

DATE: August 24, 2018

FILE: 5340-03

TO: Chair and Directors
Regional District Board

FROM: Russell Dyson
Chief Administrative Officer

Supported by Russell Dyson
Chief Administrative Officer

R. Dyson

RE: King Coho Utility Transfer Agreement

Purpose

To obtain Comox Valley Regional District (CVRD) Board endorsement of the King Coho Utility Transfer Agreement.

Recommendation from the Chief Administrative Officer:

THAT the Board endorse the King Coho Utility Transfer Agreement, attached as Appendix A in the staff report dated August 24, 2018.

AND FURTHER THAT the chair and corporate legislative officer be authorized to execute the agreement.

Executive Summary

The King Coho wastewater treatment plant is a domestic sewage treatment facility servicing three freehold strata corporations (VIS6599, VIS4843, and EPS828) with a combined total of 37 strata lots. The wastewater system is currently owned and operated by Strata VIS6599 which provides service to the other two strata's through a waste management agreement.

In November 2017, King Coho strata lot owners successfully petitioned the CVRD Board to create a new wastewater service to provide sewage conveyance, treatment and disposal to the King Coho strata development. The King Coho Wastewater Service Establishment Bylaw No. 495, 2017 received three readings at the November 28, 2017 CVRD Board meeting and was subsequently forwarded to the provincial Inspector of Municipalities (Inspector) for review. Approval from the Inspector was received December 29, 2017, and Bylaw No. 495 was adopted by the CVRD Board on January 23, 2018.

CVRD staff have continued work to finalize a Utility Transfer Agreement to transfer ownership, operations, and management of the King Coho wastewater system to the CVRD. Approval by the CVRD Board and Strata VIS6599 is required on or before the completion date of September 30, 2018 in order to complete the transaction. Obligation to complete the transaction is further subject to the granting of the required Statutory Rights of Way (SRW) over the common property of the three respective strata plans and completion of necessary arrangements for the transfer of the waste discharge permit and assignment of the outfall licence to the CVRD.

CVRD staff have been working closely with representatives from the three strata corporations to satisfy the conditions of the agreement before the completion date. Strata VIS6599 plans to bring

the Utility Transfer Agreement and the SRW agreement forward for approval at a special general meeting in September. The SRW agreements for VIS4843 and EPS828 have now been approved by the owners of those strata lots and CVRD staff have submitted the necessary information to the appropriate provincial agencies for the transfer of required permits and licences

In summary:

- The CVRD Board created the King Coho Wastewater Service on January 23, 2018.
- Upon endorsement of the Utility Transfer Agreement (Appendix A) by the CVRD Board and Strata VIS6599, and completion of the conditions specified in Section 5 of the agreement, the wastewater system will be transferred to the CVRD for a purchase price of one dollar (\$1.00). The completion date for the transaction is September 30, 2018.
- Following transfer of ownership to the CVRD, work can begin, to complete the necessary capital upgrades to the system.

Prepared by:

Darry Monteith

Darry Monteith
 Manager of Liquid Waste
 Planning

Concurrence:

M. Rutten

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

Stakeholder Distribution (Upon Agenda Publication)

Strata VIS6599	✓
Strata VIS4843	✓
Strata EPS828	✓

Attachment: Appendix A – “King Coho Utility Transfer Agreement”

UTILITY TRANSFER AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2018.

BETWEEN:

THE OWNERS, STRATA PLAN VIS6599
c/o 101 – 1260 Wally Road, Comox, BC V9M 3N9

(hereinafter referred to as the "**Strata Corporation**")

OF THE FIRST PART

AND:

COMOX VALLEY REGIONAL DISTRICT
600 Comox Road, Courtenay, BC V9N 3P6

(hereinafter referred to as the "**Regional District**")

OF THE SECOND PART

WHEREAS:

- A. The Owners, Strata Plan VIS6599 own and operate a sewer utility (the "**Sewer Utility**") under the Ministry of Environment Permit No. 13155 (the "**Permit**") that collects, treats and disposes sewage from all and singular parcels of land and premises on lands described in Schedule "A" to this Agreement (the "**Strata Lands**");

