DISTRICT OF SQUAMISH

BYLAW NO. 2405, 2015

A bylaw to enter into a municipal share agreement for specified works.

WHEREAS sections 3, 6(1), 7 and 8(1) of the *Community Charter* S.B.C. 2003, c. 26 authorize the District to enter into a municipal share agreement and to make payments pursuant to it;

AND WHEREAS the District wishes to enter into a municipal share agreement with the owner of the lands (the "Lands") as described in Schedule "A" of Appendix "I" to this Bylaw, in relation to specified works designated for the purposes of District of Squamish Development Cost Charge Bylaw No. 2265, 2015 in respect of the Lands;

NOW THEREFORE the Council of the District of Squamish in open meeting assembled enacts as follows:

- 1. This Bylaw may be cited as "District of Squamish Municipal Share Agreement (Specified Works) Authorization Bylaw No. 2405, 2015".
- 2. The District enters into, and the Mayor and the Corporate Officer are authorized to execute and deliver, the Agreement attached to and forming part of this Bylaw as Appendix "I".

READ A FIRST TIME this 8th day of September, 2015.

READ A SECOND TIME this 8th day of September, 2015.

READ A THIRD TIME this 13th day of September, 2015.

ADOPTED this 15th day of September, 2015.

Patricia Heintzman, Mayor

Robin Arthurs, Corporate Officer

Appendix "1" DISTRICT OF SQUAMISH

MUNICIPAL SHARE AGREEMENT – SPECIFIED WORKS

THIS AGREEMENT dated for reference the _____ day of _____, 2015.

BETWEEN:

DISTRICT OF SQUAMISH 37955 2nd Avenue Squamish, BC V8B 0A3

(the "District")

AND:

0983016 BC LTD. 401 – 37989 Cleveland Avenue PO Box 1068/ Squamish, BC V8B 0A7

(the "Developer")

WHEREAS:

Greater District Objective

- A. The District wishes to advance the economic, social and environmental interests of the municipality through the revitalization and redevelopment of the Squamish oceanfront peninsula, a 104 acre site, comprising 69 acres of land and 35 acres of marine area that is:
 - immediately adjacent to Squamish's historic downtown, and surrounded on three sides by water and on all sides by dramatic vistas of the Howe Sound, Garibaldi Range, Shannon Falls and the Stawamus Chief, and
 - significant portions of which were formerly the subject of extensive pulp and paper, shipping and other industrial uses;

Official Community Plan (Area Plan)

- B. In 2010, following a lengthy and extensive planning process, and in light of:
 - o the access to the ocean that the land provides for all Squamish residents,
 - o its importance to downtown revitalization, and
 - o its available deep water access,

Squamish Council adopted a bylaw to guide the future development of the area, being the Squamish Oceanfront Peninsula Sub Area Plan;

C. That Plan envisions substantial development on the peninsula, including approximately 6,500 residents, and total direct employment of more than 2,300 jobs, at build out;

Associated Infrastructure

- D. In conjunction with and following the above planning process, the District examined the infrastructure works required for the Squamish oceanfront development, and in the course of doing so determined that the needed works include substantial geotechnical, flood proofing, road, water, sanitary sewer, storm sewer and other works, the projected cost of which is:
 - more than roughly \$74.36 million on the peninsula alone, and
 - o more than roughly \$34.25 million in related off-site works.

Those works included roughly \$55 million in flood protection, shoreline and related geotechnical works, remediation work and site preparation, that would need to be very advanced before any return from development could be achieved;

- E. The District also undertook significant work in developing a development cost charge program that would be applicable to both:
 - the development of the Squamish oceanfront (with approximately \$34.25 million of the works associated with the project being designated as development cost charge works); and
 - o other development across Squamish as a whole,

and which culminated in the preparation of a draft amendment to its development cost charge bylaw in March 2012;

