

LATECOMER AGREEMENT

THIS AGREEMENT dated for reference the _____th day of _____ 2018

BETWEEN:

CITY OF KELOWNA
1435 Water Street
Kelowna, B.C.
V1Y 1J4
(the "City")

AND:

Mr. Stafford McKergow
2145 Bickerenridge Court
Kelowna, BC, V1V 1W2
(the "Owner")

WHEREAS:

- A. The Owner has applied to the City to Develop the Owner's Lands herein defined on Appendix A and is in accordance with the City's Subdivision & Development Bylaw providing water, sewage, drainage, or Highway facilities, or a combination of such facilities, that will serve the Owner's Lands;
- B. A portion of the water, sewage, drainage, or Highway facilities (herein defined as "Excess or Extended Services") will serve the Benefitting Lands herein defined on Appendix B, which Benefitting Lands do not include the Owner's Lands;
- C. The City considers that its costs to provide the Excess or Extended Services in whole or in part are excessive, and requires the Owner of the Owner's Lands, and the owners of any other lands that, in the opinion of the City, will benefit from the Excess or Extended Services, to pay the cost of the Excess or Extended Services;
- D. The City is authorized to enter into this agreement under Section 508 of the Local Government Act;
- E. The Council of the City has by way of Bylaw No. 6519, as amended or replaced from time to time, set the rate of interest referred to under Section 508 of the Local Government Act and in paragraph 3 of this agreement;

THIS AGREEMENT IS EVIDENCE THAT in consideration of the \$ 1.00 (plus GST) 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 City and the Owner covenant and agree as follows:

Interpretation

1. In this agreement
 - (a) "Benefitting Lands" means the lands other than the Owner's Lands that:
 - (i) in the opinion of the City, will be served by the Excess or Extended Services, which Benefitting Lands are, subject to paragraph 1(a)(ii), legally described on Appendix B;
 - (ii) may be connected to the Excess or Extended Services after completion of those Excess or Extended Services upon payment of the connection fee indicated in Appendix C;
 - (b) "Excess or Extended Services" means any combination, as shown in Appendix C, of a portion of a:
 - (i) Highway system required to be constructed and installed by the owner that will provide access to lands other than the lands, or
 - (ii) water, sewage, or drainage system constructed and installed by the owner that will serve land other than the lands;
 - (c) "Latecomer" means an Owner of Benefitting Lands;
 - (d) "Owner's Lands" means those certain lands equally described in Appendix A and owned by the Owner in respect of which the Owner is constructing works and services, a portion of which systems constitutes the Excess or Extended Services that will serve the Benefitting Lands;
 - (e) "Owner " in respect of real property means the registered owner of an estate in fee simple, and includes:
 - (i) the tenant for life under a registered life estate,
 - (ii) the registered holder of the last registered agreement for sale,
 - (iii) the holder or occupier of land held in the manner mentioned in Sections 356 and 357 of the Municipal Act,
 - (f) Substantial Performance is the stage of completion of all the Works and Services when:
 - (i) the Works and Services are ready to be used for their intended purpose, as certified by the Consulting Engineer; and
 - (ii) the total of the incomplete, defective and deficient Works and Services can be completed at a cost, as estimated by the Consulting Engineer; and verified by the City Engineer, of no more than 3% of the total cost of the Works and Services.

2. The City shall pay to the Owner charges imposed by the City under Section 508 of the of the Local Government Act based upon the formula described on Appendix C, only if and to the extent the charges are paid by the Latecomers and collected by the City during the period commencing on the date of Substantial Performance and ending on the earlier of:
 - (i) the date on which the Owner's costs in connection with the Excess or Extended Services, determined in accordance with Section 11.1 of the Subdivision & Development Servicing Bylaw 7900, have been paid to the Owner; and
 - (ii) August 01, 2033 – 15 years from the date of Substantial Performance.

Interest

3. There shall be included in the charge payable by the Latecomer under Section 508 interest calculated annually at a rate prescribed by a Bylaw of the City, payable for the period commencing on Substantial Performance, up to the date that the connection is made, or the use commences, and if paid by the Latecomer and collected by the City during the period referred to in paragraph 2, the interest shall be paid to the Owner.