Lands within Strata Plans:

VIS4843
VIS6599
EPS828

(hereinafter referred to as the "**Lands**");

- B. The Regional District may, by bylaw, and pursuant to subsection 332 of the *Local Government Act*, establish and operate any service that the Board considers necessary or desirable for all or part of the Regional District;
- C. The Regional District has the power under section 263(1)(d) of the *Local Government Act* to acquire, hold, manage and dispose of land, improvements, personal property or other property and any interest or right in or with respect to that property;

- D. The Strata Corporation has agreed to allow the Regional District to take over the above referred to Sewer Utility and the Regional District desires to do so on the terms and conditions hereinafter appearing;
- E. In accordance with the terms of this Agreement, the Owners, Strata Plan VIS6599 have agreed to transfer to the Regional District, all of the Works and infrastructure associated with the operation of the Sewer Utility as shown in Schedule "A"; and
- F. The Strata Corporation has further agreed to grant to the Regional District such Statutory Rights of Way pursuant to section 218 of the *Land Title Act (British Columbia)* as are necessary for the Regional District's operation of the Sewer Utility.

NOW THIS AGREEMENT WITNESSES that in consideration of the covenants hereinafter provided, the parties covenant and agree with each other as follows:

1.0 INTERPRETATION

1.1 In this Agreement,

"**Sewer Utility**" includes all the sewer system Works.

"**Works**" means the sewage disposal and water reclamation system comprising:

- (a) the plant and equipment located on VIS6599 including the P.J. Hannah system comprising the following:
 - i. a Rotating Biological Contactor that occupies approximately 480 square feet;
 - ii. underground storage tank chambers including a 100,000 litre storage tank that holds the effluent pending treatment;
 - iii. a storage tank housed in a structure that occupies approximately 160 square feet to hold treated sewage pending it being pumped through the outfall and into the ocean;
 - iv. a control building for system operations housed in a structure occupying approximately 196 square feet; and
 - v. all other related structures, equipment, chattels and other component parts;
- (b) the sewer outfall line running from the main system located on VIS6599 onto Crown land to the north and discharging into the ocean pursuant to Outfall Licence #113611 and any replacement outfall licence;

- (c) the common property network of pipes and related component parts located on VIS6599 including:
 - i. that portion of the pipe system located on the common property of VIS6599 that runs from the system to the foundation wall of the building located on VIS6599; and
 - ii. that portion of the pipe system located on the common property of VIS6599 that runs from the system to the lot line for the purpose of servicing the VIS4843 strata lots and the EPS828 strata lots;
- (d) the network of pipes and related component parts located on the common property of VIS4843 that runs from the boundary line between VIS6599 and VIS4843 to the foundation wall of each building located on VIS4843;
- (e) the network of pipes and related component parts located on the common property of VIS4843 that runs between VIS6599 and EPS828 over VIS4843 lands for the purpose of providing sewer services to those strata lots located on EPS828;
- (f) the network of pipes and related component parts located on the common property of EPS828 that runs from the boundary line between VIS4843 and EPS828 to the foundation wall of each building located on EPS828; and
- (g) the collector tank and pump located on VIS4843 that feeds the waste from VIS4843 and EPS828 across the Little River to the plant located on VIS6599, substantially in the location shown on the sketch plan attached hereto as Schedule "A".

2.0 PURCHASE PRICE

- 2.1 The purchase price for the Regional District's purchase of the Sewer Utility from the Strata Corporation shall be the sum of **ONE DOLLAR (\$1.00)** payable by the Regional District to the Strata Corporation on the Completion Date as herein defined.

3.0 COMPLETION DATE

- 3.1 The Completion Date shall be on or before September 30, 2018.

4.0 TRANSFER OF INTEREST

- 4.1 As of the Completion Date, the Owners, Strata Plan VIS6599 agree to sell, assign and transfer to the Regional District all of their right, title and interest in the Works,

including but not limited to its rights, titles and interests in and to the Works in the form attached as Schedule "B".

