

CITY OF NANAIMO

BYLAW NO. 7131

A BYLAW TO AUTHORIZE THE EMERGENCY WATER CONNECTION AGREEMENT
BETWEEN THE CITY OF NANAIMO AND NANAIMO FOREST PRODUCTS

WHEREAS the Council wishes to enter into an Emergency Water Connection agreement (the "Agreement") with Nanaimo Forest Products for a term of 30 years;

THEREFORE BE IT RESOLVED that the Council of the City of Nanaimo in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. This Bylaw may be cited as the "EMERGENCY WATER CONNECTION AGREEMENT BYLAW 2011 NO. 7131".
2. The Council of the City of Nanaimo hereby authorizes the Mayor and Manager of Legislative Services to enter into the Agreement, on behalf of the City of Nanaimo, in substantially the form attached hereto as Schedule 'A', which sets out the terms and conditions of the Agreement for the sharing of water and mitigating supply risk for either party in the event of supply interruption.
3. Upon execution of the Agreement by the Mayor and Manager of Legislative Services, this Agreement shall be validly entered into as authorized by this Bylaw.

PASSED FIRST READING 2011-JUL-11
PASSED SECOND READING 2011-JUL-11
PASSED THIRD READING 2011-JUL-11

Notice of the alternative approval process was published on the 21st day of July 2011 in the Nanaimo Daily News, and on the 28th day of July 2011 in the Nanaimo News Bulletin, newspapers circulating in the City of Nanaimo, pursuant to Section 94 of the *Community Charter*.

RECEIVED APPROVAL OF THE ELECTORS
BY ALTERNATIVE APPROVAL PROCESS 2011-AUG-31
ADOPTED 2011-SEP-12

J. R. RUTTAN
MAYOR

J. E. HARRISON
MANAGER
LEGISLATIVE SERVICES

SCHEDULE A

EMERGENCY WATER CONNECTION AGREEMENT

THIS AGREEMENT dated for reference the day of 2011.

BETWEEN:

CITY OF NANAIMO
455 Wallace Street
Nanaimo, B.C. V9R 5J6

("Nanaimo")

OF THE FIRST PART

AND:

NANAIMO FOREST PRODUCTS LTD.
P.O. Box 667
Nanaimo, B.C. V9R 5L9

("NFP")

OF THE SECOND PART

WHEREAS:

- A. Nanaimo operates a water system for the supply and distribution of water within the boundaries of the City of Nanaimo;
- B. NFP operates a water system for the supply and distribution of water to serve NFP;
- C. Nanaimo and NFP wish to establish an emergency water connection between the water systems of Nanaimo and NFP for the purpose of providing a supply of water to Nanaimo in the event that an emergency prevents Nanaimo from relying upon its own water supply and providing a supply of water to NFP if an emergency at NFP prevents NFP from relying on its own water supply.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the covenants and conditions hereinafter contained and for other good and valuable consideration, the receipt and sufficiency and receipt of which is hereby acknowledged, Nanaimo and NFP hereby covenant and agree each with the other as follows:

1.0 DEFINITIONS

“**Connection**” means the water pipeline and appurtenances connecting the Nanaimo Water System to the NFP Water System in the location more particularly described in Schedule "B" attached to this Agreement; for greater clarity, the location of the division is shown in Schedule "B";

“**Emergency Use**” means an interruption in the supply of water of a Receiving Party at a point before the water reaches the distribution system of the Receiving Party in circumstances:

- (a) that were not reasonably foreseeable; or
- (b) as part of a supply risk mitigation.

“**Lands**” means the Lands described in Schedule "D"; “**Mill**” means the pulp mill known as the Harmac mill located in Nanaimo, B.C.;

“**Nanaimo Water System**” means the Duke Point Water Supply Main and the connection up to and including the isolation valve at the NFP Water System;

“**NFP Water System**” means the water system serving the Mill;

“**Pipeline**” means the 750mm diameter water main proposed to interconnect the Duke Point Water Supply Main and the NFP Water System;

“**Pump Station**” means the proposed pump station and ancillary works to be constructed to lift water from NFP water supply mains to Nanaimo's Water System through the Connection;

“**Receiving Party**” means the party receiving water under this agreement;

“**Supplying Party**” means the party providing water from its water system under this Agreement;

“**Water Use Effective Date**” means in connection with:

- (a) NFP, the completion of the Connection;
- (b) Nanaimo, the completion of the Pump Station and connection of the Pump Station to the Connection;

“**Work**” means the construction of the Connection and the Pump Station.

2.0 WATER CONNECTION

- 2.1 Nanaimo shall in accordance with this agreement, design, construct, install, provide and maintain the Connection.
- 2.2 The Connection shall include a meter. The meter and Connection shall be the property of Nanaimo notwithstanding any thing done or any money contributed by NFP toward the cost of the Connection.
- 2.3 Nanaimo shall be the owner of the Works and the control of the Connection shall be as set out in this Agreement.

