt or terminate this Agreement during any attempt to resolve issues through the dispute resolution process set out in this part.

PART 20 - REVIEW AND MONITORING COMMITTEE

- 20.1 At least annually or as often the parties may otherwise agree, the parties shall meet to review the terms and conditions of this Agreement, to recommend amendments to this Agreement, and to negotiate and agree on improved ways of implementing this Agreement.
- 20.2 The meeting referred to in section 20.1 will be a government to government meeting between the Councils of the parties. The Councils may delegate the implementation of the decisions made by the governments.
- 20.3 There is established a Services Agreement Monitoring Committee to:
- (a) review changes in service needs, capacity or delivery;
 - (b) facilitate interpretation and implementation of this Agreement to mitigate potential service disruptions;
 - (c) recommend amendments to the Agreement; and
 - (d) initiate review of the Agreement at least one year prior to the expiration of every five year period during the Term of this Agreement.
- 20.4 The Services Agreement Monitoring Committee will comprise the Town Chief Administrative Officer and Stz'uminus First Nation Administrator, or their designates, the Director of Infrastructure Services and the Stz'uminus First Nation Director of Public Works or their designates and the Town's Chief Financial Officer.

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 Town or the Stz'uminus First Nation 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 Stz'uminus First Nation's interest in and over the Reserve or provide, in any manner, the Town 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 Subject to the Memorandum of Understanding, and except for related agreements on taxation and Land use, and the Comprehensive Final Agreement, this Agreement contains the entire agreement between the parties and supersedes all prior written and oral communication with respect to the Services to subject 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 Stz'uminus First Nation and the Town.
- 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 section;
 - (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 section 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;

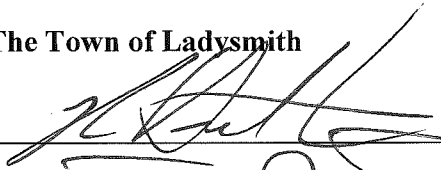
- (b) if any provision of this Agreement is invalid or unenforceable, the balance of this Agreement will be construed and enforced as if all invalid or unenforceable provisions and all provisions so deemed to be invalid or unenforceable were not contained in this Agreement; and
- (c) if, as a result of a termination 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.

END OF PAGE

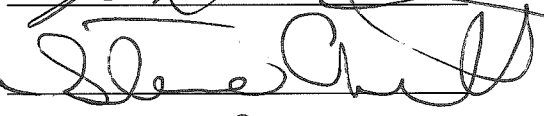
IN WITNESS WHEREOF the parties have executed the Agreement as of the date first above mentioned.


The Town of Ladysmith

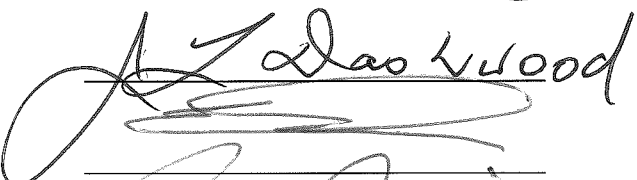
Stz'uminus First Nation




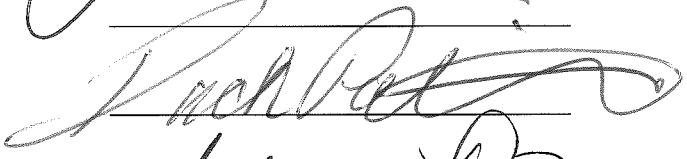







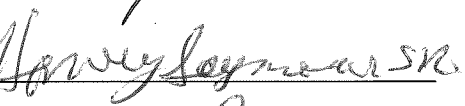


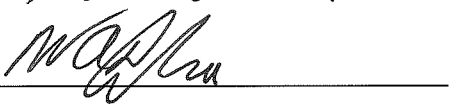












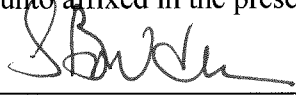






WITNESSED BY
The Corporate Seal of the Town of Ladysmith)
was hereunto affixed in the presence of:)