Assignment or Transfer of Owner's Rights

4. This Agreement may not be assigned by the Owner without the prior written consent of the City. In the event of a dispute as to the beneficiary of this Agreement, the City may, at its option, commence an action in interpleader joining any party claiming rights under this agreement, or other parties which the City believes to be necessary or proper, and the City 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 City 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 City, its administrators, successors, assigns, directors, officers, agents, employees, servants, tenants, solicitors, consultants, and anyone else for whom the City is in law liable, by reason of or arising out of or in any way connected with any error, omission, or conduct of the City in relation to the Excess or Extended Services, including, without the generality of the foregoing, a failure of the City 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. Upon the expiration of the Term, the City shall be forever released and wholly discharged from all liability and obligations hereunder this agreement, or howsoever arising pertaining to the Latecomer Charges, 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 on and Warranty

8. The Owner represents and warrants to the City that the Owner has not received, claimed, demanded, or collected money or any other consideration from the Latecomers 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 Latecomers 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 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. This agreement shall be governed by the laws of the Province of British Columbia.
13. This agreement constitutes the entire agreement between the City 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 City 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 City or the Owner includes their permitted assigns, heirs, successors, officers, employees, and agents.
16. The Owner represents and warrants to the City 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 shall breach any other agreement or obligation, or cause the Owner to be in default of any other agreement or obligation, respecting the Owner's Lands; and
 - (d) the Owner has the corporate capacity and authority to enter into and perform this agreement.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the year and date first above written.

SIGNED, SEALED AND DELIVERED by the (Owner) in the presence of:

Authorized Signatory (Print Name and Position of person signing)

Authorized Signatory (Print Name and Position of person signing)

SIGNED, SEALED AND DELIVERED by the CITY OF KELOWNA in the presence of:

Authorized Signatory (Print Name) Mayor

Authorized Signatory (Print Name) City Clerk

Appendix A to Latecomer Agreement

August 25, 2018

Legal Description of Owner's Land	Roll Number	KID Number
Lot A Plan EPP73625	0	827712

