

THE CORPORATION OF THE DISTRICT OF PEACHLAND

BYLAW NUMBER 2046

A Bylaw to establish an intermunicipal transportation services scheme

WHEREAS the Participants, for the benefit of the inhabitants of the Okanagan, have agreed to establish an intermunicipal scheme in relation to transportation 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 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 District of Peachland enacts as follows:

Citation

1. This bylaw may be cited as Sustainable Transportation Partnership Intermunicipal Service Regulation Bylaw No. 2046, 2013.

Definitions and Interpretation

2. In this bylaw
 - (a) "Participant" means the City of Kelowna, District of West Kelowna, District of Peachland, District of Lake Country, Regional District of Central Okanagan and Westbank First Nation;
 - (b) "STP" means the Sustainable Transportation Partnership service established under section 3.

Services

3. An intermunicipal scheme is established in respect of the service of the Sustainable Transportation Partnership and, without limiting the foregoing, includes:
 - (a) Transportation demand management;
 - (b) Transit administration;
 - (c) Transportation and transit surveys and studies.

Regulatory Bylaws

4. A bylaw of a Participant applies only within that Participant's boundaries.

Administration

5. There is established an Intermunicipal Advisory Board comprising the Mayors, Board Chair and Chief, respectively, of the Participants, to which the powers, duties and functions set out in section 6 are delegated.
6. The Intermunicipal Advisory Board will, on recommendation of the Chief Administrative Officers of each of the Intermunicipal Participants:
 - (a) Recommend policy to the Participants;
 - (b) Provide general direction in respect of implementing the policies and programs of the STP; and
 - (c) Appoint the Director and Financial Officer, Sustainable Transportation Partnership, with the responsibilities and authority as provided for under Schedule A.

Service Agreement – Execution Authority

7. The District hereby enters into and the Mayor and Corporate Officer are authorized to execute the Sustainable Transportation Partnership Service Agreement attached as Schedule A to this bylaw.

Delegation

8. Council hereby delegates the powers and duties and functions listed below to the Director appointed under the STP Service Agreement:
 - (a) Authority to negotiate, approve and execute all contracts related to the provision of, and advancement of the STP, provided that the aggregate liabilities and commitments for the year do not exceed the budget amount for the STP authorized by the Participants for the year and provided that the liability or commitment is not of a capital nature;
 - (b) Authority to appoint employees, provided the employee's remuneration is provided for in the budget authorized by the Participants for the STP.

Withdrawal

9. A Participant may withdraw from the STP by giving notice and repealing the Bylaw in accordance with Part 7 of Schedule A.

READ A FIRST TIME, this 12th day of March, 2013

READ A SECOND TIME, this 12th day of March, 2013

READ A THIRD TIME, this 12th day of March, 2013

FINALLY RECONSIDERED AND ADOPTED, this 26th day of March, 2013



Mayor



Corporate Officer

Dated at Peachland, B.C.
this 26th day of March, 2013.

SCHEDULE A

Sustainable Transportation Partnership Intermunicipal Service Agreement Between the Local Governments of the Central Okanagan

THIS AGREEMENT dated for reference the ____ day of _____, 2013

AMONG:

DISTRICT OF LAKE COUNTRY, a municipal corporation incorporated under the *Local Government Act*, 10150 Bottom Wood Lake Road, Lake Country, BC V4V 2M1

("Lake Country")

AND:

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

("Kelowna")

AND:

DISTRICT OF WEST KELOWNA, a municipal corporation incorporated under the *Local Government Act*, #4 - 2466 Main Street, West Kelowna BC V4T 1Z1

("West Kelowna")

AND:

WESTBANK FIRST NATION, a self-governing First Nation as described in the *Westbank First Nation Self-Government Act and Self Government Agreement*, 201 515 Highway 97 South, Kelowna BC V1Z 3J2

("WFN")

AND:

DISTRICT OF PEACHLAND, a municipal corporation incorporated under the *Local Government Act*, 5806 Beach Avenue, Peachland BC V0H 1X7

("Peachland")

AND:

REGIONAL DISTRICT OF CENTRAL OKANAGAN, a regional corporation incorporated under the *Local Government Act*, 1450 KLO Road, Kelowna BC V1W 3Z4

("RDCO")

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 Participants has enacted a Bylaw under section 14 to establish an intermunicipal scheme in relation to the service of the Sustainable Transportation Partnership defined in the Bylaw.

