



## REGIONAL DISTRICT OF EAST KOOTENAY

Vault Binder: 5-M

File: Ahl 066 001

Term: January 1, 2007 to December 31, 2011

**THIS AGREEMENT** dated for reference the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

**BETWEEN:**

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

(the "RDEK")

OF THE FIRST PART

**AND:**

**?AKISQ'NUK FIRST NATION**, as represented by the ?Akisq'nuk First Nation Chief and Council, and having its office at 3050 Highway 93/95, Box 130, Windermere BC V0B 2L0

(the "First Nation")

OF THE SECOND PART

**WHEREAS**

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

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

**1. DEFINITIONS**

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

- 1.1 **Agreement** means the Agreement including all of the Schedules referred to throughout.
- 1.2 **First Nation** means the ?Akisq'nuk First Nation, or any successor to the First Nation pursuant to the *Indian Act* as enacted by the Parliament of Canada from time to time.

- 1.3 **First Nation Council** means the Council of the First Nation within the meaning of the *Indian Act*, or any successor to the First Nation Council pursuant to legislation enacted by the Parliament of Canada from time to time.
- 1.4 **Fees** for any calendar year during this Agreement means all fees outlined in Section 3.1 hereof.
- 1.5 **Indian Act** means the *Indian Act*, R.S.C. 1985, c.I-5 and any regulation made thereunder, all as amended or replaced from time to time, and any reference to a section of that Act shall include that section as amended or replaced from time to time.
- 1.6 **Party** means a party to this Agreement and **Parties** means all of the parties to this Agreement.
- 1.7 **RDEK** means the Regional District of East Kootenay, East Kootenay Regional Hospital District, and Kootenay East Regional Hospital District.
- 1.8 **Reserve** means Columbia Lake No. 3 Indian Reserve, I.R. #7427, more particularly shown in the plan attached as Schedule B to this Agreement, and in the event that the name of the Reserve is changed from time to time pursuant to the *Indian Act* as defined herein, then "Reserve" will mean the Reserve so named.
- 1.9 **Non-native interest in the Reserve** shall include all land and improvements in the Reserve other than:
- (a) land and improvements in the Reserve held in the name of the First Nation; and
  - (b) land and improvements in the Reserve held by individual members of the First Nation.

## 2. SERVICES PROVIDED

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

system located at the Kinbasket Water & Sewer Company sewer treatment plant;

- (m) **Solid waste disposal** meaning providing access to a place for disposal of solid waste and access to recycling services;
- (n) **Weed control.**

2.3 The services listed and defined in section 2.2 (a) to (n) of this Agreement shall hereinafter be referred to as "the services".

### **3. PAYMENT FOR USE OF SERVICES**

3.1 On or before April 1<sup>st</sup> of each year, the RDEK will invoice the First Nation for the fees due from the First Nation for services provided by the RDEK under the terms of this Agreement. The fees will be equal to the sum of the levies made by RDEK for the services for that calendar year, times the assessment of all non-native interests in the Reserve as determined by the First Nation. All levies will be equal to those levies as applied to those RDEK lands surrounding the Reserve, and shall be paid on or before August 1<sup>st</sup> of each year.

3.2 For all assessment rolls of the non-native interest in the Reserve that are under taxation jurisdictional dispute and have not made tax payments to the First Nation for the current taxation year, these assessment rolls shall not be included in determining the invoicing as in section 3.1 of this Agreement. Should the tax(es) under dispute and currently in arrears be paid to the First Nation, the First Nation shall notify the RDEK and the First Nation shall forward the appropriate fees to the RDEK within 90 days of receipt of the taxes in dispute. The First Nation shall not be responsible for any penalty, interest or otherwise, for fees applied to the assessment rolls in dispute and not being paid to the First Nation.

### **4. BUDGETING**

4.1 On or before April 1<sup>st</sup> in each year, the RDEK shall deliver to the First Nation a copy of the current five-year financial plan. The financial plan for the immediately succeeding year is the provisional budget for that year.

