MASTER AGREEMENT

This Agreement dated for reference the 28th day of July, 2000

AMONG:

WESTBANK FIRST NATION as represented by the Council of
the Westbank First Nation, 515 Highway 97 South, Kelowna,
British Columbia, V1Z 3J2

(hereinafter referred to as “Westbank”)

AND:

THE REGIONAL DISTRICT OF CENTRAL OKANAGAN, a
regional district incorporated pursuant to the Municipal Act having
its offices at 1450 K.L.O. Road, Kelowna, British Columbia,
V1W 3Z4

(hereinafter referred to as the “District”)

AND:

THE CORPORATION OF THE CITY OF KELOWNA, a
municipality incorporated pursuant to the Municipal Act having its
offices at 1435 Water Street, Kelowna, British Columbia, V1Y 1J4

(hereinafter referred to as the “City”)

AND:

THE BLACK MOUNTAIN IRRIGATION DISTRICT, an
improvement district incorporated pursuant to the Municipal Act
having its offices at 285 Gray Road, Kelowna, British Columbia,
V1X 1W8

(hereinafter referred to as the “BMID”)

AND:

THE SOUTH EAST KELOWNA IRRIGATION DISTRICT, an
improvement district incorporated pursuant to the Municipal Act
having its mailing address at P.O. Box 28064, East Kelowna,
British Columbia, V1W 4A6

(hereinafter referred to as the “SEKID”)
WHEREAS:

A. The Westbank First Nation Development Co. Ltd. (Inc. No. 127971), a company wholly owned by the Chief and Council of Westbank in trust for the members of Westbank First Nation, is the registered owner in fee simple of the Lands;

B. Westbank has requested that Her Majesty in Right of Canada acquire and set aside the Lands as land reserved for Indians pursuant to section 91(24) of the Constitution Act and a Reserve pursuant to section 2(1) of the Indian Act (Canada);

C. The parties hereto have agreed to enter into this formal agreement to record their mutual understanding, and to set out their respective rights and obligations to and with each other in this Agreement;

D. Westbank Council has resolved by Westbank Council Resolution 1998/99-78 duly passed at a Westbank Council meeting on November 10, 1998, that once the Lands are set aside as Reserve, the Lands be used for community housing for the members of the Westbank First Nation and has authorized the execution of this Agreement on behalf of Westbank First Nation by a Westbank Council Resolution duly passed at a meeting of Westbank Council held on the 25th day of July, 2000, a copy of which is attached hereto as Schedule A;

E. The District Board has authorized the execution of this Agreement by the Chair and Secretary of the Board pursuant to a resolution duly passed by the Board on the 15th day of May, 2000, a copy of which is attached hereto as Schedule B;

F. The City Council has authorized the execution of this Agreement by the Mayor and City Clerk pursuant to a resolution duly passed by the City Council on the 29th day of May, 2000, a copy of which is attached hereto as Schedule C;

G. The BMID Board of Trustees has authorized the execution of this Agreement by the Chair and Administrator pursuant to a bylaw duly adopted on the 16th day of May, 2000, a copy of which is attached hereto as Schedule D;

H. The SEKID Board has authorized the execution of this Agreement by the Chair and Secretary-Manager pursuant to a bylaw duly adopted on the 13th day of June, 2000, a copy of which is attached hereto as Schedule E;

NOW THEREFORE THIS AGREEMENT WITNESSES that for and in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereto covenant and agree each with the other as follows:
PART 1
INTERPRETATION

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

"Agreement" means this Agreement, including the recitals and schedules hereto, as amended and supplemented from time to time;

"City Services" means all municipal services provided by the City at the date of execution of this Agreement to residents and improvements within the City of Kelowna;

"Commencement Date" means the date first above written;

"Dispute" means any controversy, dispute, disagreement or claim whatsoever involving one or more parties arising out of or relating in any way to this Agreement, including any such matter concerning the effect, content or interpretation of this Agreement or the rights and obligations of any party arising hereunder.

"District Services" means all regional services provided by the District at the date of execution of this Agreement to residents and improvements within the Regional District of Central Okanagan;

"Existing Easements" means all statutory rights of way, easements and other legally recognized rights of access to the Lands in existence as at the date of this Agreement in favour of any party to this Agreement including but not limited to those described in Schedule G to this Agreement;

"Force Majeure Event" means an event defined in section 9.5 herein;

"Former City Lands" means that portion or portions of the Lands which as of the Commencement Date are situated within City boundaries;

"Former District Lands" means that portion or portions of the Lands which as of the Commencement Date are situated within District boundaries but not within City boundaries;

"Indian Act" means the Indian Act, RSC 1985, c. I-5, as amended, supplemented, replaced or re-enacted from time to time;

"Joint Consultation Process" means the cooperative, reciprocal land use consultation plan agreed to by the parties and more particularly described herein;

"Land Use Plan" means the plan attached as Schedule H hereto, which plan shall govern development on the Lands or portions thereof, and any additional Land Use Plan adopted by Westbank Council for the remainder of the Lands;
"Lands" means the lands commonly known as the Gallagher Canyon lands and being those legal parcels described in Schedule F attached to this Agreement;

"Linear Park" means a park and trail public land area designated to accommodate one or a variety of modes of transportation including pedestrian, horse, non-motorized cycle, and provide where feasible maintenance or emergency vehicle access. Typically these public land use systems connect neighbourhoods, institutions, natural conservation areas, greenways and park areas;

"Member" means a person whose name appears on the Band list maintained by the Department of Indian and Northern Affairs (the "Department") in respect of the Westbank Band or who is entitled to have his or her name appear on such list maintained by the Department or Westbank pursuant to the Indian Act or a member of the Westbank First Nation pursuant to a self-government agreement with Her Majesty the Queen in Right of Canada;

"Municipal Act" means the Municipal Act, R.S.B.C. 1996, c. 323 as amended from time to time;

"Reserve" means land reserved for Indians within the meaning of section 91(24) of the Constitution Act and sec. 2(1) of the Indian Act (Canada);

"Road Improvement Contribution" means the contribution to be submitted by Westbank as more particularly described in section 2.19 herein;

"SEKID Lot" means the land legally described as: Parcel Identifier No. 013-582-127, That part of the south east ¼ section of section 7 shown on plan A820; township 27, ODYD said to contain 5.8 acres more or less;

"Transfer" means the acquisition by Her Majesty and setting aside of the Lands as a Reserve;

"Transfer Date" means the date upon which the last step of the Transfer becomes effective;

"Westbank Council" means the Chief and council of Westbank First Nation, elected pursuant to section 74 of the Indian Act or other legally recognized selection process;

"Westbank First Nation" or "Westbank" means the body of aboriginal peoples being a "band" as defined in the Indian Act, and formerly known as the "Westbank Indian Band";

"Westbank First Nation Law" means any law or by-law enacted by the Westbank Council pursuant to the Indian Act or other applicable enabling legislation of Parliament or any law enacted pursuant to the inherent jurisdiction of Westbank First Nation;
Governing Law

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

Severability

1.3 If any provision of this Agreement, or part thereof, shall be adjudged invalid, illegal or unenforceable in any respect in any jurisdiction, the remaining provisions of this Agreement or part thereof shall continue in full force and effect, provided that if the intent of the parties is not thereby preserved all parties shall make all best efforts to amend this Agreement to restore the original intent and purpose of this Agreement.

Included Words

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

Schedules

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

Schedule “A” - Westbank Resolution
Schedule “B” - District Resolution
Schedule “C” - City Resolution
Schedule “D” - BMID Bylaw
Schedule “E” - SEKID Bylaw
Schedule “F” - Lands
Schedule “G” - Existing Easements
Schedule “H” - Land Use Plan
Schedule “I” - SEKID Right of Way Permit
Schedule “J” - Linear Park Easement Permit

Headings

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

Authority

1.7 For greater certainty, where this Agreement requires Westbank to cause a permit, right of way or easement to be issued pursuant to section 28(2) of the Indian Act, it shall be
sufficient to satisfy Westbank's covenant if Westbank does so pursuant to valid exercise of delegated authority pursuant to the Indian Act or, if section 28(2) of the Indian Act no longer applies to the Lands, then Westbank provides equivalent rights and liberties, without additional obligations, pursuant to valid exercise of powers granted to Westbank under applicable enabling legislation of the Parliament of Canada.

Legal Description

1.8 Legal descriptions of land in this Agreement are deemed to include any successor description of the same land used in the Indian Land Registry or any successor land registry having similar legal effect.