WITNESS


_____)


_____)

Corporate Officer

Sandy Bowden
Director of Corporate Services
Town of Ladysmith



MEMORANDUM OF UNDERSTANDING

A MEMORANDUM OF UNDERSTANDING WITH RESPECT TO STZ' UMINUS FIRST NATION AND THE TOWN OF LADYSMITH RELATIONS AND PARTNERSHIPS

BETWEEN:

STZ' UMINUS FIRST NATION
12611 Trans Canada Highway
Ladysmith, British Columbia
V7T 1A2

and

TOWN OF LADYSMITH
PO Box 220, 410 Esplanade
Ladysmith, British Columbia
V9G 1A2

("Stz'uminus First Nation")

("Town")

(Collectively referred to as the "Parties")

GIVEN THAT:

- A. The Parties are engaged in discussions toward establishing a long-term, meaningful relationship in relation to their respective communities;
- B. The Parties wish to work collaboratively to support their respective communities' goals and objectives in a principled manner;
- C. Each of the Stz'uminus First Nation and the Town respects the lawful jurisdiction of the other Party;
- D. The Stz'uminus First Nation, the Town and the Province of British Columbia have engaged in discussions as reflected in this Memorandum of Understanding respecting:
 - (a) Liquid Waste Management Plan Approval;
 - (b) IR 12 (Oyster Bay) and IR 13 (Kulleet Bay and Shell Beach) Water/Sewer Services Agreement;
 - (c) Holland Lake-Stocking Lake Pipeline Agreement;
 - (d) Watershed management;
 - (e) Operational services, such as building inspection, and water meter reading;
 - (f) Boundary extension;

- (g) Ladysmith Harbour clean-up;
 - (h) DL 651 Partnership;
 - (i) Uniform bylaws for the protection of environment;
 - (j) Explore mutual funding opportunities;
 - (k) OCP consultation.
 - (l) South Ladysmith Stz'uminus First Nation (Crown) Land development;
 - (m) Incremental Treaty Process;
 - (n) Inclusion of First Nation's heritage/culture;
 - (o) Emergency Preparedness.
- E. The Parties intend this Memorandum of Understanding to set out their mutual expectations and goals in relation to the matters contained herein;
- F. The Memorandum of Understanding is to be read in the context of the Naut'Sa Mawt (Working Together) Community Accord and the Cooperation Protocol between the parties, and the principles stated therein;

THE PARTIES AGREE AS FOLLOWS:

Guiding Principles

1. In relation to the matters expressly addressed in this Memorandum of Understanding, the following principles apply:
- (a) The Stz'uminus First Nation has constitutionally protected rights and it asserts aboriginal rights and title to its traditional territory; and
 - (b) The Town is a municipality with governance authorities as set out in Provincial legislation; and
 - (c) The Stz'uminus First Nation is a first nation with governance authority under federal law and rights of a self-governing nation; and,
 - (d) The Stz'uminus First Nation and the Town have mutual interests and shared objectives; and
 - (e) The Stz'uminus First Nation and the Town are building a working relationship based on mutual respect, cooperation, friendship, and trust; and

- (f) The Stz'uminus First Nation and the Town wish to further their relationship by entering into this Memorandum of Understanding following up on the Community Accord and Cooperation Protocol.

Liquid Waste Management Plan Approval

- 2. (a) The Stz'uminus First Nation supports the Town's Liquid Waste Management Plan.
- (b) The Town will provide the Stz'uminus First Nation with capacity in the Town's Waste Treatment Plant upgrade, in order to provide IR 12 and IR 13 with sanitary sewer services to facilitate the orderly and efficient development of IR 12 and IR 13.
- (c) The Stz'uminus First Nation will on the reference date of an agreement between the parties with respect to section 3(c) deliver to the Province of British Columbia a letter supporting the Town's Liquid Waste Management Plan.

