

UTILITY SYSTEM TRANSFER AGREEMENT

THIS AGREEMENT dated for reference February 5th, 2020, is

BETWEEN:

CITY OF KELOWNA

Address for Delivery: 1435 Water Street Kelowna BC V1Y 1J4

Contact Person: Rod MacLean

Email Address: RMacLean@kelowna.ca

(the "**City**")

AND:

DEMONTREUIL WATERWORKS INC. (Inc. No. BC0658165)

Address for Delivery: 2 – 824 North Road, Gibsons BC V0N 1V9

Contact Person: Mrs. Andree De Montreuil

Email Address: ademontreuil98@gmail.com

(the "**Operator**")

GIVEN THAT:

- A. The Operator owns and operates a domestic water supply system, including a well (Provincial Well Tag Number: 24382, Well Identification Plate Number: 10022) that supplies the system (the "**Well**"), located within the boundary described in the Letters Patent of the South East Kelowna Irrigation District (the "**District**"), as shown generally on drawing No. A-3156-1, by Interior Engineering Services Ltd., dated September 1971, which attached hereto as Schedule A (the "**Utility System**");
- B. The Utility System currently services 19 properties in the District (the "**Properties**");
- C. The City is constructing a domestic water supply system which will service the District (the "**City System**")
- D. Once the City constructs the City System, the Properties will connect to the City System;
- E. The City wishes to acquire the Utility System from the Operator, and the Operator and the City wish to enter into this Agreement to provide for the transfer of the Utility System to the City.

THIS AGREEMENT IS EVIDENCE THAT in consideration of the promises exchanged below, and of the payment of \$1.00 by the City to the Operator (the receipt and sufficiency of which the Operator acknowledges), the Operator and the City covenant and agree as follows:

Sale & Transfer of Utility System

1. On the terms and conditions of this Agreement, the Operator shall sell, assign, transfer, cause to be transferred or assigned if not registered in the Operator's name, and set over to the City, and the City shall purchase from the Operator, all of the Operator's rights, title and interest in and to the following property and assets:
 - (a) all improvements, works, machinery and equipment in any way related to or associated with the Utility System, including as described in Schedule B;
 - (b) all rights of way, permits, licenses and other interests and agreements held by or to which the Operator is a party and under which portions of the Utility System are permitted to be located or operated or as are otherwise necessary for the operation of the Utility System, including as listed in Schedule C;
 - (c) all funds held in the reserve funds, if any, established by the Operator on the order of the Comptroller of Water Rights (the "**Comptroller**") with respect to the Utility System and listed in Schedule E (the "**Reserve Funds**"); and
 - (d) any property of any kind whatsoever, real or personal, wheresoever located, pertaining to or in any way related to or associated with the Utility System that is identified for acquisition by the City pursuant to the terms of this Agreement;

but specifically excluding the assets, property, and interests listed in Schedule F (the "**Excluded Assets and Interests**") and, additionally, any further assets, interests, and property that City indicates to the Owner, prior to the Completion Date, will be excluded from its purchase of the Utility System.

In this Agreement, the term "**Assets**" refers to the assets and property to be transferred as identified under this section, excluding, for clarity, the Excluded Assets and Interests.

Purchase Price

2. On the Completion Date (as hereinafter defined), the City shall pay \$1.00 (the "**Purchase Price**") to the Operator as consideration for the sale, transfer and assignment of the Assets.