PART 2
WESTBANK COVENANTS

Rights of Way

2.1 Westbank hereby recognizes all Existing Easements of the District, City, BMID or SEKID, as the case may be. Westbank shall give its consent, support and perform all necessary acts or things to ensure the rights granted under the Existing Easements are protected and remain in force and effect both before and after the Transfer for the term applicable thereto and shall ensure quiet enjoyment of such rights thereafter.

2.1A Concurrent with the signing of this Agreement, the City will provide a registrable discharge of the flooding covenant referred to in item 2 of Schedule G to Westbank's solicitors on their undertaking not to register the same at the Kamloops Land Title Office unless and until it is to be registered concurrently with the transfer of the Lands to Canada.

2.1B Concurrent with the signing of this Agreement, the District will provide a registrable discharge of the flooding covenant referred to in item 3 of Schedule G to Westbank's solicitors on their undertaking not to register the same at the Kamloops Land Title Office unless and until it is to be registered concurrently with the transfer of the Lands to Canada.

2.2 Westbank shall make all reasonable efforts to ensure BMID, its agents, employees and servants are not impeded or prevented from accessing BMID works located on or beyond the Lands at all reasonable times and shall cause a permit to be issued to BMID pursuant to section 28(2) of the Indian Act, concurrent with the Transfer, providing BMID free right of access to and through the Lands, with or without men, equipment and materials and without charge or payment, to access, maintain, improve, repair, operate, reconstruct or remove any BMID works which cross or lie beyond the Lands for such duration as may be necessary and on standard terms, including indemnification by BMID of Westbank of all losses, damages, costs, charges, liabilities and expenses suffered or incurred by Westbank as a result of or in connection with such access. Until such time as the section 28(2) Indian Act permit is issued, and subject to the terms thereof, BMID will defend, indemnify and save Westbank harmless from and against any and all claims,
demands, actions, causes of action, losses, damages, costs, charges, liabilities and expenses (including, but not limited to legal fees and costs of any action, both on a solicitor and own client basis) of whatever kind or character arising out of or in connection with BMID's use of the Lands to access BMID's works, whether by BMID, its agents, employees, servants or invitees.

2.3 Westbank shall make all reasonable efforts to ensure SEKID, its agents, employees and servants are not impeded or prevented from accessing SEKID works located on or beyond the Lands at all reasonable times and shall cause a permit to be issued to SEKID pursuant to section 28(2) of the Indian Act, concurrent with the Transfer, providing SEKID free right of access to and through the Lands, with or without men, equipment and materials and without charge or payment, to access, maintain, improve, repair, operate, reconstruct or remove any SEKID works which cross or lie beyond the Lands for such duration as may be necessary and on standard terms, including indemnification by SEKID of Westbank for all losses, damages, costs, charges, liabilities and expenses suffered or incurred by Westbank as a result of or in connection with such access. Until such time as the section 28(2) Indian Act permit is issued, and subject to the terms thereof, SEKID will defend, indemnify and save Westbank harmless from and against any and all claims, demands, actions, causes of action, losses, damages, costs, charges, liabilities and expenses (including, but not limited to legal fees and costs of any action, both on a solicitor and own client basis) of whatever kind or character arising out of or in connection with SEKID's use of the Lands to access SEKID's works, whether by SEKID, its agents, employees, servants or invitees.

2.4 Westbank shall cause a right of way to be issued to SEKID pursuant to section 28(2) of the Indian Act, concurrent with the Transfer, providing SEKID free access to Hydraulic Creek for such duration as may be necessary with or without men, equipment and materials and without charge or payment, for the purpose of installing, maintaining, repairing, replacing or removing existing and future SEKID works on terms and location the same in all material respects as the Right of Way attached as Schedule I. Westbank acknowledges such works are essential to the undertaking and purpose of SEKID. Where additional or different access to or through the Lands is or becomes necessary for SEKID purposes, Westbank shall consent to and make all reasonably necessary efforts to assist SEKID in obtaining such other right of way.

2.4A Upon the issuance to SEKID of the right of way pursuant to section 28(2) of the Indian Act referred to in section 2.4 on the terms specified therein, SEKID will provide a registrable discharge of the right of way referred to in item 4 of Schedule G.

2.5 Westbank shall consent to, support and assist the City and/or the District in obtaining access rights of way pursuant to section 28(2) of the Indian Act for City or District utilities works or transmission pipes or conduits, including power transmission lines, transformers, or conduits which at any time will be situated on the Lands in order to provide City Services and/or District Services to the Lands for such duration as may be necessary, and such rights of way shall include the right to access, install, maintain, repair, operate, reconstruct or remove any such works.
2.6 Westbank shall cause a right of way or easement to be issued to the District pursuant to section 28(2) of the *Indian Act*, concurrent with the Transfer, over lands bordering Mission Creek and Hydraulic Creek for the purpose of establishing a Linear Park on such right of way or easement in favour of the District, to permit use and enjoyment of the Linear Park by the District and the general public and on terms and location the same in all material respects as the Linear Park easement attached as Schedule J (the “Park Permit”). Westbank shall discuss with the District any proposal it may have to lease additional portions of the Lands adjacent to the Linear Park for additional park purposes and will negotiate in good faith any reasonable proposal for such a lease.

2.6A Within one calendar year of the Transfer, Westbank will make application for and conduct a referendum of Westbank Members and will perform such other actions as may be required to designate the portion of the Lands held or occupied by the District pursuant to the Park Permit for the purpose of leasing such lands to the District pursuant to section 53(1) of the *Indian Act* for a term of 99 years and otherwise on the same terms as the Park Permit except for such modifications as are necessary to effect the grant of a lease of such lands to the District or as may be requested by Westbank and consented to by the District, acting reasonably. The District will provide such information and assistance to Westbank as may be reasonably required to assist Westbank in obtaining the required lease from Canada. If the referendum to designate such portion of the Lands for leasing as a Linear Park is not held within one year or, if held, does not receive the required majority approval, or if Canada declines or fails to issue the required lease to the District to replace the Park Permit within 6 months of the referendum date, then Westbank will take all measures reasonably necessary to seek an Order of the Governor in Council granting to the District an easement over said Lands for Linear Park purposes under section 35(3) of the *Indian Act*, on the same terms as the Park Permit except for such modifications as are necessary to reflect a grant of an easement under section 35(3) of the *Indian Act*.

2.6B Notwithstanding section 2.6A, if at any time prior to the issuance of the lease by Canada referred to in section 2.6A, section 53(1) of the *Indian Act* ceases to apply to the Lands, Westbank’s obligations pursuant to section 2.6A shall be satisfied if Westbank grants a lease to the District pursuant to valid exercise of powers granted to Westbank under an enabling legislation of the Parliament of Canada, for a term of 99 years and otherwise on the same terms as the Park Permit except for such modifications as are necessary to effect the grant of a lease of such lands to the District or as may be requested by Westbank and consented to by the District, acting reasonably.

2.6C The Existing Easement listed as item 5 on Schedule G and the Park Permit will remain in force and effect until such time as the lease of designated lands under section 53(1) or the interest under section 35(3) of the *Indian Act* is issued to the District as described in section 2.6A hereof or the lease described in section 2.6B is issued to the District, at which time (but not before) the District will surrender and discharge said Existing Easement and Park Permit.
Water Licenses

2.7 Westbank recognizes all existing and future water licenses which are or at any time may be held or required by BMID or SEKID pursuant to the Water Act, RSBC 1996, c. 483, acknowledges such licenses are essential to the undertakings and purposes of BMID or SEKID, respectively and acknowledges and agrees that subject to any aboriginal rights or title that may be determined in a court of law or any treaty rights that may be obtained, rights to the water on the Lands, including without limitation riparian rights, are vested in SEKID and BMID pursuant to such water licences and that the beds and shores of any bodies of water or watercourses that are subject to such licences do not form part of the Lands that will become a Reserve. Westbank shall not impede, impair, restrict or adversely affect, or allow or permit any other person in respect of whom Westbank may have jurisdiction or control, to impede, impair, restrict or adversely affect the rights conferred on BMID or SEKID, respectively, through such water licenses, including, without limitation any adverse effect created by any act which diminishes or reduces the quantity of water which may be available for legitimate use by the holder of such water licenses or any other act or omission that would in any way impede, impair or restrict the access of BMID or SEKID to watersheds that supply water to each Irrigation District from time to time, including, but not limited to Mission Creek, Hydraulic and KLO Creeks, Hydraulic Lake and the tributaries of same.