Zoning

- F. The District also undertook significant work regarding the detailed land use regulations that would apply, through the development of a comprehensive development zone for the Squamish oceanfront lands, and a bylaw amendment to which Squamish Council gave two readings in October 2011;
- G. That zoning bylaw amendment contemplates the creation of close to 10 acres of new peninsula land, and provides for:
 - 21.2 acres of parks, public space and community facilities;
 - o 18.7 acres of residential use;
 - o 29.4 acres of employment generating uses; and

o 34.4 acres of marine uses;

District Search for Proponent

- H. The District then undertook an extensive search for potential proponents for the development of the portion of the Squamish oceanfront project owned by the District, on a basis that would allow the District to select the best available developer to deliver the community's vision for the area;
- I. In doing so, the District indicated that in the absence of the other two owners on the peninsula being ready or able to proceed, it anticipated proceeding on a basis that would:
 - make significant use of community amenity contribution, latecomer and other mechanisms, and
 - involve an expanded role for development cost charges;

Selection of Proponent, and Entering Into of a Memorandum of Understanding

- J. The District's search resulted in the selection of the Developer as the proposed proponent, and the District then commenced negotiations with the Developer in October 2013;
- K. Those negotiations subsequently resulted in a non-binding Memorandum of Understanding in July 2014 which contemplated the subsequent entering into of various Agreements, including a development cost charge frontender agreement, community amenity contribution frontender agreement and the adoption of various bylaws and policies;
- L. The District has since decided not to proceed with a community amenity contribution agreement. It has however indicated that it is prepared to enter into the Agreement provided for herein, based on the true condition precedent outlined herein;

Purchase and Sale Agreement

M. The District has agreed, subject to various conditions, to sell to the Developer those certain Squamish Oceanfront Lands owned by the District, which comprise both land and marine areas, as set out in Schedule "A" hereto (the "Squamish Oceanfront Lands").

Development Cost Charge Bylaw

N. The District recently amended its development cost charge bylaw, by way of Development Cost Charge Bylaw No. 2265, 2015, which bylaw has been approved by the Provincial Inspector of Municipalities;

DCC Construction Works

O. The works that are the subject of the development cost charge bylaw as amended include, *inter alia*, those certain works:

- o described in Schedule "B" hereto; and
- the cost of which is estimated in Schedule "B" hereto (the "DCC Construction Works");

Approving Officer Role

- P. The Approving Officer is an official designated under the *Land Title Act,* as an official independent of the District and its Council, who has the authority at law to determine what works are required as a condition of subdivision approval.
- Q. In the event of a future subdivision application of the Lands, the works that the Approving Officer may or may not require, in connection with such future subdivision application, includes any or all of the DCC Construction Works;

"Non growth" and "municipal assist" portion of DCCs

- R. The *Local Government Act* enables DCC's to be used to provide "funds to assist the local government to pay the capital cost" of servicing growth. DCC rates to development are based on considerations mandated by the *Local Government Act*, which include such factors as:
 - Future land use patterns and development
 - Phasing of works and services
 - Provision of park land described in an official community plan
 - How development designed to result in a low environmental impact may affect the capital costs of infrastructure
 - Whether the charges are excessive in relation to the cost of prevailing standards of service
 - Whether the charges will deter development
 - Whether the charges will discourage the construction of reasonably priced housing or serviced land
 - Whether the charges will discourage development designed to result in a low environmental impact;
- DCC's cannot be used to fund 100 per cent of the cost of the works included within a DCC Bylaw, and the District must pay the "non-growth share" and "municipal assist" portion of the DCC Construction Works that do not relate to growth from sources other than the imposition of DCCs on development applicants;
- T. The "non-growth" and "municipal assist" share of the DCC Construction Works collectively is that portion of the \$27.8 million in DCC Construction Works that are not recoverable by the District from development applications, being a total of approximately \$9,733,000. The estimated "non-growth" share of each DCC Construction Work is as recorded in Schedule B hereto;

Conditions Precedent

U. In order to advance the economic, social and environmental interests of the municipality, as outlined above, the District wishes to agree that in the event that:

- the Approving Officer, a statutory official independent of the District, determines, further to the *Land Title* Act, to require one or more of the DCC Construction Works as a precondition to the approval of the subdivision application; and
- the Developer proceeds with the subdivision, and with the construction of the DCC Construction Work(s), as provided herein;

the District will pay the Developer the "non-growth" share of the DCC Construction Work(s) in connection with each future subdivision of the Lands in accordance with this Agreement;

Limited Partnership

V. The Developer is the General Partner of Newport Beach Developments Limited Partnership, and enters this Agreement on behalf of the Limited Partnership; and

Council Bylaw

- W. While the District could enter into multiple Municipal Share Agreements, one for each of the DCC Construction Works provided for herein, with the Approving Officer requirement related to the particular DCC Construction Work being the condition precedent referenced in that agreement, it is more convenient for the District to achieve the same effect by combining such agreements into a single document as set out herein.
- Council adopted a bylaw on ______, 2015, pursuant to, *inter alia*, sections 3, 6(1), 7, and 8(1) of the *Community Charter*, R.S.B.C. 2003, c. 26 to authorize the District to enter into this Municipal Share Agreement, and to make the payments provided for herein in respect of a DCC Construction Work if the true condition precedent provided for herein in connection with that DCC Construction Work occurs.

NOW THEREFORE THIS AGREEMENT WITNESSSES that in consideration of the sum of TEN (\$10.00) DOLLARS of lawful money of Canada and other good and valuable consideration now paid by each of the parties hereto, to each of the other parties hereto, the receipt whereof is hereby acknowledged, the parties hereto hereby covenant, promise and agree with each other as follows:

1. **DEFINITIONS**

- 1.1 In this Agreement, the terms defined above have the meanings set out above, and in addition:
 - (a) "Act" means the *Local Government Act*, R.S.B.C. 1996, c. 323, as revised, re-enacted or consolidated from time to time and any successor statute.
 - (b) "Agreement" means the agreements contained herein, and all Schedules attached hereto.
 - (c) **"Approving Officer"** means the officer appointed under section 77 of the *Land Title Act* to approve subdivision in the District of Squamish.

- (d) "Council" means the elected Council of the District.
- (e) **"Development Cost Charge"** or **"DCC"** means a charge imposed pursuant to the DCC Bylaw.
- (f) **"DCC Bylaw"** means District of Squamish Development Cost Charge Bylaw No. 2265, 2015.
- (g) **"DCC Construction Work"** means a particular work from among the DCC Construction Works.
- (h) "DCC Frontender Agreement" means the agreement entered into by the parties, having a reference date of ______, 2015, pursuant to which the District agreed, subject to DCC credits and rebates owing to the Developer in accordance with the Local Government Act, to reimburse the Developer for the "growth" portion of the cost of completed DCC Construction Works covered by the DCC Bylaw.
- (i) **"Lands"** means Lots 1 through Lot 9 shown on the plan of subdivision attached hereto as Schedule "A".
- (j) "Municipal Share" means the "non-growth" and "municipal assist" portions of the costs of a DCC Construction Work, set out as the "Estimated Municipal Share" in Schedule "B" to this Agreement.
- (k) **"Squamish Oceanfront Lands"** means the lands described in Schedule "A" to this Agreement.
- (I) "Term" means the period of time this Agreement is in effect in connection with a DCC Construction Work, being 4 years from the date, if at all, the true condition precedent under section 3.1 is satisfied in respect of that DCC Construction Work, provided that in no event shall the term extend beyond that date which is 20 years less a day after the reference date of this Agreement.