3.0 TERM AND CONDITION PRECEDENT

- 3.1 The term of this agreement shall be thirty (30) years from the date first written above.
- 3.2 Despite section 3.1, it is a condition precedent to the obligations of the parties under this Agreement that this Agreement be approved by the electors of the City of Nanaimo through an alternative approval process on or before the First day of September, 2011, and if not so approved, this Agreement shall have no force or effect and neither party shall have any claim against the other.

4.0 EMERGENCY SUPPLY OF WATER

- 4.1 From and after the Water Use Effective Date in the event of a situation or occurrence requiring Emergency Use that requires the provision of a supply of water to Nanaimo, Nanaimo may temporarily use a supply of water through the Connection.
- 4.2 From and after the Water Use Effective Date, in the event of a situation or occurrence requiring Emergency Use and that requires the provision of a supply of water to NFP, NFP may temporarily use a supply of water through the Connection.
- 4.3 Water shall be provided under this agreement provided that the following conditions are fulfilled:
 - (a) the situation giving rise to the connection is an Emergency Use as defined in section 1.0 of this Agreement; and
 - (b) in the case that NFP is the receiving party, NFP has first made all reasonable efforts to contact Nanaimo's designated representative as set out in Schedule "C" or, in case of his or her absence or incapacity, another senior representative of Nanaimo having a manager position to discuss the nature and the expected duration of the Emergency Use, and seek permission to open the Connection; or

- (c) in the case where Nanaimo is the Receiving Party, Nanaimo has first made all reasonable efforts to contact NFP's designated representative as set out in Schedule "C" or, in case of his or her absence or incapacity, another senior representative of NFP to discuss the nature and the expected duration of the Emergency Use, and seek permission to open the Connection; and
 - (d) approval of the Supplying Party has been obtained in writing, and shall include both facsimile and email transmissions, which approval is not to be unreasonably withheld.
- 4.4 At the conclusion of every instance of Emergency Use, and regardless of whether or not the Connection was opened with the prior permission of a Supplying Party, the Connection shall be closed only under the supervision of Nanaimo.
- 4.5 Notwithstanding any other provision of this Agreement,
 - (a) Nanaimo may close the Connection at any time, including during a period of Emergency Use, if the closure is necessary to protect the health or safety of Nanaimo's citizens; or to ensure that the City has sufficient volumes of water reasonably available for use by the residents and property owners in Nanaimo's water supply jurisdiction, and Nanaimo shall not be liable for any loss, cost, damage or expense incurred by NFP as a result of such closure; and
 - (b) NFP may close the Connection at any time, including during a period of Emergency Use, if the closure is necessary to protect the health or safety of NFP employees or volumes of water reasonably required for the NFP's business operations; and NFP shall not be liable for any loss, cost, damage or expense incurred by Nanaimo as a result of such closure.
- 5.0 COSTS AND CONSTRUCTION OF THE WORK AND POWER SUPPLY**
- 5.1 Nanaimo shall cause the Work to be designed, and shall tender the Work, award the contract for the Work and make all payments to the contractor on account of the Work.
- 5.2 The cost of designing, installing and constructing the Connection shall be divided equally between the Parties. Nanaimo shall invoice NFP monthly for NFP's share of all amounts paid by Nanaimo on account of the cost of the Work (including NFP's share of amounts to be retained by Nanaimo under the *Builder's Lien Act (British Columbia)*) and NFP shall remit such amount to Nanaimo within 30 days of the delivery of the invoice without setoff or deduction of any kind. Nanaimo shall include with the invoice to NFP a copy of the applicable progress

payment certificate verifying the amount paid to the contractor.

- 5.3 If NFP disputes the cost of the Work allocated to NFP, or the payment of any amount by Nanaimo on which the monthly invoice to NFP from Nanaimo is based, the dispute shall be resolved under section 15.1 of this Agreement.
- 5.4 The amount of the cost to Nanaimo of all consultants, architects and engineers and apportioned under section 5.2 plus all applicable taxes shall be the greater of:
 - (a) the lowest compliant tender for the Connection plus an amount of 10% for contingency, together with the total of all change orders reasonably approved by Nanaimo; and
 - (b) the actual cost of the Connection carried out by a contractor under contract to Nanaimo.
- 5.5 Nanaimo shall cause the Pump Station to be constructed at its sole cost.
- 5.6 The designated representatives of the parties shall meet on a regular basis as agreed by the parties at all critical stages of project management during the construction of the Work to discuss construction progress and any cost-related issues so that NFP is kept informed of the cost of the Work and has an opportunity to comment on the circumstances giving rise to any projected change in cost.
- 5.7 NFP shall, at the cost of Nanaimo, cause to be designed, constructed and installed a supply of power to the Pumping Station. NFP shall tender the work for the installation of the power supply unless otherwise agreed in writing by Nanaimo. The cost payable by Nanaimo shall be the actual cost of all consultants, architects and engineers, the actual cost of the construction of the power supply plus all applicable taxes.

