

VILLAGE OF GOLD RIVER

Bylaw No. 631, 2003

A bylaw to authorize the entering into a
Municipal service agreement with the
Mowachaht/Muchalaht First Nations.

WHEREAS pursuant to Section 176 (1) (b) (i) of the *Local Government Act* the Council of the Village of Gold River deems it necessary to enter into a service agreement with the Mowachaht/Muchalaht First Nations;

NOW THEREFORE the Municipal Council in open meeting assembled, enacts as follows:

1. This bylaw shall be cited for all purposes as the “Village of Gold River Mowachaht/Muchalaht First Nations Sewer Services Agreement Authorization Bylaw No. 631, 2003”.
2. The Municipal Council hereby authorizes the entering into a service agreement with the Mowachaht/Muchalaht First Nations on the terms and conditions of the agreement attached to this bylaw and referred to as Schedule “A”.
3. Village of Gold River First Nations Sewer Services Agreement Bylaw No. 552, 1996 is hereby repealed.

READ A FIRST AND SECOND TIME THIS	21 ST	DAY OF	OCTOBER	2002.
READ A THIRD TIME THIS	16 TH	DAY OF	JUNE	2003.
ADOPTED THIS	7 TH	DAY OF	JULY	2003.

David Lewis

MAYOR

L. Plourde

CLERK

SEWER SERVICES
AGREEMENT

THIS AGREEMENT made the 1st day of October , 2002

BETWEEN:

**THE CORPORATION OF
THE VILLAGE OF GOLD RIVER**
499 Muchalat Drive, P.O. Box 610
Gold River, B.C., V0P 1G0

(the "Municipality")

AND:

**MOWACHAHT/MUCHALAT FIRST NATIONS
Tsaxana Indian Reserve 18**
P.O. Box 459
Gold River, B.C., V0P 1G0

(the "Band")

WHEREAS:

- A. The Municipality may, by bylaw, under Section 176 of the Local Government Act, enter into an agreement with a First Nation as defined in that Act to provide a municipal service within a Reserve as defined in the Indian Act (Canada);
- B. The Band has requested the Municipality to provide sanitary sewer service for land within their reserve located at Tsaxana, now known as Indian Reserve No. 18;
- C. The Municipality is prepared to offer the services, but only under the terms and conditions hereinafter provided;

NOW THEREFORE, in consideration of their mutual promises herein contained and for other valuable consideration the receipt and sufficiency of which is hereby acknowledged, **THE PARTIES AGREE AS FOLLOWS:**

DEFINITIONS:

1. In this Agreement:

- ‘Band’ means the Mowachaht/Muchalaht First Nations located at Tsaxana Indian Reserve No. 18.
- ‘Band Council’ means the Council of the Mowachaht/Muchalaht First Nations.
- ‘Council’ means the Municipal Council of the Village of Gold River.
- ‘Band Lands’ means the lands set apart in the Order in Council P.C. 1996-170 dated February 13, 1996 as Tsaxana Indian Reserve No. 18 for the use and benefit of the Mowachaht/Muchalaht Band.
- ‘Band System’ includes all pipes, valves, sanitary sewer collection lines, pumping stations and equipment and the like on the Band Lands and extending to the point of the connection with the Municipal System located within the Municipality’s boundaries.
- ‘First Nations’ means the Mowachaht/Muchalaht First Nations, also known as the Mowachaht/Muchalaht Band of Indians described in Order in Council P.C. 1996-170 dated February 13, 1996 setting apart the Lands as a reserve.
- ‘Municipality’ means the Corporation of the Village of Gold River.
- ‘Municipal System’ means the sanitary sewer system owned or controlled by the Municipality under the *Local Government Act* and located within the Municipality’s boundaries and includes all pipes, valves, sanitary sewer collection lines, pumping stations and equipment and the like from the individual service connections up to and including the sewer outfall diffusers that facilitate the collection of sanitary sewerage.
- ‘Toxic Materials’ means sulphur, carbon, calcium carbide or other flammable solids, calcium chlorate, sodium nitrate, ammonium nitrate, peroxides or other oxidizers, pesticides, herbicides, fumigants, cyanide or other poisonous materials, acids, caustic soda, bromine, lye, lime, potassium hydroxide or other corrosive materials, or PCB’s, asbestos or any other material or substance that could be considered hazardous or toxic material.
- ‘Trade Waste’ means any gasoline, turpentine, acetone, solvents, naphtha or other flammable or combustible liquid, grease, oil or other lubricant, mud, plaster of paris, clay or other material, fish offal, fat or other congealing materials, sand, dirt, rock or other such material that could be considered trade waste.

