

WATER SERVICING AGREEMENT

BETWEEN

TSAWOUT FIRST NATION

AND

THE CORPORATION OF THE DISTRICT OF CENTRAL SAANICH

DATED FOR REFERENCE THE 1ST DAY OF JANUARY, 2001

WATER SERVICING AGREEMENT

THIS AGREEMENT is dated for reference the 1st day of January, 2001.

BETWEEN:

TSAWOUT FIRST NATION as represented by the Tsawout
Council P.O. Box 121 Saanichton, British Columbia, V8M 2C3

("Tsawout")

OF THE FIRST PART

AND:

**THE CORPORATION OF THE DISTRICT OF
CENTRAL SAANICH** as represented by the Mayor and
Council 1903 Mount Newton Cross Road Saanichton, British
Columbia, V8M 2A9

("Central Saanich")

OF THE SECOND PART

WHEREAS:

- A. The lands boldly outlined on the plans hereto attached and marked Schedule "A" to this Agreement are reserve lands within the meaning of the *Indian Act, R.S. 1985, c. 1-5* ("the *Indian Act*"), located in the Province of British Columbia and vested in Her Majesty the Queen in right of Canada for the use and benefit of the Tsawout.
- B. Central Saanich has the authority to enter into an agreement with the Tsawout Council to provide local government services within a reserve as defined in the *Indian Act*.
- C. Central Saanich operates a water distribution system adjacent to the Reserve and Tsawout operates a water distribution system on the Reserve.
- D. Tsawout is desirous of obtaining a potable water supply for the Reserve and has requested that Central Saanich agree to permit Tsawout to draw water from Central Saanich's water distribution system to supply water to the Reserve.
- E. Tsawout recognizes a financial responsibility to pay for the services as defined in this Agreement and provided by Central Saanich to the Reserve.
- F. Tsawout Council has by Resolution dated the 20th day of December, 2001 attached hereto as Schedule "B" approved and consented to the terms and conditions of this Agreement.

- G. The Council of Central Saanich has by Resolution dated the 17th day of December, 2001 attached hereto as Schedule "C" approved and consented to the terms and conditions of this Agreement.
- H. Amongst other things, the intent of this Agreement is to foster and develop a harmonious relationship between the Parties as neighbouring governments.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of these presents and the mutual covenants herein contained, the parties hereto agree as follows:

1.0 DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires:

- (a) "**Central Saanich**" or the "**District**" means the Corporation of the District of Central Saanich or any successor to Central Saanich, and includes its officials, servants, employees, members, agents and contractor, sub-contractors, workers, licensees, successors and assigns;
- (b) "**Commencement Date**" means the 1st day of January, 2001;
- (c) "**Council**" or "**Tsawout Council**" means the Chief and Council of Tsawout within the meaning of the *Indian Act* or any successor to the Chief and Council and includes its officials, servants, employees, members, agents and contractors, sub-contractors, workers, licensees, successors and assigns;
- (d) "**District System**" means the watermain and distribution system operated by Central Saanich within its boundaries, including any upgrades or alternatives to that system which Central Saanich may implement during the term of this Agreement, and to which the Reserve System may be connected;
- (e) "**First Nation**" or "**Tsawout**" or the "**Band**" means the Tsawout Band, or any successor thereto pursuant to any successor legislation or any other valid authorizing act or proceeding whatsoever, as represented by the Council;
- (f) "**Interim Period**" means the time between the effective date of this Agreement and substantial completion of the New Works;
- (g) "**Meters**" means the water meters presently located at, or, subsequently installed pursuant to section 2.5, the Points of Connection;
- (h) "**New Works**" means the works which Tsawout intends to complete and which Central Saanich has approved which will complete the system modifications to the Central Saanich System and the Reserve System which are generally described in the letter attached as Schedule "D" to this Agreement, including the backflow preventers to be installed at each Point of Connection;

