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BCUC MUNICIPAL ENERGY UTILITIES INQUIRY
EXHIBIT A2-1

Re: British Columbia Utilities Commission – An Inquiry into the Regulation of Municipal Energy Utilities – Project No. 1599027 – Ministry of Community, Sport and Cultural Development: A Municipal Guide

British Columbia Utilities Commission (BCUC) staff submit the following guide for the record in this proceeding:

Ministry of Community, Sport and Cultural Development
Statutory Requirements for Partnering Agreements: A Municipal Guide
dated May 2012

Sincerely,

Original signed by Ian Jarvis for:

Patrick Wruck
Commission Secretary

/aci
Enclosure

Statutory Requirements For Partnering Agreements

A Municipal Guide



May, 2012



Ministry of
Community, Sport and
Cultural Development

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Introduction and Purpose

A partnering agreement is a contractual tool available to municipalities to provide a municipal service through a third party (e.g. another local government, business, or not-for profit organization).

Many of the statutory provisions relating to partnering agreements can be found in separate sections of the *Community Charter*. The purpose of this guide is to assist municipal councils and staff to better understand partnering agreements by consolidating and summarizing the principal statutory provisions governing these agreements into a single guide. The guide is also intended to assist council and staff in understanding the various legal requirements for a partnering agreement and some of the options available.

Note: This guide provides a high-level overview of the statutory requirements concerning partnering agreements for municipalities in British Columbia. For detailed information and best practices, please consult “Private Public Partnership: A Guide for Local Government” at: http://www.cscd.gov.bc.ca/lgd/policy_research/library/public_private_partnerships.pdf.

What is a Partnering Agreement?

A partnering agreement is defined under the *Community Charter* as an agreement between a municipality and another party (e.g. public authority or person) whereby the other party agrees to provide a service on behalf of the municipality. A municipality’s authority to enter into a partnering agreement is provided under section 8(2) of the *Community Charter*, which states:

*“A municipality may provide any **service** that the council considers necessary or desirable, and may do this directly or through another **public authority** or another **person** or organization.”*

Three important terms in the above statement are **bolded** and require further elaboration (Service, Public Authority, and Person).

What is a Service?

Section 8 of the *Community Charter* empowers municipalities with extensive authority to provide any service that council considers necessary or desirable. A “**service**” is broadly defined under the *Community Charter* to include any activity, work or facility undertaken or provided by or on behalf of a municipality. The *Community Charter* does not designate specific types of services (e.g. garbage); instead, services are broadly governed within the scope of a municipality’s purpose, as articulated under section 7 of the *Community Charter*. Municipal purposes include:

- providing good government to the community;
- providing for services, laws, and other matters for community benefit;
- providing for stewardship of public assets; and,
- fostering the economic, social and environmental well-being of its community.

Some examples of services include:

- frontline service delivery (e.g. garbage and recycling pickup);
- building and facility management (e.g. operations and maintenance of a water treatment plant or recreation facility);
- design and engineering work (e.g. planning work for a sewage treatment system); and,
- information systems and computer support.

What is a Public Authority?

A “**public authority**” under the *Community Charter* is generally a government, or agent of a government, and includes the following:

- Canadian Government;
- British Columbia Government;
- other provincial governments;
- B.C. local governments;
- First Nations;
- improvement districts;
- the Islands Trust;
- school boards, public universities and colleges;
- library boards;
- public hospitals and regional health authorities; and,
- government bodies in other provinces or countries that provide local government services.

What is a Person?

A “**person**”, defined under section 29 of the *Interpretation Act*, includes both a “natural person” (e.g. a human being in full capacity of the law) as well as not-for-profit and business organizations (e.g. societies, corporations and partnerships). Where the partner in a “partnering agreement” is a private (for-profit) company, the partnering agreement is often referred to as a public private partnership or “P3”.

