

DATE: July 9, 2020

FILE: 5210-01

TO: Chair and Directors
Comox Valley Regional District Board

FROM: Russell Dyson
Chief Administrative Officer

Supported by Russell Dyson
Chief Administrative Officer

R. Dyson

RE: Comox Valley Water and Wastewater Mutual Aid Agreement during the COVID-19 Crisis

Purpose

To update the Board on Comox Valley Regional District (CVRD) progress towards compliance with Ministerial Order M084 and continuity of water and wastewater services in the face of the ongoing COVID-19 crisis, including a recommendation to enter into a Mutual Aid Agreement (MAA) with smaller water and wastewater purveyors in the Comox Valley.

Recommendation from the Chief Administrative Officer:

THAT the Board enter into a Mutual Aid Agreement with the Village of Cumberland, K'ómoks First Nation, Union Bay Improvement District, and Ships Point Improvement District to enable the continuity of wastewater and drinking water services according to the Provincial Order M084.

Executive Summary

On March 26, 2020, the British Columbia Minister of Public Safety and Solicitor General, enacted Ministerial Order No. M084, requiring local authorities to *“use best efforts to enter into Mutual Aid Agreements with neighbouring jurisdictions to ensure that first responder, wastewater and drinking water services are maintained”* during the COVID-19 crisis.

- The CVRD has pre-existing MAA in place to ensure that there is capacity throughout our region to support first responder services.
- In April the CVRD Board approved entering into a MAA for wastewater and drinking water services with regional districts and municipalities to the south.
- All local water and wastewater purveyors, including the City of Courtenay and Town of Comox, continue to meet regularly to share resources and experience relating to management of these essential services during the COVID-19 crisis.
- City of Courtenay and Town of Comox believe that the local emergency MAA provides sufficient coverage for water and wastewater services, but the CVRD and smaller local purveyors see value in establishing a dedicated MAA for these services.
- Staff are recommending that the CVRD approve a very similar MAA, attached as Appendix A, with the smaller local purveyors of water and wastewater services.
- The MAA will provide a framework by which signatories can request resources if they are overwhelmed during the COVID-19 crisis.
- Payment for emergency services under the MAA will be on a cost recovery basis and will not include markups for overhead or profit.
- Resources will only be made available if they are not required by their primary jurisdiction.

Prepared By:

K. La Rose

Kris La Rose, P.Eng.
Senior Manager of Water/
Wastewater Services

Concurrence:

M. Rutten

Marc Rutten, P.Eng.
General Manager of
Engineering Services

Government Partners and Stakeholder Distribution (Upon Agenda Publication)

City of Courtenay	✓
Town of Comox	✓
Village of Cumberland	✓
K'ómoks First Nation	✓
Union Bay Improvement District	✓
Ships Point Improvement District	✓

Attachments: Appendix A – Comox Valley Water and Wastewater Mutual Aid Agreement

ESSENTIAL SERVICES MUTUAL AID AGREEMENT

THIS AGREEMENT is dated for reference the ____ day of _____ 2020.

BETWEEN:

REGIONAL DISTRICT OF COMOX VALLEY, a regional district incorporated pursuant to the *Community Charter* and having its business office at 770 Harmston Avenue, Courtenay, British Columbia, V9N 0G8 ("CVRD")

OF THE FIRST PART

AND:

THE CORPORATION OF THE VILLAGE OF CUMBERLAND, a municipality incorporated pursuant to the *Community Charter* and having its business office at 2673 Dunsmuir Avenue, Cumberland, BC V0R 1S0 ("Village")

OF THE SECOND PART

AND:

K'ÓMOKS FIRST NATION, having its business office at 3330 Comox Road, Courtenay, BC V9N 3P8 ("KFN")

OF THE THIRD PART

AND:

UNION BAY IMPROVEMENT DISTRICT, having its business office at 5579-B Island Highway South, Union Bay, BC V0R 3B0 ("UBID")

OF THE FOURTH PART

AND:

SHIPS POINT IMPROVEMENT DISTRICT, having its business office at 7729 Vivian Way, Fanny Bay, BC V0R 1W0 ("SPID")

OF THE FIFTH PART

WHEREAS:

- A. Mutual aid is the sharing of supplies, equipment, personnel, information, or other resources across jurisdictional boundaries;
- B. By Ministerial Order M084 dated March 26th, 2020, the Minister of Public Safety and Solicitor General for the Province mandated that local authorities must exercise best efforts to enter into mutual aid agreements with neighbouring jurisdictions to ensure continuity of essential services during the COVID-19 pandemic, and, in particular, to ensure that wastewater and drinking water services are maintained;