2.8 Nothing in section 2.7 will restrict or preclude Westbank or persons approved by Westbank from applying for water services through BMID or SEKID in the usual course or for water licences for servicing the Lands. Westbank shall cooperate with BMID and SEKID to ensure the needs of all parties entitled to utilize or divert water from watercourses on or through the Lands are reasonably met.

Water Quality

2.9 All parties recognize the principle of ensuring quality of water at standards generally prevailing within the Province of British Columbia and shall administer their respective jurisdictions so as to harmonize applicable standards in so far as possible. Westbank shall use its best efforts to protect the quality of water in Mission and Hydraulic Creeks and tributaries thereof where they are located on or cross the Lands, to ensure that all provincial and federal health standards for drinking water applicable to non-Reserve land in the City and District are met.

2.10 Westbank shall ensure that all development on the Lands meets or exceeds all applicable enactments, standards and guidelines established from time to time by the Province of British Columbia which may apply to similar developments on non-reserve adjacent lands located within the City or the District for the purpose of assuring that the quality of water in Mission and Hydraulic Creeks, or any other watercourses located on or through the Lands, is preserved, protected or enhanced with the objective of harmonizing applicable standards in so far as possible within the jurisdiction of the Westbank Council.
Highway Dedication

2.11 Westbank has taken all necessary steps to assist in the dedication of McCulloch Road to Her Majesty in Right of the Province of British Columbia, as represented by the Minister of Transportation and Highways, for that portion of McCulloch Road which lies upon or crosses any portion of the Lands, as is shown for illustration purposes on the Land Use Plan, such that that portion of McCulloch Road will be deemed or declared a public highway as at the Commencement Date by section 4 of the Highway Act RSBC 1996, c. 188, and such dedicated portion of McCulloch Road shall not form any part of the Lands to be transferred to Reserve.

2.12 Westbank and the Minister of Transportation and Highways have reached agreement on the widening or extension of McCulloch Road and dedication thereof or for the creation of other highways on or through the Lands. Westbank shall reasonably consider any further requests for negotiation and discussion relating to any other highway land requirements which may be made by the Ministry of Transportation and Highways.

Land Use Plan

2.13 Westbank shall comply with the Land Use Plan for the Lands as adopted by Westbank First Nation Law when authorizing, permitting or allowing any development of the Lands, all in accordance with Band Council Resolution 1998/99-78 in which the Westbank Council resolved that the Lands will be used primarily for community housing for Members. The Land Use Plan shall incorporate all appropriate development standards which may be applicable elsewhere on Westbank First Nation Reserve Lands. All parties acknowledge the need for consistent land use planning within the region. The Land Use Plan shall be and remain consistent to the fullest extent possible with all applicable provincial laws, and compatible with City land use bylaws, and District land use bylaws.

2.14 Westbank shall consult with the District, the City, the BMID, and SEKID prior to any amendment of the Land Use Plan found in Schedule H and during the preparation and amendment of the Land Use Plan for Lot A of District Lots 3738 and 3739, Osoyoos Division, Yale District Plan KAP65381, and shall provide copies of each draft Land Use Plan amendment to each of the District, City, BMID and SEKID as development of the Land progresses. Westbank shall give all reasonable consideration to the comments provided by the parties during the consultation process. All parties agree that nothing contained in this section limits or affects the jurisdiction of Westbank. Final approval of the Land Use Plan is at the sole discretion of Westbank.

2.15 Westbank shall provide the City and District with advance notice and sufficient time to comment on any proposed development to be constructed on the Lands which may affect traffic volumes through that portion of McCulloch Road which lies within or passes through South East Kelowna.

2.16 Westbank shall participate in the Joint Consultation Process set out in Part 7 hereof, on a reciprocal basis with the District and the City, where any proposed development on the
Lands lies within 500 meters of any boundary between the Lands and the City or the Lands and the District.

Road Contributions

2.17 The parties hereby agree to participate and support, one with the other, in ways and means to be determined, in applications for infrastructure funding for roads and other services to the Government of Canada, said services and infrastructure funding to enhance City and District lands and the Lands.

2.18 Subject to section 2.21, it is the intention of the parties that developers of projects on the Lands or in the vicinity of the Lands will make financial contributions for off-site road improvement purposes. Subsequent to the Transfer, Westbank shall provide a contribution to the City or the District, as applicable, for the increased capital costs of road improvements arising, directly or indirectly, from the proposed development on the Lands.

2.19 Westbank shall consult with the District and the City and shall establish or revise Westbank's Road Improvement Contribution based on road improvement requirements and applicable requirements in the City and District outside the Lands. Westbank shall submit a Road Improvement Contribution in respect of any new development

(a) on Former City Lands, in an amount equal to those development cost charges which would at the applicable time be imposed by the City in respect of a similar development within City boundaries;

(b) on Former District Lands, in an amount equal to the amount which would at the applicable time be requested by the District as a gift for road improvement purposes in respect of a similar development within District boundaries (or any replacement charge therefor).

2.20 After the Transfer, Westbank shall pay:

(a) to the City, on a calendar year basis within 30 days of the end of each year, those Road Improvement Contributions in respect of developments which occurred in that year on Former City Lands; and

(b) to the District, on a calendar year basis within 30 days of the end of each year, those Road Improvement Contributions in respect of developments which occurred in that year on Former District Lands.

2.21 Notwithstanding the foregoing, and in consideration of McCulloch Road dedication, no Road Improvement Contribution shall be paid by Westbank First Nation for:

(a) the first one hundred (100) single family dwelling units built on the Lands after the Transfer, owned by Westbank or by a Member of Westbank or by a body corporate owned or controlled by Westbank or a Member or Members of
Westbank and which are intended to be occupied only by a Member or Members of Westbank and their families and are so occupied; and

(b) any other developments that if situated off a Reserve would be exempt from development cost charges under the Municipal Act or other applicable provincial legislation.

2.22 Westbank shall provide notice to the City or District of any authorized developments on the Lands.

2.23 The parties shall consult with each other as and when necessary or desirable to review road improvement needs and the use and expenditure of contributions for roads in and adjacent to the Lands.

Service Agreements

2.24 Nothing herein shall obligate the City or District to provide any municipal services to the Lands or occupiers thereof. Westbank may enter into one or more service agreements with the District and/or the City for the supply of District Services or City Services, respectively, to all or a portion of the Lands. Where any such agreement is entered into, Westbank shall pay for the supply of City Services or District Services in accordance with sections 2.25 to 2.27 as applicable. Notwithstanding the generality of the foregoing, and for greater certainty, no such service agreement for City Services or District Services will require provision of new services not provided by the City and District, as the case may be, at the date of execution of this Agreement, unless expressly agreed by the City or District in the applicable service agreement and neither the District nor the City is obliged to provide any municipal services to the Lands or occupiers thereof in the absence of a mutually acceptable service agreement.

2.25 Where Westbank enters into a service agreement with the City or District for the provision of services to the Lands or a portion thereof, Westbank shall pay the following amounts for such services:

(a) for City Services delivered to the Lands, an amount equal to the amount ordinarily payable for those City Services when delivered to lands other than the Lands, using:

(i) the same tax rate imposed by the City for general purposes, multiplied by the assessment applicable to the Lands and improvements or portion thereof where those City Services are supplied; and

(ii) the same rate levied or imposed against parcels of land in the City multiplied by the number of parcels of land on the Former City Lands;

such that the City is paid for all City Services provided to the Lands and occupiers thereof as if the Lands were within City boundaries and not Reserve or exempt from taxation, except that if Westbank desires to provide to occupiers of such
Lands any particular City Service, then the service fee payable for City Services will be reduced by an amount that represents the fair and equitable estimate of the cost to a reasonably efficient municipality to provide such service to the extent such service is provided by Westbank. If Westbank and the City cannot agree on the amount of such service fee reduction, the matter will be resolved pursuant to Part 8 of this Agreement and Westbank will continue to pay the service fee as charged by the City until such time as the dispute is resolved;

(b) for District Services delivered to the Lands, an amount equal to the amount payable for those District Services delivered to lands other than the Lands, using:

(i) the same tax rate utilized by the District to impose a requisition for payment, multiplied by the assessment applicable to the Lands and improvements or portion thereof where those District Services are supplied; and

(ii) the same rate levied or imposed against parcels of land in the District multiplied by the number of parcels of land on the Former District Lands;

such that the District is paid for all District Services provided to the Lands and occupiers thereof as if the Lands were within District boundaries and not Reserve or exempt from taxation, except that if Westbank desires to provide to occupiers of such Lands any particular District Service, then the service fee payable for District Services will be reduced by an amount that represents the fair and equitable estimate of the cost to a reasonably efficient municipality to provide such service to the extent such service is provided by Westbank. If Westbank and the District cannot agree on the amount of such service fee reduction, the matter will be resolved pursuant to Part 8 of this Agreement and Westbank will continue to pay the service fee as charged by the District until such time as the dispute is resolved.