PROVISION OF SANITARY SERVICE:

2. The Municipality shall, through the Municipal system, make available to the Band Lands, sanitary sewer service (the "Service") under the terms and conditions of this Agreement.
3. The Service shall be supplied in accordance with the bylaws of general application to the Municipality adopted by the Municipal Council regulating sanitary sewer services and imposing rates and charges for the use of the Service, from time to time during the term of this Agreement.

CONSTRUCTION OF THE SYSTEM:

4. The Band has installed the Band System on the Band Lands and extended it to the point of connection with the Municipal System at the Municipal boundary and the Band shall maintain the Band System to the same standards as the Municipal System is maintained by the Municipality, during the term of this Agreement.
5. The Band shall not extend nor expand the Band System without the written consent of the Municipality and such extension shall be made at the sole cost of the Band and shall in all respects to be constructed to the then current Bylaw standards of the Municipality.

PROTECTION OF SYSTEMS:

6. For the purpose of assuring protection of the Band System and the Municipal System, no person shall erect, place, install or maintain any building, structure or other works on, over or under any portion of the Band System so that it in any way interferes with or damages or prevents access to or is likely to cause harm to the Band System or the Municipal System, and the Band shall take all such steps as may be necessary to prevent such interference, harm or loss of access.
7. The Band will not substantially diminish the soil cover over any of the Band System installed on the Band Lands, and in particular, without in any way limiting the generality of the foregoing, will not construct open ditches or drains along or across any of the Band System.

LIMITED USE OF SERVICE:

8. Subject to subsection 9 the Band shall not permit any contractor, builder or any other person to use, for building purposes or otherwise, any sewer connection from the Band System without written permission from the Municipal Public Works Department, which consent shall not be unreasonably withheld.
9. a) The use of the Service is limited to members of the Band and persons renting or leasing from the Band and guests or persons attending to business on the Band Lands;

- b) The use of the Service is limited solely to the use of the lands for residential purposes and residential buildings including the community hall and the health centre, but not for commercial or industrial purposes in those or any other buildings without the express written consent of the Municipality which consent shall not be unreasonably withheld;
- c) The Band shall not permit disposal of sanitary sewage from another source or vehicle into the Band System, without the written permission of the Municipal Public Works Department.

POINTS OF SUPPLY:

- 10. The Service shall be made available by the Municipality through the Municipal System from the Band System at the point of connection on the boundary of the Municipality.
- 11. Any new connection made to the Band System shall be made according to the procedures, standards and specification prescribed by the then current sewer bylaws of the Municipality and any applicable fees and charges shall be paid by the Band to the Municipality.
- 12. Prior to the Municipality accepting any sewage from the Band System, the Band must show to the satisfaction of the Municipal Public Works Department that on-site plumbing conforms to the specifications prescribed in the then current bylaws of the Municipality.

REPAIRS AND MAINTENANCE:

- 13. The Municipality shall arrange for and provide any and all incidental and necessary repairs and maintenance of the Band System with the exception of that portion referred to in section 15 and shall do so with the same diligence and timeliness applied to the Municipal System, including control over and supervision of the repairs and maintenance.
- 14. The Municipality shall ensure that the repairs and maintenance referred to in paragraph 13 meet Municipal specifications and the Municipality shall provide written assurance if the Band orally or in writing requests assurance.
- 15. The Municipality shall not be responsible for the maintenance and repair of the service connection and lines installed by the Band from the curb stop connections to any non-residential buildings, residential homes and other buildings on the Band Lands to which the mains are to be connected.
- 16. Upon receipt of an invoice from the Municipality, the Band shall reimburse the Municipality for any and all reasonable and necessary expenses incurred for materials, equipment and labour, in relation to the repairs and maintenance of the Band System under sections 13, 14 and 15.