Appendix B to Latecomer Agreement

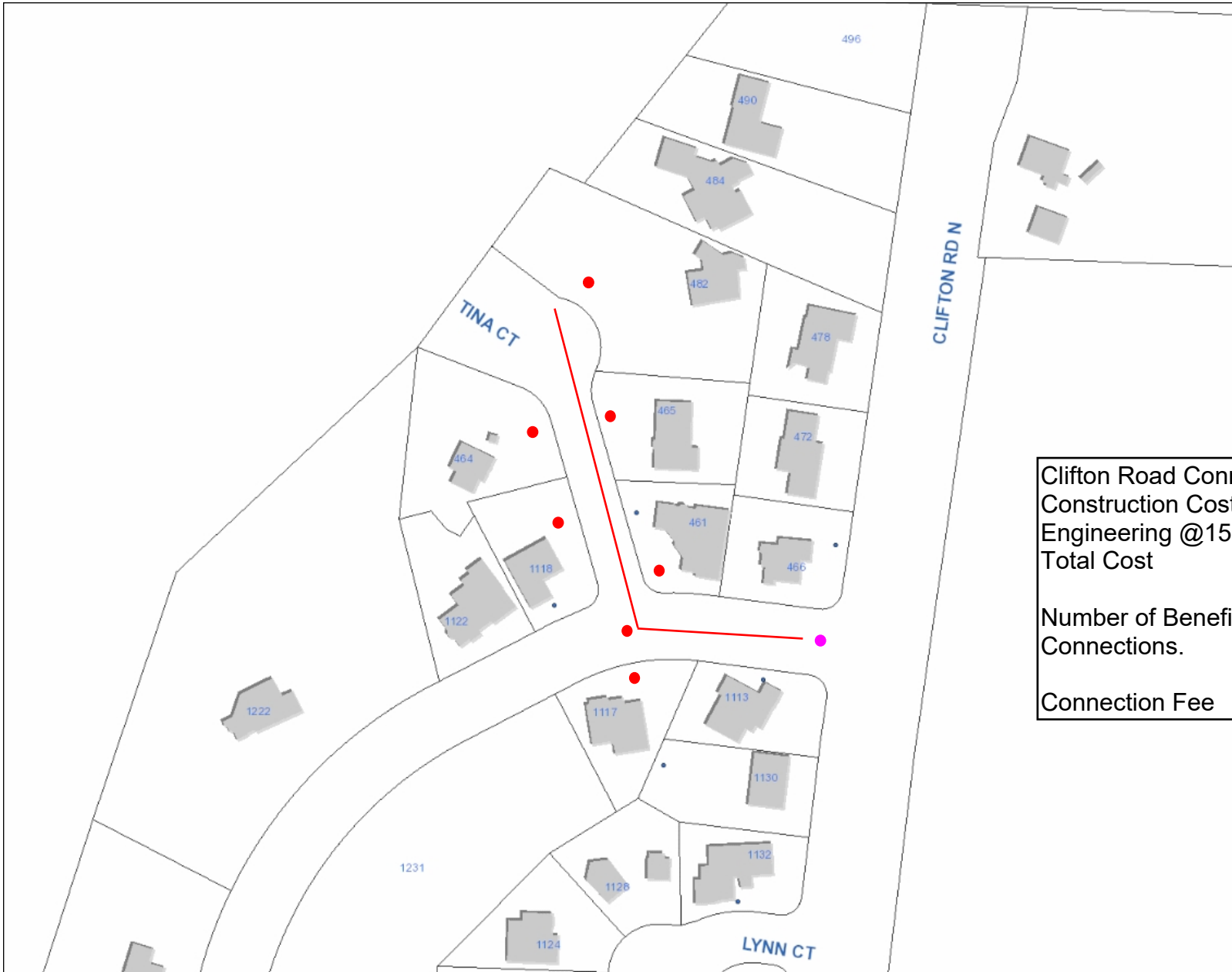
Benefiting Lands

August 25, 2018

Legal Description of Benefiting Lands	Roll Number	KID Number
Lot A Plan KAP70761, Section8, Township23	3387438	578687
Lot B Plan KAP70761, Section 8, Township23	3387439	578699
Lot 11 Plan KAP28178, Section 8, Township23	3387150	332597
Lot 8 Plan KAP28178, Section 8, Township23	3387135	222063
Lot A Plan KAP57178, Section 8, Township23	3387437	419477
Lot 13 Plan KAP28178, Section 8, Township23	3387160	332585

Appendix C to Latecomer Agreement

Extended Services Connection Fee
Calculations



Legend

- Clifton Road Connection Fee.
\$21,303.59
- Benefiting Lots Connection Fee
\$ 19,488.53

Clifton Road Connection Fee	\$21,303.59
Construction Costs	\$100,101.00
Engineering @15%	<u>\$15,015.15</u>
Total Cost	\$136,419.74
Number of Benefiting Lots or Connections.	7
Connection Fee	\$19,488.53



Notes

0 45 90Meters



May 24, 2018

This map is for general information only. The City of Kelowna does not guarantee its accuracy, currency or completeness. All information should be verified.



Certificate of Payment - Summary

CFP # 1

Client:
Contractor: **Matcon**
Date: 04-May-18
Project Number: 17011
Project Name: Tina Court

Description	Contract Amount	To Date Amount	Previous	Current CFP
1.0 Earthworks and Site Preparation	\$ 23,015.00	\$ 12,380.00	\$ -	\$ 12,380.00
2.0 Roads and Site Improvement	\$ 28,590.00	\$ 29,786.00	\$ -	\$ 29,786.00
3.0 Concrete Features	\$ 1,800.00	\$ 2,400.00	\$ -	\$ 2,400.00
4.0 Utilities	\$ 66,295.00	\$ 36,935.00	\$ -	\$ 36,935.00
5.0 Electrical	\$ 13,000.00	\$ 13,000.00	\$ -	\$ 13,000.00
6.0 General MMCD Contract Requirements	\$ 5,600.00	\$ 5,600.00	\$ -	\$ 5,600.00
Sub Total	\$ 138,300.00	\$ 100,101.00	\$ -	\$ 100,101.00
10% Holdback	0%	\$ -	\$ -	\$ -
Deficiency Holdback		\$ -	\$ -	\$ -
Sub Total	\$ 138,300.00	\$ 100,101.00	\$ -	\$ 100,101.00
GST	5%	\$ 6,915.05	\$ 5,005.05	\$ 5,005.05
Total	\$ 145,215.05	\$ 105,106.05	\$ -	\$ 105,106.05
			Total Payable	\$ 105,106.05

The amount payable indicated in this certificate for payment may be subject to a reduction by the owner.

Contract Administrator: Matt Cameron, P.Eng., FEC

Reviewed By: Andrew Zelke, CA, CPA

Final quantities to be field verified by survey or field measure

Date: **2018-05-04**
 Project Number: **17011**
 Project Name: **Tina Court**
 Project Manager/CA: **MHC**
 Prepared By: **AAZ**
 Reviewed By: **MHC**

See paragraph 5.3.1 of the Instructions to Tenderers - Part II
 All prices and Quotations including the Contract Price shall include all Taxes, but shall not include PST/GST. PST/GST shall be shown separately.

