
District of Lantzville

INFORMATION REPORT TO COUNCIL

Regular Council Agenda Item

April 25, 2016

File: 2280.20.9

Q:\DISTRICT OF LANTZVILLE\Reports to Council\2016\Water Agreement Amendments Apr 25 2016.docx

AUTHOR: Brad McRae, Chief Administrative Officer

SUBJECT: Lantzville/Nanaimo Water Agreement proposed amendments

RECOMMENDATION

THAT Council receives the April 25, 2016 Lantzville/Nanaimo Water Agreement proposed amendments report for information purposes only.

ALTERNATIVES

None.

ATTACHMENT(S)

1. Letter to Nanaimo City Council from Lantzville District Council requesting review of proposed amendments dated April 11, 2016 with:
 - Enclosure 1 – Lantzville/Nanaimo Water Agreement signed September 8, 2014; and
 - Enclosure 2 – Proposed Amendments

PURPOSE

The purpose of this report is to provide the public with an explanation as to the proposed amendments to the current Lantzville/Nanaimo Water Agreement.

BACKGROUND

On September 8, 2014, the Lantzville/Nanaimo Water Agreement was signed. The intention of the Agreement was to supply water from Nanaimo to Lantzville. In September 2015, staff raised some concerns after reviewing the document, specifically:

1. The Agreement was specific to Upper Lantzville and “new development”;
2. The Agreement was not clear on the legal parameters of contributing to Nanaimo capital, and triggers for a requirement to consult the public should the costs exceed the Provincial allowable limit;
3. The Agreement did not contemplate the ability to engage Snaw-Naw-As First Nations in discussions over distribution of water.

Staff reviewed the Agreement and provided recommendations to Council for the March 30, 2016 In-Camera meeting. Council agreed with the recommendations of staff and requested that the amendments to the Agreement be provided to City of Nanaimo Council for review and acceptance. As well, Council requested a report be prepared for the public to better articulate the reasons for the requested amendments.

DISCUSSION

Staff, along with legal counsel, reviewed the existing Agreement and came to similar conclusions – that the Agreement was unnecessarily restrictive, did not provide clarity as to when contributions to Nanaimo for infrastructure would cause Lantzville to consult the public, and the lack of building community relations with Snaw-Naw-As First Nations.

Restrictions

Staff reviewed the original wording of Section 6.6 and noted its reference to both “Upper Lantzville” and “new development”. Staff felt that due to the same issues facing residents in other areas of the community, and the existing configuration of the Lantzville system into an upper and lower pressure zones that are not reflective of an Upper and Lower Lantzville separation, that the Agreement was unnecessarily restrictive. To provide the same benefit for all residents to access water, staff presented the below noted wording to Council to remedy the matter. Amendments were required in Sections 6.6, 4.1 and 4.2 of the Agreement. Changes are identified in **bolded typeface**.

Section 6.6

(In amending section 6.6, amendments are then required in sections 4.1 and 4.2 of the Agreement)

(Current wording)

- 6.6 *“Despite anything in this Agreement, including without limitation, sections 2.2 and 5.1, until Nanaimo has notified Lantzville in writing that it has secured sufficient additional water supply, connections to the Water Main shall be limited to a total of four hundred and thirty-six (436) Premises **located within Upper Lantzville** referred to in sections 4.1 and 4.2 of this Agreement, plus connection of 50 Premises per year in **Upper Lantzville** as a result of new development. For certainty, if less than 50 Premises per year in **Upper Lantzville** are connected, the remaining Premises connection entitlement will accrue to be used by Lantzville in any future year during the Term or any Additional Term for connection at a time determined by Lantzville.”*

(Suggested wording)

- 6.6 *“Despite anything in this Agreement, including without limitation, sections 2.2 and 5.1, until Nanaimo has notified Lantzville in writing that it has secured sufficient additional water supply, connections to the Water Main shall be limited to a total of four hundred and thirty-six (436) Premises referred to in sections 4.1 and 4.2 of this Agreement, plus connection of 50 Premises per year for the remainder of this Agreement. If less than 50 Premises per year in Lantzville are connected, the remaining Premises connection entitlement will accrue to be used by Lantzville in any future year during the Term or any Additional Term for connection at a time determined by Lantzville”.*

a. Amendment recommendation to section 4.1:

(Current wording)

- 4.1 *Lantzville shall pay to Nanaimo, within thirty (30) days of connection of the Water Main to the portion of the Lantzville Water System **serving the Upper Lantzville Area**, a Connection Fee in the sum of one million three hundred and thirty thousand, two hundred and fifty-eight dollars and fifty cents (\$1,330,258.50) representing two hundred and twenty-five (225) Premises in **Upper Lantzville** currently connected to the Lantzville Water System”*

(Suggested wording)

- 4.1 *Lantzville shall pay to Nanaimo, within thirty (30) days of connection of the Water Main to the Lantzville Water System a Connection Fee in the sum of one million three hundred and thirty thousand, two hundred and fifty-eight dollars and fifty cents (\$1,330,258.50) representing two hundred and twenty-five (225) Premises"*

b. Amendment to section 4.2:

(Current wording)

- 4.2 *"Lantzville shall pay a Connection Fee for each new Connection of Premises to the Lantzville Water System in respect of any of the two hundred and eleven (211) additional Premises in Upper Lantzville served by wells and not currently connected to the Lantzville Water System, in accordance with section 4.6"*

(Suggested wording)

- 4.2 *"Lantzville shall pay a Connection Fee for each new Connection of Premises to the Lantzville Water System in respect of any of the two hundred and eleven (211) additional Premises served by wells and not currently connected to the Lantzville Water System, in accordance with section 4.6"*

Financial Contribution Clarity

In Staff's opinion, the recommended amendments to Section 14: Future Nanaimo Water System Costs were necessary to clearly explain when Lantzville could potentially be responsible for infrastructure costs, and that costs (should they exceed 5% of the annual revenue as defined by Provincial regulation) could be deferred. Staff has provided both the current wording and the proposed wording for review.

Section 14.0 and 14.1

(In order to amend section 14.0 and 14.1, a definition change will be required in Section 1.0: Definition)

(Current wording)

14.0 Future Nanaimo Water System Capital Costs

- 14.1 *To the extent costs of the design, construction, installation or enlargement of the Nanaimo Water System related to the supply of Water to Lantzville under this Agreement are not otherwise covered by the amounts otherwise paid to Nanaimo by Lantzville, Lantzville shall pay such costs to Nanaimo, within thirty (30) days of receiving an invoice from Nanaimo for such costs.*

(Suggested wording)

14.0 Future Nanaimo Water Service Surcharge (title change)

- 14.1 *In the event that the volume of water to be supplied to Lantzville under this Agreement creates demands upon the Nanaimo Water System such that an enlargement of the Nanaimo Water System is required, and if the expense of such is not otherwise covered in the amounts paid to Nanaimo by Lantzville, then Nanaimo may levy a Water Service Surcharge upon Lantzville in the amount equal to the proportionate amount of the expense incurred by Nanaimo relating to the design, construction, installation and enlargement of the Nanaimo Water System as is attributable to the continued supply to Lantzville of water under this Agreement and, upon such a Water Service Surcharge being levied by Nanaimo, Lantzville shall pay the Water Service Surcharge to Nanaimo within thirty (30) days.*