Operator Obligations Before Completion

3. From and after the execution of this Agreement until the Completion Date, the Operator covenants to:
 - (a) take all reasonable care to protect and safeguard the Assets and operate and otherwise deal with the Assets as a careful and prudent owner and operator would do and in such a manner that the Operator's representations and warranties under this Agreement remain true and correct;
 - (b) maintain in full force and effect insurance coverage in respect of the Assets against such risk and to such limits as are in accordance with prudent business practice and suitable to the Assets and the Utility System;
 - (c) not sell, transfer, dispose of, or mortgage, pledge, charge, subject to lien, grant a security interest in or otherwise encumber, the Utility System or the Assets in whole or in part;
 - (d) use and expend monies held in any of the Reserve Funds in the normal operation of the Utility System and only for the purposes which the applicable Reserve Fund is established and in accordance with any trusts upon which such monies are held and to provide notice to the City of any such expenditure as soon as possible;
 - (e) use all reasonable best efforts to obtain any third-party consent or approval necessary for the transfer and assignment to of the Assets to the City;
 - (f) after this Agreement is executed but prior to the Completion Date, permit the City, its employees, agents and contractors, to have access during normal business hours to the Utility System and the Assets and to all plans, drawings, specifications, operating manuals, books, accounts, data, records and other documents and material pertaining to the Utility System or the Assets and the operation, maintenance and repair thereof; and
 - (g) permit the City, its employees, agents and contractors to make inspections, surveys, tests and studies of the Assets.
4. Within 21 days following the date of execution of this Agreement, and from time to time following notice from the City, the Operator shall deliver to the City copies, in electronic format where available, of all plans, drawings, specifications, operating manuals, books, accounts, data, records and other documents and material pertaining to the Utility System or the Assets.

Timing of Transfer

5. The date for completion of the transfer of the Assets to the City shall be February 28, 2020 (the "**Completion Date**"), unless changed by the City pursuant to this Agreement.
6. The City, in its sole discretion, can extend the Completion Date at any time upon written notice to the Operator and on multiple occasions, provided, however, that the City cannot extend the Completion Date beyond the date that is 120 days from March 30, 2020 (the "Outside Completion Date").
7. The City, in its sole discretion and at any time upon 14 days written notice to the Operator, may change the Completion Date to a date prior to the Completion Date set in section 5.

Decommissioning and Removal of Well

8. After the Completion Date but before the date that is 120 days after the Completion Date, the Operator will, at its sole expense:
 - (a) decommission the Well,
 - (b) as instructed by the City, remove the Well and related appurtenances, equipment, and fixtures, including the pumphouse, from the land on which they are located, leaving such land in good condition (the "**Well Removal**")

in accordance with any applicable laws and regulations and to the satisfaction of the City, acting reasonably.

Upon request, the City can assist in the administration of the decommissioning of the Well and Well Removal.

Free and Clear Transfer

9. On the Completion Date, the Operator shall transfer, convey, assign and set over to the City all of the Operator's rights, title and interest in and to the Assets, free and clear of all liens, claims, charges and encumbrances.

Closing Documents

10. On or before the Completion Date:
 - (a) the Operator shall, as directed by the City, deliver to the City or the solicitors for the City, the following documents, each executed by the Operator and, where applicable, in a form registrable in the land title office:

- (i) an assignment or assignments registrable in the land title office with respect to any Assets that are interests in land registered in the land title office (the "**LTO Assignments**");
 - (ii) a general conveyance, assignment and transfer of all Assets;
 - (iii) certified copies of resolutions of the shareholders and directors of the Operator authorizing the execution, delivery and implementation of this Agreement and of all documents to be delivered by the Operator under this Agreement;
 - (iv) a certificate of the president of the Operator certifying that all of the Operator's representations and warranties in this Agreement are true as at the Completion Date; and
 - (v) such further deeds, acts, things, bills of sale, transfers, assignments, certificates and assurances as may be requisite in the reasonable opinion of the City's solicitor for more perfectly and absolutely assigning, transferring, conveying and assuring to and vesting in the City, good and marketable title to the Assets, free and clear of all liens, claims, charges and encumbrances, immediately registerable in all places where registration of such instruments is required; and
- (b) The Operator shall deliver to the City all manuals, records, accounts and other documents pertaining to the Utility System.

The City shall cause its solicitors to prepare the above documents, which shall be in such form as may be determined by the City and its solicitor.

