

SEWER SERVICES AGREEMENT

BETWEEN:

DISTRICT OF LAKE COUNTRY

AND:

CITY OF KELOWNA

Dated for Reference: April 17, 2023

Copy _____ of _____

SEWER SERVICES AGREEMENT

This agreement made effective as of the 1st of January, 2023.

BETWEEN:
City of Kelowna
1435 Water Street
Kelowna, British Columbia, Canada
V1Y 1J4

(“**Kelowna**”)

AND:

District of Lake Country
10150 Bottom Wood Lake Road,
Lake Country, British Columbia, V4V 2M1

(“**DLC**”)

(collectively, the “Parties”)

WHEREAS:

- A.** Kelowna’s Municipal Council has approved this Agreement.
- B.** DLC’s Municipal Council has approved this Agreement.
- C.** Kelowna has constructed sewerage-works for the collection and treatment of sewer waste from properties within its boundaries including lands within the Okanagan Indian Band (OKIB) and industrial lands in northern area of Kelowna. This system has surplus capacity to handle the flows contemplated in this Agreement.
- D.** The said Parties deem it to their mutual interest to enter into this Agreement.
- E.** The Services provided within this Agreement are in the spirit of cooperation outlined in the Memorandum of Understanding made as of January 25, 2022, between DLC, the OKIB and Kelowna. Through this Agreement, DLC addresses interim wastewater disposal needs while determining and implementing a longer-term strategy for its wastewater management.

THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein contained the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1.0 DEFINITIONS

1.1 In this Agreement, the following terms shall have the following meanings ascribed to them:

“**Agreement**” means this agreement, including the recitals and schedules hereto, as may be amended and supplemented from time to time in writing.

“**Effective Date**” means January 1, 2023;

“**DLC Sewer System**” means the system of sanitary sewer mains, collection laterals and treatment facilities constructed by DLC for the purpose of collection, conveyance and treatment of sanitary waste from DLC.

“**Lake Country Wastewater Treatment Facility**” means the treatment facilities constructed by DLC for the purpose of treatment of sanitary waste from DLC Sewer System and production of wastewater effluent.

“**MOU**” means the Memorandum of Understanding made as of January 25, 2022, between DLC, OKIB and Kelowna.

“**Municipal Sewer System**” means Kelowna’s system of sanitary sewer mains and sewage treatment facilities.

“**Municipal Specifications**” means the engineering and design standards in accordance with the Kelowna Subdivision, Development and Servicing Bylaw No. 7900, as amended or replaced from time to time.

“**OKIB**” means the Okanagan Indian Band, which is a reserve within the meaning of the *Indian Act*, R.S.C. 1985, c. 1-5.

“**Party**” means a party to this Agreement.

“**Point of Connection**” means the point where the Lake Country Wastewater Treatment Facility is connected to the Municipal Sewer System, as shown highlighted in yellow on the map of the Beaver Lake Service Area attached as Schedule A.

“**Service(s)**” means the municipal services provided by Kelowna that are described in section 4.1.

“**Term**” means a period of time which this Agreement remains in force and effect, as described in section 3.0.

2.0 INTERPRETATION

2.1 The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

2.1.1 Schedule A – Map of Beaver Lake Service Area

- 2.2 Any act or enactment referred to herein is a reference to an enactment of the Province of British Columbia and regulations thereto, as amended, revised, consolidated or replaced from time to time, and any bylaw referred to herein (as may be cited by short title or otherwise) is a reference to an enactment of the municipal council of DLC or the municipal council of Kelowna (as the case may require), as amended, revised, consolidated or replaced from time to time.

3.0 EFFECTIVE DATE / TERM

- 3.1 Subject to earlier termination under sections 3.2 or 10.0 below, the term of this Agreement shall be for a period of ten (10) years commencing on the Effective Date.

- 3.2 This Agreement may be terminated by either Party, at their sole discretion, by delivering a written notice thirty-six (36) months prior to the termination.