NEW 14.2 *In the event that payment of a Water Service Surcharge would cause the annual cost of servicing Lantzville's aggregate liabilities for the year in which the Water Service Surcharge is levied, as determined in accordance with section 3 of the Municipal Liabilities Regulation B.C. Reg. 254/2004, to exceed 5% of Lantzville's annual calculation of revenue for the previous year, as determined in accordance with sections 4 and 5 of the Municipal Liabilities Regulation, then Lantzville may defer payment to Nanaimo of that portion of the Water Service Surcharge that causes the annual servicing cost to exceed 5% of Lantzville's annual revenue from the previous year, to subsequent years.*

NEW 14.3 *In no event shall this Agreement operate or be deemed or interpreted to give Lantzville capital interest in the Nanaimo Water System or the potential enlargements to the Nanaimo Water System.*

(New wording)

1.0 Definitions

- (o) **"Water Service Surcharge"** means the surcharge as set out in clause 14.1, or any portion thereof that may be deferred by operation of clause 14.2".

By Nanaimo accepting the proposed changes noted above, the District can avoid costs which would trigger a referendum, and still assist Nanaimo with infrastructure costs for which the District bears a responsibility. Given, however, the size of Nanaimo in comparison to Lantzville, staff does not expect that this Section will be tested and have made these suggested amendments for both clarity and reduced risk of faulty interpretation. As well, with changing the title from "Water System Capital Costs" to "Water Service Surcharge", it removes the concern of direct capital contribution as well as any liabilities the District would have potentially assumed.

Community Relationship Building

In moving forward with the 2016-2018 District of Lantzville Strategic Priorities Chart, Council identified a desire to build/ strengthen relationships with the Snaw-Naw-As community by amending the Agreement to include the ability to have discussions around supply of water through Lantzville. Council and staff discussed amendments to Section 6.6, which currently reads:

(Current Wording)

- 6.2** *"Lantzville shall not sell or supply Water from the Nanaimo Water System except to Premises within the Boundaries of Lantzville."*

Council saw an opportunity to be progressive and supportive of neighbours, and requested the following amendment be considered:

(Suggested Wording)

- 6.2** *"Lantzville shall not sell or supply Water from the Nanaimo Water System except to Premises within the boundaries of Lantzville. However, should the Snaw-Naw-As (Nanoose) First Nation enter into discussions with the City of Nanaimo to access water from the Nanaimo Water System, the District of Lantzville will participate in exploratory discussions to review the overall feasibility of utilizing Lantzville's water system to facilitate access."*

While this does not commit any further actions by any of the parties (District of Lantzville, City of Nanaimo, Snaw-Naw-As community) it does facilitate the ability to engage in those discussions should Snaw-Naw-As wish to pursue water from Nanaimo, through Lantzville.

FINANCIAL IMPLICATIONS

As this report reflects suggested amendments, there are no financial obligations that this report will trigger.

COMMUNICATION STRATEGY

Staff has submitted a letter on behalf of District of Lantzville Council to Nanaimo City Council requesting a review of the presented amendments to the Agreement. Upon the public release of this report, Staff will place the report as well as the attached amendments and letter on the District website. Staff will also be available to assist Council with information at the upcoming water supply expansion update Town Hall meeting scheduled to be held June 2, 2016 at Costin Hall.

STRATEGIC PLAN ALIGNMENT

These actions fulfill both Council's *Corporate Priorities* item 1: Water Agreement Revision and *Corporate Priorities* item 2: Communication, Engagement, and Transparency.

SUMMARY


This report outlines the proposed amendments to the current Lantzville/Nanaimo Water Agreement.

Respectfully submitted,



Brad McKee
Chief Administrative Officer
District of Lantzville

Reviewed By:

| | | | | | | | |
|------------------------------------|---|--------------------------------------|--|-----------------------------|--|--|--|
| Chief Administrative Officer |  | Director of Financial Services | | Director of Public Works | | Director of Corporate Administration | |
|------------------------------------|---|--------------------------------------|--|-----------------------------|--|--|--|



District of Lantzville

Incorporated June 2003

April 11, 2016

Mayor McKay and Councillors
City of Nanaimo
455 Wallace Street
Nanaimo, BC V9T 5J6

Dear Mayor McKay and Councillors,

Re: Lantzville/Nanaimo Water Agreement

The Council of the District of Lantzville wishes to move forward on the Agreement with the City of Nanaimo to supply water to Lantzville. However, in the course of reviewing the current Lantzville/Nanaimo Water Agreement (Enclosure #1), the District identified some minor amendments for your consideration first.

The requested amendments are due to the wishes of the District of Lantzville Council to be able to provide water to residents of Lantzville in all areas (without changing the limitation on the number of connections), and to ensure that there is clarity surrounding future capital costs. These proposed amendments are provided in Enclosure #2.

We look forward to further discussion on this matter and await your comments and response.

Should you have any questions, please contact Brad McRae, Chief Administrative Officer, at 250.390.4006.

Respectfully,

Colin Haime, Mayor
On behalf of District of Lantzville Council

Enclosure: 1. Lantzville/Nanaimo Water Agreement
 2. Proposed Amendments

c. District of Lantzville Council; Brad McRae, CAO; Fred Spears, Director of Public Works

File: 2280.20.9

Q:\DISTRICT OF LANTZVILLE\Correspondence\2016\Arising from Council Meeting\CoN Council Water Agreement Mar 30 2016.docx

Phone: (250) 390-4006 • Fax: (250) 390-5188

Email: district@lantzville.ca • Website: www.lantzville.ca

P.O. Box 100, 7192 Lantzville Road, Lantzville, B.C. V0R 2H0

Enclosure #1

LANTZVILLE/NANAIMO WATER AGREEMENT

THIS AGREEMENT dated for reference this 8th day of September, 2014.

BETWEEN:

CITY OF NANAIMO
455 Wallace Street
Nanaimo, BC V9R 5J6

(hereinafter called "Nanaimo")

OF THE FIRST PART

AND:

DISTRICT OF LANTZVILLE
PO Box 100
7192 Lantzville Road
Lantzville, BC V0R 2H0

(hereinafter called "Lantzville")

OF THE SECOND PART

WHEREAS:

- A. Nanaimo operates a water supply system within its boundaries;
- B. Lantzville has established facilities for the purposes of constructing, operating and maintaining a water system for the supply and distribution of water within its boundaries and wishes to secure a supply of water in bulk;
- C. Under section 23 of the *Community Charter*, S.B.C. 2003, c. 26, a municipal council has the authority to enter into agreements with other public authorities respecting activities and services within the power of a party to the agreement, including agreements respecting the undertaking, provision and operation of activities and services;
- D. Lantzville and Nanaimo wish to work together to provide water in bulk from the Nanaimo Water System to serve Lantzville and to strengthen this cooperative relationship through Lantzville's participation in the cost of other services provided through the Regional District of Nanaimo on the terms and conditions set out in this Agreement;
- E. Lantzville has consented to Nanaimo providing a supply of water under this Agreement;