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 Sustainable Transportation Partnership Intermunicipal Service and Regulation Bylaw adopted by each of the Parties as follows:
 - (i) Sustainable Transportation Partnership Intermunicipal Service and Regulation Bylaw adopted by each Council or Board of the participants;
- (b) "Participant" means Lake Country, Kelowna, West Kelowna, WFN, Peachland or RDCO, their respective successors and permitted assigns, and Participants means the applicable combination of them;
- (c) "STP" means the Sustainable Transportation Partnership service as defined in the Bylaw;
- (d) "STP Materials" means all studies, reports, software, drawings, plans, models, designs, photographs, specifications, tender documents and other materials prepared or developed by or on behalf of the STP.

1.2 The definitions in the Bylaw apply to any term not otherwise defined in this Agreement.

Interpretation

- 1.3 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 is to be interpreted consistently with the standards, guidelines and recommendations issued by the Public Sector Accounting Board as authorized by the Canadian Institute of Chartered Accountants;
 - (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.

PART 2 – INTERMUNICIPAL ADVISORY BOARD and CAO Committee

- 2.1 The Intermunicipal Advisory Board (IAB) established under the Bylaw of each Participant shall exercise the authority provided under the Bylaw.
- 2.2 A committee comprised of the Chief Administrative Officers and City Manager, respectively, of the Participants (the “CAO Committee”) is established with duties and responsibilities as set out in the CAO Committee Terms of Reference, attached as Annex A to this Agreement.
- 2.3 The CAO Committee will oversee and provide such direction to the Director, appointed in accordance with Part 3, as the CAO Committee considers necessary.
- 2.4 The IAB may receive and require reports and information regarding the operations of the STP from the CAO Committee or Director as the IAB considers necessary.

PART 3 – DIRECTOR (APPOINTMENT AND POWERS)

- 3.1 The position of Director, Sustainable Transportation Partnership (“Director”) is established, who shall be responsible for the operation and administration of the service of the Sustainable Transportation Partnership (“STP”).
- 3.2 From the date of this Agreement coming into effect the Director shall be the Director, Regional Services of the City of Kelowna and that appointment shall remain in effect until the IAB appoints a different individual or office holder to be the Director.
- 3.3 Without limiting the scope of the Director’s responsibility under Section 3.1, the Director shall be responsible for the following specific matters:
 - (a) preparation of an annual budget for the STP to be presented to the Participants;
 - (b) hiring staff to undertake the work of the STP, including obtaining the secondment of staff from among the Participants;
 - (c) developing workplans on an annual basis, or more frequently if considered necessary, in respect of the matters undertaken by the STP.
 - (d) reporting to the CAO Committee, and the IAB at the direction of the CAO Committee, with respect to the work undertaken by the STP, the STP’s work plans and any other matter the Director considers appropriate.

PART 4 - FINANCES AND BUDGET

- 4.1 The IAB must appoint a person to act as the STP's Financial Officer ("the Financial Officer"), who shall have the responsibility of financial administration, including, in relation to the STP, the power, duties and functions of a financial officer under section 149 of the *Community Charter*, S.B.C. 2003, c.26. For the purposes of this section any reference in s.149 to the "municipality" means the STP and any reference to the "council" means the council or board of the Participants.
- 4.2 The Financial Officer may be a person employed by one of the Participants as its financial officer or acting in a position where the primary responsibility is financial administration.
- 4.3 In discharging the responsibility of keeping, investing and expending funds and securities, the Financial Officer may administer the financial affairs of the STP within the accounts of one of the Participants.
- 4.4 The fiscal year for the STP is the calendar year.
- 4.5 For fiscal years subsequent to 2013, a financial plan for the STP must be prepared annually and submitted to the Participants no later than August 31 in the year preceding the fiscal year. The financial plan, modified for the circumstances of the STP, will follow the format of a financial plan under s.165 of the *Community Charter* except that:
- (a) the planning period is three years :
 - (b) in respect of funding sources the plan need not identify the types of funding sources set out in s.165(7), it being a matter within the discretion of the Participants as to how each will fund their contribution to the STP.
- 4.6 The Participants shall contribute to the cost of the STP in accordance with the formula in Section 5.1.
- 4.7 The budget for the fiscal year 2013 for the STP is established as \$332,970, based on previous year (2012) figures.