- (i) **"Points of Connection"** means the points at which the Reserve System is connected to the District System which during the Interim Period are as noted on Schedule "E" to this Agreement, including: one located at Mount Newton Cross Road east of the Pat Bay Highway, the second located at Central Saanich Road approximately 600 metres south of Mount Newton Cross Road, and the third located at the Western 66, on the west side of Pat Bay Highway, and which following the Interim Period and the completion of the New Works, are as noted on Schedule "F" to this Agreement, including one located at Mount Newton Cross Road east of the Pat Bay Highway and the second located at Central Saanich Road approximately 800 metres south of Mount Newton Cross Road; and such additional points as may be requested by Tsawout and approved by Central Saanich pursuant to this Agreement;
- (j) **"Professional Engineer"** means a person who is registered or licensed as a professional engineer under the *Engineers and Geoscientists Act*, R.S.B.C. 1996, as amended and replaced from time to time;
- (k) **"Reserve"** - means the East Saanich Indian Reserve No. 2;
- (l) **"Reserve System"** means the water distribution system owned and operated by Tsawout which is located within the Reserve and connected to the District System at the Points of Connection, including any new works installed to improve or expand the system.

2.0 SERVICES AND CONNECTION TO DISTRICT SYSTEM

- 2.1 Central Saanich shall permit the Reserve System to be connected to the District System at the Points of Connection under the terms and conditions contained herein. Subject to securing sufficient financial resources, Tsawout intends to complete the New Works on or before December 2003. If Tsawout is unable to complete the New Works by December, 2003, Tsawout will notify Central Saanich of the reasons for the delay and its revised time estimate.
- 2.2 Tsawout may at any time during the term of this Agreement request connections between the Reserve System and the District System additional to the Points of Connection and Central Saanich will approve the installation of such further connections provided that in the reasonable written opinion of Central Saanich's Municipal Engineer the provision of water through such connection is technically feasible and will not unduly compromise the volume or pressure of the water supplied through the District System to other users, including that already supplied to the Reserve System. All costs associated with such additional points of connection will be Tsawout's.
- 2.3 Subject to the terms and conditions of this Agreement, Central Saanich shall provide to Tsawout at the Connection Points a potable water supply using the District System. The quality and quantity of the water and service provided by Central Saanich to the Reserve pursuant to this Agreement shall be substantially the same as the quality and quantity of such service provided by Central Saanich within the District.

- 2.4 Subject to the Saanich Peninsula Water Commission providing Central Saanich with a supply of water and section 2.5, Central Saanich hereby acknowledges that amongst other purposes Tsawout will be relying upon the water supply provided under this Agreement for fire protection purposes, including the extinguishment of all fires on the Reserve, and Central Saanich agrees to provide a supply and flow of water to the Reserve System at the Points of Connection sufficient to satisfy the fire flow requirements as calculated in accordance with the guidelines provided by the "Fire Underwriters Survey" 1999 as amended from time to time and always sustaining a residual water pressure of 20 pounds per square inch (P.S.I.) (140 kPa).
- 2.5 If during the Interim Period Central Saanich is unable, because of the size, type or condition of any Point of Connection, to provide the supply and flow of water to the Reserve System at the Points of Connection required by section 2.4, Central Saanich will continue to provide the supply and flow of water customarily provided prior to and at the time of the execution of this Agreement, and in any event meeting the terms and conditions of section 2.3.
- 2.6 Neither Central Saanich nor Tsawout will permit or authorize any works or connections to the District or Reserve System, respectively, that would threaten or jeopardize the supply, flow and availability of water to Tsawout pursuant to this Agreement. Without limiting the generality of the foregoing, neither Tsawout nor Central Saanich will, after the construction of the New Works, connect to the Reserve System or the District System, respectively, any development that places demands on the Reserve or District Systems that make it impossible for Central Saanich to provide a supply and flow of water at the Points of Connection sufficient to satisfy the fire flow requirements specified with the Fire Underwriters survey, as amended from time to time. Central Saanich and Tsawout acknowledge that firefighting activities elsewhere in the District System or in the Reserve System may reduce the availability of water for firefighting purposes on the Reserve at any particular time. Nothing in this section reduces or qualifies the terms and conditions of section 2.3.
- 2.7 Central Saanich will at Tsawout's cost maintain the Meters at the Points of Connection, and replace such meters as required from time to time.
- 2.8 Central Saanich will maintain the District System in a manner which complies with all governing laws, standards and guidelines.
- 2.9 Upon the reasonable request of Tsawout and in any event not less than annually, Central Saanich will provide Tsawout with copies of any and all laboratory results of the chemical and biological water quality tests completed periodically for the water provided by Central Saanich pursuant to this Agreement. Central Saanich will provide Tsawout with immediate notification of any laboratory results which indicate an anomaly in the water quality, and will take all steps reasonably required to address such anomaly.
- 2.10 The Parties acknowledge that while the physical parameters for the aesthetic quality of the water supply is included within the Canadian Drinking Water Quality standards and guidelines, there may be other non-health related reasonable concerns which may arise

from time to time regarding the water aesthetic quality. The Parties agree to use a collaborative approach to addressing any reasonable bona fide concerns raised regarding the aesthetic quality of the water.

