

REGIONAL DISTRICT OF CENTRAL OKANAGAN

BYLAW NO. 533

A bylaw to authorize the Regional District of Central Okanagan to enter into an agreement.

WHEREAS Section 286.1 of the Municipal Act provides the Regional District, with the Approval of the Inspector, the authority to enter into an agreement with the Council of an Indian Band to provide services to lands within a reserve;

AND WHEREAS the Regional District of Central Okanagan wishes to provide services to the Tsinstikeptum Indian Reserves No. 9 and No. 10.

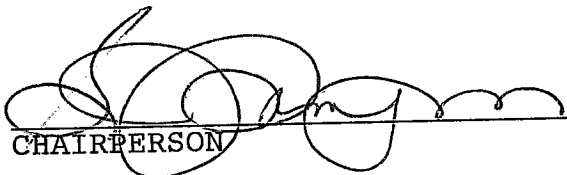
NOW THEREFORE THE Regional Board of the Regional District of Central Okanagan in open meeting assembled enacts as follows:

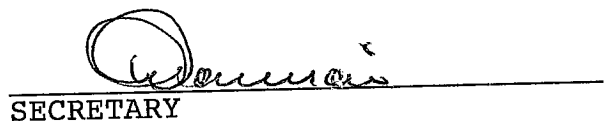
1. That the Regional Board of the Regional District of Central Okanagan provide local services to the Tsinstikeptum Indian Reserves No. 9 and No. 10, as included in the attached Agreement marked "Appendix A".
2. That the Chairperson and Secretary Treasurer are hereby authorized to sign the aforesaid Agreement representing the Regional District of Central Okanagan.
3. That this bylaw be cited as the "Regional District of Central Okanagan Tsinstikeptum Indian Reserves Local Services Agreement Authorization Bylaw No. 533 , 1992".

READ A FIRST TIME THIS 5th DAY OF October 1992.
READ A SECOND TIME THIS 5th DAY OF October 1992.
READ A THIRD TIME THIS 5th DAY OF October 1992.

Approved by the Inspector of Municipalities pursuant to Section 286.1 of the Municipal Act this 9th day of October 1992.

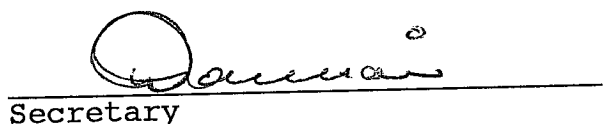
RECONSIDERED, FINALLY PASSED AND ADOPTED THIS 19th DAY OF October , 1992.


CHAIRPERSON


SECRETARY

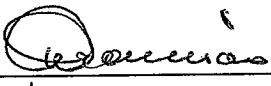
I hereby certify the foregoing to be a true and correct copy of Bylaw No. 533 cited as "Regional District of Central Okanagan Tsinstikeptum Indian Reserves Local Services Agreement Authorization Bylaw No. 533 , 1992" as read a third time by the Regional Board on the 5th day of October , 1992.

Dated at Kelowna, B.C. this
6th day of October , 1992.


Secretary

I hereby certify the foregoing to be a true and correct copy of Bylaw No. 533 cited as "Regional District of Central Okanagan Tsinstikeptum Indian Reserves Local Services Agreement Authorization Bylaw No. 533 , 1992" as adopted by the Regional Board on the 19th day of October , 1992.

Dated at Kelowna, B.C. this
20th day of October , 1992.



Secretary

INDIA2.BLW

Province of British Columbia



No.

Statutory Approval

Under the provisions of section 286.1


of the Municipal Act

I hereby approve Bylaw No. 533

of the Regional District
of Central Okanagan, *a copy*

of which is attached hereto.