Completion

11. On the Completion Date, after receipt of all of the documents and things to be delivered by the Operator to the City on the Completion Date pursuant to this Agreement, the City shall cause all LTO Assignments to be submitted for registration in the Land Title Office and upon receipt of a satisfactory post application land title office title search indicating such that in the normal course the City shall be registered owner of all of the interests identified in the LTO Assignments, the City shall deliver a cheque to the Operator in an amount equal to the Purchase Price, as adjusted pursuant to the terms of this Agreement.

Possession and Risk

12. On the Completion Date, the City shall be entitled to possession of all of the Assets. The Assets are at the Operator's risk until application is made to register the LTO Assignments in the Land Title Office on the Completion Date and thereafter are at the risk of the City.

Fees and Taxes

13. The City will pay, as and when due and payable:
- (a) any Land Title Office fees in connection with the registration, filing or deposit with the LTO of any document or plan to be deposited, filed or registered pursuant to this Agreement;
 - (b) any provincial sales tax payable in respect of the City's acquisition of the Assets; and
 - (c) any GST payable in respect of the City's acquisition of the Assets.
14. The City shall be responsible for its own legal fees and disbursements incurred in respect of this Agreement.

Reserve Funds

15. The parties acknowledge and agree that:
- (a) the Comptroller will, after the transfer of the Assets has completed in accordance with this Agreement, issue a letter to the bank currently holding the Reserve Funds authorizing the bank to transfer such Reserve Funds to the City; and
 - (b) the parties will cooperate with the Comptroller and perform any actions reasonably required to affect the transfer of the Reserve Funds to the City.
16. If, as a result of the City's due diligence investigation of the Assets, the City discovers a lien, charge, claim, or other interest that currently exists in relation to Utility System's Assets, the City may deduct the cost of discharging or settling such lien, charge, claim or other interest from the amount of the Reserve Funds it receives upon direction of the Comptroller and such deduction will occur before any payments are made to the Operator under this section.
17. The parties agree that before the date that is 30 days from the date on which both of the following have occurred:

- (a) the City has received the transfer of and is entitled to disburse the Reserve Funds; and
- (b) the Operator has provided the City with a written request for reimbursement of the legal fees and disbursements that it has incurred in respect of this Agreement (the "Operator's Legal Fees"), including invoices detailing the same

the City will reimburse the Operator for the Operator's Legal Fees up to the amount of the Reserve Funds it received upon direction of the Comptroller minus the amount deducted by the City under section 16 to settle a lien, charge, claim or other interest (the "**Actual Reserve Fund Amount**"). For clarity, the Operator will be responsible for the Operator's Legal Fees that exceed the Actual Reserve Fund Amount.

18. If:

- (a) the Operator's Legal Fees do not exceed the Actual Reserve Fund Amount, and
- (b) the Operator decommissions the Well and performs the Well Removal in accordance with the terms of this Agreement and provides evidence of such decommissioning and Well Removal to the City

the parties agree that before the date that is 30 days from the date on which both of the following have occurred:

- (c) the City has received the transfer of and is entitled to disburse the Reserve Funds; and
- (d) the Operator provides the City with a written request for reimbursement of the costs that it has incurred decommissioning the Well and performing the Well Removal (the "**Well Decommissioning and Removal Costs**"), including invoices detailing the same

the City will reimburse Operator for the Well Decommissioning and Removal Costs up to the amount remaining of the Actual Reserve Fund Amount. For clarity, the Operator will be responsible for the Well Decommissioning and Removal Costs that exceed the Actual Reserve Fund Amount.

19. If the Operator's Legal Fees and the Well Decommissioning and Removal Costs do not exceed the Actual Reserve Fund Amount, within 30 days of the City reimbursing the Operator for the Well Decommissioning and Removal Costs, the City will pay the amount remaining of the Actual Reserve Fund Amount to the Operator.

