

Local Services Agreement

THIS Agreement made as of the 1st day of January, 2024.

BETWEEN:

REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN
101 Martin Street
Penticton, B.C.
V2A 5J9

(hereinafter called the "District")

OF THE FIRST PART

AND:

PENTICTON INDIAN BAND
841 Westhills Drive
Penticton, B.C.
V2A 0E8

(hereinafter called "PIB")

OF THE SECOND PART

(individually, a "Party", and together, the "Parties")

WHEREAS the Regional District of Okanagan-Similkameen has historically provided certain local services to specified areas of the PIB Lands;

AND WHEREAS the *Local Government Act* empowers the Regional Board to make agreements with a public authority respecting activities, works or services within the powers of a party to the agreement, including agreements respecting the undertaking, provision and operation of activities, works and services;

AND WHEREAS PIB wishes the District to provide certain local services to PIB Lands and residents;

AND WHEREAS the District will provide certain local services to PIB Lands and residents, subject to the terms and conditions of this Agreement,

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants herein contained, the Parties mutually covenant and agree as follows:

Definitions

1. In this Agreement, the following terms shall have the following meanings:

“District Services” means services provided by the District in accordance with this Agreement, as further set out in the Schedules attached to this Agreement, which include 911 emergency services, emergency planning, solid waste management, general government services, and access to Campbell Mountain sanitary landfill.

“Establishment Bylaw” means Bylaws as enacted by the Board of the Regional District of Okanagan-Similkameen to establish a local government service which describes the service, defines the boundaries of the local service area, identifies the methods of cost recovery for the service, including the form of local service tax (property value tax and/or parcel tax) and the portion of the costs of the service that are to be recovered by the local service tax, and if applicable, identify the portion of the costs of the service that are to be recovered by a general property tax.

“Fee” means the annual cost payable by PIB for the District Services, determined in accordance with the methods of calculation set out in the Schedules to this Agreement, paid in accordance with Clauses 9-17.

“PIB Lands” means lands administered by PIB under the provisions of the *Indian Act* (Canada) and includes lands occupied by persons who are not Band Members.

“Taxable Property” means an interest in PIB Lands that is taxable in accordance with the *Penticton Indian Band Property Taxation Law, 2021*, and, for clarity, excludes property that is exempt from taxation under the Law.

“Term” means the term of this Agreement, in accordance with Clauses 18-20.

Services

2. The District shall provide the District Services to all PIB Lands and persons on PIB Lands.
3. The District Services shall be provided to PIB Lands and to persons on PIB Lands on the same basis, and to the same standard, as those services are generally provided within the District.
4. The District shall consult with PIB regarding any significant proposed changes or modifications to any District Service provided to PIB, including changes or modifications that would result in a significant increase in the cost of that District Service, prior to making any decision or determination regarding the proposed change or modification.
5. The District shall as soon as is practicable and without delay give notice to PIB of any proposed change or modifications of a District Service provided to PIB or increased cost of a District Service, and the Parties shall, if requested in writing by either Party, meet to discuss same.
6. Where, in the view of PIB, a change or modification to a District Service or increase in the cost of a District Service is unreasonable, or too onerous to PIB, then PIB, at its sole discretion, may withdraw from the District Service.

7. In the event that PIB withdraws from a District Service in accordance with Clause 6, PIB's withdrawal from the District Service shall become effective on the earlier of six (6) months after PIB has given notice of its intention to withdraw from the District Service or June 30 of the next year of the Term, and the applicable Schedule shall be deleted from this Agreement, and the Fee for that service shall not be payable commencing on the date the withdrawal is effective.
8. In the event of a withdrawal pursuant to Clause 6, the District shall provide PIB with a statement of the pro-rated amount of the Fee up to the date of withdrawal in accordance with the process referred to in Clause 22.

Payment of Fees

9. The cost to PIB for each District Service, including the method of calculation of payment for the District Service, is set out in the Schedules to this Agreement.
10. Notwithstanding Clause 9 and Schedule B, the Campbell Mountain Sanitary Landfill District Service is funded solely by user fees as of the date of execution of this Agreement. In the event that the District determines that it is necessary to increase funding to the Campbell Mountain Sanitary Landfill through taxation of all participants, the District shall provide PIB with at least one year's written notice prior to calculating payment for the sanitary landfill District Service accordance with the formula set out at Schedule B.
11. In each year of the Term, PIB shall pay the Fee to the District for the provision of each District Service provided to PIB under this Agreement.
12. A requisition for the Fee for the upcoming year shall be calculated by the District and provided to PIB not later than April 15 of each year of the Term, and will contain the information shown at Schedule A-1 .
13. PIB shall ensure an assessment roll and a taxation roll are prepared each year in accordance with the *Penticton Indian Band Property Assessment Law* and the *2021 Penticton Indian Band Property Taxation Law, 2021*, respectively.
14. PIB shall provide to the District a copy of its hospital taxable values roll by February 28th of each year.