- 4.2 As of the Completion Date, the Owners, Strata Plan VIS6599 agree to grant to the Regional District the Statutory Right of Way over the common property within Strata Plan VIS6599 in the form attached as Schedule "C" to this Agreement having priority over all financial encumbrances registered against the common property.
- 4.3 The Owners, Strata Plan VIS6599 further agree that following the Completion Date, it shall provide all reasonable assistance to the Regional District for the purpose of securing any further rights of way or easements over the Strata Lands as may be necessary for the Regional District's maintenance and operation of the Sewer Utility, and without limitation and for that purpose the Strata Corporation, to the extent it may lawfully do so, shall provide the Regional District with access to any lands within Strata Plan VIS6599 over which the Strata Corporation holds an easement for Sewer Utility purposes.

5.0 CONDITIONS

- 5.1 The obligation of the Regional District and the Strata Corporation to complete the transactions contemplated hereunder is subject to the Board of the Regional District approving this Agreement on or before the Completion Date.
- 5.2 The obligation of the Regional District and the Strata Corporation to complete the transactions contemplated hereunder is further subject to:
 - (a) The Strata Corporation and the Regional District having agreed to appropriate arrangements for applying for and obtaining the transfer or assignment to the Regional District of Permit 13155 issued to 463539 BC Ltd. under the provisions of the *Environmental Management Act*, and assignment of Outfall Licence #113611 to the extent that such transfer or assignment may be necessary for the Regional District's operation of the Sewer Utility;
 - (b) the Council of the Strata Corporation adopting a resolution approving this Agreement and the transfer of the Works herein; and
 - (c) The Owners Strata Plan VIS4843 and EPS828 each granting to the Regional District Statutory Rights of Way over the common property of the respective Strata Plans, having priority over all financial encumbrances registered against title to the common property to provide access for the purpose, among other things, operating, maintain, repairing, inspecting, removing and replacing system of sewerage works within the common property on terms and conditions acceptable to the Regional District acting reasonably.

on or before the Completion Date.

- 5.3 The obligation of the Regional District to complete the transactions contemplated herein is subject to the Regional District being satisfied, in its sole discretion, on and before the Completion Date, that there are no subsisting contracts, service agreements or rights of use in relation to the Sewer Utility on the part of any third party other than any contract, service agreement or right of use that the Regional District may elect to accept and be bound by before the Completion Date.
- 5.4 The Strata Corporation shall provide, at the Completion Date, a certificate on behalf of the corporation certifying the matters referred to in section 5.3 of this Agreement.

6.0 REPRESENTATIONS AND WARRANTIES

- 6.1 The Strata Corporation represents and warrants to the Regional District as follows, with the intent that the Regional District shall rely on the representations and warranties in entering into this Agreement and in concluding the purchase and sale contemplated by this Agreement:
- (a) the Strata Corporation is a strata corporation validly existing under the provisions of the *Strata Property Act* and that it has the power and capacity to dispose of the Works and to carry on the Sewer Utility, and has a good marketable title to the Works, free and clear of all mortgages, liens, charges, pledges, security interests, encumbrances or other claims;
 - (b) neither the execution and delivery of this Agreement, nor the completion of the purchase and sale contemplated by this Agreement will give any person the right to terminate, cancel or remove the Works, or any part thereof;
 - (c) the Strata Corporation has no indebtedness or obligation to any person, firm or corporation which might by operation of law or otherwise now or hereafter constitute a lien, charge or encumbrance upon any of the Sewer Utility or the Works, and there are no contracts, service agreements or rights of use in respect of the Sewer Utility that will survive the Completion Date, other than as specifically referred to herein;
 - (d) to the best of the Strata Corporation's knowledge, there is no litigation or administrative or governmental proceeding or inquiry pending or threatened against or relating to the Sewer Utility, or the Works or any part thereof, nor does the Strata Corporation know of or have any reasonable grounds to believe that there is any basis for such action, proceeding or inquiry;
 - (e) to the best of the Strata Corporation's knowledge, all governmental licenses, permits and certificates required for the use to which the Works have been put have been obtained and are in good standing and such uses are not in breach of any statute, bylaw, regulation, covenant, restriction, plan or permit; and
 - (f) the Strata Corporation's execution and delivery of this Agreement and the

completion of the transactions contemplated by this Agreement has been duly and validly authorized by all necessary corporate action on the part of the Strata Corporation, and this Agreement constitutes a legal, valid and binding obligation of the Strata Corporation enforceable against the Strata Corporation in accordance with its terms, subject to the general principles of equity (whether or not enforcement is considered in a proceeding in equity or at law), including the discretion exercisable by the Court with respect to equitable remedies such as specific performance and injunction and the concepts of materiality reasonableness, good faith and fair dealing in the performance and enforcement of a contract required by law of the party seeking its enforcement.