Dated this 9th *day*
of October, 1992


Deputy Inspector of Municipalities

APPENDIX "A"

THIS LOCAL SERVICES AGREEMENT dated for reference
September 25, 1992 and made
BETWEEN:

WESTBANK INDIAN BAND
515 Highway 97 South
Kelowna, British Columbia
V1Z 3J2

(hereinafter called the "Band")

AND:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
as represented by the Minister of Indian
Affairs and Northern Development

(hereinafter called the "Minister")

OF THE FIRST PART

AND:

REGIONAL DISTRICT OF CENTRAL OKANAGAN
540 Groves Avenue
Kelowna, British Columbia
V1Y 4Y7

(hereinafter called the "District")

OF THE SECOND PART

WHEREAS:

A. Tsinstikeptum Indian Reserves No. 9 and No. 10 of the Band in the Province of British Columbia (the "Reserves") are Reserves vested in Her Majesty the Queen in Right of Canada for the use and benefit of the Westbank Indian Band;

B. The District provides for the benefit of the residences of the Reserves, the services of the District set forth in Schedule "A" hereto (the "District Services");

C. The Band has, by bylaw, approved by the Minister, the 31st day of August, 1990, enacted the Westbank Indian Band Taxation

Bylaw pursuant to Section 83(1) of the Indian Act (the "Indian Tax Bylaw") and has passed amendments thereto in accordance with the Indian Act;

D. The Band intends, pursuant to the Indian Tax Bylaw, to levy and collect taxes and to enforce the payment of taxes;

E. The Band intends to pay the District for the District Services provided, in accordance with the terms of this Agreement.

F. Council of the Band (the "Band Council"), pursuant to Band Council resolution passed at a duly convened meeting of the Council held September 25, 1992, a certificate of which is attached hereto as Schedule "B", has approved and consented to the terms and conditions hereinafter set out.

G. The Chief and Council represent the Band.

NOW THEREFORE, IN CONSIDERATION of the covenants and agreements contained herein and for other good and valuable consideration, (the receipt and sufficiency of which is hereby acknowledged), the Band, the Minister and the District hereby covenant and agree each with the other as follows:

1 Services

1.1 The District agrees to provide the Band with the District Services listed in Schedule "A" during each year of the Term.

2 Payment for Services

2.1 For the years 1991 and 1992, the Band shall pay the District an annual payment in the amount of One Hundred

and Fifty Thousand (\$150,000.00) Dollars for the District Services provided in those years.

2.2 Commencing in the year 1993 and each year thereafter, the Band shall pay an annual payment to the District for the provision of the District Services in each of those years, in an amount equal to the amount paid for the previous year plus a percentage increase equal to the annual rate of inflation for the previous year as established by the Consumer Price Index published by Statistics Canada.

2.3 In addition to the payments referred to in Clauses 2.1 and 2.2, the Band shall pay a fee to the District in respect of any building inspection carried out under this Agreement pursuant to a Band bylaw, such fee to be in an amount equivalent to the fee that would be collected by the District for building inspections carried out within the District.

2.4 During the Term of this Agreement, the District shall not, without giving prior written notice to the Band, submit a requisition for funds or obtain funds from the Government of the Province British Columbia for the provision of the District Services or any other services to the Reserves on the basis of the occupation of land on the Reserves by any person who leases or otherwise occupies land on the Reserves.

3 Payment Due Dates

3.1 The payment referred to in Clause 2.1 for the year 1991, shall be paid to the District forthwith upon entering into this agreement.

- 3.2 Commencing in 1992, the annual payment for District Services shall be payable in two instalments with the first instalment being equivalent to fifty (50%) percent of the annual amount payable and the second instalment being equivalent to the balance of the annual amount payable. The first instalment will be due and payable on August 1st in each year and the second instalment will be due and payable on November 1st in each year.
- 3.3 The fees payable by the Band pursuant to Clause 2.3 shall be payable to the District quarterly on or before the 15th day of the month following the quarters ending on the last day of March, June, September and December in each year.

4 Payment by Minister of Amounts Owed by the Band

- 4.1 Subject to Clause 4.3, in the event that the Band fails or neglects to pay the monies payable by it to the District under Clauses 2.1 and 2.2 of this Agreement, the District may demand payment of such monies from the Minister and the Band hereby agrees and so directs the Minister that the Minister pay such monies to the District and the Band Council has, by resolution passed at a duly convened meeting of the Council held September 25, 1992, a certificate of which is attached to this Agreement as Schedule "B", so directed the Minister.
- 4.2 Subject to Clause 4.3, upon a demand for payment being made by the District as provided in Clause 4.1, the Minister agrees to follow the direction of the Band as set out in Schedule "B", by paying the monies then owing by the Band to the District from the amounts that would otherwise be provided by the Minister to the Band in any calendar year.