- 3.3 If at the end of the Term DLC wishes to continue the Services, DLC may, not later than twenty-four (24) months prior to the expiration of the Term, give Kelowna a written notice of DLC's intention to enter into a new sewer services agreement. Upon receipt of such a written notice, DLC and Kelowna agree that they will meet and communicate with one another in good faith in an attempt to negotiate a new agreement for a renewal term on terms and conditions that may be mutually agreeable. If a new agreement for a renewal term is not negotiated and entered into by the date that is twelve (12) months prior to the expiry of the Term, then there shall be no renewal. The new sewer services agreement shall provide that DLC will pay Kelowna a fee for Services and any other fees, as applicable.

- 3.4 The Parties agree and acknowledge that if:

3.4.1 the conveyance of DLC's wastewater effluent through the Point of Connection to the Municipal Sewer System in accordance with this Agreement has not actually commenced by the date that is two (2) years from the Effective Date; or

3.4.2 any of the "Proposed Specific Agreements" identified in section 3 of the MOU is not ratified and entered into by the date that is two (2) years from the Effective Date, unless the Parties have otherwise by then mutually agreed to waive the requirement for any such Proposed Specific Agreement(s) to be entered into,

then this Agreement may be terminated by either Party, at their sole discretion, by delivering at least one (1) year's written notice to the other Party.

4.0 SERVICES

- 4.1 During the Term, Kelowna, through the Municipal Sewer System, will provide the conveyance, treatment and disposal of wastewater effluent discharged from the DLC Wastewater Treatment Facility. DLC may discharge up to a peak flow rate of fifteen (15) litres per second of discharge.

- 4.2 Any required extension of or connection to Services on or within Kelowna will become the property of Kelowna upon certification of the completion of such works to the satisfaction of Kelowna.
- 4.3 The quality and quantity of the Services to be provided under this Agreement will be substantially the same as the quality and quantity of services provided by Kelowna to their utility customers. Kelowna is not obligated to provide Services at a greater level or degree than the level or degree to which the same Service is provided elsewhere within Kelowna. Kelowna makes no representation or warranty that the level or degree of Services provided under this Agreement will be maintained or continued to any particular standard, other than as stated expressly herein. DLC acknowledges and agrees that there may be from time-to-time interruptions or reductions in the level of Service, and that Kelowna will not be held liable for any losses, costs, damages, claims or expenses arising from or in connection with a temporary interruption or reduction in the level of Services provided under this Agreement.
- 4.4 At all times the wastewater effluent from the DLC Sewer System shall be treated by and discharged from DLC Wastewater Treatment Facility and be consistent in quality to that permitted to be ground discharged under DLC's operational certificate and discharge permits.
- 4.5 DLC will comply with all Kelowna regulations and bylaws and other statutes relating to the subject matter of this Agreement as may be applicable from time to time.

5.0 PAYMENT FOR SERVICES

- 5.1 DLC will pay Kelowna for the Services as follows:
 - 5.1.1 Kelowna will determine a Service fee for DLC in accordance with the Kelowna Sewerage System User Bylaw, 1972, No. 3480, as amended or replaced from time to time.
 - 5.1.2 DLC will pay Kelowna for the Services based on monthly or bi-monthly invoices provided by Kelowna.
 - 5.1.3 DLC shall pay the full amount of the invoice within thirty (30) days of the date of the invoice. Interest shall accrue on amounts overdue at the rates found in the City of Kelowna *Utility Billing Customer Care Bylaw No. 8754*, as amended or replaced from time to time.
- 5.2 Kelowna agrees that the Service fee payable by DLC will be fair and reasonable and derived with reference to Kelowna's cost of providing the Services in accordance with this Agreement and in a rate setting process that will be open and transparent.
- 5.3 DLC will pay for the installation of a sewer meter to be owned and operated by Kelowna. The sewer meter will be used to measure wastewater effluent flows from the Lake Country Wastewater Treatment Facility into the Municipal Sewer System and the measurements used for billing purposes. Kelowna will be responsible for meter reading, maintenance and renewal upon acceptance.