NOW THEREFORE in consideration of the premises and the mutual covenants and agreements contained herein, the parties hereby covenant and agree each with the other as follows:

1.0 Definitions

In this Agreement:

- (a) "Additional Term" means the additional term as set out in section 12.2;**
- (b) "Commencement Date" means the date upon which Lantzville certifies the construction of the Lantzville Water System as completed to Lantzville's satisfaction, and notifies Nanaimo with a copy of a Lantzville Council resolution that the Lantzville Water System is ready to accept the Water;**
- (c) "Connection Fee" means the connection fee for Water payable by Lantzville under article 4.0 (Fees) of this Agreement;**
- (d) "Connection Point" means the connection points on the Water Main between the Nanaimo Water System and the Lantzville Water System, as identified in Schedule "A" attached to this Agreement;**
- (e) "Event of Default" means:**
 - (i) a failure by Lantzville to pay a fee, cost or charge payable under this Agreement within thirty (30) days of the date such fee, cost or charge is payable by Lantzville; or**
 - (ii) a breach of sections 6.2, 6.3, 9.1 or 9.3 of this Agreement.**
- (f) "Force Majeure" means any prevention, delay, stoppage, or interruption in the performance of any obligation of a party due to strike, lockout, labour dispute, act of God, inability to obtain labour or materials, laws, ordinances, rules, regulations or orders of governmental authorities, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond the reasonable control of the party obligated to perform, but shall not include any inability by that party to perform because of its lack of funds;**
- (g) "Lantzville Water System" means the water system owned and operated by Lantzville to serve Premises within Lantzville boundaries;**
- (h) "Lower Lantzville Area" means that part of Lantzville identified as such on Schedule "C";**
- (i) "Nanaimo Water System" means the water system owned by Nanaimo from which it supplies Water under this Agreement and all appurtenant works, facilities and services;**
- (j) "Premises" means each and every residential, commercial and all other lands and buildings that receive Water from the Lantzville Water System, and in the case of lands and buildings with more than one permitted use, each such use shall constitute a "Premises";**
- (k) "Term" means the term of this Agreement as set out in section 12.1, and other than in section 12.1 a reference to "Term" is also a reference to the "Additional Term";**
- (l) "Upper Lantzville Area" means that part of Lantzville identified as such on Schedule "C";**

- (m) "Water" means water supplied by Nanaimo in bulk under this Agreement for treatment and redistribution by Lantzville;
- (n) "Water Main" means the water main or water mains to be constructed by Lantzville to connect the Lantzville Water System with the Nanaimo Water System and service the areas within Lantzville as generally identified in Schedule "A" and includes the Connection Point and all related connections, extensions, upgrades, fire hydrants and appurtenances; and
- (o) "Water Shortage" means meteorological or other severe circumstances beyond the reasonable control of Nanaimo (including an event of Force Majeure) resulting in a decline in the availability of Water available to meet the peak Water needs of persons served by the Nanaimo Water System and the Lantzville Water System.

2.0 Water Supply

- 2.1 Nanaimo agrees to supply Water to the Lantzville Water System for the Term and any extension thereof commencing on the Commencement Date, on the terms and conditions in this Agreement.
- 2.2 Lantzville and Nanaimo agree that Lantzville shall, at its cost, on or before the Commencement Date, connect the Lantzville Water System to the Nanaimo Water System at the Connection Point for the purpose of supplying Water to the Lantzville Water System pursuant to this Agreement.
- 2.3 For certainty, Lantzville has no financial liability to Nanaimo under this Agreement until the Commencement Date.

3.0 Conditions Precedent

- 3.1 It is a condition precedent to the obligations of Nanaimo under this Agreement that:
 - (a) Lantzville complete construction of the Lantzville Water System including the connection of the Lantzville Water System to the Nanaimo Water System under section 2.2 and any features of the Connection Point necessary to allow the passage of Water; and
 - (b) approval of this Agreement by the councils of Nanaimo and Lantzville.

4.0 Fees

- 4.1 Lantzville shall pay to Nanaimo, within thirty (30) days of connection of the Water Main to the portion of the Lantzville Water System serving the Upper Lantzville Area, a Connection Fee in the sum of one million three hundred and thirty thousand, two hundred and fifty-eight dollars and fifty cents (\$1,330,258.50) representing two hundred and twenty-five (225) Premises in Upper Lantzville currently connected to the Lantzville Water System; and

- 4.2 Lantzville shall pay a Connection Fee for each new Connection of Premises to the Lantzville Water System in respect of any of the two hundred and eleven (211) additional Premises in Upper Lantzville served by wells and not currently connected to the Lantzville Water System, in accordance with section 4.6.**
- 4.3 Lantzville shall pay to Nanaimo, within thirty (30) days of connection of the Water Main to the portion of the Lantzville Water System serving the Lower Lantzville Area, a Connection Fee for each existing residential, commercial and industrial Premises connected in the Lower Lantzville Area in accordance with section 4.5, provided that despite anything in this Agreement, including, without limitation, sections 2.2 and 5.1, Nanaimo shall be under no obligation to supply water to any premises in Lower Lantzville until Nanaimo has notified Lantzville in writing that it has secured additional water supply.**
- 4.4 Throughout the Term, Lantzville shall pay a Connection Fee for each new Connection of Premises to the Lantzville Water System in accordance with section 4.5. Lantzville shall pay the Connection Fees on July 1 for connections between January 1 and June 30 of each year of the Term, and January 1 for connections between July 1 and December 31 of each year of the Term. Lantzville shall provide to Nanaimo with respect to each year of the Term a report detailing the number and type of connections made, and such report shall be provided no later than March 31 in the year following the year to which the report relates.**
- 4.5 Except as provided under section 4.6, Connection Fees payable by Lantzville in respect of the Connection of the Premises to the Lantzville Water System shall be equal to the development cost charge payable for comparable premises within the City of Nanaimo pursuant to the City of Nanaimo's Water Supply Development Cost Charge Bylaw 2008 No. 7070, as amended from time to time, or any enactment that may replace it.**
- 4.6 In the case of Connection Fees payable by Lantzville under section 4.2 of this Agreement, the Connection Fees payable during the first five (5) years of the Term shall be those prescribed in Schedule "B". Connection Fees payable by Lantzville during the remaining fifteen (15) years of the Term shall be equal to the development cost charge payable for comparable premises within the City of Nanaimo pursuant to City of Nanaimo's Water Supply Development Cost Charge Bylaw 2008 No. 7070, as amended from time to time, or any enactment that may replace it.**
- 4.7 Lantzville shall pay Nanaimo for all Water supplied under this Agreement in accordance with the rates prescribed from time to time in the City of Nanaimo's Waterworks Rate and Regulation Bylaw 2006 No. 7004, or any bylaw that may replace it, and in accordance with all terms and conditions prescribed thereunder.**
- 4.8 Invoices for water rendered by Nanaimo in a calendar year or an amount of a Connection Fee that remains unpaid at the end of the calendar year will be deemed to be in default and subject to an interest charge equal to the amount applicable to all other users of the Nanaimo Water System.**

- 4.9** Except for the purposes of sections 4.1 of this Agreement, in this article "Connection" means installation of a water pipe and associated plumbing extending from a water distribution line of the Lantzville Water System to the property line of the parcel to be connected to the Lantzville Water System and provided water service.