6.0 FEES FOR WATER USE

- 6.1 NFP shall pay Nanaimo for water at the rate of NINE THOUSAND FOUR HUNDRED AND FIFTY-THREE DOLLARS (\$9,453.00) per 10,000 usgpm/day, or, prorated portion thereof, as measured at the Connection, calculated on a quarterly basis.
- 6.2 Nanaimo shall pay NFP at the rate of THREE THOUSAND NINE HUNDRED AND TWENTY DOLLARS (\$3920.00) per 10,000 usgpm/day, or, prorated portion thereof, as measured at the Connection, calculated on a quarterly basis.
- 6.3 Amounts under sections 6.1 and 6.2 shall be paid within thirty (30) days of receipt by the Receiving Party of an invoice from the Supplying Party.
- 6.4 If a Receiving Party disputes the amount of an invoice it shall pay the amount of

the invoice under section 6.3 and refer the matter for dispute resolution under section 15.0 of this Agreement.

- 6.5 The parties shall document the calculation of charges for water supplied under this Agreement, as shown in Schedule E.
- 6.6 The fees payable for water shall be revised on the fifth anniversary of this Agreement and thereafter every five (5) years to reflect changes in the cost of supplying water to a Receiving Party based on the same method used to calculate the rates in sections 6.1 and 6.2. If the parties cannot agree on the fees to be charged in the second or any subsequent five year period they shall refer the matter for dispute resolution under section 15.0 of this Agreement.

7.0 MAINTENANCE

- 7.1 Each of the parties shall maintain all pipes and equipment appurtenant to the Connection which lie upon its side of the Connection.
- 7.2 Each of the parties shall maintain its water system generally, including its supply and distribution facilities, in such a manner as to minimize the frequency and duration of Emergency Use.
- 7.3 In the event of Emergency Use the Receiving Party shall make all reasonable efforts to correct or resolve the Emergency so as to minimize the duration of the Emergency Use and to minimize the possibility of the recurrence of the Emergency Use.
- 7.4 For the purpose of greater certainty, it is acknowledged and agreed between the parties that:
 - (a) Nanaimo is not and shall not be obliged to install, possess, control, operate or maintain any of the NFP Water System; and
 - (b) NFP is not and shall not be obliged to install, possess, control, operate or maintain any of the Nanaimo Water System, or the Works.

8.0 CHARGED PIPE

- 8.1 Upon notice from a Receiving Party that it requires Emergency Use, the Supplying Party shall make reasonable commercial efforts to ensure that the pipe connecting the Supplying Party's water system to the Connection is charged.
- 8.2 In the event that a Supplying Party anticipates or becomes aware that the pipe connecting the Supplying Party's water system is not charged or will not be charged, the Supplying Party shall make reasonable commercial efforts to inform the Receiving Party of the situation.
- 8.3 Notwithstanding sections 8.1 and 8.2 of this Agreement, it is hereby

acknowledged and agreed by the parties that neither party warrants, represents, or guarantees that the pipe connecting its water system to the point of connection will be charged at any time.

9.0 TESTING

9.1 The parties agree that from time to time, the parties may test the Connection. Nanaimo shall make the necessary scheduling arrangements to carry out each Test, including coordination of the scheduling of each Test with NFP. There shall be no Fees for Water Use during such testing.

10.0 NO WARRANTIES

10.1 It is hereby acknowledged and agreed by the parties that neither Nanaimo nor NFP makes any representation or warranty with respect to the potability of any water supplied through the Connection as Emergency Use.

10.2 For greater certainty, it is hereby acknowledged and agreed that the Receiving Party shall be responsible for ensuring that water received at the Connection is treated as necessary for the purposes of distribution to any consumer.

11.0 STATUTORY RIGHT OF WAY

11.1 Prior to commencement of the construction of the Connection, NFP shall grant to Nanaimo a Statutory Right of Way substantially in the form attached to this Agreement as Schedule "A" over the Lands for the purpose of accommodating the Work. Nanaimo shall pay to NFP as consideration for the right of way the fair market value of the right of way as determined by an appraiser who is a qualified AACI to be jointly selected by the parties.

12.0 RELEASE AND INDEMNITY

12.1 NFP hereby indemnifies, releases, saves harmless and forever discharges Nanaimo and its elected officials, officers, employees, agents, servants, solicitors, and successors from any and all actions, causes of action, suits, debts, losses, dues, accounts, expenses, damages, costs, claims, demands or other liability whatsoever and by whomsoever (collectively, "**Liability**") which may arise out of or in connection with this Agreement, the Connection, any Emergency Use or any other matter or thing hereunder, including but not limited to Liability arising as a consequence of the failure, breakdown or malfunction of the NFP Water System caused by the inadequacy of the NFP Water System to withstand the pressure of water supplied through the Connection, or the contamination by pathogens or otherwise of water supplied to NFP through the Connection, or the failure of a pressure-reducing valve on the Nanaimo side of the Connection. The indemnity and release provided in this section shall not apply where liability is caused solely by the negligence of Nanaimo or persons for whom Nanaimo is in law responsible.