Item	MMCD Section	Payment Item	Specification Title - Item Description	Unit	Tendered Quantity	Tender Unit Price	Tender Amount	To Date Quantity	To Date Amount	Previous Quantity	Previous Amount	Current Quantity	Current Amount
1.0 Earthworks and Site Preparation													
1.1	31 11 01	1.4.1, 1.4.2	Clearing and Grubbing Clearing and Grubbing	Lump Sum	1.00	\$ 1,600.00	\$ 1,600.00	-	\$ -	-	\$ -	-	\$ -
1.2	31 23 17	1.6.4	Rock Removal Trench Rock Hammering - Provisional Item	Lump Sum	1.00	\$ 10,000.00	\$ 10,000.00	-	\$ -	-	\$ -	-	\$ -
2.1	31 24 13	1.8.4	Roadway Excavation, Embankment and Compaction Remove Existing Asphalt or Concrete Pavement, Sidewalks, Driveways c/w sawcut	Square Meters	510.00	\$ 14.00	\$ 7,140.00	562.00	\$ 7,868.00	-	\$ -	562.00	\$ 7,868.00
2.2		1.8.5	Remove Existing Curbs and Gutters and Disposed of Offsite	Meters	9.00	\$ 95.00	\$ 855.00	12.00	\$ 1,140.00	-	\$ -	12.00	\$ 1,140.00
1.5		1.8.9	Subgrade Preparation - c/w lap joint	Square Meters	570.00	\$ 6.00	\$ 3,420.00	562.00	\$ 3,372.00	-	\$ -	562.00	\$ 3,372.00
Section 1 Sub-Total							\$ 23,015.00		\$ 12,380.00		\$ -		\$ 12,380.00
2.0 Roads and Site Improvement													
2.1	32 11 16.1	1.4.3	Granular Sub-Base 165mm Granular Sub-Base	Square Meters	510.00	\$ 14.00	\$ 7,140.00	562.00	\$ 7,868.00	-	\$ -	562.00	\$ 7,868.00
2.2	32 11 23	1.4.2	Granular Base 75mm Granular Base	Square Meters	510.00	\$ 13.00	\$ 6,630.00	562.00	\$ 7,306.00	-	\$ -	562.00	\$ 7,306.00
2.3	32 12 16	1.5.1, 1.5.2	Hot-Mix Asphalt Concrete Paving 50mm Asphalt Pavement	Square Meters	570.00	\$ 26.00	\$ 14,820.00	562.00	\$ 14,612.00	-	\$ -	562.00	\$ 14,612.00
Section 2 Sub-Total							\$ 28,590.00		\$ 29,786.00		\$ -		\$ 29,786.00
3.0 Concrete Features													
3.1	03 30 20	1.4.4	Concrete Walks, Curb And Gutter Depress Barrier Curb & Gutter	Meters	9.00	\$ 200.00	\$ 1,800.00	12.00	\$ 2,400.00	-	\$ -	12.00	\$ 2,400.00
Section 3 Sub-Total							\$ 1,800.00		\$ 2,400.00		\$ -		\$ 2,400.00
4.0 Utilities													
4.1	33 11 01	1.8.4 / SS	Waterworks 25mm Water Service Connections - CoK Drawing SS-W2	Each	1.00	\$ 1,100.00	\$ 1,100.00	1.18	\$ 1,300.00	-	\$ -	1.18	\$ 1,300.00
4.2		1.8.11	25mm Hot Tapping c/w valve - main size 150mm	Each	1.00	\$ 500.00	\$ 500.00	1.12	\$ 560.00	-	\$ -	1.12	\$ 560.00
4.3	33 34 01	1.8.2, 1.8.3	Sewage Force mains 50mm Series 160 PVC Force main - Native Backfill	Meters	174.00	\$ 80.00	\$ 13,920.00	174.00	\$ 13,920.00	-	\$ -	174.00	\$ 13,920.00
4.4		1.8.3	50mm - End Cap c/w Thrust Block	Each	1.00	\$ 40.00	\$ 40.00	1.00	\$ 40.00	-	\$ -	1.00	\$ 40.00
4.5		1.8.3	50mm - Tee c/w Thrust Block	Each	1.00	\$ 115.00	\$ 115.00	1.00	\$ 115.00	-	\$ -	1.00	\$ 115.00