5.0 Quantity and Quality

- 5.1** Nanaimo shall, subject to article 7.0 of this Agreement, make available to Lantzville at all times during the Term and any renewal period, sufficient volumes of Water to allow Lantzville to supply Premises connected in accordance with this Agreement through the Lantzville Water System to the Water Main with flows of Water not greater than the average per capita daily flows of Water that Nanaimo supplies to its own residential and commercial consumers.

5.2 Nanaimo shall:

- (a) make all reasonable efforts to ensure the Water supplied under this Agreement meets the *Canadian Drinking Water Quality Guidelines* and
- (b) comply with all other laws and regulations applicable to the supply of Water under this Agreement.

- 5.3** Once Lantzville accepts the Water at the Connection Point, Lantzville is, with respect to the Water, the "water supplier" as defined in and for the purposes of the *Drinking Water Protection Act*, and Nanaimo shall not be held liable for the quality of water beyond its own infrastructure in the Nanaimo Water System.

5.4 Lantzville shall at its cost:

- (a) monitor the levels of chlorine residuals of Water supplied under this Agreement and at its own cost shall provide treatment to maintain such levels in accordance with all applicable laws and requirements;
- (b) conduct all bacteriological water testing and other testing necessary to comply with all applicable laws and requirements, including without limitation the requirements of the *Drinking Water Protection Act*, and all applicable requirements of the Vancouver Island Health Authority, and to otherwise assure itself that it is able to deliver Water that is potable prior to distribution to Premises;
- (c) provide any additional treatment necessary to ensure the Water distributed to Premises by Lantzville through the Lantzville Water System meets the requirements of the *Drinking Water Protection Act* (British Columbia) and other applicable law.

- 5.5** Despite section 6.6 of this Agreement, Lantzville may use Water from the Nanaimo Water System within that part of Lower Lantzville on the low side of the pressure reducing valve that separates the high and low pressure areas of Lantzville for the purpose of firefighting and other emergency purposes.

5.6 Lantzville shall, at its own cost, install a water meter on the low side of the pressure reducing valve referred to in section 5.5 in a location agreed to by Nanaimo, acting reasonably.

5.7 Lantzville shall report to Nanaimo on a quarterly basis on or before the 15th day of April, July, September and January the readings from the water meter installed under section 5.6, and shall pay for any such Water supplied during such quarter in accordance with section 4.7 of this Agreement.

6.0 Lantzville Acknowledgements, Covenants and Agreements

6.1 Lantzville acknowledges, as a principle on which Nanaimo has entered this Agreement, that the amount paid by consumers for Water in Lantzville should not be lower than the amount paid by consumers in Nanaimo.

6.2 Lantzville shall not sell or supply Water from the Nanaimo Water System except to Premises within the boundaries of Lantzville.

6.3 Lantzville shall not sell or supply Water from the Nanaimo Water System to Premises whose owner or occupier is in the business of selling or supplying Water that is not consumed on the Premises, including a bulk water hauler or water bottling plant.

6.4 Lantzville agrees that it shall be a condition of this Agreement that water supplied to Lantzville under this Agreement is not provided to Premises for major agricultural production or golf courses.

6.5 Lantzville shall maintain in operation the existing wells specified in Schedule "D" and shall take reasonable actions to maintain the production of those wells at at least 2014 levels.

6.6 Despite anything in this Agreement, including, without limitation, sections 2.2 and 5.1, until Nanaimo has notified Lantzville in writing that it has secured sufficient additional water supply, connections to the Water Main shall be limited to a total of four hundred and thirty-six (436) Premises located within Upper Lantzville referred to in sections 4.1 and 4.2 of this Agreement, plus connection of 50 Premises per year in Upper Lantzville as a result of new development. For certainty, if less than 50 Premises per year in Upper Lantzville are connected, the remaining Premises connection entitlement will accrue to be used by Lantzville in any future year during the Term or any Additional Term for connection at a time determined by Lantzville.

6.7 For the purpose of this section, "development" means the construction of new Premises or the subdivision of land resulting in the creation of new parcels to create new Premises.

6.8 Lantzville will provide reasonable support to Nanaimo to secure additional water supply.

7.0 Force Majeure and Water Shortage

- 7.1 Lantzville acknowledges and agrees that Nanaimo is entitled to reduce or temporarily terminate the supply of Water on a basis consistent with other users within an affected distribution area without compensation to Lantzville in the event of a Water Shortage or event of Force Majeure.
- 7.2 Where Nanaimo anticipates that there will be a Water Shortage, Nanaimo shall advise Lantzville of this circumstance without undue delay and shall appoint representatives to meet with representatives of Lantzville to discuss solutions.
- 7.3 In reducing the Water supply under section 7.1, Nanaimo shall endeavour to equalize the effect of the water reduction on uses and consumers within Nanaimo and Lantzville.
- 7.4 Lantzville acknowledges and agrees that Lantzville is at all times responsible for all of its water storage requirements, including without limitation any requirements relating to firefighting or other emergencies whether imposed by an association of fire insurance underwriters or otherwise.

8.0 Watering Conservation and Restrictions

- 8.1 Lantzville acknowledges, as a principle on which this Agreement is based, that restrictions on Water use in Lantzville should be consistent with those in place in Nanaimo in force from time to time governing the use of the Nanaimo Water System.
- 8.2 Lantzville shall take reasonable operational measures and consider taking legislative measures at Nanaimo's request to reduce the waste of Water and water consumption within its boundaries consistent with measures taken within the boundaries of Nanaimo.

9.0 Maintenance and Repair

- 9.1 Lantzville shall repair, operate and maintain the Lantzville Water System in accordance with good engineering practices and all applicable laws.
- 9.2 To the extent related to the supply of Water in accordance with this Agreement, Nanaimo shall repair, operate and maintain the Nanaimo Water System in a good state of repair in accordance with good engineering practices and all applicable laws.
- 9.3 Without limiting section 9.1 Lantzville shall maintain all wells connected to the Lantzville Water System in accordance with good engineering practices and all applicable laws, and shall take all reasonable steps to prevent contamination of the Nanaimo Water System.
- 9.4 Lantzville shall reimburse Nanaimo within thirty (30) days of receiving an invoice for all costs associated with the operation and maintenance of the Water Main and all costs of operating and maintaining any facilities, works or services constructed or located within Nanaimo that are for the sole benefit of the Lantzville Water System.

10.0 Costs of Studies

- 10.1 Lantzville shall pay the cost of any feasibility studies required to determine the need for additional facilities or modifications or alterations to existing facilities required for the supply of Water to Lantzville, even if such facilities, modifications or alterations would be required to be located, constructed, installed or enlarged within the boundaries of Nanaimo.**

11.0 Construction of Main Extension

- 11.1 Lantzville shall, at Lantzville's sole cost, design, construct, install and replace, as necessary, the Water Main.**

- 11.2 Lantzville shall pay to Nanaimo any actual costs incurred by Nanaimo in relation to the design and construction of the Water Main, including the costs of any staff time appropriately allocated thereto.**

- 11.3 Costs payable under section 11.2 shall include the costs of:**

- (a) architect, engineering, legal and other professional services in connection with the Water Main project;**
- (b) the costs of construction;**
- (c) all land acquisition costs for the purpose of obtaining a statutory right of way or other interest in land necessary for the Water Main, including, if necessary, costs of appraisers and expropriation processes; and**
- (d) communications infrastructure, programming and electronic monitoring equipment associated with the Connection Point(s) to enable monitoring of water use within Nanaimo's SCADA system;**

in relation to the Water Main project.