Payment Due Dates

15. The Fee shall be payable on August 1st in each year of the Term.
16. In the event that the actual expenditure by the District for a District Service in respect of the Taxable Properties in a given year is either greater or less than the amount estimated for the purposes of determining the Fee under Clause 12, then any deficit or surplus shall be carried forward into the following year and shown on a detailed invoice provided by the District to PIB.

Exempt Property

17. In no event shall properties that are exempt from taxation by PIB in accordance with the *Penticton Indian Band Property Taxation Law, 2021* be included or deemed to be included for calculation of any requisition for District Services.

Term

18. The term of this Agreement shall be for five (5) years from the 1st day of January 2024 to the 31st day of December 2028, unless terminated in accordance with this Agreement, and subject to Clause **Error! Reference source not found.**
19. The Parties shall meet to review the terms and conditions of this Agreement six (6) months prior to the expiry of the Term and may agree in writing to extend the Term.
20. Notwithstanding any other remedy available at law or equity, either Party may terminate this Agreement for default or breach by the other Party if written notice of the default is provided to the defaulting Party and such default is not remedied within 60 days of the receipt of notice.

Discontinuance of Service

21. Upon termination of this Agreement, the District may, at its opinion, terminate the provision of any or all of the District Services without further notice.
22. Within thirty (30) days of the termination of this Agreement, the District shall provide PIB with a statement of the pro-rated amount of the Fee up to the date of termination. If there is an underpayment for the applicable year, the District shall invoice PIB for the amount owed and PIB will pay the invoice within thirty (30) days of its receipt. If there is an over payment for the applicable year, the District will refund PIB the full amount of the overpayment within thirty (30) days of termination.
23. Any dispute between PIB and the District in respect of the determination of the amount owed by PIB or refundable to PIB shall be resolved in accordance with the Dispute Resolution process set out in this Agreement notwithstanding the prior termination of this Agreement.

Notice

24. Wherever in this Agreement it is required or permitted that notice, demand or other communications be given or served by either Party to the other, such notice or demand shall be given and served in writing and forwarded by registered mail, prepaid courier or confirmed facsimile, addressed as follows:
- a) in case of communication to the District:
101 Martin Street
Penticton, B.C.
V2A 5J9
- email: jzaffino@rdos.bc.ca

Chief Administrative Officer

- b) in the case of communication to PIB:
841 Westhills Drive
Penticton, B.C.
V2A 0E8

email: taxadministrator@pib.ca
Attention: Tax Administrator

Assignment

25. This Agreement shall not be assigned by either Party, except with the prior written consent of the other Party, which may be arbitrarily withheld.
26. Without limiting Clause 25, the District shall obtain from any proposed assignee of the whole or any part of this Agreement a written agreement, in a form approved by PIB, whereby the assignee covenants and agrees to perform all of the covenants and agreements to be observed or performed by the District under the Agreement.

Dispute Resolution

27. Unless this Agreement provides otherwise, any disagreement between PIB and the District that arises out of this Agreement or in regard to the interpretation of this Agreement shall be resolved pursuant to this Article and where such a disagreement arises either Party may give written notice to the other that it wishes to resolve the disagreement through the process set out in this Article (the "Dispute Resolution Notice") which notice shall be set out:
- a) The matter which the issuer wishes to have resolved pursuant to this Article; and
 - b) The position of the issuer in respect of the matter which is the subject of the dispute.
28. Upon receipt of a Dispute Resolution Notice by either PIB or the District, the Band Manager of PIB, the Chief Administrative Officer of the District, the Chairperson of the District and the Chief of PIB, or an appointee of PIB Council, shall meet together in an attempt to settle the disagreement through negotiation and if the disagreement cannot be so settled and ratified by the Council of PIB and the Board of the District within thirty (30) working days of receipt of the Dispute Resolution Notice by the Party to whom it was issued, then the same shall be submitted to an Arbitrator agreed upon between PIB and the District whose decision shall be handed down within twenty (20) working days of appointment.
29. Should PIB and the District fail to resolve the dispute through negotiations held pursuant to Clause 28 and fail to agree on an Arbitrator within fifteen (15) working days of receipt of the Dispute Resolution Notice by the Party to whom it was issued, a sole Arbitrator may be appointed by a Judge of the Supreme Court of British Columbia upon application by either PIB or the District, provided that the applicant shall give to the other Party five (5) working days notice of its application for such an appointment.

