



DISTRICT OF WEST KELOWNA

COUNCIL POLICY MANUAL

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Approval Date: February 12, 2013

DEPARTMENT:	Development Services
SUBJECT:	Excess or Extended Services (Latecomer Agreements) Policy

Policy Statement:

Where the District of West Kelowna requires an owner of land, pursuant to section 939 of the *Local Government Act*, to provide or provide excess or extended services, this policy shall apply.

Excess or extended services mean:

- a portion of a highway system that will provide access to land other than the land being subdivided or developed
- a portion of a water, sewage or drainage system that will serve land other than the land being subdivided or developed

The land owner shall pay all the costs of the excess or extended services required, and may apply to the District to enter into a Latecomer Agreement in accordance with this policy.

Under the Latecomer Agreement, the District will impose Latecomer Charges on parcels that obtain physical access to, connect to, front on or directly benefit from the extension or excess service.

The District will collect all Latecomer Charges and will forward them to the land owner every six months after the date of execution of the Latecomer Agreement.

Purpose:

To provide direction to staff and land owners on the applicability of Latecomer Agreements, and on the roles and responsibilities of each party to the Agreement.

Objectives:

The objectives of this policy are:

- 1.) To protect West Kelowna's municipal taxpayers from having to front-end or guarantee the cost of local government infrastructure that is not identified in the District's Development Cost Charge Bylaw or other infrastructure financing arrangement.

- 2.) To require land owners who initiate developments that are out of sequence with the District's infrastructure servicing plans to pay the full cost of infrastructure that is needed to facilitate the developments.
- 3.) To provide land owners with the means to recuperate infrastructure costs that benefit other lands.

Policy:

1.) Eligibility

Development projects in areas that are to be serviced by infrastructure works identified and funded through the District's DCC bylaw are not eligible for Latecomer Agreements.

Projects where other funding arrangements are in place are ineligible for Latecomer Agreements.

If several works or infrastructure types are included as excess and extended services, each may be required, at the discretion of the Subdivision Approving Officer to have a separate Latecomer Application and Agreement. Each service will be reviewed independently for eligibility for Latecomer Charges.

Works shall be designed to meet the requirements of the District of West Kelowna, as set out in the District's Subdivision and Development Bylaw.

2.) Exemptions

Lands already connected to a highway, or already fronted on a municipal main of adequate size and capacity for the intended land use, prior to the date of a Latecomer Agreement, are exempt from Latecomer Charges, except where a new or larger connection is applied for, or the property is developed to a greater density.

The District may identify lands as exempt where the District determines Latecomer Charges cannot be assessed. These may include, but are not limited to, Federal, Provincial, First Nations, Railway and Park lands.

The land owner may choose to waive Latecomer Charges for certain lands within the benefiting lands. These shall be defined as waived lands in the Application for the Latecomer Agreement.

Where a land owner does not wish to take part in a Latecomer Agreement and where the nature of the works would potentially allow access or service to other lands, a waiver for reimbursement of all costs in the form of Schedule B must be executed with the District.

3.) Calculation

The cost of extension or excess services included in the Latecomer Agreement are based on the actual cost of the infrastructure required to serve the owner's land in accordance with the standards prescribed in the District's Subdivision and Development Bylaw. The eligible cost of the extension or excess service shall include only the following items, where certified by a Professional Engineer and agreed to by the District:

- Actual construction costs
- Design and inspection costs
- Land or rights-of-way acquisition costs that are incurred outside the developer's land
- Specialist consulting services, where pre-approved by Subdivision Approving Officer

The District reserves the right to request, at the expense of the owner, an external review of the cost estimate by a Professional Engineer.

The Latecomer Charge calculation for road, water, storm and sanitary services shall typically be calculated as a per metre charge, based on the eligible cost of the extension or excess service, divided by the total amount of benefitting frontage.

The District reserves the right to consider approaches other than frontage, such as a charge per hectare or a formula based on equivalent development units of various land uses, for specific circumstances or specific infrastructure types where the benefit and cost do not translate equitably on a frontage basis.

The calculation of the total benefitting frontage, area or units will include the owner's lands, where applicable, and waived lands, but will exclude exempt properties.