- 11.4 Lantzville shall engage the services of a professional engineering consultant acceptable to both parties to determine in consultation with Nanaimo:**

- (a) the preferred Water Main extension to the Connection Point;**
- (b) the engineering specifications for the Water Main;**
- (c) the timing of construction of the Water Main and its connection to the Lantzville Water System;**
- (d) to oversee the completion of the Water Main; and**
- (e) to certify the Water Main as having been constructed in accordance with the engineering specifications**

and the professional engineering consultant shall be considered Lantzville's agent.

- 11.5 Nanaimo agrees to cooperate in good faith with Lantzville to secure a design for a Water Main that is both cost effective and meets the standards of good engineering practice, having regard to the effect of the Water Main project on both water systems, and to manage the Water Main project in a manner consistent with its management of similar projects in Nanaimo.
- 11.6 Subject to agreement otherwise on the timing of the payment of the design and construction costs associated with the Water Main, Lantzville shall reimburse Nanaimo for such costs within thirty (30) days of receiving an invoice for such costs from Nanaimo as work progresses on the construction project.
- 11.7 Lantzville shall cause the Water Main to be constructed, installed, commissioned and, to the extent the Water Main is within the city limits of Nanaimo, transferred to Nanaimo upon completion and certification by a professional engineering consultant under section 11.4(e) of this Agreement.

12.0 Term

- 12.1 The Term of this Agreement shall be for a twenty (20) year period commencing on the Commencement Date, and for certainty Nanaimo's obligation to supply Water under this Agreement and Lantzville's obligation to pay Nanaimo only arise from and after the Commencement Date.
- 12.2 This Agreement may be extended beyond the Term for one Additional Term of twenty (20) years by the District of Lantzville delivering written notice to Nanaimo at least 6 months prior to the end of the Term. The Additional Term shall be on the same terms and conditions as this Agreement except that there shall be no further renewal right.

13.0 Water Supply Advisory Committee

- 13.1 Lantzville shall be entitled to designate one (1) representative for appointment to the City of Nanaimo Water Supply Advisory Committee.

14.0 Future Nanaimo Water System Capital Costs

- 14.1 To the extent costs of the design, construction, installation or enlargement of the Nanaimo Water System related to the supply of Water to Lantzville under this Agreement are not otherwise covered by the amounts otherwise paid to Nanaimo by Lantzville, Lantzville shall pay such costs to Nanaimo, within thirty (30) days of receiving an invoice from Nanaimo for such costs.

15.0 Cost Sharing For Other Services

- 15.1 Lantzville will participate in the following Regional District of Nanaimo services at contribution levels reasonably consistent with other participating areas:
- (a) Economic Development Service;

- (b) Port Theatre Service; and**
- (c) Drinking Water and Watershed Protection Service.**

16.0 Indemnity

- 16.1 Nanaimo will indemnify and save harmless Lantzville, its elected officials, officers, employees, contractors and agents against and from any and all actions, causes or action, suits, damages, losses, costs (including costs of professional advisors and solicitors on a solicitor and own client basis), charges, fees, fines, claims or demands arising Nanaimo's breach of this Agreement, or the negligence or wrongful act of Nanaimo its officers, employees, subcontractors, agents or others for whom it is responsible at law except to the extent that such liability arises from the negligence or wrongful act of Lantzville, or others for whom Lantzville is responsible at law.**
- 16.2 Lantzville will indemnify and save harmless Nanaimo, its elected officials, officers, employees, contractors and agents against and from any and all actions, causes or action, suits, damages, losses, costs (including costs of professional advisors and solicitors on a solicitor and own client basis), charges, fees, fines, claims or demands arising from Lantzville's breach of this Agreement, or the negligence or wrongful act of Lantzville its officers, employees, subcontractors, agents or others for whom it is responsible at law except to the extent that such liability arises from the negligence or wrongful act of Nanaimo, or others for whom Nanaimo is responsible at law.**
- 16.3 Without limiting section 16.2 Lantzville shall indemnify and save harmless Nanaimo from any interruption to the service to be provided under this Agreement arising from:**
- (a) normal maintenance, repair or upgrading of the water system;**
 - (b) failure, breakdown or malfunction of the Lantzville Water System or any act of God or other cause beyond the reasonable control of Nanaimo, except to the extent of negligence by Nanaimo or its officers, employees, agents or contractors.**
- 16.4 Sections 16.1, 16.2 and 16.3 shall survive the expiry or earlier termination of this Agreement.**

17.0 Insurance

- 17.1 Nanaimo and Lantzville shall each:**
- (a) obtain and maintain during the term of this Agreement Commercial General Liability Insurance including Broad Form Completed Operations Coverage, naming the other party as an Additional Insured and covering losses to third parties for bodily injury or death, property damage and unlicensed vehicles including attached equipment, for a minimum amount of five million dollars (\$5,000,000.00) per occurrence with a deductible not greater than ten thousand dollars (\$10,000.00);**
 - (b) ensure that all policies where the other party is named as an Additional Insured contain a Cross Liability clause; and**

- (c) ensure that their respective insurance policy(ies) are not cancelled or materially changed without the insurer giving not less than thirty (30) days' written notice to the other party.

18.0 Assignment

- 18.1 No party to this Agreement may assign its interest in this Agreement without the prior written consent of the other party.

19.0 Further Documents

- 19.1 The parties hereto shall execute such further and other documents and do such further and other things as might be necessary to carry out and give effect to the intent of this Agreement, including executing any rights of way or easement agreements.

20.0 Termination

- 20.1 Nanaimo may terminate this Agreement on six months' written notice to Lantzville in the case of an Event of Default which has not been cured within sixty (60) days of notice of the default being delivered to Lantzville.

21.0 Rights and Powers

- 21.1 Nothing contained or implied herein shall prejudice or affect the rights and powers of Lantzville or Nanaimo in the exercise of their respective functions under any public and private statute, bylaws, orders and regulations, all of which may be fully and effectively exercised as if this Agreement had not been executed and delivered by the parties, and the interpretation of this Agreement shall be subject to and consistent with statutory restrictions imposed upon Lantzville or Nanaimo under the *Local Government Act* and the *Community Charter*.

22.0 Relationship

- 22.1 Nothing in this Agreement shall be interpreted as creating an agency, partnership or joint venture relationship between Lantzville and Nanaimo.