- 12.2 In addition to the indemnity and release provided in section 12.0 of this Agreement, NFP hereby warrants to Nanaimo that NFP's Water System is adequate to withstand the pressure of any water supplied to it through the Connection.
- 12.3 Nanaimo hereby indemnifies, releases, saves harmless and forever discharges NFP and its elected officials, officers, employees, agents, servants, solicitors, and successors from any and all actions, causes of action, suits, debts, losses, dues, accounts, expenses, damages, costs, claims, demands or other liability whatsoever and by whomsoever (collectively, "**Liability**") which may arise out of or in connection with this Agreement, the Connection, any Emergency Use or any other matter or thing hereunder, including but not limited to Liability arising as a consequence of the failure, breakdown or malfunction of the Nanaimo Water System caused by the inadequacy of the Nanaimo Water System to withstand the pressure of water supplied through the Connection, or the contamination by pathogens or otherwise of water supplied to Nanaimo through the Connection, or the failure of a pressure-reducing valve on the NFP side of the Connection. The indemnity and release provided in this section shall not apply where liability is caused solely by the negligence of NFP or persons for whom NFP is in law responsible.
- 12.4 In addition to the indemnity and release provided in section 12.0 of this Agreement, Nanaimo hereby warrants to NFP that Nanaimo's Water System is adequate to withstand the pressure of any water supplied to it through the Connection.

13.0 INSURANCE

- 13.1 The parties shall, throughout the Term of this Agreement, obtain and maintain, with a deductible and otherwise in a form acceptable to the other Party, with an insurance company licensed to carry on business in the Province of British Columbia, a policy or policies of comprehensive general liability and property insurance in amounts satisfactory to the other Party providing the following coverage and protecting Nanaimo and NFP against all claims arising out of:
- (a) death or injury to persons;
 - (b) damage to, or loss of, or loss of use of any property; and
 - (c) damage to, or loss of or loss of use of Nanaimo's Water System.
- 13.2 Such policy of insurance shall:
- (a) name the other Party as an additional insured;
 - (b) state that the policy applies to each insured in the same manner and to the same extent as if a separate policy had been issued to each insured;

and

(c) contain a waiver of subrogation.

13.3 The parties shall provide a certified copy of each policy of insurance to Nanaimo promptly upon request by Nanaimo.

13.4 Loss Payable

The parties shall cause each such policy of insurance to contain a provision that the policy will not be changed or amended in any way nor cancelled until thirty (30) days after written notice to Nanaimo. The parties shall pay all premiums as the same become due and payable in respect of such insurance that each is required to maintain under this Agreement.

13.5 Insurance Renewal

If any insurance required to be maintained hereunder is not effected nor kept duly renewed, Nanaimo may effect or renew such insurance, and if a party defaults in the payment of premiums, Nanaimo may pay the same and such sums of money shall be payable by NFP to Nanaimo forthwith without demand.

14.0 TERMINATION

14.1 Excessive Cost

Despite anything else in this Agreement, either Party may terminate this Agreement if it is determined that the cost of the Connection will exceed three (3) million dollars.

14.2 Events of Default

Any one or more of the following events shall constitute an Event of Default (whether any such Event or Default shall be voluntary or involuntary or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any Court or any order, rule or regulation of any administrative or governmental body);

- (a) the failure by a Party to perform or observe any of the covenants, conditions or agreements to be performed or observed by a Party hereunder, which such failure shall continue unremedied for a period of 30 days after delivery by the other Party of written notice thereof;
- (b) the making of an order or the passage of a resolution for the liquidation or winding-up of the NFP;
- (c) the making by a Party of a proposal or general assignment for the benefit of its creditors or other acknowledgment of its insolvency;

- (d) the appointment of a receiver, receiver-manager or receiver and manager of the NFP or any part of its property or assets;
- (e) the default by a Party in the payment of any indebtedness whatsoever under this Agreement, which such default shall continue unremedied for a period of thirty (30) days after written notice thereof to the Party and the Party is not then contesting such default in good faith.

14.3 Remedies Upon Default

Upon the occurrence of an Event of Default and at any time thereafter, provided that the Party in default has not therefore remedied all outstanding Events of Default, the Party not in default may, in its discretion, by notice to the Party in default, declare this Agreement to be in default. At any time thereafter, while the Party in default shall not have remedied all outstanding Events of Default, the other Party, at its discretion and subject to compliance with any mandatory requirements of applicable law then in effect, may terminate any of its obligations hereunder.

15.0 **DISPUTE RESOLUTION**

- 15.1 The parties hereto agree that in the event of a dispute or disagreement concerning the terms and conditions of this Agreement or of any rights, duties or obligations arising out of this Agreement, the parties will meet with each other and use their best efforts to resolve the dispute or disagreement upon terms that are mutually agreeable to both parties and are in accordance with the spirit and intent of this Agreement. If despite the best efforts of both parties, resolution is not reached, then the dispute or disagreement shall be referred to a single arbitrator pursuant to the *Commercial Arbitration Act* (British Columbia) and the determination of such arbitrator shall be final and binding on the parties hereto. The costs of arbitration shall be borne by the parties equally.

16.0 **REASONABLE ASSURANCES**

- 16.1 The parties hereto will at all times and upon every reasonable request give such further assurances and do all further things for the purpose of giving full effect to the covenants and provisions contained in this Agreement.

17.0 **CORPORATE ACTS**

- 17.1 The parties warrant to each other that they have taken all necessary corporate acts and have all necessary corporate authority in order to authorize entering into and carrying out the terms of this Agreement.