Once the costs and charges have been approved, and the Latecomer Agreement executed, the District will not consider a revision to the Latecomer Agreement.

4.) Collection

An owner of land located within the benefitting area shall pay, at the time of building or access permit, subdivision approval or application for service connection, the unit Latecomer Charge multiplied by the benefitting frontage (or other means used to determine the charge for that lot), as set out in the Latecomer Agreement, plus interest.

Interest on Latecomer Charges shall be calculated annually by the District at the rate prescribed in the District's Interest Calculations for Latecomer Agreement Charges Bylaw No. 0145, 2013. Interest shall be compounded annually on the anniversary date of Initial Acceptance (effective date).

The District will forward the Latecomer Charges, including interest, collected from the benefitting lands by regular mail, to the owner, every six months.

The District will maintain records regarding the Latecomer Charges received, and will monitor the remaining principal to be collected.

The total amount of the Latecomer Charges to be paid to the developer shall not exceed the total cost of the excess or extended services plus accumulated interest minus the owner's share of the costs.

The Latecomer Agreement shall become null and void on the earliest of the 15th anniversary of the effective date of or at the time in which all of the eligible costs plus applicable interest have been collected. No Latecomer Charges shall be collected after the expiry date of the Agreement.

The owner shall ensure a current address is on file with the District to forward any Latecomer Payments. The District will not be responsible for any misplaced payments. If payments are returned, the District will hold the funds for one year. Latecomer Charges that remain unclaimed beyond the one year time period, including any interest that may have accrued, shall be forfeited to the District.

5.) Administration

All Latecomer Agreements are subject to the approval of the Subdivision Approving Officer and shall be processed in general accordance with Schedule A. Any requests for exceptions or exemptions to this policy must be submitted to the District in writing. The Director of Development Services may approve variations in these procedures.

No provision of this policy shall be deemed to exempt any land from payment of parcel taxes, development cost charges, specified area fees or any similar charges or fees imposed by any bylaw of the District.

No provision of this policy shall be deemed to be held to limit or restrict the District Council from exercising full jurisdiction and control over the operations of the extended Municipal system, nor shall it exempt any person receiving service thereby from any regulation, order or bylaw of the District.

Schedules Attached:

- A Latecomer Agreement Process
- B Latecomer Charge Waiver Agreement
- C Latecomer Process Flowchart
- D Latecomer Application Form
- E Latecomer Agreement Template

These Schedules are attached to this policy for convenience only. They do not form part of the policy and may be amended by staff without Council resolution.

Previous Revisions:

N/A

SCHEDULE A

LATECOMER AGREEMENT PROCESS

1. Pre-Application

- 1.1 The land owner initiates the process by requesting the District to review the eligibility of the works proposed for a Latecomer Agreement.
- 1.2 The District confirms that the works represent extended or excess services, and that the works are not included in the District's DCC Bylaw or any other cost-recovery or cost-sharing agreement.
- 1.3 Where the land owner has not initiated a review, but District staff is of the view that works proposed by the land owner would potentially allow access to or would service other lands, the option for a Latecomer Agreement will be raised by staff for discussion with the land owner.
- 1.4 Where the land owner does not wish to enter into a Latecomer Agreement, despite being eligible to do so, a waiver in the form shown in Schedule B must be signed and submitted to the District.

2. Application

- 2.1 The land owner submits a complete Latecomer Agreement Application, which must include the following items:
 - 2.1.1 A signed and completed Application form, as attached in Schedule D
 - 2.1.2 The Latecomer Agreement Administration Fee set out in the District of West Kelowna Fees and Charges Bylaw.
 - 2.1.3 A Latecomer Plan at a scale of 1:500 that shows all excess and extended services, and all benefitting lands and waived parcels (including the civic addresses and frontages of each parcel)
 - 2.1.4 A Latecomer Charge Calculation Table with
 - Civic addresses, legal descriptions, frontage and area for each parcel of benefitting land and waived land
 - The total latecomer pre-construction cost estimate
 - The calculation of the estimated Latecomer Charge per meter of frontage, per hectare of development, or per development unit, depending on the approach determined by the Subdivision Approving Officer in accordance with the calculation provisions of the Latecomer Agreement Policy
 - The estimated Latecomer Charge calculation for each parcel based on the approach prescribed by the Subdivision Approving Officer

