

Aquifer 560 Watershed Agreement

THIS AGREEMENT dated for reference the 28th day of September, 2023.

BETWEEN: Town of Gibsons

P.O. Box 340
474 South Fletcher Rd
Gibsons, BC V0N 1V0

(Hereinafter referred to as the "ToG")

AND: Sunshine Coast Regional District

1975 Field Road
Sechelt, BC V7Z 0A8

(Hereinafter referred to as the "SCRD")

WHEREAS:

- A. The ToG and the SCRD operate water distribution systems within their respective jurisdictions;
- B. The ToG and the SCRD rely on the aquifer identified by the British Columbia government as the "Gibsons/SCRD Granthams Landing/Elphinstone Aquifer" and assigned aquifer number 560 ("**Aquifer 560**") as a source of water;
- C. The ToG and the SCRD both operate water supply and distribution systems, and such systems are connected to each other via the Connection Point (hereinafter defined);
- D. The ToG and the SCRD both provide water to properties that are located within the jurisdiction of the other Party (the "**Jurisdictional Properties**"), and they wish to obtain an engineering study or survey to determine exactly which properties each Party is serving, but for the time being they wish to agree to keep serving these properties and adhering to a certain service standard when doing so;
- E. The ToG and the SCRD share a mutual interest in joint planning, management and monitoring the common aquifer and watersheds of their respective wellfields and water supply systems within Aquifer 560; and
- F. The ToG and the SCRD wish to enter into this Agreement to govern the terms and conditions to support the joint provision of sustainable water supply and to monitor and protect the environment, for the immediate and long term.

TERM

1. The term of this Agreement (the “**Term**”) will commence on the date that it is fully executed by both parties and will continue from year to year unless amended or terminated in accordance with this Agreement.
2. The Parties will review this Agreement every five years.

SUPPLY BY THE TOG

3. The ToG will provide water to the SCR D if the SCR D activates an Emergency Operations Centre (an “EOC”) via the Sunshine Coast Emergency Program as a result of severe drought, via its water distribution system to the SCR D’s water distribution system via the Connection Point, provided that the essential water needs of the ToG are not compromised by such delivery, to maximum of:
 - a. 1,500 cubic meters per day, or
 - b. the maximum annual allowable volume of water the ToG is permitted to withdraw from Aquifer 560.

For the purposes of this Agreement, the “Connection Point” is the transfer point of the water from the ToG’s water system to the SCR D water system, including all related valves, meters, pipes and appurtenances.

4. The ToG will explore options to provide mutual aid through existing and/or amended Provincial Conditional Water Licenses to deliver water from the ToG’s water distribution system to the SCR D’s water distribution system via the Connection Point in the absence of the activation of an EOC, should the SCR D require water due to unforeseen events i.e., system testing, repairs or maintenance, or to meet fire flow needs.
5. Determination of if the ToG’s essential water needs are compromised by a delivery of water supplied from Aquifer 560 to the SCR D will be made solely by the ToG, and, if the ToG determines that delivering water will compromise the ToG’s essential water needs, the ToG will not be required to deliver such water until it has determined that its essential water needs are no longer compromised.

PAYMENT BY THE SCR D

6. The SCR D will pay the ToG for the total volume of water supplied pursuant to this Agreement in 2023 at a rate of \$2.05/m³.

7. If the ToG continues to supply water to the SCRD beyond 2023, the SCRD will pay the ToG for the water supplied at the average of the commercial per cubic metre tiered user rates reflected in the *Town of Gibsons Rates, Fees and Charges Bylaw 1196*, Schedule B for the time period during which the ToG supplied the water, as amended and replaced from time to time.
8. The ToG will:
 - a. meter the volume of water it diverts from Aquifer 560 and delivers to the SCRD per day via the Connection Point;
 - b. read the meter on a monthly basis during months that the ToG delivers water to the SCRD and record the total water volume;
 - c. record the time, in hours, the ToG staff spent coordinating and facilitating the delivery of water and all related activities during the period of water delivery (the “**Staff Time**”); and
 - d. provide the meter readings and Staff Time to the SCRD within 14 days of recording such information.
9. The ToG will provide an invoice to the SCRD for the Staff Time expended that includes the information outlined in section 8.c., and the SCRD will pay the ToG within 30 days of receiving such invoice.

