



SEWER UTILITY AGREEMENT

among

CITY OF LANGFORD

and

WEST SHORE ENVIRONMENTAL SERVICES INC.

and

TERASEN UTILITY SERVICES INC.

September 20, 2004



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AGREEMENT

This Agreement dated for reference September 20, 2004.

BETWEEN:

CITY OF LANGFORD, located in the Province of British Columbia

("Langford")

AND:

WEST SHORE ENVIRONMENTAL SERVICES INC., a British Columbia company

("West Shore")

AND:

TERASEN UTILITY SERVICES INC., a British Columbia company

("TUS")

RECITALS:

- A. Langford requires additional sewer infrastructure to sustain and complement its growth;
- B. West Shore has the resources and expertise to provide such infrastructure;
- C. West Shore will operate and maintain the existing Langford sewer system and additions to it and will own such additions and may acquire the existing Langford sewer system;
- D. Elector approval of this Agreement and the franchise and other rights granted herein has been obtained in accordance with the Community Charter;
- E. TUS is the sole shareholder of West Shore.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which each of Langford and West Shore acknowledge, Langford and West Shore agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Defined Terms

As used in this Agreement, the following terms have the following meanings:

- (a) “**Affiliate**” has the meaning specified in the *Business Corporations Act* (British Columbia).
- (b) “**Approval to Construct**” means a permit described in section 9.2.
- (c) “**Assets**” has the meaning specified in section 13.1.
- (d) “**BCUC**” means the British Columbia Utilities Commission or its successor.
- (e) “**Books and Records**” means all books of account, tax records, personnel records, sales and purchase records, research and development reports and records, production reports and records, equipment logs, operating guides and manuals, business reports, plans and projections and all other documents, files, correspondence and other information (whether in written, printed, electronic or computer printout form) relating to the Assets.
- (f) “**Business Day**” means a day other than a Saturday, Sunday or statutory holiday in British Columbia.
- (g) “**Closing**” means the completion of the transaction of purchase and sale contemplated in this Agreement which shall occur at 10:00 a.m. on the Closing Date.
- (h) “**Closing Date**” has the meaning specified in section 13.7.
- (i) “**Commencement Date**” means the date that is either:
 - (i) seven business days following the determination of the Chief Administrative Officer of Langford under s.86(8) of the Community Charter that elector approval of this Agreement has been obtained through the alternative approval process; or
 - (ii) seven business days following the date of elector assent to the Agreement by voting under s.85 of the Community Charter, in the event that the approval of the electors is not obtained under s.86.
- (j) “**Community Charter**” means the *Community Charter*, S.B.C. 2003, c. 26, as amended from time to time.
- (k) “**CRD**” means the Capital Regional District in British Columbia.
- (l) “**Customer Service Agreements**” means the benefit of all contracts, whether oral or implied, with the customers listed in the Schedule referred to in section 25.1(s).
- (m) “**Environmental Authority**” means any government or regulatory authority, agency, body, commission, board, court, department, ministry or official or other authority responsible for making orders, tickets or penalties or creating or otherwise administering or enforcing any Environmental Law.

- (n) “**Environmental Laws**” means all applicable statutes, regulations, ordinances, bylaws, and codes and all international treaties and agreements, now or hereafter in existence in Canada (whether federal, provincial or municipal) relating to the protection and preservation of the environment, occupational health and safety, product safety, product liability or Hazardous Substances, including, without limitation, the *Waste Management Act* (British Columbia), as amended from time to time (the “**WMA**”), and the *Canadian Environmental Protection Act*, as amended from time to time (the “**CEPA**”).
- (o) “**Environmental Permits**” means all orders, permits, certificates, approvals, consents, registrations and licences issued by any authority of competent jurisdiction under Environmental Laws.
- (p) “**Equipment**” means all the equipment of Langford used in the System, including the equipment listed in Schedule G.
- (q) “**Existing Plant**” means the System, and all ancillary equipment, constructed and operating as of the Closing Date and all work in progress on the System but excluding all works on Happy Valley Road.
- (r) “**Expiry Date**” means the 21st anniversary of this Agreement as may be extended as expressly permitted hereunder.
- (s) “**Fifth Anniversary Date**” means the date which is the fifth anniversary date of the Commencement Date.
- (t) “**Government Entity**” means (i) any Canadian federal, provincial, municipal, local or other governmental or public department, court, commission, board, bureau, agency, (ii) any subdivision or authority of any of the foregoing, or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above, including the BCUC and the Comptroller of Water Rights.
- (u) “**I and I Works**” has the meaning specified in section 11.4.
- (v) “**Intellectual Property**” means the computer software, computer programs, copyrights, including any performing, author or moral rights, designs, inventions, patents, franchises, formulas, processes, know-how, technology and related goodwill, and any applications, registrations, issued patents, continuations in part, divisional applications or analogous rights or licence rights therefor in each case, owned or used by Langford in connection with the System, all of which are listed in Schedule E.
- (w) “**ISIF**” means an incremental storage improvement fee as specified in section 15.12.

- (x) **“Laws”** means all laws, statutes, codes, ordinances, permits, decrees, rules, regulations, bylaws, judgments, orders, decisions, rulings or awards of any Governmental Entity having jurisdiction.
- (y) **“Lien”** means any mortgage, charge, pledge, hypothecation, security interest, assignment, lien (statutory or otherwise), title retention agreement or arrangement, restrictive covenant or other encumbrance of any nature or any other arrangement or condition which, in substance, secures payment or performance of an obligation.
- (z) **“Lot”** means any parcel, block or other area in Langford in which land is held or into which it is subdivided.
- (aa) **“New Infrastructure”** means all services, utilities, systems, facilities and ancillary equipment for the System, to the extent required to service the development at Langford but excluding the Existing Plant and the New Plant.
- (bb) **“New Plant”** means repairs, replacements and upgrades of Existing Plant and of New Infrastructure that is owned by West Shore.
- (cc) **“Northwest Trunk Sewer Operating Agreement”** means that certain agreement made as of the 27th day of August, 2002 between the CRD, Corporation of the City of Victoria, Corporation of the District of Saanich, Corporation of the Township of Esquimalt, Town of View Royal, City of Colwood and Langford.
- (dd) **“OCP”** means the Official Community Plan of Langford, as amended from time to time.
- (ee) **“Operating Agreements”** means all the agreements between Langford and third parties pursuant to which such third parties provide goods or services to Langford, the provision of which are necessary for the operation of the Systems in the ordinary course, all of which are listed in Schedule F.
- (ff) **“Party”** and **“Parties”** means Langford, West Shore or TUS, and any other person who may become a party to this Agreement.
- (gg) **“Permitted Liens”** means Liens for taxes, assessments or governmental charges or levies which are not delinquent.
- (hh) **“Pollutant”** means any substance or material which does not occur naturally in the environment or which falls within the definition of “contaminants”, “waste”, “special waste”, “hazardous chemicals”, “hazardous waste”, “dangerous goods”, “toxic substances”, or any variation of such terms or any terms of similar import in any Environmental Law.
- (ii) **“Priority Works”** means those works listed as such in the Sewer Capital Plan.

- (jj) **“Professional Engineer”** means a professional engineer licensed and in good standing as such in the Province of British Columbia.
- (kk) **“Projected SCRFs”** means the number of SCRFs based on SFEs in the Sewer Capital Plan, as updated from time to time to be payable to West Shore in accordance with Article 15.
- (ll) **“Protocol Document”** has the meaning specified in section 19.5.
- (mm) **“Purchase Price”** has the meaning specified in section 13.2.
- (nn) **“Release”** means any release, spill, leak, emission, discharge, leach, dumping, escape or other disposal which is or has been made in contravention of any Environmental Laws.
- (oo) **“SCRFs”** means sewer capital recovery fees payable pursuant to and adjusted in accordance with Article 15.
- (pp) **“Sewer Capital Plan”** has the meaning specified in section 8.1.
- (qq) **“SFE”** means Single Family Equivalent as calculated for each Lot pursuant to the provisions of Schedule H.
- (rr) **“Specifications”** has the meaning specified in section 9.1.
- (ss) **“SPL Agreement”** means that certain agreement between SPL Septage Processing Ltd. and Langford executed on July 15, 1999 and filed as a Section 219 Covenant in the Land Title Office in Victoria, British Columbia as instrument EN86346, as modified February 10, 2000 by an agreement filed as instrument EP011632 in said Land Title Office.
- (tt) **“SSA”** means one of the Sewer Specified Areas established by bylaws of Langford.
- (uu) **“Statutory Rights of Way”** means all those statutory rights of way, easements, licenses of occupation and other rights of occupation of real property held by Langford for the use of its Assets and the operation of the System in the ordinary course, all of which are listed in Schedule B and the rights of Langford to enter the “Land” (as defined in the SPL Agreement) pursuant to the SPL Agreement.
- (vv) **“System”** means the existing sewer system of Langford described on the CD ROMs attached as Schedule C and includes all pumping stations within or outside Langford and includes all additions and extensions made thereto from time to time.
- (ww) **“Terasen Operating Agreement”** means that certain operating agreement between West Shore and Terasen Utility Services Inc. pursuant to which Terasen

Utility Services Inc. agrees to perform certain of West Shore's obligations hereunder.

- (xx) **"Term"** has the meaning specified in section 3.1.
- (yy) **"Termination Date"** means the Expiry Date, or such earlier date on which this Agreement may be terminated in accordance with its terms.
- (zz) **"User Fees"** means user fees payable by users of the System based upon water consumption data as contemplated in section 15.3, as adjusted in accordance with this Agreement.
- (aaa) **"VCMC Contract"** means that certain contract dated for reference January 1, 1998, as extended to June 30, 2004 between Langford and Victoria Contracting & Municipal Maintenance Corporation with respect to the routine maintenance and repairs to the sewer infrastructure.

1.2 Interpretation

For the purposes of this Agreement, except as otherwise expressly provided:

- (a) "this Agreement" means this Agreement as it may from time to time be supplemented or amended and in effect, and includes the Schedules attached hereto;
- (b) all references in this Agreement to a designated "Part", "Article", "section", "subsection" or other subdivision or to a Schedule is to the designated Part, Article, section, subsection or other subdivisions of, or Schedule to, this Agreement;
- (c) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, section, subsection or other subdivision;
- (d) the headings are for convenience only and do not form a part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof; and
- (e) the singular of any term includes the plural, and vice versa, the use of any term is equally applicable to any gender and, where applicable, a body corporate and the word "including" is not limiting whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto.

1.3 Incorporation of Schedules

The following schedules attached to this Agreement are incorporated into this Agreement by reference and are deemed to be part of this Agreement:

Schedule A	-	License of Highways and Rights of Way
Schedule B	-	List of Statutory Rights of Way
Schedule C	-	Sewer System
Schedule D	-	Sewer Capital Plan
Schedule E	-	Intellectual Property
Schedule F	-	Operating Agreements
Schedule G	-	Equipment
Schedule H	-	SFE Calculation
Schedule I	-	Example Calculation of Fees

**ARTICLE 2
PUBLIC PRIVATE PARTNERSHIP**

2.1 Purpose

The purpose of this Agreement is to have Langford engage West Shore to finance, own, operate, expand and maintain the System in accordance with this Agreement as a partnering agreement under the Community Charter and as an exclusive franchise.

2.2 Cooperation

Langford and West Shore acknowledge that this Agreement is a “public private partnership” in which Langford and West Shore have the objective of achieving greater efficiencies, achieving the optimal allocation of risk and providing benefits for users of the System and Langford than could be achieved if procurement, operation and maintenance were undertaken by Langford alone, while yielding West Shore a fair economic return. Accordingly, throughout the Term Langford and West Shore will cooperate with each other with a view to furthering the purposes and objectives of this Agreement.

**ARTICLE 3
TERM**

3.1 Term

The term of this Agreement (the “Term”) will commence on the Commencement Date and will continue until the Termination Date, but may be renewed or extended pursuant to section 3.2.

3.2 Extension of Term and Renewal

The Term may be extended for a renewal term of a further 21 years by either Langford or West Shore delivering written notice of such renewal to the other at any time not less than one year prior to the Expiry Date.

ARTICLE 4 THE FRANCHISE

4.1 Design, Construct, Finance, Own, Operate and Maintain

Subject to and in accordance with the provisions of this Agreement, West Shore will be permitted and required to:

- (a) design, construct and own additions to the System in accordance with this Agreement, and subject to Article 13 may acquire and own the Existing Plant;
- (b) operate and maintain the System in accordance with this Agreement and Specifications and all applicable Laws and together with Langford will have the exclusive authority to do so; and
- (c) obtain sufficient financing to enable West Shore to perform its obligations under this Agreement.

4.2 License to Use Assets

For further certainty Langford hereby will make available to West Shore all the Assets at no additional costs above the franchise fee referred to in Section 5.1 during the Term or until acquired by West Shore in accordance with Article 13.

ARTICLE 5 FRANCHISE FEE

5.1 Payment

In consideration of being granted the exclusive right to operate the System and provide services in connection therewith, West Shore will pay Langford a franchise fee comprised of:

- (a) 18% of the amount of SCRFs collected by West Shore, payable quarterly for periods ending March 31, June 30, September 30 and December 31 in each year of the Term within 30 days of the end of the prior quarter;
- (b) 5% of the amount of User Fees collected, payable annually on or before January 15 in each year with respect to User Fees collected during the prior year; and
- (c) \$3.60 million, payable with 30 days of the Commencement Date.

5.2 Audit of Franchise Fee

Langford will have the right to audit the calculation of the franchise fees and West Shore will provide necessary access at mutually convenient times to its records necessary for the determination of franchise fees.

