

DATE: May 7, 2021

FILE: 5600-01/BCOB

TO: Chair and Directors
Black Creek - Oyster Bay Services Committee

FROM: Russell Dyson
Chief Administrative Officer

Supported by Russell Dyson
Chief Administrative Officer

R. Dyson

RE: Schulz Road Watermain Extension – Latecomers Agreement

Purpose

To receive support for the draft latecomers agreement for the watermain extension along Schulz Road.

Recommendation from the Chief Administrative Officer:

THAT the Comox Valley Regional District Board support the latecomers agreement between the Comox Valley Regional District and the property owner, Pam Pajak, attached as Appendix A to the staff report dated May 7, 2021;

AND FURTHER THAT the Chair and Corporate Officer be authorized to execute the agreement.

Executive Summary

The Schulz Road/ Paulsen Road/ Oyster River Way watermain connection project is required to improve fire flows for Miracle Beach Elementary and flow and redundancy in the system for surrounding residential properties. The project was included in previous financial plans going back to 2016 originally as an upgrade to an existing watermain; however, in 2020 the scope of the project was changed as Comox Valley Regional District (CVRD) staff identified potential for an improved design through working with private property owners in the area.

The project now includes the extension of a watermain along Schulz Road, and through rights-of-way across the private property owner’s land and Miracle Beach Elementary, to connect to an existing watermain along Paulsen Road. The updated project provides a number of benefits, including improved water quality and quantity provided by the opportunity to loop the watermain, which couldn’t be achieved with the previous design.

The total project cost, including engineering and construction, is estimated at \$557,191. CVRD staff have been in negotiations with the owner of the property along Schulz Road and have reached agreement on apportionment of costs, which would see the property owner pay approximately 40 per cent of the total estimated costs.

The CVRD and property owner also agree that there are a number of parcels, or benefitting lands, that could be serviced by the watermain that aren’t currently connected to the Black Creek-Oyster Bay water system. The latecomers agreement attached as Appendix A to this report provides a mechanism for the property owner to recover a portion of the costs for extending the watermain, should any of the benefitting lands request inclusion within the service area and connection to the new watermain within the next 15 years.

Requiring the property owner to provide an extension of a watermain to service their development and to pay all or a portion of those costs is outlined in the *Local Government Act* (LGA) and within the fees and charges bylaw for the system. In addition the LGA also obliges the CVRD to collect latecomer charges if requested by the property owner.

Timing is of the essence, as prior to agreement for apportioning costs the tender for construction was necessary to ensure viability of the project with the property owner. The construction tender closed on March 18, 2021 and 10 compliant tenders were received, resulting in very competitive pricing for this project. The period of irrevocability on these bids is 60 days or mid-May, requiring board approval in principle for the latecomers agreement before then so that the agreement can be finalized as soon as possible with the property owner, and contract award can occur immediately after signing of the latecomers agreement—capitalizing on the competitive pricing received for this project.

Prepared by:

Concurrence:

Concurrence:

K. La Rose

Zoe Berkey, EIT
Engineering Analyst

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

Marc Rutten, P.Eng
General Manager of
Engineering Services

Government Partners and Stakeholder Distribution (Upon Agenda Publication)

Pam Pajak	✓
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Attachments: Appendix A – DRAFT Latecomers Agreement

LATECOMERS AGREEMENT

THIS AGREEMENT dated for reference this day of May, 2021

BETWEEN:

COMOX VALLEY REGIONAL DISTRICT

770 Harmston Avenue
Courtenay, BC, V9N 0G8

(the "**CVRD**")

OF THE FIRST PART

AND:

PAMELA SHAY PAJAK

2245 Schulz Road
Black Creek, BC, V9J 1K5

(the "**Developer**")

OF THE SECOND PART

WHEREAS:

- A. The Developer intends to subdivide certain lands within the Comox Valley Regional District that are legally described as:

Parcel Identifier: 005-027-462

PARCEL A (DD 10199W) OF LOT 21, BLOCK 29, COMOX DISTRICT, PLAN 4267

(the "**Land**");