- 4.3 The Minister shall not make any payment pursuant to Clause 4.2 of the Agreement and the District shall not request payment from the Minister in respect of any payment required pursuant to this agreement if:
- a. the Band has notified the District, pursuant to this Agreement, that it disagrees with the amount of the payment claimed by the District, and
 - b. pursuant to this Agreement, the Band has invoked the dispute resolution process set out in Article 15 to resolve the disagreement,
 - c. a resolution of the disagreement is pending, and
 - d. any amounts not in dispute have been paid.
- 4.4 In the event that the District demands a payment from the Minister as provided in Clause 4.1, such demand shall be made in writing and the District shall give the Band notice of such demand in the form of a copy of the demand, such notice to be given in the manner set out in Article 13 and to be given forthwith upon the demand being made.
- 4.5 In the event that the District demands a payment from the Minister as provided in Clause 4.1 and the Band pays the outstanding monies to the District subsequent to the demand being made, the District shall notify the Minister forthwith and the Minister shall not make any payment in respect of such demand.
- 4.6 Should the Band fail to pay all or any of the monies owing by the Band to the District under this Agreement on the date that the same are due and payable, in addition to the remedies set out in Clauses 4.1 and 4.2, the District may recover the same by action in a Court of competent jurisdiction.

5 Renegotiation of Method of Payment

5.1 The method of payment referred to in Clause 2.2 shall remain in place until the year in which the Band becomes an Indian District or shall by other means, becomes eligible to receive annual grants for the provision of the District Services, for which it was not previously eligible, and the Band applies for and receives such grants from the Government of British Columbia.

5.2 Subject to Clause 5.3, upon the Band receiving annual grants from the Government of British Columbia referred to in Clause 5.1 herein, the method of calculation of payment for the year in which the Band receives such grants and subsequent years shall be renegotiated in consideration of the additional funding provided to the Band for payment for the District Services and Clause 2.2 shall no longer apply.

5.3 The Band may obtain Provincial grants for a new service or services or for the purpose of enhancing services listed in Schedule "A" without this agreement being renegotiated.

6 Aboriginal Rights

6.1 Subject to the Band's contractual obligation to the District as contained herein, this agreement shall not prevent the Band or its individual members from participating or benefitting from any existing or future government program, legislative or constitutional rights or provisions applicable to them as aboriginal peoples or as members of the Band.

- 6.2 The Band and/or its individual members' participation or benefitting under Clause 6.1 shall not have the effect of invalidating this Agreement.

7 Exempt Property

- 7.1 Notwithstanding any other provision of this Agreement, land occupied or held by a body corporate, owned or controlled by the Band, shall be considered to be occupied by a member of the Band and shall be exempt from taxation.

- 7.2 In no event shall properties that are exempt from taxation by the Band be included or deemed to be included for calculation of any payment for District Services.

8 Assessment Roll

- 8.1 For the purposes of providing the District with a basis of apportioning amounts payable by the Band for the District Services, the Band shall, on or before the 1st day of August in each year, provide to the District a summary by class of the completed assessment roll, including land and improvements, that was used by the Band, in that year, as the basis for the taxation roll in such year. The Band shall utilize a comparable method of calculating assessed values as the British Columbia Assessment Authority in the preparation of the assessment roll.

9 Authority to Enter Reserve Lands

- 9.1 The Band hereby agrees to enact such bylaws and to make such appointments under any such bylaws as are required to enable the District to provide the District Services.

10 Term

10.1 The term of this agreement shall be for fifteen (15) years from the 1st day of January, 1992 to the 31st day of December, 2006 (herein called the "Term").

11 Renewal

11.1 This Agreement may be renewed, subject to the consent of the District, for consecutive twenty-five (25) year periods by the Band giving the District notice thereof not earlier than one hundred and eighty (180) days before and not later than ninety (90) days before the Commencement Date of each new twenty-five (25) year period.

12 Discontinuance of Service

12.1 Upon termination or other determination of this Agreement, the District may, at its option, terminate the provision of any or all of the District's Services.