2.26 Where properties or improvements on the Lands are exempt from assessment or taxation by Westbank, those properties and improvements shall only be excluded from the assessment total used to calculate payment for City Services in section 2.25(a) or District Services in section 2.25(b) if such properties and improvements would ordinarily be exempt from assessment or taxation pursuant to the Municipal Act when not situate on a Reserve and not occupied by an Indian as defined under the Indian Act.

2.27 Westbank shall, in determining taxable values of properties on the Lands to prepare its assessment roll, use a method or methods similar or reasonably comparable to the method or methods used by the British Columbia Assessment Authority.

SEKID Lands

2.28 Westbank acknowledges that SEKID is the registered owner of the SEKID Lot situated within the exterior boundaries of the Lands and agrees that Westbank shall not, nor allow any person in respect of which Westbank has jurisdiction to, interfere, impede, restrict
access to or diminish the rights of SEKID to access, use, develop, transfer or sell the SEKID Lot in any manner whatsoever. Westbank further agrees that nothing in this Agreement confers jurisdiction on Westbank in respect to the SEKID Lot and that the SEKID Lot shall not be or become Reserve land.

Taxes

2.29 Westbank hereby irrevocably exempts the City, the District, BMID and SEKID from taxation of any kind, including without limitation user fees, property and income taxes, charges, rates or levies, pursuant to any Westbank First Nation Law now or hereafter enacted in respect of any use or occupation of the Lands pursuant to the Existing Easements or the easements, rights of way, permits, leases and similar rights granted by Canada or Westbank contemplated by this Agreement and any replacements or substitutions therefor.

Permitted Land Use

2.30 Westbank shall ensure that the permitted uses of the Lands within the terms of this Agreement and the Land Use Plan will be limited to the following:

(a) Community Housing for Members

(i) single family detached residential units, one only per each parcel or lot having a minimum size of 5 acres (2 hectares);

(ii) Accessory Buildings and/or other structures related to a single family principal residence;

(iii) Agriculture uses on a parcel or lot having a minimum size of 5 acres (2 hectares) other than Agriculture uses of an offensive or noxious nature such as hog ranches, raising of fur bearing animals, poultry farms, feed lots, or commercial stables.

(b) Neighbourhood Commercial Centre

Neighbourhood commercial centres shall be located only on a parcel or lot not larger than 10 acres (4 hectares) and designed to meet the day to day needs of residents of the Lands as follows:

(i) Library;

(ii) Neighbourhood Convenience Store;

(iii) Band Office;

(iv) Gasoline or Service Station;

(v) Fire Hall;

(vi) Museum;
(vii) Trading Post;
(viii) Health Care Facility;
(ix) Recreation Centre/Assembly Hall;
(x) Sub Post Office;
(xi) Eating Establishment;
(xii) Legal/Financial Office;
(xiii) Beauty Salon;
(xiv) Participatory ice arena with a maximum seating capacity of 1,000 persons;
(xv) Art Gallery;
(xvi) Youth Centre;
(xvii) Community Police Office.

(c) Outdoor Recreation

(i) Riding Stable, including facilities and structures required for trail riding;

(ii) seasonal Campground not exceeding 10 acres (4 hectares) and operating only during the months of April to October and which meets the following requirements:

A. a maximum of 10 individual campsites per gross acre (25 campsites per gross hectare);

B. the Campground will be serviced with a packaged biological sewage treatment facility or comparable system;

(iii) Park or Open Space; or

(iv) Sport Field.

Any capitalized terms used in this section 2.30 and not defined in this Agreement have the same defined meaning, if any, in the Regional District of Central Okanagan Zoning Bylaw No. 176, as amended or replaced from time to time, and if not defined in the District's Zoning Bylaw No. 176 or otherwise in this Agreement, will be construed according to their ordinary meaning.

Assistance

2.31 After the Transfer, Westbank will use reasonable efforts to assist the District, City, BMID and SEKID to obtain such licences and permits as are reasonably required by any of them to cut timber or to take or use sand, gravel, clay and other non-metallic substances on or
under the Lands to exercise rights under the Existing Easements and the other rights, permits and interests issued pursuant to sections 2.2 to 2.6B hereof, inclusive.

2.32 Westbank will not prevent, impede or hinder in any way the use by the general public of any Linear Park established pursuant to the Existing Easements, the Park Permit and any other rights or interests issued to the District pursuant to sections 2.6A, 2.6B and 2.6C hereof.

PART 3
DISTRICT COVENANTS

Reserve Lands

3.1 Subject to settlement of all terms of the rights of way and easements identified above in sections 2.1 to 2.4, 2.6 and the road dedication in section 2.11, all prior to the Transfer, and on the condition that Westbank complies with all of the covenants of Westbank to be performed after the Transfer, including section 2.30 hereof, the District acknowledges that this Agreement sets forth all of the issues that the parties have agreed to address in respect of the application by Westbank to set aside the Lands as a Reserve.

Land Use

3.2 The District shall participate in the Joint Consultation Process set out herein, on a reciprocal basis with Westbank and the City, where any proposed development of lands within District boundaries is within 500 meters of any boundary of the Lands.

3.3 The District shall review amendments to Westbank’s Land Use Plan in draft stages as supplied to the District by Westbank and make every reasonable effort to assist Westbank in developing plans as they relate to conservation, protection and use of land and water resources located on the Lands.

Service Agreement

3.4 The District may enter into a service agreement with Westbank on mutually acceptable terms for the delivery of District Services to the Lands and sections 2.25 to 2.27 shall apply to the payment by Westbank for District Services thereunder.

Road Improvement Contributions

3.5 The District shall use all Road Improvement Contributions remitted by Westbank to the District for the sole purpose of assisting the City and Westbank with improving arterial roads and highways in the vicinity of or within the Lands or other roads and highways, as the case may be, which require upgrading as a result, directly or indirectly, of new development on the Lands in accordance with the City’s twenty-year road service plan dated January, 1994, as amended or replaced from time to time.
PART 4
CITY COVENANTS

Reserve Lands

4.1 Subject to settlement of all terms of the rights of way and easements identified in sections 2.1 to 2.4, 2.6 and the road dedication in section 2.11, all prior to the Transfer, and on the condition that Westbank complies with all of the covenants of Westbank to be performed after the Transfer, including section 2.30 hereof, the City acknowledges that this Agreement sets forth all of the issues that the parties have agreed to address in respect of the application by Westbank to set aside the Lands as Reserve.

Land Use

4.2 The City shall participate in the Joint Consultation Process set out herein, on a reciprocal basis with Westbank and the District, where any proposed development of lands within City boundaries is within 500 meters of any boundary of the Lands.

4.3 The City shall review amendments to Westbank's Land Use Plan in draft stages as supplied to the City by Westbank and make every reasonable effort to assist Westbank in developing plans as they relate to conservation, protection and use of land and water resources located on the Lands.

Service Agreement

4.4 The City may enter into a service agreement with Westbank on mutually acceptable terms for the delivery of City Services to the Lands and sections 2.25 to 2.27 shall apply to the payment by Westbank for City Services thereunder.

Road Improvement Contributions

4.5 The City shall use all Road Improvement Contributions remitted by Westbank to the City, or received by the City from the District pursuant to section 3.5, for the sole purpose of improving or, at the discretion of the City assisting Westbank to improve, roads and highways in the vicinity of or within the Lands or other roads and highways within City boundaries, as the case may be, which require upgrading as a result, directly or indirectly, of new development on the Lands in accordance with the City's twenty-year road service plan dated January 1994, as amended or replaced from time to time.

PART 5
BMID COVENANTS

Reserve Lands

5.1 Subject to settlement of all the terms of the rights of way and easements identified in sections 2.1 to 2.4, 2.6 and the road dedication in section 2.11, all prior to the Transfer, and on the condition that Westbank complies with all of the covenants of Westbank to be
performed after the Transfer, including section 2.30 hereof, the BMID acknowledges that this Agreement sets forth all of the issues that the parties have agreed to address in respect of the application by Westbank to set aside the Lands as Reserve.

