

**The Kwanlin Dun First Nation Self-Government Agreement**

**Among**

**The Kwanlin Dun First Nation**

**and**

**Her Majesty the Queen in Right of Canada**

**and**

**The Government of the Yukon**

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Entente sur l'autonomie gouvernementale  
de la Première nation des Kwanlin Dun

This Agreement made this 19th day of February, 2005.

**AMONG:**

The Kwanlin Dun First Nation as represented by the Chief and Council of the Kwanlin Dun First Nation (hereinafter referred to as the "Kwanlin Dun First Nation")

**AND:**

Her Majesty the Queen in Right of Canada as represented by the Minister of Indian Affairs and Northern Development (hereinafter referred to as "Canada")

**AND:**

The Government of the Yukon as represented by the Government Leader of the Yukon (hereinafter referred to as the "Yukon")

being the Parties (collectively referred to as "the Parties") to this Kwanlin Dun First Nation Self-Government Agreement (hereinafter referred to as "this Agreement").

**WHEREAS:**

Kwanlin Dun have traditional decision-making institutions and practices, and wish to maintain those institutions and practices, integrated with a contemporary form of government;

the Parties have negotiated the Kwanlin Dun First Nation Final Agreement, securing the rights, benefits and commitments therein;

the Kwanlin Dun First Nation and its Citizens assert, subject to Settlement Agreements, continuing aboriginal rights, titles and interests;

the Parties wish to support and promote the contemporary and evolving self-government bodies and practices of the Kwanlin Dun First Nation;

the Parties wish to achieve certainty with respect to the relationship between the Kwanlin Dun First Nation and Government, including jurisdiction over land and other resources within the Traditional Territory of the Kwanlin Dun First Nation;

the Parties recognize and wish to protect a way of life that is based on an economic and spiritual relationship between Kwanlin Dun and the land;

the Parties wish to protect the cultural, political and economic distinctiveness and social well-being of Kwanlin Dun;

the Parties wish to provide for the effective management, administration and exercise of the rights and benefits of Kwanlin Dun and the Kwanlin Dun First Nation which are secured by the Kwanlin Dun First Nation Final Agreement;

the Kwanlin Dun First Nation, Canada and the Yukon have authorized their representatives to sign this Agreement;

**NOW THEREFORE,**

in accordance with Chapter 24 of the Kwanlin Dun First Nation Final Agreement and in consideration of the terms, exchange of promises, conditions, and provisos contained herein, the Parties agree to the following:

Signed at Whitehorse, Yukon, this 19th day of February, 2005.

**The Kwanlin Dun First Nation:**

  
\_\_\_\_\_  
Mike Smith, Chief

  
\_\_\_\_\_  
Edith Baker, Councillor

  
\_\_\_\_\_  
Jessie Dawson, Councillor

  
\_\_\_\_\_  
Leonard Gordon Sr., Councillor

  
\_\_\_\_\_  
Lesley McDiarmid, Councillor

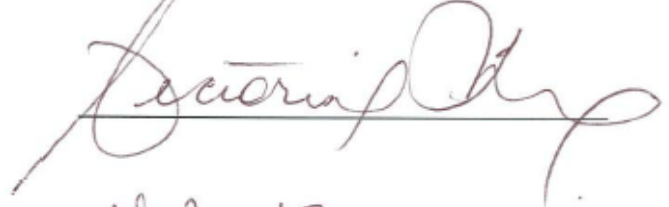
  
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Jason Shorty, Councillor

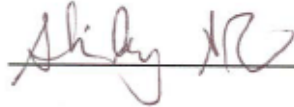
  
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Allan Taylor, Councillor

**Witnesses:**

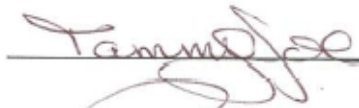
  
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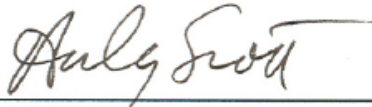
  
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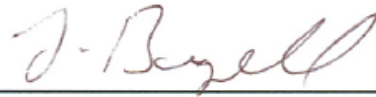
Signed at Whitehorse, Yukon, this 19th day of February, 2005.

**Her Majesty the Queen in Right  
of Canada:**



\_\_\_\_\_  
The Honourable Andy Scott  
Minister of Indian Affairs  
and Northern Development

**Witnesses:**



\_\_\_\_\_  
The Honourable Larry Bagnell  
Member of Parliament for Yukon



\_\_\_\_\_  
Elizabeth Hanson



\_\_\_\_\_  
Aletta Anne King

Signed at Whitehorse, Yukon, this 19th day of February, 2005.

**The Government of the Yukon:**

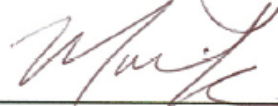


\_\_\_\_\_  
The Honourable Dennis Fentie  
Government Leader of the Yukon

**Witnesses:**



\_\_\_\_\_  
Dermot Flynn



\_\_\_\_\_  
Monica Leask



\_\_\_\_\_  
Anne Marie McColman





WITNESSES  
TO THE KWANLIN DUN FIRST NATION  
FINAL AGREEMENT AND SELF-GOVERNMENT AGREEMENT  
SIGNED ON FEBRUARY 19, 2005.

*Bill Webber*

*Bruce Webber*

*R. A. Dickson*

*Debra Tribodeau*  
*Bill Webber*

*Linda R. Harvey Way to go KDB!!*

*Jacqueline R. Ezelt, TKC*

*Bruce A. Threl*

*Q.*



## **TABLE OF CONTENTS**

### **PART I**

#### **GENERAL**

		<b>Page</b>
1.0	Definitions	1
2.0	Principles	4
3.0	General Provisions	4
4.0	Ratification	5
5.0	Self-Government Legislation	5
6.0	Amendment and Review	5
7.0	Remedies	7
8.0	Interpretation and Application of Law	7

### **PART II**

#### **KWANLIN DUN FIRST NATION**

9.0	Legal Status of the Kwanlin Dun First Nation	9
10.0	Kwanlin Dun First Nation Constitution	9
11.0	Transitional Provisions	10
12.0	Delegation	10

### **PART III**

#### **KWANLIN DUN FIRST NATION LEGISLATION**

13.0	Legislative Powers	13
	13.4.0 Emergency Powers	16
	13.5.0 Laws of General Application	17
	13.6.0 Administration of Justice	18
14.0	Taxation	20
15.0	Taxation Status	22

### **PART IV**

#### **KWANLIN DUN FIRST NATION PROGRAMS AND SERVICES**

16.0	Self-Government Financial Transfer Agreement	25
17.0	Programs and Services	28
18.0	Government of the Yukon Financial Contributions	29

19.0	Kwanlin Dun First Nation Revenue	30
20.0	Laws of Canada and the Yukon	30
21.0	Public Register of Laws and Notification Provision	31
22.0	Financial Accountability	31
23.0	Implementation	31
24.0	Dispute Resolution	32
25.0	Compatible Land Use	32
26.0	Local Service Agreements	34
27.0	Regional or District Structures	35
28.0	Exercise of Self-Government Powers Within the Community	
	Boundaries of the City of Whitehorse and the Marsh Lake Local Advisory Area	37
29.0	Regime for the Ownership, Management and Administration of the Old Village as a Reserve Retained under 4.1.1.1 of the Final Agreement	48
30.0	Local Area Land Use Planning	51
APPENDIX A	Compatible Land Use	56
APPENDIX B	Part 1 - Land Use and Development Designations	57
APPENDIX B	Part 2	61
APPENDIX C	Land Description of the Old Village	64
APPENDIX D	Road and Utility Easement Agreement	65
Schedule A	Tlingit Road City Easement Area	69
APPENDIX E	Easement Agreement	70
Schedule A	Sketch	73
Schedule B	Sketch	74
APPENDIX F	Road and Utility Easement and Licence Agreement	75
SCHEDULE A	Ratification of the Kwanlin Dun First Nation Self-Government Agreement	81
1.0	Definitions	81
2.0	General	81
3.0	Information Campaign	82
4.0	Voting Process	83
5.0	Ratification of this Agreement by the Kwanlin Dun First Nation	84
6.0	Ratification of this Agreement by Government	85
7.0	Signing of this Agreement	86

**PART I**  
**GENERAL**

**1.0**    **DEFINITIONS**

1.1    In this Agreement:

"Act" includes ordinance;

"Assembly" has the same meaning as in the Constitution;

"Chief" has the same meaning as in the Constitution;

"Citizen" means a citizen of the Kwanlin Dun First Nation as determined pursuant to the Constitution;

"Community Boundary" has the same meaning as in the Final Agreement;

"Constitution" means the constitution of the Kwanlin Dun First Nation, which comes into effect on the Effective Date, as amended from time to time;

"Consult" or "Consultation" means to provide,

- (a) to the party to be consulted, notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter,
- (b) a reasonable period of time in which the party to be consulted may prepare its views on the matter, and an opportunity to present such views to the party obliged to consult, and
- (c) full and fair consideration by the party obliged to consult of any views presented;

"Council" has the same meaning as in the Constitution;

"Council for Yukon Indians" includes any successor to the Council for Yukon Indians and, in the absence of a successor, the Yukon First Nations;

"Effective Date" means the date on which this Agreement is brought into effect pursuant to Self-Government Legislation;

"Emergency" includes apprehended, imminent or actual danger to life, health, safety, or the environment;

"Final Agreement" means the Kwanlin Dun First Nation Final Agreement among Her Majesty the Queen in Right of Canada, the Government of the Yukon and the Kwanlin Dun First Nation brought into effect pursuant to Settlement Legislation and includes any amendments made to it from time to time in accordance with its provisions;

"Government" means Canada or the Yukon, or both, depending upon which government or governments have responsibility, from time to time, for the matter in question;

"Law" includes common law;

"Laws of General Application" means laws of general application as defined by common law, but does not include laws enacted by the Kwanlin Dun First Nation;

"Legislative Assembly" means the Council of the Yukon Territory as defined in the Yukon Act (Canada);

"Legislation" includes Acts, Regulations, orders-in-council and bylaws;

"Minister" means the Minister or Ministers of Government charged by Legislation with the responsibility, from time to time, for the exercise of powers in relation to the matter in question;

"Non-Settlement Land" has the same meaning as in the Final Agreement;

"Parcel" has the same meaning as in the Final Agreement;

"Property Taxes" has the same meaning as in the Final Agreement;

"Regulation" includes a regulation or any instrument made in the execution of a power or authority conferred by an Act, but does not include laws enacted by the Kwanlin Dun First Nation;

"Relocation Agreement" means the Memorandum of Agreement with respect to the Relocation of the Kwanlin Dun Indian Band Residential Area to the McIntyre Site between the Government of Canada, the Government of the Yukon Territory, the Corporation of the City of Whitehorse and the Kwanlin Dun Indian Band, dated March 4, 1986 as amended;

"Self-Government Legislation" means the Legislation which brings this Agreement into effect;

"Settlement Agreement" has the same meaning as in the Final Agreement;

"Settlement Corporation" means a corporation as described in 20.4.2 of the Final Agreement, created by the Kwanlin Dun First Nation alone or together with one or more Yukon First Nations;

"Settlement Land" means those lands identified in the Final Agreement as Settlement Land for the Kwanlin Dun First Nation;

"Settlement Legislation" has the same meaning as in the Final Agreement;

"Traditional Territory" means the geographic area within the Yukon identified as the Traditional Territory of the Kwanlin Dun First Nation on the maps referred to in 2.9.0 of the Final Agreement;

"Umbrella Final Agreement" means the Umbrella Final Agreement signed on May 29, 1993 by representatives of the Council for Yukon Indians, Canada and the Yukon and includes any amendments made to it from time to time in accordance with its provisions;

"Yukon First Nation" means one of the following,

Carcross/Tagish First Nation,  
Champagne and Aishihik First Nations,  
Kluane First Nation,  
Kwanlin Dun First Nation,  
Liard First Nation,  
Little Salmon/Carmacks First Nation,  
First Nation of Nacho Nyak Dun,  
Ross River Dena Council,  
Selkirk First Nation,  
Ta'an Kwach'an Council,  
Teslin Tlingit Council,  
Tr'ondëk Hwëch'in, formerly known as Dawson First Nation,  
Vuntut Gwitchin First Nation, or  
White River First Nation;

"Yukon First Nations" means all of the Yukon First Nations defined as a Yukon First Nation;

"Yukon Indian People" has the same meaning as in the Final Agreement; and

"Yukon Law of General Application" means a Law of General Application enacted pursuant to the Yukon Act (Canada).

## **2.0 PRINCIPLES**

- 2.1 The Kwanlin Dun First Nation has traditional decision-making structures, institutions and practices and desires to integrate those structures, institutions and practices with a contemporary form of government.
- 2.2 The Parties are committed to promoting opportunities for the well-being of Citizens equal to those of other Canadians and to providing essential public services of reasonable quality to all Citizens.

## **3.0 GENERAL PROVISIONS**

- 3.1 This Agreement shall not affect any aboriginal claim, right, title or interest of the Kwanlin Dun First Nation or of its Citizens.
- 3.2 This Agreement shall not affect the identity of Citizens as aboriginal people of Canada.
- 3.3 This Agreement shall not affect the ability of the aboriginal people of the Kwanlin Dun First Nation to exercise, or benefit from, any existing or future constitutional rights for aboriginal people that may be applicable to them.
- 3.4 Unless otherwise provided pursuant to this Agreement or in a law enacted by the Kwanlin Dun First Nation, this Agreement shall not affect the ability of Citizens to participate in and benefit from Government programs for status Indians, non-status Indians or native people, as the case may be. Benefits under such programs shall be determined by the general criteria for such programs established from time to time.
- 3.5 Except for the purpose of determining which Citizens are "Indians" within the meaning of the Indian Act (Canada), the Indian Act (Canada) does not apply to Citizens, the Kwanlin Dun First Nation or Settlement Land.
- 3.6 This Agreement shall not:
  - 3.6.1 affect the rights of Citizens as Canadian citizens; and
  - 3.6.2 unless otherwise provided pursuant to this Agreement or in a law enacted by the Kwanlin Dun First Nation, affect the entitlement of Citizens to all of the benefits, services, and protections of other Canadian citizens applicable from time to time.
- 3.7 Government may determine, from time to time, how and by whom any power or authority of Government set out in this Agreement shall be exercised, other than the power to consent to an amendment pursuant to 6.2.



#### **4.0 RATIFICATION**

- 4.1 Ratification of this Agreement shall be sought by the Parties in the following manner:
- 4.1.1 by the Kwanlin Dun First Nation, by the process set out in Schedule A of this Agreement;
  - 4.1.2 by Canada, by the Governor in Council; and
  - 4.1.3 by the Yukon, by the Commissioner in Executive Council.
- 4.2 For greater certainty, this Agreement is made when it is signed by representatives of the Parties in both English and French and both versions of this Agreement shall be equally authoritative.

#### **5.0 SELF-GOVERNMENT LEGISLATION**

- 5.1 Government shall Consult with the Kwanlin Dun First Nation before recommending to the Governor in Council or the Commissioner in Executive Council, as the case may be, the orders-in-council required pursuant to the Yukon First Nations Self-Government Act (Canada) and the First Nations (Yukon) Self-Government Act (Yukon) to bring this Agreement into effect.
- 5.2 Government shall Consult with the Kwanlin Dun First Nation during the drafting of any amendment to or repeal of Self-Government Legislation which affects the Kwanlin Dun First Nation.

#### **6.0 AMENDMENT AND REVIEW**

- 6.1 Except as otherwise provided in 6.3, this Agreement may only be amended with the consent of all the Parties.
- 6.2 Consent to any amendment pursuant to 6.1 may only be given on the part of:
- 6.2.1 the Kwanlin Dun First Nation, by the Council;
  - 6.2.2 Canada, by the Governor in Council; and
  - 6.2.3 the Yukon, by the Commissioner in Executive Council.
- 6.3 An amendment to:
- 6.3.1 the definitions of Type 1 Parcel, Type 2 Parcel or Type 3 Parcel in 28.0 of this Agreement;

6.3.2 Appendix A of this Agreement; or

6.3.3 Appendix B of this Agreement other than variations of Land Use and Development Designations pursuant to 28.9,

requires only the consent of the Council and the Yukon Minister with responsibility for land claims and self-government.

6.4 The Yukon Minister with responsibility for land claims and self-government shall provide to the Minister of Indian Affairs and Northern Development a certified copy of any amendment made pursuant to 6.3.

6.5 Where Government has concluded a self-government agreement with another Yukon First Nation which includes provisions more favourable than those in this Agreement, and where it would be practical to include those provisions in this Agreement, Government, at the request of the Kwanlin Dun First Nation, shall negotiate with the Kwanlin Dun First Nation with a view to amending this Agreement to incorporate provisions no less favourable than those in the other self-government agreement.

6.6 A dispute arising from negotiations described in 6.5 may be referred by any Party to dispute resolution pursuant to 26.3.0 of the Final Agreement.

6.7 In any dispute arising pursuant to 6.5 an arbitrator shall have the authority set out in 26.7.3 of the Final Agreement.

6.8 The Parties shall make amendments to this Agreement which are required to give effect to orders or decisions of an arbitrator made pursuant to 6.6.

6.9 Unless the Parties otherwise agree, the Parties shall review this Agreement within five years of the Effective Date for the purpose of determining whether:

6.9.1 other self-government agreements in Canada have more effectively incorporated self-government provisions respecting any matter considered in this Agreement;

6.9.2 other self-government agreements in Canada have more effectively incorporated implementation or financial transfer agreements;

6.9.3 this Agreement has been implemented in accordance with the implementation plan;

6.9.4 the negotiated transfer of programs, responsibilities and resources pursuant to this Agreement has been successful; and

6.9.5 this Agreement should be amended in accordance with 6.1 and 6.2 or 6.3 to reflect the outcome of the review.

## **7.0 REMEDIES**

- 7.1 Neither Government nor the Kwanlin Dun First Nation shall have a claim or a cause of action in the event any provision of this Agreement or of Self-Government Legislation is found by a court of competent jurisdiction to be invalid.
- 7.2 Neither Government nor the Kwanlin Dun First Nation shall challenge the validity of any provision of this Agreement or of Self-Government Legislation.
- 7.3 If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the Parties shall make best efforts to amend this Agreement to remedy the invalidity or replace the invalid provision.
- 7.4 If any provision of Self-Government Legislation is found by a court of competent jurisdiction to be invalid, Government shall make best efforts to amend the Self-Government Legislation to remedy the invalidity or replace the invalid provision.

## **8.0 INTERPRETATION AND APPLICATION OF LAW**

- 8.1 Subject to 8.1.1, where there is any inconsistency or conflict between the provisions of federal Self-Government Legislation and any other federal Legislation, the federal Self-Government Legislation shall prevail to the extent of the inconsistency or conflict.
- 8.1.1 Where there is any inconsistency or conflict between the provisions of federal Self-Government Legislation and the Final Agreement or Settlement Legislation, the Final Agreement or Settlement Legislation shall prevail to the extent of the inconsistency or conflict.
- 8.2 Subject to 8.2.1, where there is any inconsistency or conflict between the provisions of Yukon Self-Government Legislation and any other Yukon Legislation, the Yukon Self-Government Legislation shall prevail to the extent of the inconsistency or conflict.
- 8.2.1 Where there is any inconsistency or conflict between the provisions of Yukon Self-Government Legislation and the Final Agreement or Settlement Legislation, the Final Agreement or Settlement Legislation shall prevail to the extent of the inconsistency or conflict.
- 8.3 This Agreement is subject to the Final Agreement, and in the event of any inconsistency or conflict, the Final Agreement shall prevail to the extent of the inconsistency or conflict.
- 8.4 Common law conflict of laws principles shall apply where a conflict of laws issue arises unless:

- 8.4.1 in the case of a conflict of laws issue arising between a law enacted by the Kwanlin Dun First Nation and a law enacted by another Yukon First Nation, the Kwanlin Dun First Nation and the other Yukon First Nation have otherwise agreed; or
- 8.4.2 in the case of a conflict of laws issue arising between a law enacted by the Kwanlin Dun First Nation and a Law of General Application, the Kwanlin Dun First Nation and Government have otherwise agreed.
- 8.5 Unless otherwise provided in this Agreement, the exercise of powers by the Kwanlin Dun First Nation pursuant to this Agreement shall not confer any duties, obligations or responsibilities on Government.
- 8.6 This Agreement shall be interpreted according to the Interpretation Act (Canada), with such modifications as the circumstances require.
- 8.7 The preamble and the principles in this Agreement are statements of the intentions of the Parties and shall only be used to assist in the interpretation of doubtful or ambiguous expressions in this Agreement.
- 8.8 Capitalized words or phrases shall have the meaning as defined in this Agreement.
- 8.9 Any reference in this Agreement to Legislation, an Act or a provision of an Act includes:
- 8.9.1 that Legislation, Act or provision of an Act, and any Regulations made thereunder, as amended from time to time; and
- 8.9.2 any successor Legislation, Act or provision of an Act.
- 8.10 Successor Legislation includes Yukon Legislation which replaces federal Legislation as a consequence of devolution of authority or responsibility from Canada to the Yukon.
- 8.11 The Supreme Court of the Yukon Territory shall have jurisdiction in respect of any action or proceeding arising out of this Agreement or Self-Government Legislation.
- 8.12 Nothing in this Agreement shall be construed to limit the jurisdiction of the Federal Court of Canada as set forth in the Federal Court Act (Canada).

