

EXCESS OR EXTENDED SERVICE  
(LATECOMER) AGREEMENT

**Drinkwater Road Storm Drains**

THIS AGREEMENT dated for reference the 20<sup>th</sup> day of September, 2024

BETWEEN:

**The Corporation of the District of North Cowichan**

7030 Trans Canada Highway  
DUNCAN, BC V9L 6A1

(the Municipality)

OF THE FIRST PART

AND:

**The Corporation of the District of North Cowichan**

7030 Trans Canada Highway  
DUNCAN, BC V9L 6A1

(the Owner)

OF THE SECOND PART

GIVEN THAT:

- A. The Developer is the owner of, and has subdivided and developed, or is in the process of subdividing and developing certain lands located within the Municipality, in the province of British Columbia, and more particularly known and described as:

6430 Ford Road, Lot 1, Section 4, Range 5, Somenos District, Plan EPP128531,  
PID 031-938-906

(the "Owner's Lands").

- B. The Owner, as required by the Director of Engineering, pursuant to section 6 of the Delegation of Authority Bylaw, has constructed storm drainage works on Drinkwater Road and Ford Road herein defined as "Excess or Extended Services" as shown on Schedule A (the "Works") attached hereto and forming part of this agreement.
- C. A portion of the Works (the "Excess or Extended Services") will serve as benefiting lands other than the Developer's Lands (the "Benefitting Lands").
- D. The Municipality has, pursuant to section 507 of the *Local Government Act*, required the Developer to construct the Excess or Extended Services, considers the Municipality's costs to provide the

Excess or Extended Services in whole or in part to be excessive, and requires the Owner to pay the costs of the Excess or Extended Services.

- E. The Municipality is authorized to enter into this agreement under section 508(3)(a) of the Local Government Act.
- F. The Owner has paid the cost of providing the Excess or Extended Services in the amount of \$308,641.68 including GST.
- G. The Municipality has determined that the Benefitting Lands as shown shaded gray on Schedule A will all benefit from the Excess or Extended Services.
- H. The Municipality has determined that the portion of the cost of the Excess or Extended Services attributable to the Benefitting Lands is \$156,752.06, including GST.
- I. The Municipality has imposed as a condition of the owners of the Benefitting Lands connecting to or using the Excess or Extended Services, a total charge (the "Latecomer Charge") on each of the Benefitting Lands in the amount of \$98,629.62 per gross hectare, plus simple interest, calculated annually at a rate prescribed by Fees and Charges Bylaw No. 3784 set by bylaw (currently 5% per year) from the date of the Excess or Extended Services, as certified by the Municipal Engineer (the "Completion" date August 23, 2022), to the date of issuance of a building permit for structures related to the Benefitting Lands. Refer to Schedule B.
- J. The Latecomer Charge when paid by the owners of the Benefitting Lands and collected by the Municipality shall, pursuant to Section 508 of the Local Government Act, be paid to the Owner as provided for in this Agreement.

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 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) "Benefitting Lands" means each of the lands shown shaded 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 Director of Engineering and Development Services 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 Director of Engineering;

- (c) "Excess or Extended Services" means that portion of the storm drain and related appurtenances installed by the Owner in Drinkwater Road and Ford Road, shown generally on Schedule B, that serves the Benefiting 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 508(1)(c) of the *Local Government Act*, in respect of the Excess or Extended Services only if and to the extent the charges are paid by the owners of Benefiting Lands and collected by the Municipality during the period commencing on Completion, up to and including 15 years subsequent to Completion.

### **Interest**

- 3. There shall be included in the charge payable by the owners of Benefiting Lands under section 508(1)(c) of the *Local Government Act*, simple interest calculated annually at a rate prescribed by Bylaw No. 3784, payable for the period commencing on Completion, up to the date that the connection is made, and if paid by the owners of Benefiting 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 in the B.C. Supreme Court 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 508 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 Benefiting Lands under paragraphs 2 and 3 of this Agreement; or
  - (b) 15 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 Benefiting 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 Benefiting 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 enure 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 on the day and year first above written.

*[insert appropriate execution provisions]*

**Company Name**

The Corporation of the District of North Cowichan:

\_\_\_\_\_  
Signature of Mayor Rob Douglas

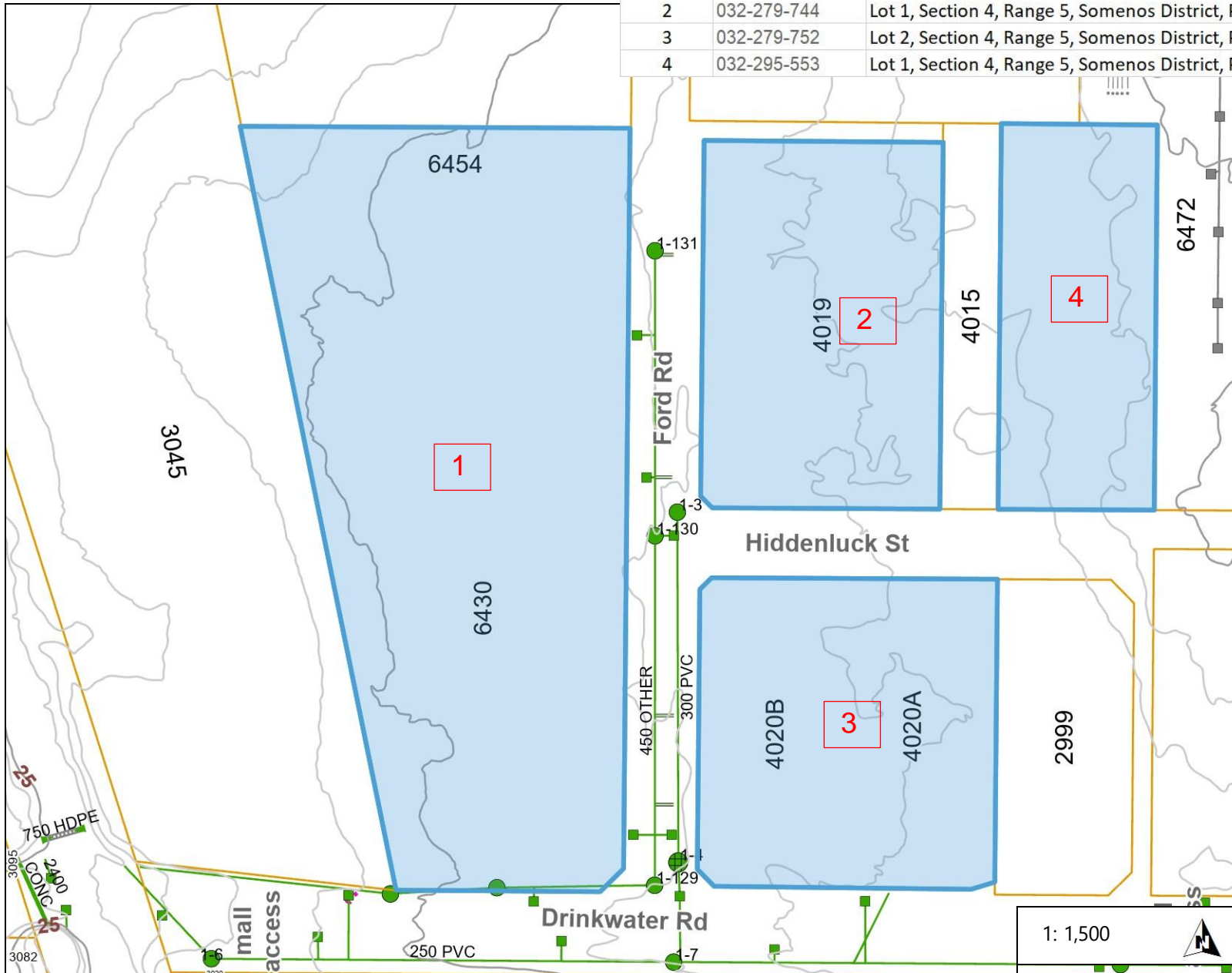
\_\_\_\_\_  
Witness Name

\_\_\_\_\_

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Witness Address

#	PID #	Legal Description of Benefitting Lands	Lot Area (ha)
1	031-938-906	Lot 1, Section 4, Range 5, Somenos District, Plan EPP39334	1.54
2	032-279-744	Lot 1, Section 4, Range 5, Somenos District, Plan EPP136556	0.5817
3	032-279-752	Lot 2, Section 4, Range 5, Somenos District, Plan EPP136556	0.6085
4	032-295-553	Lot 1, Section 4, Range 5, Somenos District, Plan EPP136552	0.3991



- Contours 5m
- Contours 10m
- Contours 25m
- Contours 50m
- Civic Address Labels
- Private Dock
- Foreshore Lots
- Strata Parcels
- Parcel Outlines
- Duncan Parcels
- CVRD Parcels
- Ladysmith Parcels
- Lake Cowichan Parcels
- NRCAN Indigenous Reserve
- Ocean Labels
- Road Names
- Drainage Catchbasins
  - DNC, Abandoned, Catchbasin
  - DNC, Abandoned, Double Catchba
  - DNC, Abandoned, Other
  - DNC, Abandoned, Unknown
  - DNC, Active, Catchbasin
  - DNC, Active, Double Catchbasin
  - DNC, Active, Other
  - DNC, Active, Unknown
  - DNC, Installed, Catchbasin
  - DNC, Installed, Double Catchbasin
  - DNC, Installed, Other
  - DNC, Installed, Unknown

1: 1,500



76.2 0 38.10 76.2 Meters

NAD\_1983\_UTM\_Zone\_10N

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

Notes

**SCHEDULE B**

Storm on Drinkwater and Ford Rd							
#	PID #	Legal Description of Benefitting Lands	Lot Area (ha)	BENEFITTING COST/ unit	NET COST PAYABLE		
1	031-938-906	Lot 1, Section 4, Range 5, Somenos District, Plan EPP39334	1.54	\$ 98,629.62	\$ 151,889.62	RCMP	
2	032-279-744	Lot 1, Section 4, Range 5, Somenos District, Plan EPP136556	0.5817	\$ 98,629.62	\$ 57,372.85	woodsmere	
3	032-279-752	Lot 2, Section 4, Range 5, Somenos District, Plan EPP136556	0.6085	\$ 98,629.62	\$ 60,016.12	woodsmere	
4	032-295-553	Lot 1, Section 4, Range 5, Somenos District, Plan EPP136552	0.3991	\$ 98,629.62	\$ 39,363.08	park	
TOTALS			3.1293	\$ 308,641.68			
COST PER GROSS HECTARE OF BENEFITTING AREA				\$ 98,629.62			