2. LIABILITY FOR MUNICIPAL SHARE OF DCC CONSTRUCTION WORK(S)

- 2.1 In the event that:
 - (a) there is an application for the subdivision of the Lands;
 - (b) the Approving Officer indicates, as part of the lawful processing of the application for the subdivision of the Lands, that the subdivision application will not be approved without the construction of a DCC Construction Work (or multiple DCC Construction Works);
 - (c) the Developer:
 - (i) obtains Approving Officer approval for, and registers the subdivision plan that is the subject of that application at the *Land Title Office*, after entering into a subdivision and development servicing agreement with the District that:

- sets out further particulars of the DCC Construction Work(s) required by the Approving Officer in connection with that application, and
- provides security for the construction of the DCC Construction Work(s), to the extent that funds in a DCC Reserve Fund are not available under the DCC Frontender Agreement to pay for the cost of the DCC Construction Work(s); and
- (ii) constructs and installs the DCC Construction Work(s) in question in accordance with the subdivision and development servicing agreement in keeping with the description of the applicable DCC Construction Works set out in Schedule "B" hereto;

then the District will pay the Developer the "Municipal Share" of the cost of the DCC Construction Work(s), as further provided at sections 4.1 through 4.4 hereof.

3. CONDITION PRECEDENT TO LIABILITY

- 3.1 This Agreement has no effect in connection with a DCC Construction Work unless and until
 - (a) the Approving Officer stipulates in writing, in response to a subdivision application presented to the Approving Officer, that the Developer must construct and install the DCC Construction Work on the Lands in connection with the approval of a subdivision application,
 - (b) the Developer proceeds to register the subdivision application at the Land Title Office, and
 - (c) the Developer enters into a development and subdivision servicing agreement for completion of the DCC Construction Work,

in which case this Agreement comes into force and effect in connection with the DCC Construction Work on the latest of those three events.

3.2 The Condition Precedent set out at section 3.1 is for the benefit of both parties and may not be waived by either party.

4. PAYMENT OF NON-GROWTH SHARE OF DCC CONSTRUCTION WORK(S), IN THE EVENT OF LIABILITY

- 4.1 Subject to sections 4.2 and 4.3 hereof, the District will reimburse the Developer for the construction of any DCC Construction Work(s) that the Developer constructs or proceeds to construct on the Lands in accordance with section 2.1(c), by paying the Developer an amount equal to the cost of the work certified by a registered professional engineer, less any amount the Developer is eligible to recover for the work under the DCC Frontender Agreement within 30 days of the date when the registered professional engineer certifies:
 - (a) the completion of the DCC Construction Work(s) under the subdivision and development servicing agreement referred to in section 2.1(c); and

- (b) the cost of the DCC Construction Work(s).
- 4.2 Notwithstanding section 4.1 hereof:
 - (a) the District will only be responsible to reimburse the Developer in respect of the construction of a DCC Construction Work(s) if and to the extent that the Developer incurs costs in connection with the construction of the DCC Construction Work(s);
 - (b) the amount of money payable to the Developer for the cost of constructing DCC Construction Works will be the capital cost of same (including all design and engineering costs) incurred by the Developer, net of any and all DCC credits and rebates or other DCC monies received by the Developer in connection with the subdivision or development;
 - (c) design, engineering and construction costs of DCC Construction Works, if the works are designed, engineered and constructed by the Developer, will be reimbursed to the extent the design, engineering and construction costs:
 - (i) are comparable with similar costs for similar infrastructure projects in similar locations; and
 - (ii) form part of the calculations under which the DCC Bylaw was based;
 - (d) the District will only be responsible to reimburse the Developer in respect of the construction of a DCC Construction Work if and to the extent that the Developer delivers to the District written evidence satisfactory to the District's Director of Engineering, acting reasonably, of the cost of the work; and
 - (e) despite any other provision of this Agreement, the maximum potential cost recovery by the Developer in connection with the DCC Construction Works collectively under this Municipal Share Agreement is \$9,221,080 less the DCC Costs of any DCC Construction Works fully undertaken by the District under section 2.3 or 2.4 of the DCC Frontender Agreement.
- 4.3 Notwithstanding sections 4.1 and 4.2 hereof, at the expiry of the Term related to a DCC Construction Work, the obligations of both parties hereunder in respect of that DCC Construction Work will be at an end, and no further monies will be payable by the District to the Developer pursuant to this Agreement with respect to the DCC Construction Work, except to the extent that such monies had become due and owing by the District under this Agreement prior to the expiry of the Term.
- 4.4 The District will pay the Developer at the address of the Developer as set forth in section 5.1(a) or at such other address as the Developer will provide by registered mail. If the said payments are returned to the District unclaimed by the Developer, and if the District is unable to locate the Developer before the expiry of the Term after all reasonable efforts, then the District will hold all monies collected until the expiry of the Term. After the expiry of the Term the District will retain such unclaimed funds forever.