IR 12 AND IR 13 Water/Sewer Services Agreement

- 3. (a) The Town will provide water and sanitary services
 - (i) for 1000 connections to the Stz'uminus First Nation's IR12 Reserve Lands (Oyster Bay); and
 - (ii) for 500 connections to the Stz'uminus First Nations IR13 Reserve Lands (Kulleet Bay and Shell Beach) Lands, plus potential capacity for additional units in the future,

at the same level of service the Town provides to lands and occupants throughout the Town, on generally the same terms and conditions, and subject in all respects to the same limitations, as are applicable to the provision of these services to lands in the Town and to occupants of those lands, after the Town completes the upgrade of its sewer and water capacity.

- (b) The parties will develop the phraseology of mutually satisfactory services agreements to implement sub-paragraphs (a)(i) and (ii).
- (c) Despite section 3(a), and until the parties can enter into the agreements under section 3(b), the parties will enter into an interim water and sewer services agreement for the Town to provide such services for the first 100 connections (of the total number of 1000 connections) for water and sewer for use by the Stz'uminus First Nation on IR 12 (Oyster Bay). This interim agreement will be amalgamated with the final comprehensive agreement referred to in section 3(b).

Holland Lake – Stocking Lake Pipeline Agreement

4. The Stz'uminus First Nation will, on the reference date of an agreement to provide water and sanitary sewer services under section 3(c), deliver to the Province of British Columbia a letter to support the Town's proposal to construct, install, operate, and maintain and repair a potable water pipeline between Holland Lake and Stocking Lake.

Watershed Management

5. The Stz'uminus First Nation and the Town will work together and facilitate stakeholders (e.g. other government agencies and private land owners) to develop a watershed management plan in relation to the Town's water service and commitments under its LWMP, and the Town will manage the plans and the services.

Operational Services

6. (a) In the Water and Sewer Services Agreement referred to in section 3(b), the parties may include provision by the Town of other services of an operational nature, including building inspection and water meter reading. Other services that may be discussed include preparation of tax notices, bylaw enforcement, police services or other matters. The Agreement will also include provision by Stz'uminus First Nation of services to the Town including but not limited to operational services. It is the intent to reduce duplication of services to the extent feasible.
- (b) The parties will develop phraseology for a mutually satisfactory set of provisions for operational services to be included in the services agreement.

Boundary Extension

7. (a) The Stz'uminus First Nation supports the extension of the Town's boundaries in the area shown on Schedule A, subject to the satisfactory conclusion of discussions between Stz'uminus First Nation and third parties.
- (b) The Stz'uminus First Nation will on the reference date of the agreement made between the parties under section 3(c) deliver to the Province of British Columbia a letter to support the boundary extension.

Ladysmith Harbour Clean-Up

8. The Stz'uminus First Nation and the Town will work together to utilize their jurisdiction, resources and capacity to work with the Federal and Provincial governments agencies and the private sector to take such action as may be necessary to move in the direction of ultimately restoring Ladysmith Harbour to its original natural state, subject to the limited financial resources of each of the parties.

DL 651 Partnership

9. (a) The Stz'uminus First Nation and the Town will continue their discussions on utilizing DL 651 for the purposes of cleaning up Ladysmith Harbour, further to section 8, and ultimately for the purpose of an expanded marina as a joint project in which both will have a significant role and interest.
- (b) The parties will develop the phraseology of a mutually satisfactory DL 651 partnership agreement.

Uniform Bylaws for the Protection of Environment

10. (a) The Stz'uminus First Nation and the Town will consult on the desirability of harmonizing and making uniform a number of regulatory bylaws that would apply in the Town and on the Reserve in relation to the protection of the environment or other regulatory matters.
- (b) Both the Town and Stz'uminus First Nation will follow the commitments under the LWMP (e.g. source point control bylaw).
- (b) Subject to its ongoing discussions on land use and management leading to its land code, the objective of the Stz'uminus First Nation is that every person on the Reserve who uses water obtained from the Town water supply system act consistent with orders or bylaws respecting water use restrictions and orders or bylaws respecting fire protection and building safety.

Explore Mutual Funding Opportunities

11. Each of the parties has access to unique funding opportunities for capital works, including infrastructure, facilities and services. The parties will work together on an overarching mutual funding opportunity plan.

