**CITY OF COQUITLAM**

**LATECOMER AGREEMENT**

<<PROJECT NUMBER>>

THIS AGREEMENT dated for reference the \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_.

BETWEEN:

**CITY OF COQUITLAM**, at 3000 Guildford Way,

City of Coquitlam, British Columbia, V3B 7N2

(the "City")

OF THE FIRST PART

AND:

(the "Developer")

OF THE SECOND PART

**WHEREAS:**

1. The City pursuant to s. 939 of the *Local Government Act*, R.S.B.C. 1996, c 323, as amended, acknowledges that the Developer has provided certain excess or extended services that benefit other lands.

B. The parties are entering into this Agreement regarding the Developer’s construction of <<WORKS>> that will benefit other lands.

1. The City will impose, as a condition on an owner of benefiting lands connecting to or using the excess or extended service a charge.
2. The City will collect the charge and reimburse the Developer in accordance with this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the sum of TEN ($l0.00) DOLLARS of lawful money of Canada and other good and valuable consideration now paid by each of the parties hereto, to each of the other parties hereto, the receipt whereof is hereby acknowledged, the parties hereto hereby covenant, promise and agree with each other as follows:

**1. DEFINITIONS**

In this Agreement and in the recital above:

*"Act"* means the *Local Government Act*, R.S.B.C. 1996, c. 323, as amended or replaced;

"Agreement" means this Agreement and all schedules attached hereto;

“Benefiting Frontage” means the amounts set out in Schedule “B” and entitled Benefiting Frontage;

**1. DEFINITIONS** cont’d/

"Benefiting Lands" means the real property described in column two and entitled "Legal Description" in Schedule "C" provided that the owner connects to and uses the Works;

"City" means the City of Coquitlam;

"Completion Date" means <<COMPLETION DATE>>

"Council" means the elected Council of the City;

"Developer" means the Developer as defined on the first page of this Agreement;

"General Manager" means the General Manager, Planning and Development, appointed by Council and includes an employee or an officer provided with the written authority to act on their behalf;

“Interest” means interest accruing on the Latecomer Charge at the rate set by Fees and Charges Bylaw No. 4425, 2013 as amnded, and compounded annually from the Completion Date to the date that the owner of the Benefiting Lands connects to or uses the Works. The annual rate of interest for this Agreement is \_\_\_\_\_ %;

“Latecomer Charge” means the sum specified in the final column of Schedule “C” and entitled Latecomer Charge;

“Latecomer Rate” means the Total Latecomer Costs set out in Schedule “B” divided by the Total Benefiting Frontage more specifically <<LATECOMER RATE>> for each meter;

“Letter of Completion” means a letter signed by the General Manager upon receipt of a letter from the Professional Engineer certifying that the Works have been completed in accordance with the servicing performance agreement;

“Professional Engineer” means a professional engineer who is currently and validly registered and licensed under the *Engineers and Geoscientists Act*, R.S.B.C. 1996, c.116, as amended, including any regulations, as amended;

"Subdivision and Development Servicing Bylaw" means Coquitlam Subdivision and Servicing Development Bylaw No. 3558, 2003, enacted by the City under the *Act* as such bylaw is amended or replaced from time to time;

"Term" means the period of time commencing on the Completion Date and expiring fifteen (15) years later on <<EXPIRY DATE>>;

“Total Benefiting Frontage” means the sum of all Benefiting Frontages set out in Schedule “B”, of this Agreement and means <<TOTAL BENEFITING FRONTAGE>> meters;

"Total Latecomer Cost" means actual costs incurred by the Developer to construct the excess or extended Works in the amount of <<TOTAL LATECOMER COST>> Canadian dollars including all taxes as set out in Schedule “B”;

“Works” means <<WORKS>> and related appurtenances substantially as shown in Schedule “A” and more particularly described in the servicing performance agreement.

**2. SCHEDULES**

The attached Schedules form part of this Agreement:

Schedule ‘A’ Latecomer Graphic;

Schedule ‘B’ Latecomer Rate Calculation; and,

Schedule ‘C’ Latecomer Summary Table.

The Developer agrees that he has retained the Professional Engineer who has prepared Schedules “A”, “B” and “C”. The Professional Engineer has certified that the Schedules as attached are correct and have been provided to the City on the understanding that they will be relied upon by the City and that the City has no obligation to verify, investigate or confirm their accuracy or completeness. In the event of any conflict or inconsistency between Schedules “A”, “B” and “C”, Schedule “C” shall supersede Schedules “A” and “B”.

**3**. **WORKS**

3.1 The Developer covenants and agrees to construct the Works in accordance with servicing performance agreement <<PROJECT FILE>>.

3.2 The Developer covenants and agrees to obtain a Letter of Completion prior to the execution of this Agreement.

**4**. **PAYMENT FOR WORKS**

4.1 The City is not responsible for financing any of the costs of the Works.

4.2 The owner of the Benefitting Lands must pay the Latecomer Charge plus Interest. The Latecomer Charge has been calculated by multiplying the Latecomer Rate by the Benefiting Frontage.

4.3 If, during the term of this Agreement, the owner does not connect to or use the Works, as determined by the City, then the Latecomer Charge for that Benefiting Land will not be collected despite the fact that it is listed as a Benefiting Land in Schedule “C”. In this circumstance the Total Frontage and the Latecomer Rate will not be changed notwithstanding the owner of the Benefiting Land is not paying the Latecomer Charge to the City.

4.4 In consideration of the completion of the Works by the Developer the General Manager, without incurring any cost to the City, agrees to collect the applicable Latecomer Charge plus Interest from the owner of the Benefitting Lands who connects to or uses the Works.