18.0 **TIME**

- 18.1 Time is of the essence of this Agreement.

19.0 STATUTORY RIGHTS AND RESPONSIBILITIES

Nothing contained or implied herein shall prejudice or affect the rights and powers of Nanaimo in the exercise of its functions under any public and private statutes, 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 on the parties under the *Community Charter* and the *Local Government Act*, and any successor legislation.

20.0 NOTICE

20.1 Unless otherwise specified herein, any notice required to be given under this Agreement by either party will be deemed to have been given if mailed by prepaid registered mail, or sent by facsimile transmission or email in the case of Notice of Use, 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 or faxed, 72 hours after the time of mailing or faxing and, if delivered, upon the date of delivery. If normal mail service or facsimile service is interrupted by strike, slow down, force majeure or other cause, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice must utilize any other such services which have not been so interrupted or must deliver such notice in order to ensure prompt receipt thereof.

21.0 ASSIGNMENT

21.1 Neither party may assign or otherwise dispose of this Agreement, in whole or in part, without the prior written consent of the other Party, not to be unreasonably withheld, except in the following circumstances where consent is not required:

(a) by NFP to any person acquiring any interest in fee simple in the Lands or the Mill.

21.2 Despite an assignment referred to in section 20.1, the assigning Party shall continue to be bound by all provisions of this Agreement unless and until the proposed assignee agrees in writing with the other Party to be bound by all provisions of this Agreement, and demonstrates to the reasonable satisfaction of the other Party that the proposed assignee shall meet all obligations under this Agreement.

21.3 NFP must obtain from any person acquiring any interest in fee simple in the Lands such person's agreement to be bound by and become a party to this Agreement in respect of NFP's interest prior to the completion date of any

transfer of a fee simple interest in the land.

21.4 Upon being reasonably satisfied under section 21.2, Nanaimo shall provide NFP with a release of the NFP's obligations under this Agreement.

21.5 A Party which intends to assign its interest in this Agreement shall provide prompt notice to the other Party in advance of all permitted assignments or dispositions and shall reimburse the other Party for all reasonable costs incurred in connection with such assignment.

22.0 HEADINGS

22.1 The headings in this Agreement are inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.

23.0 WAIVER

23.1 No waiver or any term or condition of this Agreement or of a breach of any term or condition of this Agreement by either party hereto shall be effective unless it is in writing and no waiver of breach even if in writing shall be construed as a waiver of any future breach.

24.0 LANGUAGE

24.1 Wherever the singular, masculine and neuter are used throughout this Agreement, the same shall be constructed as meaning the plural or the feminine or the body corporate or politic as the context so requires.

25.0 BINDING EFFECT

25.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors.

26.0 SEVERABILITY

26.1 Each article of this Agreement shall be severable. If any provision of this Agreement is held to be illegal or invalid by a Court of competent jurisdiction, the provision may be severed and the illegality or invalidity shall not affect the validity of the remainder of this Agreement.

27.0 ENTIRE AGREEMENT

27.1 The provisions herein contained constitute the entire agreement between the parties hereto and supersede all previous communications, representations and agreements, whether verbal or written, between such parties with respect to the subject matter hereof. This Agreement may be altered or amended only by an agreement in writing signed by the parties hereto.

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 ____ day of _____, 2011.)
_____)
_____)

NANAIMO FOREST PRODUCTS LTD. by its)
authorized signatories this ____ day of)
_____, 2011.)
_____)
Print Name: _____))
_____)
Print Name: _____))

SCHEDULE "A"

Statutory Right of Way

TERMS OF INSTRUMENT--PART 2

WHEREAS:

A. The Transferor is the registered owner, or is entitled to become the registered owner, of the lands and premises more particularly described in Form C (page 1) hereto (the "Lands of Transferor");

B. To facilitate the installation of a system of high pressure waterworks, pump house and water treatment facilities, including all pipes, valves, fittings and facilities in connection therewith and/or hydro electric and communications works including all wires, poles, conduits, radios and other facilities in connection therewith, and chemical storage and injection facilities for the purposes of treating the water to a drinking water standard and other facilities in connection therewith (herein called the "Works"), the Transferor has agreed to permit the construction by the Transferee of the Works on a portion of the Lands of the Transferor and to Grant for these purposes the Rights-of-way hereafter described.

C. The Transferor has agreed to grant to the Transferee a Right-of-way through, under and across the Lands of the Transferor on the terms and conditions set out below; and

D. It is necessary for the operation and maintenance of Transferee's undertaking to obtain a Statutory Right-of-way;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the sum of One Dollar (\$1.00) of lawful money of Canada, now paid by the Transferee to the Transferor (the receipt and sufficiency of which is hereby acknowledged by the Transferor), and in consideration of the covenants and conditions hereinafter contained to be observed and performed by the Transferee and for other valuable consideration:

PARAGRAPH 1 - GRANT OF RIGHT OF WAY TO ACCOMMODATE THE WORKS

1.1 THE PARTIES HERETO EACH HEREBY COVENANT TO AND AGREE WITH THE OTHER, as follows:

(a) The Transferor does hereby grant, convey, confirm and transfer, in perpetuity, unto the Transferee the full, free and uninterrupted right, license, liberty, privilege, permission and Right-of-way to lay down, install, construct, entrench, operate, maintain, inspect, alter, remove, replace, bury, cleanse, string, and otherwise establish one or more systems of Works upon, over, under and across the Lands of the Transferor.