EXPANSION AND ENGINEERING SUPPORT PROJECTS

10. The SCRD will pay to the ToG 50% of the costs associated with expanding the Aquifer Monitoring Network (the “**Expansion Contribution**”) to include the Elphinstone and Soames Lobes of Aquifer 560 (the “**Expansion Project**”), including the costs of design, engineering, site investigations, supervision, contract administration, procurement, survey and other professional services, the cost of construction, including labour, equipment and materials, insurance, bonding, and all taxes payable by the ToG in respect of any of the foregoing (collectively, the “**Expansion Project Costs**”).
11. The SCRD acknowledges that the Expansion Project Costs include the infrastructure and equipment necessary to expand the Monitoring Network but does not include the annual costs associated with monitoring the groundwater in the Elphinstone and Soames lobes.
12. The SCRD will pay to the ToG 50% of the costs (the “**Engineering Support Contribution**”) associated with acquiring engineering support services (the “**Engineering Support Services Costs**”) to build greater resiliency in the interconnection between the SCRD and the ToG water distribution systems so that

future water shortage emergencies can be reduced in frequency and duration (the “**Engineering Support Services**”). The Engineering Support Services will include the services outlined in Schedule B and any additional services agreed to by the parties.

13. As between the ToG and the SCRD, the ToG shall have sole control and discretion as to the:

- design and construction of the Expansion Project and as to timing of construction of the Expansion Project, outlined in Schedule A; and
- procurement of the Engineering Support Services.

14. The SCRD will contribute a maximum of:

- a. \$85,000.00 to the Expansion Project Costs; and
- b. \$30,550.00 to the Engineering Support Services Costs.

(collectively, the Expansion Project Costs and the Engineering Support Services Costs are the “**Project Costs**”)

15. The ToG may from time to time invoice the SCRD for payment of the SCRD share of Project Costs payable by the ToG and the SCRD shall pay the invoiced amount to the ToG within 30 days of receipt of the invoice.

16. The ToG shall use the Expansion Contribution and Engineering Support Contribution to pay Project Costs (including to reimburse the ToG for Project Costs paid by the ToG).

17. Upon notice to the SCRD, the ToG may elect:

- a. not to commence construction of the Expansion Project or elects to abandon the Expansion Project after commencement, or
- b. not to procure or otherwise discontinue the Engineering Support Services.

The ToG will repay all unused Project Costs, without interest, that the SCRD has paid to the ToG upon the ToG making such election.

18. As part of the Expansion Project, the SCRD agrees to do the following at its own cost and acknowledges that such cost will not be considered part of the Expansion Contribution:

- a. instrument and integrate all SCRDR wells in the Chaster Creek watershed into the ToG Aquifer 560 monitoring network;
- b. update the existing three-dimensional Leapfrog geological groundwater model with the new monitoring and drilling data and the data collected as part of the ToG's proposed Flow Accretion Studies of Chaster and Gibson Creek. Relevant outputs from the model will include:
 - i. updated groundwater flow maps;
 - ii. more refined aquifer thickness maps and visualizations (cross sections and videos) for use by staff; and
 - iii. figures showing groundwater recharge to the aquifer system

as well as any other outputs specified by the ToG to the SCRDR.

MUTUAL COVENANTS REGARDING WATER SUPPLY TO JURISDICTIONAL PROPERTIES

- 19. Each Party will construct, operate and maintain the works and equipment, including storage facilities, mains and all other appurtenances, required to receive and control the volume and pressure of the supply of water received from the water distribution system of the other Party, including ensuring the water supplied to the other Party meets the Vancouver Coastal Health drinking water standards, in order to continue serving the Jurisdictional Properties to the same standard as they serve the properties within their own jurisdiction
- 20. Notwithstanding emergency situations or system interruptions, each Party will provide the other Party with a minimum of 72 hours' notice of any changes in dates of supply commencement, supply cessation, or major fluctuations in water volume.
- 21. Each Party will supply water to the other Party during periods of system maintenance provided a minimum of seven days' notice is given and that the essential water needs of the supplying Party are not compromised. The determination of whether such the essential water needs are compromised will be made by the Party supplying the water, acting reasonably.
- 22. The Parties will jointly manage Aquifer 560 by each maintaining well monitoring equipment at each of their respective wells that is correlated with Aquifer 560 and providing the resulting recorded information to the other party within 30 days of recording it.