**ARTICLE 6
LICENSE**

6.1 License to Use Langford Highways and Rights of Way

On or before the Commencement Date, Langford will grant West Shore a license in the form of Schedule A for the purpose of using the Existing Plant, construction of additions to the System, for repairs to Existing Plant and New Plant and otherwise operating and maintaining the System and utilizing the benefit of Statutory Rights of Way for such purposes.

**ARTICLE 7
SEWER CONNECTIONS**

7.1 Customer Application Procedures

West Shore will accept applications for sewer service directly from customers. Langford will also direct sewer-related inquiries to West Shore.

7.2 Financing Available for Sewer Service

For residential customers, subject to approval of credit, West Shore will make available financing for connection costs as well as on-site works necessary to connect to the System.

7.3 Decommissioning Septic Tanks and Fields

Where a Lot contains a septic tank or field West Shore will not connect such Lots to the System unless the septic tank or field on such Lot has been decommissioned (at the owner's expense) in accordance with Langford bylaws. In cases where owners qualify, West Shore will make financing available for the associated costs.

7.4 Proactive with Customers to Facilitate Expansion

West Shore will proactively work with customers to facilitate sewer expansion to new developments. Persons constructing on-site sewer infrastructure must do so in accordance with the bylaws of Langford then in effect. West Shore will be entitled to review such on-site sewer infrastructure including reviewing the associated "as built" drawings prior to connecting such works to the System. West Shore will not connect any Lot to the System until Langford has reviewed and approved "as built" drawings of infrastructure constructed by or on behalf of West Shore for such connection. West Shore may make business arrangements with persons developing Lots to finance sewer and other infrastructure expansion if it is prudent to do so and not contrary to any other terms of this Agreement. Arrangements made between West Shore and other persons concerning the construction of sewers on private property or other types of infrastructure on public or private property are not subject to this Agreement.

7.5 Grinder Pumps

Where a grinder pump is required to serve a single or two family dwelling on its own lot that is being connected to the System, West Shore will provide to the owner an E-1 GP2010 grinder

pump with visual and audio alarm and panel, or equivalent as agreed between the parties, at a price which:

- (a) until the Fifth Anniversary Date, does not exceed \$640 including all taxes providing that the property owner has submitted to West Shore a valid certificate of completion of the installation of the pump from the City of Langford Building Inspector within 12 months of the connection being provided by West Shore; and
- (b) after the Fifth Anniversary Date, will not exceed an amount adjusted in the same manner as the maximum physical connection fees are adjusted under section 15.6 and with the same conditions as (a) above.

The subsidization of the grinder pumps by West Shore, as outlined above in sections 7.5(a) and 7.5(b) (the “Subsidy”), is contingent upon the following conditions:

- (i) the Subsidy will only be offered until a maximum of 450 property owners have accepted;
- (ii) the Subsidy will only apply to the supply of the grinder pumps. Any installation and other costs shall be the sole responsibility of the property owner;
- (iii) it is the property owner’s responsibility to replace the grinder pump at the end of its useful life and after the manufacturer’s warranty period has expired;
- (iv) property owners, who wish to avail themselves of the Subsidy offer, must sign up for connection within six months of the offer. After that time period, the offer expires and all costs associated with the grinder pump will be borne exclusively by the property owner; and
- (v) where the property owner has accepted the Subsidy offer, Langford will waive its portion of the SCRF payable by West Shore to Langford.

ARTICLE 8 EXTENSION OF SEWER SYSTEM

8.1 Sewer Capital Plan

West Shore shall maintain at all times a five-year plan (the “Sewer Capital Plan”) for New Infrastructure and New Plant, including the I and I Works, identifying target dates for the completion of design and the completion of construction of each project. On the date of execution of this Agreement the Sewer Capital Plan is comprised of the works and target dates listed in Schedule D. The Sewer Capital Plan must include a reasonable estimate of the anticipated SCRFs for each project identified in the Sewer Capital Plan.

8.2 Timely Implementation

West Shore acknowledges that the timely implementation of the Sewer Capital Plan is essential to the implementation of the OCP, and in particular that the timely installation of sewer works

may be required to permit the development of land in connection with which other infrastructure elements, including highway works, may simultaneously be provided by others, and agrees to design and construct in a timely manner the projects set out in the Sewer Capital Plan from time to time.

8.3 Meetings

Langford and West Shore shall meet annually in January of each year, and more frequently as required by either of them, to review and revise the Sewer Capital Plan, and the Sewer Capital Plan shall be from time to time the plan as so revised, but neither Langford nor West Shore need participate in a review more frequently than quarterly. Langford and West Shore will in good faith work to resolve any disagreements on the contents of the Sewer Capital Plan failing which the matter may be referred by either Langford or West Shore to the dispute resolution process pursuant to Article 30, except that the timing of construction of the Priority Works shall not be subject to dispute resolution.

8.4 Designation of Works

After the Priority Works have been completed, Langford may, prior to each June, deliver to West Shore notice in writing designating a portion of the sewers described in Part 2 of Schedule D as works which must be constructed in the following calendar year, provided that the estimated cost of constructing the portion so designated does not exceed 10% of the estimated cost of constructing the sewer projects then shown in the Sewer Capital Plan as planned for that following calendar year. Where a designation is made under this section West Shore must amend the Sewer Capital Plan to reflect the designation.

8.5 Storage and Pumping

West Shore shall, within six months of the date of this Agreement being approved by the alternative approval process pursuant to the Community Charter, provide to Langford a report and plan (the "**Store and Pump Plan**") showing proposed locations, methods, sizes and preliminary cost estimates for facilities to store peak sewage flows and the population milestones by area that will trigger the requirement for the storage in order to avoid exceeding the permitted peak discharge into the CRD sewers. Langford shall have the discretion to determine the projects to which the amounts referred to in this section are to be applied. Population milestones shall be calculated from the OCP population densities and shall include current populations and populations for which land is currently zoned where they exceed the densities contemplated by the OCP, and shall be increased to include probable population densities and other development based on extrapolations by Langford staff from OCP changes, rezonings and developments completed up to mid 2004. Langford shall review the Store and Pump Plan within two months of it being presented, West Shore shall make any required changes within a further month, and the works contemplated by the Store and Pump Plan shall be incorporated into the Sewer Capital Plan.

8.6 Sidewalks/Resurfacing Highways

The Sewer Capital Plan shall include an amount equal to 3% of the estimated sewer construction costs that will be capitalized by West Shore for the construction of sidewalks or resurfacing of

highways in excess of remedial work otherwise required by Langford Bylaw No. 500 at locations at which West Shore constructs sewers, within a reasonable period after such sewer construction costs are incurred. West Shore shall provide Langford an accounting for such sewer construction costs which Langford may audit at reasonable times and at Langford's expense.

8.7 Considerations

In preparing and reviewing the Sewer Capital Plan, West Shore and Langford shall give consideration to the following:

- (a) the existing and anticipated System requirements for Langford;
- (b) the need to satisfy the requirements of any Governmental Entity;
- (c) the desire to ensure a reasonable overall rate of return on the ownership and operation by West Shore of the System;
- (d) the requirements of the OCP;
- (e) the desire to maintain competitive rates for users of the System; and
- (f) Langford's Sewer Master Plan.

ARTICLE 9 CONSTRUCTION

9.1 Design of New Infrastructure.

West Shore shall at all times use Professional Engineers to design the New Infrastructure. The specifications for all New Infrastructure including all design and engineering components (the "Specifications") shall comply with the requirements for sanitary sewers in Langford Bylaw No. 500, as amended or replaced from time to time, be in accordance with good engineering practice and, be approved by a Professional Engineer before the commencement of construction of such New Infrastructure.

9.2 Approval to Construct

West Shore shall apply for permits for works undertaken in highways pursuant to Langford Bylaw No. 33, to authorize the construction of sewer works pursuant to this Agreement, and if in compliance Langford shall issue such permits. West Shore shall comply with the terms of such permits in every material respect.

9.3 Construction of New Infrastructure

West Shore shall, at its own cost, construct all components of the New Infrastructure in a good and workmanlike manner consistent with industry standards, substantially in accordance with the construction plans, in compliance with the applicable Approval to Construct and the

Specifications as certified by a Professional Engineer and all applicable Laws. West Shore shall use a Professional Engineer to:

- (a) provide competent survey, layout and on-site supervision to ensure that all components of the New Infrastructure conform to the Approval to Construct;
- (b) record details of any field design or construction changes to the Approval to Construct;
- (c) record all necessary information for the preparation of "as built" drawings; and
- (d) certify under seal all documents, materials and information relating to the New Infrastructure which are required to be provided to Langford under the Approval to Construct.

9.4 Subcontracting

West Shore may subcontract any portion of the design or construction of the New Infrastructure provided that West Shore shall remain liable for the proper design and construction of the New Infrastructure performed by the subcontractor and provided further that, subject to West Shore's reasonable requirements in respect of qualifications and competitive pricing being met, priority shall be given with respect to subcontracting opportunities in connection with this Agreement first to local Vancouver Island contractors.

9.5 Letter of Credit

As security for the performance of its covenants in this Agreement, West Shore shall deposit with Langford, concurrently with the execution of this Agreement, an unconditional and irrevocable letter of credit from a Canadian chartered bank or credit union having a branch in the CRD in a form satisfactory to the municipal Treasurer of Langford, acting reasonably (the "Letter of Credit") in the amount of CDN \$300,000. The Letter of Credit must include provision for automatic renewal for further terms until surrendered or drawn.

West Shore and Langford agree as follows with respect to the Letter of Credit:

- (a) Langford may draw upon the Letter of Credit at any time in the event of a default by West Shore of any of its obligations under this Agreement, of which Langford has provided written notice to West Shore of such event of default and West Shore has failed to remedy same within 30 days of receipt of such notice, and thereafter Langford may hold or use the proceeds to remedy the default;
- (b) the amount of the Letter of Credit may be reduced at any time in Langford's discretion; and
- (c) no later than 30 days following written notice from West Shore that it has completed the Priority Works, Langford shall return the Letter of Credit to West Shore.

9.6 Acquisition of Statutory Rights of Way

Any Statutory Rights of Way required for the expansion of the System or to reconfigure it shall be acquired by West Shore on behalf of Langford, in Langford's name, and on Langford's standard terms and if payment therefore is required it will be at West Shore's cost, but Langford agrees to cooperate with West Shore to attempt to facilitate such acquisitions without cost to either West Shore or Langford.

ARTICLE 10 OPERATION AND MAINTENANCE OF SEWERS

10.1 O & M Standards

West Shore will operate and maintain the System, including Existing Plant and New Infrastructure and shall:

- (a) use only qualified personnel;
- (b) carry out good and workmanlike regular service and maintenance to the System, in accordance with this Agreement, industry standards and all applicable Laws; and
- (c) promptly repair any damage to the System consistent with industry standards and in accordance with this Agreement and all applicable Laws.

10.2 Specific Repairs to Existing Plant

Langford is not aware of any repairs required to Existing Plant other than I and I Works.

10.3 VCMMC Contract

West Shore may subcontract certain of its obligations hereunder to Terasen Utilities Services Inc. pursuant to the Terasen Operating Agreement and Terasen Utilities Services Inc. intends at the Commencement Date to continue engaging Victoria Contracting & Municipal Maintenance Corporation with respect to routine maintenance and repairs to the sewer infrastructure as an assignee of the VCMMC Contract or on other terms agreed with VCMMC.

ARTICLE 11 INFLOW AND INFILTRATION

11.1 Liquid Waste Management Plan

Langford and West Shore acknowledge that the Liquid Waste Management Plan of the CRD contains commitments by the CRD and its participating member municipalities, including Langford, to reduce inflow and infiltration into sanitary sewers in order to minimize regional sewage conveyance, treatment and disposal costs. West Shore shall co-operate with Langford in the provision of information required to monitor and revise such commitments in any update, amendment or replacement of the Liquid Waste Management Plan.

11.2 Reduction of I and I Appropriate

Langford and West Shore further acknowledge that the optimal use of the trunk sewer capacity allocated to Langford under the Northwest Trunk Sewer System Operating Agreement requires that West Shore continue and enhance Langford's efforts to reduce inflow and infiltration into the Existing Plant and New Infrastructure. West Shore shall co-operate with the CRD in any inspection or flow monitoring of the Langford Facilities as defined in that agreement.

11.3 Required Remedial Action

In the event that the CRD requires Langford to take any remedial action pursuant to the Northwest Trunk Sewer Operating Agreement in respect of inflow and infiltration into the Municipal Collector System as defined in that agreement, West Shore shall take such remedial action on Langford's behalf at the cost of West Shore. To the extent that these actions are in excess of the planned works described in Schedule D and they are not the result of improper construction standards or techniques by West Shore, West Shore may request a change in fees in accordance with section 15.8.

11.4 I and I Works

West Shore shall use its best efforts to have the inflow and infiltration reduction works (the "**I and I Works**") described under the heading I and I Works in Schedule D completed within one year of the Commencement Date.

11.5 Langford Payment for I and I Works

Langford shall pay to West Shore in each of the eight calendar years 2005 to 2012 inclusive \$169,000 from parcel tax in SSA2 (as established by bylaws of Langford) towards the cost of the I and I Works.

11.6 Possible Further Reduction Initiatives

Upon completion of the I and I Works Langford and West Shore shall jointly assess the inflow and infiltration reduction that has been achieved, against objectives of the Liquid Waste Management Plan, the requirements of the Northwest Sewer Trunk Operating Agreement, and the objectives of Langford and West Shore under this Agreement, and shall determine whether further inflow and infiltration reduction initiatives are required, including without limitation the inspection and sealing of manholes and the conduct of smoke tests to identify cross-connections of storm water drainage and sewer systems on private property. West Shore shall have no obligations under this Agreement in respect of inflow via roof or other drain connections to the sanitary sewer system on private property if Langford does not have in force bylaw provisions prohibiting such connections, requiring owners and occupiers to conduct tests to determine whether such connections exist, and empowering Langford or West Shore to enter on private property to conduct such tests and remove such connections at the expense of the owner, on default of the owner or occupier.

