

CITY OF KELOWNA

BYLAW NO. 10052

INTERMUNICIPAL SERVICE AND REGULATION BYLAW, 2008

A bylaw to establish an intermunicipal services scheme.

WHEREAS the Intermunicipal Participants, for the benefit of the inhabitants of the Okanagan, have agreed to establish an intermunicipal scheme in relation to a number of matters for which they have authority under the *Community Charter* or the *Local Government Act*;

AND WHEREAS the *Community Charter* provides that two or more municipalities may, by bylaw adopted by the council of each participating municipality, establish an intermunicipal scheme in relation to one or more matters for which they have authority under the *Community Charter* or the *Local Government Act*;

AND WHEREAS the Intermunicipal Participants welcome other municipalities having a community of interest to join the intermunicipal scheme;

AND WHEREAS the nature of some municipal services is such that the interests of the inhabitants of the region are best served without reference to municipal boundaries;

NOW THEREFORE the Council of the City of Kelowna enacts as follows:

1.0 Citation

1.1 This bylaw may be cited as "Intermunicipal Service Bylaw No. 10052, 2008."

2.0 Definitions and Interpretation

2.1 In this bylaw

(a) "Intermunicipal Participant" means the City of Kelowna, City of Penticton, City of Vernon, the District of Westside;

(b) "Service" means one or more of the matters listed in section 3.

3.0 Services

3.1 The matters in respect of which the intermunicipal scheme is established are:

- (a) affordable housing;
- (b) climate action;
- (c) harmonization of regulations;
- (d) sustainable development;
- (e) transit.

4.0 Regulatory Bylaws

- 4.1 A bylaw of an Intermunicipal Participant applies only within that Participant's boundaries.

5.0 Administration

- 5.1 There is established an Intermunicipal Advisory Board comprising the Mayors and the Chief Administrative Officers of each of the Intermunicipal Participants.
- 5.2 On the advice of the Intermunicipal Service Advisory Board, the Councils of the Intermunicipal Participants will consider delegating administrative authority to existing officers and employees of the Intermunicipal Participants to provide the Services and enforce the regulatory bylaws enacted in relation to the Services, subject to the Service Agreement attached as Schedule A.
- 5.3 The Intermunicipal Advisory Board will
- (a) recommend policy to the Intermunicipal Participants; and
 - (b) administer the Services in accordance with this bylaw, regulatory bylaws enacted in relation to the Services and other applicable enactments.

6.0 Finance

- 6.1 The City hereby enters into and the Mayor and Clerk are authorized to execute the Service Agreement attached as Schedule A to this bylaw.

7.0 Withdrawal

- 7.1 An Intermunicipal Participant may withdraw from a Service by delivering notice in writing prior to the calendar year in respect of which the withdrawing municipality no longer wishes to participate in the intermunicipal scheme.

Read a first, second and third time by the Municipal Council of the City of Kelowna this

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

SCHEDULE A
INTERMUNICIPAL SERVICES
AGREEMENT

THIS AGREEMENT dated for reference the ____ day of _____, 2008

AMONG:

CITY OF VERNON, a municipal corporation incorporated under the *Local Government Act*, 3400 - 30th Street, Vernon BC V1T 5E6

("Vernon")

AND:

CITY OF KELOWNA, a municipal corporation incorporated under the *Local Government Act*, 1435 Water Street, Kelowna BC V1Y 1J4

("Kelowna")

AND:

DISTRICT OF WESTSIDE, a municipal corporation incorporated under the *Local Government Act*, #4 - 2466 Main Street, Westbank BC V4T 1Z1

("Westside")

AND:

CITY OF PENTICTON, a municipal corporation incorporated under the *Local Government Act*, # 171 Main Street, Penticton BC V2A 5A9

("Penticton")

WHEREAS:

- A. Section 14 of the *Community Charter* provides that two or more municipalities may establish an intermunicipal scheme in relation to one or more matters for which they have authority under the *Community Charter* or the *Local Government Act*;
- B. Each of the Parties has enacted a Bylaw under section 14 to establish an intermunicipal scheme in relation to a number of services ("Services") defined in the Bylaw;
- C. Under section 6 of the Bylaw, the municipalities will provide the Services and enforce the regulatory bylaws related to the Services in accordance with this Agreement and under section 10 of the Bylaw a Party may withdraw from a Service in accordance with this Agreement;

THIS AGREEMENT WITNESSES that in consideration of their mutual covenants and agreements, and the payment by each Party of ten (\$10.00) dollars to each of the other Parties, the receipt and sufficiency of which is acknowledged by each of the Parties, the Parties covenant each with the others as follows:

PART 1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Agreement,

- (a) “Bylaw” means the Intermunicipal Service and Regulation Bylaw adopted by each of the Parties as follows:
 - (i) Intermunicipal Municipal Service and Regulation Bylaw No. ____, 2008, adopted by the Council of the City of Vernon on the ____ day of ____, 2008;
 - (ii) Intermunicipal Municipal Service and Regulation Bylaw No. ____, 2008, adopted by the Council of the City of Kelowna on the ____ day of ____, 2008;
 - (iii) Intermunicipal Municipal Service and Regulation Bylaw No. ____, 2008, adopted by the Council of the District of Westside on the ____ day of ____, 2008;
 - (iv) Intermunicipal Municipal Service and Regulation Bylaw No. ____, 2008, adopted by the Council of the City of Penticton on the ____ day of ____, 2008;
- (b) “Facility” means a work or structure constituting an asset of the Intermunicipal Service, including appurtenances and related interests in land, and contemplated under this Agreement to be used in relation to the provision of the Services, which Facility is listed from time to time by the Manager as an Intermunicipal Service Asset of the Intermunicipal Service;
- (c) "Intermunicipal Advisory Board" means the board established under Section 5 of the Bylaw;
- (d) "Intermunicipal Service Assets" means all property and assets, present and future, of every nature whatsoever whether real or personal, corporeal or incorporeal, owned or rented by the Parties or possessed or rented on behalf of the Parties, including the Purchased Assets, in each case for the purposes of the Intermunicipal Services as listed on an inventory by the Intermunicipal Advisory Board, whether in the name of any of the Parties or the Intermunicipal Services,;
- (e) "Intermunicipal Services" means any of the Services listed in section 3 of the Bylaw;

- (f) "Intermunicipal Services Borrowing" means indebtedness, liabilities and obligations incurred on account of funds borrowed by or on behalf of the Parties;
- (g) "Intermunicipal Services Costs" means the Operating Costs, Maintenance Costs and the Capital Costs;
- (h) "Manager" means the manager of the Intermunicipal Service;
- (i) "Memorandum of Understanding " means a memorandum made by two or more Parties under section 2.1 (b)(i) that is not legally binding on the signatories;
- (j) "Participating Interest" means the percentage interest of a Party in the Intermunicipal Services Assets and the profits of the Intermunicipal Services, which will be as set out initially in a Service Agreement, and thereafter will be based pro rata on the population of a Party at the end of the year prior to the calendar year in respect of which the "Participating Interest" refers;
- (k) "Party" means Vernon, Kelowna, Westside or Penticton including their respective successors and permitted assigns, and "Parties" means the applicable combination of them;
- (l) "Service Agreement" means an agreement entered into by two or more Parties under Section 2.1 (b)(ii).

Interpretation

1.2 For the purposes of this Agreement, except as otherwise expressly provided or as the context otherwise requires:

- (a) "Agreement" means this Agreement as from time to time supplemented or amended by one or more agreements entered into pursuant to the applicable provisions of this Agreement together with all other attachments to it and reference to a Part or a Section means the corresponding Part or Section of this Agreement;
- (b) the word "including", when following any general term or statement, is not to be construed as limiting the general term or statement to the specific terms or matters set forth or to similar items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement;
- (c) an accounting term not otherwise defined in this Agreement has the meaning assigned to it, and except as otherwise directed in this Agreement, every calculation to be made under this Agreement is to be made in accordance with GAAP;
- (d) except as otherwise expressly provided, all references to currency mean Canadian currency;

- (e) words in the singular include the plural and words importing a corporate entity include individuals and vice-versa;
- (f) reference in this Agreement to a particular numbered paragraph, article or section, or lettered schedule is a reference to the correspondingly numbered paragraph, article, or section, or lettered schedule of this Agreement;
- (g) reference in this Agreement to an enactment is a reference to an enactment as defined in the *Interpretation Act* (British Columbia), and includes a reference to an enactment of British Columbia, Vernon, Kelowna, Westside or Penticton, as applicable;
- (h) reference in this Agreement to an enactment is a reference to that enactment as amended, revised, consolidated or replaced; and
- (i) reference in this Agreement to a party is a reference to a party of this Agreement.

Governing Law

- 1.3 This Agreement will be governed by and interpreted in accordance with the laws of the Province of British Columbia and the laws of Canada.

Headings

- 1.4 The headings given to paragraphs, articles and sections in this Agreement are for convenience of reference only and do not form part of this Agreement and must not be used in the interpretation of this Agreement.

Severance

- 1.5 If any clause or portion of this Agreement is declared or held invalid for any reason, the invalidity does not affect the validity of the remainder of that clause or this Agreement, and the terms and provisions of this Agreement continue to be in force and in effect and are to be construed as if the Agreement had been executed without the invalid portion.

PART 2 INTERMUNICIPAL SERVICES

Formation and Purpose

- 2.1 Subject to the terms and conditions of this Agreement, Vernon, Kelowna, Westside and Penticton have established the Intermunicipal Service in respect of the matters listed in section 3 of the Bylaw, which may be amended from time to time, provided that a Party participates in respect of a particular Intermunicipal Service under this Agreement only to the extent the Party has
- (a) listed the Service as a matter under section 3 of its Bylaw;
 - (b) entered into

- (i) a Memorandum of Understanding, and
- (ii) a Service Agreement in accordance with the Memorandum of Understanding, and
- (c) not withdrawn from the Service.