When to Consider a Partnering Agreement

Municipalities provide services to address pressing public needs, such as clean water, proper sanitation, and parks and recreation. The *Community Charter* provides municipalities with the broadest range of tools to find the most efficient and effective way of delivering these services, including the authority to undertake partnering agreements.

Municipalities may choose to enter into a partnering agreement for a number of reasons, including: potential cost-savings (i.e. value for money); outside expertise; risk sharing; and, operational independence.

Reason 1 - Value for Money – Partnering agreements provide municipalities with a broad range of service delivery options beyond regular delivery of services through a municipal department. Partnering agreements also enable municipalities to compare different options for service delivery (as well as different service providers) to determine the most cost-effective and efficient means of providing a given service. For example, a municipality may examine the cost feasibility of providing a service (or some component of a service) either through a municipal department or a number of potential partners.

Reason 2 - Expertise – A partner often brings a highly specialized expertise that the municipality may lack. This expertise may be in a specific area of operations (e.g. computer systems) or a particular service (e.g. water treatment).

Reason 3 - Risk-Sharing – Many services (such as water and sewer) involve considerable investment in capital infrastructure. With considerable investment comes considerable risk (such as cost overruns, delays, environmental and regulatory compliance, and long-term financing). A municipality may mitigate some or all of these risks by sharing them with an external partner under a partnering agreement. For example, a partnering agreement may stipulate that any capital cost overruns would be borne by the partner, rather than the municipality.

Reason 4 - Arms Length Independence – Because of the complex and highly technical nature of some services, a municipal council may consider a partnering agreement as a means of removing the service from the political involvement in day-to-day operations. In this case, the terms of the partnering agreement may provide long-term strategic plans and objectives for service delivery. The municipal council would remove itself from the operational decisions of a service, provided the partner meets the contractually agreed-upon plans and objectives for that service.

***Note:** While partnering agreements provide municipalities with broader options for service delivery, it is incumbent on municipal council and staff to conduct a business case analysis, or other due diligence, to determine if a partnering agreement is the most cost-effective and efficient option for delivering a given service.*

Service Life-Cycle

Services, specifically capital-intensive services, follow a life-cycle path through their creation, development and ongoing operations. This life-cycle is sometimes referred to as **DBFO** – named after each step in the life-cycle (**D**esign, **B**uild, **F**inance and **O**perate).

1. **Design** – involves the design and planning of a service including the design and planning of related facilities – e.g. architectural, engineering and planning studies.
2. **Build** – involves capital acquisition and construction – e.g. procurement, property acquisition, preparation and building construction.
3. **Finance and Own** – involves financing and control of capital (e.g. land, buildings, infrastructure and equipment) plus the financing of ongoing operations – e.g. debenture debt, leaseback agreements, tax exemptions, and fees for service.
4. **Operate** – involves the ongoing operations of a service – e.g. training, technical staffing, administration, maintenance, and service support.

The *Community Charter* provides municipalities an extensive range of legislative authority to utilize partnering agreements for one or more of these steps in the service life-cycle. Because of this, a partnering agreement may be very narrow in scope or it may be broad.

The broadest use of the partnering agreement involves **all** steps in the service life-cycle (e.g. where a partner is responsible for designing, building, financing, and operating a water service under contract with a municipality). In some cases, the partner may own or maintain broad control of the facilities related to the service. Given the diversity of partnering agreements and the potential for numerous operating and capital issues, the *Community Charter* identifies four key areas for local government consideration, including:

1. assistance to business;
2. taxation of partnership property;
3. disposition of municipal property; and,
4. capital financing.

The remainder of the guide will provide a detailed focus on the statutory requirements surrounding each of these four issues.

Assistance to Business

Under the *Community Charter*, “Assistance” is defined as a benefit or advantage provided by a municipality to a third party. Types of assistance often include grants, tax/fee exemptions, low interest loans, loan guarantees, and disposition of property below market value.