7.0 INDEMNITY

7.1 The Strata Corporation covenants to save harmless and indemnify the Regional District from and against:

- (a) any indebtedness or liability of the Strata Corporation to any person, firm or corporation arising on or before the Completion Date which might by operation of law or otherwise now or hereafter constitute a lien, charge, mortgage, security interest or encumbrance upon any of the Works or the Sewer Utility, save and except any such indebtedness or liability created or caused by the Regional District; and
- (b) any and all actions, suits, proceedings, demands, assessments, judgments, costs and legal and other expenses arising out of or from the operation of the Sewer Utility by the Strata Corporation or any person on behalf of the Strata Corporation.

8.0 SURVIVAL OF WARRANTIES

8.1 All representations, warranties, covenants and agreements made by the Strata Corporation in this Agreement or under this Agreement shall, unless otherwise expressly stated, survive closing and any investigation at any time made by or on behalf of the Regional District shall continue in full force and effect for the benefit of the Regional District.

9.0 FURTHER ASSURANCES

9.1 The parties shall execute such further and other documents and do such further and other things as may be necessary to carry out and give effect to the intent of this Agreement.

10.0 TERMINOLOGY

10.1 Wherever the singular or the masculine are used in this Agreement, they shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or parties require.

11.0 BINDING AGREEMENT

11.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

12.0 HEADINGS

12.1 The headings in this Agreement are inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.

13.0 COUNTERPART

13.1 This Agreement may be executed in counterparts and when the counterparts have been executed by the parties, each originally executed counterpart, whether a facsimile, photocopy or original, will be affected as if one original copy had been executed by the parties to this Agreement.

IN WITNESS WHEREOF the parties hereto have set their hands and seals of the day and year first above written.

THE OWNERS, STRATA PLAN VIS6599)
 by its authorized signatory(ies):)
)
 _____)
 Signature of Council Member)
)
 _____)
 Signature of Second Council Member)

COMOX VALLEY REGIONAL DISTRICT)
 by its authorized signatory(ies):)
)
 _____)
 [Name], Chair)
)
 _____)
 [Name], Corporate Officer)

SCHEDULE "B"

CONTRACT OF SALE OF GOODS (ABSOLUTE)

THIS CONTRACT dated as of the _____ day of _____, 2018, and made IN PURSUANCE OF THE *SALE OF GOODS ACT*

BETWEEN:

The Owners, Strata Plan VIS6599
c/o 101-1260 Wally Road, Comox, BC V9M 3N9

(hereinafter called the "**Seller**")

OF THE FIRST PART

AND:

Comox Valley Regional District
600 Comox Road, Courtenay, BC V9N 3P6

(hereinafter called the "**Buyer**")

OF THE SECOND PART

WHEREAS:

- A. The Seller is possessed of the goods and specific goods hereinafter described; and
- B. The Seller has agreed with the Buyer for the absolute sale to the Buyer of the same upon the terms and conditions and for the consideration hereinafter set forth.

NOW THIS INDENTURE WITNESSETH:

In consideration of the sum of ONE (\$1.00) DOLLARS of lawful money of Canada, and other good and valuable consideration, paid by the Buyer to the Seller at or before the sealing and delivery of this Contract, the receipt whereof the Seller hereby acknowledges, the Seller hereby sells, assigns, transfers and sets overall and singular the goods and specific goods (hereafter collectively called the said "goods"), hereinafter described in the Schedule "1", attached hereto and all the right, title, interest, property, claim and demand of the Seller thereto and therein, unto the Buyer, to and for its sole and only use forever.

