

Report to Council



Date: November 20, 2018

File: 0920-40 Subdivision Applications

To: City Manager

From: Development Services (MB)

Subject: Latecomer Agreement - North Clifton Sanitary Sewer

Report Prepared by: James Kay, P.Eng, Development Engineering Manager

Recommendation:

THAT Council endorse the Latecomer Agreement – North Clifton Sanitary Sewer between the City and the owner of Lot 2, Plan KAP65503, Section 17, Township 23, which was subdivided and required to provide excess and extended services;

AND THAT Council impose Latecomer charges for excess or extended services shown in Appendix C on the benefitting lands listed in Appendix B;

AND FURTHER THAT the Mayor and Clerk be authorized to execute this Latecomer Agreement;

Purpose:

For Council to endorse the execution of a Latecomer Agreement for the recovery of developer-funded costs for Excess or Extended Services.

Background:

The City of Kelowna Latecomers Policy and Guidelines outlines the framework, which has been followed, and the City's standard Latecomer Agreement has been utilized.

The owner at 1602 Bennett Road applied to subdivide their parcel and there was extensive consultation with the existing owners on Clifton Road North regarding the opportunity for connection to the sewers that the Proponent was installing. Our Utility Planning Manager structured repayment for service connections, and our Development Engineering Manager wishes to implement this latecomer such that the Proponent may recover some of their costs should adjacent owners choose to connect at a future date.

Summary

The proponent undertook the civil engineering design, paid the required connection fees, and installed the sanitary main at a cost of \$212,039.20.

The consultant has identified ten benefitting lots or connections, resulting in a Latecomer Connection Fee of \$21,203.92 per lot. This cost is only payable by the adjacent owners if they choose to connect to this sewer, within the duration of this agreement.

Legal/Statutory Authority:

Local Government Act, Sections 507 & 508

Existing Policy:

Latecomer Policy and Guidelines

Submitted by:

James Kay, P.Eng, Development Engineering Manager

Approved for inclusion:



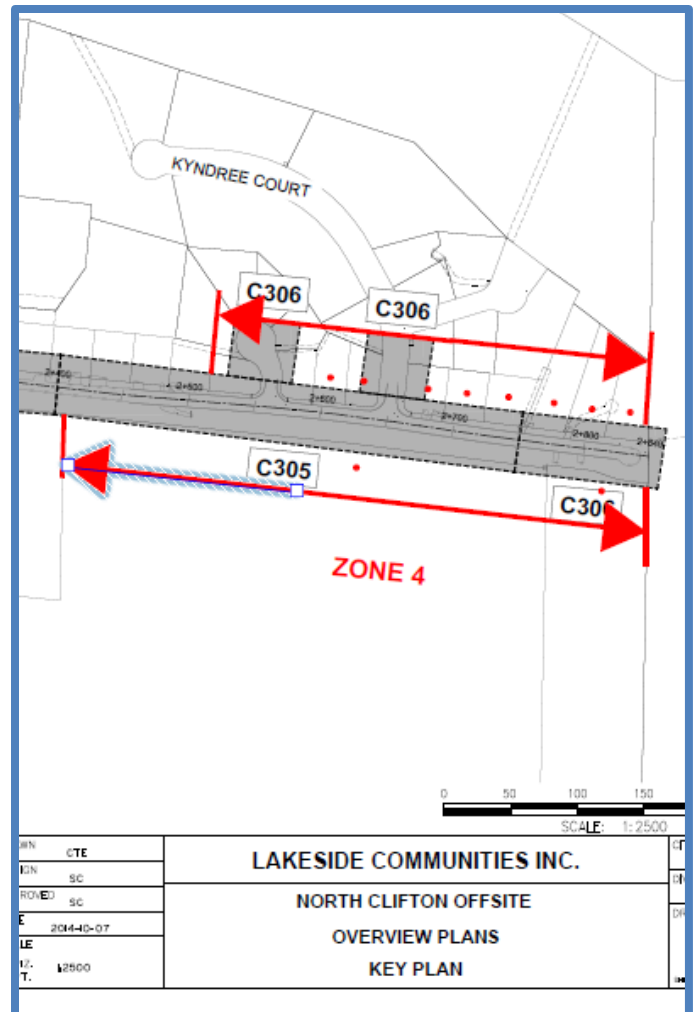
Mo Bayat, Dept. Manager, Development Services