- B. In accordance with section 507 of the *Local Government Act*, the CVRD has required the Developer, as a condition of the subdivision of the Land, to provide an extension of a watermain that is owned and operated by the CVRD as part of the Black Creek/Oyster Bay Water Service, which watermain extension will serve the Land as well as other lands;
- C. The CVRD considers that the costs to provide the watermain extension referred to in Recital B are excessive, and in accordance with section 507(3)(b) of the *Local Government Act* the CVRD requires the Developer to pay a portion of the cost of the watermain extension;

- D. The CVRD intends to construct a further extension of the watermain that is referred to in Recital B, which further extension is not considered by the CVRD to part of the Excess and Extended Service (the "CVRD Extension Project"). The Owner and the CVRD have agreed that the CVRD will coordinate the construction of the Excess and Extended Service (as defined in this Agreement) and the CVRD Extension Project as a single project, for which a single construction contractor will be retained through a contract tendering process under the direction and control of the CVRD; and
- E. The CVRD and the Developer wish to enter into this Agreement to confirm in writing the Developer's obligation to pay a portion of the cost of the Excess and Extended Service, and with respect to the CVRD's obligation to collect latecomer charges under section 508 of the *Local Government Act*.

NOW, THEREFORE, THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements made by each of the parties to the other as set out herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CVRD and the Developer covenant and agree as follows:

1. **INTERPRETATION**

In this Agreement:

"Approving Officer" means the approving officer appointed under section 77.2 of the *Land Title Act*;

"Benefitting Lands" means the parcels of land that, in addition to the Land, will be served by the Excess and Extended Services, as listed in Schedule "B" to this Agreement;

"CVRD Engineer" means the person appointed by the CVRD Board as its Senior Manager of Water and Wastewater, or any other person from time to time duly authorized by the CVRD Board or the CVRD Engineer to act on his or her behalf;

"Developer's Share" means the portion of the cost of providing the Excess and Extended Service that the Developer is required to pay as a condition of the subdivision of the Land, as referred to in section 2(a) of this Agreement;

"Excess and Extended Service" means the portion of the extension of the CVRD watermain along Schulz Road that is shown on the map that is attached as Schedule "C" to this Agreement, which extension is to be constructed substantially in accordance with the plans and specifications prepared by Koers & Associates Engineering Ltd. as issued for the CVRD Invitation to Tender – Schulz Road Watermain – dated February, 2021;

“Subdivision” means the proposed subdivision of the Land as shown on the preliminary subdivision plan attached to this Agreement as Schedule “A”; and

“Subdivision Plan” means a subdivision plan in registrable form creating the Subdivision of the Lands, as approved by the Approving Officer under the provisions of the *Land Title Act*.

2. DEVELOPER SHARE OF THE COST OF THE EXCESS AND EXTENDED SERVICES

- (a) The CVRD and the Developer agree that the portion of the total cost of providing the Excess and Extended Service for which the Developer is responsible is \$222,876.00, inclusive of engineering design and construction costs, and applicable taxes. The calculation of the Developer’s Share is as set out in Schedule “D” to this Agreement.
- (b) The Developer agrees to pay to the CVRD one third of the Developer’s Share prior to the registration of the Subdivision Plan in the Land Title Office, and by no later than the date that is thirty days following the execution of this Agreement.
- (c) The Developer agrees to pay to the CVRD the balance of the Developer’s Share by no later than December 31, 2021.
- (d) If the Approving Officer refuses approval of the Subdivision Plan the Developer may terminate this Agreement by providing written notice of termination to the CVRD, together with written confirmation from the Approving Officer that approval of the Subdivision Plan has been refused, and in that event the CVRD shall return to the Developer any portion of the Developer’s Share that has been paid.

3. BENEFITTING LANDS

The CVRD and Developer agree that the parcels of land that will be served by the Excess and Extended Services, in addition to the Land, are listed in Schedule "B" to this Agreement.

4. COST

The proportion of the costs of providing the Excess and Extended Services that will benefit the Benefitting Lands, as determined by the CVRD, is \$137,154.48.