- 2.11 In the event that the New Works are not completed or under construction by December 31, 2003, Tsawout will install by December 31, 2004 a backflow preventer at the Mount Newton Cross Road Point of Connection and the Parties will jointly determine a schedule for the installation by Tsawout of backflow preventers at the Central Saanich Road and the Western 66 Points of Connection. For the purposes of this paragraph, the New Works are under construction on December 31, 2003 if Tsawout has entered into construction contracts for the New Works.

3.0 CHARGES

- 3.1 Tsawout will pay to Central Saanich for the water provided pursuant to this Agreement a charge calculated using the metered water rate, excluding any fixed charges set out in Central Saanich's Water Rates By-laws No. 1390 which is attached as Schedule "G", as amended from time to time.
- 3.2 The volume of water deemed to have been supplied to the Reserve by Central Saanich shall be the volume recorded on the Meters. Central Saanich shall cause the Meters to be read and the results recorded every four months. In the event of a meter malfunction, Central Saanich may estimate the volume of water for the purpose of calculating charges under this Agreement on the basis of historical consumption patterns at the Point of Connection in question.
- 3.3 During the term of this Agreement, water charges payable pursuant to section 3.1 shall be invoiced by Central Saanich to Tsawout in the same manner as provided for in Central Saanich's Water Rates By-laws No. 1348 which is attached as Schedule "G", as amended from time to time. If Central Saanich intends to amend its billing practice it will provide three months notice to Tsawout. Until such notice, Central Saanich will bill Tsawout on a trimester basis, specifically, in May of each year to reflect January 1st to April 30th; in September to reflect May 1st through August 31st; and in January of the following year to reflect September 1st through December 31st. Tsawout shall pay each invoice within 30 days after the date of the invoice. Should Tsawout pay the invoice prior to the due date, Central Saanich will deduct from the invoice any early payment discounts it provides to customers within Central Saanich.
- 3.4 Central Saanich shall invoice, and Tsawout shall make payment, in respect of the volume of water recorded by the Meters or estimated by Central Saanich pursuant to section 3.2, and in accordance with the applicable rate referred to in section 3.1, and no reduction shall be allowed on account of any waste of water, unless it is shown to the satisfaction of Central Saanich's Engineer that such waste arose from the malfunctioning of meters, pipes or fittings the installation and/or maintenance of which is the responsibility of Central Saanich.

- 3.5 If any breakage or stoppage or other irregularity in the Meters is observed by Tsawout, Central Saanich's Engineer shall be notified immediately.
- 3.6 Subject to Central Saanich providing Tsawout with reasonable and prior notice of the anticipated costs, and in addition to the charges payable under section 3.1, Tsawout agrees to pay Central Saanich its reasonable actual charges for works it provides pursuant to section 2.7 and section 6.1 of this Agreement that are not included in the water user rates referred to in section 3.1, which additional charges shall be invoiced at the same time as the water charges under section 3.3 and section 3.4.
- 3.7 On or before April 15th in each year of this Agreement, Central Saanich will invoice Tsawout for their portion of the Capital Regional District's requisition for the Saanich Peninsula Water Supply Charges. The calculation of Tsawout's portion will be determined based on the existing CRD formula set out in Schedule "H", which reflects the formula and the 2001 charges. In particular the formula will use the following factors: the property assessments used for Tsawout will be the assessment after deducting any applicable grants; and the population used will be the non-native occupants on the Reserve. On or before January 30th in each year of this Agreement, Tsawout will provide notice to Central Saanich of their current assessments, number of connections and non-native populations.
- 3.8 If Tsawout defaults in any payment required to be made to Central Saanich under this Agreement for a period in excess of thirty (30) days, the amount owing will include interest at the rate prescribed by Central Saanich's Fees and Charges Bylaw 1145, as amended from time to time.
- 3.9 Central Saanich agrees to keep current any accounts or other obligations for water related services it has with the Capital Regional District, the Saanich Peninsula Water Commission, and/or their respective successors and assigns.
- 4.0 RECORDS**
- 4.1 Central Saanich will upon written request make available to the Council for inspection and copy, records and financial data of Central Saanich which would allow the Council to confirm by independent audit that all payments required by this Agreement have been made.
- 4.2 Central Saanich will upon written request make available to the Council for inspection and copy, records of Central Saanich which would allow the Council to confirm the amount of water supplied and recorded by the Meters.
- 5.0 CONDITIONS OF USE**
- 5.1 Tsawout acknowledges and agrees that it is a condition of the connections referred to in section 2.1 herein and the continued use of the District System that the Reserve System shall be substantially constructed, repaired, operated and maintained in accordance with the usual engineering standards of Indian and Northern Affairs Canada and any applicable federal, provincial and local government laws and regulations.