5. NOTICES

- 5.1 Any notice, demand, acceptance or request required to be given hereunder in writing will be deemed to be given if either personally delivered or mailed by registered mail, postage prepaid (at any time other than during a general discontinuance of postal services due to a strike, lockout or otherwise) and addressed to:
 - (a) The Developer is as follows:

0983016 B.C. Ltd. 401 – 37989 Cleveland Avenue Squamish, BC Attention: Michael Hutchison

or such change of address as the Developer has, by written notification, forwarded to the District, and

(b) The District as follows:

District of Squamish 37955 2nd Avenue Squamish, BC Attention: General Manager of Development Services and Public Works

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

- 5.2 Any notice will be deemed to have been given to and received by the party to which it is addressed:
 - (a) if delivered, on the date of delivery; or
 - (b) if mailed, then on the fifth (5th) day after the mailing thereof.

6. BINDING ON SUCCESSORS

- 6.1 It is agreed by and between the parties hereto that this Agreement will be enforceable by and against the parties, and their successors and assigns.
- 6.2 The Developer will not assign or transfer its interest in this Agreement without the prior written consent of the District, which consent will not be withheld by the District unless the proposed assignee is in bankruptcy or receivership.
- 6.3 In the event of the assignment or transfer of the rights of the Developer voluntarily, or by operation of law, the District will pay any benefits accruing hereunder, after notice, to the successor of the Developer, and in the event of conflicting demands being made upon the District for benefits accruing under this Agreement, then the District may at its option commence an action in interpleader joining any party claiming rights under the Agreement, or other parties which the District believes to be necessary or proper, and the District will be

discharged from further liability upon paying the person or persons whom any Court having jurisdiction of such interpleaded action will determine.

7. ENTIRE AGREEEMENT

- 7.1 This Agreement constitutes the entire agreement between the parties hereto with respect to the municipal share of the cost of DCC Construction Works, and supersedes any prior agreements, undertakings, declarations or representations, written or verbal, in respect thereof.
- 7.2 For greater certainty, the Developer shall not recover more for constructing a DCC Construction Work under this Agreement and the DCC Frontender Agreement than the DCC Construction Work costs the Developer.

8. LAWS OF BRITISH COLUMBIA

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

9. SEVERABILITY

- 9.1 If any part of this Agreement is held to be invalid, illegal or unenforceable by a Court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
- 9.2 In the event that this Agreement in its entirety is held to be invalid, illegal or unenforceable by a Court having jurisdiction to do so, then this Agreement shall be severed from any other Agreement entered into between the District and the Developer, and all other Agreements entered into between the District and the Developer shall remain in force unaffected by that holding or by the severance of this Agreement.

10. TIME IS OF ESSENCE

- 10.1 Time is of the essence of this Agreement.
- 10.2 No provision of this Agreement is to be considered to have been waived by a party unless the waiver is expressed in writing by the party. The waiver by a party of any breach by another party of any provision is not to be construed as or constitute a waiver of any further or other breach.