Water Service

5.2 The BMID shall consider any application by Westbank for water service in a fair and equitable manner similar to any other application for lands within or outside the boundary of the Irrigation District.

Land Use

5.3 The BMID shall review amendments to Westbank’s Land Use Plan in draft stages as supplied to the BMID by Westbank and make every reasonable effort to assist Westbank in developing plans as they relate to conservation, protection and use of water resources located on or through the Lands.

PART 6
SEKID COVENANTS

Reserve Lands

6.1 Subject to settlement of all the terms of the rights of way and easements identified in sections 2.1 to 2.4, 2.6 and the road dedication in section 2.11, all prior to the Transfer, and on the condition that Westbank complies with all of the covenants of Westbank to be performed after the Transfer, including section 2.30 hereof, the SEKID acknowledges that this Agreement sets forth all of the issues that the parties have agreed to address in respect of the application by Westbank to set aside the Lands as Reserve.

Water Service

6.2 The SEKID shall consider any application by Westbank for water service in a fair and equitable manner similar to any other application for lands within or outside the boundary of the Irrigation District.

Land Use

6.3 The SEKID shall review amendments to Westbank’s Land Use Plan in draft stages as supplied to the SEKID by Westbank and make every reasonable effort to assist Westbank in developing plans as they relate to conservation, protection and use of water resources located on or through the Lands.
PART 7
JOINT CONSULTATION PROCESS

Westbank and District Consultation

7.1 Westbank and the District shall consult each with the other in advance of either Westbank or the District making any final decision on
(a) the use and development of any portion of the Lands, and
(b) the use and development of any lands within District boundaries

where the land proposed to be used or developed is situated within 500 meters of any boundary between the Lands and the District or where the development may affect traffic volumes on that portion of McCulloch Road which lies within or passes through the Lands.

7.2 Westbank and the District shall each use their best efforts to accommodate and address the concerns of the other regarding any proposed development in section 7.1 and shall ensure, to the extent possible, that any such proposed use or development is consistent with and compatible to surrounding land uses or developments whether located on the Lands or lands within District boundaries.

Westbank and City Consultation

7.3 Westbank and the City shall consult each with the other in advance of either Westbank or the City making any final decision on
(a) the use and development of any portion of the Lands, and
(b) the use and development of any lands within City boundaries

where the land proposed to be used or developed is situated within 500 meters of any boundary between the Lands and the City or where the development may affect traffic volumes on that portion of McCulloch Road which lies within or passes through the Lands.

7.4 Westbank and the City shall each use their best efforts to accommodate and address the concerns of the other regarding any proposed development in section 7.3 and shall ensure, to the extent possible, that any such proposed use or development is consistent with and compatible to surrounding land uses or developments whether located on the Lands or lands within City boundaries.

7.5 Where appropriate, BMID, SEKID and Westbank agree to consult each with the other in respect of any development plans proposed for the Lands or any right of way or easement thereon, where such proposed development may affect the use of the Lands by one or more party.
PART 8
DISPUTE RESOLUTION

Negotiation and Arbitration

8.1 In the event of any Dispute or other disagreement, including a Dispute arising from the interpretation or application of this Agreement, or in the event of any breach or alleged breach by any party of any provision of this Agreement, any party may provide notice to all other parties describing the nature of the breach or alleged breach, or the disagreement or Dispute, as the case may be and, in that event, the parties shall:

(a) immediately proceed to negotiate in good faith with all other parties affected by the breach, alleged breach or Dispute to resolve the matter to the mutual satisfaction of the parties; and

(b) if a resolution satisfactory to all parties is not achieved within sixty (60) days of the notice referred to herein being delivered to each party, then any party may serve notice upon the other parties that the matter is to be referred to binding arbitration; and

(c) a single arbitrator shall be appointed by agreement of the parties within ninety (90) days of the notice being delivered to each party, and failing such agreement, the arbitrator shall be appointed pursuant to the Commercial Arbitration Act to hear all parties to the Dispute and the decision of that arbitrator will be final, conclusive and binding on all parties, with costs payable in respect of the arbitration to be determined by the arbitrator; and

(d) any party to the Dispute may apply to a court of competent jurisdiction for an order to confirm or ratify the decision of the arbitrator.

Injunctive Relief

8.2 Notwithstanding any requirement for arbitration of Disputes under this Agreement, any party to a Dispute is entitled to seek interim injunctive relief or a similar court order to preserve its rights hereunder pending the outcome of arbitration of the Dispute.

PART 9
GENERAL PROVISIONS

Land Claims

9.1 Nothing in this Agreement shall be construed to abrogate or derogate from the aboriginal rights of Westbank or its members. Nothing in this Agreement shall affect or prejudice the rights, interests or position of any party in respect of an existing or future aboriginal land claim or treaty negotiations and nothing herein shall be interpreted as support or objection to the inclusion of the Lands or any other land within a treaty settlement.
Further Agreements

9.2 Westbank, the District, the City, the BMID, and the SEKID shall execute such further amendments, agreements, authorities, documents, and assurances and enact and enforce such bylaws or resolutions as may be reasonably necessary to give effect to their covenants herein.

Notices

9.3 All notices and other communications given hereunder or with respect to this Agreement shall be given or made in writing and may be served personally or sent by pre-paid registered mail or by telegram, telex, facsimile, or other telecommunication device as follows:

(a) in the case of Westbank, to the Chief of Westbank Council at the address first above written;

(b) in the case of the District, to the Secretary at the address first above written;

(c) in the case of the City, to the Municipal Clerk at the address first above written;

(d) in the case of the BMID, to the Board of Trustees at the address first above written;

(e) in the case of the SEKID, to the Board of Trustees at the address first above written; or

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

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

(i) the date of delivery if served personally; or

(ii) the date of mailing in Canada if mailed; or

(iii) on the earlier of the date actually received or the day following the date on which it was sent in Canada if sent by telegram, telex, facsimile or other telecommunication device.

Agreement Binding

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

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

Amendment

9.6 No amendment, waiver, termination or variation of the terms, conditions, warranties, covenants, agreements and undertakings set out herein shall be of any force or effect unless the same is reduced to writing duly executed by all parties hereto in the same manner and with the same formality as this Agreement, and no waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision (whether or not similar) and no waiver shall constitute a continuing waiver unless otherwise expressly provided. A party may unilaterally waive in writing a right to notice included herein if the notice is for the sole benefit of that party.

Time

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

Assignment

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

Status of the Parties

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

Counterparts

9.10 This Agreement may be executed in any number of counterparts with the same effect as if all parties had all signed the same document and all counterparts and adopting instruments shall be construed together and shall constitute one and the same agreement.
THE CORPORATE SEAL of THE REGIONAL DISTRICT OF CENTRAL OKANAGAN was hereunto affixed in the presence of:

[Signature]

Robert D. Hobson, Chair

[Signature]

W.B. O'Brien, Secretary

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

[Signature]

Walter Gray, Mayor

[Signature]

[Signature]

THE CORPORATE SEAL of THE BLACK MOUNTAIN IRRIGATION DISTRICT was hereunto affixed in the presence of:

[Signature]

E.K. Jansen, Chair

[Signature]

[Signature]

THE CORPORATE SEAL of THE SOUTH EAST KELOWNA IRRIGATION DISTRICT was hereunto affixed in the presence of:

[Signature]

[Signature]
General Indemnity

9.11 Each party hereby indemnifies and holds harmless each of the other parties hereto from and against any loss, cost, damage, liability or expense arising from or being in any way a consequence of any breach by that party of the terms of this Agreement.

Specific Performance

9.12 The parties hereto acknowledge that each of BMID, SEKID, the City and the District will be irreparably harmed and that there will be no adequate remedy at law for a violation of the covenants or agreements of Westbank in sections 2.1 to 2.6B hereof, where applicable to or in favour of each of them, respectively, and it is agreed that, in addition to any other remedies that may be available to BMID, SEKID, the City or the District upon any such violation, each of them shall have the right to enforce such covenants and agreements by specific performance, injunctive relief or by any other means available to them at law or in equity.