- Certification by a Professional Engineer
 - 2.1.5 A list of any parcels that are exempt from paying the Latecomer Charge, and are therefore not included in the calculation of the Latecomer Charge
 - 2.1.6 A list of parcels that are included in the calculation of the Latecomer Charge, but that are not required to pay the resulting Latecomer Charge
- 2.2 The land owner must submit a separate Latecomer Agreement Application for each type of eligible infrastructure that is proposed by the land owner.
- 2.3 To be considered, a Latecomer Application must be properly completed with all requirements met, and must be received prior to the receipt of a Certificate to Commence Construction.
- 2.4 Eligible costs to include in the latecomer pre-construction cost estimate are:
 - Estimated construction costs
 - Design and inspection costs
 - Land or rights-of-way acquisition costs (incurred outside of the owner's lands)
 - Specialist consulting services where pre-approved by the Subdivision Approving Officer
- 2.5 Costs that are not eligible in a pre-construction cost estimate include:
 - Legal, planning and District fees
 - Fees for registering statutory rights-of-way for excess or extended infrastructure
 - Construction delays and interest or carrying costs incurred during construction
 - Advertising and communication costs
 - Service connection costs
 - Independent cost review by a Professional Engineer that may be required by the District to verify estimated and actual costs of the works
- 3. Approval in Principle
 - 3.1 The District notifies the owners of all benefitting parcels of a Latecomer Application, and provides an opportunity for feedback prior to the Agreement being finalized.
 - 3.2 When the District has reviewed and is satisfied with the Application, the District will notify the land owner in writing of approval in principle.
 - 3.2.1 The District advises the land owner of any outstanding requirements and processes needed to execute the Latecomer Agreement.

4. Implementation

- 4.1 The land owner obtains a Certificate to Commence Construction from the District prior to any construction of the works.
 - 4.1.1 Failure to obtain this Certificate results in the land owner forfeiting the right to receive Latecomer Payments.
- 4.2 The land owner constructs the extended or excess services in accordance with the plans approved by the District.
- 4.3 The land owner completes all testing and inspections in accordance with District bylaws and “good engineering practice”.
 - 4.3.1 The District is to be notified of such tests and inspections to witness as required.
 - 4.3.2 The land owner shall submit inspection reports for the works to the District when completed.
- 4.4 The land owner submits a Substantial Completion Report to the District and applies for a Certificate of Latecomer Acceptance.
- 4.5 As part of the application for a Certificate of Latecomer Acceptance the land owner is required to submit:
 - Updated actual costs, certified by a Professional Engineer, for review and approval by the District
 - An updated Latecomer Charge Calculation Table for review and approval by the District, and for inclusion in the Latecomer Agreement
 - 4.5.1 The eligible Latecomer costs shall not include estimates for outstanding deficiencies yet to be addressed.
- 4.6 The District prepares and approves the Latecomer Agreement using the template presented in Schedule E, complete with the certified schedules, and forwards it to the land owner for signing.
- 4.7 The Certificate of Latecomer Acceptance is issued when the signed Latecomer Agreement is returned to the District and executed by the District.
 - 4.7.1 The date of Latecomer Acceptance becomes the effective date of the Latecomer Agreement.
- 4.8 Once the Latecomer Costs and Charges have been approved, and the Latecomer Agreement executed, the District will not consider any revisions to the Agreement.
- 4.9 The land owner must submit all as-constructed drawings to receive a Certificate of Total Performance following an 18-month Maintenance Period.

4.9.1 Failure to submit as-constructed drawings, or to comply with any other requirement, renders the Latecomer Agreement null and void.

