

# Memorandum of Understanding

## For the Provision of Wastewater Recovery Facilities and Services

BETWEEN: **REGIONAL DISTRICT of NORTH OKANAGAN (“RDNO”)**

Of the first part

AND: **TOWNSHIP of SPALLUMCHEEN (“TOS”)**

Of the second Part

AND: **OKANAGAN INDIAN BAND (“OKIB”)**

Of the Third Part

Collectively “THE PARTIES”

PARTY means an individual party to the Memorandum of Understanding: RDNO, TOS or OKIB individually.

JURISDICTION refers, as the context warrants, to the land areas within the boundaries of each party, or areas of responsibility for each party.

### 1. Background

The Regional District of North Okanagan, the Township of Spallumcheen, and the Okanagan Indian Band signed a Memorandum of Understanding on August 18, 2015 that outlined the intent of the three parties to collaborate on the development of a Master Wastewater Recovery Plan. The parties have now agreed to proceed with implementing the construction, operations and maintenance of a Wastewater Recovery System.

### 2. Ownership of Works

#### General

Ownership of works is divided into two categories: Common Works and Attributable Works.

- Common Works are held jointly by all paying partners. Initially, Common Works will be held jointly by TOS and RDNO. However, if OKIB elects to participate by paying 1/3<sup>rd</sup> of Common Works cost net of grants, OKIB shall receive 1/3<sup>rd</sup> ownership of Common Works.
- Attributable Works are owned separately by each individual jurisdiction: TOS, RDNO, and OKIB.

## **Common Works**

The Common Works include:

- The Wastewater Recovery Plant;
- The lines from the Wastewater Recovery Plant to the Storage Ponds;
- The Storage Ponds;
- The Supply Lines from the Storage Ponds to irrigation in fields, and lines to Swan Lake; and
- Railway and Highway crossings and short stubs of major collection system trunks leading into the Wastewater Recovery Plant.

## **Payment for Common Works**

Each party will pay an amount proportional to the benefit received from the Common Works.

Only RDNO and TOS will be initially connecting to the Common Works. RDNO will pay 50% of the net costs of the Common Works after application of the grant funds received for the Common Works, and TOS will pay 50% of the net costs of the Common Works after application of the grant funds received for the Common Works. The RDNO and TOS will pay their costs at the time of construction of the Common Works.

If a party contributes additional assets to the Common Works, such as a parcel of land, the value of the asset will be accounted for as contribution to the portion of the total funded by that party.

OKIB does not plan to initially connect to the Common Works, but wishes to maintain the option to connect to the Common Works at a later date. When OKIB joins, it will pay 1/3<sup>rd</sup> of the net cost of the Common Works, after application of the grant funds that had been received for the Common Works. OKIB will pay 50% of their net costs to TOS, and 50% of their net costs to RDNO. OKIB will pay their costs at the time of connection to the Common Works.

## **Attributable Works**

The Attributable Works include:

- Wastewater collection lines that collect and convey wastewater in one jurisdiction; and
- Lift stations, pump stations, attenuation tanks, and force mains that serve to convey wastewater in one jurisdiction.

The Attributable Works are owned by the individual jurisdiction within which the works are located.

If Attributable Works, such as a collection line or trunk line, extends from one jurisdiction through another jurisdiction, the option exists for the two parties to form an agreement regarding sharing capital costs, operations, and maintenance of that line, without necessarily involving the remaining party.

### **3. Decision Making Authority**

#### **Common Works**

##### Swan Lake Wastewater Recovery Joint Stakeholders Committee

TOS and RDNO will appoint a joint stakeholders committee, the Swan Lake Wastewater Recovery Stakeholders Committee (SLWRSC). The SLWRSC will consist of elected representatives from each jurisdiction:

- Township of Spallumcheen
- Electoral Area B
- Electoral Area C
- Okanagan Indian Band

The Committee makes recommendations to TOS Council and RDNO Board.

OKIB does not wish to initially connect to the Common Works, but wishes to maintain the option to connect at a later date, and OKIB will have a non-voting representative on the SLWRSC to keep informed about the project until they join the system. Once OKIB joins the system, OKIB will have a voting member and the Committee will also make recommendations to OKIB Chief and Council.

Items to be considered for inclusion in the bylaw establishing the Committee are as follows:

- definitions;
- composition of the delegated body;
- method of appointment;
- limitations on delegation;
- no further delegation rule, as laid out in the statute;
- service or services to be administered;
- administration and operational responsibilities of the delegated body;
- voting rules or how decisions are to be made;
- procedures or the applicability of Council procedures bylaw or committee procedures;
- communications to Council and Board;
- reporting requirements of the Committee;
- operating policies;
- reconsideration of decisions

The Committee will provide one vote for each member, and provide each member with Veto Power, allowing each member to veto a decision if they wish. This will provide each party, particularly OKIB, which does not have a formal seat at the Regional District Board or on the Township Council, to have a significant voice providing them with veto power once they join the system, ensuring that no items go to Council or the Board without their approval.