Partnering agreements sometimes involve special assistance to the partner in return for operating a municipal service. However, there is a general prohibition (under section 25 of the *Community Charter*) against a municipality providing assistance to a **business**. This is to ensure a municipal government does not provide an advantage to one business at the expense of other competing businesses – thereby guaranteeing a level playing field for all businesses within the municipality.

A **Business** is an organization (or an area of operations) carrying on commercial or industrial activity or providing personal or professional services for profit, but does not include corporations or agencies of the Provincial Government or South Coast BC Transportation Authority.

For a partner that is also a business, the *Community Charter* recognizes that a partnering agreement is distinct from normal business operations of the partner because it involves the provision of a service on behalf of a municipality. Therefore, the general prohibition of assistance does not apply to a business providing a municipal service under a partnering agreement (*Community Charter*, section 21).

Note: the prohibition on a municipal council providing assistance only applies to businesses; it does not apply to most government or not-for-profit organizations regardless of whether or not they are in a partnering agreement.

Notice of Assistance

If a municipality intends to provide assistance through a partnering agreement, it must post a public notice in accordance with sections 24 and 94 of the *Community Charter* in order to ensure transparency and public accountability. The public notice involves:

- posting of notice in a public posting place (normally identified in the municipality's procedure bylaw and may include a municipal hall or website);
- **AND**
 - publication of notice in a local newspaper once each week for two consecutive weeks;
 - OR,**
 - if publication in a newspaper is not practical, providing notice by alternative means once each week for two consecutive weeks (except in the case of door-to-door distribution of information, which need only be delivered once).

The contents of a notice may vary depending on the specific content of a partnering agreement. Appendix A (p. 16) provides a general description of the contents for a public notice. In order to ensure transparency of the process, municipalities must provide the required public notification prior to providing any assistance under the agreement. Certain types of assistance (such as property tax exemptions) require municipalities to follow additional statutory provisions outlined in the *Community Charter*.

Taxation of Partnership Property

One of the most common forms of assistance under a partnering agreement is a total or partial tax exemption for property related to the provision of a municipal service under agreement. For example, a business that operates a privately-owned water treatment facility under a municipal partnering agreement may be eligible for a property tax exemption.

Because taxation can be very complex, a municipality may benefit from consultation with the Ministry, British Columbia Assessment, or legal counsel before proceeding with a tax exemption in relation to an agreement.

Types of Partners

When considering a tax exemption in relation to a property owned or occupied by a partner, a municipality must first determine the legal structure of the partner (i.e. is it another government, public authority, private company, not-for-profit organization, or some other entity). This is an important distinction because different legal entities have different tax treatment under the *Community Charter*.

Important Terms

Property, Property Taxes, and Taxing Authorities

Property – For the purpose of taxation, the term “property” includes land and improvements; improvements are buildings, fixtures, and structures affixed to the land.

Property Tax – A tax levied on the net taxable value of the property (also called an ad valorem tax), or a tax levied per parcel, or on the frontage or area of a parcel.

Taxing Authorities – public authorities (e.g. hospital districts, regional districts, the Province on behalf of school districts), that either set their own tax rates or requisition tax amounts from municipalities. Municipalities are legally obligated to collect these taxes within their boundaries and remit the collected taxes to the appropriate taxing authority.

Tax Exemptions

Property Tax Exemption – an exemption from property tax; may be based on the type of the owner (e.g. the Provincial Government) and/or the use of the property (e.g. for charitable purposes).

Types of Tax Exemptions:

Automatic Exemption – a tax exemption provided for by statute which, if the criteria for exemption are met, applies automatically (i.e. does not require council approval).

General Permissive Exemption – a tax exemption provided at the discretion of a municipal council in accordance with section 224 of the *Community Charter*.

Partnering Exemption – a specific type of permissive tax exemption provided under section 225 of the *Community Charter*. This is provided at the discretion of a council and in accordance with a partnering agreement.

Ownership/Occupation

Ownership – defined in the *Community Charter*; generally refers to fee-simple ownership but may also include other types of ownership or deemed owners (e.g. an occupier of Crown or municipally-owned property is deemed to be an “owner”).