Representations and Warranties

20. The Operator represents and warrants to the City that the following are true, and shall be true on the Completion Date, acknowledging that the City is relying on the following representations and warranties in connection with its acquisition of the Assets, which representations and warranties shall survive the completion of the transaction under this Agreement:
- (a) the Operator is the legal and beneficial owner of, and has good and marketable title to, the Assets, free and clear of all liens, charges, security interests, encumbrances and claims of any kind;
 - (b) the Operator has operated the Utility System and the Assets in compliance with all applicable enactments and all orders, directives, rulings, decisions, requirements and approvals of any government authority having jurisdiction with respect to their operation, including under the *Water Sustainability Act*, *Utilities Commission Act*, *Environmental Management Act* or otherwise;
 - (c) the Operator is a corporation duly incorporated, validly existing and in good standing under the *Business Corporations Act*, has made all necessary filings required by that Act and has never been struck from the Registrar of Companies maintained by the office of Registrar of Companies for British Columbia;
 - (d) the Operator has the legal capacity, power and authority to own the Utility System and the Assets and to enter into this Agreement and perform all of its obligations under this Agreement;
 - (e) all necessary actions, steps and other proceedings have been taken to approve and authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement and the transfer of the Assets to the City;
 - (f) there is no action, suit, claim, litigation or proceeding pending or to the Operator's knowledge threatened against the Operator or in respect of the Utility System or the Assets before any court, arbitrator, arbitration panel or administrative tribunal or agency that might affect the Operator's ability to perform any of its obligations under this Agreement and no state of facts exist that could constitute the basis of any such action, suit, claim, litigation or proceeding;
 - (g) neither the Operator entering into this Agreement nor the performance by the Operator of the terms of this Agreement shall result in the breach of or constitute

a default under any term or provision of any instrument, mortgage, deed of trust, lease, document or agreement to which the Operator is bound or subject;

- (h) the Operator has complied with all Environmental Laws in its operation of the Utility System and the Assets, during the period that the Operator has owned the Utility System, the Operator has not caused or permitted any Contaminants to be introduced, and is not aware of any Contaminants having been introduced into, onto or under, or migrating to or from, any land comprised in the Utility System or the Assets, including the SRWs;
- (i) to the best of the Operator's knowledge, there is not now and has not been in the past any action, proceeding, investigation, prosecution or claim, pending or threatened under Environmental Laws in respect of, or related to the presence of Contaminants in, on or under any land comprised in the Assets, including the SRWs, whether relating to the presence of Contaminants in the soils or ground water or migrating thereto or therefrom or otherwise;
- (j) to the best of the Operator's knowledge, there are no reports, soil test reports, assessments, audits, studies, permits, licenses or records with respect to the lands comprised in the Assets, including the SRWs, concerning or relating to Contaminants or compliance with Environmental Laws, whether or not prepared for the Operator or any other person, including any predecessors in title or tenants;
- (k) to the best of the Operator's knowledge, there are no Contaminants in, on or under the lands included in the Assets or migrating or having migrated to or from the lands included in the Assets, including the SRWs;
- (l) there is no liability, contingent or otherwise, for any Governmental Charges in respect Utility System or the Assets;
- (m) the Operator is not a "non-resident" of Canada within the meaning of the *Income Tax Act* (Canada) and is not acting as agent, trustee or nominee for any person in connection with the transaction contemplated by this Agreement; and
- (n) there are no debts due or owing for any work, labour, service or materials provided to or performed on any land comprised in the Utility System or the Assets under which a lien or charge has arisen or could arise under the *Builders Lien Act* (British Columbia).

In this section,

“Contaminants” means

- (i) as defined in the *Environmental Management Act*, any biomedical waste, contamination, contaminant, effluent, pollution, recyclable material, refuse, hazardous or special waste or waste;
- (ii) matter of any kind which is or may be harmful to safety or health or to the environment; or
- (iii) matter of any kind the storage, manufacture, disposal, emission, discharge, treatment, generation, use, transport, release, remediation, mitigation or removal of which is now or is at any time required, prohibited, controlled, regulated or licensed under any Environmental Laws;

“Environmental Law” means any past, present or future, common law or principle, enactment, statute, regulation, order, bylaw or permit, and any requirement, standard or guideline of any federal, provincial or local government authority or agency having jurisdiction, relating to the environment, environmental protection, pollution or public or occupational safety or health; and

“Governmental Charges” includes all taxes, customs, duties, rates, levies, assessments, re-assessments and other charges, together with all penalties, interests and fines with respect thereto, payable to any federal, provincial, local or other government or governmental agency, authority, board, bureau or commission, domestic or foreign.