- 1. The Seller hereby covenants, promises and agrees to and with the Buyer:
 - (a) that all of the said goods are now in the possession of the Seller as defined in the *Sale of Goods Act*;

- (b) the Seller is now rightfully and absolutely possessed and entitled to the said goods hereby sold and assigned, and to all and every part of them;
 - (c) that the Seller now has good right to sell and assign the said goods unto the Buyer in the manner aforesaid and according to the true intent and meaning of this Contract;
 - (d) that the goods are free and clear of all charges and encumbrances of every nature and kind whatsoever;
 - (e) that the Buyer shall and may from time to time, and at all times hereafter, peaceably and quietly have, hold, possess and enjoy the said goods hereby sold and assigned and all and every part of them, to and for its own use and benefit without any manner of hindrance, interruption, molestation, claim or demand whatsoever of, from or by him, the Seller, or any person whomsoever; and
 - (f) that the Seller shall and will from time to time, and at all times hereafter, upon every reasonable request of the Buyer, but at the expense of the Buyer, make, do and execute, or cause or procure to be made, done and executed, all such further acts, deeds and assurances for the more effectual assignment and assurance of the said hereby sold and assigned goods unto the Buyer, in the manner aforesaid and according to the true intent and meaning of this Contract, as shall be reasonably required by the Buyer.
2. The parties to this Agreement hereby covenant and agree as follows:
- (a) that all of the said goods hereby sold are sold on an as is, where is basis and that the Seller make no representations or warranties to the Buyer of any nature whatsoever regarding the conditions of the said goods; and
 - (b) that the Buyer shall pay any and all taxes, duties, rates and charges that may be imposed by any federal, provincial, state or local government as a result of this sale, and that the Buyer will indemnify and save the Seller harmless from any and all liability for any such tax, duty, rate or charge.
3. This contract shall be governed by the laws of the Province of British Columbia.

IN WITNESS WHEREOF the parties hereto have set their hand and seal as for the day and year first above written.

Comox Valley Regional District)
by its authorized signatories:)

_____)
[Name], Chair)

_____)
[Name], Corporate Officer)

The Owners, Strata Plan VIS6599)
by its authorized signatory(ies):)

_____)
[Name], [Position])

_____)
[Name], [Position])

Schedule 1 to Contract of Sale of Goods (Absolute)

In this Schedule:

"Lands" means:

Lands within - Strata Plans VIS6599, VIS4846 and EPS828

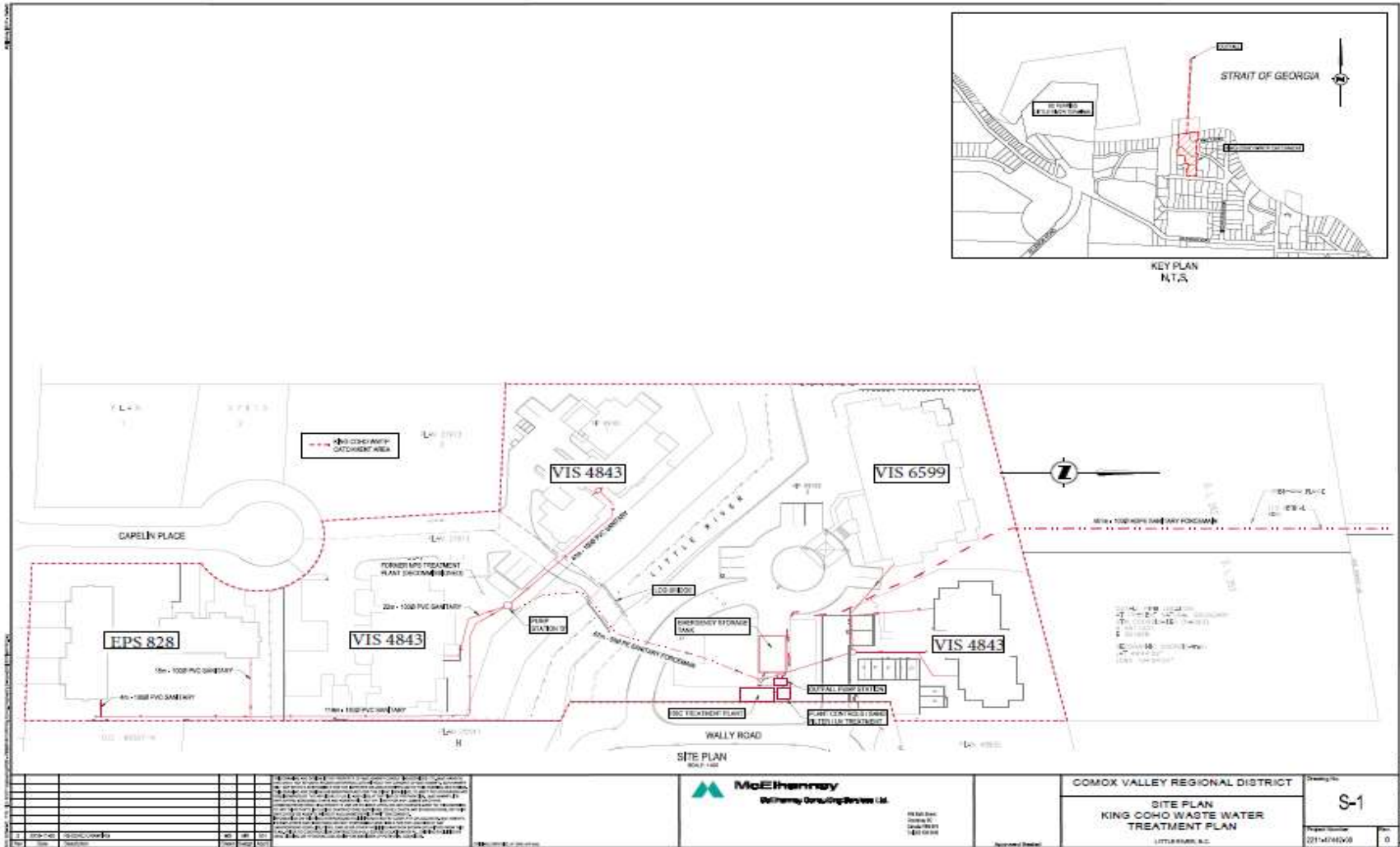
(the "**Strata Lands**").

"Goods" means the sewage disposal and water reclamation system on the Lands comprising:

- (a) the plant and equipment located on VIS6599 including the P.J. Hannah system comprising the following:
 - i. a Rotating Biological Contactor that occupies approximately 480 square feet;
 - ii. underground storage tank chambers including a 100,000 litre emergency storage tank that holds the effluent pending treatment;
 - iii. a storage tank housed in a structure that occupies approximately 160 square feet to hold treated sewage pending it being pumped through the outfall and into the ocean;
 - iv. a control building for system operations housed in a structure occupying approximately 196 square feet; and,
 - v. all other related structures, equipment, chattels and other component parts;
- (b) the sewer outfall line running from the main system located on VIS6599 onto Crown land to the north and discharging into the ocean pursuant to Outfall Licence #113611 and any replacement outfall licence;
- (c) the common property network of pipes and related component parts located on VIS6599 including:
 - i. that portion of the pipe system located on the common property of VIS6599 that runs from the system to the foundation wall of the building located on VIS6599; and
 - ii. that portion of the pipe system located on the common property of VIS6599 that runs from the system to the lot line for the purpose of servicing the VIS4843 strata lots and the EPS828 strata lots;

- (d) the network of pipes and related component parts located on the common property of VIS4843 that runs from the boundary line between VIS6599 and VIS4843 to the foundation wall of each building located on VIS4843;
- (e) the network of pipes and related component parts located on the common property of VIS4843 that runs between VIS6599 and EPS828 over VIS4843 lands for the purpose of providing sewer services to those strata lots located on EPS828;
- (f) the network of pipes and related component parts located on the common property of EPS828 that runs from the boundary line between VIS4843 and EPS828 to the foundation wall of each building located on EPS828; and
- (g) the collector tank and pump located on VIS4843 that feeds the waste from VIS4843 and EPS828 across the Little River to the plant located on VIS6599, substantially in the location shown on the sketch plan attached as Schedule 2 to this Contract of Sale of Goods (Absolute) as may be located within the Strata Lands.