The following responsibilities will be considered for the SLWRSC:

- review and make recommendations on user and regulatory policies,
- review and make recommendations on fiscal policies,

- review and make recommendations on the annual budget,
- review and make recommendations on proposed changes to fees, levies, or charges,
- review and make recommendations on the composition and preparation of reports required by regulatory agencies;
- review and make recommendations on inter-jurisdictional items;
- communicate the Committee’s progress and direction.

Swan Lake Wastewater Recovery Technical Committee

The SLWRSC will have a separate staff Swan Lake Wastewater Recovery Technical Committee (SLWRTC) that reports to the SLWRSC. The SLWRSC will appoint at least one staff member from RDNO, TOS, and OKIB to the SLWRTC. The Swan Lake Wastewater Recovery Technical Committee will address the following items:

- Provide options and recommendations to the SLWRSC on technical items, particularly the items set out below:
  - Identify Budgets in detail;
  - Address Operational details;
  - Address Capital project details;
  - Address Cost recovery mechanics and details;
  - Address reporting requirements of regulatory agencies in detail;
  - Other items that the SLWRSC may request of the SLWRTC.

OKIB does not wish to initially connect to the Common Works, but wishes to maintain the option to connect later, and OKIB will have an observing representative on the Swan Lake Wastewater Recovery Technical Committee to keep informed about the project until they join the system.

**Attributable Works**

For Attributable Works (the individual wastewater collection works), the individual jurisdictions will make decisions:

- Township Council for wastewater collection works in the TOS.
- The Regional Board for wastewater collection works in Electoral Areas B and C, based on decision making and voting procedures for Electoral Area items.
- Okanagan Indian Band Chief and Council for wastewater collection works in the OKIB.

**4. Operations and Management of the System**

**Common Works**

While the Common Works are the joint responsibility of all paying partners, the intent is that the RDNO will operate and maintain the Common Works.

The RDNO intends to establish and staff a department to operate and maintain the Common Works.

## **Attributable Works**

Attributable Works, including Individual wastewater collection works, will be the responsibility of each separate Jurisdiction.

Each jurisdiction can decide if it wants to operate and maintain the system with their own staff, contract with the RDNO, or contract with another entity.

If the OKIB or TOS, wishes to enter an agreement with the RDNO for operation of their collection system, the RDNO will form a separate agreement with each party.

If an agreement is established between OKIB or TOS and RDNO, the agreement will consider generally addressing the following topics:

- Inspection and connection fee requirements;
- Operations and Maintenance by the RDNO;
- Operational and emergency assistance by OKIB or TOS staff;
- Reporting and monitoring requirements;
- Insurance;
- Granting of rights for the RDNO to occupy and use property or interests that OKIB or TOS has in the wastewater recovery system;
- Access by the RDNO;
- Length of term of agreement;
- Dispute resolution;
- Form of notice.

## **5. Allocation of Capacity of Initial Plant**

The capacity of the Common Works in the initial plant are allocated as follows:

- 1/3<sup>rd</sup> allocated to RDNO;
- 1/3<sup>rd</sup> allocated to TOS;
- 1/3<sup>rd</sup> allocated to OKIB.

While OKIB does not wish to initially connect to the Common Works, but wishes to maintain the option to connect at a later date, the parties agree to reserve 1/3<sup>rd</sup> of the capacity in the initial plant for OKIB. Changes in capacity allocation of the initial plant, and the consequential changes in investment level by each party, can be negotiated and shall be agreed upon by all three parties. The capacity utilized by each party will be determined by the sewage flows measured as originating from each party. If one party requires additional capacity beyond the amount initially allocated to them, the additional capacity can be negotiated and shall be agreed upon by all three parties.

## **6. Allocation of Capacity Beyond Initial Plant**

The capacity associated with future expansion of the initial plant will not be allocated to the parties. As growth occurs in each jurisdiction, Development Cost Charges or Connection Charges will be paid by owners who connect or develop, and those charges will be placed in a fund for future plant expansion. The jurisdictional location of the growth will be irrelevant because regardless of where the growth occurs, funds will be placed in the reserve fund to pay for the expansion. The funds required for expansion will be available when expansion is required.