**ARTICLE 12
CUSTOMER SERVICE STANDARDS**

12.1 West Shore Office in Langford/Hours of Business

West Shore has a branch at 859 Orono Avenue, Langford, British Columbia. West Shore shall provide a customer reception area and staff situated at its branch at that address or another location in Langford during normal business hours to receive sewer customers and developers. Outside of normal business hours, West Shore shall make available a 24 hour emergency service telephone number. Billing and service complaints and general enquiries will be dealt with by that office.

**ARTICLE 13
ACQUISITION OF EXISTING SEWERS**

13.1 Purchase and Sale of Assets

Upon the terms and subject to the conditions of this Agreement, Langford agrees to sell, assign and transfer to West Shore, and West Shore agrees to purchase from Langford all of Langford's right, title and interest in and to the following assets of the System wherever situate:

- (a) the Existing Plant;
- (b) the Equipment;
- (c) the Customer Service Agreements; and
 - (i) the Operating Agreements,

and in connection therewith, Langford will provide to West Shore:

- (a) copies of all Books and Records of Langford that West Shore may reasonably require to operate the System; and
- (b) the right to utilize any Intellectual Property relating to the System, together with the right of West Shore to represent itself as operating the system in continuation of and in succession to Langford.

(collectively the "Assets")

13.2 Purchase Price and Payment.

The purchase price payable by West Shore to Langford for the Assets will be a nominal amount (the "**Purchase Price**") in light of other obligations assumed and services provided herein. The Purchase Price shall be paid by West Shore to Langford at Closing.

13.3 Liabilities Not Assumed.

West Shore will not assume and will not be responsible for any debts or liability of Langford relating to the System prior to Closing and Langford shall indemnify and save harmless West Shore from and against any debt or liability of Langford.

13.4 Status of Assets

West Shore will purchase the assets on an “as is” basis except to the extent Langford has actual knowledge of a specific defect or deficiency which it has not disclosed in writing to West Shore.

13.5 Assignment of Equipment and Construction Warranties

Langford shall assign the benefit of all Equipment warranties and warranties on prior work on the System to the extent assignable and shall otherwise hold same in trust for West Shore.

13.6 Condition Precedent

The sale of the Assets is subject to the elector assent process under the Community Charter. Langford agrees to undertake the elector assent process at a convenient time to be determined in consultation with West Shore.

13.7 Timing

The Closing will be held at 10:00 a.m. on the ninetieth day following approval by voting as contemplated in section 13.6, provided that if that day is a holiday, Saturday or Sunday, it will be held at 10:00 a.m. on the next day which is not a holiday, Saturday or Sunday, or such other time and date as the Parties may agree. The Closing will take place at the address of West Shore as provided in section 31.9.

13.8 Extension of Highway Use License and Other Terms

If West Shore acquires the Assets the License of Highways and Rights of Way will be extended to apply to West Shore’s use and ownership of the Assets.

**ARTICLE 14
CUSTOMER BILLING**

14.1 Water Consumption Data

Water consumption data is provided by the CRD to Langford from readings during winter months. Langford shall provide this data to West Shore for the calculation of sewer flows for each connected Lot which shall be annualized by dividing the usage between readings by the number of days between readings and multiplying by 365. If CRD does not provide such data to Langford for any Lot, West Shore may estimate water consumption based upon historical consumption for the Lot or comparative data for a similar Lot and use. West Shore may also directly monitor water consumption not supplied by the CRD as Langford’s agent.

14.2 West Shore Billing Procedures

West Shore intends to bill residential customers annually, midway through the calendar year with payment due on approximately July 2nd, or if more frequently, at even intervals throughout the year. West Shore shall work with commercial and industrial customers to establish billing schedules mutually convenient to them and West Shore.

ARTICLE 15 RATE DESIGN, REVIEW & APPROVAL

15.1 Physical Connection Fee

West Shore may, as a condition of permitting an owner or occupier to connect to the System, impose a one-time connection fee (the “**Physical Connection Fee**”) in accordance with this section, provided all of the following conditions are satisfied:

- (a) West Shore installed, or installs, all or part of the connecting pipe and if required, the inspection chamber;
- (b) the connecting pipe does not serve a building that existed prior to the sewer main being located in the road adjacent to the Lot on which that building is located; and
- (c) a connecting pipe meeting the requirements of the property owner did not already exist prior to the installation referred to in section 15.1(a).

Where the connecting pipe is installed by West Shore to fulfill a servicing requirement imposed on a person in connection with a subdivision or other development, the Physical Connection Fee may only be imposed on that person.

The connection fee under this section may not exceed \$900 per inch of diameter of connecting pipe from a Lot until the later of:

- (a) the Fifth Anniversary Date; and
- (b) five years after installation of a sewer adjacent to a Lot available to connect the Lot to the System; and

thereafter West Shore may increase such fee, once only, without restricting any increases permitted by section 15.6(a), by up to 45% of the fee payable immediately prior to such later date. This fee would also apply to any Lot that requires a larger service than its current service and to any Lot that requires an additional service.

15.2 Sewer Capital Recovery Fees

West Shore may impose sewer capital recovery fees (“**SCRFs**”) on owners (or occupiers, as the case may be) of not more than \$3,680 per SFE until the Fifth Anniversary Date.

After the Fifth Anniversary Date, West Shore may increase SCRFs by up to 55% of the fee payable immediately prior to the Fifth Anniversary Date for any connection to an adjacent sewer which is five years old or older and may thereafter increase such increased SCRF by up to double the percentage by which the Annual All-Items Consumer Price Index for Greater Victoria on the date of the increase exceeds that of the later of the date of the previous increase, if any, and the Fifth Anniversary Date.

SCRFs for Lots used for institutional purposes or zoned CD1 will be determined collaboratively with the Langford Approving Officer and Municipal Planner with the SCRF paid to West Shore being not less than the incremental costs with respect to servicing such Lots respectively, including downstream System improvements, direct connection costs, labour, overhead and other costs incurred as a result of or with respect to the connection.

15.3 Incremental SCRFs

An incremental SCRFs would apply at the time of any change in use based upon the difference in SCRFs for such different usages at the time of such changes in use. Where a Lot that is connected to the System (including a Lot within an existing SSA) is rezoned by Langford such that the SCRFs that would have applied in respect of that connection had the Lot:

- (a) not been in an existing SSA; and
- (b) been connected immediately after the rezoning,

are more than the SCRFs that would have applied to that connection had the Lot:

- (a) not been in an existing SSA; and
- (b) been connected immediately before rezoning,

then West Shore may impose an incremental SCRF not exceeding the amount of that notional increase, less the total of any annual increase in SSA payments to Langford that will result from the rezoning multiplied by the number of years of SSA payments remaining.

15.4 User Fees

West Shore may impose sewer user fees (“User Fees”) of not more than \$0.233 per cubic metre of water based on the water consumption data calculated in accordance with section 14.1 for residential and other users until the Fifth Anniversary Date, and thereafter the User Fees shall be subject to sections 15.6 and 15.8.

15.5 Account Set Up Charges

West Shore may charge one time account set up charges of up to \$25 for residential connections and up to \$125 for all other connections. These will apply each time an account is set up by the owner or occupier of a Lot.

15.6 Increased Fees

Commencing on the Fifth Anniversary Date, West Shore may increase no more than once annually:

- (a) maximum physical connection fees contemplated in section 15.1 by the percentage by which the Annual All-Items Consumer Price Index for Greater Victoria on the date of the increase exceeds that of the later of the date of the previous increase, if any, and the Fifth Anniversary Date;
- (b) User Fees, except as agreed to during a rate review in accordance with section 15.8, by not more than the percentage by which the Annual All-Items Consumer Price Index for Greater Victoria on the date of the increase exceeds that of the later of the date of the previous increase, if any, and the Fifth Anniversary Date; and
- (c) account set up charges contemplated in section 15.5 by the percentage by which the Annual All-Items Consumer Price Index for Greater Victoria on the date of the increase exceeds that of the later of the date of the previous increase, if any, and the Fifth Anniversary Date.

Any such increases together with the Consumer Price Index data on which it is based shall be reported to Langford before any customer is charged an increased amount.

15.7 Example Calculation of Fees

For the purposes of clarification, attached hereto as Schedule I is a table of example fee calculations applying the principles set out in this Article 15.

15.8 Changes in Fees Initiated by West Shore

West Shore may in addition to increases contemplated in section 15.6 change physical connection fees, SCRFs and User Fees by any amount approved by Langford on the basis of a rate change proposal made in writing by West Shore and reviewed by Langford and West Shore in good faith. No changes in any of the fees contemplated by this Article 15 will be requested by West Shore prior to the Fifth Anniversary Date except with respect to:

- (a) a substantial increase in costs arising from or with respect to:
 - (i) Langford-specific or sewer-specific changes in laws, regulations or taxes;
 - (ii) inflow and infiltration remediation as permitted in section 11.3; or
 - (iii) an inability to utilize the sewer sleeve under the Trans Canada Highway at Spencer Road which the Province of British Columbia installed at Langford's expense and for which Langford has an implied licence; or

- (b) a downturn of the development real estate market where over a two year period the rate of SCRFs drops below 50% of the total anticipated SCRFs for that two year period for the pipe in the ground.

15.9 Evidence of Increased Costs

Rate increase proposals under section 15.8 shall be based on actual and projected increases in West Shore's costs of constructing New Infrastructure and operating and maintaining the Existing Plant, the New Plant or the New Infrastructure, as the case may be, shall be supported by evidence of costs being incurred or projected to be incurred in transactions with parties at arm's length from West Shore or by evidence of new regulatory requirements, and shall be based on West Shore receiving a reasonable rate of return. CRD penalties and environmental fines payable by West Shore are not eligible costs justifying fee increases. Costs of repairing or replacing portions of the System that are damaged or destroyed are also not eligible costs justifying fee increases if those costs would normally have been covered by insurance. A copy of such insurance shall be provided to Langford prior to the Commencement Date.

A reasonable rate of return for the period prior to the Expiry Date is defined as the Return on Equity ("ROE") established annually by BCUC for a low-risk benchmark utility plus 2.5% to 3.5% and for the period of the Term after the Expiry Date, if any, as the ROE established annually by BCUC for a low-risk benchmark utility plus 1%.

In the event that the BCUC discontinues the establishment of an annual ROE target for a low-risk benchmark utility, then the appropriate ROE will be based on the target ROE established by the BCUC for Terasen Gas Inc. with respect to natural gas distribution services in the Lower Mainland area of British Columbia plus 2.5 to 3.5% prior to the Expiry Date and plus 1% thereafter.

West Shore is expected to employ a prudent amount of debt within its capital structure. A prudent amount of debt shall be defined as between 40 and 60 percent of the total assets of West Shore. Total assets shall be measured using Canadian Generally Accepted Accounting Principles. If West Shore employs less debt than 40% of total assets, then Langford, in evaluating West Shore's actual achieved ROE in the context of a rate review, will use a deemed capital structure of 40%.

In evaluating the adequacy of West Shore's actual or proposed rates, Langford will take into account West Shore's financial returns over the entire length of the Term. West Shore will provide Langford with any information that Langford may reasonably require, provided West Shore already has the information, in undertaking this evaluation.

In the event the regulation of the System becomes subject to the jurisdiction of the BCUC, both Langford and West Shore acknowledge adjustments to this Agreement with respect to fee regulation will be necessary, but Langford will not be required in such event to compensate West Shore for any reduction in West Shore's ROE that results from decisions of the BCUC.

Unless otherwise agreed in writing by Langford, rate reviews shall relate solely to West Shore's construction and operation and maintenance of the System and not to other aspects of business that West Shore may engage in from time to time.

15.10 Franchise Fee Changes

Langford may, in partial or whole response to a successful rate change request under section 15.8 or 15.17, change the franchise fee payable to Langford under section 5.1 to have the same effect on West Shore revenues as the requested rate change would have had, and in that event the provisions of this Agreement respecting rate change requests apply as if the franchise fee change were a rate change request.

15.11 Amendment to Bylaw

Notwithstanding any other term of this Agreement West Shore may request fee increases if Langford does not have in effect a bylaw requiring that all Lots be connected to the System within one year of the System being available for connection but exempting owners who are on a CPP disability pension, and giving owners and occupiers of Lots assessed at less than four SFEs five years in which to connect if they are within 30 metres of a water course and otherwise 10 years in which to connect.

15.12 Store and Pump Plan Costs

West Shore shall despite any other provision in this Article 15 be entitled to propose a one time (per Lot) incremental storage improvement fee (“ISIF”) reasonably necessary to finance the construction, operation and maintenance of the works contemplated by the Store and Pump Plan. All properties in which increases in density are approved in any area except the Town Centre Area as set out in the OCP may be subject to a charge for storage as calculated by a study to be performed by West Shore and approved by Langford. Any such ISIF shall be proposed by West Shore and considered by Langford in sufficient time that the ISIF can be implemented within one year of the date of this Agreement, to ensure that the works will be available when they are required. If West Shore and Langford determine a portion of ISIFs collected by West Shore in anticipation of future storage costs will not be required to pay for such storage costs West Shore shall rebate the amount collected in excess of that required to customers of the System on a basis approved by Langford and West Shore jointly.