Occupation – as defined in the *Community Charter*; generally refers to property held under lease, license or other tenure. **Note:** occupation of property is not an issue unless the owner of the property is exempt; in which case, the occupier may be deemed taxable under certain circumstances.

Entities that are Automatically Exempt

Some entities are automatically exempt from property tax by statute or the *Constitution Act, 1867*.

Municipal councils have no exemption discretion regarding such entities; they are automatically exempt by British Columbia Assessment. Therefore, if these entities are part of a partnering agreement, they do not require any permissive exemption by the municipal council because they are already exempt.

Also, an automatic exemption applies to all property taxes of the municipality and other taxing authorities (e.g. regional districts, hospital districts, Province on behalf of school districts).

Examples of this type of entity are the Federal and Provincial Governments. Property that belongs to these governments is exempt under section 125 of the federal *Constitution Act, 1867* even if the properties are held under lease by an exempt owner.

Other examples of automatic exemptions include entities under section 220 of the *Community Charter* such as: public libraries under the *Library Act*; cemeteries under the *Cremation, Internment and Funeral Services Act*; and, hospitals under the *Hospital Act*.

Entities Eligible for a General Permissive Exemption

A municipal council has the power to adopt (by bylaw) general permissive exemptions under section 224 of the *Community Charter* for eligible properties. Examples of entities that may be exempted under this section include neighbouring local governments or charitable, philanthropic or other not-for-profit corporations that own or hold property, where the municipal council is satisfied that the property is used for the purposes of the not-for-profit corporation.

Depending on the type of exemption under section 224, the duration of the general permissive exemption may be limited to 10 years (with the possibility of renewal). The prohibition against assistance to business under section 25 of the *Community Charter* may also apply.

As is the case with an automatic exemption, general permissive exemptions trigger exemptions from all other property taxes levied for other taxing authorities such as regional districts, hospitals districts, and the Province on behalf of school districts.

Use of Property by an Otherwise Exempt Partner

For both automatic and general permissive exemptions, a municipality must carefully determine whether the potential partner is exempt for all purposes (or only under certain conditions). For example, under section 129 of the *School Act*, a school board property is only exempt if it is used for the purposes listed in that section, including purposes of (or ancillary to) a school. Also, under section 15 of the *Health Authority Act*, property of a health authority is only exempt if it is used for the purposes of that Act.

Thus, the use of a property under a partnering agreement will affect whether or not it is eligible for an automatic or general permissive tax exemption. If the municipal council wants to exempt a partner and circumstances do not meet the parameters for an automatic or general permissive exemption, the municipality may still exempt the property under a partnering exemption in accordance with section 225 of the *Community Charter*. A partnering exemption may also be used in lieu of a general permissive exemption if the partner is eligible for both the general permissive and partnering exemptions.

Entities Eligible for a Partnering Exemption

Some entities are not eligible for either an automatic or general permissive exemption and are otherwise fully taxable; however, such an entity may be eligible for a partnering exemption. Under section 225 of the *Community Charter*, a municipal council may permissively grant a tax exemption on property owned or occupied by the partner and used for the provision of a municipal service under a partnering agreement. This is done through an **exemption bylaw** and in accordance with the terms and conditions of an **exemption agreement**. The exemption bylaw under this section requires the approval of at least two-thirds of council.

The exemption agreement under section 225(5) and (6) of the *Community Charter* allows council to set the following:

- extent of the exemption;
- a covenant on the property under S. 219 of the *Land Title Act*;
- relevant conditions for the exemption; and,
- appropriate terms for breach of those conditions, including:
 - discharge of any relevant covenant under the *Land Title Act*; and,
 - payment of amounts from the partner to the municipality in accordance with the agreement.

