

THIS AGREEMENT is made as of the 10th day of August, 1994.

BETWEEN:

CITY OF VANCOUVER, a municipal corporation, having offices at 453 West 12th Avenue, in the City of Vancouver, in the Province of British Columbia, V5Y 1V4

(herein called "the City")

AND:

MUSQUEAM INDIAN BAND
6370 Salish Drive,
Vancouver, B.C. V6N 2C6

(herein called "the Band")

WHEREAS:

- A. The Band has requested that the City provide Municipal Services (as herein defined) to that area within the City known as Musqueam Indian Reserve No. 2;
- B. The Council of the Band by resolution passed on the 25th Day of July, 1994 has authorized the provision of the requested Municipal Services upon the terms and conditions herein set out;
- C. The Council of the City by resolution passed on the 28th day of July, 1994 has authorized the provision of the requested Municipal Services upon the terms and conditions herein set out;

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

1. DEFINITIONS

Except where the context otherwise requires, the following words and expressions have the meanings assigned to them below:

- (a) "Municipal Services" means all normal city services that are delivered without direct charge by the City within its boundaries, but specifically excludes the services provided by other levels of government, including School District No. 39 and the Greater Vancouver Regional District;
- (b) "Reserve" means Musqueam Indian Reserve No. 2 located in the City of Vancouver;
- (c) "Village" means that portion of the Reserve shown outlined in red on the plan attached hereto as Schedule "A";
- (d) "Leasehold Lands" means that portion of the Reserve shown outlined in blue on the plan attached hereto as Schedule "B".

2.0 TERM OF AGREEMENT

The term of this Agreement shall be from January 1, 1994 to December 31, 1995.

3.0 MUNICIPAL SERVICES PROVIDED BY THE CITY

3.1 Quantity and Quality. The City agrees to provide to the Village and to the Leasehold Lands, Municipal Services which are substantially the same as the quantity and quality of such services provided by the City to neighbourhoods of similar size and characteristics located elsewhere in the City of Vancouver.

3.2 Limitation on City's Obligations. It is expressly agreed that the City's obligations under this Agreement do not include:

- (a) Work required to bring any or all of the water mains, water main valves, hydrants or other related water main facilities within the Village up to the City's standards.
- (b) Work required to bring any or all of the sewer mains and connections or other related facilities within the Village up to the City's standards.
- (c) The making or providing of service connections to residences or other buildings in the Village with respect to the water system or the sewer system or the providing of maintenance or repair services with respect to such connections.
- (d) The expansion of the water system or sewer system within the Village to accommodate any change, new growth, subdivision or consolidation of property, or capacity limitations related thereto.

- (e) The construction or installation of new streets, sidewalks or street lighting or ancillary facilities within the Reserve.
- (f) The making of service connections to residences or other buildings in the Leasehold Lands with respect to the water system or the sewer system or the providing of maintenance or repair services with respect to such connections.
- (g) The expansion of the water system or sewer system in the Leasehold Lands to accommodate new growth, subdivision or consolidation of property, or capacity limitations related thereto.
- (h) Enforcement of City by-laws within the Village.

4.0 SERVICE CHARGES

4.1 Calculation of Charges for Municipal Services. It is agreed that the cost of the Municipal Services provided under section 3 shall be established by multiplying the tax rate established for the current taxation year for residential property, by the respective total taxable assessed values of residential property as determined for the year under Section 5 on both Village and Leasehold Lands of the Reserve and by multiplying fifty percent (50%) of the tax rate established for the current taxation year for each non-residential class of property by the respective total taxable assessed values of each non-residential class of property as determined for the year under Section 5 on both Village and Leasehold Lands of the Reserve.

4.2 Additional charges (Water, Sewer, Garbage).

4.2.1. Village Lands

- (a) The City will bill, and the Band will pay the current flat rate for water at the normal City rate for any unmetered residential properties.
- (b) The City will bill, and the Band will pay for metered water services at normal City rates pursuant to City by-laws.
- (c) If, at any time during the term of this agreement, the City imposes direct charges for sewer services and/or garbage collection and disposal service, the City will bill, and the Band will pay for such services on the same basis as levied on all other similar properties in the City.

4.2.2 Leasehold Lands

- (a) The City will bill, and the Band will pay the current flat rate for water at the normal City rate for any unmetered residential properties.
- (b) The City will bill for metered water services at normal City rates pursuant to City by-laws.
- (c) If, at any time during the term of this agreement, the City imposes direct charges for sewer services and/or garbage collection and disposal service, the City will bill for such services on the same basis as levied on all other similar properties in the City.

4.3 Taxation. If the cost of any services provided pursuant to this Agreement are subject to taxation under any Federal or Provincial tax legislation, the Band agrees that any such amount shall be paid by the Band either directly or indirectly to the City.

4.4 Billing and Payment. The City will bill and the Band will pay for Municipal Services as calculated under Section 4.1. The City will Bill the Band no later than May 31 of each calendar year during the Term of this Agreement. The account will be payable in full before the close of business on the last working day in July of each calendar year. Any amount outstanding after the due date will be subject to an interest charge as set out in Section 4.5.

4.5 Late Payment Interest Charge. The parties agree that there shall be an interest charge on outstanding billed amounts, calculated on a per diem basis, using the City's current rate for delinquent taxes as established from time to time by City Council.