11. INTERPRETATION

- 11.1 In this Agreement:
 - (a) the headings and captions are for convenience only and do not form a part of this Agreement and will not be used to interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions;
 - (b) the word "including" when following any general term or statement is not to be construed as limiting the general term or statement to the specific items or matters set

forth or to similar terms or matters but rather as permitting it to refer to items or matters that could reasonably fall within its scope;

- (c) a reference to currency means Canadian currency;
- (d) a reference to time or date is to the local time or date in Squamish, British Columbia;
- (e) a word importing the masculine gender includes the feminine or neuter, and a word importing the singular includes the plural and vice versa;
- (f) a reference to a statute includes every regulation made pursuant thereto, all amendments to the statute or to any such regulation in force from time to time and any statute or regulation that supplements or supersedes such statute or any such regulation;
- (g) a reference to approval, authorization, consent, designation, waiver or notice means written approval, authorization, consent, designation, waiver or notice; and
- (h) a reference to a section means a section of this Agreement, unless a specific reference is provided to a statute.

12. EXECUTION AND DELIVERY

- 12.1 This Agreement may be executed in counterpart and such counterparts together shall constitute a single instrument. Delivery of an executed counterpart of this Agreement by electronic means, including by facsimile transmission or by electronic delivery in portable document format (".pdf"), shall be equally effective as delivery of a manually executed counterpart hereof.
- 12.2 The Parties acknowledge and agree that in any legal proceedings between them respecting or in any way relating to this Agreement, each waives the right to raise any defense based on the execution hereof in counterparts or the delivery of such executed counterparts by electronic means.

13. SCHEDULES

- 13.1 The Schedules attached hereto, which form part of this Agreement, are as follows:
 - (a) Schedule "A" Squamish Oceanfront Lands
 - (b) Schedule "B" Description of the DCC Construction Works, including estimated cost and Municipal Share.

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

DISTRICT OF SQUAMISH

By its authorized signatories

Mayor

Corporate Officer

0983016 B.C. LTD. by its authorized signatory

Name:

SCHEDULE "A"

SQUAMISH OCEANFRONT LANDS

PRECINCT SUBDIVISION PLAN



Schedule "B"

DESCRIPTION OF DCC CONSTRUCTION WORKS, INCLUDING ESTIMATED COST

Note: The inclusion of a work in the list of DCC Construction Works is not intended by either party to in any way imply that such work can be lawfully required by the Approving Officer in connection with any subdivision application for the Squamish Oceanfront Lands.

Item	Type of Works	Works Description	Estimated Municipal Share \$	Estimated Cost \$
4	Water	W-15 New Reservoir	\$ 30,690	\$ 3,069,000
5	Water	W-9 New Source Feedermain	\$ 1,318,267	\$ 2,436,000
6	Water	W-2 Logger's Lane Feedermain	\$ 18,900	\$ 1,890,000
Water		Sub-total, Water	\$1,367,857.00	\$7,395,000.00
13	Sanitary	S-22 450 mm dia. Vancouver Street Collector Sewer	\$ 8,645	\$ 864,500
16	Sanitary	S-15 450 mm dia. Downtown Forcemain Twinning	\$ 28,980	\$ 2,898,000
17	Sanitary	S-20b 450 mm dia. Queens Way PS Forcemain	\$ 11,340	\$ 1,134,000
18	Sanitary	Twinning S-18b Reconstruct C11 PS	\$ 11,270	\$1,127,000
Sanitary		Sub-total, Sanitary	\$60,235.00	\$6,023,500.00
23	Roads	R-3a Pemberton Avenue Extension	\$ 608,805	\$ 1,125,000
24	Roads	R-3b Pemberton Avenue Upgrade	\$ 608,805	\$1,125,000
25	Roads	R-18 East Downtown Connector	\$ 2,029,352	\$ 3,750,000
27	Roads	R-9 Bridge on Third Avenue at Flood Gates	\$ 1,161,330	\$ 2,146,000
28	Roads	R-13 Downtown Roundabout or Alternate	\$ 324,696	\$ 600,000

29	Roads	Approximately 69% of R-20 Peninsula Main Road	\$ 3,060,000	\$ 5,660,000
		Arterial Standard		
Roads		Sub-total, Roads	\$7,792,988.00	\$14,406,000.00