Official Community Plan Consultation

12. Under section 879 of the *Local Government Act*, the Town will consult with the First Nation on amendments to the Town's Official Community Plan by providing the First Nation with early and ongoing opportunities to make submissions to the Town in relation to the preparation of an Official Community plan amendment, to attend a meeting with the Town's staff if desired by the First Nation, and to make submissions at the formal public hearing if the First Nation so desires.

South Ladysmith Stz'uminus First Nation (Crown) Land Development

13. The parties will develop the phraseology of a mutually satisfactory servicing agreement and development plan in respect of the South Ladysmith Crown Land Development by the Stz'uminus First Nation.

Incremental Treaty Process

14. (a) The Stz'uminus First Nation will consult with the Town in relation to the Incremental Treaty Process on the same basis as the Town consults with the First Nation in relation to Official Community Plan amendments under section 12.
- (b) Without limiting paragraph 9(b) or 14(a), the Parties may develop partnerships in relation to Crown Land located within the Town, and in this regard may develop the phraseology of a mutually satisfactory partnership agreement for each partnership.

Inclusion of First Nation's Heritage/Culture

15. (a) The Town acknowledges and agrees that the Stz'uminus First Nation's heritage and culture will be reflected in each of the agreements, plans and understanding reached by the parties under this Memorandum of Understanding.
- (b) The parties will provide for the formal recognition of Stz'uminus First Nation within the Town.

Emergency Preparedness.

16. The parties will work together to enhance the Cowichan Valley Regional District's emergency preparedness plan.

Land Use Strategy

17. The Stz'uminus First Nation and the Town will work together towards land use policy harmonization in the context of the Town's Official Community Plan, the Stz'uminus First Nation's Oyster Bay Land Use Plan and Smart Growth Principles, recognizing that each is subject to laws and statutory requirements and each is an independent government whose discretion cannot be fettered.

General

18. This Memorandum of Understanding is not a binding legal agreement. It does not define, create, recognize or amend the rights of the Parties. This Memorandum of Understanding is not intended to be a treaty or a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*. Nothing in this Memorandum of Understanding, or anything done based on it, is to be taken as limiting, interfering with, or derogating from the constitutionally protected rights of Stz'uminus First Nation and the assertion by it of its aboriginal rights and title to its traditional territory.
19. Nothing in this Memorandum of Understanding obliges the Town to act in a manner inconsistent with Provincial legislative and Town bylaw regulatory jurisdictions or authorities.

- 20. Nothing in this Memorandum of Understanding obliges the Stz'uminus First Nation to act in a manner inconsistent with applicable laws or regulatory or other authorities having jurisdiction with respect to Stz'uminus First Nation and its affairs.
- 21. For greater certainty, this Memorandum of Understanding will not be interpreted in a manner which fetters the discretion of statutory decision makers.

Public Messaging

- 22. Given that the Parties are engaged in discussions toward establishing a long-term, meaningful relationship in relation to their respective communities, the Parties will work together in relation to constructive positive public messaging in respect of this Memorandum of Understanding and the agreements arising out of it.

Schedules

- 23. The following schedules are attached to and form part of this Memorandum of Understanding:
 - (a) Schedule A – Boundary Extension Area

EXECUTED in Ladysmith, British Columbia on the 23rd day of October, 2012.