(b) The Transferee does hereby covenant and agree that as soon as reasonably

practical after the construction and installation of the Works upon the Lands of the Transferor the Transferee shall cause to be delivered to the applicable Land Title Office for deposit under the Land Title Act a plan of Right-of-way defining that part of the Lands of the Transferor required by the Transferee for the accommodation of the Works, and immediately after deposit of the said plan of Right-of-way the Transferee shall cause to be registered in the Land Title Office a release from the rights granted in this Paragraph 1 over all of the Lands of the Transferor not within the Right-of-way shown on the plan. Thereafter the rights granted in this Section 1 shall only apply to the Lands of the Transferor shown outlined and marked on the Right-of-way plan (hereinafter called the "Right of Way").

- (c) The Transferor does hereby covenant and agree to and with the Transferee that for the purposes aforesaid and upon, over, under and across the Right-of-Way, the Transferee shall for itself and its servants, agents, workers, contractors and all other licensees of the Transferee together with machinery, vehicles, equipment, and materials be entitled at all times to enter, use, pass and repass, labour, construct, erect, install, dig, carry away soil or other surface or subsurface materials, clear of all trees, growth, buildings or obstructions now or hereafter in existence, as may be necessary, useful, or convenient in connection with the operations of the Transferee in relation to the Works.
- (d) The Transferor does hereby transfer, assign and convey to the Transferee all right, title and interest in and to any Works that the Transferee, or the Transferor have prior to this Agreement established or constructed or maintained or operated within the Right-of-Way or in relation to any similar Works previously constructed by any party whatsoever within the Right-of-Way.
- (e) The said Works referred to above, together with all pipes, valves, conduits, wires, casings, fittings, lines, meters, appliances, facilities, attachments or devices used in connection therewith shall constitute the Works.
- (f) Notwithstanding any rule of law or equity to the contrary, the Works brought on to, set, constructed, laid, erected in, upon or under the Right-of-way by the Transferee shall at all times remain the property of the Transferee notwithstanding that the same may be annexed or affixed to the freehold and shall at any time and from time to time be removable in whole or in part by the Transferee.
- (d) In the event that the Transferee abandons the Works or any part thereof the Transferee may, if it so elects, leave the whole or any part thereof in place.

1.2 THE TRANSFEROR HEREBY COVENANTS TO AND AGREES WITH THE TRANSFEEE, as follows:

- (a) That the Transferor will not, nor permit any other person to erect, place, install or maintain any fence, buildings, structure, mobile home, concrete driveway or patio, pipe, wire or other conduit on, over or under any portion of the Right-of-Way so that it in any way interferes with or damages or prevents access to, or is likely to cause harm to Works authorized hereby to be installed in or upon the Right-of-way.
- (b) That the Transferor will not do nor knowingly permit to be done any act or thing which will interfere with or injure the said Works and in particular will not carry out any blasting on or adjacent to the Right-of-Way without the consent in writing of the Transferee, provided that such consent shall not be unreasonably withheld.
- (c) That the Transferor acknowledges that any act or thing which interferes with or injures the Works or any authorized work or activity by the Transferor within the Right-of-Way may rupture the high pressure waterworks which could result in explosion, massive flooding, injury or death.
- (c) That the Transferor will not substantially add to or diminish the soil cover over any of the Works installed in the Right-of-Way and in particular, without limiting the generality of the foregoing, will not construct open drains or ditches along or across any of the Works installed in the Right-of-Way without the consent of the Transferee which will not be unreasonably withheld.

1.3 THE TRANSFEEE HEREBY COVENANTS TO AND AGREES WITH THE TRANSFEROR, as follows:

- (a) That the Transferee will not bury any debris or rubbish of any kind in the excavations or backfill, and will remove shoring and like temporary structures as backfilling proceeds.
- (b) That the Transferee will thoroughly clean the Right of Way of all rubbish and construction debris created or placed thereon by the Transferee and will leave the Right of Way in a neat and clean condition.
- (c) That the Transferee will, as soon as weather and soil conditions permit, and so often as it may exercise its rights hereunder to the Right of Way, replace the surface soil as nearly as may be reasonably possible to the same condition as it was prior to such entry, in order to restore the natural drainage to such lands, PROVIDED HOWEVER that nothing herein contained shall require the Transferee to restore any trees or other surface growth but the Transferee shall leave such lands in a condition which will not inhibit natural regeneration of such growth.
- (d) That the Transferee will, as far as reasonably possible, carry out all work in a proper and workmanlike manner so as to do as little injury to the Right of Way

as possible.