15.13 Innovation

If West Shore proposes an innovative approach to the design, construction, operation or maintenance of sewer collection works in the performance of this Agreement which is in accordance with the laws of British Columbia and bylaws of Langford, it may with the prior written approval of Langford increase SCRFs and User Fee rates designed to permit West Shore to recover its costs in implementing that approach, but once such costs have been recovered West Shore shall share any financial benefit of such innovation equally with Langford.

15.14 Disagreement on Fees

In the event that Langford does not approve a rate increase proposed by West Shore, or in the event that West Shore does not approve a rate decrease proposed by Langford, West Shore or Langford, respectively, may submit the matter to dispute resolution pursuant to Article 30. .

15.15 No Increase if Previously Billed

No rate increase may be imposed in respect of SCRFs or User Fees that have already been billed to customers at the time the increase is approved by the Langford Council or ordered by an arbitrator.

15.16 Langford Retains Governance

Subject to the terms of this Agreement, Langford will retain governance over rates and performance measures.

15.17 Change in Fees Initiated by Langford

Langford may request a rate change by delivering a rate change proposal in writing to West Shore which it must consider in good faith. No such request may be made prior to the Fifth Anniversary Date. The same factors to be considered with respect to rate changes in section 15.8 and 15.9 will be considered by Langford and West Shore.

15.18 Fees to Comply with Agreement

West Shore will not impose any fee for connection or use of the system, other than the fees referred to in this Agreement (as it may be changed from time to time in accordance with the terms of this Agreement). For certainty, this section does not prevent West Shore from charging customers interest on overdue accounts.

**ARTICLE 16
LANGFORD OPTION TO PURCHASE UNITS IN PARTNERSHIP**

16.1 Option to Purchase 30%

Until May 31, 2009 Langford will have the option to subscribe for and own a percentage (the "**Elected Percentage**") up to 30% of the units of a British Columbia limited partnership of which West Shore will be the general partner and to which West Shore will transfer all its assets including the benefits and obligations of this Agreement (and Langford hereby expressly agrees to such transfer and assignment) for an amount (the "**Subscription Price**") equal to the Elected Percentage of the aggregated stated capital of such limited partnership (being the amount contributed in cash or in value of property by West Shore) at the date of subscription. The option may be exercised at any time prior to June 1, 2009 by Langford delivering written notice to West Shore that it wishes to exercise the option and specifying the Elected Percentage in respect of which the option is exercised. In such event West Shore shall cause a British Columbia limited partnership to be formed in which West Shore is the general partner and Langford is the limited partner. The units in the partnership shall be issued to Langford promptly upon payment of the Subscription Price. The Subscription Price must be paid in cash within 30 days of exercise of the Option unless within such time Langford agrees in writing to set-off amounts due to Langford by the limited partnership (which obligations will have been assumed as assigned to it by West Shore), whether accrued or in the future, against the Subscription Price (provided that Units will only be issued when paid and to extent set-offs have been made from time to time).

ARTICLE 17
PERFORMANCE STANDARDS AND PENALTIES

17.1 Customer Call Response

- (a) If a customer calls the Customer Call Centre, a West Shore representative shall answer the call within 1 minute during normal business hours. At least 65% of calls, calculated on a monthly average, will be answered within 30 seconds during normal business hours.
- (b) West Shore shall report to the contact person designated by Langford on all emergency calls from customers within 10 minutes. Non-emergency calls shall be reported to Langford at the end of each month.
- (c) If a West Shore representative fails to respond within designated times, West Shore shall pay Langford:
 - (i) \$100 per occurrence for the first 5 occurrences in each calendar year; and
 - (ii) \$500 per occurrence in excess of the initial 5 occurrences.

17.2 Customer Issue Response

- (a) West Shore shall respond to customer inquiries within 24 hours to inform the customer as to how the inquiry will be handled.
- (b) West Shore shall use reasonable efforts to resolve customer issues promptly, and within five (5) business days at the latest or within a time frame agreed to by the customer.
- (c) If the five (5) business day timeline cannot be met, West Shore shall notify the contact person designated by Langford to seek agreement on an appropriate response.
- (d) If a West Shore representative fails to respond within designated times West Shore shall pay Langford \$100 per occurrence.
- (e) West Shore may refer recurring issues to Langford for assistance in addressing such issues but at no expense to Langford and the performance standards set out herein may be adjusted in light of particular circumstances.

17.3 Tracking and Payment of Penalties

West Shore shall maintain a record of customer responses which Langford may audit from time to time at its expense and at reasonable times. West Shore shall pay to Langford all penalties by the end of the month following the month in which the penalties were incurred together with an accounting of such penalties.

17.4 Emergency Response Procedures

- (a) If an emergency arises related to the System (e.g. leaks), a West Shore representative shall acknowledge the notification and shall be on site to respond within 1.5 hours of West Shore being notified of the emergency.
- (b) If a West Shore representative is not on site within 1.5 hours, West Shore shall pay Langford \$500 per hour for each hour or portion thereof in excess of the 1.5 hours referred to in section 17.4(a) until the West Shore representative is on site.

17.5 Odour Complaint Response Procedure

- (a) West Shore shall respond to any odour complaint promptly, investigate the issue and its cause.
- (b) If the cause of the complaint is the responsibility of West Shore to remedy, it shall remedy the issue or cause the problem to be remedied promptly.
- (c) If the cause of the complaint is not a responsibility of West Shore, it shall notify Langford.
- (d) If West Shore and Langford are not in agreement with respect to the cause of the complaint, the question of cause will be referred to a committee to be established by Langford and West Shore in accordance with the Protocol Document.

**ARTICLE 18
NORTHWEST TRUNK/CRD SEWER**

18.1 Limited Discharge

West Shore acknowledges that Bylaw 2312 of the CRD and the Northwest Trunk Sewer Operating Agreement entitle Langford to discharge into the Northwest Trunk Sewer not more than 370 litres per second of municipal sewage, and agrees that the CRD's measurement of sewage discharge volume shall be determinative for the purposes of this Agreement.

18.2 Storage During Off-Peak Discharge Times

West Shore acknowledges that the optimal use of the capacity of the Northwest Trunk Sewer to provide the sewer service contemplated by this Agreement will require that West Shore design, construct and operate at its cost facilities for the storage of sewage during peak discharge times and the pumping and discharge of sewage to the Northwest Trunk Sewer during off-peak discharge times. Such facilities shall be identified in the capital plans contemplated by section 8.4 such that sufficient time is available for the design, construction and commissioning of the works that the provision of New Infrastructure is not delayed due to the capacity of the Northwest Trunk Sewer being exceeded.

18.3 Payment of Penalty

In the event that an amount is allocated to Langford under s.3 of Bylaw 2312 of the CRD in respect of a spill attributable to the capacity of the Northwest Trunk Sewer being exceeded, and the flows from the Northwest Trunk Sewer exceeded 370 litres per second, West Shore shall pay the amount forthwith upon being advised by Langford that it is required to do so.

18.4 Participation in CRD Negotiations

In the event that Langford is required to commence negotiations with the CRD pursuant to s.9 of Bylaw 2312 as a result of actual usage of the total design capacity of the Northwest Trunk Sewer exceeding 95%, West Shore shall participate with Langford in such negotiations if requested to do so.

18.5 No Interest in Municipal Facilities

West Shore acknowledges that nothing in this Agreement gives it an interest in the Municipal Facilities as defined in the Northwest Trunk Sewer Operating Agreement or in that agreement, or in Langford's entitlement under the terms of Bylaw 2312 and the Northwest Trunk Sewer Operating Agreement to discharge sewage into CRD sewage collection, treatment and disposal facilities except as Langford's invitee.

ARTICLE 19 LANGFORD SEWER UTILITY AND LOCAL SERVICE AREAS

19.1 Continued Operation

The Parties acknowledge that Langford continues to own and operate a municipal sewer service under the terms of this Agreement, including the ownership and operation of the Northwest Trunk Sewer and the management of the capacity of the Northwest Trunk Sewer that is allocated to Langford under Bylaw 2312 of the Capital Regional District.

19.2 Consent Required to Service Other Areas

West Shore shall not provide sewer service to real property in a municipality other than Langford using the Existing Plant, the New Plant or the New Infrastructure, without the prior written consent of Langford.

19.3 Langford Retains Right

Langford retains the right to enter into agreements with other municipalities for or grant its consent to the provision of sewer service within portions of Langford by other municipalities, if the provision of sewer service to those portions of Langford is, in the opinion of Langford's Council, most appropriately arranged in that manner.

19.4 Sewer Service to Direct Connections

Langford may provide sewer service to parties directly connecting to the Northwest Trunk Sewer outside Langford and retain for its own purposes such connection charges, local service taxes and user fees as it may impose. Langford shall pay to West Shore ISIFs in respect of such connections established by the study referred to in section 15.12.

19.5 Protocol

West Shore shall develop a Protocol Document which will identify current business practices and policies that West Shore shall use in performing the work in connection with the Agreement. The Protocol Document shall be prepared by West Shore within 60 days of Commencement Date, shall be consistent with the terms of the Agreement, and provided to Langford for approval. If West Shore and Langford cannot agree on the contents of the Protocol Document, then it will be subject to the dispute resolution process set out in Article 30. West Shore may, with the approval of Langford, amend the Protocol Document from time to time to reflect updates in the business practices and policies appropriate for the work. In updating the Protocol Document, West Shore may draw upon the resources of its own internal personnel as well as input provided to West Shore by Langford. Each of Langford and West Shore shall designate in writing a person to act as its "Contract Administrator". Langford's initial Contract Administrator until further notice is the Chief Administrative Officer for Langford. West Shore's initial Contract Administrator until further notice is Vice-President, Water & Wastewater Operations. No change to the Protocol Document shall be effective until the change has been approved by Langford's Contract Administrator and West Shore Contract Administrator, unless in an urgent situation, in which case West Shore shall take responsibility for any damages or claims as a result of the change in business practice or policy. No term of the Protocol Document shall be inconsistent with this Agreement and in the event the terms of this Agreement and the Protocol Document are in conflict the terms of this Agreement shall prevail.

19.6 Non-Arm's Length Transactions

Where West Shore obtains services, resources or products from an affiliated corporation, West Shore shall ensure that it pays no more than the fair market value for these services, resources or products. A valid tendering process shall be evidence of fair market value. Where a tendering process was not used and where fair market value cannot be identified for any product, resource or service, then West Shore shall pay no more than a cost-based price based on a transfer pricing policy to be incorporated in the Protocol Document. The initial transfer pricing policy will be based on Appendix A of the Transfer Pricing Policy approved by the BCUC for Terasen Gas Inc.

ARTICLE 20 RE-PURCHASE BY LANGFORD ON TERMINATION

20.1 No Renewal

If the Term is not extended by a renewal in accordance with Section 3.2, Langford shall buy from West Shore on the Termination Date (i) the New Infrastructure and (ii) if it has sold the Assets to West Shore, all the Assets and New Plant, for an aggregate purchase price of \$1.00.

20.2 If Renewal

If the Term is extended by a renewal in accordance with Section 3.2 to the 42nd anniversary of Commencement Date, Langford shall buy from West Shore at the end of the renewal term (unless agreed in writing to be further extended) (i) the New Infrastructure and (ii) if it has sold the Assets to West Shore, all the Assets and New Plant, for an aggregate purchase price of \$1.00.

20.3 Other Termination

If this Agreement is terminated prior to the expiry of the Term or any renewal term, Langford shall buy from West Shore 30 days following such termination (i) the New Infrastructure and (ii) if it has sold the Assets to West Shore, all the Assets and New Plant, for an aggregate purchase price of \$1.00.

20.4 Continuing SCRFs

Notwithstanding termination of this Agreement for any reason, West Shore shall be entitled to receive Projected SCRFs (net of franchise fees which would otherwise have been payable to Langford pursuant to Section 5.1(a) if this Agreement had not been terminated) which it has not yet received in respect of additions and expenditures on the System while West Shore was operating the System.

**ARTICLE 21
GRANTS**

21.1 Langford to Continue Seeking Grants

Langford shall use its best efforts to maintain existing and obtain new infrastructure grants from governments and their agencies.

21.2 West Shore Builds

West Shore shall build the infrastructure with respect to the Glen Lake neighbourhood set out in Part 1 of the Priority Works in the Sewer Capital Plan and up to March 15, 2006 bill Langford \$3,603,888 for such service.

21.3 Maximize Grants

Langford and West Shore shall work together to maximize the aggregate amount of grants applied for with respect to the System.

**ARTICLE 22
WEST SHORE COVENANTS**

22.1 Home Services Financing

West Shore shall facilitate and coordinate the availability of home services financing for the purpose of accelerating owner connections and alleviating the timing of the financial burdens

associated with said connections. West Shore will make clear to owners and occupiers that they may choose any source of financing and their service will not be affected as a result of not utilizing financing arranged or recommended by West Shore.

22.2 Compliance

West Shore shall:

- (a) observe, abide by and comply with all laws, bylaws, orders, directions, rules and regulations of any competent government authority or branch or agency thereof directly or indirectly applicable to West Shore or this Agreement.
- (b) punctually pay as they become due all accounts, expenses, wages, salaries, taxes, rates, fees, contributions and assessments required to be paid by it on any of its undertaking;
- (c) observe, perform and comply with each covenant and agreement on its part contained in this Agreement;
- (d) co-operate with Langford and any other contractors providing services to Langford and in areas adjacent to Langford;
- (e) promptly respond to sewer systems maintenance complaints from members of the public, regulatory agencies and Langford at all times;
- (f) perform its services in a good workmanlike manner to the satisfaction of Langford;
- (g) maintain the Equipment in a safe and roadworthy state of repair at all times within Langford;
- (h) provide and maintain at all times sufficient staff, facilities, materials, appropriate equipment and approved subcontractual agreements in place and available to it to fully perform the services contemplated hereunder;
- (i) SCADA system information shall be made available to Langford on the same basis and at the same time as it is available to West Shore;
- (j) Web site access (read only) shall be provided at various levels for West Shore, Langford and public, including for the latter, news bulletins, contact information and relevant consumer information;
- (k) accept the risks assigned within this Agreement identified expressly or impliedly as being borne by West Shore; and
- (l) comply with all the requirements of the Agreement and shall perform all of its obligations and supply all labour, equipment and material necessary to do so.