Notwithstanding the foregoing, all hydrants in the Reserve System shall conform to the Engineering Specifications and Standard Drawings included in the District of Central Saanich Land Use Bylaw No. 1309 as amended or replaced from time to time.

- 5.2 Central Saanich shall not be responsible for the construction, repair, operation or maintenance of the Reserve System or its use or any costs associated therewith.
- 5.3 If the Reserve System is not constructed, repaired, operated and maintained as provided in section 5.1 therein or if there is a breach of any federal, provincial or local government law or regulation referred to in the said section, then Central Saanich may notify Tsawout of such and provide Tsawout with reasonable notice in writing to remedy the lack of construction, repair, operation or maintenance or breach. If Tsawout has not taken reasonable steps to remedy the situation prior to the expiry of the notice given, Central Saanich may cease to supply the water to the Reserve System at the Connection Points until the necessary steps are taken to remedy the breach, and shall have no further obligations under this Agreement or the Fire Protection Agreement to provide water or fire protection services to the Reserve.
- 5.4 Tsawout will take reasonable steps to adopt bylaws governing water use and the imposition of water restrictions on the Reserve which are substantively consistent with bylaws of Central Saanich related to water use and water restrictions.

6.0 ACCESS

- 6.1 Subject to section 6.2, Tsawout hereby consents to Central Saanich, entering onto the Reserve for the following purposes:
- (a) to connect the Reserve System to the District System;
 - (b) to inspect and/or maintain the Connection Points and Meters; or
 - (c) to inspect the Reserve System to determine whether or not the usual engineering standards of Central Saanich as adopted and amended by Central Saanich from time to time, and federal, provincial and local government laws and regulations are being met.
- 6.2 The consent provided in section 6.1 is subject to the following:
- (a) Central Saanich shall exercise its rights under this section in a reasonable manner so as to minimize inconvenience to the residents or other occupants of the Reserve and to minimize any damage to the Reserve;
 - (b) Central Saanich shall not exercise such of its rights under this section as can be reasonably foreseen to be likely to cause irreparable damage to the Reserve without first obtaining the written consent of Tsawout except in an emergency; and

- (c) Central Saanich will notify Tsawout in writing of work to be performed on the Reserve at least two working days before exercising the access rights in this section.

6.3 The right to enter the Reserve given to Central Saanich under this Agreement shall be construed as a license only and shall not be construed as granting, conveying or conferring on Central Saanich any right, estate, interest, or title to any portion of the Reserve.

6.4 The right to enter the Reserve given to Central Saanich under this Agreement shall extend during the period of this Agreement subject to any earlier termination or other determination of this Agreement.

7.0 RELEASE AND INDEMNITY

7.1 Tsawout shall indemnify and save harmless Central Saanich from and against all claims, actions, causes of action, suits or other liability resulting from any breach of any provisions of this Agreement to be performed by Tsawout or from the interruption of service to the Reserve due to normal maintenance, repair or upgrading, acts of God or any other cause beyond the control of Central Saanich, provided that this indemnification and saving harmless shall not apply in any case where Central Saanich has been negligent or have behaved in a manner which amounts to willful misconduct and damage has been caused thereby.

7.2 Central Saanich shall indemnify and save harmless Tsawout from and against all claims, actions, causes of action, suits or other liability resulting from any breach of any provisions of this Agreement to be performed by Central Saanich.

