

## **AGREEMENT**

THIS AGREEMENT dated for reference December 10, 2018.

BETWEEN:

**VILLAGE OF ANMORE**

Municipal Hall  
2697 Sunnyside Road  
Anmore, B.C.,  
V3H 3C8

("Anmore")

AND:

**THE OWNERS, STRATA PLAN LMS 3080**

c/o Maria Ferreira, Strata Manager  
Quay Pacific Property Management Ltd.  
(Tel. 604-521-0876 ext. 300)  
535 Front Street  
New Westminster B.C.  
V3L 1A4

(the "Owners")

### **ARTICLE PREAMBLE**

- A. Anmore is prepared to become a member of the GVS&DD and to provide municipal sewerage services within its boundaries to the lands depicted by dotted line as the local area service on Schedule "A" hereto ("Lands") provided such is at the sole expense of the Owners.
- B. In recognition of exceptional circumstances, which include Anmore's taking steps to resolve potential risk of public health and safety caused by septic effluent leachate from Lands onto the Eagle Mountain Middle School lands, Heritage Mountain Secondary School lands and Port Moody's North Shore Community Park lands, Anmore is willing to approach Port Moody and the GVS&DD to request that sewerage and storm water from the Lands be conveyed via Port Moody's municipal sewerage and storm water systems, and to GVS&DD's Annacis Wastewater Treatment Plant for treatment as required.

- C. Port Moody has indicated to the parties that it is willing to accept sewerage and storm water from the Lands and to convey such sewerage to the GVS&DD's sewerage system provided that the Owners are prepared to pay for these services.
- D. GVS&DD by terms and conditions set out in its letter dated May 14, 2018 to Anmore appears willing to accept and treat such sewerage at the Annacis Wastewater Treatment Plant, provided that the Owners are prepared to pay for these services.
- E. The parties are involved in litigation wherein the Owners are petitioners, and Anmore is respondent, which proceedings were commenced in the Supreme Court of British Columbia, New Westminster Registry, Action No.: 207286 (the "Action").
- F. The parties have agreed to resolve the Action in accordance with the terms and conditions contained in this Agreement.

NOW THEREFORE, in exchange for the promises and covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, THE PARTIES AGREE THAT:

## **ARTICLE 1**

### **1.0 In this Agreement:**

- (a) "Annacis Wastewater Treatment Plant" means the wastewater treatment plant owned and operated by GVS&DD and located at 1299 Derwent Way, Delta, British Columbia;
- (b) "Base Unit Rate" means each calendar year GVS&DD will calculate a base unit rate by dividing the total Non-Growth Costs that were apportioned to the Fraser Sewerage Area for the current calendar year pursuant to sections 6.1, 6.2 and 6.3 of GVS&DD's Cost Apportionment Bylaw 283, by the Dry Weather Flow for the Fraser Sewerage Area for the previous calendar year (the "Base Unit Rate");
- (c) "Connections" means the sanitary sewerage and storm water connections that enable the provision of the Municipal Services, as shown on the Connection Plans;
- (d) "Connection Plans" means the plans attached as Schedule "B" hereto;
- (e) "Court Costs" are defined in section 1.1(d);

- (f) "GVS&DD Act" means the *Greater Vancouver Sewerage and Drainage District Act* (British Columbia);
- (g) "Middle School Lands" means those lands situated within the boundaries of Anmore having the legal description(s):

PID: 025-638-661

Lot 2 Section 16 Township 39 New Westminster District Plan BCP5107

PID: 024-381-993

Lot 4 Section 16 Township 39 New Westminster District Plan LMP40733

PID: 024-382-001

Lot 5 Section 16 Township 39 New Westminster District Plan LMP40733

- (h) "Municipal Services" has the meaning given to such term in section 1.3;
- (i) "Owners" means the registered owners of the Lands;
- (j) "Port Moody Annual Service Fee" has the meaning given to such term in section 1.6;
- (k) "Port Moody Sewerage Charge" has the meaning given to such term in section 1.6(a);
- (l) "Port Moody Sewerage Rates" means Port Moody's sanitary sewerage rates as established from time to time by Port Moody City Council;
- (m) "Port Moody Storm Sewage Charge" has the meaning given to such term in section 1.6(b);
- (n) "Sanitary Sewerage System" means the sanitary sewerage system constructed on the Lands by the Owners;
- (o) "Secondary School Lands" means those lands situated within the boundaries of Port Moody, immediately adjacent to the Middle School Lands and having the legal description:

PID: 025-214-560

Lot 1 District Lot 350 Group 1 New Westminster District Plan LMP52368

- (p) "Storm Water System" has the meaning given to such term in section 1.8; and
- (q) "Water Meter" has the meaning given to such term in section 1.9.