12.2 Upon termination or other determination of this Agreement, the District will provide the Band with a statement of the pro-rated amount of the annual contribution set out in Article 2 herein, or as set out in any renegotiated terms and conditions setting out the method of calculation for the payment of District Services, up to the date of termination within thirty (30) days of the termination. If there is a deficiency in payment for the applicable year, the District shall invoice the Band for the amount owed and the Band or the Minister will pay the invoice within sixty (60) days of its receipt. If there is an overpayment for the applicable year, the District will refund the Band the

full amount of the overpayment within ninety (90) days of the termination.

12.3 Any dispute between the Band and the District in respect of the determination of the amount owed by the Band or refundable to the Band pursuant to Clause 12.2 shall be resolved in accordance with the process set out in Article 15 notwithstanding the prior termination of this Agreement.

13 Notice

13.1 Wherever in this Agreement it is required or permitted that notice, demand or other communication 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, addressed as follows:

To the District:

REGIONAL DISTRICT OF CENTRAL OKANAGAN
540 Groves Avenue
Kelowna, British Columbia
V1Y 4Y7

Attention: Regional District

AND

To the Minister:

INDIAN AND NORTHERN AFFAIRS CANADA
British Columbia Regional Office
300 - 1550 Alberni Street
Vancouver, British Columbia
V6G 3C5

Attention: Director, Funding Services

AND

To the Band:

WESTBANK INDIAN BAND
Westbank Band administration office
515 Highway 97 South
Kelowna, British Columbia
V1Z 3J2

PROVIDED that a party may change its address by giving the others prior notice of a change in address in accordance with this Clause and PROVIDED FURTHER that if there is a postal strike or other postal disruption, notice shall be personally delivered, not mailed, in the case of the District, by delivery to the Municipal Administrator of the District, and in the case of the Minister, by delivery to his Regional Director General or his Regional Director of Funding Services and, in the case of the Band, to the Band Administrator at the offices of the Band.

14 Assignment

14.1 This Agreement shall not be assigned by either party hereto, except with the prior written consent of the other.

15 Dispute Resolution

15.1 Unless this Agreement provides otherwise, any disagreement between the Band 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 (herein called the "Dispute Resolution Notice"), which notice shall 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.

15.2 Upon receipt of a Dispute Resolution Notice by either the Band or the District, the administrator of the Band, the administrator of the District, the Chairman of the District and the Chief of the Band, or an appointee of the Band 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 the Band and the Board of the District within ten (10) 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 the Band and the District whose decision shall be handed down within twenty (20) working days of appointment.

15.3 Should the Band and the District fail to resolve the dispute through negotiations held pursuant to Clause 15.2 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 the Band 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.

15.4 The decision of an arbitrator appointed pursuant to this Agreement will be considered final and binding upon the Parties.

- 15.5 The cost of any arbitration shall be borne equally by the District and the Band unless otherwise ordered by the Arbitrator.
- 15.6 If upon a reference to it, an arbitrator refuses jurisdiction or otherwise fails to determine the question, then the question may be referred by 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.

16 Indemnity

- 16.1 The District shall indemnify and save harmless the Band and the Minister 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.
- 16.2 Except with respect to the services to be provided by the District under Clause 9.1, for which the District shall remain responsible, the Band 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, related to, occasioned by or attributed to the breach of any provision of this Agreement to be performed by the Band and the officials, servants, employees, members, agents and contractors of the Band.

This condition shall survive the termination of this Agreement.

16.3 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 in the provision of services to be provided by the District pursuant to this Agreement, such insurance to afford protection to the minimum limit of **TWO MILLION (\$2,000,000.00) DOLLARS** or to such limit as may be agreed upon by the Parties in writing.

16.4 The Band and its Band Council, officers, officials, servants, employees, members, agents and contractors shall be added by the District to its comprehensive general liability insurance policy required to be maintained under Clause 16.3 as Additional Insureds with respect to the liability of the Band arising out of the provision of the District Services by the District.

17 Interpretation

17.1 Nothing contained or implied herein shall prejudice or affect the rights and powers of the District or the Band in the exercise of their functions under any public or private statutes, bylaws, orders and regulations.