4.5 To the extent that the City has received a Latecomer Charge plus Interest from the owner of the Benefitting Lands, the City must remit the Latecomer Charge plus Interest actually received annually up to a maximum of the Total Latecomer Cost plus Interest. The City does not have any further obligation to the Developer to make any payment pursuant to this Agreement.

4.6 If the said payments are returned to the City unclaimed by the Developer and if the City is unable to locate the Developer after all reasonable efforts, then the City must hold all monies collected until the expiry of this Agreement. After the expiry of this Agreement, the City is entitled to retain all such unclaimed funds forever.

4.7 In the event of the assignment or transfer of the rights of the Developer voluntarily, or by operation of law, the City must pay any benefits accruing hereunder, after notice, to such successor of the Developer as the City, in its’ judgment deems entitled to such benefits; and in the event of conflicting demands being made upon the City for benefits accruing under this Agreement, then the City may at its option commence an action in interpleader joining any party providing notice to the City of its rights under this Agreement, or other parties which the City believes to be necessary or proper, and the City must be discharged from further liability upon paying into court an amount the court having jurisdiction of such interpleader action shall determine, and in such action the City must 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.

**5.** **TERM**

5.1 The Developer agrees that if insufficient funds are paid by the owners of the Benefitting Lands within the Term of this Agreement, that it is at its risk and at the expiry of the Term no further monies are payable by the City to the Developer pursuant to this Agreement.

5.2 This Agreement will terminate prior to the expiry of the Term in the event the Developer has been paid the Total Latecomer Cost plus Interest.

**6.** **INDEMNITY**

In consideration of Ten Dollars ($10.00) and other good and valuable consideration paid by the City to the Developer (the receipt and sufficiency of which is hereby acknowledged), the Developer jointly and severally agrees to indemnify and save harmless the City, its employees, elected officials, contractors and agents against all actions, causes of action, suits, claims and demands whatsoever which may arise either directly or indirectly whether known or unknown, suspected or unsuspected by reason of the City and the Developer entering into this Agreement, and including without limitation the Developer agrees that if insufficient funds are paid by the owner of the Benefiting Land within the Term of this Agreement, that it is at the Developer’s risk and at the expiry of the Term no further monies are payable to the Developer pursuant to this Agreement. This indemnity will survive the expiry of the Term of this Agreement.

**7.** **CITY'S COSTS**

The Developer shall pay to the City, by cash or bank draft, prior to the City executing this Agreement, a latecomer administration fee as set out in the City’s Fees and Charges Bylaw No. 4425, 2013, as amended.

**8.** **NOTICES**

8.1 Any notice, demand, acceptance or request required to be given hereunder by any party in writing shall be deemed to be given if either personally delivered or mailed postage prepaid at any time other than during a general discontinuance of postal services due to a strike, lockout or otherwise.

8.2 To the Developer as follows:

To the address as shown on page 1 of this Agreement or such change of address as the Developer has, by written notification, forward to the City.

8.3 To the City as follows:

City of Coquitlam

Planning and Development

3000 Guildford Way

Coquitlam BC V3B 7N2

Attention: General Manager, Planning and Development

cc: City Solicitor

or such change of address as the City has, by written notification, forwarded to the Developer.

8.4 Any notice shall be deemed to have been given to and received by the party to which it is addressed:

(a) if delivered, on the date of delivery; or

(b) if mailed, then on the fifth (5th) day after the mailing thereof.

**9. ASSIGNMENT**

The Developer must not assign or transfer its interest in this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld.

**10. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties hereof and supersedes any prior agreements, undertakings, declarations or representations, written or verbal, in respect thereof. It is agreed between the parties that this Agreement must be enforceable by and against the parties, and their successors and assigns.

The Parties agree that the determination, collection and payment of Latecomer Charges shall be in accordance with City “Excess/Extended Services (Latecomer Charges) Policy”. In the event of any conflict between the Policy and this Agreement, the provisions of the Policy shall prevail.

**11.** **LAWS OF BRITISH COLUMBIA**

This Agreement shall be interpreted under and is governed by the applicable laws of Canada and the Province of British Columbia.

**12. JOINT AND SEVERAL**

The obligations, agreements and promises of the Developer in this Agreement are joint and several.

**13. Interpretation**

13.1 Whenever the singular or masculine is used in this Agreement, the same is deemed to include the plural or the feminine or the body politic or corporate as the context so requires.

* 1. Every reference to a party is deemed to include the successors and assigns of such party wherever the context so requires or allows.

13.3 The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.

**14. Enurement.** This Agreement will enure to the benefit of and be binding on the parties and their respective successors and assigns notwithstanding any rule of law or equity to the contrary.

1. **Severability**. The provisions hereof are severable and if any of them is found to be void or unenforceable at law, the remaining provisions hereof will not be affected.
2. **Further Assurances**. The parties will do and cause to be done all things and execute or cause to be executed all documents and give such further assurances which may be necessary to give proper effect to the intent of this Agreement.

The Developer covenants and agrees that there are no financial agreements or arrangements by which owners of the Benefiting Lands have contributed or will be contributing to the cost of the Excess or Extended Services which are the subject of this Agreement. In the event that any such arrangements are confirmed, this Agreement shall become null and void and any payments collected by the City may be returned to the parties having paid the charges.

IN WITNESS WHEREOF this Agreement has been executed as of the day and year first above written.

CITY OF COQUITLAM

by its authorized signatory

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

General Manager, Planning and Development

The Developer, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

by its authorized signatory(ies):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Developer

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of the Director (please print)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Witness ) Signature of Developer

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) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Witness (please print) ) Name of Witness (please print)

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)

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Address )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

Occupation )

**SCHEDULE “A”**

**LATECOMER GRAPHIC**

**SCHEDULE “B”**

**LATECOMER RATE CALCULATION**

**SCHEDULE “C”**

**LATECOMER SUMMARY TABLE**