1.1. The parties shall prepare express terms and conditions for one or more definitive agreements, each constituting a Contract, within ninety (90) days of signing this Agreement or such other period as the parties may in writing agree to:

- (a) Anmore will agree to move forward with the following:
  - i. its application for membership in the GVS&DD as outlined in a May 14, 2018 letter from GVS&DD to Anmore;
  - ii. amendments to the Anmore's OCP, if required,
  - iii. Provincial approval to add the Anmore to the GVS&DD, if required,
  - iv. GVS&DD approval,
  - v. any contract with Metro/GVS&DD that they may require,
  - vi. a contract with the City of Port Moody and enactment of service bylaws by Anmore.
- (b) Anmore will agree that the approximate 6,000 square meters of lands comprising Owner's septic disposal field may be subdivided and sold to either School District 43, or to a third party, after connection of the Owner's private sewer system to a municipal sewer system via Port Moody.
- (c) The Owners will agree to be responsible for and pay all up front construction costs associated with the Connection Plans to accomplish the Municipal Services, Anmore's costs arising out of GVS&DD membership, including reasonable staff time, Court Costs, and all ongoing operation and maintenance costs, including repair and replacement funding, and annual costs payable by Anmore and/or to Port Moody or GVS&DD, as are determined necessary to commence and maintain Municipal Services to the Lands.
- (d) The parties agree a Consent Dismissal Order shall be entered in the Action, and the parties hereby instruct their solicitors to approve and enter a Consent Dismissal Order in the Action dismissing the Action, with payment by the Owners

of costs awarded to Anmore in the October 15, 2018 hearing ("Court Costs"), by consent.

1.2 The parties agree to cooperate with each other to expedite provision of the Municipal Services to the Lands as soon as possible.

1.3 Anmore will request Port Moody to provide to Anmore the following services (the "Municipal Services"):

- (a) the conveyance of sanitary sewerage generated on the Lands to the Secondary School Lands and then through Port Moody's sewerage network to GVS&DD's sewerage network in accordance with the Connection Plans; and
- (b) the conveyance of storm water generated on the Lands to the Secondary School Lands and then into Port Moody's storm water drainage system.

1.4 Anmore will further request Port Moody to provide the Municipal Services as if the Lands were located within Port Moody and to the same standards and in a like manner as it supplies these services to parcels of land located within Port Moody.

1.5 The parties will request Port Moody to commence providing the Municipal Services on the date Anmore confirms in writing to Port Moody that both the Storm Water System and the Sanitary Sewerage System have been substantially completed and are ready for use.

1.6 In consideration of Port Moody providing the Municipal Services, the Owners will pay to Anmore, and Anmore will pay to Port Moody an annual service fee ("Port Moody Annual Service Fee") comprised of the following:

- (a) a sewerage charge ("Port Moody Sewerage Charge") calculated by applying Port Moody's Sewerage Rates to 80% of the Conveyed Water;
- (b) a storm sewer charge ("Port Moody Storm Sewer Charge") calculated by applying the conditions in Port Moody's property tax bylaws to the Lands and associated structures;
- (c) an annual administrative fee equal to 10% of the Port Moody Sewerage Charge and 10% of the Port Moody Storm Sewer Charge which is partial compensation for Port Moody's staff time and overhead associated with administering and providing the Municipal Services;

1.7 The parties expect that the Port Moody Annual Service Fee will be payable by Anmore in such billing schedule as may be required by City of Port Moody Fees Bylaw No.

2857. The Owners will pay to Anmore the full amount of each Port Moody invoice within the time periods specified on the invoice.

1.8 The Owners will be responsible to maintain, repair and/or replace their existing storm water system on the Lands (the "Storm Water System") to ensure that there are no blockages that would cause storm water to flow directly across the Middle School Lands or the Secondary School Lands, and to ensure that the release of storm water is at such a rate as not to exceed the design standards for the receiving storm system located on the Secondary School Lands nor the Port Moody storm water system; and will carry out, or cause to be carried out, annual inspections of tile Storm Water System and will, within 30 days of each inspection, provide Anmore and Port Moody with a report detailing the date of inspection and the maintenance, repairs and replacements performed on the Storm Water System.