5.4 Kelowna will not apply any capital improvement cost charges issued for the Services during the initial Term of this Agreement.

5.5 DLC will be responsible for all infrastructure and land costs necessary within the municipal boundaries of the District of Lake Country to the Point of Connection to connect to the Municipal Sewer System.

6.0 DESIGN AND CONSTRUCTION OF RELEVANT INFRASTRUCTURE WITHIN KELOWNA

6.1 Because Kelowna has not paid growth costs for water capacity in the past, Kelowna will be responsible for the design and construction of all sewer system infrastructure and land costs necessary within the boundaries of Kelowna to the Point of Connection.

6.2 Kelowna and DLC will phase in increased flows up to the allowable maximum over time to allow Kelowna to phase in any sewer system improvements needed to accommodate those increasing flows. Kelowna agrees to complete these improvements, to allow for the maximum volume, by December 31, 2024.

7.0 OWNERSHIP OF DLC SEWER SYSTEMS

7.1 DLC shall at all times retain ownership of their infrastructure.

7.2 Except with the prior written consent of DLC, Kelowna will not utilize the DLC Sewer System, including Lake Country Wastewater Treatment Facility, or establish any connection thereto, except for the purpose of providing Services under this Agreement.

7.3 Kelowna will not be responsible for administration, operation, maintenance or renewal requirements of the DLC Sewer System, including the Lake Country Wastewater Treatment Facility.

8.0 REPAIRS AND MAINTENANCE

8.1 Kelowna will be responsible for all operation and maintenance of the Municipal Sewer System up to the Point of Connection. Kelowna will notify DLC should any stoppages of Service occur due to maintenance or short-term system failure.

8.2 DLC will promptly (within 48 hours) notify Kelowna of any breakdown in the DLC Sewer System or Lake Country Wastewater Treatment Facility that requires any repair or maintenance work that may affect DLC wastewater effluent quality or quantity received by Kelowna under this Agreement.

9.0 RIGHTS OF ACCESS

9.1 Representatives of Kelowna may at any time enter upon DLC property for the purpose of providing any of the Services required in accordance with this Agreement and ensuring compliance with the terms of this Agreement.

10.0 TERMINATION FOR BREACH OF AGREEMENT

- 10.1 If, at any time during the term of this Agreement, invoices remain unpaid by DLC as at the date that is one (1) year after the date of the invoice, Kelowna shall have the right, without prejudice to any other right or remedy, to terminate this Agreement, after giving DLC six (6) months written notice.
- 10.2 Should either Party be in breach of its covenants or undertakings under this Agreement, other than a failure by DLC to pay for Services, which remains unrectified for a period of one (1) year following written notification of such breach, the Party not in breach may, at its option and without prejudice to any other rights or remedies it might have, terminate this Agreement after providing one (1) year's written notice to the party in breach.

11.0 LIABILITY

- 11.1 Kelowna does not warrant or guarantee the continuance or quality of any of the services provided under this Agreement and shall not be liable for any damages, expenses, or losses occurring by reason of suspension or discontinuance of the Services for any reason which is beyond the reasonable control of Kelowna, including without limitation acts of God, forces of nature, soil erosion, landslides, lightning, washouts, floods, storms, serious accidental damage, strikes or lockouts, vandalism, negligence in the design and supervision or construction of the reserve systems, or in the manufacture of any materials used therein, and other similar circumstances.

12.0 COMMUNICATIONS AND CONTRACT PROTOCOL

- 12.1 All the Parties to this agreement will appoint one or more representatives, with notice to the other Parties of such appointments as the principal contacts for official communications about this Agreement, and as the principal contacts for operational matters pursuant to this Agreement. The Parties further agree to establish a communications protocol to manage issues arising under this Agreement.