8.0 COMMENCEMENT AND TERM OF AGREEMENT

8.1 This Agreement shall commence on the 1st day of January, 2001, and shall be for a term of five (5) years from the commencement date of this Agreement.

8.2 The Parties agree to begin meeting no later than January, 2005 and to negotiate in good faith using their best efforts the terms and conditions under which a new Water Servicing Agreement, together with a new General Servicing Agreement and a new Fire Protection Agreement will be reached. The Parties further agree that should they be unable to reach such agreements by September 30, 2005, then the Dispute Resolution provisions set out in Article 12 will be used by the Parties to assist their efforts, except that in no circumstances may an extension or renewal of this Agreement be imposed.

9.0 DISCONTINUANCE

9.1 If there is a default in any payment required to be made to Central Saanich under this Agreement for a period in excess of ninety (90) days, Central Saanich may disconnect the Reserve System from the District System. Reconnection of the Reserve System to the District System shall not be made until the payments in default have been made, together with any interest on any balance from time to time owing at the rate set out in section 3.8.

- 9.2 Subject to section 5.3, should Tsawout fail to perform any covenant or condition to be performed by them or fail to make any payment required to be made under this Agreement, Tsawout will, as soon as possible after the date of receipt of notice in writing from the Municipality of such breach, rectify the breach. Should the breach not be rectified within 30 days after the date of receipt of such notice, the Municipality may discontinue the provision of water until such time as the default is rectified. Central Saanich may terminate this Agreement by giving a further 30 days written notice to Tsawout.
- 9.3 If Central Saanich fails to perform or observe any term or condition contained herein then the Council may terminate this Agreement by giving five (5) days notice in writing thereof to Central Saanich. Any right of action arising prior to the breach or arising out of any breach shall not be prejudiced by termination of this Agreement.
- 9.4 If this Agreement is terminated under section 9.3 or suspended under section 5.3, then Central Saanich will within five working days provide the Tsawout Council with an invoice for the bulk water supply as set out in section 3.1 herein and Tsawout will pay the invoice within five working days of its receipt and Central Saanich thereafter shall disconnect the District System from the Reserve System.

10.0 NOTICE

- 10.1 Any notice, document, statement, report, demand or payment desired or required to be given or made pursuant to this Agreement will be in writing and may be given or made if delivered personally to the Party to whom it is to be given or made, delivered by electronic facsimile transmission or mailed in Canada with postage prepaid and addressed if to:

- (a) To the District:

Mayor and Council
1903 Mount Newton Cross Road
Saanichton, BC
V8N 2A9

Attention: Clerk - Administrator

- (b) To Tsawout:

Tsawout Council
7725 Tetayut Road
P.O. Box 121
Saanichton, BC
V8M 2C3

Attention: Band Manager

10.2 Provided that a Party may change its address by giving the other Party prior notice of a change in address in accordance with this section 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 Municipality by delivery to the Municipal Clerk and in the case of Tsawout to the Band Administrator/Manager.

11.0 ASSIGNMENT

11.1 This Agreement shall not be assigned by any party hereto, except with the prior written consent of the other, which consent shall not be unreasonably withheld.

12.0 DISPUTE RESOLUTION

12.1 The Parties agree that during the term of this Agreement and in the performance of each of their responsibilities under this Agreement, each of them will:

- (a) make bona fide efforts to resolve any disputes arising between them by amicable negotiations; and
- (b) provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate those negotiations.

12.2 The Parties further agree to use their best efforts to conduct any dispute resolution procedure under this Agreement as efficiently and cost effectively as possible.

12.3 The Parties agree to attempt to resolve all disputes arising out of or in connection with this Agreement, or in respect of any defined legal relationship associated with it or from it, by mediated negotiation with the assistance of a neutral person mutually agreed upon, or should the Parties be unable to agree upon such person within 30 days of either Party serving notice of its intention to proceed to mediation, a neutral person appointed by the British Columbia International Commercial Arbitration Centre administered under its Mediation Rules.

12.4 If the dispute cannot be settled within thirty (30) days after the mediator has been appointed or such lesser or longer period otherwise agreed to in writing by the Parties, the dispute will be referred to and finally resolved by arbitration administered by the British Columbia International Commercial Arbitration Centre, under its Rules. In the absence of any written agreement otherwise, the place of arbitration will be Victoria, British Columbia.