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

SIGNED, SEALED AND DELIVERED by the WESTBANK COUNCIL on behalf of the WESTBANK FIRST NATION, being a "band" as defined in the Indian Act, pursuant to the consent of a majority of the Councillors of the Westbank Council present at a Council meeting duly convened:

Witness Name: NANCY A. CRONIE
Barrister & Solicitor
Address 301 - 515 Highway 97 South
Kamloops, B.C. V1Z 3J2
(250) 769-4999

Chief
Councillor
Councillor
Councillor
PROTOCOL AGREEMENT ON CULTURE, HERITAGE AND ECONOMIC DEVELOPMENT

THIS PROTOCOL AGREEMENT dated for reference the 26th day of June, 2004

BETWEEN: THE CORPORATION OF THE DISTRICT OF POWELL RIVER,

A Municipal Corporation having its place of business at 6910 Duncan Street, Powell River, B.C. V8A 1V4 (the “Municipality”)

AND: TLA’AMIN FIRST NATION, also known as Sliammon

having its place of business at 6686 Sliammon Road, RR#2

Powell River, B.C. V8A 4Z3 (“Tla’amin”)

WHEREAS

1) The Municipality and Tla’amin signed a Community Accord on the 10th day of May, 2003 (the “Accord”);

2) Article 1 of the Accord states the Municipality and Tla’amin each have distinct authorities and responsibilities towards their residents and members, and acknowledge that the interests of all persons living in the two communities are best served by working together in the spirit of cooperation;

3) Article 3.2 of the Accord states the Parties will form working groups from time to time to explore and initiate activities designed to facilitate economic diversification, to protect cultural and heritage resources, to promote community growth, to increase investment and to generate employment;

4) The Parties acknowledge that much of the settlement area now within the boundaries of the Municipality has been built upon lands that formed part of the traditional Tla’amin village of Teeskwat and that there are many important Tla’amin culture and heritage sites in the area;

5) Tla’amin claims aboriginal title to the area within the boundaries of the municipality, aboriginal title carries an undeniable economic component, and the Parties
recognize that there are significant economic and cultural values and economic development opportunities in the area;

6) The Parties are committed to carrying out the vision in the Accord and this Protocol Agreement in a timely manner and will continue building government-to-government relations now than await the outcome of treaty negotiations;

NOW THEREFORE the Parties have entered into this Protocol Agreement with the intention and desire to ensure the protection of cultural and heritage sites, promote economic development and diversification in common areas of interest, in a manner that respects and accommodates Tla’amin’s title and rights and culture and heritage, the responsibilities and limits of the Municipality under the Community Charter, the heritage, values and rights of the citizens of the Municipality.

ARTICLE 1 – TLA’AMIN CULTURAL AND HERITAGE SITES

1.01 The Parties acknowledge that the Tla’amin village of Teeskwat and Tla’amin traditional village sites and use areas encompass many important archaeological sites, traditional land use sites and spiritual sites, arising from thousands of years of use and the occupation of the Tla’amin ancestors.

1.02 The Parties acknowledge that these sites may include cultural and heritage sites in the form of petroglyphs, culturally modified trees, canoe skids, fish traps, fish weirs, pictographs, shell midden and burial sites.

ARTICLE 2 – POWELL RIVER CULTURE AND HERITAGE SITES

2.01 The Parties acknowledge that the traditional Tla’amin village of Teeskwat was located within the boundaries of the Municipality and that this area also includes non-aboriginal culture and heritage sites arising from the presence of non-Tla’amin Citizens dating back to approximately 1800.

2.02 The Parties acknowledge that the historic Townsite of Powell River is designated by Canada as a National Historic Site.

ARTICLE 3 – PROTECTION OF CULTURE AND HERITAGE SITES

3.01 The Parties commit to take steps to protect the cultural and heritage sites described above in accordance with this Protocol Agreement.

3.02 The Parties agree to promote and enhance awareness of the cultural and heritage sites described above and to promote awareness and understanding of the history and culture of Tla’amin and Powell River.
3.03 The Parties agree to form a joint Culture and Heritage Committee that will be comprised of political appointments and planning staff from each of the communities within two months of signing this protocol to:

a) Develop a strategy to ensure to the extent possible the protection of cultural and heritage sites which may include some of the options set out in Appendix “B”;

b) Draft culture and heritage policies for inclusion in the Municipal Official Community Plan, Land Use Plan and Zoning Bylaw Review.

c) Explore funding opportunities to promote an awareness and understanding of the Parties culture and heritage history and if appropriate, the Parties unique government to government to relationship.

3.04 Policy and criteria recommendations and funding proposal applications will be submitted to the Parties for approval prior to implementation.

ARTICLE 4 - ECONOMIC DEVELOPMENT COOPERATION

4.01 The Parties share many common objectives with respect to generating a diversified and sustainable economy for the region in a manner that is consistent with the values and rights of the Tla‘amin members and the values and rights of the citizens of the Municipality.

4.02 The Parties agree to explore joint economic ventures.

4.03 The Parties agree to establish a Joint Economic Development Working Committee that will consist of an equal number of representatives from both communities that will meet as may be required to:

a) Assess existing conditions relative to economic development in both communities and the surrounding region on key topic areas that may include, but are not restricted to the waterfront, cultural tourism, forestry, and marine resources.

b) Explore joint economic development opportunities and recommend proposals to increase the economic health of the region.

c) The Parties may consider to jointly host economic development forums with emphasis on attracting business, investors, joint venture partners, and to promote and market the Municipality and Tla‘amin’s economic diversity.
Costs associated with organizing such events will be mutually agreed upon before hosting such forums.

4.04 The Joint Economic Development Working Committee will provide written and verbal reports to the Parties, as may be requested, for approval prior to implementation.

4.05 Tla’amin Development Corporation and the Powell River and Region Economic Development Society (PRREDS) have a Memorandum of Understanding that does not supersede this Protocol Agreement.

ARTICLE 5 – OFFICIAL COMMUNITY PLANS AND LAND USE BYLAWS REVIEW

5.01 The Parties agree that Tla’amin will be notified and invited to attend for active participation in the review of all subsequent major review and proposed revisions of the Municipality’s Official Community Plan, Land-Use Plan and Zoning Bylaw.

5.02 The Parties agree that the Municipality will be notified and invited to attend for active participation in the review of all land use and land use planning and for all subsequent major review and proposed revisions of land use planning for lands owned by Tla’amin within the Municipal boundary.

5.03 The Municipality agrees that for any future major revisions to its Official Community Plan, Land-Use Plan and Zoning Bylaws it will include:

a) A brief summary of Tla’amin history, culture and heritage;
b) If appropriate, sites for potential treaty settlement lands;
c) If appropriate, Tla’amin cultural and heritage sites;
d) Policies for the protection of Tla’amin and Powell River culture and heritage sites.

ARTICLE 6 – INTERGOVERNMENTAL COORDINATION

6.01 The Parties agree to hold not less than six (6) government-to-government meetings per year. The Primary purpose of the meetings is to:

a) Review the progress of the joint committees, advisory groups and other initiatives to the protocol agreement;
b) Identify joint initiative opportunities;
c) Strategize on issues affecting each other’s area of jurisdiction;
d) Share information and improve communications;
e) Collaborate on common issues with other levels of government;
f) Discuss other relevant issues that are of concern to both Parties.
6.02 The Mayor of the Municipality and the Chief Councillor of Tla'amin will alternate the Chair of the government-to-government meetings.

6.03 Each Party agrees to provide timely notice on matters that could significantly impact the other Party, and to provide information to facilitate the opportunity for meaningful discussion and cooperation at the government-to-government meetings.

6.04 The Mayor of the Municipality and the Chief Councillor of Tla'amin will meet promptly at the request of either Party to deal with emergency issues that may include:

a) Immediate threats to cultural and heritage sites;
b) Immediate threats or potential infringements to Tla'amin’s aboriginal title and rights;
c) Other emergency issues that may affect the subject matter of the Community Accord or this Protocol Agreement.

ARTICLE 7 – DISPUTE RESOLUTION

7.01 The Parties are committed to open, honest, and respectful interaction with each other in order to communicate effectively and to avoid conflict.

7.02 Where a dispute arises between the Parties, the Parties agree that the Mayor of the Municipality and the Chief Councillor of Tla’amin will engage in informal communications in an attempt to resolve specific issues.

7.03 Where a dispute between the Parties has not been resolved by informal communications, either Party may, upon reasonable notice, call a special meeting of the Parties to discuss the dispute. Where the Parties are unable to resolve a dispute by special meeting, either Party may request a dispute resolution session.

7.04 Both Parties shall mutually agree upon the procedure for carrying out a dispute resolution session.

7.05 The Parties will share agreed upon dispute resolution costs on a 50/50 basis.

ARTICLE 8 – TERMS OF THE AGREEMENT

8.01 The Parties agree this Protocol Agreement shall take affect upon the adoption by resolution of each respective Council.