4.6 Grant for Taxable City Property. Each year the Band will credit the City, by way of a grant, the full cost to the City of any taxation payable with respect to any lands, interests in land, or improvements owned by the City situate within the Reserve and taxable under any Musqueam Assessment or Taxation By-laws.

5. Property Assessments

The Band will provide the City with assessment data pertaining to each parcel of property on the Reserve, as determined by the B.C. Assessment Authority within two (2) weeks of receipt of the same from the British Columbia Assessment Authority. It is agreed that this assessment data will be used in calculating the cost of Municipal Services pursuant to Section 4.1. It is further agreed that if the Band is unable to contract with the B.C.

Assessment Authority to provide assessment values for each property in the Reserve this Agreement shall terminate at the end of the then current year.

6. ZONING AND LAND USE

The Band agrees to ensure that all lessees or occupants of Leasehold Lands conform with all City by-laws, regulations, standards and restrictions in respect of the lands and buildings.

7. ACCESS RIGHTS

The Band hereby grants to the City, its servants, agents, contractors, subcontractors, workmen, officials, licensees, successors and assigns, all rights of access to, in, under or over the Reserve Lands to the extent reasonably required by the City for the purpose of performing its obligations under this Agreement. In particular, but without limiting the generality of the foregoing, for that purpose the Band hereby grants to the City, its servants, agents, contractors, subcontractors, workmen, officials, licensees, successors and assigns the full, free and uninterrupted right, liberty and license to enter upon, with all manner of vehicles, tools and equipment, to dig up the streets on, any and all areas of the Reserve Lands, provided that:

- (a) The City shall exercise its rights under this Section 7 in a reasonable manner so as to minimize inconvenience to the residents or other occupants of the Reserve Lands and which minimizes damage;
- (b) The City shall not exercise such of its rights under this section as can be reasonably foreseen to be likely to cause irreparable damage to the Reserve Lands without first obtaining the written consent of the Council of the Band except in an emergency; and
- (c) The City shall only exercise the rights granted to it pursuant to this section for the sole purpose of providing Municipal Services to the Reserve Lands.

8.0 RELEASE AND INDEMNITY IN FAVOUR OF THE CITY

- 8.1 Release. The Band hereby releases the City, its servants, agents, contractors, subcontractors, workmen, officials, licensees, successors and assigns from all manner of suits, claims, demands and causes of action in any way associated or connected with the performance by the City of its obligations under this Agreement and hereby waives all rights and causes of action against the City, its servants, agents, contractors, subcontractors, workmen, officials, licensees, successors and assigns for all loss and damage to property and for all bodily injury (including bodily injury resulting in death)

which may be caused by the City in respect of the performance by it of its obligations under this Agreement, provided that this release and waiver shall not apply in any case where the City or its servants, agents, contractors, subcontractors, workmen, officials, licensees, successors or assigns have been negligent or have behaved in a manner which amounts to wilful misconduct.

- 8.2 Indemnity. The Band shall indemnify and hold harmless the City, its servants, agents, contractors, subcontractors, workmen, officials, licensees, successors and assigns for and from all manner of claims, suits, losses, damages or costs in respect of bodily injury (including bodily injury resulting in death) or damage to property occurring within the Reserve Lands which is caused by the City in respect of or in connection with the performance by the City, its servants, agents, contractors, subcontractors, workmen, officials, licensees, successors and assigns, or any of the obligations of the City under this Agreement, provided that this indemnity shall not apply in any case where the City, its servants, agents, contractors, subcontractors, workmen, officials, licensees, successors or assigns have been negligent or have behaved in a manner which amounts to wilful misconduct.

9. LIMITATION OF LIABILITY OF CITY

Notwithstanding anything to the contrary contained in this Agreement, the Band agrees that the maximum and total liability of the City hereunder or otherwise for failure by the City to carry out and fulfill its obligations under this Agreement shall be the liability of the City to refund, without interest, sums paid by the Band to the City as relate to the obligations of the City hereunder that the City has not carried out and fulfilled, provided that this limitation of liability shall only apply where such failure occurs despite the good faith and diligent efforts by the City to carry out and fulfil its obligations hereunder.

10. OWNERSHIP OF ASSETS

It is agreed that the City is the sole owner of the Municipal Services infrastructure including, but not limited to, the water system, the sewer system, the street lighting plant and the streets, curbs and gutters situated on or in the lands designated as the Leasehold Lands in this Agreement.

11. RESERVATION OF PARKLAND

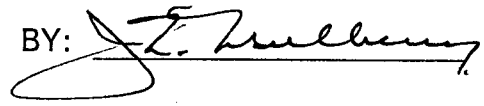
It is agreed that the Band, during the Term of this Agreement, will reserve for park and recreational purposes, the area shown outlined in orange on the plan attached hereto as Schedule "C" or such other equivalent area as may be agreed.

12.0 GENERAL PROVISIONS

- 12.1 Assignment. This Agreement may not be assigned by either party except that the City may assign its rights to receive payments under this Agreement, provided that the prior written consent of the Band has been given to such assignment.
- 12.2 Binding Effect. This Agreement shall bind and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 12.3 Reasonable Assurances. The parties hereto will at all times and upon every reasonable request give all further assurances and do all further things for the purpose of giving full effect to the covenants and provisions contained in the Agreement.

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

CITY OF VANCOUVER

BY: 
Director of Legal Services

THE BAND

BY: 