12.5 Except where otherwise specified in this Agreement, any and all disputes between or among the Parties to this Agreement arising under, out of or in any way relating to this Agreement will be determined under this section.

12.6 Subject to any ruling or recommendation to the contrary by the Arbitrator or Mediator respectively, the Parties agree that the costs of such mediation or arbitration shall be shared equally between them. Costs in this context shall not include any costs incurred

by a Party in preparation for and attending upon or settling a matter through mediation or arbitration.

13.0 INTERPRETATION

- 13.1 Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of Central Saanich, Tsawout or their Councils in the exercise of their functions under any public or private statute, bylaw, order and regulation all of which may be fully and effectively exercised in relation to each other and their assets as if this Agreement had not been executed and delivered by the Parties to this Agreement.
- 13.2 This Agreement shall not be construed so as to create any greater standard of care or liability on the part of Central Saanich in respect of the supply of water to the Reserve than that which applies to the supply of such service to any occupants, land or facilities within Central Saanich.
- 13.3 Nothing in this Agreement or in the Parties' dealings with each other is intended to be or interpreted or construed as creating an agency relationship, joint venture or partnership of any kind between the Parties or as imposing on any of the parties any partnership duty, obligation or liability to any other Party or to any other person.
- 13.4 Each of the Parties covenants and agrees to execute such further and other documents and instruments, and to do such further and other things as they are authorized to do and as may be necessary to implement and carry out the intent of this Agreement.
- 13.5 None of the Parties shall challenge the validity of this Agreement, in whole or in part. If any party of this Agreement is declared or held invalid for any reason, the invalidity of that part will not affect the validity of the remainder, which will continue in full force and effect and be construed as if this Agreement had been executed without the invalid part. In the event that a part of this Agreement is declared or held invalid, the Parties agree to use their best efforts to reach agreement on terms which substantially achieve the intent of the invalid part and that will be enforceable.
- 13.6 Time shall be of the essence of this Agreement.
- 13.7 Headings are inserted in this Agreement for convenience only and shall not be construed as affecting the meaning of this Agreement.
- 13.8 No waiver of any term or condition of this Agreement or of 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 or breach even if in writing shall be construed as a waiver of any future breach.
- 13.9 This Agreement constitutes the entire Agreement amongst the Parties and there are no other terms, conditions, representations or warranties in this Agreement express or implied, statutory or otherwise, except for those expressly set forth herein.
- 13.10 This Agreement may be amended at any time by consent of both Parties.


13.11 Whenever 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 of the Parties hereto so requires.

13.12 The word "including", when following any statement, will be construed broadly, to refer to all other things that could reasonably fall within the scope of such statement, whether or not non-limiting language (such as "without limitation" or "without limiting the generality of the foregoing") is referenced.

13.13 This Agreement shall enure to the benefit of and be binding upon the Parties hereto and their permitted successors and assigns.

IN WITNESS WHEREOF the parties have executed this Agreement on the 20th day December, 2001.

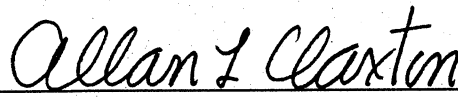
SIGNED, SEALED AND DELIVERED
by TSAWOUT FIRST NATION



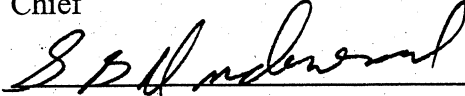
Witness

2810 McNEILTON YD
Address STANICTON BC

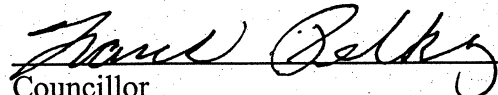
CEO - TSAWOUT FIRST NATION
Occupation



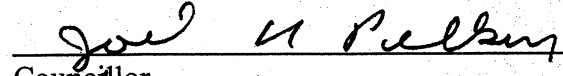
Chief



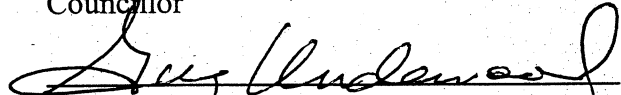
Councillor



Councillor



Councillor




Councillor

The Corporate Seal of THE DISTRICT
OF CENTRAL SAANICH was hereunto
affixed in the presence of:



Mayor



Clerk Administrator

(C/S)