Operator Default

- 21. If on the Completion Date any of the representations or warranties made by the Operator under this Agreement are untrue, or the Operator is in default under any of the covenants and obligations to be observed or performed by the Operator under this Agreement, the City may elect not to complete the purchase of the Assets under this Agreement or to complete the purchase of the Assets under this Agreement, in either case without prejudice to any rights or remedies the City may have in respect of the Operator’s breach or default.

Conditions Precedent

- 22. The obligation of the City to complete the transaction provided for in this Agreement is subject to the satisfaction of the following conditions precedent being satisfied or waived

on or before the applicable date specified, each of which is for the exclusive benefit of the City and may be waived in whole or in part by the City in writing at any time on or before the applicable date specified:

- (a) On or before the Completion Date the City will be satisfied in its sole discretion with the results of any due diligence investigations it undertakes with respect to the Utility System and the Assets.
- (b) On the Completion Date, the representations and warranties of the Operator under this Agreement shall be true on the Completion Date in all material respects, with the same effect as though the representations and warranties had been made on the Completion Date.
- (c) On or before the Completion Date, the City shall have received all required consents of all government authorities and third parties necessary to permit any of the Assets to be transferred and assigned to the City pursuant to this Agreement.
- (d) On or before the Completion Date, the City shall have received all required consents of all government authorities and third parties necessary to permit the decommissioning of the Well and the Utility System.

The Operator shall execute and deliver to the City or to any governmental authority or other third party as directed by the City such consents, authorizations and directions as may be necessary to enable the City to conduct such due diligence investigations it chooses to undertake under paragraph (a) of this section and to enable the City to receive the consents referred to in paragraphs (c) and (d) of this section.

If any of the conditions precedent under this section is not satisfied or waived within the applicable time provided under this Agreement, this Agreement shall terminate and the parties shall have no further obligations to, nor rights against, each other in respect of this Agreement. In consideration of \$10.00 non-refundable paid by the City to the Operator and other good and valuable consideration, the receipt and sufficiency of which the Operator acknowledges, the Operator agrees to remain bound by the terms and conditions of this Agreement while it remains subject to the conditions precedent under this section.

- 23. If a Certificate of Public Convenience and Necessity has been issued for the Utility System by the Comptroller of Water Rights, the parties' obligations to complete the transfer of the Assets are subject to, and conditional upon, the satisfaction of the following condition precedents:

- (a) on or before the Completion Date , the Comptroller of Water Rights under the *Water Sustainability Act* shall have approved, pursuant to the *Water Utility Act* and s. 52(1) of the *Utilities Commission Act*, of the disposition of the Utility System under this Agreement on conditions, if any, acceptable to the City exercising its sole discretion; and
- (b) on or before the Completion Date, the Comptroller of Water Rights shall have permitted, pursuant to the *Water Utility Act* and s. 41 of the *Utilities Commission Act*, the discontinuance of the Utility System's operations on conditions, if any, acceptable to the City exercising its sole discretion.

The City will apply for the approval and permission required under subsections 22(a) and (b) above.

The conditions precedent created by this section may not be waived and if such condition is not satisfied on or before the date set out above, this Agreement shall terminate and the parties shall have no further obligations to, nor rights against, each other in respect of this Agreement.