While a partnering exemption requires more process than a general permissive exemption, under section 224 of the *Community Charter*, it:

- grants the municipality broader authority to set terms and conditions for exemption eligibility;
- provides possible financial consequences if terms and conditions of the exemption agreement are not met by the partner; and,
- allows the duration of the exemption to exceed 10 years. This is beneficial because most general permissive exemptions under section 224 of the *Community Charter* are limited to 10 years unless renewed by a future council, whereas the duration of a partnering agreement may exceed this 10-year limit. Thus, the partner may want certainty that the tax exemption extends beyond 10 years.

Note: Partnering exemptions are not subject to the prohibition against assistance to business under section 25 of the *Community Charter*.

Unlike automatic exemptions or general permissive exemptions, a partnering exemption does not automatically trigger an exemption from property taxes for other taxing authorities (e.g. regional districts, hospital districts, and the Province on behalf of school districts). For a partnering exemption to apply to these other types of property taxes, the Lieutenant Governor in Council (Cabinet) must pass a regulation in accordance with section 131(6) of the *School Act*.

Examples of partners that may be exempt under a partnering agreement include for-profit businesses and other organizations that are not eligible for automatic or general permissive exemptions. For example, a municipal arena may be owned by a private, for-profit partner and leased to a municipality. In such circumstances, the for-profit partner would normally be taxable. However, if this lease arrangement was part of a partnering agreement, the arena may be exempt from property taxation using a partnering exemption.

Note: Both general permissive and partnering exemptions require a public notice in accordance with sections 94 and 227 of the *Community Charter* (see Appendix A, p. 16). Also, in order to be effective in the current tax year, a general permissive exemption bylaw (under section 224 of the *Community Charter*) or a partnering exemption bylaw (under section 225 of the *Community Charter*) must be passed on or before October 31 of the previous year.

Exemptions for Sub-Occupiers

Tax exemptions under a partnering agreement only apply to property owned or occupied by the municipality or the partner. In some cases, there may be secondary occupiers on the property who are neither the municipality nor the partner. An example of this is a clubhouse for a local not-for-profit sport club located on the premises of a recreation facility providing a municipal service under a partnering agreement. Normally, such property would be taxable in the name of the non-profit sports club because it would be considered a taxable occupier under the *Community Charter*.

However, a municipal council may grant such a permissive tax exemption for property occupied by a sub-occupier in accordance with section 224(2)(e) of the *Community Charter*. In order for council to grant such an exemption, the following criteria must be met:

- sub-occupied portion of the property is located within the broader property providing a municipal service under a partnering agreement;
- broader property has been provided a partnering exemption under section 225 of the *Community Charter*;
- partnering agreement expressly contemplates that council may provide exemptions to sub-occupiers under the authority of section 224(2)(e) of the *Community Charter*; and,
- sub-occupied property would otherwise be eligible for an automatic or general permissive tax exemption if it were owned by the sub-occupier.

Note: An exemption for a sub-occupier cannot override the prohibition on assistance to business. Thus, this exemption authority cannot be used to exempt a business sub-occupying property that is subject to a separate partnering agreement. For example, if a for-profit restaurant franchise sub-occupies a portion of a recreation facility, and the facility is subject to partnering exemption, the restaurant is still taxable.

Disposition of Property

Partnering agreements may involve the disposition of municipally-owned property (i.e. land or improvements) to the partner as a condition of the service agreement. Under section 8(1) of the *Community Charter*, municipalities have the capacity, rights, powers, and privileges of a natural person (referred to as natural persons powers), including the power to acquire and dispose of property.

Disposition, under the *Interpretation Act*, is a means to transfer by any method (including: to assign, give, sell, grant, convey, lease, divest and others).

Municipalities also have a responsibility to provide stewardship of public assets as outlined in section 7(d) of the *Community Charter*. In accordance with this stewardship requirement, the *Community Charter* places restrictions on disposition of critical municipal property.