On behalf of the STZ'UMINUS FIRST NATION

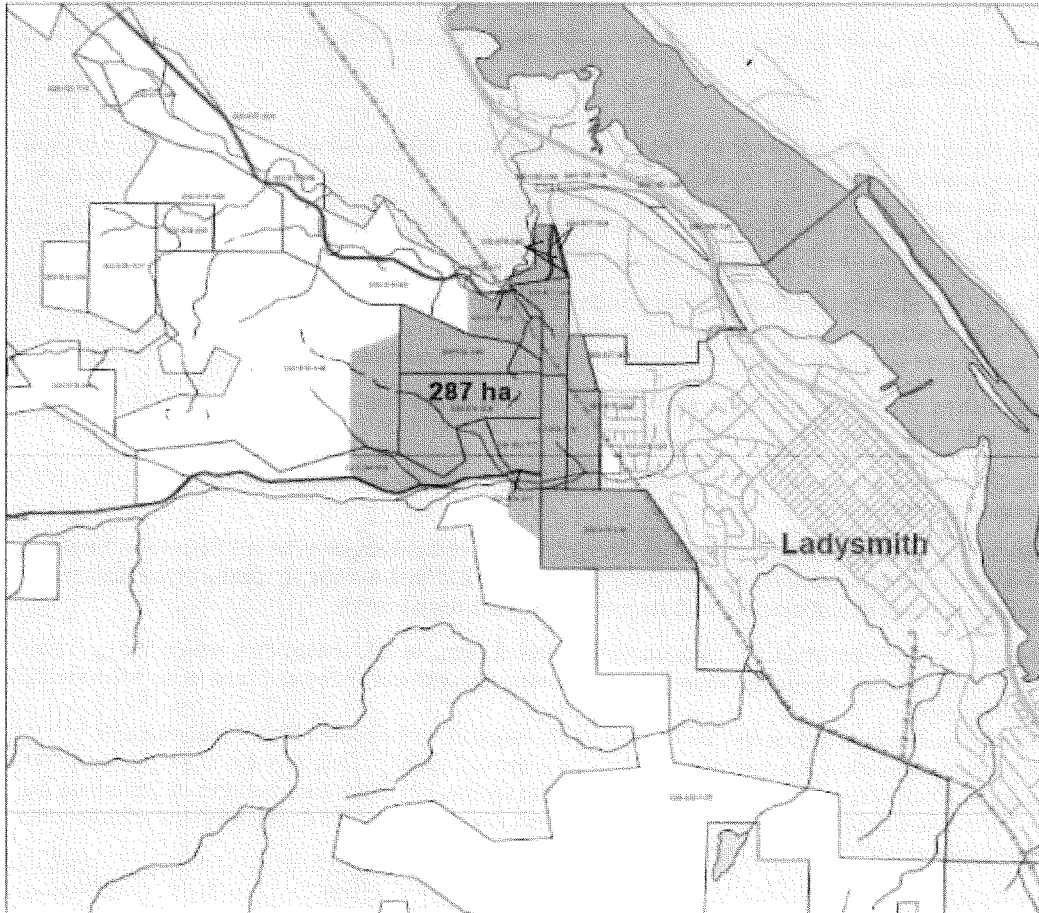
On behalf of the TOWN OF LADYSMITH

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

Schedule A

Boundary Extension Area





BAND COUNCIL RESOLUTION

NOTE: The words "from our and Funds" "capital" or "revenue", which is the case, must appear in all resolutions requesting expenditures from Band Funds.

		Cash free balance	
The council of the Stz'uminus First Nation		Capital Account	\$
Date of duly convened meeting	<input type="checkbox"/> 2 6 0 2 1 4	Revenue account	\$
	D-J M Y-A Province BC		

DO HEREBY RESOLVE:

THAT

A. The Stz'uminus First Nation and the Town have entered into a Memorandum of Understanding, a copy of which is attached as Schedule A, made as of the 22nd day of October, 2012 with respect to the provision of municipal services by the Town to the Stz'uminus First Nation;

B. The Stz'uminus First Nation has requested the Town to provide municipal services defined in this interim Agreement to persons residing or doing business on its Reserve;

C. The Stz'uminus First Nation and the Town each have distinct governance authorities and responsibilities toward their residents and members, and acknowledge that the interests of all persons living in their communities are best served by working together in a spirit of cooperation;

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

E. The Town has the authority under section 23 of the Community Charter to enter into an agreement to provide Services to the Stz'uminus First Nation;

F. The Stz'uminus First Nation and the Town recognize that future development on the Reserve will create additional demand for certain services provided by the Town, and wish to enter an interim agreement that defines the obligations of the parties with respect to that future development;

G. Pursuant to the Memorandum of Understanding between them, the Stz'uminus First Nation and the Town desire to enter into this interim Agreement to provide municipal services as contemplated in the Memorandum of Understanding;