Intermunicipal Services

- 2.2 On and after the date of this Agreement coming into effect, the Parties , subject to the terms and conditions set out in a Service Agreement, will provide the Intermunicipal Services for the benefit of the residents of these municipalities in the Okanagan.

Nature of Obligations

- 2.3 Unless the Parties otherwise agree, the liabilities and obligations of the Parties under this Agreement, and under a Service Agreement contemplated by this Agreement, will be several to the extent of their respective Participating Interests and not joint or joint and several and all agreements made in relation to the Intermunicipal Services will, to the extent practicable, state the liability of the Parties to be several.

No Partnership

- 2.4 The Parties expressly disclaim any intent to create a partnership with respect to the Intermunicipal Services or the ownership or operation of the Intermunicipal Services Assets, and disclaim any intent to create a partnership or joint venture with respect to the exercise of their rights under this Agreement, the administration of the Intermunicipal Services Assets or any other matter relating to this Agreement. Except as provided in a Service Agreement, none of the Parties will have any authority, actual or implied, to act for the other as agent or otherwise or to bind the others, without the prior written consent of the others.

PART 3 AGREEMENTS

Completion of Agreements

- 3.1 Subject to any approval of the Councils of Vernon, Kelowna, Westside and Penticton required by statute, each of the parties will cooperate fully and take all reasonable steps to negotiate, finalize and execute all agreements, instruments and other documents contemplated by or related to this Agreement and a Service Agreement.

Memorandum of Understanding

- 3.2 Prior to entering into a Service Agreement, the Parties proposing to enter into the Service Agreement will execute a Memorandum of Understanding approved by the respective Councils, describing the nature of the Service and a general description of the administrative and financial terms and conditions that will govern the Service.

Service Agreement

- 3.3 Two or more parties may enter into a Service Agreement in accordance with the Bylaw, this Agreement and a Memorandum of Understanding, and the Service Agreement will contain the following terms and conditions:
- (a) the powers of and procedures governing the Intermunicipal Advisory Board;
 - (b) the appointment and powers of a Manager;
 - (c) finances, including bank accounts, cash flow, Intermunicipal Service Borrowing, contributions and sharing;
 - (d) budgets, including the budget approval process;
 - (e) apportionment of Intermunicipal Costs;
 - (f) disposition of Intermunicipal Service Assets, including Facilities;
 - (g) reports and records;
 - (h) withdrawal of a Party;
 - (i) addition of a new Party or other municipality;
 - (j) liability.
- 3.4 Every Service Agreement is subject to the amendment of the Bylaw to authorize the Service Agreement in accordance with the *Community Charter*.

PART 4 AMENDMENTS

Amendments

- 4.1 This Agreement may not be modified or amended except by written agreement of all the parties hereto and in accordance with the Bylaw.

PART 5 GENERAL

Notices

- 5.1 Any notice or other communication hereunder will be in writing and will be given by the delivery or rendering thereof to its addressee by hand, by prepaid first class mail or by facsimile transmission, to the address below:
- (a) If to Vernon:

3400 - 30th Street
Vernon BC V1T 5E6

Attention: City Clerk

- (b) If to Kelowna:

1435 Water Street
Kelowna BC V1Y 1J4

Attention: City Clerk

- (c) If to Westside:

#4 - 2466 Main Street
Westbank BC V4T 1Z1

Attention: Director of Corporate Services

- (d) If to Penticton:

171 Main Street
Penticton BC V2A 5A9

Attention: Deputy Clerk

Any notice or other communication so given will be deemed to have been received at the time of its delivery if delivered by hand, three Business Days after the date of mailing if mailed and at the time the sender receives a confirmation of dispatch if transmitted by facsimile transmission. Each party will notify the other parties of any change of address.

Entire Agreement

- 5.2 This Agreement contains the entire agreement among the parties hereto with respect to the subject matter hereof and replaces and supersedes all previous agreements between the parties relating to the subject matter hereof.

Enurement

- 5.3 This Agreement will be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns hereunder.

Further Assurances

- 5.4 Each party will perform, any act, and execute and delivery any document reasonably required by any other party to carry out the terms of this Agreement in accordance with the true intent and meaning hereof.

Statutes

- 5.5 The obligations of the parties under this Agreement are always subject to the requirements of the *Community Charter*, *Local Government Act*, and other applicable enactments.

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

CITY OF VERNON

Per: _____
Mayor

Per: _____
City Clerk

CITY OF KELOWNA

Per: _____
Mayor

Per: _____
City Clerk

DISTRICT OF WESTSIDE

Per: _____
Mayor

Per: _____
Clerk

CITY OF PENTICTON

Per: _____
Mayor

Per: _____
Clerk