5. LATECOMER CHARGE

- (a) The CVRD shall, under section 508(3) of the *Local Government Act*, impose a Latecomer Charge against each parcel of the Benefitting Lands, calculated in accordance with Schedule "E" of this Agreement, as a condition of an owner of the Benefitting Lands connecting to or using the Excess and Extended Service.
- (b) The CVRD shall pay to the Developer those Latecomer Charges collected under section 5(a).
- (c) Included with the Latecomer Charge imposed under section 5(a) of this Agreement shall be interest calculated annually at the rate prescribed by bylaw, payable for the period commencing when the Excess and Extended Service is completed, as determined by the CVRD Engineer, up to the date that the connection is made, or the use commences.
- (d) No Latecomer Charges under section 5(a) of this Agreement shall be charged beyond a period of fifteen (15) years commencing on the date of completion of the Excess and Extended Service as determined by the CVRD Engineer.
- (e) The Developer accepts the risk that if insufficient Latecomer Charges are collected from the owners of the Benefitting Lands within the time period referred to in subsection (d), no further monies shall be payable by the CVRD to the Developer in respect of the Excess and Extended Service.

6. ENTIRE AGREEMENT

This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings among the parties with respect to the subject matter hereof, and there are no oral or written agreements, promises, warranties, terms, conditions, representations or collateral agreements whatsoever, express or implied, other than those contained in this Agreement.

7. TIME

Time is to be the essence of this Agreement.

8. LAW APPLICABLE

This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

9. TERMINOLOGY

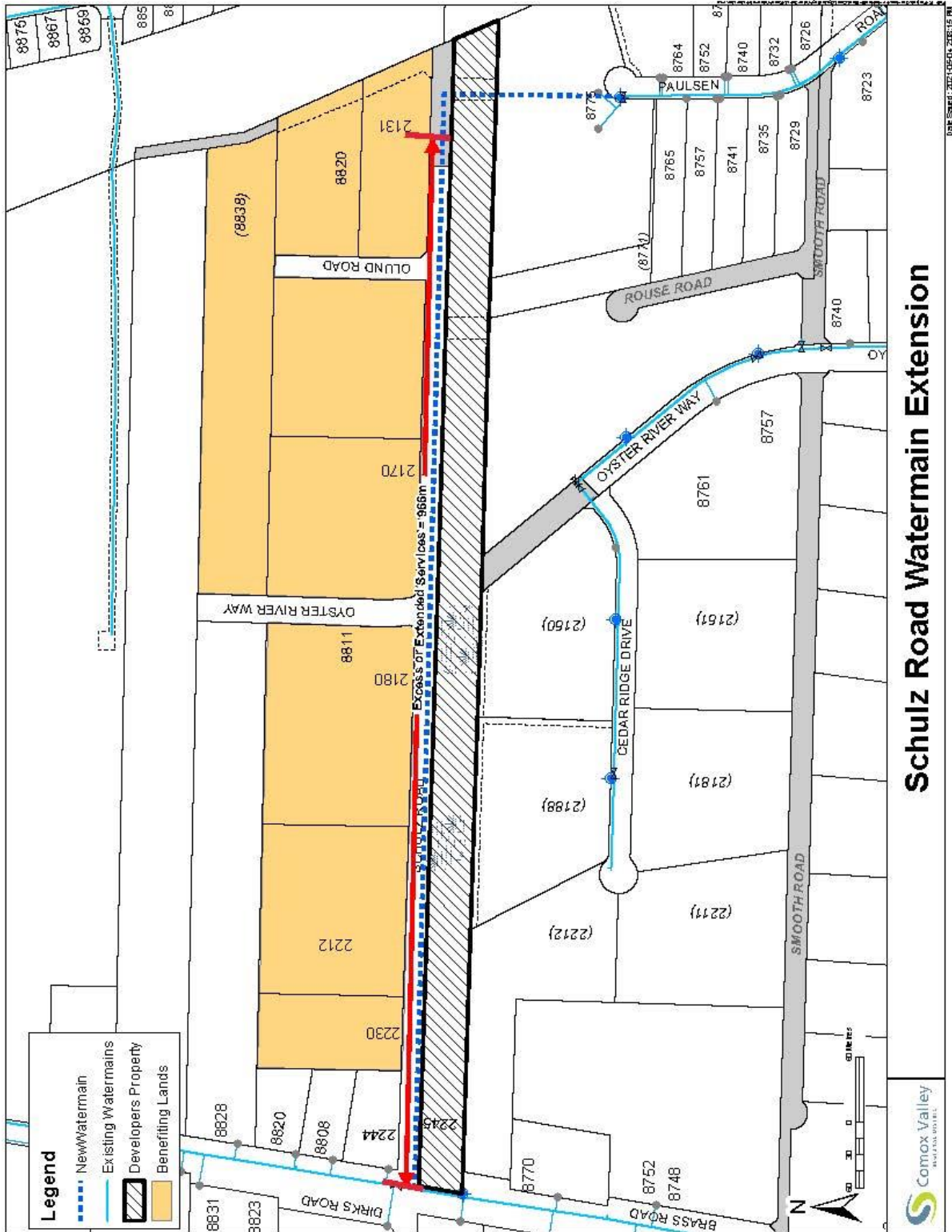
SCHEDULE "B"