17.2 The Parties shall observe, fulfil and comply with all relevant and applicable laws, by-laws, requirements, directions, 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 on the Reserves.

17.3 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 occupants within the Reserves than that which applies to the supply of such services to other persons within the Regional District of Central Okanagan.

17.4 For the purpose of greater certainty, it is acknowledged and agreed between the parties hereto that, notwithstanding anything to the contrary contained in this Agreement, the Minister does not and shall not be obliged to possess, control, operate and maintain any District Services.

17.5 The Minister is a party to this Agreement for the purposes of directing payment for the District Services pursuant to Clause 4.2 and will remain a party to this Agreement only until the District is permitted by law to recover funds owed to the District by the Band under the terms of this Agreement, by an action in a Court of competent jurisdiction and to recover the same from the real and personal property making up the Reserves.

17.6 No members of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit to arise from this Agreement.

17.7 Nothing in this Agreement shall be interpreted as creating an agency, partnership or joint ventureship among or between any of the District, the Minister, the Band and the Band Council.

- 17.8 Time shall be of the essence of this Agreement.
- 17.9 Headings are inserted in this Agreement for convenience only and shall not be construed as affecting the meaning of this Agreement.
- 17.10 No waiver of any term or condition of this Agreement or a breach of any term or condition of this Agreement by any party hereto shall be effective unless it is in writing and no waiver of breach even if in writing shall be construed as a waiver of any future breach.
- 17.11 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.
- 17.12 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year first above written.

SIGNED SEALED AND DELIVERED by)
the WESTBANK BAND COUNCIL pursuant)
to the consent of a majority of the)
Councillors of the Band present)
at a Council meeting duly)
convened)

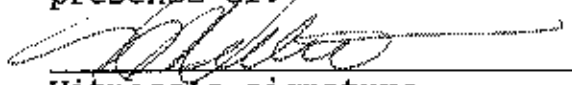


Witness
LYLE BREWER
Lands Administration

Address Officer
Westbank Band

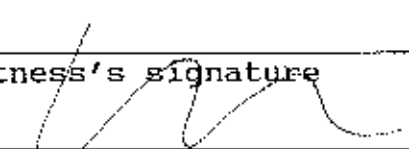
Occupation

SIGNED SEALED AND DELIVERED on)
behalf of HER MAJESTY THE QUEEN)
IN RIGHT OF CANADA on the 1st day of)
October 1992, in the)
presence of:



Witness's signature
MARCEL P. FILLION
MANAGER, CAPITAL PROGRAMS

Witness's name printed

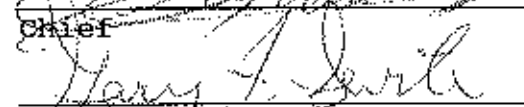


Witness's signature

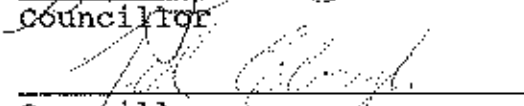
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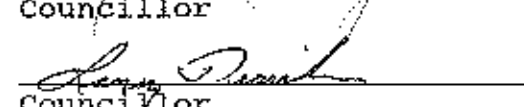
Chief



Councillor

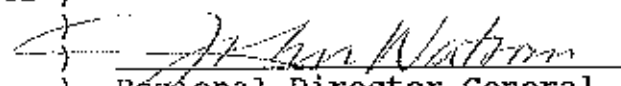


Councillor

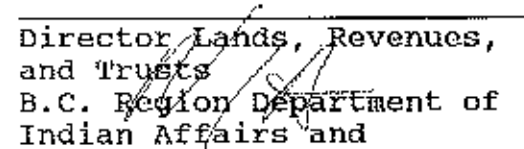


Councillor

Councillor




Regional Director General
B.C. Region Department of
Indian Affairs and
Northern Development



Director Lands, Revenues,
and Trusts
B.C. Region Department of
Indian Affairs and
Northern Development