H. The Stz'uminus First Nation and the Town intend to negotiate and execute a Final Comprehensive Agreement to supplement this Agreement, to provide water and sanitary sewer Services to an additional 900 units on IR 12 and 500 units on IR 13 in accordance with section 3(a) of the Memorandum of Understanding and subject to and in accordance with the terms and conditions of the additional agreement and subject to the Town complying with applicable provincial licences and other approvals;

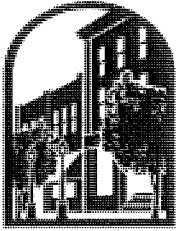
AND THAT

The Stz'uminus First Nation approves this interim Services Agreement, a copy of which is attached.

Quorum Five (5)

(Councillor) Anne Jack
 (Councillor) Terry Sampson
 (Councillor) Timothy Harris
 (Chief) John Elliott
 (Councillor) George Seymour Sr.
 (Councillor) Harvey Seymour Sr.
 (Councillor) Roxanne Harris
 (Councillor) Kevin Frenchy
 (Councillor) Herb Seymour

FOR DEPARTMENTAL USE ONLY - RÉSERVÉ AU MINISTÈRE					
Expenditure- Dépense	Authority (Indian Act Section) / Autorité (Article de la Loi sur Les Indiens)	Source of funds / Source des fonds	Revenue / Revenu	Expenditure- Dépense	Authority (Indian Act Section) / Autorité (Article de la Loi sur Les Indiens)
		Capital			Source of funds / Source des fonds <input type="checkbox"/> Capital <input type="checkbox"/> Revenue / Revenu
Recommending officer - Recommandé par			Recommending officer - Recommandé par		
Signature _____ Date _____			Signature _____ Date _____		
Approving officer - Approuvé par			Approving officer - Approuvé par		
Signature _____ Date _____			Signature _____ Date _____		



LADYSMITH

TOWN OF LADYSMITH

410 Esplanade, P.O. Box 220, Ladysmith, B.C. V9G 1A2
Municipal Hall (250) 245-6400 • Fax (250) 245-6411 • info@ladysmith.ca • www.ladysmith.ca

September 22, 2014

**CERTIFIED RESOLUTION OF COUNCIL
STZ'UMINUS SERVICES AGREEMENT**

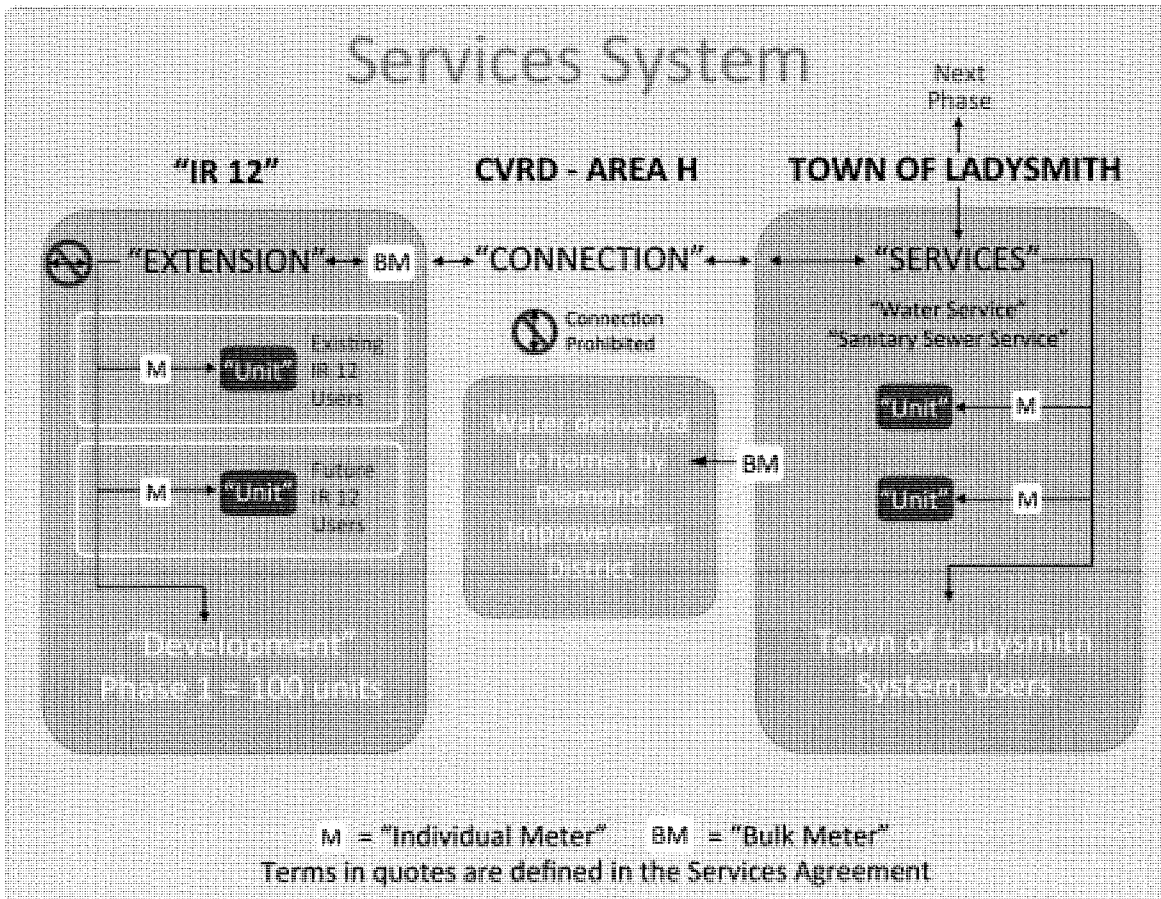
CS 2014-096 (March 3, 2014)

