

SEWER SERVICE CONTRIBUTION AGREEMENT

THIS AGREEMENT dated for reference the __ day of _____, 2016.

BETWEEN:

THE CITY OF KELOWNA

1435 Water St.
Kelowna, BC V1Y 1J4

(the "City")

AND:

ECOTEX HEALTHCARE LINEN SERVICE INC.

Incorporation No. BC0631069
1600 925 W Georgia St.
Vancouver, BC V6C 3L2

(the "Developer")

WHEREAS:

- A. The Developer is the registered owner of those lands in the City of Kelowna legally described as Lot 1, Section 1, Township 20 and District Lot 118, Osoyoos Division Yale District, Plan KAP54110 (the "Lands");
- B. The Developer is proposing to develop a regional industrial laundry service (the "Development") on the Lands;
- C. The Developer has the option of meeting its sanitary sewer service requirements by connecting to the City's sanitary sewer system or providing onsite wastewater treatment and disposal. The Developer has opted to connect to the City's sanitary sewer system;
- D. The Lands and the Development are within the North End Industrial Sewer Service Connection Area #32 under Sewer Connection Charge Bylaw No. 8469 as amended (the "Connection Area");

- E. The Development will generate waste water flows estimated to require a discharge capacity of 3 litres/second to the City's sanitary sewer system;
- F. The calculated discharge flow for a property the size of the Lands in accordance with Bylaw No. 8469 is 1.62 litres/second. Accommodating the Development's anticipated waste water flow within the existing Bylaw 8469 works will leave the City unable to provide sanitary sewer service to other properties within the Connection Area.
- G. Connecting the Development to the existing trunk sewer at the connection point on Jim Bailey Road, at a point south of Tilley Road (the "Connection Point"), requires a 6-inch force main connection, which is a larger diameter than the standard required by reference to the City's Subdivision, Development and Servicing Bylaw No. 7900 ("Bylaw 7900").
- H. The Developer has agreed to construct the forcemain, gravity main and pumpstation to provide the connection to the Connection Point and with a design that will accommodate the anticipated waste water flows within the Connection Area.
- I. As a temporary measure, upgrades are required to the City's existing Highway and Airport lift stations to accommodate the additional waste flows from the Development (the "Temporary Upgrades").
- J. The Developer has agreed to waive any entitlement to latecomer recovery under section 508 of the *Local Government Act*, RS 2015, c. 1 and to accept instead the City's contribution towards construction of the various sanitary sewer works set out in this Agreement.
- K. Recognizing that the gravity main portion of the Works (as defined below) is not required to service the Development, but that it is convenient to construct and install the gravity main in a common trench with the forcemain that is required to service the Development, the City will pay for the gravity main construction as provided below.

NOW THEREFORE in consideration of the mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both parties, the Developer covenants and agrees with the City as follows:

1. **Developer Construction** - The Developer agrees to construct the forcemain, gravity main, pumpstation and ancillary works (the "Works") in conformance with the WSP set of Design and Construction drawings "Issued for Construction – 9750 McCarthy Road LS Forcemain" with engineers stamp dated 26 August 2016 and Issued for Construction drawings – 9750 McCarthy Road Lift Station" with engineers stamp dated 9 September

2016 and in accordance with the design standards for sanitary sewer system works set out in Schedule 4, part 2 of Bylaw 7900.

2. **Bylaw 7900 Requirements Incorporated** - The Developer agrees that upon the Works being completed to Substantial Performance, as defined by Bylaw 7900, it will provide to the City, following verification of Substantial Performance by the City, the Certificate of Substantial Performance, Maintenance Bond, Statutory Declaration and drawings required to satisfy the requirements of section 9.5 of Bylaw 7900.
3. **Vesting of Works** - The Developer agrees and acknowledges that upon connection of the Works to the City's sanitary sewer system, the Works will vest in and become the property of the City.
4. **Total Performance** - The Developer agrees that the requirements of section 10 of Bylaw 7900 apply and that it must achieve Total Performance of the Works, undertake any repairs to the Works during the one-year Maintenance Period and provide all documentation necessary for the City to issue a Certificate of Acceptance.
5. **Grant of Charge over Works** - To the extent that any of the Works are not situated within existing dedicated roads, the Developer will grant a charge, executed in registrable form, over the land on which the Works are located in favour of the City in a form required by the City in priority to all charges and encumbrances.
6. **Performance Security** - The Developer has entered into an agreement with the City for the provision of performance security in the form attached as Schedule A, with security provided in the amount set out in Appendix A thereof.
7. **City Payment – Gravity Main** - Within 30 days of achieving Substantial Performance (as defined by Bylaw 7900), the City will make payment to the Developer in the amount of \$335,021.00 (inclusive of engineering and GST) for the construction and installation of the gravity main portion of the Works.
8. **City Payment – Increased Capacity** - Within 30 days of achieving Substantial Performance (as defined by Bylaw 7900) in respect of the forcemain and pumping station portions of the Works, the City will make payment to the Developer in the amount of \$31,399.00 (inclusive of GST), representing the additional cost of increasing the capacity of the forcemain to 6 inch diameter.
9. **Developer Payment – Increased Connection Fee** - The Developer agrees to pay the City \$67,407.00 as the amount required as the connection fee under Bylaw No. 8469

multiplied by 1.85, representing the factor by which the Developer's capacity requirements exceed the capacity available in the sanitary sewer works constructed pursuant to Bylaw No. 8469.