Additional Assets, Interests and Property

- 24. If during the course of any due diligence investigations the City undertakes with respect to the Utility System and the Assets, the City determines it necessary or desirable to include in the acquisition under this Agreement additional assets, interests or property, of any kind whatsoever, real or personal (including contracts and intellectual property of any kind), wheresoever located, associated with or related to the Utility System that are not currently included as part of the Assets, the City may provide notice of that determination to the Operator identifying such additional property and assets and upon such notice such property and assets shall be included as "Assets" and the transfer and assignment to the City under this Agreement.

No City Assumption of Utility System Liabilities

- 25. For clarity:
 - (a) Except as provided for under paragraph (c) of this section, the City is acquiring the Assets only and does not assume in any way responsibility or liability for any liabilities, debts or other obligations of the Operator in any way relating to or associated with the Utility System or the Assets.
 - (b) Without limiting paragraph (a) of this section, the Operator will be solely responsible for any continuing obligations under any contracts or agreements not

included in the Assets and transferred and assigned to the City under this Agreement and for taking such steps as the Operator considers necessary or desirable to terminate such contracts and agreements.

- (c) From and after closing on the Completion Date, the City shall be responsible for performing all obligations arising after closing under the terms of any rights of way, easements, crossing agreements, contracts and agreements that are Assets transferred and assigned to the City under this Agreement.

Operator Indemnity of City

- 26. The Operator hereby indemnifies and saves harmless the City and its elected and appointed officials, officers, employees and agents from and against:
 - (a) any and all liabilities and debts, whether accrued, absolute, contingent or otherwise, existing at closing on the Completion Date;
 - (b) any and all losses, damage and deficiencies resulting from any misrepresentation, breach of warranty or non-fulfilment of any covenant on the part of the Operator under this Agreement or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished to the City under this Agreement; and
 - (c) any and all claims, actions, suits, demands, proceedings, assessments, judgments, costs and legal and other expenses incident or related to any of the foregoing.

General Provisions

- 27. Further Assurances – The Operator shall promptly execute and deliver all such further documents, deeds and instruments, and do and perform such other acts, as the City may consider necessary or desirable to give full effect to the intent and meaning of this Agreement.
- 28. Operator Performance – The Operator shall perform its obligations, including under any covenants, under this Agreement at its own expense and without compensation or reimbursement from the City.
- 29. Notice – Any notice which may be or is required to be given under this Agreement will be in writing and be delivered to the applicable address set out above, or by email and sent to the City and the Operator at their respective email addresses set out on the first page or to such other address notice of which is given in accordance with this section. Any notice that is delivered or sent by email is to be considered given on the day it is delivered

or sent, except that if that day is not a business day, the notice is to be considered given on the next business day after it is sent.

30. No Effect on Powers – This Agreement does not, and nothing herein will:

- (a) affect or limit the discretion, rights, duties or powers of the City or the approving officer for the City under the common law or any statute, bylaw or other enactment;
- (b) affect or limit the common law or any statute, bylaw or other enactment applying to the Operator Lands; or
- (c) relieve the Operator from complying with any common law or any statute, regulation, bylaw or other enactment.

Without limiting the foregoing, the Operator acknowledges and agrees that where fulfillment of a condition precedent under this Agreement requires that the City' regional board adopt bylaws or pass resolutions, the adoption of such bylaws and passage of such resolutions is within the absolute and unfettered discretion of the board and the provisions of this Agreement will not in anyway obligate the board to adopt such bylaws or pass such resolutions or affect councils' discretion with respect thereto.

31. Time of Essence – Time is of essence of this Agreement.

32. Interpretation – In this Agreement:

- (a) all dollar amounts referred to in this Agreement are Canadian dollars;
- (b) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (c) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (d) the term "enactment" has the meaning given to it under the *Interpretation Act* (British Columbia) on the reference date of this Agreement;
- (e) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time, unless otherwise expressly provided;

- (g) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement and any Schedules to this Agreement form part of this Agreement;
- (h) where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including"; and
- (i) "Business Day" means a day other than a Saturday, Sunday or statutory holiday in British Columbia.

33. Tender – Any tender of documents or money to be made upon a party may be made at that party's address set out in this Agreement or upon their solicitor.