23.0 Arbitration

- 23.1 If a dispute arises under this Agreement, then the parties shall make good faith efforts to resolve the dispute between themselves. If the dispute is not resolved within fifteen (15) days, then the Chief Administrative Officers, or their deputies, shall meet within fifteen (15) days to attempt to resolve the dispute.
- 23.2 If a dispute arises under sections 9.4, 11.2 or 14.1 regarding any amounts that may be payable by Lantzville, then such dispute shall, at the request of either party be submitted to arbitration under the *Commercial Arbitration Act*, by a professional engineer selected by the parties. If the parties cannot agree on the choice of the arbitrator, then each party will

select a representative who shall jointly select the arbitrator. The costs of the arbitrator shall be shared equally between the parties, and the results of the arbitration shall be binding on the parties.

24.0 Notice

24.1 Unless otherwise specified herein, any notice required to be given under this Agreement by any party will be deemed to have been given if mailed by prepaid registered mail or delivered to the address of the other party set forth on the first page of this Agreement or at such other address as the other party may from time to time direct in writing, and any such notice will be deemed to have been received if mailed, seventy-two (72) hours after the time of mailing and, if delivered, upon the date of delivery. If normal mail service is interrupted by strike, slow down, force majeure or other cause, then a notice sent by mail will not be deemed to be received until actually received, and the party sending the notice must deliver such notice in order to ensure prompt receipt thereof.

25.0 Binding Effect

25.1 This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees.

26.0 Waiver

26.1 The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

27.0 Headings

27.1 Section and paragraph headings are inserted for identification purposes only and do not form a part of the Agreement.

28.0 Language

28.1 Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.

29.0 Law Applicable

29.1 This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia. Any reference to an enactment is deemed to be a reference to the enactment as amended from time to time, and any enactment that may replace it.

30.0 Amendment


30.1 This Agreement may not be modified or amended except by the written agreement of the parties.

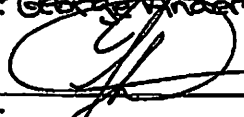
31.0 Notice of Violations

31.1 Each party shall promptly notify the other party of any matter which is likely to continue or give rise to a violation of its obligations under this Agreement.

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

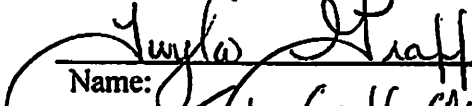
CITY OF NANAIMO by its authorized
signatories this 20th day of August, 2014


Name: George Anderson Acting Mayor

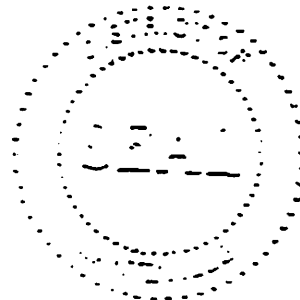

Name: Chris Jackson
Corporate Officer

DISTRICT OF LANTZVILLE by its authorized
signatories this 9th day of September, 2014


Name: Jack St. John Mayor

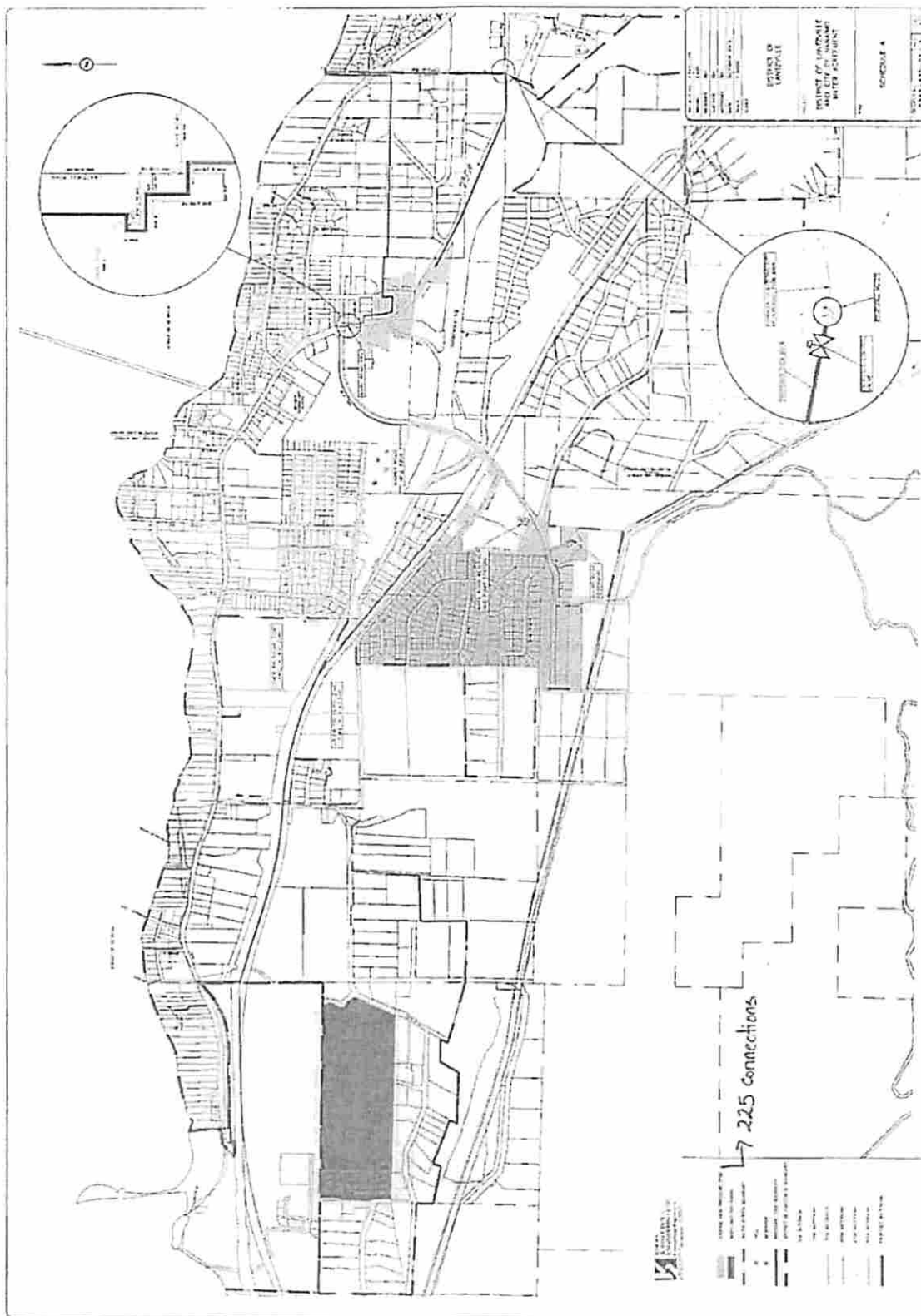

Name: Wyla Giraff, CAO

Deputy Director of Corp. Admin



SCHEDULE "A"