30. The decision of an Arbitrator appointed pursuant to this Agreement will be considered final and binding upon the Parties.
31. The cost of any arbitration shall be borne equally by the District and PIB unless otherwise ordered by the Arbitrator.
32. If upon a reference to it, an Arbitrator refuses jurisdiction or otherwise fails to determine the question, then the question may be referred to either Party, to any court of competent jurisdiction and the Parties may exercise any other right or remedy they may have under this Agreement or otherwise.

Indemnity

33. The District shall indemnify and save harmless PIB from and against all claims, demands, losses, costs, damages, actions, suits, proceedings, fines or assessments by whoever made, brought or prosecuted and in any manner based upon, arising out of, related to, occasioned by, or attributed to the breach of any provision of this Agreement to be performed by the District, its officials, servants employees, agents and contractors. This condition shall survive the termination of this Agreement.
34. PIB shall indemnify and save harmless the District from and against all claims, demands, losses, costs, damages, actions, suits, proceedings or fines or assessments by whoever made, brought or prosecuted and in any manner based upon, arising out of, occasioned by, or attributed to, the breach of any provision of this Agreement to be performed by PIB and the officials, servants, employees, members, agents and contractors of PIB. This condition shall survive the termination of this Agreement.
35. The District shall, during the Term of this Agreement, at its sole cost and expense, maintain comprehensive general liability insurance against claims for personal injury, death, or property damage occurring on, off, in or about the Reserves, arising out of or resulting from negligence of the District and the officials, servants, employees, members, agents and contractors of the District the provision of services to be provided by the District pursuant to this Agreement; such insurance to afford protection to the minimum limit of FIVE MILLION (\$5,000,000.00) DOLLARS or to such limit as may be agreed upon by the Parties in writing.
36. PIB Council, and the officers, officials, servants, employees, agents and contractors of PIB shall be added by the District to its comprehensive general liability insurance policy required to be maintained under Clause 35 as Additional Insureds with respect to the liability of PIB arising out of the provision of the District Services by the District.

Amendment

37. No change or modification of this Agreement is valid unless it is in writing and signed by PIB and the District.

Interpretation

38. Nothing contained or implied herein shall prejudice or affect the rights and powers of the District or PIB in the exercise of their functions under any public or private statutes,

bylaws, orders, ordinances, rules and regulations of every federal, provincial, municipal or Band authority and agency by law constituted and the Parties shall not commit nor suffer any breach thereof to be committed.

39. This Agreement shall not be construed so as to create any greater standard of care or liability on the part of the District in respect of the supplying of District Services to the PIB Lands than that which applies to the supply of such services generally within the Regional District of Okanagan Similkameen.
40. Nothing in this Agreement shall be interpreted as creating an agency, partnership or joint venture-ship between the District and PIB.
41. Time shall be of the essence of this Agreement.
42. In the event that any provision of this Agreement or any part thereof is invalid, illegal, or unenforceable, the remainder shall be construed as if the invalid provisions or part thereof had been deleted from this Agreement.
43. Headings are inserted in this Agreement for convenience only and shall not be construed as affecting the meaning of the Agreement.
44. No waiver of any term or condition of this Agreement by any Party hereto shall be effective unless it is in writing and no waiver or breach even if in writing shall be construed as a waiver of any future breach.
45. Wherever the singular or masculine is used herein the same shall be construed as meaning the plural or feminine or body politic or corporate where the context or the Parties hereto so require.
46. Each Party warrants and represents that it has full legal capacity and authority to enter into this Agreement and that this Agreement has been executed by the proper signing authorities for the Party after all acts legally required to authorize the Party to enter into this Agreement have been completed.
47. This Agreement shall enure to the benefit of and be binding upon the Parties hereto and upon their respective successors and assigns.
48. This Agreement may be executed in one or more counterparts, each of which is considered to be an original, but all of which together constitute one and the same document.