4.2 The First Nation shall be given the opportunity to comment on any item set out in the financial plan as delivered to the First Nation. The First Nation shall, through the Chief Administrative Officer of the RDEK, arrange a joint meeting of the First Nation Council and the RDEK Board to discuss any item of concern in the financial plan and the RDEK Board shall give reasonable consideration to any submission made by the First Nation Council in that regard.

### **5. LIMIT TO CONTRIBUTIONS**

5.1 Any payments made by the First Nation to the RDEK in excess of that required by the RDEK under its invoices shall be repaid to the First Nation within 30 days of the receipt of overpayment.

5.2 If the RDEK defaults in any repayments required to be made to the First Nation under this Agreement for a period in excess of 30 days from the date that the RDEK receives the invoice, the amount owing shall bear interest at the same rate that the First Nation is required to pay its bankers for short term borrowing.

### **6. RECORDS**

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

## **7. ASSESSMENT**

- 7.1 Assessments used for calculating the invoice for fees under section 3.1 of this Agreement shall be based on the First Nation's assessment roll for the Reserve for all non-native interests, less those assessment rolls that are under jurisdictional dispute and have not been paid in full to the First Nation.
- 7.2 In February of each year, the First Nation and the RDEK shall review and update assessment rolls in the Reserve for the purpose of fee invoicing under section 3.1 of this Agreement. Assessment rolls added to the Reserve's assessment roll after the assessment notices are sent out by May 1<sup>st</sup> in each year, shall apply to the following year's review.

## **8. INSURANCE AND INDEMNITY**

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

## **9. TERMINATION**

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

## **10. TERM OF AGREEMENT**

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

**11. DISPUTE RESOLUTION**

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

**12. NOTICE**

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

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

To the First Nation:                       Chief and Council  
   ?Akisq'nuk First Nation  
   Box 130  
   Windermere BC V0B 2L0

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

**13. ASSIGNMENT**

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

**14. INTERPRETATION**

- 14.1 Nothing contained or implied herein shall prejudice or affect the rights and powers of the RDEK or the First Nation in the exercise of their functions under any public or private statutes, bylaws, orders or regulations, all of which may be fully and effectively exercised in relation to each other and their assets as if this Agreement had not been executed and delivered by all of the parties to this Agreement.
- 14.2 This Agreement shall not be construed so as to create any greater standard of care or liability on the part of the RDEK in respect of the supplying of any services hereunder to occupants of the Reserve or to land or facilities within the Reserve than that which applies to the supply of such services to other occupants, lands or facilities within the RDEK.
- 14.3 The parties acknowledge that this Agreement is not intended to create an agency relationship, joint venture or partnership of any kind between the parties or as imposing on any of the parties any partnership duty, obligation or liability to any other party or to any other person.
- 14.4 Headings are inserted in this Agreement for convenience only and shall not be construed as affecting the meaning of this Agreement.
- 14.5 No waiver of any term or condition of this Agreement or waiver of a breach of any term or condition of this Agreement by any party hereto shall be effective unless it is in writing and no waiver or breach even if in writing shall be construed as a waiver of any future breach.
- 14.6 This Agreement constitutes the entire Agreement amongst the parties and there are no terms, conditions, representations, or warranties, expressed or implied, statutory or otherwise, except for those expressly set forth herein.
- 14.7 Whenever the singular or masculine is used herein, the same shall be construed as meaning the plural or feminine or body politic or corporate where the context of the parties hereto so require.
- 14.8 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their permitted successors and assigns.

The Corporate Seal of **REGIONAL DISTRICT OF EAST KOOTENAY** was hereunto affixed in the presence of:  
 \_\_\_\_\_  
 Gregory Deck, Chair  
 \_\_\_\_\_  
 Lee-Ann Crane, Chief Administrative Officer

C/S

Signed by ?Akisq'nuk First Nation in the presence of:  
 \_\_\_\_\_  
 Witness Name  
 \_\_\_\_\_  
 Witness Address  
 \_\_\_\_\_

\_\_\_\_\_  
 Chief Wilfred Teneese  
 \_\_\_\_\_  
 Councillor  
 \_\_\_\_\_  
 Councillor