4.6		1.8.3	50mm - 22.5 Degree Bend c/w Thrust Block	Each	1.00	\$ 175.00	\$ 175.00	1.00	\$ 175.00	-	\$ -	1.00	\$ 175.00
4.7		1.8.3	50mm - 5 Degree Vertical Bend c/w Thrust Block	Each	1.00	\$ 135.00	\$ 135.00	1.00	\$ 135.00	-	\$ -	1.00	\$ 135.00
4.8		1.8.3	In-line Gate Valves 50mm	Each	3.00	\$ 800.00	\$ 2,400.00	3.00	\$ 2,400.00	-	\$ -	3.00	\$ 2,400.00
4.9		1.8.10	Force main Tie-In - 50mm diameter into existing manhole	Each	1.00	\$ 650.00	\$ 650.00	1.00	\$ 650.00	-	\$ -	1.00	\$ 650.00
4.10			E-One Lift Station - DH071 c/w E-One uni-lateral check valve and 32mm FM	Lump Sum	1.00	\$ 18,440.00	\$ 18,440.00	-	\$ -	-	\$ -	-	\$ -
4.11			32mm Sanitary Service Connections - as per detail on CTQ D-101	Each	4.00	\$ 3,600.00	\$ 14,400.00	2.00	\$ 7,200.00	-	\$ -	2.00	\$ 7,200.00
4.12			Additional Bedding for Fortis Gas in Trench	Linear Meters	130.00	\$ 20.00	\$ 2,600.00	130.00	\$ 2,600.00	-	\$ -	130.00	\$ 2,600.00
4.13	33 44 01	1.5.1.5	Manholes and Catch basins Energy Dissipation Structure c/w rebenching - install to ex manhole as per detail on CTQ D-101	Each	1.00	\$ 3,980.00	\$ 3,980.00	-	\$ -	-	\$ -	-	\$ -
4.14		1.5.1.1	Sanitary Force main Pigging Port - as per detail on CTQ D-101	Each	2.00	\$ 3,920.00	\$ 7,840.00	2.00	\$ 7,840.00	-	\$ -	2.00	\$ 7,840.00
Section 4 Sub-Total							\$ 66,295.00		\$ 36,935.00		\$ -		\$ 36,935.00
5.0 Electrical													
5.1	26 56 01	1.9.1	Roadway Lighting Roadway Lighting	Each	1.00	\$ -	\$ -	-	\$ -	-	\$ -	-	\$ -
5.2		1.9.1	Lamp Standard Bases & Ducting - as per City of Kelowna Standards	Each	1.00	\$ 2,200.00	\$ 2,200.00	1.00	\$ 2,200.00	-	\$ -	1.00	\$ 2,200.00
5.3			Remove ex Lamp Standard, Base and Ducting	Lump Sum	1.00	\$ 1,550.00	\$ 1,550.00	1.00	\$ 1,550.00	-	\$ -	1.00	\$ 1,550.00
5.4	26 56 01*	1.9.1	Shallow Utilities Hydro, Telephone and Cable Ducting - (Fortis BC, TELUS, Shaw)	Meters	30.00	\$ 285.00	\$ 8,550.00	30.00	\$ 8,550.00	-	\$ -	30.00	\$ 8,550.00
5.5			Supply/Install Fortis Service Box	Lump Sum	1.00	\$ 700.00	\$ 700.00	1.00	\$ 700.00	-	\$ -	1.00	\$ 700.00
Section 5 Sub-Total							\$ 13,000.00		\$ 13,000.00		\$ -		\$ 13,000.00
6.0 General MMCD Contract Requirements													
6.1			General Requirements Mobilization/Demobilization	Lump Sum	1.00	\$ 2,600.00	\$ 2,600.00	1.00	\$ 2,600.00	-	\$ -	1.00	\$ 2,600.00
6.2			Survey - Pre Construction, Construction, and Asbuilt	Lump Sum	1.00	\$ 3,000.00	\$ 3,000.00	1.00	\$ 3,000.00	-	\$ -	1.00	\$ 3,000.00
Section 6 Sub-Total							\$ 5,600.00		\$ 5,600.00		\$ -		\$ 5,600.00
TENDER PRICE							\$ 138,300.00		\$ 100,101.00		\$ -		\$ 100,101.00