Connection Points



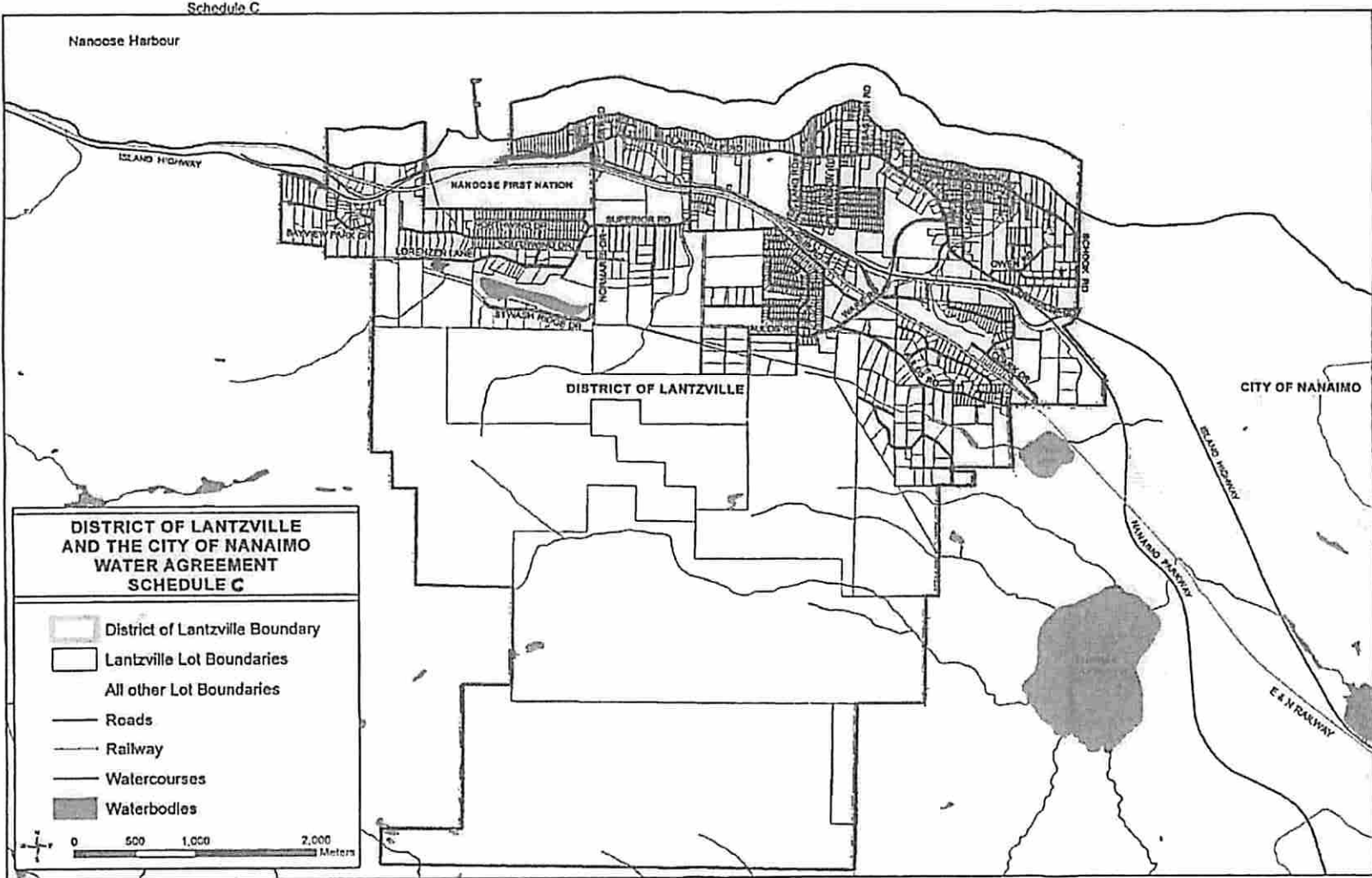
SCHEDULE "B"

Connection Fees

1. The terms "Single Family", "Dwelling Unit", "Multi-Family", "Gross Floor Area", "Commercial", "Institutional", "Industrial", "Mobile Home Park", "Service Connection" and "Campground" used in this Schedule "B" have the same meaning as provided in the City of Nanaimo's Water Supply Development Cost Charge Bylaw 2008 No. 7070, as amended from time to time, or any enactment that may replace it.
2. The Connection Fees payable by Lantzville are as follows:
 - (a) Single Family - \$5,912.26 per Dwelling Unit;
 - (b) Multi-Family - \$35.47 per square metre of Gross Floor Area;
 - (c) Commercial- \$34.36 per square metre of Gross Floor Area;
 - (d) Institutional- \$34.36 per square metre of Gross Floor Area;
 - (e) Industrial - \$8.77 per square metre of Gross Floor Area;
 - (f) Mobile Home Park - \$3,611.38 per Service Connection;
 - (g) Campground - \$849.74 per Service Connection.

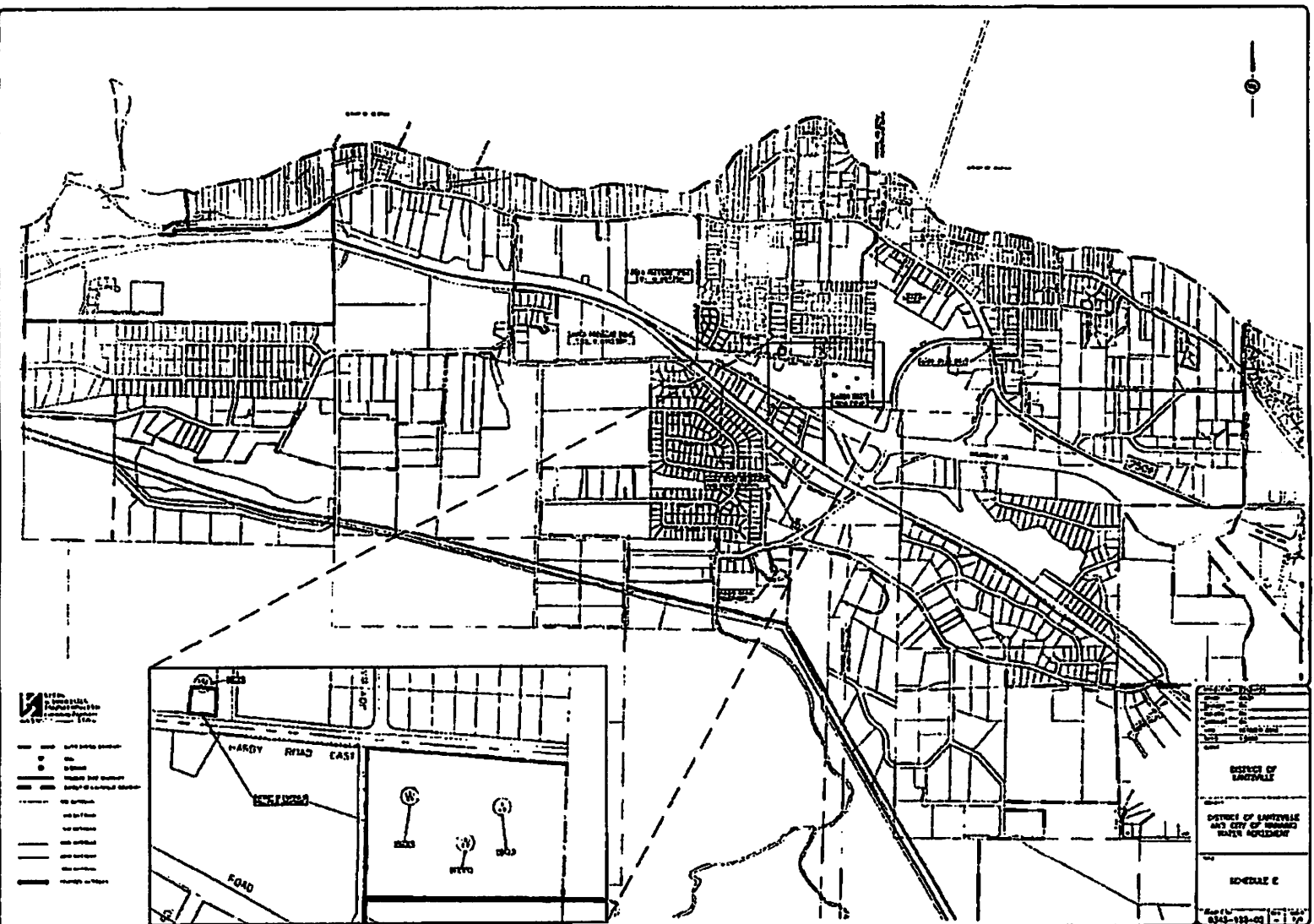
SCHEDULE "C"