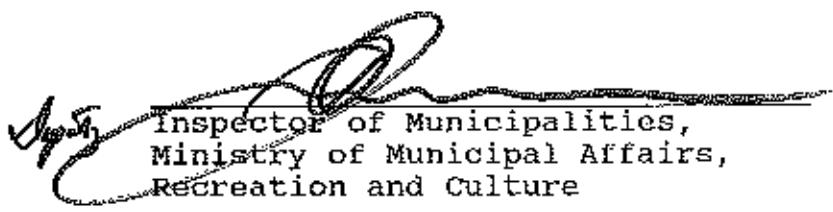
The Corporate Seal of REGIONAL)
DISTRICT OF CENTRAL OKANAGAN)
was hereunto affixed on the 2nd day)
of ~~October~~ 1992, in the)
presence of:)

C/S


Chairperson

Secretary

Approved by the Inspector of)
Municipalities on the 9th day of)
October, 1992 pursuant to)
Sections 286(1) and 286.1 of the)
Municipal Act, RSBC 1979)


Inspector of Municipalities,
Ministry of Municipal Affairs,
Recreation and Culture

REGIONAL DISTRICT OF CENTRAL OKANAGAN - WESTBANK INDIAN BAND
LOCAL SERVICES AGREEMENT
SCHEDULE "A"

District Services

Rescue Service
911 Telephone - Operations
911 Telephone - Debt Repayment
Crimestoppers
Victims of Crime
Westside Transit
Westside Transit - Handi Dart
Septic Tank Effluent
Westside Sanitary Landfill
Okanagan Basin Water Board
Noxious Insect Control
Sterile Insect
Economic Development Commission
Mount Boucherie Complex
Johnson-Bentley Memorial Aquatic Centre
Regional Parks
Westside Community Parks
Westside Senior Citizens Centre
Building Inspection
Dog Control
Regional Hospital District

**REGIONAL DISTRICT OF CENTRAL OKANAGAN - WESTBANK BAND
LOCAL SERVICES AGREEMENT
SCHEDULE "B"
BAND COUNCIL RESOLUTION**

The Council of the Westbank Band (the "Band") DOES HEREBY RESOLVE AND AGREE to approve of and consent to the terms and conditions of the Local Services Agreement (the "Agreement") between the Regional District of Central Okanagan (the "District"), the Band and Her Majesty the Queen in Right of Canada, as represented by the Minister of Indian Affairs and Northern Development (the "Minister"), which agreement is dated for reference September 25, 1992, and

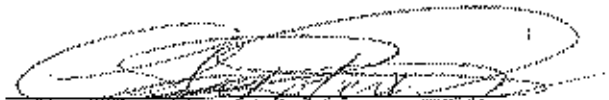
THAT WE FURTHER RESOLVE AND AGREE to execute the Agreement on behalf of the Westbank Band but in so doing, it remains our position that the Minister being a party to the Agreement is unnecessary and contradicts the objectives and principles of aboriginal self-government and the development of relationships of mutual trust and respect between First Nations and other levels of government and has been made necessary only because of the insistence of the District and we agree to enter into a tripartite agreement on the express understanding that doing so shall not set a precedent for future agreements of this nature involving the Westbank Band or any other Band, and

THAT WE FURTHER RESOLVE AND AGREE that in the event that the Band defaults in its obligations to pay the monies due to the District as set out in this Agreement, the Minister is hereby authorized, subject only to the terms and conditions of the Agreement, to direct the transfer of the amounts that would otherwise be provided by the Minister to the Band in any calendar year (which the Band Council could pay to the District for the monies then owing) to the District in payment of such monies owing by the Band to the District under this Agreement, and


THAT we further resolve and agree that the authority conferred upon the Minister by this Resolution is irrevocable for so long as the Agreement remains in effect.

A quorum for a meeting of the Band Council is three Council members.

Passed at a duly convened meeting of the Council of the Westbank Band held on September 25, 1992 at the Boardroom of the Westbank Band Administration Offices.



Chief



Councillor



Councillor

Councillor



Councillor

LOCAL SERVICES AGREEMENT
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This is Appendix "A" attached to and forming part of Bylaw No. 533 , 1992
Regional District of Central Okanagan Tsinstikeptum Indian Reserves
Local Services Agreement Authorization Bylaw No. 533, 1992.