At a minimum, the disposition of municipal property requires a public notice in accordance with sections 26 and 94 of the *Community Charter*. This allows for transparency and public input into the disposition decision (see Appendix A – public notice requirements). Such a disposition would normally be done in conjunction with an operating agreement (i.e. an agreement that the partner operate the property for municipal benefit and in accordance with the terms of the partnering agreement).

Example: a municipality may dispose of a facility through a nominal lease to a private partner; in turn, the private partner will operate that facility in accordance with the terms of the partnering agreement.

In addition to the general notice requirements for property disposition in Appendix A, there are four scenarios that have additional statutory requirements as set out under sections 24, 27 and 28 of the *Community Charter*. These additional requirements involve the disposition of specific types of property, such as:

1. properties involved in capital intensive service delivery (e.g. utilities);
2. properties involved in public health (water and sewer services);
3. public parks; and,
4. properties disposed of below fair market value.

Each of these four scenarios is examined in more detail in the next part of this guide.

Electoral Approval

Some components of partnering agreements discussed in this guide (e.g. property disposition and liabilities) may require the approval of the citizens of the municipality (called the electors). This approval can take one of two forms under the *Community Charter*:

Assent of the Electors – this approval process requires a majority vote of the eligible electors in a municipality (similar to a public referendum process).

Approval of the Electors – this form of approval includes either the assent of the electors (mentioned above) or an **alternative approval process**. The choice is at the discretion of council.

Under an **alternative approval process**, council will publish a notice of approval (see **Appendix A**, p 16). Electors will have at least one month to petition against the substance of that notice (e.g. adoption of an agreement or bylaw).

If, at the end of the one month period, less than 10% of the eligible electors of the municipality petition against the substance of the notice (as certified by the municipal corporate officer), the substance of the notice is deemed to have received the approval of the electors.

If 10% or greater of the electors petition against the substance of the notice, it is either defeated or council must go to the assent of electors for approval.

Four Disposition Scenarios Requiring Additional Approval (beyond public notice):

1. Municipally-owned telephone, TV rebroadcast, transportation, gas, or electrical systems

A council only has unrestricted authority to dispose of such property if the property is:

- no longer required for that purpose; **OR**,
- disposed of to the regional district in which the municipality participates; **OR**,
- disposed of to a neighbouring municipality within the same regional district.

Otherwise, council must seek approval of the electors in accordance with section 84 of the *Community Charter* [assent of the electors or alternative approval process].

2. Municipally-owned water and sewer systems

A council only has unrestricted authority to dispose of such property if the property is:

- no longer required for that purpose; **OR**,
- disposed of to the regional district in which the municipality participates; **OR**,
- disposed of to a neighbouring municipality within the same regional district.

Otherwise, council must obtain:

- an agreement from the purchaser (i.e. the partner) that the property will continue to be used for water or sewer service for a period specified in the agreement; **AND**,
- the assent of the electorate by referendum in accordance with section 85 of the *Community Charter*.

3. Municipally-owned park land

A council may only dispose of municipally-owned park land with the approval of the electors in accordance with section 84 of the *Community Charter* and only under the following conditions:

- the purchaser (i.e. partner) provides the municipality with other land suitable for park purposes; **OR**,
- the purchaser (i.e. partner) pays for the property and the payment is deposited into a park land acquisition reserve fund under section 188 of the *Community Charter*.

4. Disposition Below Fair Market Value

Where a municipality disposes of its property to a private partner (e.g. a business) at less than market value it is considered to be assistance to business and therefore must follow the appropriate statutory requirements. (See Assistance to Business on p.4 for further information).

Capital Financing: Under Agreement or by Loan Authorization Bylaw

One of the primary reasons for exploring partnering agreements is sharing risk between a municipality and a partner. One of the riskiest components of any service is large capital financing requirements. Thus, a partnering agreement will often involve provisions for capital financing.

Capital financing is long-term financing for the acquisition or construction of capital assets, including: buildings, treatment plants, roads, pipes, vehicles and land. This financing may take many forms, including: debenture issues, bank financing, lease agreements and loan guarantees.