Map of Lantzville



SCHEDULE "D"

Existing Lantzville Wells



Enclosure #2

REQUESTS FOR AMENDMENTS TO THE LANTZVILLE/NANAIMO WATER AGREEMENT

(As per a comprehensive review of the 2014 Lantzville/Nanaimo Water Agreement, the District of Lantzville wishes to have the below noted amendments considered)

Section 6.2

(Current Wording)

- 6.2 *"Lantzville shall not sell or supply Water from the Nanaimo Water System except to Premises within the Boundaries of Lantzville."*

(Suggested Wording)

- 6.2 *"Lantzville shall not sell or supply Water from the Nanaimo Water System except to Premises within the boundaries of Lantzville. However, should the Snaw-Naw-As (Nanoose) First Nation enter into discussions with the City of Nanaimo to access water from the Nanaimo Water System, the District of Lantzville will participate in exploratory discussions to review the overall feasibility of utilizing Lantzville's water system to facilitate access."*

Section 6.6

(In amending section 6.6, amendments are required in sections 4.1 and 4.2 of the Agreement)

(Current wording)

- 6.6 *"Despite anything in this Agreement, including without limitation, sections 2.2 and 5.1, until Nanaimo has notified Lantzville in writing that it has secured sufficient additional water supply, connections to the Water Main shall be limited to a total of four hundred and thirty-six (436) Premises located within Upper Lantzville referred to in sections 4.1 and 4.2 of this Agreement, plus connection of 50 Premises per year in Upper Lantzville as a result of new development. For certainty, if less than 50 Premises per year in Upper Lantzville are connected, the remaining Premises connection entitlement will accrue to be used by Lantzville in any future year during the Term or any Additional Term for connection at a time determined by Lantzville."*

(Suggested wording)

- 6.6 *"Despite anything in this Agreement, including without limitation, sections 2.2 and 5.1, until Nanaimo has notified Lantzville in writing that it has secured sufficient additional water supply, connections to the Water Main shall be limited to a total of four hundred and thirty-six (436) Premises referred to in sections 4.1 and 4.2 of this Agreement, plus connection of 50 Premises per year for the remainder of this Agreement. If less than 50 Premises per year in Lantzville are connected, the remaining Premises connection entitlement will accrue to be used by Lantzville in any future year during the Term or any Additional Term for connection at a time determined by Lantzville".*

a. Amendment recommendation to section 4.1:

(Current wording)

- 4.1 *Lantzville shall pay to Nanaimo, within thirty (30) days of connection of the Water Main to the portion of the Lantzville Water System serving the Upper Lantzville Area, a Connection Fee in the sum of one million three hundred and thirty thousand, two hundred and fifty-eight dollars and fifty cents (\$1,330,258.50) representing two hundred and twenty-five (225) Premises in Upper Lantzville currently connected to the Lantzville Water System"*

(Suggested wording)

- 4.1 *Lantzville shall pay to Nanaimo, within thirty (30) days of connection of the Water Main to the Lantzville Water System a Connection Fee in the sum of one million three hundred and thirty thousand, two hundred and fifty-eight dollars and fifty cents (\$1,330,258.50) representing two hundred and twenty-five (225) Premises"*

b. Amendment to section 4.2:

(Current wording)

- 4.2 *"Lantzville shall pay a Connection Fee for each new Connection of Premises to the Lantzville Water System in respect of any of the two hundred and eleven (211) additional Premises in Upper Lantzville served by wells and not currently connected to the Lantzville Water System, in accordance with section 4.6"*

(Suggested wording)

- 4.2 *"Lantzville shall pay a Connection Fee for each new Connection of Premises to the Lantzville Water System in respect of any of the two hundred and eleven (211) additional Premises served by wells and not currently connected to the Lantzville Water System, in accordance with section 4.6"*

Section 14.0 and 14.1

(In order to amend section 14.0 and 14.1, a definition change will be required in Section 1.0: Definition)

(Current wording)

14.0 Future Nanaimo Water System Capital Costs

- 14.1 *To the extent costs of the design, construction, installation or enlargement of the Nanaimo Water System related to the supply of Water to Lantzville under this Agreement are not otherwise covered by the amounts otherwise paid to Nanaimo by Lantzville, Lantzville shall pay such costs to Nanaimo, within thirty (30) days of receiving an invoice from Nanaimo for such costs.*

(Suggested wording)

14.0 Future Nanaimo Water Service Surcharge (title change)

- 14.1 *In the event that the volume of water to be supplied to Lantzville under this Agreement creates demands upon the Nanaimo Water System such that an enlargement of the Nanaimo Water System is required, and if the expense of such is not otherwise covered in the amounts paid to Nanaimo by Lantzville, then Nanaimo may levy a Water Service Surcharge upon Lantzville in the amount equal to the proportionate amount of the expense incurred by Nanaimo relating to the design, construction, installation and enlargement of the Nanaimo Water System as is attributable to the continued supply to Lantzville of water under this Agreement and, upon such a Water Service Surcharge being levied by Nanaimo, Lantzville shall pay the Water Service Surcharge to Nanaimo within thirty (30) days.*

NEW 14.2 *In the event that payment of a Water Service Surcharge would cause the annual cost of servicing Lantzville's aggregate liabilities for the year in which the Water Service Surcharge is levied, as determined in accordance with section 3 of the Municipal Liabilities Regulation B.C. Reg. 254/2004, to exceed 5% of Lantzville's annual calculation of revenue for the previous year, as determined in accordance with sections 4 and 5 of the Municipal Liabilities Regulation, then Lantzville may defer payment to Nanaimo of that portion of the Water Service Surcharge that causes the annual servicing cost to exceed 5% of Lantzville's annual revenue from the previous year, to subsequent years.*

NEW 14.3 *In no event shall this Agreement operate or be deemed or interpreted to give Lantzville capital interest in the Nanaimo Water System or the potential enlargements to the Nanaimo Water System.*

(New wording)

1.0 Definitions

- (o) **"Water Service Surcharge"** means the surcharge as set out in clause 14.1, or any portion thereof that may be deferred by operation of clause 14.2".

- END OF DOCUMENT -