Schedule 2 to Contract of Sale of Goods (Absolute)



SCHEDULE "C"

Statutory Right of Way Over Common Property

TERMS OF INSTRUMENT - PART 2

WHEREAS:

- A. The Transferor is the Owners, Strata Plan VIS6599;
- B. Under the provisions of section 80 of the *Strata Property Act (British Columbia)* the Transferor may grant a statutory right of way over the common property within Strata Plan VIS6599 (the "**Strata Lands**"), provided the owners of the strata lots have approved the grant by a $\frac{3}{4}$ vote at an annual or special general meeting;
- C. The Transferee is the Comox Valley Regional District;
- D. This Right of Way is necessary for the operation and maintenance of the Transferee's undertaking as described in Recital E; and
- E. To facilitate the installation of sewerage system works including all related pipes, valves, fittings, facilities, equipment, power lines, utility poles, wires, pumps, buildings, kiosks, treatment plants, disposal works, outfalls, culverts, signage and appurtenances (the "**Works**"), the Transferor has agreed to permit the operation by the Transferee of the Works on the Strata Lands and to grant for that purpose the Right of Way in section 1.1.

NOW THEREFORE, in consideration of the sum of One (\$1.00) Dollar of lawful money of Canada, now paid by the Transferee to the Transferor (the receipt and sufficiency of which is now acknowledged by the Transferor), and in consideration of the covenants and conditions agreed to be observed and performed by the parties and for other valuable consideration:

1.0 THE TRANSFEROR:

- 1.1 grants, conveys, confirms and transfers, in perpetuity, to the Transferee the full, free and uninterrupted right, license, liberty, privilege, easement, permission and right of way, at the Transferee's cost, to lay down, install, erect, construct, entrench, operate, maintain, repair, inspect, alter, remove, replace, bury, cleanse, string, and otherwise establish one or more systems of Works upon, over, under and across the Strata Lands (the "**Right of Way**");
- 1.2 covenants and agrees to and with the Transferee that the Transferee shall:
 - (a) for itself and its agents, workers, contractors and all other licensees of the Transferee;
 - (b) together with machinery, vehicles, equipment, and materials;

- (c) upon, over, under and across the Right of Way;
- (d) as may be necessary, useful, or convenient for the purposes in section 1.1; and
- (e) in connection with the operations of the Transferee in relation to the Works or other works of the Transferee on adjacent land or other works of the Transferee on adjacent land;

be entitled at all times to enter, use, pass and repass, labour, construct, erect, install, dig, carry away soil or other surface or subsurface materials, and clear of all trees, growth, buildings or obstructions now or hereafter in existence upon, over, under and across the Right of Way;

- 1.3 transfers, assigns and conveys to the Transferee all right, title and interest in and to any Works that the Transferee, or the Transferor has prior to this Agreement established or constructed or maintained or operated within the Right of Way or in relation to any similar Works previously constructed by any party whatsoever within the Right of Way, and without limiting the foregoing the Transferor confirms that under the terms of a Utility Transfer Agreement dated [month, date, 2018], all of the right, title and interest in and to various sewer utility works within the Right of Way area, set out in Easement No. CA367240, CA367241 or CA3627243, have also been assigned to the Transferee; and
- 1.4 grants unto the Transferee the license, permission, easement and Right of Way to lay down, install, erect, construct, operate, maintain, repair, inspect, alter, remove, replace, cleanse, string, and otherwise establish one or more temporary systems of works upon the Strata Lands of the Transferor, in the event of a breakdown or malfunction of the Works.