- (e) That the Transferee will make good at its own expense all damage or disturbance which may be caused to the surface soil of the Right of Way in the exercise of its rights hereunder.
- (f) The Transferee will, as far as reasonably possible, restore any fences, lawns, and flower beds, at its cost as nearly as may be reasonably possible to the same condition that they were in prior to any entry by the Transferee upon the Right of Way.

PARAGRAPH 2 GRANT OF RIGHT OF WAY OVER THE LANDS OF THE TRANSFEROR

2.1 THE TRANSFEROR HEREBY COVENANTS TO AND AGREES WITH THE TRANSFEREE, as follows:

- (a) The Transferor does hereby grant, convey, confirm and transfer unto the Transferee for itself, and its servants, agents, workmen, contractors and all other licensees of the Transferee together with machinery, vehicles, equipment and materials, the right at all times to enter upon and to pass and repass over such of the Lands of the Transferor as may reasonably be required for the purpose of ingress to and egress from the Right-of-Way.
- (b) The Transferor does hereby grant, convey, confirm and transfer unto the Transferee for itself, and its servants, agents, workmen, contractors and all other licensees of the Transferee together with machinery, vehicles, equipment and materials, the right at all reasonable times to use such of the Lands of the Transferor as may reasonably be required for the purpose of installing, constructing, maintaining, inspecting, altering, removing replacing or repairing the Works.

2.2 THE TRANSFEREE HEREBY COVENANTS TO AND AGREES WITH THE TRANSFEROR, as follows:

- (a) That the Transferee will not bury any debris or rubbish of any kind on the Lands of the Transferor, and will remove shoring and like temporary structures as backfilling proceeds.
- (b) That the Transferee will thoroughly clean all lands to which it has access hereunder of all rubbish and construction debris created or placed thereon by the Transferee and will leave such lands in a neat and clean condition.
- (c) That the Transferee will, as soon as weather and soil conditions permit, and so often as it may exercise its rights of entry hereunder to any of the Lands of the Transferor, replace the surface soil as nearly as may be reasonably possible to

the same condition as it was prior to such entry, in order to restore the natural drainage to such lands, PROVIDED HOWEVER that nothing herein contained shall require the Transferee to restore any trees or other surface growth but the Transferee shall leave such lands in a condition which will not inhibit natural regeneration of such growth.

- (d) That the Transferee will, as far as reasonably possible, carry out all work in a proper and workmanlike manner so as to do as little injury to the Lands of the Transferor as possible.
- (e) That the Transferee will make good at its own expense all damage or disturbance which may be caused to the surface soil of the Lands of the Transferor in the exercise of its rights hereunder.
- (f) The Transferee will, as far as reasonably possible, restore any fences, lawns, flower beds at its cost as nearly as may be reasonably possible to the same condition that they were in prior to any entry by the Transferee upon the Lands of the Transferor.

PARAGRAPH 3 GENERAL TERMS

3.1 THE PARTIES HERETO EACH HEREBY COVENANT TO AND AGREE WITH THE OTHER, as follows:

- (a) That the Transferor will from time to time and at all times upon every reasonable request and at the cost of the Transferee do and execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices, conveyances and assurances in law whatsoever for the better assuring unto the Transferee of the rights hereby granted.
- (b) That no part of the title in fee simple to the soil shall pass to or be vested in the Transferee under or by virtue of these presents and the Transferor may fully use and enjoy the Lands of the Transferor subject only to the rights and restrictions herein contained.
- (c) That the covenants herein contained shall be covenants running with the land and that none of the covenants herein contained shall be personal or binding upon the Transferor, save and except during the Transferor's ownership of any interest in the Lands of the Transferor, and with respect only to that portion of the Lands of the Transferor of which the Transferor shall be seized or in which he shall have an interest, but that the Lands of the Transferor, shall nevertheless, be and remain at all times charged therewith.
- (d) If at the date hereof the Transferor is not the sole registered owner of the Lands of the Transferor, this Agreement shall nevertheless bind the Transferor to the full extent of his interest therein, and if he shall acquire a

greater or the entire interest in fee simple, this Agreement shall likewise extend to such after-acquired interests.

- (e) Where the expression "Transferor" includes more than one person, all covenants herein on the part of the Transferor shall be construed as being several as well as joint.
- (f) This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors and assigns as the case may be and wherever the singular or masculine is used, it shall be construed as if the plural or the feminine or neuter, as the case may be, had been used, where the parties or the context hereto so require and the rest of the sentence shall be construed as if the grammatical and terminological changes thereby rendered necessary had been made.