- C. The Parties desire to enter into an Agreement whereby supplies, equipment, personnel, information, or other resources of any Party can be deployed to assist the other Parties during an emergency; and
- D. The CVRD, Village, KFN, UBID and SPID consider it to be of mutual benefit to enter into an arrangement whereby any one of them may, in situations where their own resources are insufficient, request Mutual Aid from the others to bring the situation under control.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the mutual covenants and agreements herein contained and subject to the terms and conditions hereinafter set out, the Parties agree as follows:

Interpretation

- 1. Unless the context otherwise requires, in this Agreement:
 - (a) "CAO" means the person appointed by the Board of Directors or Council for each Party as the Chief Administrative Officer or their designate;
 - (b) "Emergency Situation" means a real or anticipated occurrence that in the opinion of the CAO compromises the ability of the Requesting Party to provide an Essential Service to their constituents;
 - (c) "Essential Service" means drinking water and waste water infrastructure services;
 - (d) "Mutual Aid" means assistance by providing, upon request, emergency resources to another Party outside the jurisdictional boundaries of the Party that provides the emergency resources;
 - (e) "Requesting Party" means the local government requesting Mutual Aid under this Agreement;
 - (f) "Responding Party" means the local government responding to a request for Mutual Aid under this Agreement; and
 - (g) "State of Emergency" means the state of emergency declared by the Province of British Columbia on March 18th, 2020 with respect to the COVID-19 pandemic, and any extension of the duration of that declaration.

The Request for Mutual Aid

- 2. Where the CAO of the Requesting Party determines that the resources of their local government are insufficient to provide an Essential Service, whether actual or imminent, they may request the Mutual Aid of another Party for the purposes of maintaining that service and in submitting such request, the said CAO shall specify the type of assistance and the number of personnel required.
- 3. The Requesting Party shall first request Mutual Aid from the Party that is closest in proximity to their location.
- 4. If the Party that is closest in proximity to the location of the Requesting Party is unable to provide some or all required Mutual Aid, the Requesting Party may request Mutual Aid from the Party that is next closest in proximity to their location.
- 5. All requests for Mutual Aid under this Agreement shall be made by the CAO of the Requesting Party to the CAO of the Party from whom Mutual Aid is being requested.

The Provision of Mutual Aid

6. The CAO of a Party from whom Mutual Aid has been requested under this Agreement shall immediately upon receiving the request determine, in their sole discretion, as soon as reasonably possible whether and to what extent the supplies, equipment, personnel, information, or other resources of their local government may be deployed to assist the Requesting Party and shall thereafter deploy to the extent available such supplies, equipment, personnel, information, or other resources.
7. When specialized equipment is supplied to a Requesting Party, the Responding Party will endeavour to provide an operator to the Requesting Party to ensure adequate, safe and proper operation of such equipment.
8. Nothing in this Agreement requires the CAO of a Responding Party from whom Mutual Aid has been requested under this Agreement to deploy supplies, equipment, personnel, information, or other resources to assist a Requesting Party that the CAO has determined are unavailable or are required to provide service within their local government.
9. All supplies, equipment, personnel, information, or other resources provided by a Responding Party to a Requesting Party under this Agreement shall, for the duration of the time that the Mutual Aid is being provided under this Agreement, and solely with respect to the provision of such Mutual Aid, be under the direction of the CAO of the Requesting Party who shall adhere to standards and practices acceptable to local governments in British Columbia, and all applicable health and safety regulations and standards, when utilizing and directing the resources provided by the Responding Party.
10. The Requesting Party is responsible for ensuring that any workers from the Responding Party understand safe work procedures required to undertake the tasks needed to assist and that all safety equipment and proper protective equipment is provided by the Requesting Party.
11. The CAO of a Responding Party may, in their sole discretion, recall at any time for whatever reason any resource provided by their local government to the Requesting Party under this Agreement and shall not be liable for any loss, costs, damages or expenses whatsoever as a result thereof.
12. Upon being notified, whether verbally or in writing, that the CAO of a Responding Party has recalled supplies, equipment, personnel, information, or other resources under section 11 of this Agreement, the CAO of the Requesting Party shall immediately release and return to the Responding Party all supplies, equipment, personnel, information, or other resources provided by the Responding Party that was recalled by the CAO of the Responding Party.
13. The CAO of a Requesting Party shall, as soon as practicable, release and return to the Responding Party all supplies, equipment, personnel, information, or other resources that are no longer required to assist the Requesting Party and all such equipment and resources shall be returned to the Responding Party in the same working condition as when it was accepted by the Requesting Party.
14. The Parties acknowledge that where a Requesting Party receives assistance under this Agreement from a Responding Party involving unionized personnel that such personnel remain under the Responding Party's collective agreement and, if there is a discrepancy or dispute with respect to a collective agreement, it will be addressed by the affected Parties outside of this Agreement.