34. No Other Agreements – This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other representations, warranties, promises and agreements regarding its subject.

35. Assignment – The Operator may not assign all or any part of this Agreement, or the benefit hereof, without the prior written consent of the City, which may be withheld arbitrarily and without reason.

36. Schedules – The following are Schedules to this Agreement and form an integral part of this Agreement:

- Schedule A** – Drawing No. A-3156-1,
- Schedule B** – Improvements, Works, Machinery and Equipment,
- Schedule C** – Rights of Way,
- Schedule D** – Form of Assignment for LTO Registered Interests,
- Schedule E** – Reserve Funds, and
- Schedule F** – Excluded Assets and Interests
- Schedule G** – Plan A10851

37. Modification – This Agreement may not be modified except by an instrument signed in writing by the parties, except that the Completion Date may be changed by their agreement through their respective solicitors upon instructions to their solicitors as evidenced promptly thereafter in writing by their solicitors.

38. Governing Law – This Agreement will be governed by and construed in accordance with the laws of British Columbia.

39. Non-Merger – None of the provisions of this Agreement will merge in the transfer of the Assets or any other documents delivered on the Completion Date and the provisions of this Agreement will survive the completion of the purchase and sale transaction under this Agreement.

40. Counterparts and Electronic Execution & Delivery - This Agreement may be executed in any number of counterparts and delivered by e-mail, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, provided that any party delivering this Agreement by e-mail shall also deliver to the other party an originally executed copy of this Agreement.

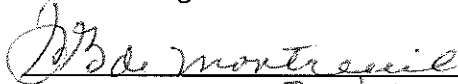
As evidence of their agreement to be bound by this Agreement, the City and the Operator have executed this Agreement below.

CITY OF KELOWNA by its authorized signatories:

Name:

Name:

DEMONTREUIL WATERWORKS INC. by its
authorized signatories:

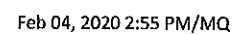


Name: ANDREE B. de MONTREUIL

Name:

List of Schedules:

- Schedule A** – Drawing No. A-3156-1;
- Schedule B** – Improvements, Works, Machinery and Equipment;
- Schedule C** – Rights of Way;
- Schedule D** – Form of Assignment for LTO Registered Interests;
- Schedule E** – Reserve Funds; and
- Schedule F** – Excluded Assets and Interests
- Schedule G** – Plan A10851



Schedule B
Improvements, Works, Machinery and Equipment

The Operator will transfer to the City all of the following assets:

Description	Unit	Quantity
4" diameter watermain and fittings (between Well and Mariposa Ct.)	linear feet	260
4" diameter watermain and fittings (Mariposa Ct.)	linear feet	240
2" diameter watermain and fittings (Hall Road west of Mariposa Ct.)	linear feet	180
4" diameter watermain and fittings (Hall Road)	linear feet	270
2" diameter watermain and fittings (Hall Road)	linear feet	500
Miscellaneous Service Components	EA	19

The Assets are described in the table above are further shown on the following site drawing, which is attached to the Agreement as Schedule A:

Details	Date	Record Drawing No.	Consultant
Domestic Water System	September, 1971	092-01; A-3156-1	Interior Engineering Services

**Schedule C
Rights of Way**

The Operator shall transfer to the City the following interests:

Legal Description	Charge	Charge Number	Registration Date	Notes
Lot 19, Section 9, Township 26, ODYD Plan 24322	Statutory Right of Way	W21290	April 17, 1984	Over that area shown and labelled as "E" on Plan No. A10851 (attached to the Agreement as Schedule "G")
Lot 5, Section 9, Township 26, ODYD, Plan 24322	Statutory Right of Way	W41494	July 26, 1984	Over that area shown and labelled as "C" on Plan No. A10851

Schedule D
Form of Assignment for LTO Registered Interests

TERMS OF INSTRUMENT – PART 2

WHEREAS:

- A. The Transferor is the registered owner of the statutory rights of way described in section 3 of the *Land Title Act* Form C (collectively, the “Rights of Way”) to which this agreement is attached;
- B. The Transferor has agreed to transfer its rights and interest in the Rights of Way to the Transferee and is permitted to do so under each of the Rights of Way;
- C. Section 218 of the *Land Title Act* provides, *inter alia*, that a person may and shall be deemed always to have been able to create, by grant or otherwise an easement, without a dominant tenement, to be known as a “statutory right of way” for any purpose necessary for the operation and maintenance of the transferee’s undertaking;
- D. The transfer of the Rights of Way is necessary for the operation and maintenance of the Transferee’s undertaking.