## **7. Decisions on Plant Expansion**

The SLWRSC will make decisions on the timing and implementation of future plant expansions. The decisions will be made as recommendations to the participating jurisdictions.

## **8. Capital Cost recovery for the Initial Plant**

The capital cost recovery for the initial plant will be determined by each individual party within their jurisdiction. Methods may vary from jurisdiction to jurisdiction.

## **9. Operations and Maintenance Cost Recovery for the Plant**

The Operations and Maintenance costs for the Common Works, which are intended to be operated and maintained by the RDNO, will be administered and charged to the parties by the RDNO based on the wastewater flows from each party to the plant.

The operations and maintenance costs generally include, but are not limited to, the following:

- Operational staff;
- Vehicle costs;
- Administration and billing costs;
- Overhead costs;
- Asset renewal costs;
- Materials, supplies and other consumables;
- Testing and reporting costs; and
- Electrical costs.

A system will be established to account for abnormal climatic conditions such as flooding that results in an increase of the total volume of wastewater flows to the plant from the parties.

The rates established by each jurisdiction to recover the costs allocated to them should have a consistent rate structure across all jurisdictions. The rate charged for a use in one jurisdiction should be the same as the rate charged for the same use in another jurisdiction.

## **10.Recovering Costs Related to Growth**

### **Common Works**

Development Cost Charges will be based on the charges required to pay for expansions to the wastewater recovery plant, such that when the next expansion module is required to the plant, appropriate DCC funds will be set aside in the DCC reserve fund.

The Development Cost Charge will be set by RDNO, collected by each party and passed on to RDNO.

The Development Cost Charge shall be the same charge for all three Jurisdictions.

### **Attributable Works**

Development Cost Charges for expansion to the Attributable Works will be determined by each party for the area within their jurisdiction.

Each jurisdiction can also use other approaches for local works as they wish, which could include, but is not limited to: developer build, latecomer, local service area, phased development agreements, development works agreements, grants, other approaches or combinations of approaches.

## **11.Wastewater Recovery Regulations**

Before connecting to the Common Works each jurisdiction will adopt a bylaw that regulates wastewater. The wastewater recovery system bylaw will generally address items including, but not limited to, the following:

- Definitions;
- Administration;
- Terms and Conditions of Service;
- Inspection and Enforcement;
- Interruption and Discontinuation of Service;
- Service Connections;
- Inspection Chambers and Manholes;
- Requirement to Connect and applications;
- Termination of Service;
- Prohibitions;
- Effluent Limitation Parameters (Wastewater Strength);
- Sampling and Analysis Protocols;
- Pre-Treatment Requirements;
- Volume Control;
- Interception Devices;
- Wastewater Credit Meter Installation Requests;
- Reporting of Accidental Discharges;

- Offences and Penalties.

## **12. Wastewater Recovery Utility and Administration**

Each jurisdiction will establish a wastewater recovery utility to administer the works within its jurisdiction, including but not limited to:

- imposition and collection of wastewater user fees and capital charges;
- operations and maintenance of the system;
- ensuring monitoring and inspection is being undertaken; and
- enforcing the wastewater recovery bylaw.

While each jurisdiction will need to establish a wastewater recovery utility, the utility may contract to another entity to provide administration services. The intent is that TOS and OKIB will contract with RDNO to provide administration services.

## **13. Lands for the Wastewater Recovery Plant and Associated Facilities**

The Wastewater Recovery Plant will be located on Lot A, Section 35, Township 8 ODYD, Plan KAP89234, owned by TOS, as shown in Appendix A.

The Storage Pond and Constructed Wetland will be located on Lot 1, Section 35, Township 8, ODYD, Plan KAP26739, leased from the land owner, as shown in Appendix B.

## **14. Grant Applications**

The parties will work together to secure grants for the construction of the Common Works. The parties will also provide letters of support or other non-financial support to each other for securing grants for the Attributable Works.

The Common Works will not be constructed unless Grants are secured for the project in order to ensure that the costs to the individual property owners fall within the normal range of costs for wastewater recovery in the Okanagan-Shuswap-Thompson area.

## **15. Amendment of Memorandum of Understanding**

This Memorandum of Understanding may be amended upon the agreement of representatives from all three parties.



**16. Signatures**

This Memorandum of Understanding is signed without prejudice.

Dated for Reference this 27<sup>th</sup> day of August, 2018

REGIONAL DISTRICT of NORTH OKANAGAN as represented by

M.A. Monahan L. Penie

TOWNSHIP of SPALLUMCHEEN as represented by

Janece Brown \_\_\_\_\_

OKANAGAN INDIAN BAND as represented by

Byron Harris \_\_\_\_\_