The Cost of Mutual Aid

15. The Responding Party shall, within sixty (60) days after providing services and resources, render to the Requesting Party a statement of account for the cost of services and resources on a cost recovery basis without overhead or profit.
16. The Requesting Party shall pay the account of the Responding Party within thirty (30) days of receiving it.

Waiver and Indemnification

17. No Party to this Agreement shall bring any claim, action, or demand against any other Party to this Agreement or its elected officials, officers, employees, agents, volunteers, or contractors in respect of or in any way related to the decision of a CAO as to the level of Mutual Aid, if any, or the withdrawal of Mutual Aid to be provided under this Agreement.
18. No Party to this Agreement, nor its elected officials, officers, employees, agents, volunteers or contractors, shall be liable to any other Party to this Agreement in respect of the decision of a CAO as to the level of Mutual Aid, if any, or the withdrawal of Mutual Aid to be provided under this Agreement.
19. The Requesting Party shall indemnify and save harmless the Responding Party, its elected officials, officers, employees, agents, volunteers, or contractors from and against any and all claims, demands, actions, causes of action, loss, costs, damages and expense (including legal fees on a solicitor-client basis) in respect of or in any way related to the provision of Mutual Aid under this Agreement and, without limiting the generality of the foregoing, any action taken or thing done or any failure to take action or do a thing under this Agreement, save and except where the claim, demand, action, cause of action, loss, cost, damage, or expense arose from the negligence of the Responding Party.

Insurance

20. Each Party to this Agreement shall keep in force third party liability insurance coverage to a minimum of five million (\$5,000,000.00) dollars and each such Party shall add all other Parties to this Agreement as additional insured.
21. Each Party shall maintain insurance coverage on its own equipment.
22. Each Party shall maintain Workers' Compensation coverage and other required coverage for the personnel of its own local government.

Term and Termination

23. This Agreement shall be in force for the period of the State of Emergency commencing on the date of its execution by all Parties.
24. Any Party to this Agreement may terminate its rights and obligations under this Agreement by giving ninety (90) days written notice of its intention to do so to the other Parties to this Agreement and thereafter shall be unconditionally released from any further obligation herein save and except any obligation up to the date of termination.
25. Where a Party to this Agreement terminates its rights and obligations under this Agreement, this Agreement shall continue in force between the remaining parties.

Miscellaneous Provisions

26. Any requests for Mutual Aid shall be subject to any of the Parties obligations pursuant to the provisions of the *Emergency Program Act* R.S.B.C. c. 111.

27. The Parties agree to consult on a regular basis through their CAO to achieve the optimum deployment of Mutual Aid.
28. The Parties hereto agree that in the event of dispute between any of the Parties, each of the Parties hereto shall meet with a qualified mediator in a timely manner and attempt in good faith to negotiate a settlement of such dispute during which time such representatives shall disclose to the other all relevant information relating to the dispute.
29. This Agreement shall be the entire agreement between the Parties in respect of the provision of Mutual Aid by the Parties to one another for the purposes of bringing Emergency Situations under control.
30. The Parties may not assign this Agreement without the prior written consent of the other Parties to this Agreement.
31. This Agreement shall ensure to the benefit of, and be binding upon, the Parties and their respective successors and permitted assigns.
32. This Agreement shall be governed by and interpreted in accordance with the laws of the Province of British Columbia.
33. Unless otherwise authorized under this Agreement, all notices under this Agreement shall be given in writing to the CAO of the Parties to this Agreement.
34. This Agreement may be executed in any number of counterparts and transmitted by electronic means, and if so executed and transmitted, this Agreement will be for all purposes as effective as if the Parties had delivered an executed original Agreement.

IN WITNESS WHEREOF the parties have signed, sealed, and delivered this Agreement as of the date first written above.

REGIONAL DISTRICT OF COMOX VALLEY)
 by its authorized signatory(ies):)
)
 _____)
 Chair:)
)
 _____)
 Chief Administrative Officer:)

THE CORPORATION OF THE VILLAGE OF)
CUMBERLAND by its authorized)
 signatory(ies):)
)
 _____)
 Chair:)
)
 _____)
 Chief Administrative Officer:)

K'ÓMOKS FIRST NATION by its)
authorized signatory(ies):)
)
_____)
Chief:)
)
_____)
Band Administrator:)

UNION BAY IMPROVEMENT DISTRICT by)
its authorized signatory(ies):)
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Chair:)
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Chief Administrative Officer:)

SHIPS POINT IMPROVEMENT DISTRICT)
by its authorized signatory(ies):)
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Chair:)
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Chief Administrative Officer:)