1.9 The Owners will:

- (a) install on the water system serving the Lands, a water meter designed in accordance with the standards and specifications ordinarily used and applied by Port Moody, sufficient to ensure accurate measurement in cubic meters of water conveyed to the Lands (the "Water Meter");
- (b) carry out all necessary repairs, maintenance, replacement, and inspection of the Water Meter;
- (c) carry out testing and calibration of the Water Meter every 5 years and will provide the results to Anmore, Port Moody and GVS&DD within 30 days of completing such testing and calibration;
- (d) will cause the Water Meter to be read and recorded 4 times each year, commencing 90 days after provision of Municipal Services and then every 3 months thereafter, to determine the quantity of water conveyed to the Lands by Anmore for the previous quarter ("Conveyed Water"), and will then forward the results to Anmore, Port Moody and GVS&DD within 30 days following each such reading ("Water Reading");
- (e) discharge only sanitary sewerage and non-domestic liquid waste generated on or caused by their use of the Lands to the Secondary School Lands and will not cause, permit or allow any other user or person to connect to the Sanitary Sewerage System so as to then permit discharge of that sanitary sewerage to the Secondary School Lands;
- (f) comply with Port Moody's bylaws and policies pertaining to sewerage;

- (g) comply with GVS&DD's bylaws and policies pertaining to sewerage, including the GVS&DD Sewer Use Bylaw No. 299; and
- (h) comply with Port Moody's bylaws and policies pertaining to storm water drainage, including integrated storm water management plans.

1.10 The parties agree that all publicly issued statements, documents or press releases specific to relationship, activities, and any agreements of the parties will be jointly agreed upon and issued.

## **ARTICLE 2 CONTRACTS**

With respect to the brief description of the concepts contained in Article 1 above, and this Agreement in general, the preliminary understandings expressed in this Agreement are to be incorporated into definitive and final Contracts. The parties shall use all best efforts to reach agreement on the Contracts.

## **ARTICLE 3 CONDITIONS PRECEDENT**

3.1 The parties' respective obligations to carry out the terms and conditions of this Agreement and execute and perform the Contracts are subject to the further following conditions:

- (a) Approval by Anmore Council, acting at their sole discretion within ten (10) business days of the execution date of this Agreement;
- (b) Successful completion and execution of the definitive Contract(s) constituting the objectives of the parties within ninety (90) days of the execution date of this Agreement.
- (c) The Owners execute a Section 219 Covenant, in favour of Port Moody, for the discharge of sanitary sewerage and storm water; and
- (d) The Owners execute a Section 219 Covenant, in favour of Anmore, for the discharge of sanitary sewerage and storm water.

## **ARTICLE 4**

### **GENERAL TERMS**

4.1 The rights, duties, obligations and liabilities of the parties shall be several and not joint nor joint and several, it being the express purpose and intention of the parties that their respective interests in this Agreement shall be held as tenants in common.

4.2 No party is authorized or empowered to obligate the other or incur any costs on behalf of the other without their prior written consent.

4.3 Each party is an independent contractor and the employees or agents of one are not the employees or agents of the other.

4.4 Nothing herein contained shall be construed as creating an agency, employment relationship, a partnership of any kind or as imposing upon any party any duty, obligation or liability to any other party hereto.

4.5 No party shall, except when required by this Agreement or by any law, bylaw, ordinance, rule, order or regulation, use, suffer or permit to be used, directly or indirectly, the name of any other party for any purpose related to the work contemplated in this Agreement.

4.6 No party will make any public statement regarding any matter arising pursuant to this Agreement without the prior written consent of the other.

4.7 All information disclosed or furnished by one party to the other, whether orally or in writing, in connection with the transaction contemplated hereunder shall be deemed to be proprietary and confidential information of the disclosing party. Except as required by law, the receiving party agrees that for a period of two years from the date of this agreement, it shall not disclose any confidential information not otherwise already in public domain without breach of this condition to any third party nor use the information for any purpose other than to evaluate its interest and carry out the transaction contemplated hereunder.

4.10 All references to each party herein are deemed to be references to the administrators, successors, permitted assigns of the respective parties hereto whenever the context so allows.

4.11 All references to legislation or regulations in this Agreement include any amendment to or replacement of such legislation or regulations.

4.12 This Agreement shall enure to the benefit of and be binding on the parties hereto.



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

4.14 Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default by that party.

4.15 This Agreement shall be governed by and construed according to the laws of the Province of British Columbia.

4.16 Time is of the essence in this Agreement.

4.17 Section headings are included for convenience only and do not form part of this Agreement and shall not be used in the construction or interpretation of this Agreement.\

4.18 The whole Agreement between parties hereto is set forth in this Agreement and no representations, warranties, or conditions, express or implied, have been made other than expressed herein.

4.19 Whenever it is required or desired that either party deliver or serve a notice on the other, delivery or service shall be deemed to be satisfactory and deemed to have occurred when:

- (a) served personally, on the date of service; or
- (b) mailed by prepaid registered mail to the address listed for that party on the first page of this Agreement or other address of which that party has in writing notified the other, on the earlier of the date received or on the fifth business day following date of mailing at any Canada post office, but in the event of interruption of mail service, notice shall be deemed to be delivered only when actually received by the party to whom it is addressed.