13.0 DISPUTE RESOLUTION

- 13.1 In the interest of cooperative and harmonious co-existence, the Parties agree to use their best efforts to avoid conflict and to settle any disputes arising from or in relation to this Agreement.
- 13.2 In the event that the Parties fail to resolve matters, the Parties shall seek a settlement of the dispute by utilizing the dispute resolution procedures set out in subsection 13.3 below, and recourse to the Courts shall be a means of last resort, except when public health or safety is concerned.
- 13.3 In the event of any unresolved dispute between the Parties arising from or in relation to this Agreement, the dispute shall be determined by the award of a single arbitrator appointed pursuant to the provisions of the British Columbia Arbitration Act (the "Act"). The award of the arbitrator shall be made pursuant to the provisions

of the Act and the decision shall be final and binding upon the parties. Unless otherwise agreed, the arbitration shall take place at Kelowna, British Columbia.

14.0 HEADINGS

14.1 Headings that precede sections are provided for the convenience of the reader only and shall not be used in constructing or interpreting the terms of this Agreement.

15.0 ENTIRE AGREEMENT

15.1 This Agreement and schedules attached to this Agreement constitute the entire Agreement between the Parties and there are no undertakings, representations or promises express or implied, other than those expressly set out in this Agreement.

15.2 This Agreement supersedes, merges, and cancels any and all pre-existing agreements and understandings in the course of negotiations between the Parties.

16.0 NOTICE

16.1 The address for delivery of any notice or other written communication required or permitted to be given in accordance with this Agreement, including any notice advising the other Party of any change of address, shall be as follows:

(a) to Kelowna:

City of Kelowna
1435 Water Street
Kelowna, British Columbia, Canada
V1Y 1J4

Attention: City Clerk

(b) to DLC:

District of Lake Country
10150 Bottom Wood Lake Road,
Lake Country, British Columbia, Canada
V4V 2M1

Attention: Director of Corporate Services

16.2 Any notice mailed shall be deemed to have been received on the fifth (5th) business day following the date of mailing. If the notice is faxed or emailed it will be deemed to have been received on the first (1st) business day following the date of transmission. For the purposes this section, the term "business day" shall mean Monday to Friday, inclusive of each week, excluding days which are statutory holidays in the Province of British Columbia.

16.3 The Parties may change their address for delivery of any notice or other written communication in accordance with section 16.1.

17.0 SEVERANCE

- 17.1 In the event that any provision of the Agreement should be found to be invalid, the provision shall be severed and the Agreement read without reference to that provision.
- 17.2 Where any provision of the Agreement has been severed in accordance with section 17.1 and that severance materially affects the implementation of this Agreement, the parties agree to meet to resolve any issues as may arise as a result of that severance and to amend this Agreement accordingly.

18.0 AMENDMENT

- 18.1 The Agreement shall not be varied or amended except by written agreement of both Parties.
- 18.2 No waiver of the terms, conditions, warranties, covenants, and agreements set out herein shall be of any force and effect unless the same is reduced to writing and executed by all parties hereto and no waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar) and no waiver will constitute a continuing waiver unless otherwise expressly provided.

19.0 GOVERNING LAWS

- 19.1 The provisions of this Agreement will be governed and interpreted in accordance with the laws of British Columbia or Canada, as applicable.

20.0 ASSIGNMENT

- 20.1 The rights and obligations of the Parties may not be assigned or otherwise transferred. An amalgamation by a Party does not constitute an assignment.

21.0 ENUREMENT

- 21.1 The Agreement enures to the benefit and is binding upon the Parties and their respective heirs, executors, administrators and successors.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