22.3 Co-Operation with Regulatory and Bylaw Investigations

West Shore shall cooperate with investigations by agencies such as the Department of Fisheries and Oceans (Canada), Ministry of Water, Lands and Parks (British Columbia) and their successors and by Langford with respect to its bylaws.

22.4 Community Sponsorship

West Shore shall sponsor local events such as “Music in the Park”, Langford Lavender Festival, charity golf tournaments and important community events on a regular basis.

22.5 Educational Programs and Conservation Kits for Users

West Shore shall create and provide educational programs and distribute water conservation kits to residents of Langford to assist in reducing utility costs and managing the environment.

22.6 Financial Statements

West Shore shall provide a copy of its annual financial statements to Langford within 60 days of the end of each fiscal year.

ARTICLE 23 LANGFORD COVENANTS

23.1 Langford shall Seek Approval

Langford will promptly take all reasonable steps within its power to have this Agreement and the franchising of its sewer system services to West Shore including specifically the renewal term contemplated in section 3.2 approved by whatever means required by Laws, if any, required in addition to the elector approval referred to in Recital D above.

23.2 Exemption from Taxes

It is a condition of West Shore’s obligation hereunder that Langford pass and maintain in force a bylaw exempting West Shore from property tax with respect to the System. It is contemplated that an order-in-council be obtained from the Province of British Columbia exempting West Shore with respect to the System from property taxes pursuant to the *School Act* (British Columbia) but if that order-in-council is not obtained or is rescinded, the taxes payable will be an eligible cost to be taken into account in any review of fees hereunder.

23.3 Langford Shall Retain Liability re SPL and Environmental Levy

Langford shall collect User Fees and any other fees payable by SPL Septage Processing Ltd., under the SPL Agreement or otherwise and remit all of same other than the environmental levy to West Shore and shall indemnify and hold harmless West Shore from any and all liability with respect to the NHLW facility described in the SPL Agreement and any failure by SPL to comply with the standards of the CRD and with the requirements in the SPL Agreement and at law with respect to the quality or character of liquid waste discharged from the NHLW facility.

23.4 Assist in Recovery of Third Party Damage

Langford shall report any malicious damage or damage to the System of which it becomes aware to West Shore and on behalf of West Shore shall pursue recovery for such damage against third parties, including enforcing bylaws to the extent West Shore is not able, as if Langford still owned the System.

23.5 Assist in Fee Collection

After West Shore has exhausted all commercial means for bill collection, Langford shall use reasonable efforts to assist in the collection of fees owed to West Shore.

23.6 Seek Consents

Langford shall assist West Shore at West Shore's expense in obtaining regulatory approvals and consents associated with the System which may be required or reasonably necessary from time to time.

23.7 No Other Sewer Related Fees

Other than pursuant to the SPL Agreement, or agreements substantially similar to the SPL Agreement, Langford will not charge any fees to owners or occupiers in Langford in respect of the System, it being intended that all such fees will be charged by and be for the benefit of West Shore in accordance with this Agreement.

Langford may enter into agreements substantially similar to the SPL Agreement permitting the bulk discharge of septage into the System and may under those agreements impose fees and environmental levies. Where Langford enters into any such agreements, the fees and environmental levies collected by Langford under them will be dealt with in the same manner as the similar fees and levy under the SPL Agreement.

ARTICLE 24 WEST SHORE REPRESENTATIONS AND WARRANTIES

24.1 Representations and Warranties

West Shore represents and warrants to Langford that:

- (a) West Shore is skilled and knowledgeable in the construction, maintenance and operation of municipal utilities and has the expertise, skill and judgement required to discharge its obligations pursuant to this Agreement in a manner consistent with good engineering, public health and environmentally responsible standards;
- (b) West Shore is a company, duly organized, validly existing and legally entitled to carry on business in British Columbia and is in good standing with respect to filings of annual reports according to the records of the Registrar of Companies of British Columbia;

- (c) all necessary proceedings have been taken to authorize the execution and delivery of this Agreement by West Shore;
- (d) this Agreement has been properly executed by West Shore and is enforceable against West Shore in accordance with its terms;
- (e) all representations herein by West Shore are materially correct and accurate;
- (f) West Shore has no knowledge of any specific fact that materially adversely affects or, so far as is it can be foreseen, would materially adversely affect either its financial condition or its ability to fulfill its obligations under this Agreement;
- (g) the observance and performance of the terms and conditions of this Agreement will not constitute a breach by it or a default by it under
 - (i) any statute, regulation or bylaw of Canada or of the Province of British Columbia applicable to or binding on it,
 - (ii) its constating documents, or
 - (iii) any contract or agreement to which it is a party;
- (h) West Shore has obtained and holds all permits, licenses, consents, and authorities issued by any level of government or any agency of government, to conduct business and carry on the duties and activities which it is required to do under this Agreement;
- (i) the making of this Agreement and the completion of the transactions contemplated hereby and the performance of and compliance with the terms of this Agreement do not conflict with or result in a breach of, any judgment, decree, order, rule or regulation of any court or administrative body by which West Shore is bound or, to the knowledge of West Shore, any statute, regulation or bylaw applicable to West Shore;
- (j) West Shore is, to the knowledge of Brett Hodson and Eric Van Roon, unaware of any untrue or incorrect representation or assurance, whether verbal or written, given by West Shore, its directors or officers to Langford in connection with this Agreement;
- (k) West Shore has sufficient trained staff, facilities, materials, appropriate equipment and approved subcontractual agreements in place and available to enable it to fully perform its obligations under this Agreement;
- (l) West Shore has investigated and satisfied itself as to conditions affecting the performance of its obligations under this Agreement including, but not limited to, the construction of the New Plant and the New Infrastructure; and

- (m) West Shore's investigation has been based on its own examination, knowledge, information and judgment and upon statements, representations, or information made or given by Langford.

ARTICLE 25
LANGFORD REPRESENTATIONS AND WARRANTIES

25.1 Representations and Warranties

Langford represents and warrants to West Shore as follows and acknowledges that West Shore is relying upon the following representations and warranties in connection with this Agreement:

- (a) Langford has the power, authority and right to enter into and deliver this Agreement (subject to elector assent as contemplated by section 13.6) and to transfer the legal and beneficial title and ownership of the Assets to West Shore free and clear of all liens, charges, encumbrances and any other rights of others.
- (b) Neither the entering into nor the delivery of this Agreement nor the completion of the transactions contemplated hereby by Langford will result in the violation of:
 - (i) any order, decree, bylaw, regulation, covenant or restriction applicable to Langford or any of the Assets;
 - (ii) any agreement or other instrument to which Langford is a party or by which Langford is bound; or
 - (iii) any other applicable Laws.
- (c) There are no actions, suits or proceedings (whether or not purportedly on behalf of Langford), pending or threatened against or adversely affecting, or which could adversely affect, the Assets or before or by any federal, provincial, municipal or other governmental court, department, commission, board, bureau, agency or instrumentality, domestic or foreign, whether or not insured, and which might involve the possibility of any lien, charge, encumbrance or any other right of another against the Assets.
- (d) Neither the execution and delivery of this Agreement by Langford nor the completion and performance by Langford of the transactions and obligations contemplated by or contained in this Agreement including the operation of the System will require the consent or approval of any person or Governmental Entity.
- (e) The books and records of Langford relating to the System are true and correct and present fairly and disclose in all material respects the financial position of the System and all material financial transactions of Langford relating to the System have been accurately recorded in such books and records and, to the extent possible, such books and records have been prepared in accordance with generally accepted accounting principles consistently applied.

- (f) The financial statements of Langford with respect to the System contained within the annual financial statements of Langford for the year ended December 31, 2003;
 - (i) are in accordance with the books and accounts of Langford as at December 31, 2003;
 - (ii) are true and correct and present fairly in all material respects the financial position of the System at December 31, 2003;
 - (iii) have been prepared in accordance with generally accepted accounting principles consistently applied; and
 - (iv) present fairly all of the assets and liabilities and all material financial transactions of Langford regarding the System as at December 31, 2003 including, without limiting the generality of the foregoing, all contingent liabilities of Langford with respect to the System as at December 31, 2003.

- (g) Since December 31, 2003 there has not been:
 - (i) any change, event or circumstance which would materially affect the affairs, prospects, operation or condition of the Assets; or
 - (ii) any loss, damage or destruction, whether or not covered by insurance, which would materially adversely affect the affairs, prospects, operations or condition of the Assets.

- (h) There are no outstanding orders, notices or similar requirements relating to the Assets issued by any Governmental Entity and there are no matters under discussion with any Governmental Entity relating to orders, notices or similar requirements.

- (i) The Schedule of Operating Agreements contains a complete and accurate listing of all Operating Agreements to which Langford is a party, by which Langford is bound or under which Langford is entitled to any benefits relating to the System or any part.

- (j) Neither Langford nor any party to the Operating Agreements is in default or breach of such Agreements, and there exists no condition, event or act that, with the giving of notice or lapse of time or both, would constitute such a default or breach, and all such Agreements are in good standing and in full force and effect without amendment thereto (other than as described in this Agreement) and Langford is entitled to all benefits thereunder. Langford is not aware of any intention on the part of any of the other parties to the Agreements to terminate or materially alter any such Agreements.

- (k) There are no contracts, prepaid or otherwise, obligations, or commitments with respect to the period following the Closing Date with respect to the System, except those which may be cancelled without notice or penalty.
- (l) The Assets other than the sewer pipes are adequately insured against all material risks which a prudent person would be expected to insure against and to prudent limits applicable to the nature of the Assets.
- (m) Langford is aware of no Pollutant located on, at or beneath the System, nor is it aware that any Pollutant has been Released, accidentally or otherwise, from the System.
- (n) No Government Approvals are required for Langford or West Shore to operate the System and there is no outstanding order, notice, direction or other communication from any Environmental Authority under or relating to any Environmental Law requiring any work, repairs, construction or expenditures with respect to the System.
- (o) There is no current, pending or threatened claim, suit, proceeding, investigation or inspection, and no order, notice or other communication from any Environmental Authority, with respect to the System alleging or concerning any violation, breach or infringement of any Environmental Law, and Langford has no knowledge of any facts which could give rise to any such claim, suit, proceeding, investigation, inspection, order, notice or other communication
- (p) There has been no breach of the SPL Agreement.
- (q) Langford owns and has good marketable title to the Assets free and clear of all mortgages, liens, charges, pledges, security interests, encumbrances or other claims.
- (r) the Schedule which Langford has separately provided West Shore herewith (but is not attached for reasons of privacy) contains a true, complete and accurate list of:
 - (i) the names of all current customers of the System, any of their addresses, telephone numbers, facsimile numbers and e-mail addresses which Langford may have as of the Closing Date, as well as the revenue generated by each of the customers with respect to the immediately preceding 32 calendar months and any related account history; and
 - (ii) the names of all potential customers and any of their addresses, telephone numbers, facsimile numbers and e-mail addresses which Langford may have.
- (s) Langford has no employees relating to the Assets and has had no employees relating to the Assets.

- (t) There is not currently and there has never been any collective agreement or other agreement with any trade union or employee association with Langford with respect to the System and there have been no discussions or negotiations to enter any such agreements or associations.
- (u) The System is located within the Statutory Rights of Way or lands belonging to Langford.
- (v) There have been no changes to SSAs since June 1, 2004.

ARTICLE 26
INDEMNIFICATION, PERFORMANCE GUARANTEES AND INSURANCE

26.1 Insurance and Indemnity

West Shore shall obtain and maintain in force during the Term:

- (a) comprehensive general liability insurance providing coverage of not less than ten million dollars (\$10,000,000.00) inclusive per occurrence for bodily injury, death and property damage and including loss of use thereof, which may arise directly or indirectly out of the acts or omissions of West Shore under this Agreement, such insurance to include Langford as an additional named insured;
- (b) automobile liability insurance in an amount not less than five million dollars (\$5,000,000.00) and automobile physical damage insurance including collision and comprehensive coverage, covering all automobiles owned, rented or leased by West Shore, that are required by law to be licensed; and
- (c) equipment insurance covering all equipment owned, rented or leased (with policy limits and conditions that may be applicable to any rental or lease agreements) by West Shore utilized in performance of the services hereunder by West Shore against "all risks" of loss or damage;

all in form and content and with an insurer or insurers acceptable to Langford acting reasonably.

26.2 Evidence of Insurance

Evidence that the insurance required under section 26.1 has been obtained will be submitted by West Shore to Langford on the Commencement Date and West Shore shall, upon the request of Langford made at any time or times, submit to Langford evidence, satisfactory to Langford, that the policy of insurance remains in force and effect.

26.3 No Cancellation Without Notice

West Shore shall ensure that the insurance described in section 26.1 may not be cancelled or materially changed in any way whatsoever without the insurer or insurers giving not less than 30 days prior written notice to Langford.