Client Name: City of Kelowna

Project Name: North Clifton - Offsite Works - Forcemain / Gravity Sewer Section

Reference No: 5111047-004

Summary Sheet

Schedule 2e - Cost Estimate - Latecomer

Item Number	Title	Amount
1	General Requirements	\$ 6,455.55
2	Concrete	\$ 4,524.80
3	Earthworks	\$ 43,225.79
4	Roads and Site Improvements	\$ 29,946.47
5	Utilities	\$ 100,229.30
	Engineering (15%)	\$ 27,657.29
	Total Estimated Cost	\$ 212,039.20
	Average Per Lot Estimate (All 10 lots)	\$ 21,203.92

Item #	MMCD Reference	Item Description	Unit	Estimated Quantity	Unit Price	Total Price
1	General Requirements					
1.1	01 53 01	SPP-1 Mobilization / De-Mobilization	LS	1	\$ 1,419.34	\$ 1,419.34
1.2	01 33 01	SPP-2 Survey Layout and Project Record Documents, including as-built survey	LS	1	\$ 1,210.04	\$ 1,210.04
1.3	01 55 01	SPP-3 Traffic Control, Vehicle Access and Parking	LS	1	\$ 3,826.17	\$ 3,826.17
Sub-Total Section 1						\$ 6,455.55
2	Section 3 - Concrete					
2.1		Machine Placed Rollover Curb and Gutter	LM	44.8	\$ 101.00	\$ 4,524.80
Sub-Total Section 3						\$ 4,524.80
3	Section 31 - Earthworks					
3.1		Rock Removal for Utility Trenches, including services	m ³	347.0	\$ 124.57	\$ 43,225.79
3.2		Clearing and Grubbing, including Disposal off site	m ²	0	\$ 8.73	\$ -
Sub-Total Section 31						\$ 43,225.79
4	Section 32 - Roads and Site Improvements					
ROAD WORKS						
4.1		Crushed Granular Sub-Base, 200mm thickness	m ²	363.1	\$ 11.12	\$ 4,037.67
4.2		Granular Base, 100mm thickness	m ²	363.1	\$ 7.01	\$ 2,545.33
4.3		AC Pavement, 60mm thickness base course Clifton Road North	m ²	175.6	\$ 17.07	\$ 2,997.49
4.4		AC Pavement, 40mm thickness surface course Clifton Road North	m ²	175.6	\$ 11.42	\$ 2,005.35
4.5		AC Pavement, 50mm thickness basecourse (Lane)	m ²	187.5	\$ 27.31	\$ 5,120.63
WALKWAYS, BOULEVARDS AND PLANTING						
4.6		Hydroseeding	m ²	0.0	\$ 3.98	\$ -
4.7		Driveway Asphalt Restoration	ea.	0.0	\$ 400.00	\$ -
4.8		Driveway Concrete Restoration	ea.	0.0	\$ 2,214.00	\$ -
4.9		Lot Frontage Restoration	ea.	10.0	\$ 1,324.00	\$ 13,240.00
Sub-Total Section 32						\$ 29,946.47
5	Section 33 - Utilities					
SANITARY SEWERS						
5.2		200mm PVC DR 35 sanitary sewer main				
		a. 1-2m Depth	LM	183.0	\$ 176.92	\$ 32,376.36
		b. 2-3m Depth	LM	18.0	\$ 202.67	\$ 3,648.06
5.3		150mm PVC DR 35 sanitary sewer main				
		a. 1-2m Depth	LM	112.0	\$ 202.74	\$ 22,706.88
5.4		100mm PVC DR 26 sanitary service connection c/w inspection chamber	ea.	10.0	\$ 1,298.00	\$ 12,980.00
5.5		50mm PVC SCH 80 sanitary pressure service connection	ea.	0.0	\$ 734.24	\$ -
5.6		Pressure sewer service connection chamber	ea.	0.0	\$ 552.00	\$ -
MANHOLES AND CATCHBASINS						
5.7		1050mm dia. Sanitary Manhole				
		a. 1-2m Depth	ea.	5	\$ 4,496.00	\$ 22,480.00
		b. 2-3m Depth	ea.	1	\$ 4,734.00	\$ 4,734.00
5.8		Internal drop connection for 1050mm dia. Sanitary Manhole	ea.	1	\$ 1,304.00	\$ 1,304.00
Sub-Total Section 33						\$ 100,229.30

Notes:

1. Actual construction Unit Rates applied
2. GST is not included.