5. Collection and Administration

- 5.1 The District shall file notice of the Latecomer Agreement in the Land Title Office in the form set out in the *Land Title Practice Manual*.
- 5.2 Owners of benefitting properties identified in the Agreement are not permitted to connect to the excess or extended services until approved by the Director of Engineering Services.
 - 5.2.1 In most cases, approval of the Director will coincide with issuance of Latecomer Acceptance and execution of Latecomer Agreement.
- 5.3 Interest, as determined by District bylaw, is calculated annually on the anniversary date of the Latecomer Acceptance (i.e., the effective date of the Latecomer Agreement), as set out in the Latecomer Agreement.
- 5.4 The District collects Latecomer Charges with interest applied from any owner of benefitting lands upon application for subdivision approval, a building or access permit, or upon application for a service connection.
- 5.5 The District forwards the Latecomer Charges collected, with interest, to the land owner by regular mail every six months.
- 5.6 The District maintains records of the Latecomer Charges received and monitors the remaining principal to be collected.
- 5.7 The Latecomer Agreement becomes null and void on the 15th anniversary of the effective date, or when all of the eligible costs plus applicable interest (minus the land owner's share) have been collected, whichever event occurs earlier.
 - 5.7.1 No Latecomer Charges are collected after the expiry date of the Agreement.
- 5.8 The land owner must ensure that a current address is on file with the District for receipt of Latecomer Payment transfers.
 - 5.8.1 Payments that are returned to the District are held for one year; funds that remain unclaimed beyond this period are forfeited to the District, along with any interest that accrues.

Schedule B
Latecomer Charge Waiver Agreement

THIS AGREEMENT made the _____ day of _____, _____

BETWEEN:

[name of owner]
(the "Owner")

OF THE FIRST PART

AND:

THE DISTRICT OF WEST KELOWNA
Province of British Columbia

OF THE SECOND PART

WHEREAS:

- A. The Owner is the owner of and proposes to develop certain lands and premises located within the Municipality, more particularly known and described as:

Parcel Identifier:
Lot __, Block __, District Lot __, _____ Plan _____
(the "Lands")

For [describe use] use:

- B. Such development is in accordance with the future plans of the Municipality but is presently premature as a portion of the municipal works and services required to be installed by the Owner to serve the proposed development may provide access to or serve land other than the Lands and thus may be eligible for contribution towards the cost of such works and services from the Municipality or from the owners of other land who may connect to or use those works and services.
- C. The Owner has voluntarily agreed to waive any right the Owner may have to a contribution toward the cost of such works and services which are necessary to serve the proposed development of the Lands and has requested that the Municipality enter into this Agreement with the Owner.

NOW THIS AGREEMENT WITNESSETH that in consideration of the covenants and

agreements contained in this Agreement and \$1.00 now paid to the Owner by the Municipality (the receipt and sufficiency of which are acknowledged), and for other valuable consideration:

1. The Owner waives, relinquishes and abandons any right which the Owner now has or may at any time have for any contribution from the Municipality or any other person toward the Owner's cost of installing those works and services shown on Drawing No. [number] (the "Works").
2. The Owner releases and forever discharges the Municipality, its officers, employees, elected officials, servants, agents, successors, and assigns from all manner of actions, contracts, claims and demands against the Municipality which the Owner ever had, now has or may have in future by reason of the installation of the Works by the Owner with no contribution toward the cost of the Works by the Municipality or any other person and, without limiting the generality of the foregoing, by reason of the failure by the Municipality to impose or collect any latecomer charges from the owners of any lands which may connect to or use the Works.
3. The parties agree that:
 - a) The Municipality has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Owner other than those contained in this Agreement.
 - b) Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of the Municipality in the exercise of its functions under any public and private statutes, bylaws, orders, and regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner;
 - c) Whenever the singular or masculine is used in this Agreement, the same shall be construed as meaning the plural, feminine or the body corporate or politic where the context of the parties so require and, where the Owner consists of more than one person, the term "Owner" shall mean all such persons jointly and severally;
 - d) This agreement shall enure to the benefit or and be binding upon the parties and their respective heirs, executors, administrators, successors, assigns; and
 - e) The parties shall do and cause to be done all things and execute and or cause to be executed all documents which may be necessary to give proper effect to the intention of this Agreement.

IN WITNESS WHEREOF the parties have set their hands and seals and caused their corporate seals to be affixed in the presence of their duly authorized officers of the day and year first above written.