## PART II

### THE KWANLIN DUN FIRST NATION

#### **9.0 LEGAL STATUS OF THE KWANLIN DUN FIRST NATION**

9.1 Upon the Effective Date, the Indian Act (Canada) Kwanlin Dun First Nation Band shall cease to exist and its rights, titles, interests, assets, obligations and liabilities, including those of its band council, shall vest in the Kwanlin Dun First Nation.

9.2 The Kwanlin Dun First Nation is a legal entity and has the capacity, rights, powers and privileges of a natural person and, without restricting the generality of the foregoing, may:

9.2.1 enter into contracts or agreements;

9.2.2 acquire and hold property or any interest therein, and sell or otherwise dispose of property or any interest therein, except as limited by the Constitution;

9.2.3 raise, invest, expend and borrow money;

9.2.4 sue or be sued;

9.2.5 form corporations or other legal entities; and

9.2.6 do such other things as may be conducive to the exercise of its rights, powers and privileges.

9.3 The act of acquiring or the holding of any rights, liabilities or obligations by the Kwanlin Dun First Nation or by any entity described in 9.2.5, shall not be construed to affect any aboriginal right, title or interest of the Kwanlin Dun First Nation, its Citizens or their heirs, descendants or successors.

#### **10.0 THE KWANLIN DUN FIRST NATION CONSTITUTION**

10.1 The Constitution of the Kwanlin Dun First Nation shall, in a manner consistent with this Agreement, provide for:

10.1.1 a citizenship code that includes the requirements for citizenship in the Kwanlin Dun First Nation and the procedure for determining whether a person is a Citizen;

10.1.2 the governing bodies of the Kwanlin Dun First Nation and their composition, membership, powers, duties and procedures;

- 10.1.3 a system of reporting, which may include audits, through which the Kwanlin Dun First Nation shall be financially accountable to its Citizens;
  - 10.1.4 the recognition and protection of the rights and freedoms of Citizens;
  - 10.1.5 challenging the validity of the laws enacted by the Kwanlin Dun First Nation and quashing invalid laws; and
  - 10.1.6 the amendment of the Constitution by the Citizens.
- 10.2 The Constitution may provide for any other matters relating to the Kwanlin Dun First Nation or to the governing of Settlement Land, or of persons on Settlement Land.
- 10.3 The citizenship code established in the Constitution shall enable all persons enrolled under the Final Agreement to be Citizens.

## **11.0 TRANSITIONAL PROVISIONS**

- 11.1 The band council of the Indian Act (Canada) Kwanlin Dun First Nation Band that is in office on the Effective Date shall be deemed to be the governing body of the Kwanlin Dun First Nation until replaced in accordance with the Constitution.
- 11.2 Any monies held by Canada for the use and benefit of the Indian Act (Canada) Kwanlin Dun First Nation Band shall be transferred to the Kwanlin Dun First Nation, as soon as practicable after the Effective Date.

## **12.0 DELEGATION**

- 12.1 The Kwanlin Dun First Nation may delegate any of its powers, including legislative powers, to:
- 12.1.1 a public body or office established by a law of the Kwanlin Dun First Nation;
  - 12.1.2 Government, including a department, agency or office of Government;
  - 12.1.3 a public body performing a function of government in Canada, including another Yukon First Nation;
  - 12.1.4 a municipality, school board, local body, or legal entity established by Yukon Law;

- 12.1.5 a tribal council; or
  - 12.1.6 any legal entity in Canada.
- 12.2 Any delegation under 12.1.2 to 12.1.6 shall be made by written agreement with the delegate.
- 12.3 The Kwanlin Dun First Nation has the capacity to enter into agreements to receive powers, including legislative powers, by delegation.





## PART III

### KWANLIN DUN FIRST NATION LEGISLATION

#### **13.0 LEGISLATIVE POWERS**

- 13.1 The Kwanlin Dun First Nation shall have the exclusive power to enact laws in relation to the following matters:
- 13.1.1 administration of Kwanlin Dun First Nation affairs and operation and internal management of the Kwanlin Dun First Nation;
  - 13.1.2 management and administration of rights or benefits which are realized pursuant to the Final Agreement by persons enrolled under the Final Agreement, and which are to be controlled by the Kwanlin Dun First Nation; and
  - 13.1.3 matters ancillary to the foregoing.
- 13.2 The Kwanlin Dun First Nation shall have the power to enact laws in relation to the following matters in the Yukon:
- 13.2.1 provision of programs and services for Citizens in relation to their spiritual and cultural beliefs and practices;
  - 13.2.2 provision of programs and services for Citizens in relation to their aboriginal languages;
  - 13.2.3 provision of health care and services to Citizens, except licensing and regulation of facility-based services off Settlement Land;
  - 13.2.4 provision of social and welfare services to Citizens, except licensing and regulation of facility-based services off Settlement Land;
  - 13.2.5 provision of training programs for Citizens, subject to Government certification requirements where applicable;
  - 13.2.6 adoption by and of Citizens;
  - 13.2.7 guardianship, custody, care and placement of Kwanlin Dun First Nation children, except licensing and regulation of facility-based services off Settlement Land;
  - 13.2.8 provision of education programs and services for Citizens choosing to participate, except licensing and regulation of facility-based services off Settlement Land;

- 13.2.9 inheritance, wills, intestacy and administration of estates of Citizens, including rights and interests in Settlement Land;
  - 13.2.10 procedures consistent with the principles of natural justice for determining the mental competency or ability of Citizens, including administration of the rights and interests of those found incapable of responsibility for their own affairs;
  - 13.2.11 provision of services to Citizens for resolution of disputes outside the courts;
  - 13.2.12 solemnization of marriage of Citizens;
  - 13.2.13 licences in respect of matters enumerated in 13.1, 13.2 and 13.3 in order to raise revenue for Kwanlin Dun First Nation purposes;
  - 13.2.14 matters necessary to enable the Kwanlin Dun First Nation to fulfill its responsibilities under the Final Agreement or this Agreement; and
  - 13.2.15 matters ancillary to the foregoing.
- 13.3 The Kwanlin Dun First Nation shall have the power to enact laws of a local or private nature on Settlement Land in relation to the following matters:
- 13.3.1 use, management, administration, control and protection of Settlement Land;
  - 13.3.2 allocation or disposition of rights and interests in and to Settlement Land, including expropriation by the Kwanlin Dun First Nation for Kwanlin Dun First Nation purposes;
  - 13.3.3 use, management, administration and protection of natural resources under the ownership, control or jurisdiction of the Kwanlin Dun First Nation;
  - 13.3.4 gathering, hunting, trapping or fishing and the protection of fish, wildlife and habitat;
  - 13.3.5 control or prohibition of the erection and placement of posters, advertising signs, and billboards;
  - 13.3.6 licensing and regulation of any person or entity carrying on any business, trade, profession, or other occupation;
  - 13.3.7 control or prohibition of public games, sports, races, athletic contests, and other amusements;

- 13.3.8 control of the construction, maintenance, repair and demolition of buildings or other structures;
- 13.3.9 prevention of overcrowding of residences or other buildings or structures;
- 13.3.10 control of the sanitary condition of buildings or property;
- 13.3.11 planning, zoning and land development;
- 13.3.12 curfews, prevention of disorderly conduct and control or prohibition of nuisances;
- 13.3.13 control or prohibition of the operation and use of vehicles;
- 13.3.14 control or prohibition of the transport, sale, exchange, manufacture, supply, possession or consumption of intoxicants;
- 13.3.15 establishment, maintenance, provision, operation or regulation of local services and facilities;
- 13.3.16 caring and keeping of livestock, poultry, pets and other birds and animals, and impoundment and disposal of any bird or animal maltreated or improperly at-large, but the caring and keeping of livestock does not include game farming or game ranching;
- 13.3.17 administration of justice;
- 13.3.18 control or prohibition of any actions, activities or undertakings that constitute, or may constitute, a threat to public order, peace or safety;
- 13.3.19 control or prohibition of any activities, conditions or undertakings that constitute, or may constitute, a danger to public health;
- 13.3.20 control or prevention of pollution and protection of the environment;
- 13.3.21 control or prohibition of the possession or use of firearms, other weapons and explosives;
- 13.3.22 control or prohibition of the transport of dangerous substances; and
- 13.3.23 matters coming within the good government of Citizens on Settlement Land.

#### **13.4.0 Emergency Powers**

- 13.4.1 Off Settlement Land, in relation to those matters enumerated in 13.2, in any situation that poses an Emergency to a Citizen, Government may exercise power conferred by Laws of General Application to relieve the Emergency, notwithstanding that laws enacted by the Kwanlin Dun First Nation may apply to the Emergency.
- 13.4.2 A person acting pursuant to 13.4.1 shall, as soon as practicable after determining that a person in an Emergency is a Citizen, notify the Kwanlin Dun First Nation of the action taken and transfer the matter to the responsible Kwanlin Dun First Nation authority, at which time the authority of the Government to act pursuant to 13.4.1 shall cease.
- 13.4.3 A person acting pursuant to 13.4.1 is not liable for any act done in good faith in the reasonable belief that the act was necessary to relieve an Emergency.
- 13.4.4 On Settlement Land, in relation to those matters enumerated in 13.2, in any situation that poses an Emergency to a person who is not a Citizen, the Kwanlin Dun First Nation may exercise power conferred by laws enacted by the Kwanlin Dun First Nation to relieve the Emergency, notwithstanding that Laws of General Application may apply to the Emergency.
- 13.4.5 A person acting pursuant to 13.4.4 shall, as soon as practicable after determining that a person in an Emergency is not a Citizen, notify Government or, where the person in an Emergency is a citizen of another Yukon First Nation, that Yukon First Nation, of the action taken and transfer the matter to the responsible authority, at which time the authority of the Kwanlin Dun First Nation to act pursuant to 13.4.4 shall cease.
- 13.4.6 A person acting pursuant to 13.4.4 is not liable for any act done in good faith in the reasonable belief that the act was necessary to relieve an Emergency.
- 13.4.7 Notwithstanding 13.5.0, in relation to powers enumerated in 13.3, Laws of General Application shall apply with respect to an Emergency arising on Settlement Land which has or is likely to have an effect off Settlement Land.

### **13.5.0 Laws of General Application**

- 13.5.1 Unless otherwise provided in this Agreement, all Laws of General Application shall continue to apply to the Kwanlin Dun First Nation, its Citizens and Settlement Land.
- 13.5.2 Canada and the Kwanlin Dun First Nation shall enter into negotiations with a view to concluding, as soon as practicable, a separate agreement or an amendment of this Agreement which will identify the areas in which laws enacted by the Kwanlin Dun First Nation shall prevail over federal Laws of General Application to the extent of any inconsistency or conflict.
- 13.5.2.1 Canada shall Consult with the Yukon prior to concluding the negotiations described in 13.5.2.
- 13.5.2.2 Clause 13.5.2 shall not affect the status of the Yukon as a party to the negotiations or agreements referred to in 13.6.0 or 17.0.
- 13.5.3 Except as provided in 14.0 and 28.0, a Yukon Law of General Application shall be inoperative to the extent that it provides for any matter for which provision is made in a law enacted by the Kwanlin Dun First Nation.
- 13.5.4 Where the Yukon reasonably foresees that a Yukon Law of General Application which it intends to enact may have an impact on a law enacted by the Kwanlin Dun First Nation, the Yukon shall Consult with the Kwanlin Dun First Nation before introducing the Legislation in the Legislative Assembly.
- 13.5.5 Where the Kwanlin Dun First Nation reasonably foresees that a law which it intends to enact may have an impact on a Yukon Law of General Application, the Kwanlin Dun First Nation shall Consult with the Yukon before enacting the law.
- 13.5.6 Where the Commissioner in Executive Council is of the opinion that a law enacted by the Kwanlin Dun First Nation has rendered a Yukon Law of General Application partially inoperative and that it would unreasonably alter the character of a Yukon Law of General Application or that it would make it unduly difficult to administer that Yukon Law of General Application in relation to the Kwanlin Dun First Nation, Citizens or Settlement Land, the Commissioner in Executive Council may declare that the Yukon Law of General Application ceases to apply in whole or in part to the Kwanlin Dun First Nation, Citizens or Settlement Land.
- 13.5.7 Prior to making a declaration pursuant to 13.5.6:

- 13.5.7.1 the Yukon shall Consult with the Kwanlin Dun First Nation and identify solutions, including any amendments to Yukon Legislation, that the Yukon considers would meet the objectives of the Kwanlin Dun First Nation; and
- 13.5.7.2 after Consultation pursuant to 13.5.7.1, where the Yukon and the Kwanlin Dun First Nation agree that the Yukon Law of General Application should be amended, the Yukon shall propose such amendment to the Legislative Assembly within a reasonable period of time.

**13.6.0 Administration of Justice**

- 13.6.1 The Parties shall enter into negotiations with a view to concluding an agreement in respect of the administration of Kwanlin Dun First Nation justice provided for in 13.3.17.
- 13.6.2 Negotiations respecting the administration of justice shall deal with such matters as adjudication, civil remedies, punitive sanctions including fine, penalty and imprisonment for enforcing any law of the Kwanlin Dun First Nation, prosecution, corrections, law enforcement, the relation of any Kwanlin Dun First Nation courts to other courts and any other matter related to aboriginal justice to which the Parties agree.
- 13.6.3 Notwithstanding anything in this Agreement, the Kwanlin Dun First Nation shall not exercise its power pursuant to 13.3.17 until the expiry of the time described in 13.6.6, unless an agreement is reached by the Parties pursuant to 13.6.1 and 13.6.2.
- 13.6.4 Until the expiry of the time described in 13.6.6 or an agreement is entered into pursuant to 13.6.1 and 13.6.2:
  - 13.6.4.1 the Kwanlin Dun First Nation shall have the power to establish penalties of:
    - (a) fines up to \$300,000 for the violation of a law enacted by the Kwanlin Dun First Nation in relation to the use of Settlement Land and of natural resources on Settlement Land or the control or prevention of pollution and the protection of the environment on Settlement Land;
    - (b) fines up to \$5,000 for the violation of any other law enacted by the Kwanlin Dun First Nation; and

- (c) imprisonment to a maximum of six months for the violation of a law enacted by the Kwanlin Dun First Nation;
- 13.6.4.2 the Supreme Court of the Yukon Territory, the Territorial Court of Yukon, and the Justice of the Peace Court shall have jurisdiction throughout the Yukon to adjudicate in respect of laws enacted by the Kwanlin Dun First Nation in accordance with the jurisdiction designated to those courts by Yukon Law except that any offence created under a law enacted by the Kwanlin Dun First Nation shall be within the exclusive original jurisdiction of the Territorial Court of Yukon;
- 13.6.4.3 any offence created under a law enacted by the Kwanlin Dun First Nation shall be prosecuted as an offence against an enactment pursuant to the Summary Convictions Act (Yukon), by prosecutors appointed by the Yukon; and
- 13.6.4.4 any term of imprisonment ordered by the Territorial Court of Yukon pursuant to 13.6.4.1 shall be served in a correctional facility pursuant to the Corrections Act (Yukon).
- 13.6.5 Nothing in 13.6.4 is intended to preclude:
  - 13.6.5.1 consensual or existing customary practices of the Kwanlin Dun First Nation with respect to the administration of justice; or
  - 13.6.5.2 programs and practices in respect of the administration of justice, including alternate sentencing or other appropriate remedies, to which the Parties agree before an agreement is concluded pursuant to 13.6.1 and 13.6.2.
- 13.6.6 The provisions in 13.6.4 are interim provisions and shall expire five years from the Effective Date or on the effective date of the agreement concluded pursuant to 13.6.1 and 13.6.2, whichever is earlier. The five year period may be extended for such further time as may be agreed in writing by the Minister on behalf of Canada, the Minister on behalf of the Yukon and the Council on behalf of the Kwanlin Dun First Nation.
- 13.6.7 All new and incremental costs of implementing the interim provisions in 13.6.4 incurred by the Yukon shall be paid by Canada in accordance with guidelines to be negotiated by the Yukon and Canada.

## 14.0 TAXATION

- 14.1 The Kwanlin Dun First Nation shall have the power to enact laws in relation to:
- 14.1.1 taxation, for local purposes, of interests in Settlement Land and of occupants and tenants of Settlement Land in respect of their interests in those lands, including assessment, collection and enforcement procedures and appeals relating thereto;
  - 14.1.2 other modes of direct taxation of Citizens (and, if agreed under 14.3.2, other persons and entities) within Settlement Land to raise revenue for Kwanlin Dun First Nation purposes; and
  - 14.1.3 the implementation of measures made pursuant to any taxation agreement entered into pursuant to 14.6 or with Canada.
- 14.2 The powers of the Kwanlin Dun First Nation provided for in 14.1 shall not limit Government's powers to levy tax or make taxation laws.
- 14.3 Canada and the Kwanlin Dun First Nation shall make reasonable efforts to negotiate agreements on:
- 14.3.1 the manner in which the power of the Kwanlin Dun First Nation to enact taxation laws under 14.1.2 shall be coordinated with existing tax systems; and
  - 14.3.2 the extent, if any, to which the power provided for in 14.1.2 should be extended to apply to other persons and entities within Settlement Land.
- 14.4 When the Kwanlin Dun First Nation exercises its jurisdiction, or assumes responsibility, for the management, administration and delivery of local services and, as a consequence, exercises property taxation powers under 14.1.1, the Yukon shall undertake to ensure a sharing of tax room in respect of Property Taxes which is equitable.
- 14.4.1 To the extent that the Kwanlin Dun First Nation imposes property taxation for local purposes, the Yukon shall ensure that Yukon municipalities do not incur any consequential net loss.
  - 14.4.2 The Kwanlin Dun First Nation and the Yukon shall enter into negotiations as necessary to provide for the efficient delivery of local services and programs.
- 14.5 Where, following the ratification date of this Agreement, Parliament enacts Legislation providing:
- 14.5.1 taxation powers to an Indian government other than those provided for in this Agreement; or



14.5.2 tax exemptions for an Indian government, or an entity owned by an Indian government, other than those provided for in this Agreement,

Canada shall, upon the request in writing of the Kwanlin Dun First Nation, recommend Legislation to the appropriate legislative authority to provide the Kwanlin Dun First Nation with those other powers or exemptions on the same terms as are set out in the Legislation which provides the powers or exemptions to the other Indian government or entity.

14.6 The Yukon Minister of Finance may enter into taxation agreements with the Kwanlin Dun First Nation.

14.7 Notwithstanding 14.1, the Kwanlin Dun First Nation shall, for taxation purposes, be deemed to be a "public authority" within the meaning of Schedule 1 of the Northern Pipeline Act (Canada) and shall abide and be bound by its terms and by the following:

14.7.1 "Pipeline" has the same meaning as in the Northern Pipeline Act (Canada);

14.7.2 "Yukon Property Tax" has the same meaning as in Schedule 1 of the Northern Pipeline Act (Canada);

14.7.3 the maximum level of the Yukon Property Tax imposed by the Yukon or any public authority therein on or for the use of the Pipeline, shall not exceed the amounts payable set out in section 5 of Schedule 1 of the Northern Pipeline Act (Canada);

14.7.4 the Yukon shall Consult with the Kwanlin Dun First Nation and any other affected Yukon First Nation on the establishment of the assessment and taxation regime for the Pipeline and the apportioning, as between themselves, of the Yukon Property Tax;

14.7.5 the assessment and taxation regime shall:

14.7.5.1 take into account the assessment and taxation regimes for similar projects in other jurisdictions in Canada;

14.7.5.2 include a fair and equitable method to apportion the Yukon Property Tax payable for the part of the Pipeline on Settlement Land and the portions which are not on Settlement Land; and

14.7.5.3 provide for consistent, non-discriminatory assessment methods and tax rates for all parts of the Pipeline regardless of whether those parts are located on Settlement Land or Non-Settlement Land;

- 14.7.6 subject to 14.7.3, a dispute respecting the assessment and taxation regime, including the apportionment of Yukon Property Tax payable on Settlement Land and on Non-Settlement Land, may be referred by the Kwanlin Dun First Nation or the Yukon to dispute resolution under 26.4.0 of the Final Agreement; and
- 14.7.7 a dispute not resolved pursuant to 26.4.0 may be referred to dispute resolution under 26.7.0 of the Final Agreement upon agreement of the Kwanlin Dun First Nation and the Yukon.

## **15.0 TAXATION STATUS**

15.1 The Kwanlin Dun First Nation shall, for the purposes of paragraph 149(1)(c) of the Income Tax Act (Canada), be deemed to be a public body performing a function of government in Canada for each taxation year of the Kwanlin Dun First Nation where, at all times during the year:

- 15.1.1 it did not carry on any business other than a business carried on by it on Settlement Land, the primary purpose of which was to provide goods or services to Citizens or residents of Settlement Land; and
- 15.1.2 all or substantially all of its activities were devoted to the exercise of its powers of government authorized under this Agreement, Self-Government Legislation, its Final Agreement or Settlement Legislation,

and for these purposes the taxation year of the Kwanlin Dun First Nation shall be the calendar year or such other fiscal period as the Kwanlin Dun First Nation may elect.

15.2 Nothing in this Agreement shall affect the taxation status of Settlement Corporations as provided for in Chapter 20 of the Final Agreement.

15.3 No tax shall be payable under the Income Tax Act (Canada) for a taxation year on the income, property or capital of a corporation, in this clause referred to as "the subsidiary", where, at all times during the year:

- 15.3.1 all the shares and capital of the subsidiary are owned by the Kwanlin Dun First Nation or by another subsidiary that satisfies the requirements of 15.3.1, 15.3.2, 15.3.3, 15.3.4 and 15.3.5;
- 15.3.2 no part of the earnings of the subsidiary are available to any person other than the Kwanlin Dun First Nation or to another subsidiary that satisfies the requirements of 15.3.1, 15.3.2, 15.3.3, 15.3.4 and 15.3.5;

- 15.3.3 all of the real property and all or substantially all of the tangible personal property of the subsidiary is, or is situate on, Settlement Land;
  - 15.3.4 the subsidiary did not carry on any business other than a business carried on by it on Settlement Land, the primary purpose of which was to provide goods or services to Citizens or residents of Settlement Land, provided that any revenue arising from the provision of goods or services to persons other than Citizens or residents of Settlement Land comprises only an incidental portion of the total revenue from the business; and
  - 15.3.5 the subsidiary was not a Settlement Corporation established pursuant to Chapter 20 of the Final Agreement.
- 15.4 Where the Kwanlin Dun First Nation is deemed to be a public body under 15.1 for a particular year, no income tax will be imposed on the Kwanlin Dun First Nation by the Yukon in respect of that year.
- 15.5 Where, under 15.3, no income tax is payable by a subsidiary for a particular year, no income tax will be imposed on the subsidiary by the Yukon in respect of that year.
- 15.6 For greater certainty, nothing in 15.1 to 15.5 shall be construed so as to prevent the application of section 149 of the Income Tax Act (Canada) to the Kwanlin Dun First Nation or to a corporation referred to in 15.3.
- 15.7 The Kwanlin Dun First Nation, or a trust, board, commission or similar body established by the Kwanlin Dun First Nation, or a corporation wholly owned by any such entity or by a combination thereof (each of which is referred to in 15.7 to 15.11 as the "claimant"), may claim a refund of any tax paid by the claimant under subsection 165(1) or sections 212 or 218 of Part IX of the Excise Tax Act (Canada) that is not otherwise recoverable by the claimant under any law, to the extent that the property or service in respect of which the tax was paid was acquired by the claimant:
- 15.7.1 for consumption or use in the course of exercising the powers of government within Settlement Land authorized under this Agreement, Self-Government Legislation, its Final Agreement or Settlement Legislation; and
  - 15.7.2 not for consumption, use or supply in the course of any business or other activity engaged in by the claimant for profit or gain.
- 15.8 A refund of tax under 15.7 will not be paid to a claimant referred to in that clause unless, at the time at which the tax is paid;
- 15.8.1 all of the claimant's real property and all or substantially all of the

claimant's tangible personal property is, or is situated on, Settlement Land; and

- 15.8.2 the claimant does not engage in any business or other activity for profit or gain, other than a business or an activity, engaged in by the claimant on Settlement Land, the primary purpose of which is to provide goods or services to the Kwanlin Dun First Nation, Citizens, individuals resident on Settlement Land, or corporations wholly owned by the Kwanlin Dun First Nation or by Citizens, or such other businesses or activities as the Parties may from time to time agree.
- 15.9 A refund of tax under 15.7 will not be paid unless an application for the refund is filed with the Canada Revenue Agency within four years after the tax is paid.
- 15.10 The provisions of Part IX of the Excise Tax Act (Canada) will apply, with such modifications as the circumstances require, in respect of claims under 15.7 and in respect of amounts paid as a refund under 15.7 as though the refund provided for under 15.7 were a rebate provided for under Division VI of that Part.
- 15.11 Unless otherwise defined in this Agreement, words used in 15.7 to 15.10 have the same meaning as in Part IX of the Excise Tax Act (Canada).
- 15.12 Notwithstanding any other provision of this Agreement, 15.7 to 15.11 shall not apply to tax that is paid or becomes payable before the Effective Date.

## PART IV

### KWANLIN DUN FIRST NATION PROGRAMS AND SERVICES

#### **16.0 SELF-GOVERNMENT FINANCIAL TRANSFER AGREEMENT**

- 16.1 Canada and the Kwanlin Dun First Nation shall negotiate a self-government financial transfer agreement in accordance with 16.3, with the objective of providing the Kwanlin Dun First Nation with resources to enable the Kwanlin Dun First Nation to provide public services at levels reasonably comparable to those generally prevailing in Yukon, at reasonably comparable levels of taxation.
- 16.2 Subject to such terms and conditions as may be agreed, the self-government financial transfer agreement shall set out:
- 16.2.1 the amount of funding to be provided by Canada towards the cost of public services, where the Kwanlin Dun First Nation has assumed responsibility;
  - 16.2.2 the amount of funding to be provided by Canada towards the cost of operation of Kwanlin Dun First Nation government institutions; and
  - 16.2.3 such other matters as Canada and the Kwanlin Dun First Nation may agree.
- 16.3 In negotiating the self-government financial transfer agreement, Canada and the Kwanlin Dun First Nation shall take into account the following:
- 16.3.1 the ability and capacity of the Kwanlin Dun First Nation to generate revenues from its own sources;
  - 16.3.2 diseconomies of scale which impose higher operating or administrative costs on the Kwanlin Dun First Nation, in relation to costs prevailing prior to conclusion of this Agreement;
  - 16.3.3 due regard to economy and efficiency, including the possibilities for co-operative or joint arrangements among Yukon First Nations for the management, administration and delivery of programs or services;
  - 16.3.4 any funding provided to the Kwanlin Dun First Nation through other Government transfer programs;
  - 16.3.5 demographic features of the Kwanlin Dun First Nation;
  - 16.3.6 results of reviews pursuant to 6.9;

- 16.3.7 existing levels of Government expenditure for services to Yukon First Nations and Yukon Indian People;
  - 16.3.8 the prevailing fiscal policies of Canada;
  - 16.3.9 other federal Legislation respecting the financing of aboriginal governments;
  - 16.3.10 the capacity of tribal and territory-wide Yukon First Nation government institutions; and
  - 16.3.11 such other matters as Canada and the Kwanlin Dun First Nation may agree.
- 16.4 To assist in the negotiation of self-government financial transfer agreements, Government and the Kwanlin Dun First Nation shall:
- 16.4.1 take into account the direct and indirect costs to Government, over such period as the Parties may agree, of managing, administering and delivering a particular program or service for which the Kwanlin Dun First Nation is assuming responsibility;
  - 16.4.2 subject to the restrictions described in 2.7.0 of the Final Agreement, disclose all relevant information for the purposes of 16.4.1;
  - 16.4.3 consider the establishment of a base year and appropriate adjustment factors for determining the resources to be provided; and
  - 16.4.4 consider, without prejudice, the method for calculating the formula financing grant under the Formula Financing Agreement between Canada and the Yukon.
- 16.5 Self-government financial transfer agreements may consolidate federal program funding (operating and capital programs) for the Kwanlin Dun First Nation.
- 16.6 Payments pursuant to the self-government financial transfer agreement shall be provided on an unconditional basis except where criteria or conditions are attached to the provision of funding for similar programs or services in other jurisdictions in Canada.
- 16.7 The Kwanlin Dun First Nation may continue to access federal program funding for those programs not consolidated in the self-government financial transfer agreement in accordance with program authorities and conditions in effect from time to time.
- 16.8 Financial compensation and other monies paid:

- 16.8.1 to Yukon First Nations in accordance with Chapter 19 of the Umbrella Final Agreement;
- 16.8.2 to the Kwanlin Dun First Nation pursuant to Chapter 19 of the Final Agreement;
- 16.8.3 to the Kwanlin Dun First Nation pursuant to Part I of the Memorandum Regarding Certain Financial and Other Arrangements referred to in 2.2.15.1 of the Final Agreement;

and the proceeds from investments thereof, shall not be taken into account for the purposes of determining the level of funding provided through self-government financial transfer agreements.

- 16.9 Payments made to the Kwanlin Dun First Nation pursuant to Part II of the Memorandum Regarding Certain Financial and Other Arrangements referred to in 2.2.15.1 of the Final Agreement shall not be taken into account for the purposes of determining the level of funding provided through self-government financial transfer agreements.
- 16.10 Funding pursuant to self-government financial transfer agreements shall be provided in the form of grants or other arrangements as appropriate.
- 16.11 Any amounts required for the purposes of the self-government financial transfer agreement shall be paid out of such monies as may be appropriated by Parliament for those purposes.
- 16.12 Unless otherwise agreed, a self-government financial transfer agreement shall be for a term of five years.
- 16.13 At least one year prior to the date of expiry of the then current self-government financial transfer agreement Canada and the Kwanlin Dun First Nation shall begin negotiating the terms of a new self-government financial transfer agreement. Until a new agreement has been concluded, the financing provisions of the expiring self-government financial transfer agreement, other than those dealing with start-up and one-time cost, shall continue for a further two years or for such period as may be agreed by Canada and the Kwanlin Dun First Nation.
- 16.14 The self-government financial transfer agreement shall be a contract between Canada and the Kwanlin Dun First Nation.
- 16.15 The level of funding provided pursuant to the self-government financial transfer agreement may be adjusted annually according to a formula to be agreed upon by Canada and the Kwanlin Dun First Nation.

- 16.16 When the self-government financial transfer agreement is renegotiated, the Kwanlin Dun First Nation and Government shall review the cost-sharing arrangements.
- 16.17 The first self-government financial transfer agreement of the Kwanlin Dun First Nation shall be negotiated at the same time as the implementation plan for this Agreement.
- 16.18 Nothing in 16.0 shall affect the ability of the Kwanlin Dun First Nation to exercise, or benefit from, any rights that it may become entitled to under future provisions of the Constitution of Canada.

## **17.0 PROGRAMS AND SERVICES**

- 17.1 During the term of a self-government financial transfer agreement the Kwanlin Dun First Nation and Government shall negotiate the assumption of responsibility by the Kwanlin Dun First Nation for the management, administration and delivery of any program or service within the jurisdiction of the Kwanlin Dun First Nation, whether or not the Kwanlin Dun First Nation has enacted a law respecting such matter.
- 17.2 The Kwanlin Dun First Nation may notify Government within 90 days after the Effective Date of its priorities for negotiations pursuant to 17.1 for the current fiscal year, and shall notify Government by March 31st of each year of its priorities for negotiations pursuant to 17.1 for the fiscal year beginning April 1st of that year. Within 60 days of receipt of such notification, the Parties shall prepare a workplan to address the priorities identified by the Kwanlin Dun First Nation for negotiation. The workplan shall identify timelines and resources available for negotiations.
- 17.3 Negotiations pursuant to 17.1 shall have the following objectives:
- 17.3.1 to provide resources adequate to ensure that the program or service to be offered by the Kwanlin Dun First Nation is of a level or quality equivalent to the Government program or service and existing program or service quality is not diminished;
  - 17.3.2 to provide for mechanisms of cooperation and coordination, as appropriate, between the Kwanlin Dun First Nation and governments at a local, territorial and federal level to ensure the effective and efficient delivery of the program or service;
  - 17.3.3 to consider financial and administrative limitations and to promote administrative efficiency and economies of scale;
  - 17.3.4 to provide for local management and delivery of the program or service;



- 17.3.5 to provide mechanisms for negotiating basic common standards between Government and Kwanlin Dun First Nation programs and services; and
- 17.3.6 to identify the scope of the Parties' authority.
- 17.4 An agreement concluded pursuant to 17.1 shall, unless otherwise agreed by the parties thereto, include a program and service implementation plan and identify the training requirements to be addressed in that plan.
- 17.5 Canada and the Kwanlin Dun First Nation may agree to consolidate the funding provided for in an agreement entered into pursuant to 17.1 with the funding provided pursuant to the self-government financial transfer agreement, which consolidation may take effect either at the commencement of the next fiscal year or at the commencement of the term of the next self-government financial transfer agreement.
- 17.6 Any responsibility assumed by the Kwanlin Dun First Nation in an agreement entered into pursuant to 17.1 shall be funded by interim financing arrangements which shall be in accordance with 16.1.

## **18.0 GOVERNMENT OF THE YUKON FINANCIAL CONTRIBUTIONS**

- 18.1 The contribution of the Yukon shall be subtracted from the expenditure base of any fiscal transfer arrangement in effect at the time, and shall be calculated by Government to be the aggregate of the following:
  - 18.1.1 the savings in expenditures realized by the Yukon as a result of the assumption by the Kwanlin Dun First Nation of responsibility for programs and services, taking into account efficiency and economy as well as losses in efficiency that result from the Yukon's continuing responsibility for such programs and services; minus
  - 18.1.2 an amount equal to losses in tax revenues resulting from the Kwanlin Dun First Nation occupying tax room previously occupied by the Yukon, but only if the revenue capacity associated with the tax room previously occupied by the Yukon remains included in the revenue capacity of the Yukon for the purpose of determining the federal fiscal transfer; minus
  - 18.1.3 the monetary value of technical assistance and other contributions in kind provided by the Yukon; as well as
  - 18.1.4 any other factors as Canada and the Yukon may agree,

but in all cases, the Yukon shall continue to have the capacity to provide to Yukon residents the services for which it remains responsible, at a level or quality comparable to those prevailing prior to assumption of responsibility by the Kwanlin Dun First Nation for the programs and services.

- 18.2 Any one-time net savings to the Yukon resulting from the assumption by the Kwanlin Dun First Nation of responsibilities shall be paid by the Yukon to Canada in instalments of an amount and in accordance with a schedule to be agreed upon.
- 18.3 The calculation of net savings pursuant to 18.0 shall be made solely at the time that the Kwanlin Dun First Nation initially assumes responsibility for that program or service or part thereof.
- 18.4 Should there be no fiscal transfer arrangement as contemplated in 18.1 that is in effect at the time, then the Yukon contribution shall be provided for under an agreement to be negotiated by Canada and the Yukon, and shall be based on the stipulations enumerated in 18.1.

## **19.0 KWANLIN DUN FIRST NATION REVENUE**

- 19.1 If the Kwanlin Dun First Nation has access to a tax base, the revenue capacity associated with that tax base may be considered in determining the level of funding to be received pursuant to the Kwanlin Dun First Nation self-government financial transfer agreement, provided that:
- 19.1.1 the revenue capacity associated with the tax base will be subject to offset at a ratio of less than 1:1;
- 19.1.2 any such revenue capacity shall be excluded entirely from such consideration for a period of two years following the date that the Kwanlin Dun First Nation obtains access to that tax base; and
- 19.1.3 the tax rate or rates used to measure revenue capacity during a further period beyond the initial two years shall take into account the capability of the Kwanlin Dun First Nation to exploit that tax base.

## **20.0 LAWS OF CANADA AND THE YUKON**

- 20.1 The Kwanlin Dun First Nation has the power to adopt any Law of the Yukon or Canada as its own law in respect of matters provided for in this Agreement.
- 20.2 The Statutory Instruments Act (Canada) does not apply to a law enacted by the Kwanlin Dun First Nation.

## **21.0 PUBLIC REGISTER OF LAWS AND NOTIFICATION PROVISIONS**

- 21.1 The Kwanlin Dun First Nation shall maintain at its principal administrative offices a register of all laws enacted by the Kwanlin Dun First Nation.
- 21.2 The Kwanlin Dun First Nation shall enter into negotiations with other Yukon First Nations with a view to concluding an agreement to establish a central registry of constitutions and laws enacted by Yukon First Nations.
- 21.3 Every law enacted by the Kwanlin Dun First Nation and any amendment thereto and the Constitution and any amendment thereto shall be entered in their entirety into the register forthwith upon approval, adoption or enactment and also shall be forwarded forthwith to the central registry.
- 21.4 Any person shall have reasonable access to the registries during normal business hours.
- 21.5 The Kwanlin Dun First Nation shall forward to Government a list of Citizens and any alterations to that list forthwith after they occur.

## **22.0 FINANCIAL ACCOUNTABILITY**

- 22.1 The Kwanlin Dun First Nation shall prepare, maintain and publish its accounts in a manner consistent with the standards generally accepted for governments in Canada.

## **23.0 IMPLEMENTATION**

- 23.1 The Parties shall conclude as soon as practicable an implementation plan for this Agreement which shall be coordinated to the extent practicable with the Final Agreement Implementation Plan.
- 23.2 If the implementation plan has not been completed at the time this Agreement is ratified by the Kwanlin Dun First Nation, the Kwanlin Dun First Nation hereby delegates to the Council the authority to negotiate and approve the implementation plan on behalf of the Kwanlin Dun First Nation.
- 23.3 Canada shall seek approval of the implementation plan at the same time Canada seeks ratification of this Agreement.
- 23.4 The implementation plan referred to in 23.1 shall be a contract between the Parties.

## **24.0 DISPUTE RESOLUTION**

- 24.1 If the Kwanlin Dun First Nation and Canada do not agree to the terms of a self-government financial transfer agreement provided for in 16.0, either may refer the matter to mediation under 26.4.0 of the Final Agreement.
- 24.2 If the Kwanlin Dun First Nation, Canada, or the Yukon do not agree:
- 24.2.1 to the calculation of the contribution of the Yukon provided for in 18.1;  
or
- 24.2.2 in the negotiations for the transfer of programs or services provided for in 17.0,
- any of the Parties may refer the matter to mediation under 26.4.0 of the Final Agreement.
- 24.3 Except as provided elsewhere in this Agreement, a dispute respecting this Agreement among the Kwanlin Dun First Nation, Canada or the Yukon may be referred to mediation under 26.4.0 of the Final Agreement upon agreement of the parties to the dispute.
- 24.4 The parties to a dispute described in 24.1 to 24.3 which is not resolved by mediation under 26.6.0 of the Final Agreement may agree to refer the dispute to arbitration under 26.7.0 of the Final Agreement and the arbitrator shall have the authority provided in 26.7.3 of the Final Agreement to resolve the dispute.
- 24.5 Subject to 26.8.0 of the Final Agreement, no party may apply to any court for relief in respect of any dispute which has been referred to arbitration under 24.4, except for an application for interim or interlocutory relief where the board has failed to appoint an arbitrator under 26.7.2 of the Final Agreement within 60 days of an application by any party to the dispute.

## **25.0 COMPATIBLE LAND USE**

- 25.1 In 25.0, the following definition shall apply:
- "Intended Use" means the uses permitted under the Land Use and Development Designations listed in Appendix A, which Designations have the meanings defined in Part 1 of Appendix B;
- 25.2 The Kwanlin Dun First Nation and the Yukon or a municipality within the Traditional Territory may establish a joint planning structure to develop or recommend amendments to a territorial, municipal or Kwanlin Dun First Nation community plan or area development land use plan, or to carry out other activities to promote compatible land use.

- 25.3 Where a proposed land use of Non-Settlement Land may have significant impact on the land use of adjacent Settlement Land described in Appendix A, the Yukon or the affected municipality, as the case may be, shall Consult with the Kwanlin Dun First Nation for the purpose of resolving an actual or potential incompatibility in land use of the Non-Settlement Land and the adjacent Settlement Land described in Appendix A.
- 25.4 In determining whether a proposed land use of Non-Settlement Land may have a significant impact on the land use of adjacent Settlement Land described in Appendix A, the Intended Use of that Settlement Land shall be considered.
- 25.5 Where a proposed land use of Settlement Land described in Appendix A may have a significant impact on the land use of adjacent Non-Settlement Land, the Kwanlin Dun First Nation shall Consult with the Yukon or the affected municipality as the case may be, for the purpose of resolving an actual or potential incompatibility in land use of the Settlement Land described in Appendix A and the adjacent Non-Settlement Land.
- 25.6 In determining whether a proposed land use of Settlement Land described in Appendix A may have a significant impact on the use of adjacent Non-Settlement Land, the Intended Use of that Settlement Land shall be considered.
- 25.7 For greater certainty, the Intended Use for a Parcel as set out in Appendix A shall serve as a guide only to indicate the intended use of a Parcel by the Kwanlin Dun First Nation and shall not obligate the Kwanlin Dun First Nation to develop a Parcel in that manner.
- 25.8 In matters not subject to the development assessment process referred to in Chapter 12 of the Final Agreement, unless otherwise agreed by the Kwanlin Dun First Nation and either the Yukon or the affected municipality, as the case may be:
- 25.8.1 a proposed land use of Non-Settlement Land shall not have a significant adverse impact on the peaceful use and enjoyment of adjacent Settlement Land described in Appendix A; and
- 25.8.2 a proposed land use of Settlement Land described in Appendix A shall not have a significant adverse impact on the peaceful use and enjoyment of adjacent Non-Settlement Land.
- 25.9 Where Consultation pursuant to 25.3 or 25.5 does not resolve an actual or potential incompatibility in land use, the Kwanlin Dun First Nation, the Yukon or the affected municipality may refer the matter to dispute resolution pursuant to 26.4.0 of the Final Agreement.
- 25.10 The parties to a dispute referred to dispute resolution pursuant to 25.9 which is

not resolved by mediation under 26.6.0 of the Final Agreement may agree to refer the dispute to arbitration under 26.7.0 of the Final Agreement.

25.11 An arbitrator appointed to hear a dispute pursuant to 25.9 shall have the authority as set out in 26.7.3 of the Final Agreement and the authority to make recommendations to a party to the dispute to:

25.11.1 change or vary an existing or proposed land use;

25.11.2 modify a land use plan or area development regulation; and

25.11.3 prepare a new zoning by-law or amend an existing zoning by-law.

25.12 In making a recommendation in respect of a dispute referred to in 25.9, the arbitrator shall not give any more weight to the fact that a territorial, municipal or Kwanlin Dun First Nation community or area development land use plan which one party has not had an opportunity to participate in developing, is completed than to any other factor to be taken into consideration.

25.13 Nothing in 25.0 shall be construed to limit the use of Settlement Land described in Appendix A for traditional purposes by Yukon Indian People.

## **26.0 LOCAL SERVICE AGREEMENTS**

### **26.1 Municipal Services and Infrastructure Agreement**

26.1.1 The Kwanlin Dun First Nation, Canada, the Yukon and the City of Whitehorse have negotiated an agreement (the "Municipal Services and Infrastructure Agreement") to:

26.1.1.1 address issues arising from the termination of the Relocation Agreement, which itself provides that it will terminate upon a Kwanlin Dun First Nation final agreement and self-government agreement coming into effect;

26.1.1.2 provide mutual releases of any claims of every kind in any way connected with the Relocation Agreement;

26.1.1.3 facilitate evolving inter-governmental relationships among the Kwanlin Dun First Nation, Government and the City of Whitehorse; and

26.1.1.4 assist in the orderly provision of municipal services to Kwanlin Dun First Nation Settlement Land Parcels and the Old Village located within the municipal boundary of the City of Whitehorse.

- 26.1.2 Ratification of this Agreement by the Kwanlin Dun First Nation and the Yukon shall constitute approval of the Municipal Services and Infrastructure Agreement by the Kwanlin Dun First Nation and the Yukon and authorization of their respective representatives to execute and deliver the Municipal Services and Infrastructure Agreement.
- 26.1.3 The Municipal Services and Infrastructure Agreement shall be signed by the parties thereto at the same time as the signing of this Agreement and shall come into effect on the Effective Date.
- 26.1.4 The Municipal Services and Infrastructure Agreement is a contract between the parties thereto and is not a land claims agreement or a treaty within the meaning of sections 25 or 35 of the Constitution Act, 1982 (Canada).

## **26.2 Other Local Service Agreements**

- 26.2.1 The Kwanlin Dun First Nation may enter into agreements with another Yukon First Nation, a municipality, or Government, to provide for such matters as municipal or local government services, joint planning, zoning or other land use control.
- 26.2.2 Any agreement entered into pursuant to 26.2.1 respecting a municipal or local government service shall:
  - 26.2.2.1 take into account the cost of providing that service;
  - 26.2.2.2 provide for a process to resolve disputes which arise in respect of the agreement or the provision of the service; and
  - 26.2.2.3 provide that the parties to such agreement, and their respective corporations, as the case may be, shall pay similar rates for user-pay municipal or local government services as are paid by property owners in the same or similar communities.

## **27.0 REGIONAL OR DISTRICT STRUCTURES**

- 27.1 The Kwanlin Dun First Nation and Government may agree to develop a process for consulting affected residents regarding the establishment of common administrative and planning structures for part or all of the Traditional Territory.
- 27.2 Where affected residents have been consulted through a process developed

pursuant to 27.1 and the Kwanlin Dun First Nation or Government is satisfied that affected residents support the establishment of a common administrative and planning structure, the Kwanlin Dun First Nation or Government, as the case may be, may request the other party to enter into negotiations respecting the establishment of a common administrative and planning structure.

- 27.3 In the negotiations referred to in 27.2, the Kwanlin Dun First Nation and Government may agree to establish a common administrative and planning structure within part or all of the Traditional Territory.
- 27.4 A common administrative and planning structure established pursuant to 27.3 shall:
- 27.4.1 remain under the control of all residents of the Traditional Territory or any agreed upon portion of the Traditional Territory; and
  - 27.4.2 include direct representation by the Kwanlin Dun First Nation.
- 27.5 The Kwanlin Dun First Nation and Government may agree to delegate responsibilities to a common administrative and planning structure established pursuant to 27.3.
- 27.6 An agreement pursuant to 27.3 to establish a common administrative and planning structure may include provisions respecting:
- 27.6.1 the detailed powers and responsibilities of the common administrative and planning structure;
  - 27.6.2 the exact manner by which the common administrative and planning structure shall be created;
  - 27.6.3 a process to ensure that the common administrative and planning structure is accountable to all residents of the Traditional Territory or to all residents in any agreed upon portion of the Traditional Territory;
  - 27.6.4 the manner in which the representatives to a common administrative and planning structure shall be selected or elected;
  - 27.6.5 a detailed implementation plan;
  - 27.6.6 financial and cost-sharing arrangements; and
  - 27.6.7 such other matters as the Kwanlin Dun First Nation and Government may agree.

**28.0 EXERCISE OF SELF-GOVERNMENT POWERS WITHIN THE COMMUNITY**



## **BOUNDARIES OF THE CITY OF WHITEHORSE AND THE MARSH LAKE LOCAL ADVISORY AREA**

### **Objective**

The Parties wish to coordinate Yukon, Kwanlin Dun First Nation and municipal legislative regimes on Settlement Land and Non-Settlement Land within the Community Boundaries for the City of Whitehorse and the Marsh Lake Local Advisory Area.

### **28.1 Definitions**

In 28.0, the following definitions shall apply:

"Applicable Authority" means:

- (a) in relation to a Whitehorse Type 2 Parcel, either the Yukon or the City of Whitehorse as they may determine pursuant to 28.7.4 or 28.8.4 or as is set out in 28.9.1.1; and
- (b) in relation to a Marsh Lake Type 2 Parcel, the Yukon;

"City of Whitehorse Law" means a law enacted by the City of Whitehorse pursuant to authority under the Municipal Act (Yukon);

"Community Boundaries" means the Community Boundary for the City of Whitehorse and the Marsh Lake Local Advisory Area;

"Land-Based Power" means any of the powers of the Kwanlin Dun First Nation to enact laws pursuant to 13.3 of this Agreement;

"Land Use and Development Designation" means any of the categories of permitted land use and development as defined in Part 1 of Appendix B;

"Marsh Lake Type 2 Parcel" means a Type 2 Parcel located within the Community Boundary for Marsh Lake Local Advisory Area;

"Old Village" has the same meaning as in 29.1 of this Agreement;

"Parcel" has the same meaning as in the Final Agreement;

"Planning, Zoning and Land Development Power" means the power of the Kwanlin Dun First Nation to enact laws pursuant to 13.3.11 of this Agreement;

"Protective Services" means fire fighting, ambulance, policing and other emergency services;

"Public Health and Safety Power" means any of the powers of the Kwanlin Dun

First Nation to enact laws pursuant to the following provisions of this Agreement:

- 13.3.5 (posters, billboards)
- 13.3.8 (construction, buildings)
- 13.3.9 (overcrowding)
- 13.3.10 (sanitary conditions)
- 13.3.12 (prohibition of nuisances)
- 13.3.16 (animals)
- 13.3.17 (administration of justice)
- 13.3.18 (threat to public order)
- 13.3.19 (public health)
- 13.3.20 (pollution)
- 13.3.21 (firearms);

(the notes in parenthesis are for convenience of reference only and shall not affect the interpretation of the referenced provisions);

"Type 1 Parcels" means the Old Village and Settlement Land Parcels C-41B, C-42B, C-47B/D, C-48B, C-116B, C-131B, C-138B, C-140B, C-143B, C-194B, C-195B, C-196B, R-40A, and R-75A and "Type 1 Parcel" means any one them;

"Type 2 Parcels" means C-5B, C-6B/D, C-7B, C-8B, C-9B, C-15B, C-24B, C-27B, C-31B, C-34B, C-43B, C-49B, C-50B/D, C-52B, C-53B, C-56B, C-57B, C-59B, C-61B, C-77B, C-82B/D, C-86B, C-95B, C-100B, C-103B, C-106B, C-107B, C-117B, C-118B, C-119B, C-128B, C-136FS, C-137FS, C-141B, C-144B, C-145B, C-146B, C-153B, C-173B, C-175B, C-176B, C-178B, C-179B, C-180B, C-181B, C-182B, C-183B, C-184B, C-185B, C-186B, C-187B, C-188B, C-189B, C-190B, C-191B, C-197B, S-19B, S-367B/D, S-369B, S-370B and R-77B and "Type 2 Parcel" means any one of them;

"Type 3 Parcels" means C-70FS, C-71FS, C-73B, C-79B, C-85FS, C-96B, C-97B, C-98B, C-99B, C-108B, C-109B, C-110B, C-111B, C-112B and C-192B and "Type 3 Parcel" means any one of them;

"Whitehorse Type 2 Parcel" means a Type 2 Parcel within the Community Boundary of the City of Whitehorse.

"Yukon Law" means Legislation enacted by the Yukon.

## **28.2 General**

28.2.1 The Kwanlin Dun First Nation shall exercise its power to enact a law in relation to a Land Based Power in accordance with the provisions of 28.0 in respect of its Type 1 Parcels, Type 2 Parcels and Type 3 Parcels which together make up its Settlement Land within the Community Boundaries.

28.2.2 Any law enacted by the Kwanlin Dun First Nation pursuant to a Land-

Based Power which is subject to 28.0 is only valid if enacted in accordance with 28.0.

28.2.3 For greater certainty, 28.0 shall not affect the power of the Kwanlin Dun First Nation to enact laws in relation to the matters set out in 13.1 and 13.2 or the application of federal law on Type 1 Parcels, Type 2 Parcels and Type 3 Parcels.

28.2.4 For greater certainty, 28.0 is not a source of power for the Kwanlin Dun First Nation to enact laws.

### **28.3 Type 1 Parcels**

28.3.1 The power of the Kwanlin Dun First Nation to enact a law in relation to a Land-Based Power on a Type 1 Parcel is not affected by 28.0.

### **28.4 Type 2 Parcels**

28.4.1 The power of the Kwanlin Dun First Nation to enact a law in relation to a Land-Based Power other than a Public Health and Safety Power or the Planning, Zoning and Land Development Power on a Type 2 Parcel is not affected by 28.0.

28.4.2 A Kwanlin Dun First Nation law enacted in relation to a Public Health and Safety Power on a Type 2 Parcel shall be enacted in accordance with 28.6.

28.4.3 A Kwanlin Dun First Nation law enacted in relation to the Planning, Zoning and Land Development Power on a Type 2 Parcel shall be enacted in accordance with 28.8.

### **28.5 Type 3 Parcels**

28.5.1 The power of the Kwanlin Dun First Nation to enact a law in relation to a Land-Based Power other than a Public Health and Safety Power or the Planning, Zoning and Land Development Power on a Type 3 Parcel is not affected by 28.0.

28.5.2 Unless otherwise agreed by the Kwanlin Dun First Nation and the Yukon or the City of Whitehorse, whichever has responsibility for the matter in question, the Kwanlin Dun First Nation shall not enact a law in relation to a Public Health and Safety Power or the Planning, Zoning and Land Development Power on a Type 3 Parcel.

### **28.6 Adoption of Laws in Relation to a Public Health and Safety Power on a**

## **Type 2 Parcel**

- 28.6.1 If the Kwanlin Dun First Nation proposes to enact a law in relation to a Public Health and Safety Power in respect of a Whitehorse Type 2 Parcel, it shall do so by adopting the Yukon Law or City of Whitehorse Law in effect from time to time and shall delegate the administration and enforcement of that law to the Yukon or the City of Whitehorse, whichever has responsibility for the law in question.
- 28.6.2 If the Kwanlin Dun First Nation proposes to enact a law in relation to a Public Health and Safety Power in respect of a Marsh Lake Type 2 Parcel, it shall do so by adopting the Yukon Law in effect from time to time and shall delegate the administration and enforcement of that law to the Yukon.
- 28.6.3 A delegation referred to in 28.6.1 or 28.6.2 may not be withdrawn by the Kwanlin Dun First Nation without the written agreement of the delegate.
- 28.6.4 For greater certainty, an adoption of a law by the Kwanlin Dun First Nation pursuant to 28.6.1 or 28.6.2 includes any amendment to, replacement of, or repeal of the adopted law from time to time without further action by the Kwanlin Dun First Nation.
- 28.6.5 In order to facilitate the efficient administration of laws, the Kwanlin Dun First Nation shall, at least 90 days prior to enacting a law which adopts either a Yukon Law or City of Whitehorse Law, provide written notice to the Yukon or the City of Whitehorse, whichever has responsibility for the law in question, of its intention to adopt the law.
- 28.6.6 The provisions of 28.6 are not intended to limit negotiations under 13.6.0 respecting the administration of justice.
- 28.6.7 Unless otherwise agreed by the Kwanlin Dun First Nation and:
- 28.6.7.1 in respect of a Whitehorse Type 2 Parcel, the Yukon or the City of Whitehorse, whichever has responsibility for the law in question; or
  - 28.6.7.2 in respect of a Marsh Lake Type 2 Parcel, the Yukon,
- the Kwanlin Dun First Nation shall not enact a law in relation to a Public Health and Safety Power on a Type 2 Parcel until after the first anniversary of the Effective Date of this Agreement.

## **28.7 Enactment of Laws in Relation to a Public Health and Safety Power on a**

## **Type 2 Parcel in the Absence of a Yukon Law or City of Whitehorse Law**

- 28.7.1 The Kwanlin Dun First Nation may enact a law in relation to a Public Health and Safety Power on a Whitehorse Type 2 Parcel if no Yukon Law or City of Whitehorse Law is in force in relation to that particular matter and if the law:
- 28.7.1.1 is consistent or compatible with those aspects of Yukon Law or City of Whitehorse Law which pertain to or regulate public health and safety; and
  - 28.7.1.2 has no adverse effect on the ability of the City of Whitehorse or the Yukon to provide Protective Services on the Parcel in a safe or cost effective manner.
- 28.7.2 The Kwanlin Dun First Nation may enact a law in relation to a Public Health and Safety Power on a Marsh Lake Type 2 Parcel if no Yukon Law is in force in relation to that particular matter and if the law:
- 28.7.2.1 is consistent or compatible with those aspects of Yukon Law which pertain to or regulate public health and safety; and
  - 28.7.2.2 has no adverse effect on the ability of the Yukon to provide Protective Services on the Parcel in a safe or cost effective manner.
- 28.7.3 The Kwanlin Dun First Nation shall provide a draft copy of any law it proposes to enact to:
- 28.7.3.1 the Yukon and the City of Whitehorse, if the proposed law is pursuant to 28.7.1; or
  - 28.7.3.2 the Yukon, if the proposed law is pursuant to 28.7.2,
- at least 60 days prior to enacting the law.
- 28.7.4 Following receipt of a draft law referred to in 28.7.3.1, the Yukon and the City of Whitehorse shall determine which of them is the Applicable Authority in respect of the matter and the Applicable Authority shall advise the Kwanlin Dun First Nation of the determination.
- 28.7.5 Within 60 days of receipt of the proposed Kwanlin Dun First Nation law, the Applicable Authority shall advise the Kwanlin Dun First Nation in writing:
- 28.7.5.1 whether it intends to pass a law in relation to the matter; and

- 28.7.5.2 whether it has any concerns with respect to the proposed Kwanlin Dun First Nation law.
- 28.7.6 If the Applicable Authority does not advise the Kwanlin Dun First Nation in accordance with 28.7.5 that it either:
  - 28.7.6.1 intends to enact a law in relation to the matter; or
  - 28.7.6.2 has concerns with respect to the proposed law,the Kwanlin Dun First Nation may enact the proposed law.
- 28.7.7 Unless otherwise agreed by the Applicable Authority and the Kwanlin Dun First Nation, if the Applicable Authority advises the Kwanlin Dun First Nation in accordance with 28.7.5 that it intends to enact a law in relation to the matter:
  - 28.7.7.1 within one year, if the Applicable Authority is the Yukon; or
  - 28.7.7.2 within six months, if the Applicable Authority is the City of Whitehorse,then subject to 28.7.8, the Kwanlin Dun First Nation shall not enact its proposed law.
- 28.7.8 If the Applicable Authority fails to have in force a law within the time specified in 28.7.7.1 or 28.7.7.2, as the case may be, then the Kwanlin Dun First Nation may enact its proposed law.
- 28.7.9 If the Applicable Authority advises the Kwanlin Dun First Nation in accordance with 28.7.5 that it has concerns with the proposed law, then the Applicable Authority and the Kwanlin Dun First Nation shall meet and endeavour to resolve the concerns and, subject to 28.7.11, the Kwanlin Dun First Nation shall not enact the proposed law.
- 28.7.10 If the concerns of the Applicable Authority are not resolved pursuant to 28.7.9, the Applicable Authority may, within 90 days after the Applicable Authority advises the Kwanlin Dun First Nation that it has concerns with the proposed law, refer the matter to an arbitrator under 26.7.0 of the Final Agreement for a declaration as to whether the proposed law complies with 28.7.1 in the case of a Whitehorse Type 2 Parcel or 28.7.2 in the case of a Marsh Lake Type 2 Parcel.
- 28.7.11 Unless otherwise agreed by the Kwanlin Dun First Nation and the Applicable Authority, if:
  - 28.7.11.1 the concerns of the Applicable Authority are resolved pursuant to 28.7.9; or

28.7.11.2 the concerns of the Applicable Authority are not resolved pursuant to 28.7.9 and the Applicable Authority does not refer the matter to an arbitrator in accordance with 28.7.10; or

28.7.11.3 an arbitrator makes a declaration that the proposed law complies with 28.7.1 in the case of a Whitehorse Type 2 Parcel or 28.7.2 in the case of a Marsh Lake Type 2 Parcel,

then the Kwanlin Dun First Nation may enact its proposed law.

28.7.12 A determination of an arbitrator pursuant to 28.7.10 shall be binding on the parties to the arbitration.

28.7.13 No determination of an arbitrator pursuant to 28.7.10 shall be construed as imposing any obligation, financial or otherwise, to provide Protective Services to the Parcels that would not be provided to equivalent Non-Settlement Land within the Community Boundaries, on:

28.7.13.1 the Yukon or the City of Whitehorse, in respect of a Whitehorse Type 2 Parcel; or

28.7.13.2 the Yukon, in respect of a Marsh Lake Type 2 Parcel.

28.7.14 The administration and enforcement of any law enacted by the Kwanlin Dun First Nation in accordance with 28.7.1 or 28.7.2 shall be the responsibility of the Kwanlin Dun First Nation.

28.7.15 Where the Kwanlin Dun First Nation enacts:

28.7.15.1 a law pursuant to 28.7.1 and a subsequent Yukon Law or City of Whitehorse Law is enacted in respect of the same matter; or

28.7.15.2 a law pursuant to 28.7.2 and a subsequent Yukon Law is enacted in respect of the same matter,

the Yukon or the City of Whitehorse, whichever has responsibility for the law in question, and the Kwanlin Dun First Nation shall meet to review the administration and enforcement of the law and determine what steps, if any, are required to address identified duplications or inconsistencies.

## **28.8 Enactment of Laws Pursuant to the Planning, Zoning and Land Development Power on a Type 2 Parcel**

- 28.8.1 The Kwanlin Dun First Nation may enact a law in relation to the Planning, Zoning and Land Development Power on a Whitehorse Type 2 Parcel if the law:
- 28.8.1.1 is in accordance with the Land Use and Development Designation for each Parcel as set out in Appendix B as varied pursuant to 28.9 from time to time;
  - 28.8.1.2 is consistent with Yukon Law and City of Whitehorse Law in relation to planning, zoning and land development in its effect on public health or safety; and
  - 28.8.1.3 does not have an adverse effect on the ability of the City of Whitehorse or the Yukon to provide Protective Services on the Parcel in a safe or cost effective manner.
- 28.8.2 The Kwanlin Dun First Nation may enact a law in relation to the Planning, Zoning and Land Development Power on a Marsh Lake Type 2 Parcel if the law:
- 28.8.2.1 is in accordance with the Land Use and Development Designation for each Parcel as set out in Appendix B as varied pursuant to 28.9 from time to time;
  - 28.8.2.2 is consistent with Yukon Law in relation to planning, zoning and land development in its effect on public health or safety; and
  - 28.8.2.3 does not have an adverse effect on the ability of the Yukon to provide Protective Services on the Parcel in a safe or cost effective manner.
- 28.8.3 The Kwanlin Dun First Nation shall provide a draft copy of any law it proposes to enact to:
- 28.8.3.1 the Yukon and the City of Whitehorse, if the proposed law is pursuant to 28.8.1; or
  - 28.8.3.2 the Yukon, if the proposed law is pursuant to 28.8.2,  
at least 60 days prior to enacting the law.



- 28.8.4 Following receipt of a draft law in accordance with 28.8.3.1, the Yukon and the City of Whitehorse shall determine which of them is the Applicable Authority in respect of the matter and shall advise the Kwanlin Dun First Nation of the determination.
- 28.8.5 Within 60 days of receipt of the proposed Kwanlin Dun First Nation law, the Applicable Authority shall advise the Kwanlin Dun First Nation in writing whether it has any concerns with respect to the proposed law.
- 28.8.6 If the Applicable Authority does not advise the Kwanlin Dun First Nation in accordance with 28.8.5 that it has concerns with respect to the proposed law, the Kwanlin Dun First Nation may enact the proposed law.
- 28.8.7 If the Applicable Authority advises the Kwanlin Dun First Nation in accordance with 28.8.5 that it has concerns with the proposed law, then the Applicable Authority and the Kwanlin Dun First Nation shall meet and endeavour to resolve the concerns and, subject to 28.8.9, the Kwanlin Dun First Nation shall not proceed to enact the proposed law.
- 28.8.8 If the concerns of the Applicable Authority are not resolved pursuant to 28.8.7, the Applicable Authority may, within 90 days after the Applicable Authority advises the Kwanlin Dun First Nation that it has concerns with the proposed law, refer the matter to an arbitrator under 26.7.0 of the Final Agreement for a declaration as to whether the proposed law complies with 28.8.1 in the case of a Whitehorse Type 2 Parcel or 28.8.2 in the case of a Marsh Lake Type 2 Parcel.
- 28.8.9 Unless otherwise agreed by the Kwanlin Dun First Nation and the Applicable Authority, if:
- 28.8.9.1 the concerns of the Applicable Authority are resolved pursuant to 28.8.7; or
  - 28.8.9.2 the concerns of the Applicable Authority are not resolved pursuant to 28.8.7 and the Applicable Authority does not refer the matter to an arbitrator in accordance with 28.8.8; or
  - 28.8.9.3 an arbitrator makes a declaration that the proposed law complies with 28.8.1 in the case of a Whitehorse Type 2 Parcel or 28.8.2 in the case of a Marsh Lake Type 2 Parcel,
- then the Kwanlin Dun First Nation may enact its proposed law.

- 28.8.10 A determination of an arbitrator pursuant to 28.8.8 shall be binding on the parties to the arbitration.
- 28.8.11 No determination of an arbitrator pursuant to 28.8.8 shall be construed as imposing any obligation, financial or otherwise, to provide Protective Services to Type 2 Parcels that would not be provided to equivalent Non-Settlement Land within the Community Boundaries, on:
- 28.8.11.1 the Yukon or the City of Whitehorse, in respect of a Whitehorse Type 2 Parcel; or
- 28.8.11.2 the Yukon, in respect of a Marsh Lake Type 2 Parcel.
- 28.8.12 The administration and enforcement of any law enacted by the Kwanlin Dun First Nation in accordance with 28.8.1 or 28.8.2 shall be the responsibility of the Kwanlin Dun First Nation.
- 28.8.13 The Kwanlin Dun First Nation shall not exercise its Planning, Zoning and Land Development Power in respect of a Type 2 Parcel until after the first anniversary of the Effective Date of this Agreement.

## **28.9 Variation of Land Use and Development Designations**

- 28.9.1 The process to vary the Land Use and Development Designation applicable to a Whitehorse Type 2 Parcel or a Marsh Lake Type 2 Parcel shall be as follows:
- 28.9.1.1 the City of Whitehorse shall be the Applicable Authority in respect of a Whitehorse Type 2 Parcel and the Yukon shall be the Applicable Authority in respect of a Marsh Lake Type 2 Parcel;
- 28.9.1.2 the Kwanlin Dun First Nation shall provide written notice to the Applicable Authority identifying the Type 2 Parcel and the Land Use and Development Designation which it seeks to vary with its reasons as to why it is seeking such variation;
- 28.9.1.3 the Applicable Authority and the Kwanlin Dun First Nation shall make reasonable efforts to reach a consensus with respect to a variation request;
- 28.9.1.4 the Applicable Authority may provide for public consultation in respect of a variation request;

- 28.9.1.5 if the Applicable Authority and the Kwanlin Dun First Nation are unable to reach a consensus with respect to a variation request within 90 days of receipt of the notice referred to in 28.9.1.2, the Kwanlin Dun First Nation or the Applicable Authority may refer the matter to an arbitrator under 26.7.0 of the Final Agreement;
- 28.9.1.6 if a variation request is referred to arbitration under 28.9.1.5 the arbitrator shall consider the following factors in making a decision or order to allow or disallow the request:
- (a) the fundamental importance of Settlement Land to the social, economic, spiritual and cultural identity and future prosperity of the Kwanlin Dun First Nation;
  - (b) whether a variation of the Land Use and Development Designation would have a significant adverse effect on the character or quality of life in the City of Whitehorse; and
  - (c) whether a variation of the Land Use and Development Designation would have a significant adverse impact on the peaceful use and enjoyment of adjacent Non-Settlement Land.
- 28.9.2 If a Land Use and Development Designation for a Type 2 Parcel is varied in accordance with the process set out in 28.9.1 the new varied Land Use and Development Designation shall be deemed to replace the Land Use and Development Designation set out in Appendix B for that Parcel.
- 28.9.3 A decision of the arbitrator pursuant to 28.9.1.5 and 28.9.1.6 shall be binding on the parties to the arbitration.
- 28.9.4 The Kwanlin Dun First Nation, the Yukon and the City of Whitehorse may agree to a process different from that set out in 28.9.1 to vary the Land Use and Development Designation applicable to a Whitehorse Type 2 Parcel.
- 28.9.5 The Kwanlin Dun First Nation and the Yukon may agree to a process different from that set out in 28.9.1 to vary the Land Use and Development Designation applicable to a Marsh Lake Type 2 Parcel.
- 28.9.6 The Kwanlin Dun First Nation shall provide Canada, and the Yukon if it was not the Applicable Authority, with a copy of any changes to Land Use and Development Designations.

## **28.10 Annual and 10 Year Reviews**

- 28.10.1 Annually, the Kwanlin Dun First Nation may notify the Yukon of its view that a Yukon Law or a City of Whitehorse Law adopted by the Kwanlin Dun First Nation under 28.0 or the administration of such law by the Yukon or the City of Whitehorse is not adequately addressing the particular interest or circumstances of the Kwanlin Dun First Nation and as soon as practicable after receipt of such notice the Kwanlin Dun First Nation and the Yukon shall meet to review the matter and endeavour to identify solutions to address the concerns of the Kwanlin Dun First Nation.
- 28.10.2 Upon the written request of the Kwanlin Dun First Nation no earlier than 10 years after the Effective Date, the Yukon, Canada and the Kwanlin Dun First Nation shall jointly review the exercise of the Kwanlin Dun First Nation's Land-Based Powers under 28.0 and consider alternative approaches to the exercise by the Kwanlin Dun First Nation of its Public Health and Safety Powers in relation to Type 2 Parcels and the administration and enforcement of such laws by the City of Whitehorse or the Yukon.
- 28.10.3 The alternative approaches to be considered by the Kwanlin Dun First Nation, the Yukon and Canada shall include the power of the Kwanlin Dun First Nation to enact and administer laws in exercise of its Public Health and Safety Powers in relation to Type 2 Parcels which meet or exceed the standards established by Laws of General Application in respect of such matters.

## **29.0 REGIME FOR THE OWNERSHIP, MANAGEMENT AND ADMINISTRATION OF THE OLD VILLAGE AS A RESERVE RETAINED UNDER 4.1.1.1 OF THE FINAL AGREEMENT**

- 29.1 In 29.0, the following definitions shall apply:

"Category A Settlement Land", "Category B Settlement Land", "Developed Settlement Land", "Fee Simple Settlement Land", "Mines", "Minerals", "Special Conditions" and "Specified Substances" each have the same meaning as in the Final Agreement;

"Old Village" means the land which is retained as a reserve pursuant to 4.1.1.1 of the Final Agreement, and more particularly described in Appendix C of this Agreement.

- 29.2 On the Effective Date, title to the Old Village shall be vested in the Kwanlin Dun First Nation for the use and benefit of its Citizens.

- 29.3 The title of the Kwanlin Dun First Nation to the Old Village shall be the same as if the Old Village were Category A Settlement Land.
- 29.4 The title of the Kwanlin Dun First Nation to the Old Village shall:
- 29.4.1 continue to be subject to any lawful rights or interests of third parties to which the Old Village was subject immediately prior to the Effective Date;
- 29.4.2 be subject to the Special Conditions and other interests described in Appendix C of this Agreement.
- 29.5 On the Effective Date, the Kwanlin Dun First Nation grants an easement in favour of the City of Whitehorse for road and utility infrastructure in relation to Tlingit Road and Galena Road on the terms and conditions set out in Appendix D of this Agreement, and as soon as practicable after the Effective Date the Kwanlin Dun First Nation shall execute and deliver to the City of Whitehorse an easement agreement in the form set out in Appendix D of this Agreement and provide an executed copy thereof to Canada and the Yukon.
- 29.6 On the Effective Date, the Kwanlin Dun First Nation grants an easement in favour of the Yukon Electrical Company Limited for existing power lines on the terms and conditions set out in Appendix E of this Agreement, and as soon as practicable after the Effective Date the Kwanlin Dun First Nation shall execute and deliver to the Yukon Electrical Company Limited an easement agreement in the form set out in Appendix E of this Agreement and provide an executed copy thereof to Canada and the Yukon.
- 29.7 On the Effective Date, the Kwanlin Dun First Nation grants:
- 29.7.1 an easement in favour of the City of Whitehorse for road and utility infrastructure in relation to Crow Street and Swan Drive which vests in the City of Whitehorse pursuant to 6.2 of the Municipal Services and Infrastructure Agreement referred to in 26.1 of this Agreement; and
- 29.7.2 a licence in favour of the City of Whitehorse for a stormwater drainage ditch,
- on the terms and conditions set out in Appendix F of this Agreement and as soon as practicable after the Effective Date, the Kwanlin Dun First Nation shall execute and deliver to the City of Whitehorse an easement and licence agreement in the form set out in Appendix F of this Agreement and provide an executed copy thereof to Canada and the Yukon.
- 29.8 Subject to 29.4, on the Effective Date all rights and interests of Canada in the Old Village shall cease to exist.

- 29.9 Canada shall be held harmless by the Kwanlin Dun First Nation for the vesting of the Old Village in the Kwanlin Dun First Nation in accordance with 29.0.
- 29.10 Except as provided in 29.10.1 and subject to 29.10.2, 29.10.3, 29.10.4 and 29.10.5, the Final Agreement shall apply to the Old Village as if it were Category A Settlement Land, designated as Developed Settlement Land.
- 29.10.1 Sections 5.2.6 and 5.15.1 of the Final Agreement shall not apply to the Old Village.
- 29.10.2 For the purposes of the application of 5.12.0 of the Final Agreement to the Old Village, in the event of the reacquisition of any of those lands in fee simple by the Kwanlin Dun First Nation, the Kwanlin Dun First Nation may declare that the Final Agreement shall apply, and it shall thereafter apply, to those lands reacquired as if they were:
- (a) Category A Settlement Land when Mines and Minerals are included; or
  - (b) Fee Simple Settlement Land when Mines and Minerals other than Specified Substances are not included,
- except that the cession, release and surrender of any aboriginal claim, right, title or interest in respect of the land shall not be affected.
- 29.10.3 For the purposes of 7.5.2.8 of the Final Agreement, land ordered as compensation thereunder shall be designated as if it were Category A Settlement Land when Mines and Minerals are included, or Category B Settlement Land or Fee Simple Settlement Land when Mines and Minerals are not included.
- 29.10.4 For the purpose of 20.5.0 of the Final Agreement, the Old Village is deemed to be transferred or acquired under a Settlement Agreement.
- 29.10.5 For the purposes of the application of 21.2.5.2 of the Final Agreement to the Old Village, portions of the Old Village are set out in Schedule C to Chapter 21 - Taxation of Settlement Land, of the Final Agreement and pursuant to 21.2.5.6 of the Final Agreement, the Kwanlin Dun First Nation and the Yukon agree that the exemption for those portions shall continue until it ceases pursuant to 21.2.5.4 of the Final Agreement.
- 29.11 The Indian Act (Canada) shall cease to apply to the Old Village and this Agreement shall apply to the Old Village as if it were Settlement Land.
- 29.12 The Old Village shall continue to be lands reserved for the Indians within the

meaning of Section 91(24) of the Constitution Act, 1867.

- 29.13 Subject to the interests described in 29.4, 29.5, 29.6 and 29.7, the Kwanlin Dun First Nation shall have full power to dispose of the Old Village and any rights or interests therein, but shall not do so except in accordance with the Constitution.
- 29.14 Canada shall be held harmless by the Kwanlin Dun First Nation for the management by the Kwanlin Dun First Nation of the Old Village after the Effective Date.
- 29.15 The vesting of the Old Village and all other matters agreed to in 29.0 shall take effect by virtue of the Yukon First Nations Self-Government Act (Canada) and not by virtue of the Indian Act (Canada).
- 29.16 The easements granted by 29.5 and 29.6, the easement and licence granted by 29.7, and the agreements executed and delivered in accordance with those provisions, shall be contracts between the parties to each agreement and may be amended or terminated by agreement of the parties thereto and do not form part of this Agreement.

### **30.0 LOCAL AREA LAND USE PLANNING**

#### **30.1 Annual Local Area Land Use Planning Meeting**

- 30.1.1 In order to encourage cooperation between the Yukon and the Kwanlin Dun First Nation in relation to local area land use planning so as to minimize actual or potential land use conflicts between Settlement Land and Non-Settlement Land, upon written request of the Yukon or the Kwanlin Dun First Nation, the Yukon and the Kwanlin Dun First Nation shall meet once a year, at a time and place mutually agreeable, to discuss Yukon and Kwanlin Dun First Nation land use planning initiatives and priorities, and any opportunities for cooperative local area land use planning in the Traditional Territory.

#### **30.2 Commencing a Local Area Land Use Planning Initiative**

- 30.2.1 Prior to commencing a local area land use planning initiative with respect to a proposed local planning area in the Traditional Territory, the Yukon and the Kwanlin Dun First Nation shall meet to discuss and may agree to carry out cooperative local area land use planning with respect to the proposed local area land use planning initiative.
- 30.2.2 In discussing whether to agree to carry out cooperative local area land use planning pursuant to 30.2.1, the Yukon and the Kwanlin Dun First Nation may consider:

- 30.2.2.1 whether the proposed local planning area should include both

Non-Settlement Land and Settlement Land;

- 30.2.2.2 the composition of the planning body, including the role of Yukon or Kwanlin Dun First Nation representatives, if any, on the planning body;
- 30.2.2.3 the process for public consultation in the development of the local area land use plan;
- 30.2.2.4 the estimated cost for development of a cooperative local area land use plan and how such costs would be shared;
- 30.2.2.5 the need for any technical advisors and consultants to the local area land use planning process;
- 30.2.2.6 the need to involve other affected Yukon First Nations in the planning process; and
- 30.2.2.7 any other matters the Yukon and the Kwanlin Dun First Nation may agree upon.

### **30.3 Agreement to Develop a Cooperative Local Area Land Use Plan**

30.3.1 Any agreement by the Yukon and the Kwanlin Dun First Nation to carry out cooperative local area land use planning in the Traditional Territory shall address:

- 30.3.1.1 the composition of the planning body;
- 30.3.1.2 how the members of the planning body will be selected or elected;
- 30.3.1.3 the process to develop the planning terms of reference;
- 30.3.1.4 a process to ensure that the public, including affected residents of the proposed planning area and any affected Yukon First Nations, are consulted; and
- 30.3.1.5 financial and cost sharing arrangements.

### **30.4 Approval of a Local Area Land Use Plan Developed Cooperatively**

30.4.1 The planning body referred to in 30.3 which develops a cooperative local area land use plan shall forward any proposed plan for approval to the Yukon and the Kwanlin Dun First Nation.

30.4.2 The Yukon shall approve, reject or modify that part of the proposed



local area land use plan which would apply on Non-Settlement Land.

- 30.4.3 If the Yukon rejects or modifies the proposed plan, it shall forward either the modifications with written reasons, or written reasons for rejecting the proposed local area land use plan to the Kwanlin Dun First Nation.
- 30.4.4 The Kwanlin Dun First Nation shall approve, reject or modify that part of the proposed local area land use plan which would apply to its Settlement Land.
- 30.4.5 If the Kwanlin Dun First Nation rejects or modifies the proposed plan, it shall forward either the modifications with written reasons, or written reasons for rejecting the recommended local area land use plan to the Yukon.

### **30.5 Local Area Land Use Plans Developed Independently**

- 30.5.1 If either the Yukon or the Kwanlin Dun First Nation proposes to proceed independently with a local area land use planning initiative, it shall provide the other with at least 30 days written notice prior to commencing the initiative.
- 30.5.2 The notice required pursuant to 30.5.1 shall set out:
  - 30.5.2.1 the proposed area of the Traditional Territory to be planned;
  - 30.5.2.2 the nature of the planning in the proposed area of the Traditional Territory; and
  - 30.5.2.3 any other matter considered relevant by the party initiating the planning.
- 30.5.3 The party which provides notice under 30.5.1 shall provide to the other party, upon request, as soon as practicable, any:
  - 30.5.3.1 planning terms of reference;
  - 30.5.3.2 draft local area land use plan;
  - 30.5.3.3 approved local area land use plan; and
  - 30.5.3.4 information as to the implementation of an approved local area land use plan.

### **30.6 Consistency Between Local Area Land Use Plans and Regional,**

## **Sub-Regional and District Land Use Plans**

- 30.6.1 When developing a local area land use plan in the Traditional Territory, a planning body shall consider any approved regional, sub-regional or district land use plan applicable in the Traditional Territory with a view to achieving consistency with such plans, where desirable.
- 30.6.2 Where the Yukon or the Kwanlin Dun First Nation is of the view that a proposed or approved local area land use plan in the Traditional Territory is inconsistent with any proposed or approved regional, sub-regional or district land use plan applicable in the Traditional Territory, the Yukon or the Kwanlin Dun First Nation may, by written notice to the other party, request a meeting to review the proposed or approved local area land use plan.
- 30.6.3 Within 30 days of receipt of the notice referred to in 30.6.2 the Yukon and the Kwanlin Dun First Nation shall meet and review the proposed or approved local area land use plan and determine whether they are in agreement that the plan is inconsistent with any proposed or approved regional, sub-regional or district land use plan applicable in the Traditional Territory.
- 30.6.4 Where the Yukon and the Kwanlin Dun First Nation agree that a proposed or approved local area land use plan in the Traditional Territory is inconsistent with a proposed or approved regional, sub-regional or district land use plan applicable in the Traditional Territory:
- 30.6.4.1 the Yukon may make changes to that part of any proposed or approved plan applying on Non-Settlement Land, after Consultation, if required, with any affected Yukon First Nation and any affected Yukon community; and
  - 30.6.4.2 the Kwanlin Dun First Nation may make changes to that part of any plan applying on its Settlement Land after Consultation, if required, with the Yukon,
- to effect, where desirable, consistency between that proposed or approved local area land use plan and any proposed or approved regional, sub-regional or district land use plan applicable in the Traditional Territory.

## **30.7 Application of Local Area Land Use Planning Provisions**

30.7.1 For greater certainty, 30.0 does not apply within the Community Boundary of the City of Whitehorse.

**APPENDIX A**

**COMPATIBLE LAND USE**

<b>PARCEL</b>	<b>INTENDED USE</b>
C-1B	Residential or Commercial or both
C-2B	Residential or Commercial or both
C-3B	Residential or Commercial or both
C-41B	Residential, Commercial or First Nation Institutional, or any combination thereof
C-42B	Residential or Commercial or both
C-47B/D	Residential
C-48B	Residential or Commercial or both
C-63B/D	Residential or Commercial or both
C-113B	Residential
C-131B	Residential
C-138B	Residential or Commercial or both
C-140B	Residential or Commercial or both
C-143B	Residential or Commercial or both
C-177B	Residential
C-194B	Residential, Commercial, Industrial or First Nation Institutional or any combination thereof
C-195B	Residential, Commercial, Industrial or First Nation Institutional or any combination thereof
C-196B	Residential, Commercial, Industrial or First Nation Institutional or any combination thereof
R-78B	Residential
S-164B/D	Residential
S-314B	Residential
S-315B	Residential
Old Village	Residential, Commercial, Industrial or First Nation Institutional, or any combination thereof

## **APPENDIX B**

### **PART 1**

#### **LAND USE AND DEVELOPMENT DESIGNATIONS**

##### **Principles**

1. The uses listed for each Land Use Designation are not intended to be exhaustive. Reference should be made to the intent of the designation, impact and ordinary meaning of the use in determining whether or not a use is permitted within a particular Land Use Designation.
2. On Parcels designated Residential or Commercial or both, commercial development shall be screened from adjacent Non-Settlement Land which is zoned as or used for residential purposes to the extent required and using such methods as would be permitted for commercial development on Non-Settlement Land adjacent to a residential zone by City of Whitehorse Law or Yukon Law as defined in 28.0 of this Agreement.

##### **Residential**

Purpose: to provide dwelling units of a permanent nature and to provide for ancillary convenience, retail commercial and personal service enterprises for the day-to-day needs of residents living in the general proximity of the Parcel.

Uses: single detached housing, manufactured homes, mobile home parks, duplexes and multiple housing and unless otherwise specified ancillary uses: small food stores, video rental outlets and variety stores selling confectionery, tobacco, groceries, beverages, pharmaceutical and personal care items, hardware or printed matter, gas bars, eating and drinking establishments, household repair services, child care services.

The purposes and permitted uses under this Designation on C-61B, C-141B and C-117B shall be restricted as follows:

C-61B - dwelling units of a permanent nature only;

C-117B - single family dwelling units of a permanent nature only on the area shown cross-hatched on Sketch 1 attached to this appendix;

C-141B - single family dwelling units of a permanent nature only on the area shown cross-hatched on Sketch 1 attached to this appendix.

## **Commercial**

Purpose: to provide for development of facilities to carry out enterprises for profit or financial gain which enterprises are contained within an enclosed building (with the exception of some entertainment facilities which use the physical environment for commercial purposes such as golf courses, campgrounds, recreation clubs, and ski facilities).

Uses: local convenience centres, retail and office uses, tourism operations, automobile service stations, entertainment facilities, amusement arcades, emergency and protective services, exhibition and retail stores, scientific and cultural exhibits, spectator entertainment establishments, commercial schools (excluding heavy equipment), funeral services, hotels, temporary shelter services, animal clinics, drive-in food services, fleet services, motels, vehicle sales and services, non-accessory parking, custom indoor manufacturing and studios.

This designation also permits uses under the Residential Designation.

## **Light Industrial**

Purpose: to provide for development of facilities used for manufacturing, storage, warehousing or assembling of semi-finished or finished goods which development or facilities shall not cause a nuisance or create a hazard which extends beyond the Parcel.

Uses: storage, light manufacturing, cleaning services, the repairing or testing of materials, goods and equipment normally associated with industrial, business or household use.

This designation also permits uses under the Residential and Commercial Designations.

## **Industrial**

Purpose: to provide for development of facilities for industrial use which may produce smoke, smell, toxic fumes, air and water contaminants, vibrations or noise which may interfere with the use of any contiguous land.

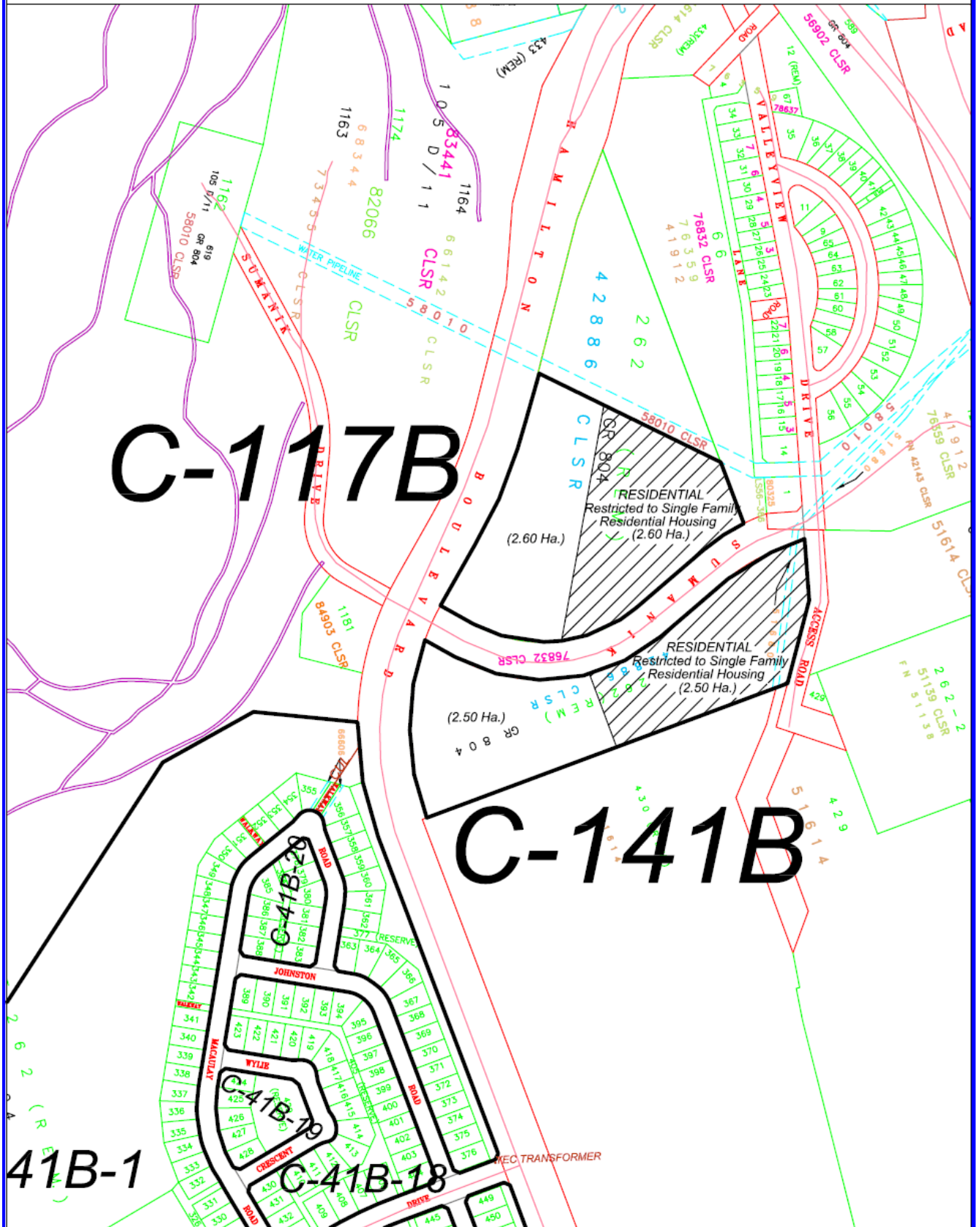
Uses: processing of raw materials, manufacturing or assembling of goods, products or equipment, and terminals for the indoor and outdoor storage or transhipping of materials, goods and equipment.

This designation also permits uses under the Residential, Commercial, and Light Industrial designations.

## **First Nation Institutional**

Purpose: to provide for the development of facilities for public or non-profit purposes.

Uses: educational, administration, recreational, ceremonial or religious facilities, recreation facilities, emergency or protective service facilities, medical treatment facilities, cemeteries, correctional facilities, cultural heritage facilities, community centres and child care facilities.



**C-117B**

**C-141B**

**41B-1**

**C-41B-28**

**C-41B-29**

**C-41B-18**



## **APPENDIX B**

### **PART II**

<b>WHITEHORSE COMMUNITY LANDS</b>	<b>LAND USE AND DEVELOPMENT DESIGNATION</b>
C-5B	Residential
C-6B	Residential or Commercial or both
C-7B	Commercial or Industrial or both
C-8B	Residential or Commercial or both
C-9B	Light Industrial
C-15B	Residential
C-24B	Residential or Commercial or both
C-27B	Commercial or Light Industrial or both
C-31B	Commercial
C-34B	Industrial
C-43B	Residential or Commercial or both
C-49B	Residential or Commercial or both
C-50B/D	Residential or Commercial or both
C-52B	Residential
C-53B	Light Industrial
C-56B	Residential or Commercial or both
C-57B	Residential or Commercial or both
C-59B	Residential or Commercial or both
C-61B	Residential, restricted in accordance with Appendix B Part I
C-77B/D	Commercial or First Nation Institutional or both
C-82B/D	Residential or Commercial or both
C-86B	Commercial
C-95B	Light Industrial

C-100B	Industrial
C-103B/D	Residential or Commercial or both
C-106B/D	Residential
C-107B	Commercial
C-117B	Residential, restricted in accordance with Appendix B Part I on cross-hatched portion shown on Sketch 1, remainder Commercial
C-118B	Commercial or Light Industrial or both
C-119B	Commercial or Light Industrial or both
C-128B	Residential or Commercial or both
C-136FS	Residential or Commercial or both
C-137FS	Residential or Commercial or both
C-141B	Residential, restricted in accordance with Appendix B Part I on cross-hatched portion on Sketch 1, remainder Commercial
C-144B	Residential or Commercial or both
C-145B	Residential or Commercial or both
C-146B	Residential
C-153B	Commercial
C-173B	Light Industrial
C-175B	Light Industrial
C-176B	Light Industrial
C-178B	Residential or Commercial or both
C-179B	Light Industrial
C-180B	Light Industrial
C-181B	Light Industrial
C-182B	Light Industrial
C-183B	Light Industrial
C-184B	Light Industrial
C-185B	Light Industrial
C-186B	Light Industrial

C-187B	Light Industrial
C-188B	Residential or Commercial or both
C-189B	Light Industrial
C-190B	Light Industrial
C-191FS	Commercial
C-197B	Residential or Commercial or both
S-367B/D	Commercial or First Nation Institutional or both
S-370B	Residential or Commercial or both
<b>MARSH LAKE COMMUNITY LANDS</b>	
R-77B	Residential or Commercial or both
S-19B	Residential or Commercial or both
S-369B	Residential or Commercial or both

## **APPENDIX C**

### **LAND DESCRIPTION OF THE OLD VILLAGE**

The Old Village, being the land described in 4.1.1.1(a) of the Final Agreement and comprising the area shown as the Old Village on Map Sheet 105 D/11 - Old Village Area, City of Whitehorse, dated February 19, 2005 in Appendix B - Maps, which forms a separate volume to the Final Agreement,

including:

- the land described in Reservation No. 105D14-0000-00048, being Lot 226 Remainder, Group 5, Plan 68098 CLSR, 65109 LTO;
- the land described in Reservation No. 105D14-0000-00057, being Parcel A-1, Lot 226, Group 5, Plan 69769 CLSR, 75793 LTO;
- Block 312, City of Whitehorse, Plan 69768 CLSR, 75794 LTO;

subject to:

- an easement in favour of the City of Whitehorse, the terms and conditions of which are set out in Appendix D, granted in accordance with 29.5 and 29.16 of this Agreement;
- an easement in favour of the Yukon Electrical Company Limited, the terms and conditions of which are set out in Appendix E, granted in accordance with 29.6 and 29.16 of this Agreement;
- an easement and licence in favour of the City of Whitehorse, the terms and conditions of which are set out in Appendix F, granted in accordance with 29.7 and 29.16 of this Agreement;
- Water Licence No. HY99-010, recorded in the offices of the Yukon Territory Water Board;

subject to the following Special Condition:

- Airport Zoning Controls shall apply,

having an area of 112.45 hectares, more or less.

**APPENDIX D**

**THIS ROAD AND UTILITY EASEMENT AGREEMENT** dated the \_\_ day of \_\_\_\_\_, 200\_\_.

**BETWEEN:**

**KWANLIN DUN FIRST NATION**, a Yukon First Nation under the Kwanlin Dun First Nation Self-Government Agreement (the "Grantor")

and

**THE CITY OF WHITEHORSE**, a municipal corporation constituted under the Municipal Act, as amended (the "City")

**WHEREAS:**

A. The Kwanlin Dun First Nation, Canada and the Government of the Yukon have reached agreement on the terms of a comprehensive land claim agreement for the Kwanlin Dun First Nation, by which agreement certain lands described as:

Lot 226 Remainder Group 5 Plan 68098 CLSR, 65109 LTO	Parcel A-1, Lot 226 Group 5 Plan 69769 CLSR, 75793 LTO	Block 312 City of Whitehorse Plan 69768 CLSR, 75794 LTO
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(the "Lands"),

will be retained as a reserve pursuant to section 4.1.1.1 of the Kwanlin Dun First Nation Final Agreement, as of the effective date of that Agreement (the "Effective Date");

B. On the Effective Date title to the Lands shall be the same as if the Lands were Category A Settlement Land;

C. The City has constructed various utilities in, on or under the southern boundary of the Lands;

D. A portion of the Lands have been set aside for road and utility easement purposes as outlined in bold on Schedule "A" attached hereto (the "Easement Area");

E. The Parties have agreed to enter into this Easement Agreement (the "Agreement") for purposes of permitting the City to lay down, operate and maintain various utilities and a road in the Easement Area which is the servient tenement to the roads abutting or near the Lands which are the dominant tenement;

F. The City has been authorized to execute this Agreement by Bylaw # \_\_\_\_\_ dated \_\_\_\_\_; and

G. The Parties intend this Agreement to have full force and effect immediately upon the Effective Date.

**In consideration of the sum of ONE (\$1.00) DOLLAR paid to the Grantor and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:**

1. THE GRANTOR DOES HEREBY GIVE, GRANT, TRANSFER and MAKE OVER unto the City the right, privilege and easement to use the Easement Area for digging, putting down, taking up, relaying, connecting, disconnecting, constructing, repairing, replacing, maintaining, inspecting and operating utility lines and systems of all kinds, including without limiting the generality of the foregoing, electrical power, telephone, gas and cable TV distribution and transmission lines, sanitary and storm sewer mains, water mains, roads, curbs, gutters, sidewalks, storm water outfalls, or any one or more of them, together with the usual and ordinary appurtenances incidental thereto (all or any one or more of which, including the road, are referred to in this Agreement as the "Utility") to be laid under, over or on the Easement Area and a right of reasonable access to the Easement Area in relation to the above.

2. The term "City" wherever referred to in this Agreement shall include and be interpreted to mean the City of Whitehorse and its agents, and includes officials, servants, workers, contractors, subcontractors, permittees, licensees and all persons authorized by the City to install or maintain, or both, a Utility, including their servants, workers, contractors, subcontractors, permittees, licensees and officials. The Grantor acknowledges that the public shall have the right, subject to the terms of this Agreement, to use the road built and maintained by the City in the Easement Area.
3. The City agrees that in the event of upgrading of the road on the Easement Area to Urban Standards, the width of the Easement Area shall be reduced to the width prescribed by the City Servicing Standards Manual at the date that construction of such upgraded road commences, for the type of urban road constructed (the "Easement Area Reduction"). The City agrees to make best efforts to have the Easement Area Reduction occur on the north side of the Easement Area.
4. The right, privilege and easement of the Easement Area hereby granted shall be for such length of time as required by the City to operate the Utility.
5. The City shall have the full and free right and liberty to gain access and remain on the Easement Area for the purposes aforesaid.
6. Notwithstanding any rules at law or in equity to the contrary, the Utility will at all times remain the property of the City or the operator of the Utility notwithstanding that the same may be annexed or affixed to the freehold and will at any time be removable in whole or in part by the City or the operator of the Utility. Upon termination of this Agreement, the City shall remove the Utility from the Easement Area or, with respect to any portion of the Utility, take such other steps as are prudent and in accordance with standard practice for the abandonment of such portion of the Utility and restore the Easement Area to its former condition at the expense of the City, provided that the Grantor reserves the right in the event of unsatisfactory restoration of the Easement Area, to restore the Easement Area, and the City agrees to reimburse the Grantor for its reasonable expenses.
7. The Grantor covenants not to build, erect or maintain, nor permit or suffer to be built, erected or maintained on the Easement Area, any building or structure, nor to carry out any work on the Easement Area without the prior written consent of the City. The Grantor, in carrying out any work on the Easement Area, will do so only in a proper manner and will cause or do as little damage to the Utility and inconvenience to the City, as is reasonably possible. Upon completion of the Grantor's work, the Easement Area shall be restored to its former condition at the expense of the Grantor and to the reasonable satisfaction of the City, provided that the City reserves the right in the event of unsatisfactory repair, to repair any damage done to the Utility in the Easement Area and the Grantor agrees to reimburse the City for its reasonable expenses.
8. The Grantor shall not grant any further interests in the Easement Area without the written consent of the City, provided that such consent will not be unreasonably withheld and provided that such other interests shall be subordinate to and subject to the rights granted to the City by this Agreement.
9. The Grantor will not do or knowingly permit to be done any act or thing which will interfere with or injure the Utility and, in particular, will not carry out or permit to be carried out blasting, excavation, drilling on or adjacent to the Easement Area, which might interfere with or injure the Utility, without the consent in writing of the City, provided that such consent will not be unreasonably withheld.
10. The Grantor agrees that the City shall have the right, without the consent of the Grantor, to grant permits or licenses to operators of one or more utilities, to construct, maintain and operate one or more of the Utility in accordance with the terms of this Agreement.
11. The City shall be responsible to maintain and repair the Utility on the Easement Area. The City in carrying out any work on the Easement Area or using the Easement Area will do so only in a proper manner and will cause or do as little damage to the Easement Area and the Grantor's improvements thereon and inconvenience to the Grantor or the occupier of the Lands, as is reasonably possible. Upon completion of the City's work, the City shall restore the Easement Area to its former condition at the expense of the City and to the reasonable satisfaction of the Grantor, provided that the Grantor reserves the right in the event of unsatisfactory repair, to repair any damage done to the Easement Area and the City agrees to reimburse the Grantor for its reasonable expenses. The parties agree that the obligations of the City under this paragraph are to be determined with reference to the obligations of the City undertaking such work in relation to utilities or a road located on lands owned by the City.

12. Subject to the City observing and performing the covenants, terms and conditions on its part herein, the City may and will hold and enjoy the easement herein granted without hindrance, molestation, or interference on the part of the Grantor, provided that the Grantor, its agents and all others authorized by the Grantor will have and continue to have free access to the Easement Area.

13. The City shall, at all times hereafter, indemnify and save harmless the Grantor against all actions, causes of action, claims, debts, liabilities, dues, sums of money, and demands, of whatsoever kind or nature incurred by the Grantor or that may be brought or made against the Grantor by reason of:

- (a) anything done or omitted to be done by the City in the exercise or purported exercise of the rights and privileges of the easement hereby granted; or
- (b) any member of the public using the road built and maintained by the City on the Easement Area;

with the exception of any actions, causes of action, claims, debts, liabilities, dues, sums of money, and demands arising from or in relation to the negligence or intentional acts of the Grantor or its officials, servants, workers, agents, contractors, subcontractors, permittees or licensees.

This indemnity shall include all reasonable costs and expenses incurred in defending any action brought against the Grantor, including legal fees and expenses taxed as special costs.

14. This Agreement shall run with the Lands.

15. No part of the fee of the Lands shall pass to or be vested in the City under or by these presents.

16. This Agreement is the entire agreement between the Parties, with respect to the subject matter herein, and no representations or warranties have been made by the City to the Grantor, or by Grantor to the City, with respect to the subject matter herein, save those as contained herein.

17. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

18. Any notice required under or authorized to be given under this Agreement shall be sufficiently given if delivered to the Party by registered mail, postage prepaid, addressed as follows:

City Engineer  
c/o City Hall  
2121 - 2nd Avenue  
Whitehorse, Yukon  
Y1A 2C6

Kwanlin Dun First Nation  
Attention: Chief  
35 McIntyre Drive  
Whitehorse, Yukon  
Y1A 5A5

19. Whenever the singular or the masculine is used in this Agreement, the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the Parties hereto so requires.

20. This Agreement will enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. Subject to section 10 hereof, the City may not assign this Agreement.

21. The preamble of this Agreement consisting of the recitals therein set forth shall be deemed to be part of this Agreement.

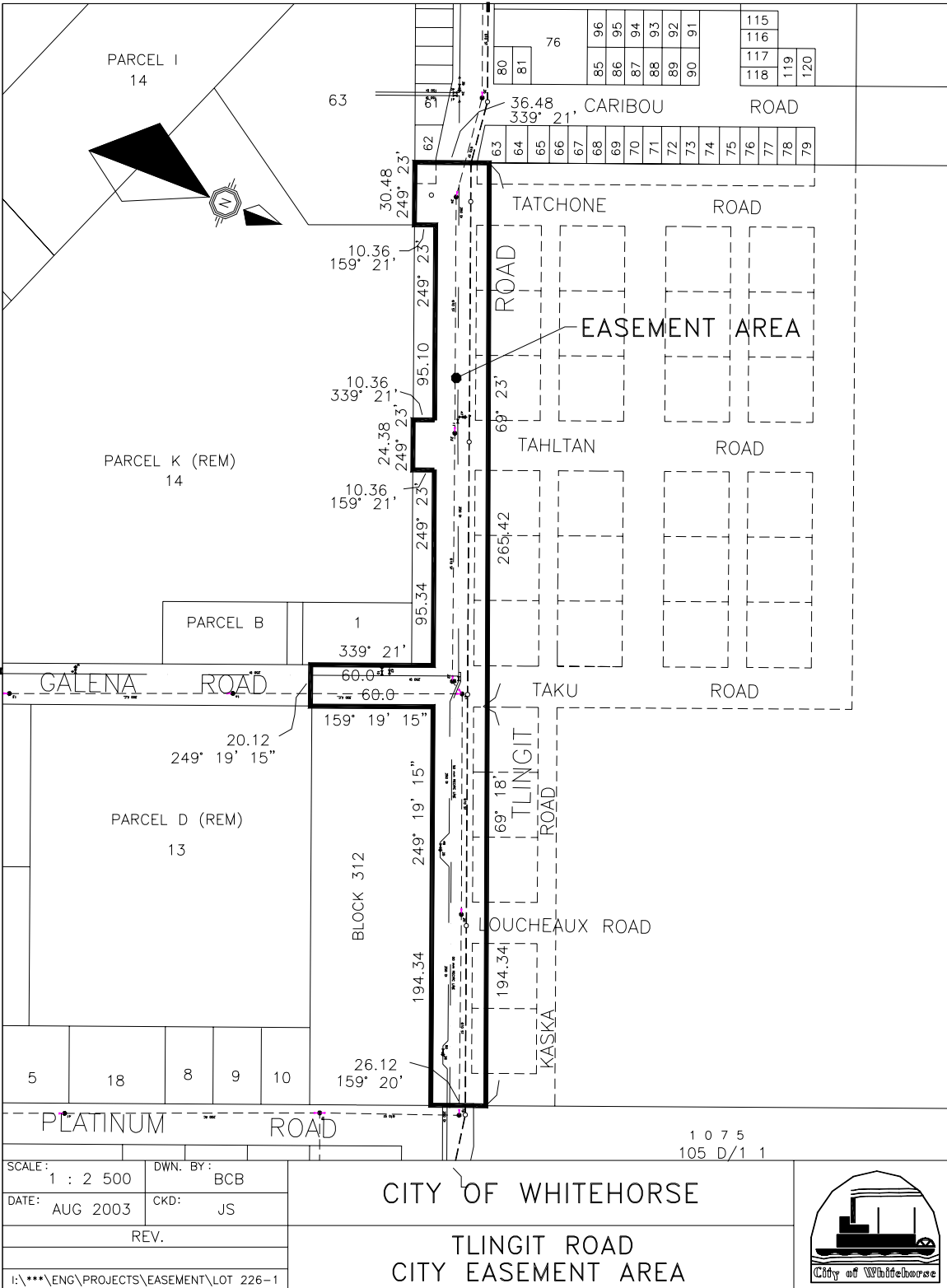
22. This Agreement shall be construed in accordance with the laws of the Yukon Territory.

23. This Agreement replaces any easement arrangement with the City which may exist respecting any Utility in the Easement Area.





# Schedule "A"



SCALE:	DWN. BY:
1 : 2 500	BCB
DATE:	CKD:
AUG 2003	JS
REV.	
I:\***\ENG\PROJECTS\EASEMENT\LOT 226-1	

1 0 7 5  
105 D/1 1

CITY OF WHITEHORSE

TLINGIT ROAD  
CITY EASEMENT AREA



## APPENDIX E

### EASEMENT AGREEMENT

**BETWEEN:**

**THE KWANLIN DUN FIRST NATION** (“the Grantor”)

**AND:**

**THE YUKON ELECTRICAL COMPANY LIMITED**, a corporation incorporated under the laws of the Yukon Territory (the "Grantee")

**WHEREAS:**

- A. The Kwanlin Dun First Nation, Canada and the Government of the Yukon have reached agreement on the terms of a comprehensive land claim agreement for the Kwanlin Dun First Nation, by which agreement certain lands described as:

Lot 226 Remainder Group 5 Plan 68098 CLSR, 65109 LTO	Parcel A-1, Lot 226 Group 5 Plan 69769 CLSR, 75793 LTO	Block 312 City of Whitehorse Plan 69768 CLSR, 75794 LTO
--	--	---

(the "Lands"),

which will be retained as a reserve pursuant to 4.1.1.1 of the Kwanlin Dun First Final Agreement, as of the Effective Date of that Agreement (the “Effective Date”);

- B. On the Effective Date title to the Lands shall be the same as if the Lands were Category A Settlement Land;
- C. Yukon Electrical Company Limited has constructed various electrical distribution and transmission systems (the “utility lines”) on the Lands;
- D. The utility lines referred to in recital C are shown outlined in bold on the sketches attached as Schedule “A” and Schedule “B”;
- E. The Parties have agreed to enter into this Easement Agreement (the “Agreement”) for purposes of permitting the Yukon Electrical Company Limited to erect, construct, maintain, inspect, alter, repair and operate the utility lines; and
- F. The Parties intend this Agreement to have full force and effect immediately upon the Effective Date.

**WITNESSETH THAT:**

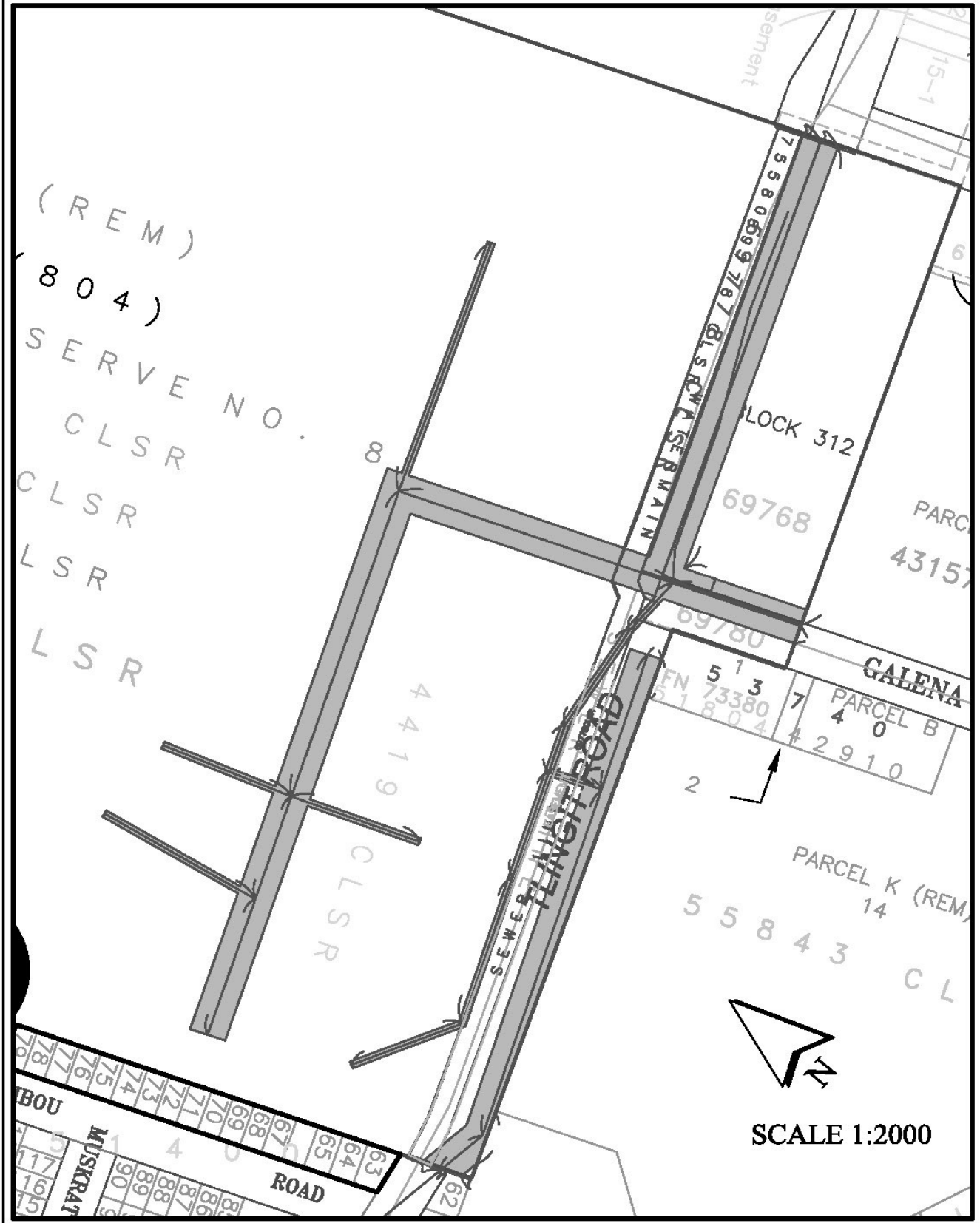
In consideration of the sum of One (\$1.00) Dollar now paid to the Grantor by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby transfer and grant to the Grantee an easement (the "Easement") for utility lines over, across and through the Lands as shown outlined in bold on the sketches attached hereto and marked Schedule "A" and Schedule "B" on the following terms and conditions:

1. The Easement shall be for utility purposes and, without limiting the generality of the foregoing, for the purposes of erecting, constructing, maintaining, inspecting, altering, repairing and operating an electrical distribution and transmission system (the "Utility") including all improvements and additions thereto on, under and over the Easement.
2. The Easement shall be for as long a period as the Grantee, its successors and assigns desire and continue to

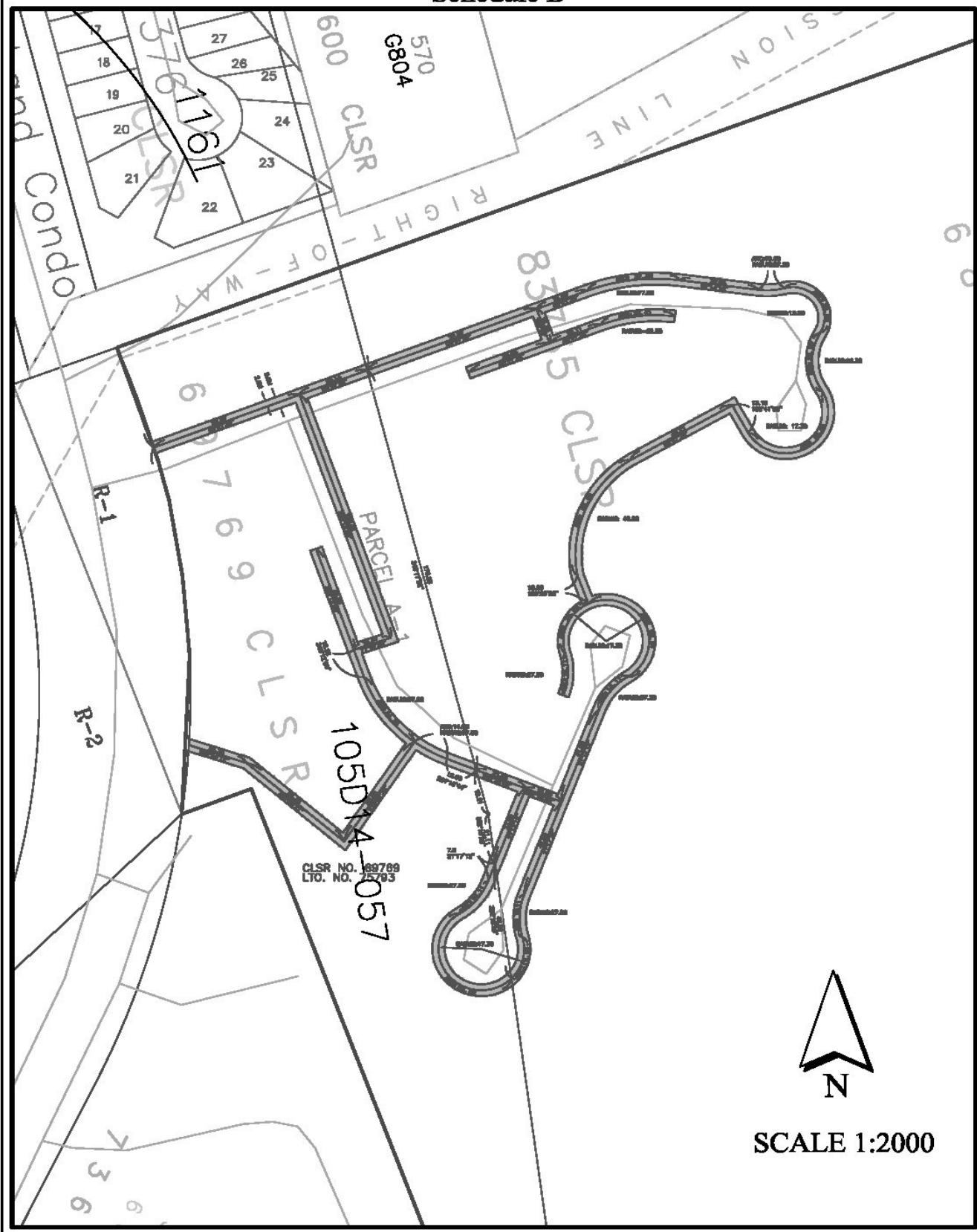




Schedule A



Schedule B



**APPENDIX F**

**THIS ROAD AND UTILITY EASEMENT AND LICENCE AGREEMENT** dated the \_\_\_ day of \_\_\_\_\_, 200\_\_.

**BETWEEN:**

**KWANLIN DUN FIRST NATION**, a Yukon First Nation under the Kwanlin Dun First Nation Self-Government Agreement (the "Grantor")

and

**THE CITY OF WHITEHORSE**, a municipal corporation under the Municipal Act, as amended (the "City")

**WHEREAS:**

A. The Kwanlin Dun First Nation, Canada and the Government of the Yukon have reached agreement on the terms of a comprehensive land claim agreement for the Kwanlin Dun First Nation, by which agreement certain lands described as:

Lot 226 Remainder Group 5 Plan 68098 CLSR, 65109 LTO	Parcel A-1, Lot 226 Group 5 Plan 69769 CLSR, 75793 LTO	Block 312 City of Whitehorse Plan 69768 CLSR, 75794 LTO
--	--	---

(the "Lands"),

will be retained as reserve pursuant to section 4.1.1.1 of the Kwanlin Dun First Nation Self-Government Agreement, as of the Effective Date of that Agreement (the "Effective Date");

B. On the Effective Date title to the Lands shall be the same as if the Lands were Category A Settlement Land;

C. Various utilities have been or will be constructed in, on or under the Lands;

D. A portion of the Lands have been set aside for utility easement purposes (the "Easement Area") and a stormwater drainage ditch has been constructed (the "Ditch") on another portion of the Lands (the "Licence Area"), each of which is shown on the survey attached hereto as Schedule "A";

E. The Parties have agreed to enter into this Road and Utility Easement and Licence Agreement (the "Agreement") for purposes of permitting the City to maintain the Ditch on the Licence Area and to lay down, operate and maintain various utilities, as defined below, in the Easement Area which is the servient tenement to the roads abutting or near the Lands which are the dominant tenement;

F. The City has been authorized by Bylaw # \_\_\_\_\_ dated \_\_\_\_\_ to execute this Agreement and the Municipal Services and Infrastructure Agreement (the "MSIA") among the Parties, Her Majesty in Right of Canada and the Government of Yukon; and

G. The Parties intend this Agreement to have full force and effect immediately upon the Effective Date.

In consideration of the sum of ONE (\$1.00) DOLLAR paid to the Grantor and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**PART 1  
INTERPRETATION**

2. The term "City" wherever referred to in this Agreement shall include and be interpreted to mean the City of Whitehorse and its agents, and includes officials, servants, workers, contractors, subcontractors, permittees, licensees and all persons authorized by the City to install or maintain, or both, a Utility, including their servants, workers, contractors, subcontractors, permittees, licensees and officials.

**PART 2  
EASEMENT**

3. The Grantor does hereby give, grant, and transfer unto the City the right, privilege and easement to use the Easement Area for digging, putting down, taking up, relaying, connecting, disconnecting, constructing, repairing, replacing, maintaining, inspecting and operating roads, curbs, gutters, sidewalks and utility lines and systems of all kinds, including without limiting the generality of the foregoing, electrical power, telephone, gas and cable TV distribution and transmission lines, sanitary and storm sewer mains, water mains, storm water outfalls, or any one or more of them, together with the usual and ordinary appurtenances incidental thereto (all or any one or more of which, including the road, are referred to in this Agreement as the "Utility") to be laid under, over or on the Easement Area and a right of reasonable access to the Easement Area in relation to the above. The Grantor acknowledges that the public shall have the right, subject to the terms of this Agreement, to use the road built and maintained by the City in the Easement Area.

4. The right, privilege and easement of the Easement Area hereby granted shall be for such length of time as required by the City to operate the Utility.

5. The City shall have the full and free right and liberty to gain access and remain on the Easement Area for the purposes aforesaid.

6. Notwithstanding any rules at law or in equity to the contrary, the Utility will at all times remain the property of the City or the operator of the Utility notwithstanding that the same may be annexed or affixed to the freehold and will at any time be removable in whole or in part by the City or the operator of the Utility. Upon termination of this Agreement, the City shall remove the Utility from the Easement Area or, with respect to any portion of the Utility, take such other steps as are prudent and in accordance with standard practice for the abandonment of such portion of the Utility and restore the Easement Area to its former condition at the expense of the City, provided that the Grantor reserves the right in the event of unsatisfactory restoration of the Easement Area, to restore the Easement Area, and the City agrees to reimburse the Grantor for its reasonable expenses.

7. The Grantor covenants not to build, erect or maintain, nor permit or suffer to be built, erected or maintained on the Easement Area, any building or structure, nor to carry out any work on the Easement Area without the prior written consent of the City. The Grantor, in carrying out any work on the Easement Area, will do so only in a proper manner and will cause or do as little damage to the Utility and inconvenience to the City, as is reasonably possible. Upon completion of the Grantor's work, the Easement Area shall be restored to its former condition at the expense of the Grantor and to the reasonable satisfaction of the City, provided that the City reserves the right in the event of unsatisfactory repair, to repair any damage done to the Utility in the Easement Area and the Grantor agrees to reimburse the City for its reasonable expenses.

8. The Grantor shall not grant any further interests in the Easement Area without the written consent of the City, provided that such consent will not be unreasonably withheld and provided that such other interests shall be subordinate to and subject to the rights granted to the City by this Agreement.

9. The Grantor will not do or knowingly permit to be done any act or thing which will interfere with or injure the Utility and, in particular, will not carry out or permit to be carried out blasting, excavation, drilling on or adjacent to the Easement Area, which might interfere with or injure the Utility, without the consent in writing of the City, provided that such consent will not be unreasonably withheld.

10. The Grantor agrees that the City shall have the right, without the consent of the Grantor, to grant



permits or licenses to operators of one or more utilities, to construct, maintain and operate one or more of the Utility in accordance with the terms of this Agreement.

11. The City shall be responsible to operate, maintain and upgrade the Utility on the Easement Area in accordance with the terms of the MSIA. The City in carrying out any work on the Easement Area or using the Easement Area will do so only in a proper manner and will cause or do as little damage to the Easement and the Grantor's improvements thereon and inconvenience to the Grantor or the occupier of the Lands, as is reasonably possible. Upon completion of the City's work, the City shall restore the Easement Area and the Grantor's improvements on the Easement Area to their former condition at the expense of the City and to the reasonable satisfaction of the Grantor, provided that the Grantor reserves the right in the event of unsatisfactory repair, to repair any damage done to the Easement Area and the City agrees to reimburse the Grantor for its reasonable expenses. The parties agree that the obligations of the City to restore, or to repair any damage done to, the Easement Area under this paragraph are to be determined with reference to the obligations of the City undertaking such work in relation to utilities or a road located on lands owned by the City.

12. Subject to the City observing and performing the covenants, terms and conditions on its part herein, the City may and will hold and enjoy the easement herein granted without hindrance, molestation, or interference on the part of the Grantor, provided that the Grantor, its agents and all others authorized by the Grantor will have and continue to have free access to the Easement Area.

13. The City shall, at all times hereafter, indemnify and save harmless the Grantor against all actions, causes of action, claims, debts, liabilities, dues, sums of money, and demands, of whatsoever kind or nature incurred by the Grantor or that may be brought or made against the Grantor by reason of:

- (a) anything done or omitted to be done by the City in the exercise or purported exercise of the rights and privileges of the easement hereby granted; or
- (b) any member of the public using the road and sidewalk built and maintained by the City on the Easement Area;

with the exception of any actions, causes of action, claims, debts, liabilities, dues, sums of money, and demands arising from or in relation to the negligence or intentional acts of the Grantor or its officials, servants, workers, agents, contractors, subcontractors, permittees or licensees.

This indemnity shall exclude costs and expenses incurred by the Grantor in defending any action brought against the Grantor, including legal fees and expenses.

### **PART 3 LICENCE**

14. Grantor gives and grants to the City the right and licence to enter on the present and hereinafter relocated Licence Area to repair, maintain, upgrade, inspect and operate the Ditch on the terms and conditions set out in this Agreement and for no other use or purpose. The right and licence hereby granted is not intended to confer any tenancy or easement upon the City and possession of the Licence Area is retained by Grantor, subject to the rights of the City under this Agreement. The term of the right and licence hereby granted shall be for such length of time as required by the City to operate the Ditch.

15. The Grantor covenants not to place, build, erect or maintain, nor permit or suffer to be placed, built, erected or maintained on the Licence Area, any building, structure or other thing, nor to carry out any work on the Licence Area without the prior written consent of the City. The City agrees that the Grantor may direct that all or a portion of the Licence Area and the Ditch be relocated on the Lands, on the condition that all of the costs for such relocation, including engineering, construction and legal costs, shall be borne by the Grantor, and that the work for such relocation shall, at the option of the City, be undertaken by the City. In all cases, the construction of the replacement Ditch shall be in accordance with the prevailing City standards at the time such relocation takes place.

16. The City shall inspect, operate, repair, maintain and upgrade the Ditch on the Licence Area in accordance with the terms of the MSIA and will cause as little damage to the Licence Area and inconvenience to the

Grantor or occupiers of the Lands, as is reasonably possible.

17. The Grantor covenants and agrees with the City that it will not sell, transfer, or grant any interest in all or any portion of the Lands on which the Licence Area and Ditch are located, without the prior written consent of the City, unless the Grantor first agrees in writing, in form satisfactory to the solicitor for the City acting reasonably, that this Agreement shall be amended to make the portion of the Licence Area located on such Lands part of the Easement Area and to make the portion of the Ditch located on such Lands part of the Utility and the Grantor makes any such sale, transfer, or grant of interest expressly subject to the City's rights to the amended Easement Area and the Ditch.

18. The Grantor shall indemnify and save harmless the City against all actions, causes of action, claims, debts, liabilities, dues, sums of money, and demands, of whatsoever kind or nature incurred by the City or that may be brought or made against the City by reason of the inability of the City to enter upon the present or hereinafter relocated Licence Area to inspect, operate, repair, maintain or upgrade the Ditch. This indemnity shall include costs and expenses incurred by the City in defending any action brought against the City, including legal fees and expenses.

19. The City shall, at all times hereafter, indemnify and save harmless the Grantor against all actions, causes of action, claims, debts, liabilities, dues, sums of money, and demands, of whatsoever kind or nature incurred by the Grantor or that may be brought or made against the Grantor by reason of anything done or omitted to be done by the City in the exercise or purported exercise of the rights and licence granted in this Part 3, with the exception of any actions, causes of action, claims, debts, liabilities, dues, sums of money, and demands arising from or in relation to the negligence or intentional acts of the Grantor or its officials, servants, workers, agents, contractors, subcontractors, permittees or licensees.

This indemnity shall exclude costs and expenses incurred by the Grantor in defending any action brought against the Grantor, including legal fees and expenses.

#### **PART 4 GENERAL**

20. This Agreement shall run with the Lands and be binding on any person who acquires all or a portion of the Lands on which the Easement Area or Licence Area is located.

21. No part of the fee of the Lands shall pass to or be vested in the City under or by these presents.

22. This Agreement and the MSIA are the entire agreement between the Parties, with respect to the subject matter herein, and no representations or warranties have been made by the City to the Grantor, or by Grantor to the City, with respect to the subject matter herein, save those as contained herein or in the MSIA.

23. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

24. Any notice required under or authorized to be given under this Agreement shall be sufficiently given if delivered to the Party by registered mail, postage prepaid, addressed as follows:

City Engineer  
c/o City Hall  
2121 - 2nd Avenue  
Whitehorse, Yukon  
Y1A 2C6

Kwanlin Dun First Nation  
Attention: Chief  
35 McIntyre Drive  
Whitehorse, Yukon  
Y1A 5A5

25. Whenever the singular or the masculine is used in this Agreement, the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the Parties hereto so requires.

26. This Agreement will enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. Subject to section 9 hereof, the City may not assign this Agreement.

27. The preamble of this Agreement consisting of the recitals therein set forth shall be deemed to be part of this Agreement.

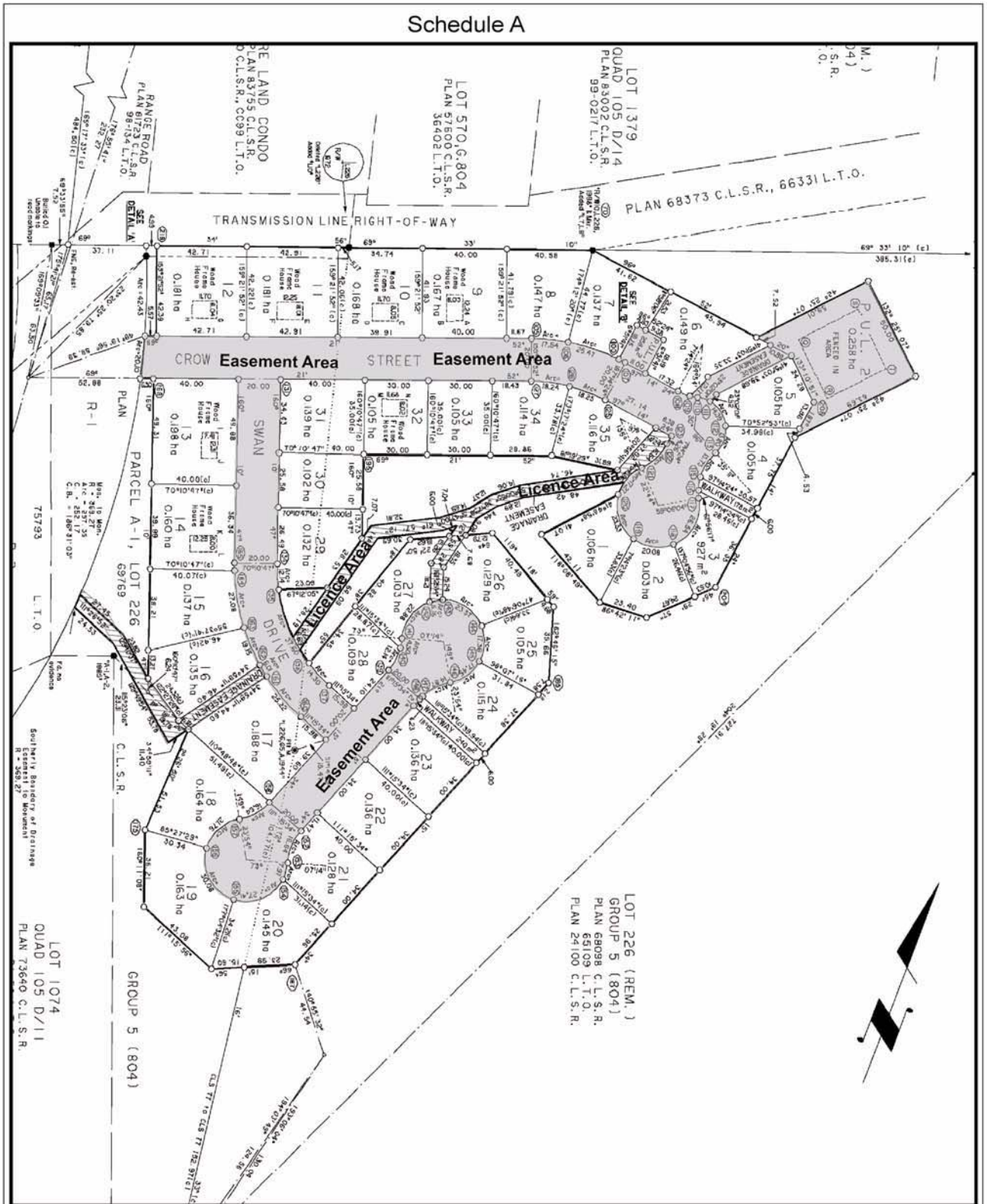
28. This Agreement shall be construed in accordance with the laws of the Yukon Territory.

**IN WITNESS WHEREOF** the Parties hereto have duly executed this Agreement under seal as of the day and year first above written.

**KWANLIN DUN FIRST NATION** )  
By: )  
)  
)  
)  
\_\_\_\_\_)  
Chief )  
)  
\_\_\_\_\_)  
Councillor )  
)  
\_\_\_\_\_)  
Councillor )  
)  
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Councillor )  
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\_\_\_\_\_)  
Councillor )  
)  
\_\_\_\_\_)  
Councillor )

**THE CITY OF WHITEHORSE** )  
By: )  
)  
)  
\_\_\_\_\_)  
Mayor )  
)  
)  
\_\_\_\_\_)  
Clerk )  
)  
)

Schedule A



This is a portion of a plan of survey prepared by Glen W. Lamerton, Canada Lands Surveyor which has been highlighted to show the areas referred to in this Agreement as the Easement Area and the Licence Area.

**SCHEDULE A**  
**RATIFICATION OF**  
**THE KWANLIN DUN FIRST NATION SELF-GOVERNMENT AGREEMENT**

**1.0 DEFINITIONS**

1.1 In this schedule the following definitions shall apply:

"Collateral Agreement" means the collateral agreement referred to in 2.2.15.2 of the Final Agreement;

"Members of the Kwanlin Dun First Nation Band" means persons who are, as of the day 45 days before the first day of the vote, registered Indians of, or are members of, the Indian Act (Canada) Kwanlin Dun First Nation Band, and for this purpose "registered" has the same meaning as in the Indian Act (Canada);

"Memorandum" means the Memorandum Regarding Certain Financial and Other Arrangements referred to in 2.2.15.1 of the Final Agreement and attached as Appendix C to the Final Agreement, but which does not form part of the Final Agreement;

"Municipal Services and Infrastructure Agreement" means the Municipal Services and Infrastructure Agreement referred to in 26.1 of this Agreement;

"Official Enrollment List" means the official enrollment list for the Kwanlin Dun First Nation prepared by the Enrollment Commission pursuant to Chapter 3 of the Final Agreement;

"Official Voters List" means the official voters list prepared by the Ratification Committee pursuant to 4.0 of Schedule A to Chapter 2 of the Final Agreement;

"Ratification Committee" means the Ratification Committee established pursuant to 3.1 of Schedule A to Chapter 2 of the Final Agreement.

**2.0 GENERAL**

2.1 Ratification of this Agreement, the Constitution and the Collateral Agreement by the Kwanlin Dun First Nation in accordance with this schedule shall be considered ratification by all persons eligible to be Citizens.

2.2 Where there is a reference in this schedule to a period of time after or before a specified day the period does not include that day.

2.3 Following discussions with the Kwanlin Dun First Nation, the Ratification Committee shall prepare a budget for the ratification process subject to review and approval by Canada. The approved expenses of the Ratification Committee shall be a charge on Canada.

### **3.0 INFORMATION CAMPAIGN**

3.1 The Ratification Committee shall be responsible for affording eligible voters a reasonable opportunity to review the substance and details of this Agreement, the Collateral Agreement and the Municipal Services and Infrastructure Agreement through the use of a communications strategy which may include videos, information booklets, community visits, door to door visits and accurate map reproductions.

3.2 Only printed, audio and visual material submitted by the Ratification Committee to, and approved by, the Parties shall be made available, or distributed, to eligible voters by the Ratification Committee pursuant to 3.1. Material submitted by the Ratification Committee to a party shall be considered approved by that party unless the Ratification Committee receives written notice otherwise within 15 calendar days of the material being received by that party.

3.3 The Kwanlin Dun First Nation shall be responsible for affording eligible voters a reasonable opportunity to review the substance and details of the Constitution through the use of a communications strategy which may include videos, information booklets, community visits and door to door visits.

3.4 The Ratification Committee and the Kwanlin Dun First Nation shall cooperate with each other in the distribution of material required of each under 3.2 and 3.3 respectively.

3.5 The Ratification Committee shall make reasonable efforts to locate each person whose name is on the Official Voters List as early in the ratification process as practicable and inform the voter of the vote and the dates of the vote.

3.6 A person whose name is on the Official Voters List is located if

3.6.1 no later than 14 days before the first day of voting determined pursuant to 6.1 of Schedule A to Chapter 2 of the Final Agreement, the person has been contacted by a representative of the Ratification Committee in person or by telephone,

3.6.2 no later than 14 days before the first day of voting determined pursuant to 6.1 of Schedule A to Chapter 2 of the Final Agreement, the Ratification Committee sends a notice by post or by e-mail addressed to the person and obtains an acknowledgement of receipt indicating

receipt by that person, or

3.6.3 the person casts a vote.

#### **4.0 VOTING PROCESS**

4.1 Only persons whose names appear on the Official Voters List shall be eligible to vote on the ratification of this Agreement, the Constitution and the Collateral Agreement.

4.2 The voting process for ratification of this Agreement, the Constitution and the Collateral Agreement shall be the same as that determined for ratification of the Final Agreement and Memorandum pursuant to 6.0 of Schedule A to Chapter 2 of the Final Agreement.

4.3 The vote on the ratification of this Agreement, the Constitution and the Collateral Agreement and the vote on the ratification of the Final Agreement and the Memorandum shall be combined in a single ratification process.

4.4 The ballot for the ratification of this Agreement, the Constitution and the Collateral Agreement shall ask the following question:

Do you approve of:

1. the Kwanlin Dun First Nation Self-Government Agreement,
2. the dissolution of the Kwanlin Dun First Nation Band and the transfer of all its liabilities and assets, including the Old Village, to the Kwanlin Dun First Nation, and
3. the Kwanlin Dun First Nation Constitution,
4. the Collateral Agreement, and
5. the release absolutely and unconditionally to Her Majesty the Queen in Right of Canada of all of the interest of the Kwanlin Dun First Nation Band in those parts of Road R-1, Plan 69769 CLSR, 75793 LTO and in Lot 1074, Quad 105 D/11, Plan 73640 CLSR, 91-54 LTO which were surveyed out of Lot 226, Group 5, as shown on a plan of survey by H. G. Dickson, DLS, dated September 7, 1918?

[yes or no]

4.5 The appearance and format of the ballot shall be approved by the Parties.

**5.0 RATIFICATION OF THIS AGREEMENT BY THE KWANLIN DUN FIRST NATION**

- 5.1 The Kwanlin Dun First Nation shall be considered to have ratified this Agreement, the Constitution and the Collateral Agreement if:
- 5.1.1 a majority of the eligible voters on lists one and two of the Official Voters List who were located pursuant to 3.5, together, cast a ballot approving this Agreement, the Constitution and the Collateral Agreement;
  - 5.1.2 a majority of the eligible voters on lists one and three of the Official Voters List who were located pursuant to 3.5, together, cast a ballot approving this Agreement, the Constitution and the Collateral Agreement; and
  - 5.1.3 the Final Agreement and the Memorandum are approved in accordance with 7.1.1 of Schedule A to Chapter 2 of the Final Agreement.
- 5.2 The Ratification Committee shall, as soon as practicable, and in any event no later than seven days after the last day of the vote, or such other time period as may be agreed by the parties on the request of the Ratification Committee, first tabulate the number of persons on lists one and two of the Official Voters List, together and on lists one and three of the Official Voters List, together, who were located pursuant to 3.5 and then tabulate and publish the results of the vote showing:
- 5.2.1 the total number of persons on each of lists one, two and three of the Official Voters List;
  - 5.2.2 the total number of persons on lists one and two, together, of the Official Voters List who were located pursuant to 3.5;
  - 5.2.3 the total number of persons on lists one and three, together, of the Official Voters List who were located pursuant to 3.5;
  - 5.2.4 the total number of ballots cast;
  - 5.2.5 the total number of ballots cast by persons on each of lists one, two and three of the Official Voters List;
  - 5.2.6 the total number of ballots cast by persons on lists one and two of the Official Voters List who were located pursuant to 3.5, together, which approve this Agreement, the Constitution and the Collateral Agreement which do not approve this Agreement, the Constitution and the Collateral Agreement which are spoiled and which are rejected; and



- 5.2.7 the total number of ballots cast by persons on lists one and three of the Official Voters List who were located pursuant to 3.5, together, which approve this Agreement, the Constitution and the Collateral Agreement, which do not approve this Agreement, the Constitution and the Collateral Agreement, which are spoiled and which are rejected.
- 5.3 The Ratification Committee shall publish the results of the vote pursuant to 5.2 in the communities in which the Official Voters List was published pursuant to 4.2 of Schedule A to Chapter 2 of the Final Agreement and may publish the results in such other locations as the Ratification Committee determines.
- 5.4 The Ratification Committee shall prepare and submit to the Parties, within 14 days after publishing the results of the vote, a report setting out the results referred to in 5.2, and the details of the carrying out of the Kwanlin Dun First Nation ratification process.
- 5.4.1 The Ratification Committee shall include in its report a list of each eligible voter who was not located pursuant to 3.5, and what efforts were made to locate each eligible voter who was not located.
- 5.5 After ratification of this Agreement, the Constitution and the Collateral Agreement by the Kwanlin Dun First Nation but prior to signing of this Agreement and the Collateral Agreement by the Parties, the chief negotiator on behalf of Canada, the principal negotiator on behalf of the Yukon, and the Chief on behalf of the Kwanlin Dun First Nation, may agree to minor amendments to this Agreement and the Collateral Agreement.

## **6.0 RATIFICATION OF THIS AGREEMENT BY GOVERNMENT**

- 6.1 This Agreement may be presented by the Yukon Minister with responsibility for land claims and self-government to the Executive Council for ratification prior to ratification by the Kwanlin Dun First Nation, and if not so presented, shall be so presented within three months after the Ratification Committee submits its report pursuant to 5.4 if the results of the vote constitute a ratification of this Agreement, the Constitution and the Collateral Agreement by the Kwanlin Dun First Nation.
- 6.2 This Agreement and the Collateral Agreement may be presented by the Minister of Indian Affairs and Northern Development to Cabinet for ratification, prior to ratification by the Kwanlin Dun First Nation, and if not so presented, shall be so presented within three months after the Ratification Committee submits its report pursuant to 5.4 if the results of the vote constitute a ratification of this Agreement, the Constitution and the Collateral Agreement by the Kwanlin Dun First Nation.

**7.0 SIGNING OF THIS AGREEMENT**

- 7.1 This Agreement shall be signed by representatives of the Kwanlin Dun First Nation, Canada and the Yukon, and the Collateral Agreement shall be signed by representatives of the Kwanlin Dun First Nation and Canada, as soon as practicable after ratification by the Parties.
- 7.2 As soon as practicable after the signing of this Agreement, the Yukon Minister with responsibility for land claims and self-government and the Minister of Indian Affairs and Northern Development shall sponsor orders-in-council to bring this Agreement into effect.