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Via Email

3. **Mutual Commitments.** The Parties will use best efforts to conclude negotiations and to finalize and enter into the Cowichan Bay Agreement in a diligent and timely manner. The Agreement shall contain such covenants, conditions, indemnities, representations, and warranties as the Parties shall mutually agree. For certainty, notwithstanding the foregoing commitment, or any construction work completed by Cowichan Tribes before the Parties finalize and enter into the Cowichan Bay Agreement, the CVRD shall not be obliged to provide any sewer services beyond those referred to in section 1 of this letter agreement before the conclusion of negotiation and execution of the Cowichan Bay Agreement.
4. **Term and Termination.** This letter agreement will automatically terminate and be of no further force and effect upon the earlier of:
- a. execution of the Cowichan Bay Agreement by Cowichan Tribes and the CVRD;
 - b. mutual agreement of the Parties;
 - c. the date that is 24 months following execution of this letter agreement, in which case Cowichan Tribes and the CVRD will in good faith enter into negotiations for a new or renewed agreement for the continuance of the limited services agreed to under section 1 of this letter agreement.
5. **Dispute Resolution.** The Parties will make good faith efforts to resolve any disputes that arise under this letter agreement through discussion and negotiation, and if mutually agreed, through mediation or arbitration. This commitment does not preclude access to the courts in the event the Parties cannot resolve their dispute by other means.
6. **Entire Agreement.** This letter agreement constitutes the entire agreement between the Parties. Except for the terms and conditions set out herein, no other binding commitments or agreements shall exist between the Parties unless and until the Cowichan Bay Agreement has been duly executed and delivered by both Parties.
7. **Non-Derogation.** Nothing contained in this letter agreement will be deemed to limit or affect any Aboriginal rights, title, or claims that Cowichan Tribes may have at law. This letter agreement does not create, amend, define, abrogate, or derogate from any Aboriginal rights or title enjoyed by Cowichan Tribes which are recognized and affirmed by section 35(1) of the *Constitution Act, 1982*.
8. **Non-Derogation.** Nothing contained or implied herein shall prejudice or affect the rights and powers of the CVRD in the exercise of its functions under any public and private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the CVRD Sewer System as if this letter agreement had not been executed and delivered by the Parties and the interpretation of this letter agreement shall be subject to and consistent with statutory restrictions imposed on the CVRD under the *Local Government Act*.
9. **Time is of the Essence.** Time shall be of the essence in this letter agreement.
10. **Governing Law.** This letter agreement shall be governed by and construed in accordance with the laws of the province of British Columbia and the federal laws of Canada applicable therein.
11. **No Third-Party Beneficiaries.** Nothing herein is intended or shall be construed to confer upon any person or entity other than the Parties and their successors or assigns, any rights or remedies under or by reason of this letter agreement.
12. **Counterparts.** This letter agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement.

Cowichan Tribes looks forward to concluding the Cowichan Bay Agreement and to continuing a good working relationship with the CVRD. If you are in agreement with the terms set forth above, please sign this letter agreement in the space provided below and return an executed copy to the attention of [NAME].

Very truly yours,

Cowichan Tribes

By its authorized signatory:

[Name:]

[Title:]

Agreed to and accepted:

Cowichan Valley Regional District

By its authorized signatory:

[Name:]

[Title:]

Schedule A

Fees and Charges

- 1.1 (a) Cowichan Tribes shall pay, on an annual basis according to its percentage use of the Hecate Park Sewage Forcemain by the Reserve System(s), but for certainty not by Direct Connections, as calculated on the basis of Capacity Units held from time to time by all parties serviced by the Hecate Park Sewage Forcemain, its proportionate share of:
- (i) annual operating and maintenance costs for the Hecate Park Sewage Forcemain and Pump Station - Hecate Park;
 - (ii) reasonable capital upgrades or replacements for pumping and transmission, as required, for the Hecate Park Sewage Forcemain and Pump Station – Hecate Park; and
 - (iii) an annual contribution to the Cowichan Bay Sewer Reserve Fund.
- (collectively, the “**Contribution Fees**”).
- (b) The total contribution by all parties serviced by the Sewage Forcemain to the Cowichan Bay Forcemain Reserve Fund shall be \$6,000.00 annually. If reasonably required to adequately provide for the future costs of capital upgrades or replacements, the CVRD may propose increases to the total contribution required to be made to the Cowichan Bay Forcemain Reserve Fund, on the fifth anniversary of this Agreement and every five years thereafter and the parties will seek to reach agreement on the proposed increases.
- (c) Payments of the Contribution Fees shall be made by Cowichan Tribes by April 15th of each calendar year for the calendar year prior.
- (d) The CVRD shall determine and apply an appropriate credit to all amounts required to be paid by Cowichan Tribes to reflect the number of Premises on Cowichan Tribes’ Lands that discharge directly to the Hecate Park Sewage Forcemain and not through the Pump Station – Hecate Park.
- (e) The share of the costs will be calculated as follows, and will from time to time be adjusted to reflect the number of Capacity Units held by each party:

	<u>Capacity Units</u>	<u>Percentage (%)</u>
Cowichan Bay	1036	
Cowichan Tribes	Up to 16 single family units with STEP system = 15.1 Units, once tied in, and 1 Long House with STEP system = 1.275, once tied in 16.375	
Service Area		
Total		100

For greater certainty, Cowichan Tribes will notify CVRD when any units are tied in, and CVRD will pro-rate costs on an annual basis to reflect any Cowichan Tribes units that are tied in for a partial year.

The CVRD will provide updates to Cowichan Tribes whenever any adjustments are made to the number or percentage of Capacity Units held by any parties.

- 1.2 The Parties acknowledge and agree that the CVRD may from time to time implement programs associated with the regulation or administration of the CVRD Sewer System, as a result of a concern for the environment or as a consequence of government regulation, and Cowichan Tribes agrees to pay its proportionate share of the costs of such programs as agreed by the Parties in advance, or if the Parties cannot agree, as determined by: a) first mediation by an agreed to mediator, or in the event of the failure of a mediator; b) by arbitration under the *Commercial Arbitration Act*, such that the amount payable by each Party reflects the number of premises serviced by the CVRD Sewer System proportionately.

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