NOW THEREFORE THIS AGREEMENT WITNESSES AS FOLLOWS:

- 1. In consideration of the sum of \$10.00 and other good and valuable consideration paid by the Transferee to the Transferor (the receipt of which the Transferor acknowledges), the Transferor transfers the Rights of Way to the Transferee.
- 2. The Transferee accepts the transfer of the Rights of Way from this date forward.
- 3. These presents shall enure to the benefit of and be binding upon the parties hereto and upon their respective heirs, executors, administrators, successors and assigns.

As evidence of their agreement to be bound by the terms of this agreement, the parties have each executed and delivered this agreement under seal by executing the *Land Title Act* Form C to which this agreement is attached and which forms part of this agreement.

Schedule E Reserve Funds



BANK CONFIRMATION REQUEST From the Comptroller of Water Rights, Province of British Columbia

(to be completed by Bank Representative)

for

Demontreuil Waterworks Inc.

File: 0321220

The undersigned does hereby signify that on September 19, 2019 the following funds were held in a restricted savings/term deposit/safekeeping or G.I.C. account(s) for the above utility, in accordance with the Irrevocable Letter of Authority (I.L.A.) signed on the date shown below:

Fund Name	ILA Date	Acct Type	Acct No.	Total Amount
		DBFC	54-66 52077/35	2500.00
		LTFC	54-66 52077/27	6114.00
Replacement (CIBC)	Nov 22, 1993	PCA	000000000000000000	954.84

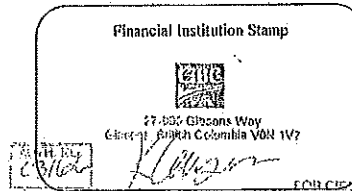
Enclose a separate form if required; ensuring the fund balance is identified by the above Fund Name.

The above account(s) was(were) not encumbered in any way, and from which account(s) no withdrawals have been made without the written authorization of the Comptroller of Water Rights.

The said Fund(s) is(are) identified as held for the sole discretion of the Comptroller of Water Rights, Water Utility Act, of the Province of British Columbia.

CIBC
Name of Financial Institution
27-900 Gibsons Way
Address
Gibsons BC V0N 1V7
604 836 4366
Telephone
604 886 3147
Fax

Karla Carson
Bank Representative Name (please print)
K. Carson
Bank Representative Signature
07090 GIBSONS, B.C. SEP 26 2019
Date



Prescribed Bank Confirmation Form Authorized by the Province of British Columbia

Schedule F
Excluded Assets and Interests

Registered interests:

Legal Description	Charge	Charge Number	Registration Date	Notes
Appurtenant to: PID: 004-956-176 LOT 19 SECTION 9 TOWNSHIP 26 OSOYOOS DIVISION YALE DISTRICT PLAN 24322 Annexed over: PID: 001-957-155 LOT 12 SECTION 9 TOWNSHIP 26 OSOYOOS DIVISION YALE DISTRICT PLAN 24322	Easement	N41901	July 26, 1978	Over that area shown and labelled as "D" on Plan No. A10851

Improvements, Works, Machinery and Equipment:

Description	Unit	Quantity
Well (Well Tag No. 5095)	EA	1

Schedule G
Plan A10851

Status: Filed

Plan #: KAP106S1A App #: N/A Ctl #:

RCVD: 1998-02-19 RQST: 2019-08-23 14:44:08