In some cases, the private partner will be responsible for capital financing; however, often the private partner will want direct or indirect access to lower interest rates available to municipalities. Because capital financing decisions are longer than the normal term of a municipal council, such financing usually requires the approval of the electors through an alternative approval process or assent through referendum (see sections 84-86 of the *Community Charter*).

The *Community Charter* has specific provisions regarding two types of capital financing:

- liabilities under agreement; and,
- liabilities under a loan authorization bylaw.

Liabilities Under Agreement

Section 175 of the *Community Charter* sets out the requirements for liabilities under agreement (e.g. capital leases or other liabilities of a similar nature).

Note: Liabilities under agreement do not include loan authorization bylaws and debenture debt, which are addressed under different statutory authority.

In accordance with section 6 of the Municipal Liabilities Regulation (BC Reg 254/2004), municipal liabilities of a capital nature enacted under the authority of section 175 of the *Community Charter* (e.g. financing for land, building and equipment), require the approval of the electors. However, this approval is only required if the term of the liability exceeds five years (including by rights of renewal).

Note: Operating liabilities of a non-capital nature (e.g. maintenance contracts) do not require the approval of the electors.

When to Seek Approval of the Electors for a Liability Under Agreement

Generally, a municipal council will seek elector approval to incur a liability only after the partnering agreement has been finalized. This ensures that the electors have all the information needed to make an informed decision.

However, a municipal council may wish to pursue elector approval in advance of the final agreement in order to provide the prospective partner a level of certainty during the negotiation process. In this case, council may seek the approval of the electors on the broad “concept” of the agreement in accordance with section 175(5) of the *Community Charter*. The concept of the agreement must include:

- the nature of the expected capital works to be provided under the partnering agreement;
- the expected maximum term of the agreement;
- the maximum amount of the capital liability that may be incurred; and,
- any other germane information regarding the liability under agreement.

If the electors approve the “concept” of the agreement, the municipality may proceed with its negotiations for a partnering agreement. Before a municipality can incur a liability under the agreement, it must finalize the agreement. The agreement must be finalized within five years of receiving elector approval on the initial concept. If the maximum liability under the finalized agreement exceeds the maximum liability approved under the “concept”, the municipality will require approval of the electors for the new liability amount.

Liabilities Under Loan Authorization Bylaw

Under section 179(1)(b) and (c) of the *Community Charter*, a municipality may provide a loan authorization bylaw for the purpose of **lending money to a partner** or **guaranteeing repayment of the borrowing of a partner**.

A loan authorization bylaw is a means of accessing debenture financing through the Municipal Finance Authority of British Columbia (MFA). Similar to liabilities under agreement, loan authorization bylaws require the approval of the electors. However, unlike liabilities under agreement, loan authorization bylaws also require the approval of the Inspector of Municipalities prior to adoption of the bylaw.

Miscellaneous Requirements for Partnering Agreements

There are several additional considerations to take into account when deciding if a partnering agreement is appropriate.

Freedom of Information and Public Disclosure Requirements

Public transparency is essential when a municipality is contemplating a partnering agreement. One part of transparency is ensuring access to relevant information concerning a partnering agreement.

All relevant information pertinent to a partnering agreement is subject to the *Freedom of Information and Protection of Privacy Act*. Also, in accordance with section 96 of the *Community Charter*, if a partnering agreement requires the approval of the electors, the agreement and all records relating to the agreement that are in the custody of the municipality must be available for public inspection at the municipal hall while the approval process is under way.

Open Tendering Requirements

Partnering agreements will often involve the procurement of a good or service. This may involve a procurement process to determine the partner from a number of eligible candidates and further procurement for specific aspects of the agreement.

Through considering all potential partnership candidates, a municipality can ensure the agreement is executed in the most efficient and effective manner.

In accordance with Article 14, Section 1(c) of the *New West Partnership Trade Agreement*, municipalities must provide open and non-discretionary access to any procurement equal to or greater than:

- \$75,000 for goods or services; **OR**,
- \$200,000 for construction.