Chief Administrative Officer

Schedule A

District Service: General Government Services to Penticton Indian PIB Lands

Service Agreement Calculation:

Net value of Taxable <u>Properties on PIB Lands</u>	X	District Service Annual	=	Cost
Net value of Taxable Properties on PIB Lands and net taxable values of lands and improvements total for RDOS and Municipal areas within the applicable service area		Requisition		

RDOS Department: Protective Services & Development & Infrastructure Services

Applicable RDOS Bylaws:

RDOS Bylaw 1899,1999 – Establishment Bylaw Solid Waste Management Plan
RDOS Bylaw 2375, 2006 – Establishment Bylaw Emergency Planning
RDOS Letters Patent – General Government Services

Mandate:

To provide local government services related to solid waste and emergency planning.

Taxation Allotment on PIB Lands:

Applicable to all Taxable Properties on PIB Lands

Schedule A-1

REGIONAL DISTRICT OKANAGAN-SIMILKAMEEN
2024 Budget Comparative Requisition

<u>Page</u>	<u>Dept #</u>		<u>2024</u>	<u>2023</u>	<u>NET</u> <u>CHANGE</u>	<u>%</u> <u>CHANGE</u>
		<u>PENTICTON INDIAN BAND</u>				
		<u>Participating Directors determine budget by weighted vote</u>				
1	0100	GENERAL GOVERNMENT	\$ -	\$ 14,596	\$ (14,596)	
17	0400	911 EMERGENCY CALL SYSTEM Improvements Only	-	20,049	(20,049)	
18	0410	EMERGENCY PLANNING	-	6,584	(6,584)	
76	4300	SOLID WASTE MANAGEMENT	-	5,036	(5,036)	
TOTAL			\$ -	\$ 46,265	\$ (46,265)	-100.00%
Average Res Tax Rate/\$1000			#DIV/0!	\$ 0.06826	#DIV/0!	
Average Res Taxes per Propert			#DIV/0!	\$ 45.61	#DIV/0!	#DIV/0!

Schedule B

District Service: Campbell Mountain Sanitary Landfill

Currently Campbell Mountain Sanitary Landfill is funded only by user fees. If it ever becomes necessary to increase funding through taxation, the District will provide PIB with one year's notice and all participants will be taxed using the service agreement formula.

Service Agreement Calculation:

$$\begin{array}{l} \text{Net value of Taxable} \\ \text{Properties on PIB Lands} \end{array} \quad \times \quad \begin{array}{l} \text{District Service Annual} \\ \text{Requisition} \end{array} = \text{Cost}$$

Net value of Taxable
Properties on PIB Lands
and net taxable values of lands and
improvements total for RDOS and Municipal areas
within the applicable service area

Department: Public Works

Applicable RDOS Bylaws:

RDOS Bylaw 1104.01, 2005 – Establishment Bylaw

RDOS Bylaw 2925, 2021 RDOS Administered Landfills Regulatory Bylaw

Mandate:

To provide Sanitary Landfill services for the City of Penticton, Village of Keremeos, Electoral Areas 'B', 'D', 'E' and 'G' and a portion of Electoral Area 'F' defined by the Establishment Bylaw comprising the communities of West Bench and Husula Highlands. To provide Sanitary Landfill services for all PIB Lands of the Penticton Indian Band.

Taxation Allotment on PIB Lands:

Applicable to all Taxable Properties on PIB Lands

Schedule C

District Service: 911 Emergency Services

Service Agreement Calculation:

Net value of
Taxable Properties
on PIB - Improvements Only _____ X (District Service Annual
Requisition – Other Revenue) = Cost

Net value of Taxable Properties on
PIB Lands – Improvements only
and Net taxable values of Improvements only
total for all RDOS and Municipal
areas within RDOS boundaries

Department: 911 Emergency Services

Applicable RDOS Bylaws:

RDOS Bylaw 1095, 1989 – Establishment Bylaw

Mandate:

To fund 911 Emergency Telephone services for all Municipalities and Rural Areas within the boundaries of the RDOS. To fund 911 Emergency Telephone services for all PIB Lands of the Penticton Indian Band. To fund 911 Emergency Telephone service for other areas not limited to those lands administered by the Osoyoos Indian Band, Lower Similkameen Indian Band and Upper Similkameen Indian Band.

Taxation Allotment on PIB Lands:

Applicable to all Taxable (improvements only) Properties on PIB Lands