Attachments:

- 1) Latecomer Agreement - North Clifton Sanitary Sewer

cc:

Acting Divisional Director, Community Planning & Strategic Investments
Divisional Director, Infrastructure
Divisional Director, Financial Services
Infrastructure Engineering Manager



LATECOMER AGREEMENT

THIS AGREEMENT dated for reference the _____ day of _____, 2018

BETWEEN

CITY OF KELOWNA
1435 Water Street
Kelowna, B.C.
V1Y 1J4

("the City")

AND:

LAKESIDE COMMUNITIES INC.
207-1664 Richter Street
Kelowna, BC
V1Y 8N3

(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,
 - (i) 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 of 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.

Payment of Latecomer Charges During Term

2. The City shall pay to the Owner charges imposed by the City under Section 508 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) December 1, 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 any and 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 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 enure 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:

Name: (Authorized Signatory)

Name: (Authorized Signatory)

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

Mayor

City Clerk

Appendix A to Latecomer Agreement

Owner's Land

November 15, 2018

Legal Description of Owner's Land	Roll Number	KID Number
Lot 2, Plan KAP65503, Section 17, Township 23	3576729	791498

Appendix B to Latecomer Agreement

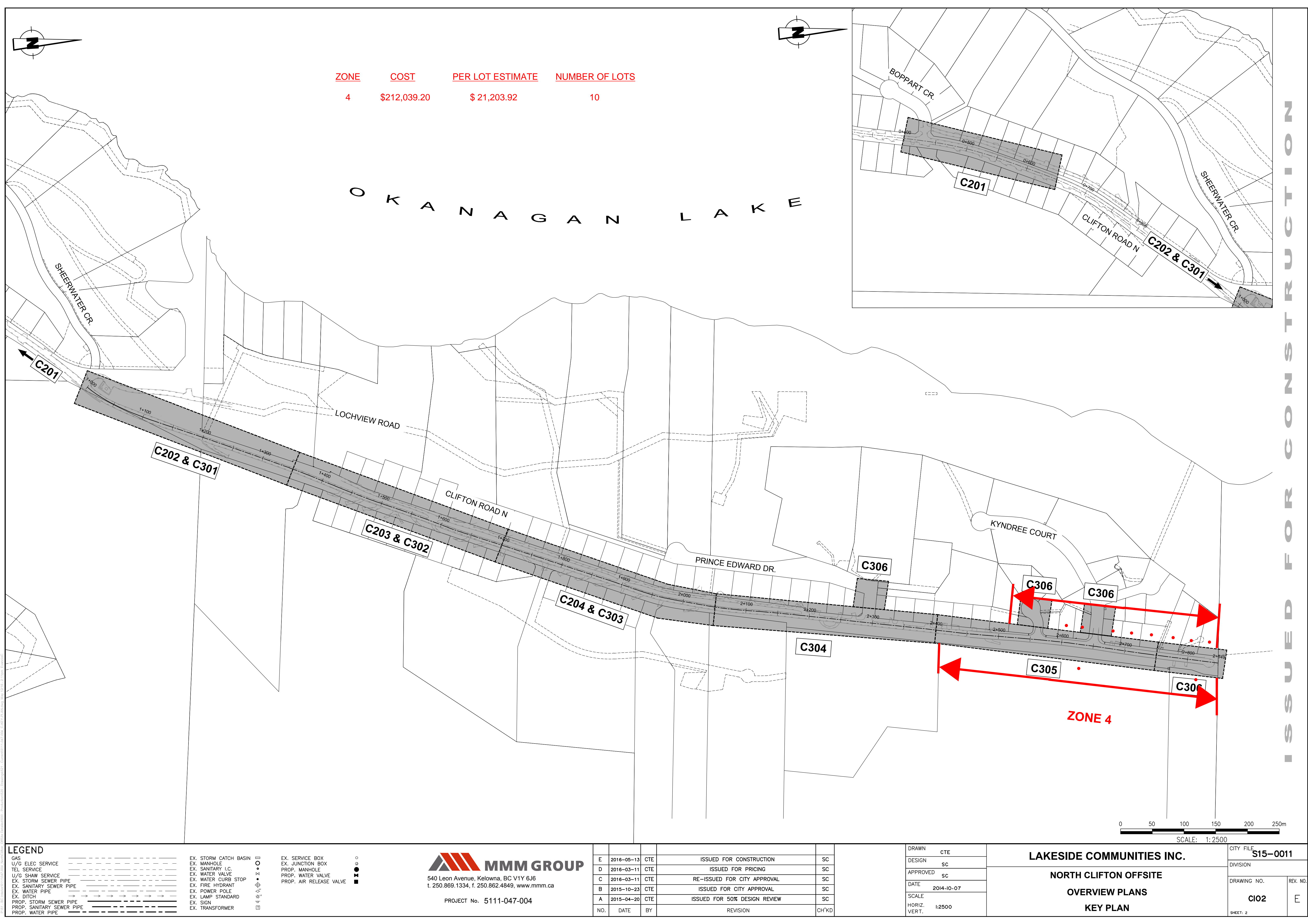
Benefitting Lands

November 15, 2018

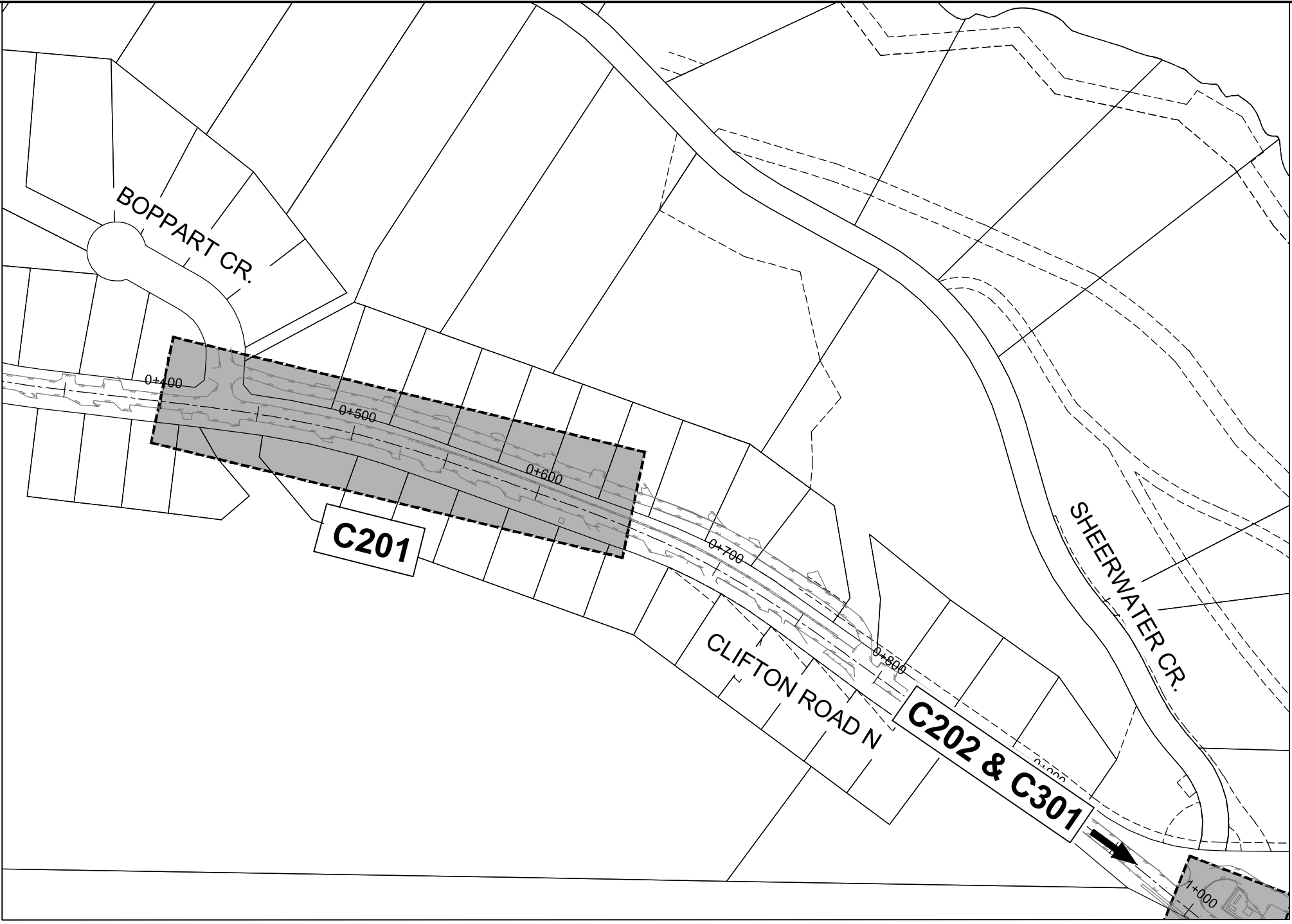
Legal Description of Benefitting Lands	Roll Number	KID Number
Lot 1, Plan KAP 28178, Section 8, Township 23	3387100	240768
Lot 2, Plan KAP 28178, Section 8, Township 23	3387105	240731
Lot 3, Plan KAP 28178, Section 8, Township 23	3387110	240794
Lot 5, Plan KAP 28178, Section 8, Township 23	3387120	240806
Lot 7, Plan KAP 28178, Section 8, Township 23	3387130	240770
Lot 9, Plan KAP 28178, Section 8, Township 23	3387140	240782
Lot 14, Plan KAP 28178, Section 8, Township 23	3387165	332623
Lot 15, Plan KAP 28178, Section 8, Township 23	3387170	240756
Lot A, Plan KAP 47167, Section 8, Township 23	3387434	385260
Lot 1, Plan KAP 29568, Section 8, Township 23	3387325	241760