That Council enter into the Services Agreement with the Stz'uminus First Nation as presented.

*I hereby certify this to be a true and correct copy
of Town of Ladysmith Resolution CS 2014-096.*

Corporate Officer (S. Bowden)

**SCHEDULE "D"
SERVICES SYSTEM DRAWING**



Schedule "E"

Equivalent Development Unit Calculation

The number of Equivalent Development Units (EDU's) for each development shall be determined by the following table:

Development Type : Subtype	Equivalent Development Unit Calculation
Single Family Detached Residential	1.0 EDU per house
Duplex Detached residential	0.75 EDU's per side (1.5 per duplex dwelling)
Multi-Family Residential (> 2 units per building)	0.67 EDU's per unit
Commercial:	
Hotel	0.5 EDU's/room
Entertainment	20.0 EDU's/100 sq. meter building area
Restaurant - sit down, menu	0.3 EDU's/seat
Restaurant - fast food type	0.2 EDU's/seat
Service Station (No Car Wash)	3.0 EDU's per pump set (servicing 2 cars)
Service Commercial	6.0 EDU's/100 sq. m building area
Assembly Hall	3.0 EDU's/100 seats
School	0.1 EDU's/child
Golf Course	if connected: by calculated demand
Greenhouse (if connected to water)	if connected: by calculated demand
Office - Non Laboratory	0.2 EDU's/employee
Picnic Park with toilets	0.5 EDU's/toilet
Industrial	1.0 EDU/0.7 cu meters of calculated average demand/day
Institutional - Care Facility	0.5 EDU's/bed
Institutional - other	1.0 EDU/0.7 cu meters of calculated average demand/day

Notes:

- "Development Type" definitions shall be in accordance with the Town's DCC Bylaw, as amended from time to time;
- The number of Equivalent Units shall be calculated in accordance with the above table, based on the actual or most probable use of the building, and the number of applicable development units;
- Where a building or structure is used, or may be used for a mixed use, the equivalent development units shall be calculated separately for each portion of the development based on each separate development type;
- Where a type of development is not identified above, or in the event of a vacant building where the actual or probable use is uncertain, the calculation of equivalent units shall be based on the most comparable type of development;
- This table is intended to provide average, typical flows by development category. Alternatively, the parties may agree to base the EDU on actual measured flow from other similarly constructed developments, subject to review and approval by the Director of Infrastructure Services.