Summary of Relevant Sections of the *Community Charter*

Item	<i>Community Charter</i> Sections
Contracting Authority	S. 8 and 21
Assistance to Business	S. 24-25
Disposal of Assets	S. 26-28
Elector Approval	S. 84-86
Liabilities Under Agreement	S. 175
Loan Authorization Bylaw	S. 179
Property Tax Exemption	S. 224-225
Public Notice	S. 94

Web Links to Relevant Legislation and Agreements:

Community Charter

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/03026_00

Freedom of Information and Protection of Privacy Act

http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96165_00

New West Partnership Trade Agreement

<http://www.newwestpartnershiptrade.ca/pdf/NewWestPartnershipTradeAgreement.pdf>

Contact information

For further details regarding the information contained in this guide, please contact:

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Local Government Infrastructure and Finance Branch

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Toll Free through EnquiryBC: 1-800-663-7867

or, contact a financial analyst at: <http://www.lgics.cd.gov.bc.ca/>

Appendix A - Contents of Public Notice

The contents of notices for public posting and publication vary depending on the nature and terms of a partnering agreement.

a) General Assistance (section 24 of the *Community Charter*)

If the partnering agreement involves general assistance to business, the notice must:

- identify the intended recipient of assistance; and,
- describe the nature, term and extent of the proposed assistance.

b) Property tax exemption (section 227 of the *Community Charter*)

If the partnering agreement involves a property tax exemption, in addition to the general assistance notice, the notice must also:

- describe the exemption;
- identify the property eligible for the exemption;
- state the maximum term of the exemption; and,
- provide an estimate of the amount of the exemption for each of the first three years it will be in place.

c) Disposition of Property (section 26 of the *Community Charter*)

If the partnering agreement involves the disposition of property, the notice must:

- describe the municipal property to be disposed;
- provide the name of the partner who is to acquire the property;
- state the nature of the disposition (e.g. fee-simple sale or lease);
- if applicable, state the duration of the disposition;
- provide the “consideration” (i.e. payment or payment-in-kind) received by the municipality for the disposition; and,
- if the disposition is below market value, the notice must also include the general assistance provisions listed in item (a).

d) Long-term Liability (sections 175 and 179 of the *Community Charter*)

If the partnering agreement involves a long-term liability (either a liability under agreement or a loan authorization bylaw), the notice must:

- state the nature/purpose of the activity or work provided;
- state the amount of the liability;
- state the duration of the liability; and,
- provide any other germane information.

Note: *in some cases the above notices are done in conjunction with one another and in conjunction with elector approval if required by statute. Based on the type of elector approval process, the notice must be as follows:*

e) Assent of the Electors (section 164 of the *Local Government Act*)

If elector approval is required by Assent (e.g. referendum), the notice must include the following:

- the question to be voted on;
- the voting area (usually the entire municipality but in some cases it may be a sub-area of a municipality);
- the qualifications required to be met in order to vote as an eligible elector;
- the date of general voting and established voting places;
- documents required by an eligible elector at the voting place in order to vote; and,
- information requirements for non-resident property electors.

f) Alternative Approval Process (section 86 of the *Community Charter*)

If elector approval is required by Alternative Approval Process, the notice must include the following:

- a general description of the proposed bylaw, agreement, or other matter requiring elector approval;
- a description of the area to which the approval process applies (usually the entire municipality but in some cases it may be a sub-area of a municipality);
- the deadline for elector approval response;
- a statement that council may proceed with the matter unless, by the deadline, at least 10% of the electors in the area indicate that council must obtain the assent of the electors;
- a statement that
 - elector responses must be given in a form provided by council,
 - elector response forms are available at the municipal hall, and
 - only eligible electors in the area are entitled to sign the response forms;
- the number of elector responses required to prevent council from proceeding with a matter without the assent of the electors.