2.0 THE TRANSFEROR COVENANTS:

- 2.1 not, and not to permit any other person, to erect, place, install or maintain any building, structure, addition to a building or structure, mobile home, paved driveway or patio, pipe, wire or other conduit on, over or under any portion of the Right of Way within 3 metres of the Works provided that nothing in this Agreement shall prevent the Transferor from maintaining any existing structure located within the Right of Way Area;
- 2.2 not to do anything that in any way interferes with or damages or prevents access to or is likely to cause harm to the Works installed in or upon the Right of Way;
- 2.3 not to do or knowingly permit to be done any act or thing which will interfere with or injure the Works and in particular, without limitation, will not carry out any blasting on the Right of Way without the consent in writing of the Transferee, and consent shall not be unreasonably withheld;
- 2.4 not to substantially add to or diminish the soil cover over any of the Works installed

in the Right of Way and in particular, without limitation, will not construct open drains or ditches along or across any of the Works installed in the Right of Way without the consent of the Transferee, and consent shall not be unreasonably withheld; and

- 2.5 from time to time and at all times at the reasonable request and at the cost of the Transferee to do and execute or cause to be made, done or executed any further and other lawful acts, deeds, things, devices, conveyances and assurances in law required to ensure the Transferee of its rights under this Agreement.

3.0 THE TRANSFEEE COVENANTS:

- 3.1 not to bury any debris or rubbish of any kind in excavations or backfill on the Right of Way, and to remove shoring and similar temporary structures as backfilling proceeds;
- 3.2 to thoroughly clean all lands to which it has had access under this Agreement of all rubbish and construction debris created or placed on the Right of Way by the Transferee and to leave such lands in a neat and clean condition;
- 3.3 as soon as weather and soil conditions permit, and as often as it may exercise this right of entry to the Right of Way, to replace the surface soil as nearly as may be reasonably possible to the same condition as it was prior to the entry, in order to restore the natural drainage to the Strata Lands. This shall not require the Transferee to restore any trees or other surface growth, but the Transferee shall leave the Strata Lands in a condition which will not inhibit natural regeneration of that growth;
- 3.4 as far as reasonably possible, to carry out all work in a proper and workmanlike manner so as to do as little injury to the Strata Lands as possible;
- 3.5 to make good at its own expense damage or disturbance which may be caused to the Strata Lands in the exercise by the Transferee of its rights under this Agreement except as permitted under this Agreement; and
- 3.6 as far as reasonably possible, to restore any fences, lawns or flower beds, at its cost as nearly as may be reasonably possible to the same condition that they were in prior to any entry by the Transferee upon the Strata Lands.

4.0 THE PARTIES COVENANT TO AND AGREE WITH EACH OTHER, as follows:

- 4.1 in spite of any rule of law or equity to the contrary, the Works brought on to, set, constructed, laid, erected in, upon or under the Right of Way by the Transferee shall at all times remain the property of the Transferee, even if the Works are annexed or affixed to the freehold, and the Works shall at any time and from time to time be removable in whole or in part by the Transferee;
- 4.2 in the event that the Transferee abandons the Works or any part of them, the Transferee may, if it so elects, leave the whole or any part of the Works in place and

if so abandoned the Works, or part thereof, shall become the property of the Transferor;

- 4.3 no part of the title in fee simple to the Strata Lands of the Transferor shall pass to or be vested in the Transferee under or by virtue of this Agreement, and the Transferor may fully use and enjoy all of the Strata Lands of the Transferor subject only to the rights and restrictions in this Agreement;
- 4.4 the Transferor acknowledges that (a) these Covenants are enforceable against the Transferor and their successors in title, but (b) the Transferor is not personally liable for breach of these Covenants after the Transferor has ceased to be the owner of the Strata Lands;
- 4.5 if at the date hereof the Transferor is not the sole registered owner of the Strata Lands of the Transferor, this Agreement shall nevertheless bind the Transferor to the full extent of its interest therein, and if they acquire a greater or the entire interest in fee simple, this Agreement shall likewise extend to such after-acquired interests;
- 4.6 where the expression "Transferor" includes more than one person, all covenants made by the Transferor shall be construed as being several as well as joint with respect to all persons constituting the Transferor;
- 4.7 this Agreement shall continue to benefit and be binding upon the Transferor and Transferee, and their respective heirs, administrators, executors, successors and permitted assigns, as the case may be; and
- 4.8 gender specific terms include both genders and corporations, and the singular and plural forms are interchangeable, according to the context.

The Transferor and Transferee acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached hereto.