10. **Set Off** - The amount payable by the Developer to the City under section 9 is to be set off against the amount payable by the City under sections 7 and 8.
11. **Temporary Upgrades** – The Developer will supply and install, at its cost, the equipment components of the Temporary Upgrades. The City will be available during the installation, and commissioning of the Temporary Upgrades equipment and the Developer will reimburse the City for its time. Both the City and Developer acknowledge the need to coordinate their activities and availability.
12. **Temporary Upgrades Security** - As security for its obligation to reimburse the City for the installation cost associated with the Temporary Upgrades, the City may withhold from the payment(s) to the Developer under section 7 herein, an amount equal to 125% of the City's estimate of the installation costs.
13. **No Effect on Powers** – This agreement does not:
 - (a) affect or limit the discretion, rights, duties or powers of the City under the common law or any statute, regulation, bylaw or other enactment, nor does it create, or is the parties' intention to create, any implied obligations regarding such discretion, rights, duties or powers;
 - (b) affect or limit the common law or any statute, regulation, bylaw or other enactment applying to the Lands; or
 - (c) relieve the Developer from complying with the common law or any statute, regulation, bylaw or other enactment;
14. **Ownership and Regulation of the Works** – The City will be the sole owner of the Works and the Developer, through its contributions under this Agreement or otherwise, does not acquire any interest in or rights to the Works. The use of the Works will be regulated by the City in accordance with its ordinary jurisdiction over its works and services. Nothing in this agreement entitles the Developer or any person claiming through the Developer to any extraordinary right to use the Works.
15. **No Representations** – The Developer acknowledges that the City has made no representations, covenants, warranties, guarantees, promises or agreements to or with the Developer with respect to the subject matter of this agreement, other than those set out in this agreement, if any.

16. **Notices** – Any notice which may be or is required to be given under this agreement will be in writing and either be delivered or sent by fax, addressed as follows:

(a) To the Developer
Post Office Box 8000-351
2448 Townline Road, Abbotsford,
British Columbia V2S 6H1

Attention: Bryan Bartsch
Fax No.: (604) 850-0391

(b) To the City:
City of Kelowna
1435 Water Street
Kelowna BC V1Y 1J4
Attention: City Clerk
Fax No.: (250) 862-3315

or to such other address or fax number of which notice has been given as provided in this section. Any notice that is delivered or faxed is to be considered given on the day it is delivered or faxed, except that if that day is not a business day, the notice will be considered given on the next business day. If a party changes its address or fax number, or both, it will promptly give notice of its new address or fax number to the other party as provided in this section. A business day is a day other than a Saturday, Sunday or B.C. statutory holiday.

17. **Interpretation** – In this agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this agreement;
- (c) 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;

- (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
 - (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
 - (f) the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply; and
 - (g) 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”.
18. **Time of the Essence** – Time is of the essence of this agreement.
19. **Waiver** – Waiver of any default by either party will not be deemed to be a waiver of any subsequent default by that party.
20. **Severance** – If any part of this agreement is for any reason held to be invalid by a decision of a court with the jurisdiction to do so, the invalid portion is to be severed and the rest of this agreement will remain valid and in effect.
21. **Schedules** – The following Schedules are attached to this agreement, and such Schedules and all documents referenced therein, form integral parts of this agreement:
- Schedule A – Development Servicing Agreement
22. **Governing Law** – This agreement will be governed by and construed in accordance with the laws of the Province of British Columbia which are deemed to be the proper law thereof.
23. **Enurement** – This agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
24. **Acknowledgment** – The Developer acknowledges having read and fully understood all the terms and conditions of this agreement and confirms that it has entered into this agreement voluntarily and has had a reasonable opportunity to seek legal advice with respect to this agreement.

IN WITNESS OF WHICH the parties have set their hands and seals as of the day and year first above written.

Authorized signatories of **THE CITY OF KELOWNA:**)

Mayor)

Clerk)

) C/S

The Corporate Seal of **ECOTEX** was hereunto affixed in the presence of:)



Authorized Signatory)



Authorized Signatory)

) C/S