End of Document

SCHEDULE "C"

Designated Contract Persons

	Title	Phone	Cell
Nanaimo Forest Products			
Central Control Room	Operations (24 hour)	250-722-4307	
Gerry Turner	Supervisor (Waterline)	250-722-4293	
David Bramley	Technical Services Superintendent	250-722-4267	250-739-1043
Ryan Prontack	Engineering Superintendent	250-722-4320	250-714-4787
City of Nanaimo			
Public Works Yard	24 hour Operator on call	250-758-5222	
Ritchie Fulla	General Foreman, Waterworks	250-756-5324	250-755-5731
Bill Sims	Manager, Water Resources	250-756-5302	250-714-3568
John Elliot	Manager, Utilities	250-756-5305	250-755-5186
Scott Pamminger	Water Resources Specialist	250-756-5338	250-713-9857

SCHEDULE "D"

Lands Occupied by the Connection

1. 1000 Wave Place
 - PID: 003-926-516 - WEST 60 ACRES OF SECTION 22, RANGE 1, CEDAR DISTRICT, EXCEPT THAT PART SHOWN OUTLINED IN RED ON PLAN 1499R AND EXCEPT THAT PART IN PLAN VIP74868
 - PID: 023-922-893 –LOT 3 OF SECTIONS 21,22,23, RANGE 1 & 2, CEDAR DISTRICT, & DISTRICT LOT 137 & 385, NANAIMO DISTRICT, PLAN VIP65621

2. 1140 Hooker Road
 - PID: 003-924-424 –THE EAST 1/2 OF SECTION 2, RANGE 8, NANAIMO DISTRICT, EXCEPT PLANS 32333, 37427 AND VIP7486

3. 1190 Maughan Road
 - PID: 023-922-877 - LOT 1, SECTION 1, RANGE 8, NANAIMO DISTRICT AND SECTION 21, RANGE 1, CEDAR DISTRICT, PLAN VIP65621

SCHEDULE "E"
Calculation of Water Charges

City of Nanaimo Calculations:

	CHARGE TO SW EXTENSION	FULL COST AT 22M
	2011	2011
Cost of Supply		
Debt	544,334	544,334
Less: Transfer from DCC Fund	0	0
Transfer to (from) Reserves	125,816	125,816
Capital	2,816,976	2,816,976
Supply Operation Expense		
Administration	746,751	746,751
Dams	250,179	250,179
Transmission Lines	175,771	175,771
Reservoirs	54,326	54,326
Telemetry & Instrumentation	123,244	123,244
Pressure Reducing Stations	136,662	136,662
Waterworks Grnds Mtce P&R	16,000	16,000
Utility Yard Maintenance	10,080	10,080
Water Testing	106,714	106,714
WPC Chlorination	108,324	108,324
#1 Reservoir Chlorination	62,112	0
Water Supply Projects	371,000	371,000
Water Treatment Centre Operations	0	0
Supply and Storage	1,414,412	1,352,300
Engineering & P/W Overhead	984,224	984,224
Less: cc # 3757 Water Supply admin	(336,756)	(336,756)
	647,468	647,468
Water Supply Share = 51.5%	333,446	333,446
Watermain Flushing	118,863	118,863
Water Supply Share = 50%	59,432	59,432
Transmission and Distribution	392,878	392,878
Pumping	242,065	242,065
Cost of Supply - Gross	6,283,231	6,221,119
Water Consumption (Gallons)	3,650,000,000	3,650,000,000
Cost per 1,000 Gallons	\$1.72	\$1.70
COST PER DAY	17,214	17,341
GALLONS PER DAY	10,000,000	21,990,448
COST PER 1000 GAL PER DAY	\$ 1.72	\$ 0.79
COST FOR HARMAC PER DAY		\$ 9,455
Additional costs (included in unit costs above):		
- double chlorination costs		297
Additional gallons per day		11,990,448

Nanaimo Forest Products Calculations:

Nanaimo Forest Products - Water Supply Calculation of Charges for City of Nanaimo Incremental Flow		
Description	Cost	Notes
Capital Costs - Annualized over 30 yr life	\$3,504,337.37	Based on 2005 pipeline replacement feasibility engineering estimates. Assumes existing wood stave well and river water lines are replaced with HDPE lines below ground. Based on average costs from 2005-2011 Included in above calculation Included in above calculation Included in above calculation Estimate Estimate Estimate Based on 2009-2010 average water flows, see attached trends Based on 350 operating days (typ) Prorated on supply of 11,990,448 USGPM/day
Cost of Supply - Operational Expenses	\$730,122.44	
Annual Maintenance		
Electricity		
Wells Attendent		
Administration @ 5% of operational costs	\$36,506.12	
Supervision @ 10% of labour costs	\$30,000.00	
Permits	\$102,000.00	
Testing/Sampling	\$5,000.00	
Total	\$4,407,965.93	
Cost Distribution Calculation		
Annual Average Water Flow (Well + River) USGPM	18,434	
Annual Avg Daily Water Flow (USGPD)	26,544,960	
Cost Per 1000 Gal Per Day	\$0.47	
Additional Flow to City (GPD)	11,990,448	
Total Flow Including City Flow (GPD)	38,535,408	
Cost for City of Nanaimo Per 1000 Gal	\$0.33	
Cost to City of Naimo per Day	\$3,918.73	
Annualized Capital Cost Calculation		
Pipeline Replacement Capital	\$37,125,000.00	For the purposes of this exercise, only costs related to the replacement of the well and river water pipelines have been included in the calculation. (The capital value of river pumps, electrical supply, wells, well pumps, storage tanks, 4th Lake Dam, etc, have not been included)
Life of installed equipment (yrs)	20	
Annual Interest Rate 5% + 2% Inflation	7%	
Capital Costs - Annualized over 30 yr life	(\$3,504,337.37)	