4.20 Should any clause or portion of this Agreement be declared or held invalid for any reason, the invalid portion shall be severed and the severance shall not affect the validity of the remainder.

4.21 Until all parties execute the formal Contracts, this Agreement shall remain binding on the parties, unless terminated or varied by written mutual consent or in accordance with its terms.

4.22 This Agreement may be executed in counterparts, each of which will be deemed as an original, but all of which will constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or electronic transmission is as effective as delivery of an originally executed counterpart. Dated as of this 10th day of December 2018

**Village of Anmore:**

**The Owners, Strata Plan LMS  
3080:**

By: \_\_\_\_\_

Name \_\_\_\_\_

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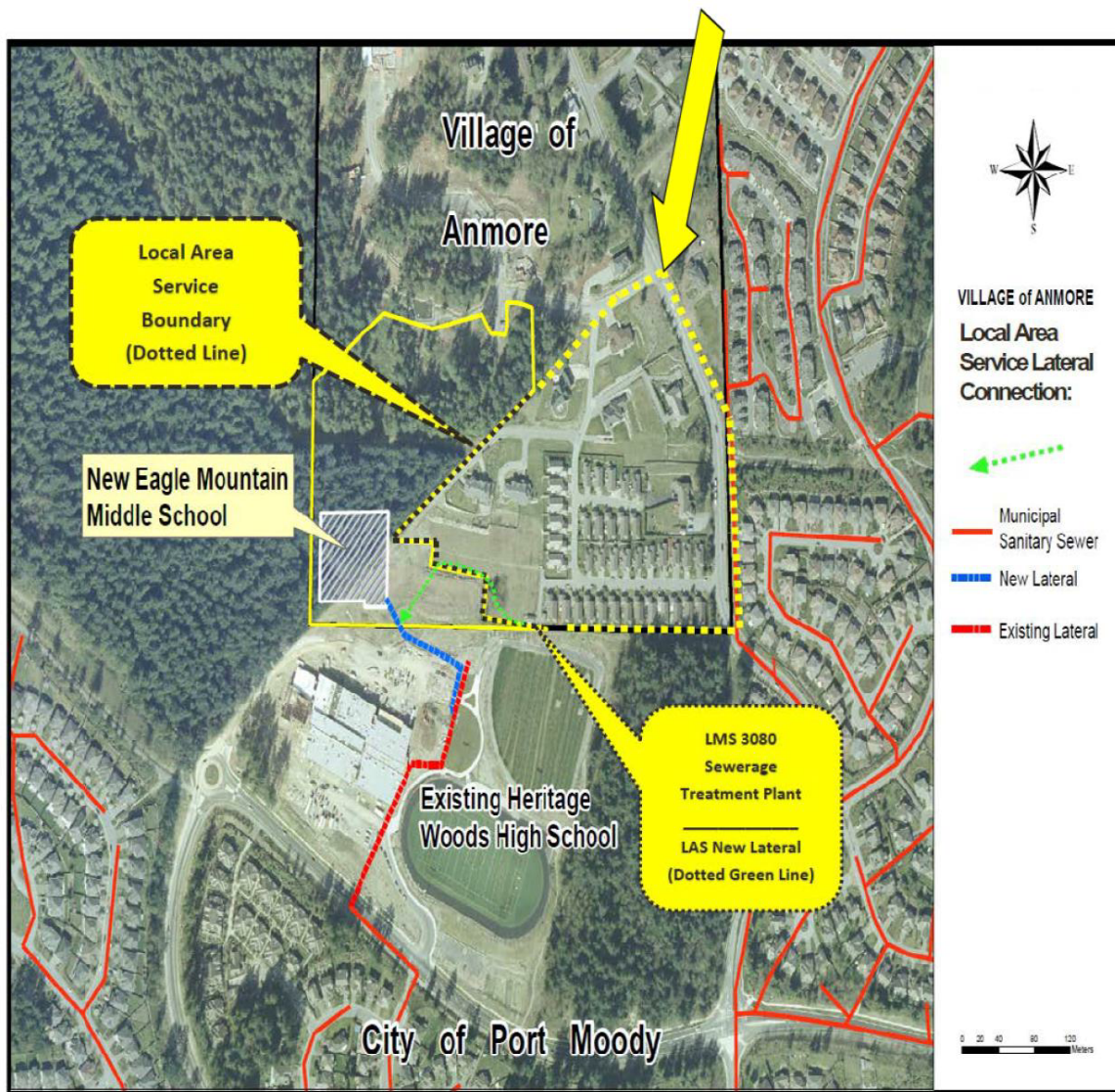
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By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## LOCAL AREA SERVICE



Greater Vancouver Sewerage & Drainage District - 19