26.4 Indemnity

West Shore shall indemnify and save harmless Langford from and against all claims, liabilities, demands, losses, damages, costs and expenses, fines, penalties, assessments and levies made against or incurred, suffered or sustained by Langford at any time or times (whether before or after the expiration or sooner termination of this Agreement) where the same or any of them are based upon or arise out of or from anything done or omitted to be done by West Shore pursuant to this Agreement including any claim against Langford for failure to supervise or inspect the work which is performed by West Shore pursuant to this Agreement which indemnity will survive the expiration or sooner termination of this Agreement for a period of two (2) years.

26.5 Workers Compensation

West Shore will be responsible for compliance with all conditions and regulations under the Workers Compensation Act and for all assessments and levies which may be made thereunder.

26.6 Cooperation

West Shore shall, at its expense, co-operate with Langford and its counsel in the investigation, settlement and judicial determination of any claims made against Langford or West Shore relating directly or indirectly to this Agreement.

26.7 Performance Guarantee

TUS hereby guarantees the performance by West Shore of its obligations hereunder.

ARTICLE 27 FORCE MAJEURE

27.1 Suspension

Subject to the other provisions of this Article 27, if any Party is unable or fails by reason of Force Majeure to perform in whole or in part any obligation or covenant set forth in this Agreement, with the exception of unpaid financial obligations, such inability or failure shall be deemed not to be a breach of such obligation or covenant and the obligations of the Parties under this Agreement shall be suspended to the extent necessary during the continuation of any inability or failure so caused by such Force Majeure.

27.2 Definition of Force Majeure

For purposes of this Agreement, the term "Force Majeure" means any event or occurrence not within the control of the Party claiming Force Majeure and which by the exercise of reasonable diligence such Party is unable to prevent or overcome, including any acts of God, including lightning, earthquakes, storms, washouts, landslides, avalanches, fires, epidemics and floods; strikes, lockouts or other industrial disturbances; acts of the Queen's or public enemies, sabotage, wars, blockades, insurrections, riots or civil disturbances, fires, explosions, breakages of or accidents to machinery or lines of pipe; the laws, orders, rules, regulations, acts or restraints of any court or governmental or regulatory authority. For the purposes of this Article 27, a Party is

deemed to have control over the actions or omissions of those persons to which it, its agents, contractors or employees, have delegated, assigned or subcontracted its obligations and responsibilities.

27.3 Exceptions

No Party will be entitled to the benefit of section 27.1 under any of the following circumstances:

- (a) to the extent that the inability or failure was caused by the negligence or contributory negligence of the Party claiming Force Majeure;
- (b) to the extent that the inability or failure was caused by the Party claiming Force Majeure having failed to diligently attempt to remedy the condition by taking all reasonable acts and to resume the performance of such covenants and obligations with reasonable dispatch;
- (c) if the inability or failure was caused by lack of funds or is in respect of any amount due hereunder; or
- (d) unless, as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Agreement, the claiming Party will have given to the other Party notice to the effect that the claiming Party is unable by reason of Force Majeure (the nature whereof shall be therein specified) to perform the particular covenants or obligations.

27.4 Resumption of Obligations

The Party claiming Force Majeure shall give notice to the other Party, as soon as possible after the Force Majeure condition is remedied, to the effect that the same had been remedied and that such Party has resumed, or is then in a position to resume, the performance of its suspended covenants and obligations hereunder either in whole or in part.

27.5 Settlement of Labour Disputes

Notwithstanding any of the provisions of this Article 27, and subject to section 27.3, the settlement of labour disputes or industrial disturbances is entirely within the discretion of the particular Party involved and the Party may make settlement of it at the time and on terms and conditions as it may deem to be advisable and no delay in making settlement will deprive the Party of the benefit of section 27.1.

ARTICLE 28 EVENTS OF DEFAULT AND TERMINATION

28.1 Events of Default

For the purposes of this Article 28, an event of default means:

- (a) any failure of West Shore to complete the construction of the I and I Works or the works described in Part I of Priority Works in Schedule D by the respective target dates identified in that Schedule;
- (b) any failure of West Shore to make a franchise fee payment by the date on which it is due;
- (c) any breach of the terms of the Northwest Trunk Sewer Operating Agreement for which West Shore is responsible under Article 18;
- (d) any failure of West Shore to fulfil the grantee's obligations under any statutory right of way whose use is licensed to West Shore under this Agreement;
- (e) any failure to operate or maintain the System, the New Plant or the New Infrastructure in accordance with the terms of this Agreement;
- (f) West Shore becomes insolvent, admits in writing its inability to pay its debts as they become due, commits an act of bankruptcy, is adjudged or declared bankrupt or makes an assignment for the benefit of creditors, a proposal or similar action under the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act or any similar legislation;
- (g) the commission of any material breach of an Environmental Law in the construction, operation or maintenance of the System, the New Plant or the New Infrastructure.

28.2 Loss re Failure to Implement I and I Works

In the event of a default described in Article 28.1(a), Langford may terminate this Agreement without further notice if West Shore does not mitigate any loss that Langford suffers as a result of the default, in a manner approved by Langford and within the period of time determined by Langford.

28.3 Notice of Default

In the event of a default described in Article 28.1(b), (c), (d), (e) or (g), Langford may deliver notice of default to West Shore in accordance with section 31.9 specifying the nature of the default, the remedy required and the reasonable period of time within which the remedy must be effected, and West Shore shall remedy the default, but if the default is not remedied or if West Shore remedies the default and commits a like event of default on two additional occasions, Langford may terminate this Agreement without further notice.

28.4 Termination Without Notice on Bankruptcy

In the event of a default described in Article 28.1(f), Langford may terminate this Agreement without notice.

**ARTICLE 29
LANGFORD DEFAULT**

29.1 Langford Default

Langford will be in default under this Agreement if:

- (a) Langford is adjudged bankrupt or insolvent by a court of competent jurisdiction; or
- (b) Langford is in material default of any of the terms, covenants, agreements, conditions or obligations imposed upon it under this Agreement and fails to cure such default within 30 days after receipt by Langford of written notice thereof referencing this section from West Shore or, if such default is not capable of being cured within such 30 day period, fails to commence in good faith the curing of such default forthwith upon receipt of written notice thereof from West Shore and to continue to diligently pursue the curing of such default thereafter until cured.

Upon the happening and during the continuance of any above-described default by Langford, West Shore may, at its option and without liability therefor:

- (a) suspend, or refuse to carry out, any design, engineering or construction of New Plant until the default has been fully remedied, and no such suspension or refusal will relieve Langford from any of its obligations under this Agreement; or
- (b) terminate this Agreement by written notice to Langford without prejudice to any other right West Shore may have hereunder or at law or otherwise.

29.2 Consequences of Termination by West Shore

In the event of termination by West Shore, TUS shall continue to operate the system for the account of Langford until the earlier of:

- (a) an alternate operator is identified by Langford; and
- (b) 120 days after termination;

unless TUS agrees otherwise with Langford.

**ARTICLE 30
DISPUTE RESOLUTION**

30.1 Informal Dispute Resolution

Langford and West Shore shall attempt in good faith to resolve any disputes relating to this Agreement informally. Upon the request of any Party, a dispute will immediately be referred to the following representatives of the Parties for resolution by them:

- (a) the Chief Administrative Officer, on behalf of Langford; and
- (b) the President of West Shore.

30.2 Mediation

If the dispute has not been resolved within 15 Business Days of being referred to the representatives of the Parties pursuant to section 30.1, then the Parties to the dispute shall attempt in good faith to resolve the matter through mediated negotiation administered under the Mediation Rules of the British Columbia International Commercial Arbitration Centre (the “BCICAC”) with the assistance of a neutral person appointed as mediator by Langford and West Shore. If Langford and West Shore cannot agree on the mediator, the mediator will be appointed by the BCICAC.

30.3 Arbitration

If the dispute has not been resolved within a further 15 Business Days (being 30 Business Days after being referred to the representatives of the Parties pursuant to section 30.1), any disputing Party may submit the matter to arbitration to be conducted in Victoria, British Columbia pursuant to the provisions of the *Commercial Arbitration Act* (British Columbia) with the arbitration to be concluded and an arbitral award made within 45 Business Days of such submission.

30.4 Agreement to Continue

Notwithstanding any dispute between the Parties, this Agreement and the franchise herein will continue and each Party shall continue complying with its obligations under this Agreement until the dispute has been resolved or arbitrated.

ARTICLE 31 GENERAL

31.1 No Assignment

This Agreement may not be assigned by any Party without the prior written consent of the other Parties. Subject thereto, this Agreement will enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. For the purposes of this Agreement a change of control of West Shore will be deemed to be an assignment.

31.2 No Contrary Agreements

No Party shall enter into an agreement or other commitment with any person if such agreement or commitment has terms or provisions in conflict with or inconsistent with the terms of this Agreement or which could reasonably be expected to lead to actions or consequences that would result in the Party being in breach of the commitments and obligations of the Party pursuant to this Agreement unless such other agreement or commitment is expressly approved by the other Parties.

31.3 Confidentiality

Each Party acknowledges that in the course of its participation in the Project there may be disclosed to the Party information concerning the business or affairs, including information about the operations, plans, properties and financial position of another Party or its agents or affiliates, which the Party in respect of which such information is disclosed considers to be proprietary or confidential (collectively, “**Confidential Information**”); provided, however, that the term Confidential Information in respect of a Party will not include information that is in the public domain prior to disclosure by the other Party, is in the receiving Party’s possession prior to disclosure by the other Party, that lawfully enters the public domain through no violation of this confidentiality obligation after disclosure to another Party or information that at a time of disclosure to a Party hereto is generally known to independent knowledgeable persons familiar with the business or affairs of the Party in respect of which the information is disclosed. Subject as hereafter stated, each Party agrees to use the Confidential Information of the other Party solely for the purposes of the franchise hereunder and the System and for no other purpose and to keep such Confidential Information of the other Parties confidential and not to disclose that Confidential Information other than to such of the Party’s officials, directors, partners, employees, legal, financial and other advisors or other persons who have a bona fide need to have access to such Confidential Information in order for the Parties to carry out the purposes and objectives of this Agreement. Nothing contained herein will be deemed to prevent disclosure by a Party of any Confidential Information of another Party if, in the written opinion of the Party’s legal counsel, such disclosure is legally required to be made in a judicial, administrative, or governmental proceeding or pursuant to the Party’s obligations under freedom of information legislation.

31.4 Publicity

Except as may be required under applicable law, including without limitation regulations and policies of governmental or regulatory authorities, no public disclosure announcement of this Agreement or the transactions contemplated hereby will be made without the mutual consent of the Parties, each acting reasonably. Subject as aforesaid, before any Party issues any press release concerning this Agreement or the System, the Party shall provide a copy of the proposed text thereof to the other Party and the Parties shall consult each with the other with a view to settling a mutually acceptable press release or other announcement.

31.5 No Partnership or Agency Created

Notwithstanding that this Agreement is a “partnering agreement” for the purposes of the Community Charter this Agreement is not intended to create, nor will it be construed as creating, any partnership or agency whatsoever between the Parties and no Party will be deemed to be the legal representative of the other Party for the purposes of this Agreement, the System, or otherwise nor will either Party have, nor represent itself to have, any authority or power to act for, to undertake any obligation or responsibility on behalf of, or to pledge the credit of the other Party, or otherwise except as may herein be expressly provided or as may hereafter be expressly agreed upon between the Parties.

31.6 Further Assurances

Each of Langford and West Shore and their administrators, successors and permitted assigns shall execute such further documents and do and perform or cause to be done and perform such further and other acts as may be reasonably necessary from time to time in order to give full effect to this Agreement.

31.7 Amendment

None of the terms, conditions or provisions of this Agreement will be held to have been changed, waived, varied, modified or altered by any act or knowledge of any Party, their respective agents, servants, or employees unless done in writing signed by the Party intending to give a waiver, in the case of a waiver, and signed by each Party in the case of any intended change, variation, modification or alteration of this Agreement.

31.8 Entire Understanding

As of the date hereof, this Agreement constitutes the entire understanding among the Parties regarding the System and supersedes all prior discussions, negotiations and understandings between the Parties with respect to the System.

31.9 Notices

All notices, demands or requests provided for or permitted to be given under this Agreement must be in writing and in that regard:

- (a) all notices, demands and requests to be sent to either Party will be deemed to have been properly given or served if delivered by hand, telecopied or deposited in the mail addressed to the Party intended, post paid and double registered, at the relevant addresses set out below;
- (b) all notices, demands or requests will be deemed to have been effectively given on the date of delivery, if delivered by hand on a day that is a business day, on the date of transmission if sent by telecopier on a day that is a business day, or the first business day thereafter if delivered or transmitted on a day that is not a business day, and on the fifth business day after the date of deposit in the mail if sent by mail;
- (c) by giving the other Party at least four days written notice thereof, any Party hereto will have the right from time to time and at any time during the term of this Agreement to change its respective address and to specify as its address for notices any other address within British Columbia;

(d) addresses for notices are as follows:

For Langford: 877 Goldstream Avenue, 2nd Floor
Victoria, British Columbia V9B 2X8

Fax: 250-478-7864

For West Shore: 859 Orono Avenue
Victoria, BC V9B 2T9

Fax: 250-478-1581

For TUS: 1128 Burdette Street
Richmond, BC V6V 2Z3

Fax: 604-273-0619

31.10 Governing Law

This Agreement will be governed by the laws of the Province of British Columbia.

31.11 Time of the Essence

Time shall be of the essence of this Agreement.

31.12 Counterparts

This Agreement may be executed in counterparts and will become operative when each Party has executed and delivered at least one counterpart. This Agreement may be delivered by facsimile or similar transmission, and a facsimile or similar transmission evidencing execution will be effective for all purposes.

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

CITY OF LANGEORD


By: 

Mayor

By: 

Clerk Administrator

**WEST SHORE ENVIRONMENTAL
SERVICES INC.**

By: 

TERASEN UTILITY SERVICES INC.