17. If the Municipality of necessity makes repairs to connecting lines not usually required under section 15, the Band shall reimburse the Municipality for the cost of repairs in the same manner as section 16.
18.
 - a) The Band shall promptly notify the Municipality orally or in writing of any interruption of or cessation in any part of the Service or of any breakdown requiring repairs and maintenance.
 - b) Upon receiving notice, the Municipality shall restore the Service or initiate the required repairs and maintenance of the Service in as timely and diligent a manner as it would do so in relation to the Municipal System.
19. The repairs and maintenance referred to in section 13 may be attended to by independent contractors retained by the Band if:
 - a) the Band demonstrates that this arrangement is more cost effective for the Band.
 - b) consent for the use of independent contractors and to the choice of the independent contractors is first obtained from the Municipal Administrator.
 - c) the Band arranges for supervision and inspection by the Municipality of work done by the independent contractors to ensure that the work is done to Municipal specifications and standards as if under section 4.

ACCESS:

20. The Municipal Administrator and Municipal Public Works Department employees designated by him are authorized and empowered to enter on the Band Lands to ascertain whether and ensure that all the requirements of this Agreement are carried out.

RESTRICTIONS:

21. This Agreement does not permit:
 - a) the connection or discharge of surface, storm or ground water into the Band System or the Municipal System;
 - b) the connection, either directly or indirectly, of roof leaders, foundation drains, field drains, sumps or any other collector storm, surface or ground water to the Band System or the Municipal System;
 - c) connections that allow sanitary sewage to be discharged from any premises on the Band Lands into a storm drain or ditch;
 - d) Toxic Material or Trade Waste to be discharged into the Band System or any part of it, nor into a storm drain or ditch;

- e) steam exhaust, blow-off or drip from drip-pipe or any heated water to be discharged directly into any sanitary sewers, storm drain, house drain, soil pipe, waste pipe or rain water conductor on the Band Lands or forming part of the Municipal System, until the temperature has been reduced to a maximum of 43 degrees Celsius.

RATES AND CHARGES:

- 22. The Band shall pay to the Municipality all rates, rents or charges prescribed in the Municipality's Sanitary Sewer Utility Rates and Connection Regulation Bylaw in effect at any given time.
- 23.
 - a) The Municipality shall invoice the Band quarterly for the rates, rents or charges due to the Municipality for the Service and the Band shall pay the Municipality such monies within thirty (30) days of the receipt of the billing from the Municipality.
 - b) The Band shall be deemed to receive the invoice two (2) days after it is mailed by the Municipality.
- 24.
 - a) Should the Band fail to make any payment required to be made pursuant to paragraph 23 (a) on the required dates, interest calculated from the due date at the rate of prime as set by the Municipality's bankers plus 1% per annum shall be added to the amount owing until the date of actual payment.
 - b) If payment under any part of this Agreement is in arrears for more than six (6) months, the Municipality may disconnect forthwith the Band System from the Municipal System and terminate the Service and this Agreement, but the Band shall remain liable to the Municipality for payment of all arrears under this Agreement until paid in full.

FRONTAGE TAX AND CAPITAL COSTS:

- 25. The Municipality shall invoice annually and the Band shall pay to the Municipality annually, sewer frontage taxes and/or parcel taxes at the same rate as applied within the Municipality if levied and imposed pursuant to one or more bylaws adopted by the Municipality after this agreement is executed by the parties.
- 26. The cost of future major capital works required within the Municipal System, including sewage collection, sewage treatment or piping improvements, which could be related to the collection of sanitary sewage from the Band Lands shall be borne and paid by the Band in the same manner as all similar users of the Municipal System.
- 27. The Municipality shall invoice the Band for the sewer frontage taxes and payments for capital works due to the Municipality under this section and the Band shall pay to the Municipality such monies in the same manner as municipal taxes, that is, the invoice

shall be due and payable on or by July 2nd in the year rendered, after which time a 10% penalty will be assessed and added to any unpaid amount.

INTERPRETATION:

- 28. All references to each party herein are deemed to be references to the heirs, successors, permitted assigns, servants, agents and officials of the respective parties hereto whenever the context so allows.
- 29. This Agreement shall enure to the benefit of and be binding on the parties hereto.
- 30. Whenever the singular or masculine is used in this Agreement, it shall be deemed to include the plural, the feminine or the body politic or corporate as the context requires.
- 31. Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default by that party.
- 32. The rights, powers and remedies of the Municipality provided in this Agreement are cumulative and not exclusive of any right, power or remedy that may be available to the Municipality at law or in equity.
- 33. Section headings are included for convenience only and do not form part of the Agreement and shall not be used in the construction or interpretation of this Agreement.