PART 5 - COSTS APPORTIONMENT

- 5.1 The Participants shall contribute to the cost of the STP in accordance with shares based on converted assessment. The following cost apportionment are for 2013 (based on previous year figures) and may change annually:

(a) Lake Country: \$20,679 (6.95%)

(b) Kelowna:	\$225,065 (64.85%)
(c) West Kelowna:	\$52,765 (16.89%)
(d) WFN:	\$11,604 (3.49%)
(e) Peachland:	\$9,282 (3.17%)
(f) RDCO:	\$13,575 (4.66%)

- 5.2 In the event of the withdrawal of one or more of the Participants from the STP, the withdrawing Participant(s)' portion of costs shall be re-apportioned among the remaining Participants and section 5.1 shall be amended accordingly.

PART 6 – ASSETS

- 6.1 Any real or personal property acquired or produced for, or in the course of the operation of, or for the benefit of, the STP, including the STP Materials, and any copyright, patent and trademark rights therein (the "Assets"), shall be the joint property of the Participants.
- 6.2 Effective upon the Withdrawal Date, the withdrawing Participant grants, assigns, transfers, releases and quitclaims to and in favour of the remaining Participants all of the withdrawing Participant's estate, right, title, interest, claim and demand whatsoever, both at law and equity, in and to any and all Assets.
- 6.3 Each of the Participants, including the withdrawing Participant, will at all times execute and deliver such further documents, deeds and instruments, and do and perform such other acts, as may be reasonably necessary to effect the transfer of the withdrawing Participant's interest in any Assets to the remaining Participants.

PART 7– WITHDRAWAL

- 7.1 Before withdrawing from the STP, a Participant must provide notice in writing of its intention to withdraw to the other Participants. Notice may be given only within the last two months of the second calendar year of the three year period commencing January 1, 2013 and only within the last two months of the second calendar year of the successive three year periods commencing January 1, 2016. The withdrawal of the notifying Participant shall take effect at the end of the three period.

PART 8- LIABILITY

8.1 Any amount required:

- (a) to satisfy a judgment or other order of a court against a Participant or Participants;
- (b) to satisfy an award or other order of an arbitrator against a Participant or Participants;
- (c) for a payment authorized under section 287.2 of the *Local Government Act*;

arising out of or in connection with the STP shall be apportioned as a cost amount the Participants in accordance with the formula in section 5.1

8.2 As an exception to section 8.1, if the legal action or proceedings arose from the negligence or fault of a Participant or more than one Participant, the cost shall be borne by only that Participant or by those Participants negligent or at fault, reflecting their respective cost shares under section 5.1, with such modification as necessary.

PART 9- GENERAL

Governing Law

9.1 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

9.2 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

9.3 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.

No Partnership

- 9.4 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.

Amendments

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

Notices

- 9.6 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 Lake Country:

District of Lake Country
10150 Bottom Wood Lake Road
Lake Country, BC V4V 2M1
ATTENTION: Corporate Officer

- (b) If to Kelowna:

City of Kelowna
1435 Water Street
Kelowna, BC V1Y 1J4
ATTENTION: City Clerk

- (c) If to West Kelowna:

District of West Kelowna
#4 – 2466 Main Street
West Kelowna, BC V4T 1Z1
ATTENTION: City Clerk

- (d) If to WFN:

Westbank First Nation
201 515 Highway 97 South

Kelowna, BC V1Z 3J2
ATTENTION: Administrator

(e) If to Peachland:

District of Peachland
5806 Beach Avenue
Peachland, BC V0H 1X7
ATTENTION: Corporate Officer

(f) If to RDCO:

Regional District of Central Okanagan
1450 KLO Road
Kelowna, BC V1W 3Z4
ATTENTION: Corporate Officer

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

9.7 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

9.8 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

9.9 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

9.10 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.

DISTRICT OF LAKE COUNTRY

by its authorized signatory(ies):

Print Name:

Print Name:

CITY OF KELOWNA

by its authorized signatory(ies):

Print Name:

Print Name:

DISTRICT OF WEST KELOWNA

by its authorized signatory(ies):

Print Name:

Print Name:

WESTBANK FIRST NATION

by its authorized signatory(ies):

Print Name:

Print Name:

DISTRICT OF PEACHLAND

by its authorized signatory(ies):

Print Name:

Print Name:

**REGIONAL DISTRICT OF
CENTRAL OKANAGAN**

by its authorized signatory(ies):

Print Name:

Print Name: