

RESIDENTIAL RECYCLING SERVICES AGREEMENT

This agreement made this [day] of [month, year]

BETWEEN:

*The City of Merritt
2185 Voght Street
Merritt, B.C. V1K 1B8*

(hereinafter called "Merritt")

AND:

*The Lower Nicola Indian Band
181 Nawishaskin Lane
Merritt, B.C. V1K 0A7*

(hereinafter called "LNIB")

(collectively, the "Parties")

WHEREAS:

- A. The LNIB Council has approved this Agreement by passing Band Council Resolution [Name of Resolution] at its meeting held on [Date] in accordance with the provisions of the Indian Act, R.S.C. 1985, c. I-5. A certificate of the Band Council Resolution is attached to this Agreement as Schedule [Name of Schedule].
- B. The Merritt Council has approved this Agreement by resolution at a Regular Council Meeting held on [Date].
- C. LNIB and Merritt are separate, independent government entities, accountable to their respective communities, that benefit from a productive, inter-government working relationship.
- D. LNIB is seeking opportunities to improve their solid waste services by diverting as much volume as possible from the residual waste stream and lowering the financial burden of service delivery.
- E. To that end, Merritt and LNIB wish to partner for the purposes of providing residential recycling collection services to residents on LNIB Lands as shown on Appendix A, in accordance with the terms and conditions set out in this Agreement.
- F. The Parties deem it in their mutual interest to enter into this Agreement.

THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein contained the sufficiency of which is hereby acknowledged, the PARTIES hereto agree as follows:

1.0 DEFINITIONS

1.1 In this agreement, including this section, the recitals and schedules hereto, unless the context otherwise requires:

“Agreement” means this agreement, including the recitals and schedules hereto, as amended and supplemented from time to time.

“Fees” has the same meaning as in the Master Services Agreement.

“In-Scope PPP” has the same meaning as in Schedule 2.1(a) to the Master Services Agreement.

“LNIB Lands” means those lands described in Appendix A.

“LNIB Recycling Services” means the gathering, transporting, separating, sorting, processing and disposing of In-Scope PPP from residential properties on LNIB Lands.

“LNIB Serviced Properties” means any property that is receiving LNIB Recycling Services.

“Master Services Agreement” means the agreement between Recycle BC and the City of Merritt.

“Merritt Serviced Properties” means any property that is receiving Recycling Services from the City of Merritt.

“Recycle BC” means MMBC Recycling Inc., doing business as Recycle BC.

“Recycling Services” means the gathering, transporting, separating, sorting, processing, and disposing of In-Scope PPP from the Service Area which, for greater certainty, includes LNIB Lands.

“Respective Volume” means the proportion of LNIB Serviced Properties or Merritt Serviced Properties in the event of Service Level Failure 4, as the case may be.

“Service Area” has the same meaning as in Schedule 2.1(a) to the Master Services Agreement.

“Service Level Failure 4” means a disposal load with greater than 3% contamination as described in Attachment 3.4 to Schedule 2.1(a) of the Master Services Agreement.

“Term” means a period of time which this Agreement remains in force and effect, as described in Section 2.

2.0 TERM

- 2.1 This Agreement commences on *[Date of Agreement]* and shall continue until either Party terminates this Agreement subject to Section 2.2 or Section 8.1.
- 2.2 This Agreement may be terminated on six months prior written notice by either Party, at their sole discretion.
- 2.3 Failure to replace this Agreement or to provide earlier termination thereof, places the Parties in overholding status, and all agreements and obligations herein remain in effect on a month-to-month basis.

PART 1 – PROVISION OF SERVICES

3.0 GENERAL COVENANTS OF MERRITT

- 3.1 Merritt is responsible for Recycling Services in the Service Area in accordance with the Master Services Agreement.
- 3.2 Merritt will pay LNIB a portion of the Fees received under the Master Services Agreement for each of the LNIB Serviced Properties in accordance Section 6.0.
- 3.3 Merritt will inform LNIB as soon as practical in accordance with Section 14.0 of any changes to the Master Service Agreement that may affect the provision of LNIB Recycling Services as described in this Agreement.

4.0 GENERAL COVENANTS OF LNIB

- 4.1 LNIB will provide LNIB Recycling Services in accordance with the terms and conditions of this Agreement and as illustrated in Appendix A – LNIB Lands.
- 4.2 The operation of LNIB Recycling Services will be as described in Appendix B – Operational Details.
- 4.3 LNIB will be responsible for any recycling promotion or education for residents on LNIB Lands, including any associated costs.

5.0 QUALITY OF SERVICE

- 5.1 LNIB will take reasonable steps to ensure compliance with the Service Standards as described in Section 4 of the Master Services Agreement.

PART 2 – PAYMENT FOR SERVICES

6.0 PAYMENT FOR SERVICES

- 6.1 Merritt will pay LNIB a percentage of all Fees collected under the Master Service Agreement minus an administration fee in accordance with the following equation:

$$\text{Fees} \times \left\{ \left(\frac{\text{LNIB Serviced Properties}}{(\text{LNIB Serviced Properties} + \text{Merritt Serviced Properties})} \right) - 0.02 \right\}$$

- 6.2 Payments under Section 6.1 will be made within 30 days of receipt of Fees from Recycle BC.

7.0 FINES

- 7.1 The Parties are responsible for the payment of any fine levied in accordance with a Service Level Failure 4 in proportion to their Respective Volumes by weight in the pertinent load.
- 7.2 Merritt will provide LNIB an invoice for any fines payable under section 7.1 in accordance with Section 14.0.

PART 3 – GENERAL CLAUSES

8.0 TERMINATION FOR BREACH OF AGREEMENT

- 8.1 Should either party be in breach of its obligations under this Agreement the party not in breach may, at its option and without prejudice to any other rights or remedies it might have, immediately terminate this Agreement.
- 8.2 If this Agreement is terminated or otherwise cancelled for any reason, Merritt will pay a prorated portion of any fees payable under Section 6.1 that are owing.

9.0 COMMUNICATIONS PROTOCOL

- 9.1 Each Party will appoint one or more representatives to be the principle contact for operational matters pursuant to this Agreement.
- 9.2 Notice of appointments made under Section 9.1 will be given in accordance with Section 14.0.
- 9.3 Either Party may request that the representatives meet to discuss and manage any issues arising under this Agreement, and the Party receiving such request may not unreasonably refuse.

10.0 DISPUTE RESOLUTION

- 10.1 In the interest of cooperative and harmonious co-existence, the Parties agree to use their best efforts to avoid conflict and to settle any disputes arising from or in relation to this Agreement.
- 10.2 In the event that the Parties fail to resolve conflicts or disputes arising from or in relation to this Agreement, the Parties shall seek a settlement of the conflict by utilizing generally accepted methods of dispute resolution, including mediation or arbitration, and recourse to the Courts shall be a means of last resort, except when public health or safety is concerned.

11.0 ACKNOWLEDGEMENT OF RIGHTS

- 11.1 Nothing contained in this Agreement will be deemed to limit or affect any Aboriginal rights or claims LNIB may have or make. Nothing contained in this Agreement will be deemed to limit or affect the legal rights, duties or obligations of Merritt. The Parties agree that nothing in this Agreement will affect the cooperation or consultation covenants the Parties have entered into pursuant to other Agreements.

12.0 HEADINGS

- 12.1 Headings that precede sections are provided for the convenience of the reader only and shall not be used in constructing or interpreting the terms of this Agreement.

13.0 ENTIRE AGREEMENT

- 13.1 This Agreement constitutes the entire Agreement between the Parties in relation to the provision of Recycling Services and there are no undertakings, representations or promises express or implied, other than those expressly set out in this Agreement.
- 13.2 This Agreement supersedes, merges, and cancels any and all pre-existing agreements and understandings in relation to the provision of Recycling Services between the Parties.

14.0 NOTICE

- 14.1 The address for delivery of any notice or other written communication required or permitted to be given in accordance with this Agreement, including any notice advising the other Party of any change of address, shall be as follows:

(a) to Merritt:

2185 Voght Street, PO Box 198,
Merritt, BC, V1K 1B8

Attention: Sean Smith, Deputy Chief Administrative Officer, ssmith@merritt.ca

(b) to LNIB:

181 Nawishaskin Lane
Merritt, B.C. V1K 0A7

Attention: Hyrum Peterson, Director of Infrastructure, hyrum.peterson@lnib.net

Attention: Suzette O'Flynn, Administrative Assistant, suzette.oflynn@lnib.net

- 14.2 Any notice given by mail shall be deemed to have been received on the fifth (5th) business day following the date of mailing. Notice given by email will be deemed to have been received on the first (1st) business day following the date of transmission.

14.3 The Parties may change their address for delivery of any notice or other written communication in accordance with Section 14.1.

15.0 SEVERANCE

15.1 In the event that any provision of the Agreement should be found to be invalid, the provision shall be severed and the Agreement read without reference to that provision.

15.2 Where any provision of the Agreement has been severed in accordance with Section 15.1 and that severance materially affects the implementation of this Agreement, the parties agree to meet to resolve any issues as may arise as a result of that severance and to amend this Agreement accordingly.

16.0 AMENDMENT

16.1 This Agreement shall not be varied or amended except by written agreement of both Parties.

16.2 No waiver of the terms, conditions, warranties, covenants, and agreements set out herein shall be of any force and effect unless the same is reduced to writing and executed by all parties hereto and no waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar) and no waiver will constitute a continuing waiver unless otherwise expressly provided.

17.0 GOVERNING LAWS

17.1 The provisions of this Agreement will be governed and interpreted in accordance with the laws of the Province of British Columbia or Canada, as applicable.

18.0 ASSIGNMENT

18.1 The rights and obligations of the Parties may not be assigned or otherwise transferred. An amalgamation by a Party does not constitute an assignment.

19.0 ENUREMENT

19.1 This Agreement enures to the benefit and is binding upon the Parties and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

On behalf of the **LOWER NICOLA INDIAN BAND**

[Name, Position]

[Name, Position]

On behalf of the **CITY OF MERRITT**

[Name, Position]

[Name, Position]

APPENDIX A - LNIB LANDS

Nicola Mameet IR 1

Joeyaska IR 2

Zoht IR 4

Speous IR 8

APPENDIX B – OPERATIONAL DETAILS

Existing LNIB solid waste management operations consist of both recycling and residual waste collection and disposal for residents under a municipal type service agreement (MTSA) with Indigenous Services Canada.

Infrastructure, Equipment, Routing and Schedule

- LNIB and the Thompson-Nicola Regional District (TNRD) have entered into a *Solid Waste Reduction, Recycling and Disposal Agreement* which permits LNIB to use TNRD landfills, transfer stations and recycling facilities to dispose of non-industrial and non-agricultural waste.
- All LNIB residential recycling is disposed of at the Lower Nicola Eco-Depot, located at 2348 Woodward Road, approximately 5km from Nicola Mameet IR 1.
- The LNIB Public Works department provides weekly curbside collection every Wednesday of approximately 16 cubic yards of co-mingled packaging and paper products (PPP) recyclable items.
- Collection is only from residential areas of LNIB Lands (Nicola Mameet IR 1, Joeyaska IR 2 and Zoht IR 4).
- Collection is done by a 2-person crew using a purpose-built truck (Figure 1).



Figure 1 – LNIB recycling truck

Community Education and Promotion

LNIB employs a number of methods when engaging with residents and community members: the LNIB website, newsletter and public and private Facebook pages, automated phone calls and text messages, video clips, and paper and online surveys.

In 2019, LNIB has engaged their community member on solid waste management in the following ways:

- Newsletter articles, community notices, and social media posts (Figure 2);
- A community engagement session held in February (Figure 3), which consisted of an information portion and a facilitated feedback session on the subject session on the topic of solid waste management.
- An online survey of community members priorities regarding solid waste.

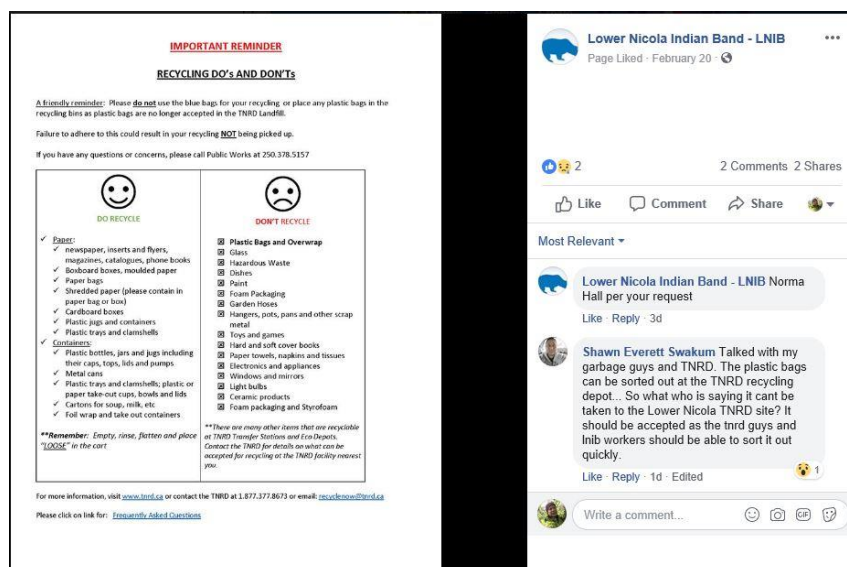


Figure 2 – Facebook Post: Recycling Do's and Don'ts



Figure 3 – February 11, 2019 Community Event Poster

LNIB has drafted plans for a comprehensive community outreach strategy on solid waste, including potential resources. Further information may be found in the *Draft Lower Nicola Solid Waste Management Plan* and the *Draft Lower Nicola Indian Band Waste Management Community Engagement Report*.

Program Compliance

LNIB has a positive working relationship with the TNRD with respect to administering their solid waste management program. The TNRD provides support to LNIB by making staff available to monitor LNIB's recycling disposal. Any problems that they observe are to be communicated to LNIB as soon as practical so that LNIB may be proactive in addressing any issues.

LNIB employs a hanging tags analogous to those used by the City of Merritt to assist members to determine what items belong in their household recycling bins.