The corporate seal of [name of owner] was
Hereunto affixed in the presence of:

Authorized Signatory

Authorized Signatory

The corporate seal of the District of West Kelowna was hereunto affixed in the presence of:

Mayor

Clerk

Schedule B
Latecomer Charge Waiver Agreement

THIS AGREEMENT made the _____ day of _____, _____

BETWEEN:

[name of owner]

(the "Owner")

OF THE FIRST PART

AND:

THE DISTRICT OF WEST KELOWNA
Province of British Columbia

OF THE SECOND PART

WHEREAS:

- D. The Owner is the owner of and proposes to develop certain lands and premises located within the Municipality, more particularly known and described as:

Parcel Identifier:

Lot___, Block___, District Lot___, _____ Plan_____

(the "Lands")

For [describe use] use:

- E. Such development is in accordance with the future plans of the Municipality but is presently premature as a portion of the municipal works and services required to be installed by the Owner to serve the proposed development may provide access to or serve land other than the Lands and thus may be eligible for contribution towards the cost of such works and services from the Municipality or from the owners of other land who may connect to or use those works and services.
- F. The Owner has voluntarily agreed to waive any right the Owner may have to a contribution toward the cost of such works and services which are necessary to serve the proposed development of the Lands and has requested that the Municipality enter into this Agreement with the Owner.

NOW THIS AGREEMENT WITNESSETH that in consideration of the covenants and agreements

contained in this Agreement and \$1.00 now paid to the Owner by the Municipality (the receipt and sufficiency of which are acknowledged), and for other valuable consideration:

4. The Owner waives, relinquishes and abandons any right which the Owner now has or may at any time have for any contribution from the Municipality or any other person toward the Owner's cost of installing those works and services shown on Drawing No. [number] (the "Works").
5. The Owner releases and forever discharges the Municipality, its officers, employees, elected officials, servants, agents, successors, and assigns from all manner of actions, contracts, claims and demands against the Municipality which the Owner ever had, now has or may have in future by reason of the installation of the Works by the Owner with no contribution toward the cost of the Works by the Municipality or any other person and, without limiting the generality of the foregoing, by reason of the failure by the Municipality to impose or collect any latecomer charges from the owners of any lands which may connect to or use the Works.
6. The parties agree that:
 - a) The Municipality has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Owner other than those contained in this Agreement.
 - b) Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of the Municipality in the exercise of its functions under any public and private statutes, bylaws, orders, and regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner;
 - c) Whenever the singular or masculine is used in this Agreement, the same shall be construed as meaning the plural, feminine or the body corporate or politic where the context of the parties so require and, where the Owner consists of more than one person, the term "Owner" shall mean all such persons jointly and severally;
 - d) This agreement shall enure to the benefit or and be binding upon the parties and their respective heirs, executors, administrators, successors, assigns; and
 - e) The parties shall do and cause to be done all things and execute and or cause to be executed all documents which may be necessary to give proper effect to the intention of this Agreement.

IN WITNESS WHEREOF the parties have set their hands and seals and caused their corporate seals to be affixed in the presence of their duly authorized officers of the day and year first above written

The corporate seal of [name of owner] was
Hereunto affixed in the presence of:

Authorized Signatory

Authorized Signatory

The corporate seal of the District of West Kelowna was hereunto affixed in the presence of:

Mayor

Clerk



SCHEDULE D

LATECOMER APPLICATION FORM

Date: _____

Development Application No: _____

Consultant File No.: _____

Required Application Information

All submissions must include the following information. Applicant to check completed items as part of the application package:

- | | |
|--|--|
| <input type="checkbox"/> Complete application form signed by registered owner(s) of the subject property | <input type="checkbox"/> Latecomer Site Diagram of all engineering works and servicing for latecomer charges |
| <input type="checkbox"/> Application Fee (\$1500) | <input type="checkbox"/> Agent Authorization |
| <input type="checkbox"/> Latecomer Rate Calculation | |

The District of West Kelowna will consider entering into a Latecomer Agreement subject to:

- Conformance with the District of West Kelowna Latecomer Agreement Policy
- Application must be received prior to the receipt of a Certificate to Commence Construction
- The entering into the Latecomer Agreement with the District of West Kelowna

Required Application Information

Civic Address (*street address or general location*): _____

Lot _____ Block _____ District Lot _____ Plan _____

PID _____ Roll No. _____

Owner Under British Columbia Land Title

First Name: _____ Last Name: _____

Company Name: _____

Address: _____ City: _____

Province: _____ Postal Code _____

Telephone: _____ Cell: _____ Email: _____

Latecomer Application Overview

Works:

- Storm Sewer
- Water
- Sanitary Sewer
- Roads

Summary: Total Latecomer Costs _____
Total Benefitting Frontage _____
Latecomer Rate _____

Professional Engineer Working under authority of Owner (Required)

First Name: _____ Last Name: _____

Company Name: _____

Address: _____ City: _____

Province: _____ Postal Code _____

Telephone: _____ Cell: _____ Email: _____

Signature: Professional Engineer of Record _____
Name Signature

Developer _____
Name Signature

SCHEDULE E
LATECOMER AGREEMENT TEMPLATE

THIS AGREEMENT made the _____ day of _____, _____

BETWEEN:

THE DISTRICT OF WEST KELOWNA
Province of British Columbia

(the "Municipality")

OF THE FIRST PART

AND:

[name of owner]

(the "Owner")

OF THE SECOND PART

GIVEN THAT:

- A. The Owner has applied to the Municipality to provide works on or about ____ Road and ____ Avenue to ____ Avenue in accordance with the Municipality's subdivision and development servicing bylaw providing sewage facilities that will serve Lands defined in this Agreement;
- B. A portion of the sewage facilities (herein defined as Excess or Extended Services) will also serve the Benefitting Lands herein defined;
- C. The Municipality considers that its costs to provide the Excess or Extended Services in whole or in part are excessive, and requires the Owner, as owner of the Lands, and the owners of the benefitting lands to pay the cost of the Excess of Extended Services;
- D. The Municipality is authorized to enter into this agreement under section 939 of the *Local Government Act*;
- E. The Council of the Municipality Has by way of Bylaw No. xxx, 2013 as amended or replaced from time to time, set the rate of interest referred to under section 939(8) of the *Local Government Act* and in paragraph 3 of the Agreement;

NOW THEREFORE THIS AGREEMENT WITNESS THAT in consideration of the mutual covenants and agreements made by each of the parties to the other as set out in this Agreement, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Municipality and the Owner covenant and agree as follows:

Interpretation

1. In this Agreement

- a. "Benefiting Lands" means each of the lands shown on Schedule A which lands may be connected to the Excess or Extended Services after Completion of the Excess or Extended Services;
- b. "Completion" means the date of the issuance of a Certificate of Completion signed by the Municipality's Subdivision Approving Officer certifying that the Excess or Extended Services have been completed to the standards and specifications set out in the bylaws of the Municipality, such that the Excess or Extended Services have been fully tested, are functional, and can be used for their intended purpose when the system becomes operational, all to the satisfaction of the Municipality's Subdivision Approving Officer;
- c. "Excess or Extended Services" means that portion of the sewer main and related appurtenances installed by the Owner in _____ Road and _____ Avenue, shown generally on Schedule B, that serves the Benefitting Lands;
- d. "Lands" means those certain lands shown shaded on Schedule C.

Charges for Latecomer Connections or Use

2. The Municipality must pay to the Owner charges imposed by the Municipality under section 939(5)(c) of the Local Government Act, in respect of the Excess or Extended Services only if and to the extent of the charges are paid by the owners of Benefitting Lands and collected by the Municipality during the period commencing on Completion, up to and including _____ years subsequent to Completion.

Interest

3. There shall be included in the charge payable by the owner of Benefitting Lands under section 939(5)(c) of the Local Government Act, interest calculated annually at a rate prescribed by Bylaw No. xxx, 2013, payable for the period commencing on Completion, up to the date that the connection is made, and if paid by the owners of Benefitting Lands and collected by the Municipality during the period referred to in paragraph 2, the interest shall be paid to the owner.