By: 

SCHEDULE A

LICENSE OF HIGHWAYS AND RIGHTS OF WAY

LICENCE AGREEMENT

Made this 20th day of September, 2004.

BETWEEN:

WEST SHORE ENVIRONMENTAL SERVICES INC., a
British Columbia company having an office at 859 Orono Avenue
Victoria, BC V9B 2T9

(hereinafter called "**West Shore**")

AND:

CITY OF LANGFORD, a municipality incorporated under the
Local Government Act, R.S.B.C. 1996, c.323 and having its office
at 2nd Floor, 877 Millstream Avenue, Victoria, B.C. V9B 2X8

(hereinafter called "**Langford**")

WHEREAS the parties have on the reference date of this Agreement entered into an agreement under which West Shore will operate and maintain Langford's sewage collection infrastructure, and will construct, own, operate and maintain new sewage collection infrastructure required to service Langford's development; and

WHEREAS Langford has agreed to grant to West Shore permission to use portions of Langford's highways and Langford's rights under certain statutory rights of way for the operation, maintenance, and construction of sewage collection infrastructure.

NOW THEREFORE, in consideration of the premises and the covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties covenant and agree each with the other as follows:

INTERPRETATION

1. In this Agreement,

"**Statutory Rights of Way**" means the statutory rights of way listed in Schedule 1 and the rights of Langford to enter the "**Land**" as defined in the "**SPL Agreement**" (as defined in the Sewer Utility Agreement).

"**Sewer Utility Agreement**" means the agreement between West Shore and Langford dated for reference September 20, 2004.

“Sewage Works” means the works listed in Schedule 2 and such additional works as West Shore may construct in Langford highways and the Statutory Rights of Way under the terms of the Sewer Utility Agreement.

LICENCE AND TERM

2. Langford so far as it legally can, but not otherwise, and subject to this Agreement and to its bylaws, grants to West Shore the right, as licensee and agent of Langford, to construct, operate and maintain the Sewage Works on Langford’s highways and the Statutory Rights of Way for a term equal to the term of the Sewer Utility Agreement. The location of Sewage Works constructed subsequent to the reference date of this Agreement is subject to the approval of Langford under the terms of the Sewer Utility Agreement.

USE OF HIGHWAYS AND STATUTORY RIGHTS OF WAY

3. West Shore and its employees, contractors, subcontractors consultants and agents may use Municipality highways or the Statutory Rights of Way for the construction, operation and maintenance of sanitary sewers pursuant to the Sewer Utility Agreement and for no other purpose whatsoever, and shall not sub-licence the use of Municipality highways or the Statutory Rights of Way in any manner or for any purpose whatsoever without the express written consent of Langford.
4. West Shore shall not use any of the Statutory Rights of Way for any purpose not strictly within the terms of the instrument, shall be solely responsible for any breach of the terms of any of the Statutory Rights of Way, and shall indemnify and save Langford harmless in respect of any such breach. West Shore acknowledges having received as of the reference date of this Agreement a copy of each of the Statutory Rights of Way as registered in the Victoria Land Title Office.
5. In the event that any of the Statutory Rights of Way grants to Langford the rights to use land for sewage collection works as well as other purposes, West Shore and Langford shall jointly determine the manner in which each of them shall exercise its rights under the Statutory Right of Way and this Agreement.

OWNERSHIP OF SEWAGE WORKS

6. Despite any rule of law or equity, West Shore shall retain title to any Sewage Works it installs in a highway or any of the Statutory Rights of Way, subject to the Sewer Utility Agreement and Section 10(b) of this Agreement.

WEST SHORE’S COVENANTS

7. West Shore covenants and agrees:

FEE

- (a) to pay to Langford the franchise fees prescribed by the Sewer Utility Agreement.

SAVE HARMLESS

- (b) to release, indemnify and save harmless Langford from any and all liability whatsoever arising out of:
 - (i) the Sewage Works other than those listed in Schedule 2 encroaching upon, under or over the highway of Langford, or
 - (ii) the construction by West Shore of anything upon, under or over the highway, or
 - (iii) the operation or maintenance by West Shore of anything upon, under or over the highway, or
 - (iv) the occupation or use by West Shore of the highway or the ground below or the air above for the purpose of such encroachment by the Sewage Works.

INSURANCE

- (c) to purchase, maintain in full and deposit with Langford a copy of a policy of third party liability insurance in a form acceptable to Langford, insuring both West Shore and Langford against any loss arising from the circumstances mentioned in subsection (b) above, in the amount of at least five million dollars. West Shore shall give Langford 30 days notice prior to cancellation of the insurance. Cancellation of such insurance will serve to immediately terminate this Agreement and any right West Shore derives hereunder, and title to the Sewage Works shall pass to Langford under Section 10(b) of this Agreement.

ENTRY

- (d) that Langford reserves the right for itself, its servants or agents, at any and all reasonable times, to enter into and upon any highway or any of the Statutory Rights of Way for the purpose of inspecting the Sewage Works and constructing, maintaining, inspecting or removing any public structure, service or utility running on or under the highway or on or under any of the Statutory Rights of Way provided Langford will indemnify West Shore for any damage to the Sewage Works caused by any such activity by Langford or its servants or agents.

MUNICIPAL WORKS

- (e) that in the event that the construction, maintenance, use or removal of the Sewage Works necessitates any alteration or change to any meter, water service, sewer or other public works or utility in the vicinity of the Works, West Shore will reimburse Langford for whatever direct costs (as certified by the Langford Municipal Engineer) may be incurred by Langford in making such alterations or changes as may be deemed necessary by the Langford Municipal Engineer.

DEFAULT

- (f) at all times to observe and perform the provisions of the bylaws of Langford, and this Agreement shall be at all times be subject thereto, and in case the West Shore shall fail to comply with the provisions of the said bylaws, or any of them or of this Agreement, after 30 days' written notice and a failure by West Shore to remedy such failure all rights of West Shore hereunder shall thereupon terminate and be at an end; but Langford, nevertheless, shall be entitled to proceed with the enforcement of any security or indemnity herein provided, or upon any bond or otherwise in satisfaction of any claim, loss or expenses of whatsoever kind arising under this Agreement, or from the permission hereby granted.

ASSIGNMENT

- 8. This Agreement may not be assigned by West Shore without the prior written consent of Langford.

ALTERATION OF MUNICIPAL WORKS

- 9. This Agreement shall not in any way operate to restrict the right of Langford at any time to
 - (a) alter the road, curb, gutter, sidewalk or boulevard on any highway, notwithstanding that such alteration in width or elevation may affect the Sewage Works or render them of less value for the purposes of West Shore;
 - (b) construct or maintain any form of structure or utility on, over or under any portion of a highway on or in which the Sewage Works are located and for such purpose require that the Sewage Works be relocated;

provided Langford will consult with West Shore and consider alternatives before altering works in such a way to require West Shore to relocate the Sewage Works and West Shore covenants that, in the event of Langford effecting any such alteration or construction or in requiring relocation of all or part of the Sewage Works, West Shore will release and forever discharge, and hereby releases and forever discharges, Langford from all manner of claims of any nature whatsoever, which may arise by reason of such alteration, or by reason of the relocation of the Sewage Works.

TERMINATION

- 10. In particular, but without restricting the generality of the foregoing, it is understood and agreed that:
 - (a) this agreement may be terminated by either party upon the same terms on which the Sewer Utility Agreement may be terminated;
 - (b) in the event of the termination of this agreement by West Shore, or expiry or non-renewal of this Agreement any title of West Shore to the Sewage Works shall,

subject to the terms of the Sewer Utility Agreement, pass to Langford and West Shore's title to the Sewage Works shall be extinguished absolutely.

MAINTENANCE OF SEWAGE WORKS

11. West Shore will at all times, and at its own expense, keep and maintain the Sewage Works in good and sufficient repair to the standards specified in the Sewer Utility Agreement.
12. Should West Shore:
 - (a) fail to keep the Sewage Works in good and sufficient repair, to the satisfaction of Langford; or
 - (b) fail to relocate the Sewage Works or to fill up any excavation when required under this Agreement.then Langford may:
 - (c) make such repairs when deemed necessary; or
 - (d) remove the Works, or fill up the excavation, as the case may require, in the opinion of Langford.
13. West Shore shall pay the costs of such work to Langford forthwith; and in default of payment, the amount of such costs, together with interest at the rate established by Langford for taxes in arrears, may be recovered in a Court of competent jurisdiction.

MISCELLANEOUS

14. Nothing contained in this Agreement shall have the effect of relieving West Shore from its obligation to comply with Bylaw 33.
15. For the purposes of Bylaw 33 fee calculations, all sewer works constructed by West Shore will be considered "underground works" and fees will be calculated on the aggregate value of all works in any calendar year rather than on the individual permit amounts.
16. Time shall be of the essence of this Agreement.
17. This Agreement shall enure to the benefit of and be binding upon the successors of Langford and the permitted assigns of West Shore.
18. West Shore acknowledges that the areas over which the Sewage Works encroach, other than those areas comprising statutory rights of way, are public highways and that this Agreement is a contractual licence only and grants no leasehold or other property right or interest in the area over which the Sewage Works encroach.

19. Where the context so requires, words importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders and vice versa.
20. Any notice required or permitted to be given hereunder shall be in writing and shall be given by personal service or prepaid registered mail addressed to the parties at the addresses set forth on page 1 of this Agreement. Notice by mail shall be deemed to have been given and received five (5) business days (excluding Saturdays, Sundays and statutory holidays), following, but not including, the day on which it is mailed.
21. This Agreement terminates and supersedes all other Agreements and arrangements between Langford and West Shore regarding its subject, and shall be interpreted so as to be consistent with the terms of the Sewer Utility Agreement.

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

WEST SHORE ENVIRONMENTAL SERVICES INC.

By: _____

THE COMMON SEAL OF THE CITY OF)
 LANGFORD was hereunto affixed in the)
 presence of:)
)
 _____)
 Authorized Signatory)
)
 _____)
 Authorized Signatory)
)
)

SCHEDULE B

LIST OF STATUTORY RIGHTS OF WAY

Civic Address	Legal Description	Charge Number
	005-817-889, Lot 6, Section 112, Esquimalt District, Plan 6252	EM056824
	024-067-636, Lot 1, Section 112, Esquimalt District, Plan VIP66783	EM060045
Bear Mountain Phase 1	No PID, Lot 26, Section 3, Range 4 West, Highland District, Plan VIP75449	EV073885
Bear Mountain Phase 2	Lot 1, Section 82, Highland District, Plan VIP76197	EV147586
Bear Mountain Phase 2	Lot 6, Section 82, Highland District, Plan VIP76197	EV147581
Bear Mountain Phase 2	Lot 9, Section 82, Highland District, Plan VIP76197	EV147582
Coralee Place, 403	018-604-277, Strata Lot 7, Section 2, Range 2 West, Highland District, Strata Plan VIS2088	EN101090
Country Terrace	Lots 5 to 19, Section 105, Esquimalt District, Plan VIP72336	ES036636
Crystalview	The Common Property, Section 105, Strata Plan VIS2725	ET131784
Crystalview Phase 3	Lot 18, Section 105, Esquimalt District, Plan VIP67806	EM090662
Crystalview Phase 4	Lots 29, 31 to 42, 48 to 56, Section 105, Esquimalt District, Plan VIP72733	ES078518
Desmond (Bona Vista) 1	025-453-629, Lot 1, Section 70, Metchosin District, Plan VIP73990	ET84375
Desmond (Bona Vista) 2	025-453-696, Lot 8, Section 70, Metchosin District, Plan VIP73990	ET84377
Eagle Ridge Phase 1	No PID, Lots 245 and 25, Section 2, Range 3 West, Highland District, Plan VIP76187	EV148043
Gourman/ Haley Rae	Lots 3, 8, 11, 13, 40, 43, Section 2, Range 2 West, Highland District, Plan VIP68387	EN000129
Henry Eng	Lot 1, Section 80, Esquimalt District, Plan VIP51550, Except part in Plan VIP66561	EM002103
Hoffman/Winster 1	Lots 2, 3, 4, 11, Section 72, Esquimalt District, Plan VIP73334	ET015290
Hoffman/Winster 2	Lots 1-14, 16 to 32, 34 to 36, Section 72, Esquimalt District, Plan VIP73334	ET015288
Jacklin Road, 2885	012-375-543, Lot 14, Section 73, Esquimalt District, Plan 47649	EK005930
Langvista North	Remainder of Lot 1, Section 107, Esquimalt District, Plan VIP75148; Common Property, Lots 7, 8, 26, Sections 107 & 108, Esquimalt District, Strata Plan VIS 5348	EV050298
McCallum Road	Lots C, D, F, Sections 112 and 112A, Esquimalt District, Plan VIP67382	EM058227
Millstream Road	Lot A, Sections 111 and 112, Esquimalt District, Plan VIP71537	EP093249
Millstream Road, 2364	005-010-993, Lot A, Section 112, Esquimalt District, Plan 12347	EM056825
Millstream Road, 2404	005-818-001, Parcel A (DD385321I), Lot 7, Section 112, Esquimalt District, Plan 6252	EM058993
Phelps/ Avery Court	Common Property of Strata Plan VIS2549	EP088456
Phelps/Avery Ct.	Lot 5, Esquimalt District, Section 108, Plan VIP71474	EP088457
Phelps/Avery Ct.	Lot 9, Esquimalt District, Section 108, Plan VIP71474	EP088455
Selwyn Falls Phase 1	025-593-609, Lot 20, Section 107, Esquimalt District, Plan VIP74866	EV016763

Civic Address	Legal Description	Charge Number
Selwyn Falls Phase 2	025-593-617, Lot 21, Section 107, Esquimalt District, Plan VIP74866	EV016765
Selwyn North	Lot 20, Section 111, Esquimalt District, Plan VIP72190	ES027886
Selwyn, 2642	Lots 4, 5, 6, 7, 8, Section 107, Esquimalt District, Plan 76403	EW008904
Stewart Lift Station 1	003-008-576, Lot 3, Section 109, Esquimalt District, Plan 24285	EL090502
Stewart Lift Station 2	003-008-576, Lot 3, Section 109, Esquimalt District, Plan 24285	EM004363

SCHEDULE C
SEWER SYSTEM



**Digital “as built” drawings of
Existing Plant on
CD-ROM
are enclosed.**

SCHEDULE D

SEWER CAPITAL PLAN

PART 1 - PRIORITY WORKS

Sewer south along Happy Valley Road to the Metchosin Border. This sewer empties into the existing sewers in Sooke. The sewer shall be constructed and operational to the point where it could service the development at 3691 Happy Valley Road by December 23, 2004 or by the time the first house on this development is otherwise ready for an occupancy permit, whichever is later.