8.02 The Parties agree this Protocol Agreement is a living document and may be subject to revision from time to time by mutual consent. The revisions must be agreed to in writing and adopted by resolution of each respective Council.
8.03 This Protocol Agreement will remain in effect unless terminated by either of the Parties.

8.04 Either Party may terminate the Protocol Agreement by providing to the other Party sixty (60) days notice in writing, to be delivered by hand, facsimile or registered mail.

IN WITNESS OF the Parties have hereunto affixed their signatures as of the day and year first written above

______________________________              ________________________________
Chief Councillor L. Maynard Harry                   Mayor Stewart B. Alsgard

______________________________              ________________________________
Denise Smith, Councillor                        Brenda M. DeGraag, Councillor

______________________________              ________________________________
Walter Paul, Councillor                         David B. Gabelhouse, Councillor

______________________________              ________________________________
Kevin Blaney, Councillor                        Myrna K. Leishman, Councillor

______________________________              ________________________________
Donna Tom, Councillor                           Jefferson Y.C. Mah, Councillor

______________________________              ________________________________
Steven Galligos, Councillor                     J. Russell Story, Councillor

______________________________              ________________________________
Gloria Francis, Councillor                      Sandi L. Tremblay, Councillor

______________________________
Bruce Point, Councillor

______________________________
Brian Hackett, Councillor

______________________________
SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

______________________________              ________________________________
Steve Gallagher                  Stan Westby
Intergovernmental Relations      Chief Administrative Officer
Tla'amin First Nation            Corporation of the District of Powell River
APPENDIX "A"

To the Protocol Agreement on Culture, Heritage, and Economic Development

Consultation and Permitting Process for Proposed Developments

Step 1: Designation and identification of Tla'amin cultural and heritage sites and traditional land use sites for protection

1.1 Tla'amin will provide the Municipality appropriate information and maps showing the location of petroglyphs, culturally modified trees, canoe skids, fish traps, fish weirs, pictographs, shell middens, burial sites, and other important cultural and heritage sites or areas. Tla'amin may also provide information on harvesting, hunting or fishing areas or other areas where Tla'amin members exercise their aboriginal rights.

1.2 The Municipality will make every effort to respect the sensitivity and confidentiality of cultural information provided by Tla'amin. However, Tla'amin acknowledges that any information provided to the Municipality may be subject to public disclosure under this Protocol Agreement or under Freedom of Information legislation. For particularly sensitive or confidential cultural sites or uses, Tla'amin may decide to provide the information verbally to the Municipality and may request that no written information is kept in the Municipality's files.

Step 2: Application Process

2.1 An applicant applying for one or more of the following will receive appropriate information or notification if their proposed project may affect a known cultural or heritage site or area where Tla'amin members exercise aboriginal rights:
   a) Subdivision application
   b) Rezoning Application
   c) Amendment to the Official Community Plan or Land-Use Bylaw
   d) Development Permit for a Development Permit Area
   e) Variance

2.2 The Municipality will advise the applicant of their responsibilities and penalties under the Heritage Conservation Act if there is the potential for disturbing cultural or heritage sites or areas.

2.3 Whenever reasonably possible Real Estate agents or individuals inquiring in person at the Municipal Hall about properties that have known Tla'amin cultural and heritage sites or areas will be advised of the appropriate information.
5.2 The Tla’amin may recommend that the Municipality to request the applicant to conduct presentations, field visits, or an Archaeological Inventory Assessment (AIA) to determine the nature and scope of potential impacts and to explore ways for addressing concerns and avoiding or minimizing impacts.

5.3 The contractor for an Archaeological Inventory Assessment will be determined as per the *Heritage Conservation Act*.

5.4 There will be an assignment of all costs for the consultation process associated in 5.2 to the applicant as per the *Heritage Conservation Act*.

5.5 Within thirty (30) days of a consultation meeting, Tla’amin will provide the Municipality with a written summary describing which of its concerns have been resolved to its satisfaction and which, if any, remain outstanding, together with a summary of the consultation meetings that have taken place.

**Step 6: Submission for Permit**

6.1 The Municipality will provide Tla’amin with a copy of a proposed permit that contains conditions under which it is prepared to issue a permit for the development.

**Step 7: Tla’amin Cultural and Heritage Permit**

7.1 Where the applicant and the Municipality have completed the process described above and addressed all reasonable concerns raised by Tla’amin, Tla’amin will issue a Cultural and Heritage Permit as set out in the *Archaeological Protection Act* to the Municipality within five (5) business days.

**Step 8: Municipal Development Permit**

8.1 Upon receipt of Tla’amin’s Cultural and Heritage Permit, the Municipality may issue its Development Permit.

8.2 If Tla’amin declines to issue its Cultural and Heritage Permit, the Municipality may choose to meet with Tla’amin for a further review or the Municipality may advise Tla’amin that it will issue a Municipal Development Permit or other approval under its authority in the *Community Charter*. 
APPENDIX “B”

To the Protocol Agreement on Culture, Heritage, and Economic Development

Potential Options to Protect Cultural and Heritage Sites

The Parties will work together through the Joint Culture and Heritage Committee to explore and implement options to fulfill their mutual commitments relating to ensuring the protection and enhancement of culture and heritage in the Protocol Agreement on Culture, Heritage and Economic Development.

The Parties will explore and assess available options including the ones identified below.

DEVELOPMENT PERMIT AREAS

a) Consider creating Development Permit Areas to protect known cultural and heritage sites;

b) The Development Permit Areas could include requirements for minimum setback distances from specified types of sites such as burial sites.

SUBDIVISIONS

a) Consider setting out policies that request the Approving Officer to require park dedications for culture or heritage sites as part of subdivision approvals.

COVENANTS

a) Consider developing policies to require covenants to secure or protect culture or heritage sites.

DESIGNATED SITES

a) Consider joint site designation to recognize important sites;

b) With the cooperation of land-owners, Tla’amin and the Municipality could jointly seek to designate important culture and heritage sites;

c) The Parties could work with land-owners to install interpretive signs at the site.
Thompson Rivers Economic Accord
A Statement of Co-operation

WHEREAS we the Mayor of the City of Kamloops, the Chief of the Kamloops Indian Band, the Member of the Legislative Assembly for the provincial riding of Kamloops, the Member of the Legislative Assembly for the provincial riding of Kamloops-North Thompson, the Member of Parliament for the federal riding of Kamloops, Thompson and Highland Valleys, and the Chair of the Thompson-Nicola Regional District (co-operating under the name Team Kamloops) recognize the need to work together for the economic benefit of the residents within our jurisdictions;

AND WHEREAS in order for local businesses to take advantage of emerging opportunities, comprehensive regional advantages must be presented to potential investors, and efficient use of regional infrastructure and human resources must be encouraged;

AND WHEREAS there is a need to jointly promote the positive attributes of our region and to make use of local capabilities more effectively for the benefit of the regional economy;

AND WHEREAS we believe co-operation among economic development groups, Team Kamloops and other committed business associations and businesses is the most effective way of creating new economic opportunities for Kamloops and region;

AND WHEREAS we believe in the importance of co-operation on cultural and social issues as they pertain to the economic well-being of our region.

NOW THEREFORE we agree to:

1. Maintain an open communication with one another on economic development and to work co-operatively and proactively in the best economic interests of the region; and

2. Support and encourage positive communication and co-operation among economic development stakeholders in the Thompson Rivers economic zone, defined for the purposes of this Accord as being the area within the boundaries of the Thompson-Nicola Regional District; and

3. Co-operate with other stakeholders in the development of such strategies as may be appropriate in keeping with the principles of this Accord; and

4. Act as ambassadors for our region and promote awareness within our communities, among potential investors and at all levels of government, of the benefits of a regional economic strategy that is inclusive of municipal, First Nations, provincial and federal interests; and

5. Meet from time to time as necessary, but not less than biannually to further the aims of this Accord; and

6. Act in rotation as Chair, in the order of signatures appearing below, to encourage and coordinate the aims of this Accord.