ENTIRE AGREEMENT:

- 34. The whole Agreement between parties hereto is set forth in this Agreement and no representations, warranties or conditions, express or implied, have been made other than those expressed.
- 35. This Agreement may be amended from time to time upon terms and conditions mutually acceptable to the Band and the Municipality only if the amendments are in writing and executed by the parties hereto.

TERMINATION AND ASSIGNMENT:

- 36. Subject to section 24 (b), this Agreement in whole or in part may be terminated upon either party giving two years written notice to the other at their respective addresses, and no new residential, commercial or industrial premises shall be connected to the Band System during the two year notice period.
- 37. This Agreement may be terminated and service discontinued by the Municipality upon one month's notice to the Band if any breach of section 21 (a) to (e) occurs.
- 38. This Agreement may not be assigned by the Band without the written consent of the Municipality, which consent may be withheld at the discretion of the Municipal Council.

NOTICE:

39. Notice given under this Agreement shall be deemed to be delivered when:
- a) served personally, on the date of service; or
 - b) mailed by prepaid registered mail to the address listed for that party on the first page of this Agreement or other address of which that party has in writing notified the other, on the earlier of the date received or the fifth business day following date of mailing at any Canada Post Office, but in the event of interruption of mail service, notice shall be deemed to be delivered only when actually received by the party to whom it is addressed.
40. The Administrator of each party shall be considered an agent by both parties to this Agreement for the purpose of service of notices.

RIGHTS RESERVED:

41. Nothing contained in or implied by this Agreement shall in any way prejudice or affect the rights and powers of the Municipality in the exercise of its function under any public and private statutes, bylaws, orders and regulations.
42. This Agreement for municipal services shall not be construed as placing any greater obligation, responsibility or liability on the Municipality in respect to the Band or the Band Lands over and above the obligation, responsibility or liability which exists in law between the Municipality and any property owner in the Municipality.

INDEMNITY:

43. The Band hereby releases and forever discharges, indemnifies and saves harmless the Municipality from and against any and all manner of actions, causes of action, suits, claims, costs, losses, demands and liability whatsoever at law or in equity which the Band or any other party may now or at any time hereafter have against the Municipality in connection with the Band Lands and the provision of the services to the Band Lands under this Agreement, except where caused by the negligence of the Municipality.

TERM OF AGREEMENT:

44. This Agreement shall be for the term of 5 years from the 1st day of October 2002 and, subject to section 45, is renewable automatically for successive five year terms unless terminated sooner.

NOTICE OF RENEWAL

45. Before any renewal under section 44 may take effect, written notice of intention to renew or to renegotiate any one or more of the terms and conditions of this Agreement must be

given by either party to the other no later than 1 year prior to the expiration of the initial Term or any renewal of the Term.

46. The Municipality shall be under no obligation to renew this Agreement upon its termination by effluxion of time or for any other reason, nor shall it be obliged to enter into a new agreement to provide the Service or any other services to the Band Lands or the Band.

IN WITNESS WHEREOF the Municipality and the Band have on this day set their hands and seals.

SIGNED SEALED AND DELIVERED by
the **Mowachaht/Muchalaht First Nations
Band Council** pursuant to the consent of the
majority of the Councillors of the Band
present at a Council Meeting duly convened
at which authority was given for the
Mowachaht/Muchalaht First Nations to
enter into this Agreement.

)	_____
)	Chief
)	_____
)	Councillor
)	_____
)	Councillor
)	_____
)	Councillor
)	_____
)	Councillor
)	_____
)	Councillor
)	_____
)	Councillor
)	_____
)	Councillor
)	_____
)	Councillor
)	_____
)	Councillor
)	_____
)	Councillor
)	_____
)	Councillor

_____)
Witness

_____)
Address

_____)
Occupation

The Corporate Seal of **Village of Gold River**
was hereto affixed in the presence of:

_____)
Mayor

_____)
Clerk

(seal)