Assignment or Transfer of Owner's Rights

4. In the event of the assignment or transfer of the rights of the Owner voluntarily, or by operation of law, the Municipality's Financial Officer may pay any benefits accruing under this Agreement, after notice, to such successor of the Owner as the Municipality's Financial Officer, in his judgment, deems entitled to such benefits. In the event of conflicting demands being made on the Municipality for benefits accruing under this Agreement, then the Municipality may at its option commence an action in interpleader joining any party claiming rights under this Agreement, or other parties which the Municipality believes to be necessary or proper, and the Municipality shall be discharged from further liability on paying the person or persons whom the court having jurisdiction over such interpleader action shall determine, and in such action the Municipality shall be entitled to recover its reasonable legal fees and costs, which fees and costs shall constitute a lien upon all funds accrued or accruing pursuant to this agreement.

Indemnity

5. The Owner covenants not to sue the Municipality, its administrators, successors, assigns, directors, officers, agents, employees, servants, tenants, solicitors, consultants, and anyone else for whom the Municipality is in law liable, by reason of or arising out of or in any way connected with any error, omission, or conduct of the Municipality in relation to the Excess or Extended Services, including, without limiting the generality of the foregoing, a failure of the Municipality to pass a resolution, enact a bylaw, enter into an agreement, impose a charge, calculate a charge correctly, or collect a charge under Section 939 of the Local Government Act.

Termination

6. This Agreement shall expire and shall be of no further force and effect for any purpose on the earlier of:
 - a. the payment of the latecomer charge or charges by the Municipality to the Owner for all the Benefitting Lands under paragraphs 2 and 3 of this Agreement; or
 - b. ____ years subsequent to Completion.

and thereafter the Municipality shall be forever fully released and wholly discharged from any and all liability and obligations under this Agreement, or howsoever arising pertaining to the Excess or Extended Services, and whether arising before or after the expiry of this Agreement.

7. Paragraphs 5 to 16 shall survive the termination of this Agreement.

Owner Representation and Warranty

8. The Owner represents and warrants to the Municipality that the Owner has not received, claimed, demanded, or collected money or any other consideration from the owners of the Benefitting Lands for the provision, or expectation of the provision of the Excess or Extended Services, other than as contemplated and as provided for under this Agreement; and further represents and warrants that the Owner has not entered into any agreement with the owners of the Benefitting Lands for consideration in any way related to or connected directly or indirectly with the provision of the Excess or Extended Services.

Miscellaneous

9. Time is of the essence.
10. Any notice required by this Agreement will be sufficiently given if delivered by courier or registered mail to the parties at the addresses first above written.
11. This Agreement will ensure to the benefit of and be binding on the parties hereto and their respective successors and assigns.
12. The laws of the Province of British Columbia shall govern this Agreement.
13. This Agreement constitutes the entire agreement between the Municipality and the Owner with regard to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written of the Municipality with the owner.
14. No amendment or waiver of any portion of this Agreement shall be valid unless in writing and executed by the parties to this Agreement. Waiver of any default by a party shall not be deemed to be a waiver of any subsequent default by that party.
15. A reference in this Agreement to the Municipality or the Owner includes their permitted assigns, heirs, successors, officers, employees and agents.
16. The Owner represents and warrants to the Municipality that:
 - a. all necessary corporate actions and proceedings have been taken by the Owner to authorize its entry into and performance of this Agreement;
 - b. upon execution and delivery on behalf of the Owner, this Agreement constitutes a valid and binding contractual obligation of the Owner;
 - c. neither the execution and delivery, nor the performance, of this Agreement breaches any other agreement or obligation, or causes the Owner to be in default of any other agreement or obligation, respecting the Lands; and
 - d. the Owner has the corporate capacity and authority to enter into and perform this Agreement.

IN WITNESS WHEREOF the parties have set their hands and seals and caused their corporate seals to be affixed in the presence of their duly authorized officers of the day and year first above written.

The corporate seal of [name of owner] was
Hereunto affixed in the presence of:

Authorized Signatory

Authorized Signatory

The corporate seal of the District of West Kelowna was hereunto affixed in the presence of:

Mayor

Clerk