Appendix C to Latecomer Agreement

Extended Services Connection Fee Calculations



ZONE	COST	PER LOT ESTIMATE	NUMBER OF LOTS
4	\$212,039.20	\$ 21,203.92	10



LEGEND	
GAS	---
U/G ELEC SERVICE	---
TEL SERVICE	---
U/G SHAW SERVICE	---
EX. STORM SEWER PIPE	---
EX. SANITARY SEWER PIPE	---
EX. WATER PIPE	---
EX. DITCH	---
PROP. STORM SEWER PIPE	---
PROP. SANITARY SEWER PIPE	---
PROP. WATER PIPE	---
EX. STORM CATCH BASIN	○
EX. MANHOLE	○
EX. SANITARY I.C.	○
EX. WATER VALVE	○
EX. WATER CURB STOP	○
EX. FIRE HYDRANT	○
EX. POWER POLE	○
EX. LAMP STANDARD	○
EX. SIGN	○
EX. TRANSFORMER	○
EX. SERVICE BOX	○
EX. JUNCTION BOX	○
PROP. MANHOLE	○
PROP. WATER VALVE	○
PROP. AIR RELEASE VALVE	○

**MMM GROUP**

540 Leon Avenue, Kelowna, BC V1Y 6J6
t. 250.869.1334, f. 250.862.4849, www.mmm.ca

PROJECT No. 5111-047-004

NO.	DATE	BY	REVISION	CH'KD
E	2016-05-13	CTE	ISSUED FOR CONSTRUCTION	SC
D	2016-03-11	CTE	ISSUED FOR PRICING	SC
C	2016-03-11	CTE	RE-ISSUED FOR CITY APPROVAL	SC
B	2015-10-23	CTE	ISSUED FOR CITY APPROVAL	SC
A	2015-04-20	CTE	ISSUED FOR 50% DESIGN REVIEW	SC

DRAWN	CTE
DESIGN	SC
APPROVED	SC
DATE	2014-10-07
SCALE	
HORIZ.	1:2500
VERT.	

LAKESIDE COMMUNITIES INC.

NORTH CLIFTON OFFSITE

OVERVIEW PLANS

KEY PLAN

CITY FILE
S15-0011

DIVISION

DRAWING NO.
C102

REV. NO.
E

SHEET: 2

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.