23. The Parties will explore the regulatory and legislative mechanisms, as well as agreements and best practices to ensure the shared watersheds are managed to ensure safety and security of the water supply quality and quantity.
24. The Parties will explore opportunities to expand this Agreement where feasible beyond potable water to include items such as a Fringe Area Plan, stormwater (drainage) strategy and the expansion of sanitary sewer treatment, within the Aquifer 560 Watershed Agreement area, depicted in Schedule A.
25. The SCRD and the ToG both acknowledge and agree that this Agreement is made in the spirit of co-operation to fulfill the terms of Agreement and shall require regular communications between the respective operators and engineering and finance staff.

DISPUTE RESOLUTION

26. In the event of any dispute between the Parties arising out of or in connection with this Agreement, the following dispute resolution process will apply unless the parties otherwise agree in writing:
 - a. the Parties will initially attempt to resolve the dispute through collaborative negotiation.
 - b. if the dispute is not resolved through collaborative negotiation within 15 Business Days of the dispute arising, the parties will then attempt to resolve the dispute through mediation under the rules of the British Columbia Mediator Roster Society; and
 - c. if the dispute is not resolved through mediation within 30 Business Days of the commencement of mediation, the dispute will be referred to and finally resolved by arbitration under the *Commercial Arbitration Act*.
27. Unless the Parties otherwise agree in writing or, in the case of an arbitration, the arbitrator otherwise orders, the Parties must share equally the costs of a mediation other than those costs relating to the production of expert evidence or representation by counsel.

RELEASE, IDNEMNITY AND POTENTIAL CLAIMS

28. The ToG covenants and agrees to indemnify and save harmless the SCRD (including any officer, elected official and employee of the SCRD) from and against any and all losses, damages, costs, liabilities, suits, claims, or expenses arising out of any breach by the ToG of any of its obligations under this Agreement. This covenant of indemnity shall survive the expiration or termination of this Agreement.

29. The SCRD covenants and agrees to indemnify and save harmless the ToG (including any officer, elected official, or employee of the ToG) from and against any and all losses, damages, costs, liabilities, suits, claims, or expenses arising out of any breach by the SCRD of any of its obligations under this Agreement or arising out of any non-compliance with government permits issued to the SCRD. This covenant of indemnity shall survive the expiration or termination of this Agreement.
30. Each Party releases the other Party, along with its officers, employees, or agents from liability of any kind whatever by reason of the cessation in whole or in part of water pressure, Bulk Water supply, or changes in operating pressures, or by reason of the Bulk Water containing sediments, deposits or other foreign matter of any nature or kind whatsoever.
31. In the event that a Party becomes aware of any claim or potential claim for loss or damage or alleged loss or damage resulting from the operation of either Party's water distribution system or anything done or omitted to be done by either party hereunder, such party shall promptly notify the other Party of such occurrence and shall cooperate with the other Party in processing such claim.

TERMINATION OF AGREEMENT AND FORCE MAJEURE

32. This Agreement may be terminated:
- a. by mutual agreement of the Parties, on terms acceptable to the Parties;
 - b. in the event of force majeure as set out in section 35; or
 - c. upon a breach of this Agreement as set out in section 33.
33. Any party to this Agreement (the "**Terminating Party**") may terminate this Agreement for breach by the other party (the "**Defaulting Party**"); PROVIDED THAT
- a. the Terminating Party first provides written notice of such breach to the Defaulting Party,
 - b. the Defaulting Party fails to correct such breach within 60 days or such longer period as the parties may agree or such longer period as may reasonably be required to cure such default if such rectification would reasonably require more than 60 days to complete (the "**Cure Period**"). If such matter is referred for dispute resolution within fourteen (14) days of notice of breach, such Cure Period shall run only from the date the dispute is resolved in accordance with this Agreement.

For clarity, the Defaulting Party shall be given the Cure Period to correct the breach and, if such breach is not corrected within the Cure Period to the reasonable satisfaction of the Terminating Party, this Agreement may be terminated immediately by the Terminating Party.

In the event of termination, the ToG or the SCRD, as applicable, shall pay to the other all amounts due and payable pursuant to this Agreement up to the date of termination (prorated for less than a full month, if necessary).

34. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of that breach. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.
35. Any delay or failure of any party to perform its obligations under this Agreement shall be excused if, and to the extent, that the delay or failure is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, action by any government authority (whether valid or invalid) other than the SCRD or the ToG, fires, flood, natural disaster, pandemic, epidemic, labour problems, or court injunction or order, provided that written notice of the delay (including anticipated duration of delay) shall be given by the affected Party to the other Party within ten days of discovery of delay by either Party.
36. Any Party which gives notice of an event of force majeure shall use all reasonable efforts to remove or remedy the event which is causing the delay or failure and to find other methods of fulfilling its obligations under this Agreement as quickly as possible, provided that no party shall be required against its will to settle any labour dispute, protest or demonstration or to question the validity or constitutionality of any court order or injunction or provincial or federal regulation or law. Where the duration of the delay exceeds sixty days, the non-delayed Party may elect by notice in writing to terminate this Agreement. The Agreement shall terminate on the effective date specified in such notice and in such event the Town shall be liable only for the cost of the Bulk Water that has actually been delivered and provided pursuant to this Agreement up to the date of termination, and in addition, proportionate cost responsibility for any capital costs that have been incurred by the Regional District in connection with the water system, calculated on the same basis as the Town would have been responsible for if the Agreement had not been terminated under this section.
37. Despite anything to the contrary contained herein, force majeure shall not include:
 - a. any failure of performance by any party if such failure is due to causes arising out of that party's negligence; or
 - b. any failure of performance by any party if such failure is due to lack of funds.

NOTICE

38. Any notice, direction, demand, approval, certificate, or waiver which may be or is required to be given under this Agreement must be in writing and delivered personally or by courier or sent by fax or e-mail, addressed as follows:

TO THE TOWN:

Municipal Hall
P.O. Box 340
474 South Fletcher Road
Gibsons, B.C.
V0N 1V0
E-mail address: info@gibsons.ca
Attention: Chief Administrative Officer

TO THE REGIONAL DISTRICT:

Administration Office
1975 Field Road
Sechelt, B.C.
V7Z 0A8
E-mail address: info@scrd.ca
Attention: General Manager, Infrastructure Services

Or to such other address, e-mail address or fax number of which notice has been given as provided in this section.

39. Any notice, direction, demand, approval, or waiver delivered is to be considered given on the next business day after it is dispatched for delivery personally or by courier.
40. Any notice, direction, demand, approval, or waiver sent by fax or email is to be considered given on the day it is sent, if that day is a business day and if that day is not a business day, it is to be considered given on the next business day after the date it is sent.

GENERAL TERMS AND CONDITIONS

41. This document constitutes the entire agreement between the SCRD and the ToG and may be modified or terminated only by further written agreement executed by the SCRD and the ToG.
42. Time is deemed to be material and of the essence of this Partnership Agreement.


43. In this Agreement:

- a. Reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- b. Reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section, or Schedule of this Agreement;
- c. Article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- d. The word “enactment” has the meaning given to it in the *Interpretation Act* (British Columbia) on the reference date of this Agreement;
- e. Reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted, or replaced, unless otherwise expressly provided;
- f. Reference to a “party” or the “parties” is a reference to a Party, or the Parties, to this Agreement, and to their respective successors and assigns;
- g. Reference to a “day”, “month” or “year” is a reference to a calendar day, calendar month, or calendar year, as the case may be, unless otherwise expressly provided;
- h. Any act, decision, consent, or exercise of discretion by a party must be performed, made, or exercised acting reasonably unless this Agreement expressly provides that the act, decision, consent, or exercise of discretion is in the sole discretion of a party, in which case that party is under no duty to act fairly, reasonably or in good faith and may act in its unfettered discretion;
- i. Where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the statement preceding the word “including”;
- j. Reference to an “agreement” is a reference to an agreement in writing; and
- k. All transactions referred to in this Agreement will be made in lawful currency of Canada.

44. This Agreement may be executed in any number of counterparts and delivered by email, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, provided that any party delivering this Agreement by email shall also deliver to the other party an originally executed copy of this Agreement.


IN WITNESS WHEREOF the parties hereto have duly executed this Agreement as of the day and year first above written.