On behalf of the **CITY OF KELOWNA**

Mayor Thomas Dyas

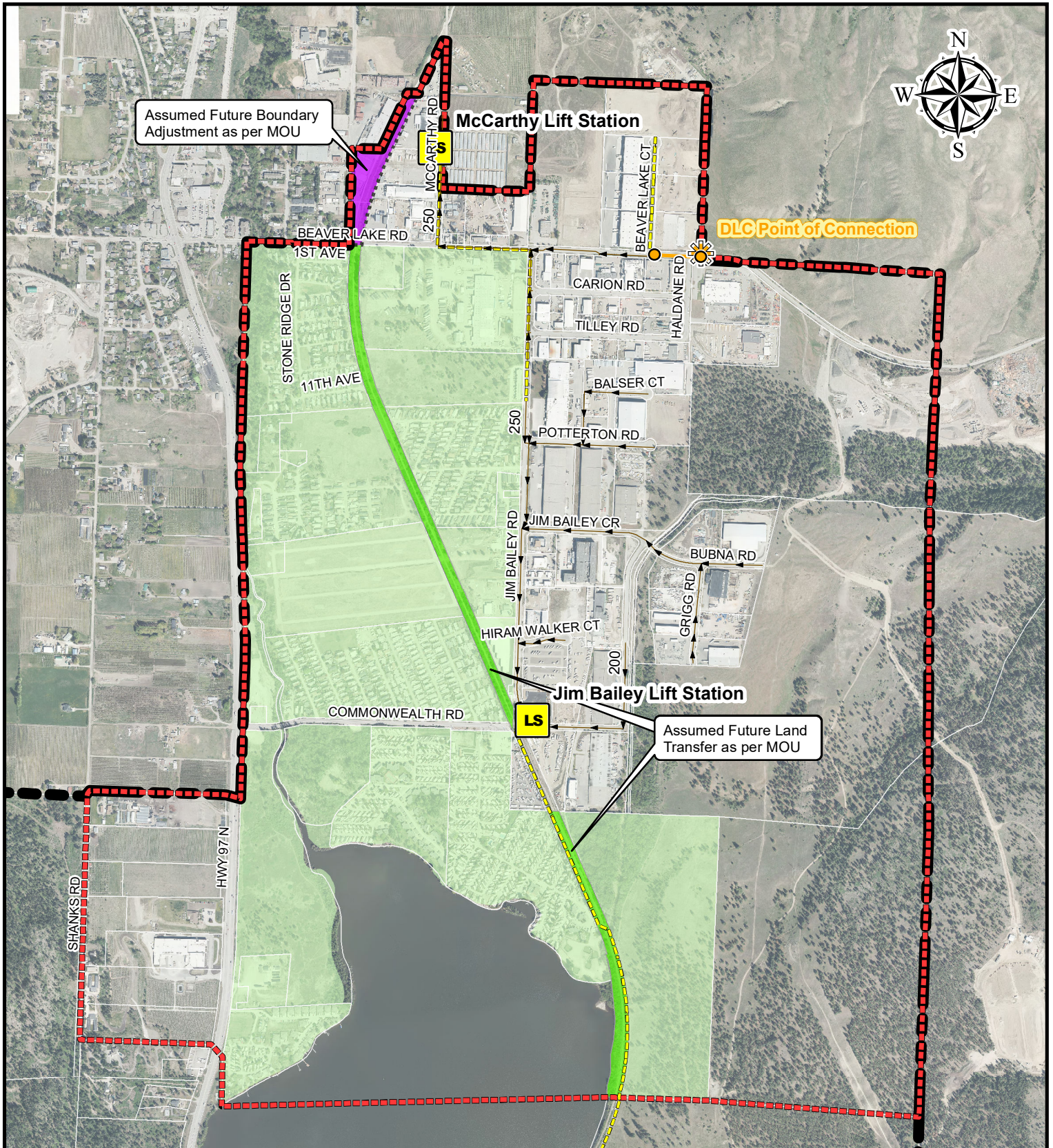
City Clerk – Stephen Fleming

On behalf of the **DISTRICT OF LAKE COUNTRY**

Mayor Blair Ireland

Director of Corporate Services – Matt Vader

SCHEDULE "A" – Map of Beaver Lake Service Area



Beaver Lake Service Area (BLSA) - Waste Water

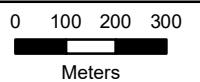
Legend

- DLC Point of Connection
- Sanitary Lift Station
- New MH

- New Sewer
- Fortcmain
- Gravity Sewer
- Lot Lines

- BLSA Boundary
- IR # 7
- City Boundary

- Assumed Future Boundary Adjustment as per MOU
- Assumed Future Land Transfer as per MOU



January 2023