Benefitting Lands

Parcel Identifier	Legal Description
004-136-560	Lot 4, Block 29, Comox District, PLAN 16988
018-526-519	Lot 1, Block 29, Comox District,, PLAN VIP57753
018-526-527	Lot 2, Block 29, Comox District, Plan VIP57753
018-526-535	Lot 3, Block 29, Comox District, Plan VIP57753
018-526-543	Lot 4, Block 29, Comox, District, Plan VIP57753
025-678-582	Lot B, Block 29, Comox District, Plan VIP75366
025-678-574	Lot A, Block 29, Comox District, Plan VIP75366
026-682-311	Lot 2, Block 29, Comox District, Plan VIP81047

SCHEDULE "C"

MAP SHOWING LOCATION OF EXCESS AND EXTENDED SERVICE



SCHEDULE "D"

CALCULATION OF COST OF EXCESS AND EXTENDED SERVICES

Cost Breakdown	
Contractor price (including GST and contingency)	\$522,316
Engineering services (Tender ready/construction management/inspections/record drawings)	\$34,875
Total	\$557,191

Apportionment of Costs	
CVRD	\$334,314
Developer's Share	\$222,876

Notes:

As a matter of administrative convenience and cost efficiency, the CVRD and the Developer have agreed that the Excess and Extended Services and the CVRD Extension Project will be constructed as a single project by a single contractor hired by the CVRD for that purpose. The CVRD has tendered the work required for the Excess and Extended Services and the CVRD Extension Project, and intends to award the work to the lowest qualified bidder whose bid (the Contractor price set out in the above table) represents best overall value to the CVRD.

The Developer's Share as set out above has been agreed to by both the Developer and the CVRD as the portion of the cost of the Excess and Extended Services that the Developer is required to pay, pursuant to section 507(3)(b) of the *Local Government Act*.

SCHEDULE "E"**CALCULATION OF LATECOMER CHARGES**

Parcel Identifier	Legal Description	Latecomer Charge
004-136-560	Lot 4, Block 29, Comox District, PLAN 16988	\$17,144.31
018-526-519	Lot 1, Block 29, Comox District, PLAN VIP57753	\$17,144.31
018-526-527	Lot 2, Block 29, Comox District, Plan VIP57753	\$17,144.31
018-526-535	Lot 3, Block 29, Comox District, Plan VIP57753	\$17,144.31
018-526-543	Lot 4, Block 29, Comox, District, Plan VIP57753	\$17,144.31
025-678-582	Lot B, Block 29, Comox District, Plan VIP75366	\$17,144.31
025-678-574	Lot A, Block 29, Comox District, Plan VIP75366	\$17,144.31
026-682-311	Lot 2, Block 29, Comox District, Plan VIP81047	\$17,144.31