Signed this 15th day of February in the year 2002 at Kamloops, British Columbia, by:

Mel G. Rothenburger
Mayor, City of Kamloops
Bonnie Leonard
Chief, Kamloops Indian Band

Betty Hinton, MP
Kamloops, Thompson Highland Valleys

Al Kemp
Chair, Thompson-Nicola Regional District

Claude Richmond, MLA
Kamloops
MEMORANDUM OF UNDERSTANDING

FOR ESTABLISHING PROCEDURES FOR THE ADMINISTRATION OF A
COOPERATIVE LAND USE PLANNING PROGRAM
BETWEEN
THE SWINOMISH INDIAN TRIBAL COMMUNITY
AND
SKAGIT COUNTY

This Memorandum of Understanding (MOU) is made by and between the Swinomish Indian Tribal Community, a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, hereinafter the "Tribe", and Skagit County, a political subdivision of the State of Washington, hereinafter the "County", both hereinafter collectively referred to as "governments."

This Memorandum of Understanding represents good faith commitments which are being made by each of the parties in a spirit of cooperation and are not intended as obligations that may be compelled by either party if both parties are not in full agreement. Rather, this MOU represents the belief that these commitments will be of mutual benefit to the parties.

WHEREAS, the Tribe and the County recognize that a common interest exists between the two governments with respect to growth management and land use regulations on the Swinomish Indian Reservation in that the Tribe claims regulatory authority over all lands within the Reservation and the County claims regulatory authority over non-trust property within the Reservation; and

WHEREAS, the interest of the Tribe extends to all lands within the exterior boundaries of the Swinomish Indian Reservation and to land use activities in areas beyond the exterior boundaries of the Swinomish Indian Reservation that may affect or have impacts on Reservation lands; and

WHEREAS, the interests of the County extends to non-trust lands within the exterior boundaries of the Swinomish Indian Reservation; and

WHEREAS, the Tribe and the County have, with assistance from the Northwest Renewable Resources Center, cooperatively developed a Joint Comprehensive Land Use Plan for the Swinomish Indian Reservation pursuant to a Memorandum of Understanding passed by the Skagit County Board of Commissioners and the Swinomish Indian Senate in March, 1987; and

WHEREAS, the Tribe adopted a Land Use Comprehensive Plan on August 6, 1996 and the County adopted the Skagit County Comprehensive Plan pursuant to the Growth Management Act (RCW 36.70A) on June 1, 1997 and having done so the County identified the Swinomish Tribal Community/Skagit County Joint
Comprehensive Plan as a priority item requiring further studies, reports, recommendations, and implementation under Ordinance #16530; and

WHEREAS, the Tribe and the County agree that it is in both their interests to cooperatively manage growth and administer associated land use regulations while continuing to build on the cordial government-to-government relationship established through the collaborative planning process; and

WHEREAS, the Tribe and County agree that in order to address conflicts that may arise in managing growth and administering implementing land use regulations, the Tribe and the County should adopt an administrative procedure that involves joint review and consultation regarding proposals for land use actions so that mutually agreeable decisions which acknowledge the broad interests of the community, both Indian and non-Indian, may be reached, and jurisdictional disputes avoided; and

WHEREAS, the Tribe and the County affirm that cooperative problem solving and consensus decision-making will be the preferred means of reaching consensus decisions relating to growth management, land use planning and regulatory activities on the Swinomish Indian Reservation; and

NOW THEREFORE, the Tribe and the County agree to proceed as follows:

I. AREAS OF INTEREST

Those lands covered by this agreement are shown as such on the attached map (Attachment A).

II. SWINOMISH PLANNING ADVISORY BOARD

A Swinomish Planning Advisory Board, (hereinafter referred to as the "Advisory Board"), is a citizen board established to settle disagreements regarding land use actions by means of cooperative problem-solving and consensus-based negotiations. The Board will also make recommendations to each government's Planning Commission regarding land use activities on the Swinomish Reservation. The Advisory Board will be comprised of five members, with two appointments made by the Tribe, two appointments made by the County, and one made jointly. The Advisory Board will facilitate the resolution of disputes stemming from any jurisdictional conflicts regarding growth management, land use planning, and related regulatory codes. The Advisory Board will also monitor the progress of the cooperative planning processes and make recommendations to the County Planning Commission and the Swinomish Planning Commission to improve the future effectiveness of these processes.
III. COMPREHENSIVE PLANS AND ZONING ORDINANCES

Both governments have adopted comprehensive plans and have or are implementing ordinances such as, but not limited to, zoning and subdivision ordinances. It is the intent of the parties that these land use policy documents become compatible and consistent with the Joint Comprehensive Land Use Plan for the Swinomish Indian Reservation pursuant to a Memorandum of Understanding passed by the Skagit County Board of Commissioners and the Swinomish Indian Senate in March, 1987, subject to the studies and a report, public review and comment, and recommendations based on applicable federal, state and local laws and plans and that any future modification to these documents take place through the joint review process established in this Memorandum of Understanding. Notwithstanding the fact that existing or future land use policy and regulatory documents are or become compatible, they remain separate and distinct codes of each government.

IV. ADMINISTRATIVE RESPONSIBILITIES FOR JOINT PERMIT REVIEW

In order to avoid the economic burden on each government and the general public of independently administering separate permit review processes, both governments agree that a unified procedure for the administration of permitting services will be established providing for coordination of the planning departments of each government for accepting and administering permit applications. It is in the interest of achieving the joint implementation of the plan and related codes to reduce unnecessary duplication in administration while providing for the fullest participation of each government agency.

V. FILING APPLICATIONS FOR JOINT PERMIT REVIEW

Application for a land use permit may be initially filed with both or either agency. If an application is filed with one agency (the "recipient agency"), that agency shall forward to the planning department of the other government (the "receiving agency") a copy of the entire application file within five (5) working days from the filing of the complete application and request comments on the application. If the application file satisfies the application requirements of the receiving agency, then said application shall be considered a complete application for the receiving agency. If additional information is required by the receiving agency, that agency shall directly notify the applicant accordingly.

In the event that the recipient agency does receive written comments back within the 15 working days from the date the application was originally sent, the application will be presumed acceptable to the other government and the recipient agency will process the application pursuant to its prescribed procedures. Either the recipient agency or both agencies may elect to issue a separate permit under their respective authorities.
In the event receiving agency comments are submitted to the recipient agency, technical staff review pursuant to Section VI shall take place. The recipient agency shall give full consideration to the other government’s concerns and make every attempt to address them. If the concerns cannot be resolved at the technical staff level, Advisory Board review pursuant to Section VII shall take place.

The planning departments of each agency may enter into subsequent agreements concerning the sharing of permit fee revenues to (a) fairly reimburse each agency for their permit review, and (b) to minimize, to every extent possible, the burden of a dual application fee to applicants. In addition, the agencies shall jointly develop flow charts to depict the cooperative review process and timelines required for joint review and final decision(s).

VI. CONSULTATION PROCESS

In the event that either government provides written comments, concerns and/or recommendations, they will be conveyed within the time prescribed in Section V, thereby triggering a staff-level consultation meeting. The consultation process will provide the opportunity for both governments to come together and discuss the various issues related to the specific application under review. The intent is to provide a procedural mechanism through which to voice concerns, identify problems, and explore solutions in a professional review manner, during the early stages of the permit process.

VII. RESOLUTION OF DISPUTES

Should agreement not be reached at the staff-level through the consultation process, each government will prepare a staff report for submittal to the Advisory Board which will seek to bring about a mutually acceptable resolution. The Advisory Board will assist the governments in their search for agreement and will use conciliation, mediation, fact-finding, or any other method deemed appropriate, to reach a resolution.

In the event the Advisory Board is unsuccessful in bringing about agreement, it will forward its recommendations to the County Planning Commission/Hearing Examiner, and the Tribal Planning Commission. Each planning commission will follow its own prescribed procedures for decision-making and will forward its recommendations to the respective governing bodies. Should the recommendations be in conflict, the Tribal Senate and the Board of County Commissioners may decide to confer on the issue and may call a special meeting for that purpose. In the event that consensus is not reached, each government will issue its decision and be free to pursue its interests independent of the other government.
VIII. ANNUAL REVIEW

The Advisory Board will report to both governments after one year, biannually thereafter, regarding its activities. A joint review of the cooperative planning process will be conducted after two years. Based on the results of the review, as well as recommendations from the Advisory Board, the process will be refined as needed.

IX. AMENDMENTS

The provisions of this Memorandum of Understanding may be amended by parallel resolutions of the respective governing bodies.

X. JURISDICTION

Nothing in this Agreement shall limit or waive the regulatory authority or jurisdiction of either party. Likewise, nothing in this agreement nor any decision made by the Tribe or the County, whether or not the decision is consistent with this Memorandum of Understanding, shall give any third party any cause of action or claim. This Agreement is not intended to provide any remedy not already provided by law.