Low pressure system to service 409 Atkins and 420 Atkins and others. This sewer empties into the siphon chamber in Crystalview Drive/Silverstone Way. The sewer is to be constructed and operational on the frontage of these two properties within two months of the earlier of: (a) West Shore receiving notice to proceed from Langford, and (b) the Commencement Date.

Sewer to the Glen Lake neighbourhood. The sewers shown on the attached drawing are to be constructed and operational by 15th March 2006. Grinder pumps are to be supplied to owners as provided under section 7.5.

Sewer to 2966 Jacklin Road. This mixed commercial and residential development requires operational sewer service to its frontage on Jacklin Road or Rex Road within three months of the earlier of: (a) West Shore receiving notice to proceed from Langford, and (b) the Commencement Date. The design for this sewer has been completed by the Municipality and will be made available to West Shore.

Sewer to West Side of Florence Lake. This sewer empties into the existing sewer in Goldstream Avenue. Sewers are required to be constructed to Savory Road, Preston Way and Raycroft Close and to be operational by June 1, 2006. This includes construction of the sewer lift station at the east end of Brock Road north of the Trans Canada Highway or pipe jacking under the Trans Canada Highway.

Sewer to Duncan Place and Toth Place. These sewers empty into the existing sewer on Strandlund Avenue. Sewers must be constructed and operational to all property frontages on Duncan Place and Toth Place within three months of the earlier of: (a) West Shore receiving notice to proceed from Langford, and (b) the Commencement Date.

Sewer to Rockingham Road. Sewers must be constructed and operational to all property frontages on Rockingham Road by November 30, 2005.

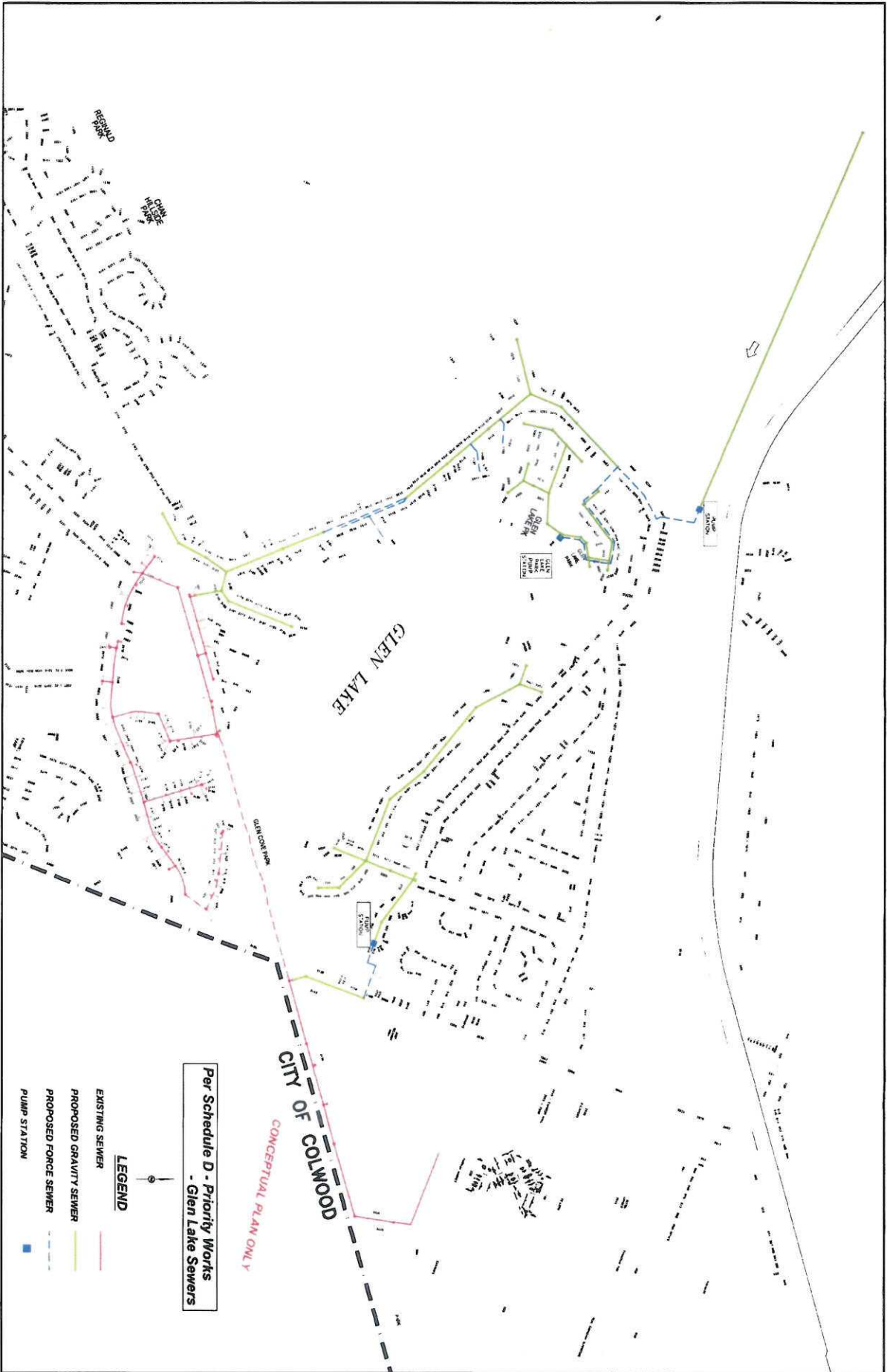
Sewer to Lot B, Plan 18094, Sections 1 & 4, Land District 22. This sewer empties into the existing sewer in Goldstream Avenue. Sewers are required to be constructed to service this property and to be operational by April 1, 2005.

PART 2 – OTHER SEWERS

Other sewers. Langford requires that West Shore constructs sewers in existing road rights of way at a rate of not less than 4.5 km per calendar year starting January 1, 2005 and continuing until all existing properties on existing road rights of way are serviced with sewers on their frontage except for any properties north of Goldstream Provincial Park or on the following roads: Armco Road, Humpback Road south of Irwin Road, Yorkshire Place, Awsworth Road, Woodruff Road, Sooke Road west of Humpback Road, Salem Road, Cogan Road, Morris Road and Gittens Road. Sewers for roads fronting lakes, creeks or similar bodies of water are to take priority over all other sewers. This does not override the specific requirements above but the construction of those sewers counts towards this requirement. Sewers constructed in 2004 by the partnership in public roads also count towards the requirement. Sewers in statutory road rights of way required to achieve these objectives count towards the total. Despite the foregoing, West Shore is not required under this Part to construct sewers in the portion of Sooke Road lying west of Loledo Place until sufficient changes to the zoning of properties fronting on the portion of Sooke Road lying between Loledo Place and Humpback Road have been made by Langford such that the number of possible SCRFs for that portion over the Term have increased as a result of those changes by at least 700.

PART 3 – I AND I WORKS

1. Remediation of sewers in the Phelps area with pipe replacement or relining and replacement or repair of existing service connections to the respective property lines.
2. Repair of Henry Eng Pump Station to reduce inflow and infiltration to its design standard.
3. Replacement or repair of overflow chamber in Stewart Pump Station to reduce inflow and infiltration to its design standard.
4. Reassessment of inflow and infiltration with respect to the System and evaluation of next priorities, which may include smoke tests to identify and eliminate cross connections, manhole cover sealants and other initiatives.



**Per Schedule D - Priority Works
- Glen Lake Sewers**

LEGEND

- EXISTING SEWER
- PROPOSED GRAVITY SEWER
- PROPOSED FORCE SEWER
- PUMP STATION

CONCEPTUAL PLAN ONLY

CITY OF COLWOOD

GLEN LAKE

GLEN LAKE
LAKESHORE
PUMP STATION

GLEN LAKE
PUMP STATION

RESERVED
GLEN LAKE
PUMP STATION

SCHEDULE E

INTELLECTUAL PROPERTY

Pump Station Programmable Logic Controller (PLC) Software

- pump control and monitoring software
- control software to allow monitoring of the pump station via CDPD modem

Central Monitoring Software

- software that communicates data to pump stations via CDPD modem;
- data collection and pump control

SCADA Software

- Customizations to the SCADA (Lookout) software

Auxiliary Software

- Scripts, macros & any customized maintenance and support software

Non-exclusive right to utilize Sewer Master Plan

SCHEDULE F

OPERATING AGREEMENTS

1. VCMMC Agreement
2. Bear Mountain Servicing Agreement between Langford and LGB9 Development Corporation and The Bear Mountain Master Partnership, as amended, dated January 5, 2004.

SCHEDULE G

EQUIPMENT

1 Flygt Type 2A Davit Arm

SCHEDULE H

The number of SFEs per lot will be determined by the Approving Officer considering the development potential of the property under the existing OCP or Zoning designation (whichever is the greater) and using the following factors for the SFE for various zonings or types of development potential:

R2 Single Family (Suite-able) for each lot potential.	1.0 SFE
RS1 (no suites)/Townhouse – for each dwelling unit potential.	0.75 SFE
Duplex-able Lot – where a lot meets the requirements for a duplex but has no potential for additional dwellings under the current zoning.	1.50 SFE
Duplex (each side) – where there is an existing duplex but the lot has no potential for additional dwellings under the current zoning.	0.75 SFE
Condominium – Strata Apartment – for each dwelling unit potential.	0.67 SFE
Trailer/Mobile Home – for each dwelling unit potential.	0.50 SFE
Hotel Room (each) – for each potential room.	0.40 SFE
Commercial/Industrial (including Pub/Restaurant Facilities) – for each lot potential if it were zoned R-2.	2.58 SFE
Institutional – for each lot potential if it were zoned R-2	1.0 SFE

SCHEDULE I

Sewer Capital Recovery Fee (SCRF) Calculation

	Date that Sewer is Available	Original SCRF	Date of Payment	Years Elapsed	SCRF Escalator	Inflation Escalator	SCRF at Payment
Example 1	01-Jun-04	\$3,680	31-May-09	4	1.00	1.00	\$3,680
Example 2	01-Jun-04	\$3,680	02-Jun-09	5	1.55	1.04	\$5,932
Example 3	01-Jun-04	\$3,680	02-Jun-11	7	1.55	1.12	\$6,416
Example 4	01-Jun-10	\$3,829	02-Jun-12	2	1.00	1.04	\$3,983
Example 5	01-Jun-10	\$3,829	02-Jun-16	6	1.55	1.17	\$6,948

Base SCRF \$3,680
 Inflation Rate 2%
 Inflation Multiplier after 5 years 2
 SCRF Escalation Rate 55%
 Base Year for Escalation 2008

Narrative:

Example 1: Paid within first 5 years, therefore SCRF is at the original \$3,680.
 Example 2: SCRF escalator applies. One year of double inflation applies from 2008 to 2009.
 Example 3: SCRF escalator applies. Three years of double inflation applies from 2008 to 2011.
 Example 4: SCRF escalator does not apply. Two years of inflation applies from 2010 to 2012.
 Example 5: SCRF escalator applies. Four years of inflation applies from 2010 to 2014. Two years of double inflation applies from 2014 to 2016.

Connection Fee (CF) Sample Calculation

	Date that Sewer is Available	Original CF/in	Date of Connection	Years Elapsed	CF Escalator	Inflation Escalator	CF at Connection
Example 6	01-Jun-04	\$900	31-May-09	4	1.00	1.00	\$900
Example 7	01-Jun-04	\$900	02-Jun-09	5	1.45	1.02	\$1,331
Example 8	01-Jun-04	\$900	02-Jun-11	7	1.45	1.06	\$1,385
Example 9	01-Jun-10	\$936	02-Jun-12	2	1.00	1.04	\$974
Example 10	01-Jun-10	\$936	02-Jun-16	6	1.45	1.13	\$1,529

Base Connection Fee \$900
 Inflation Rate 2%
 Inflation Multiplier after 5 years 1
 SCRF Escalation Rate 45%
 Base Year for Escalation 2008

Narrative:

Example 6: Paid within first 5 years, therefore CF is at the original \$900.
 Example 7: CF escalator applies. One year of inflation applies from 2008 to 2009.
 Example 8: CF escalator applies. Three years of inflation applies from 2008 to 2011.
 Example 9: CF escalator does not apply. Two years of inflation applies from 2010 to 2012.
 Example 10: CF escalator applies. Six years of inflation applies from 2010 to 2016.

City of Langford
 Terasen Utility Services

Langford Sewer Utility
 Sample Fee Schedule

Version 2.0
 July 2004