On behalf of the Sunshine Coast
Regional District:




Board Chair
Sunshine Coast Regional District

On behalf of the Town of Gibsons:



Mayor
Town of Gibsons

for 

Corporate Officer
(Deputy Corporate Officer)



Corporate Officer

Schedule A

Implementation and Phasing of key elements is suggested as follows:

2023

- Sign Agreement
- Develop and Implement a Communications Strategy
- Complete Aquifer 560 Optimization Study
- Complete installation of the expanded Monitoring Program
- Initiate Fringe Area Plan
- Jointly organize an Aquifer 560 Optimization Event

2024

- Implement recommendations of the Optimization Study
- Develop Data gap analysis to support Licensing and Approvals
- Complete Fringe Area Plan
- Produce an annual Report on the State of the Aquifer and supporting Watershed

Schedule B

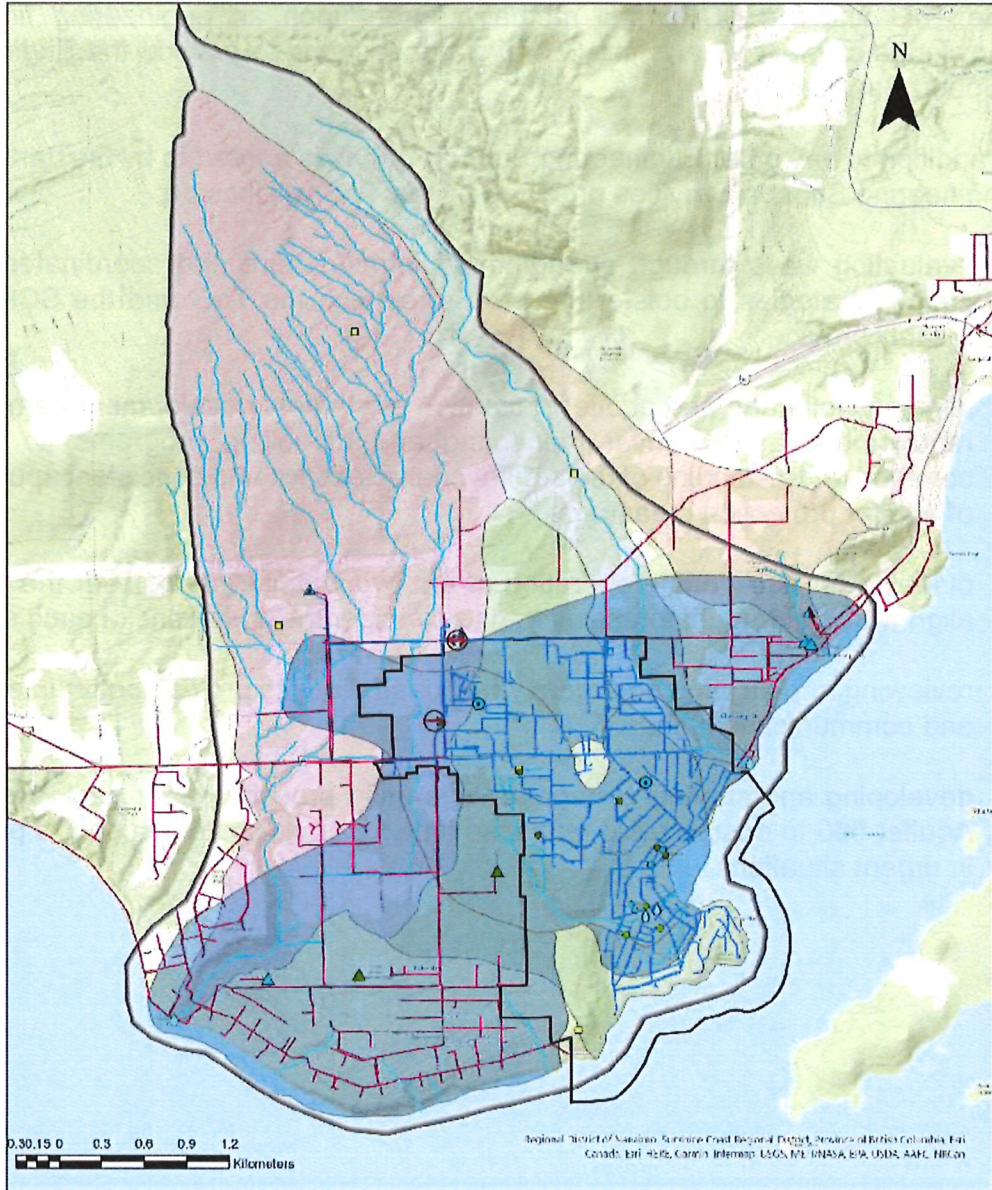
Engineering Support Services Requirements

1. The ToG and the SCRD will mutually agree upon an engineering firm with knowledge of the ToG and the SCRD water systems to provide the Engineering Support Services.
2. In addition to any other Engineering Support Services agreed to by the parties, the Engineering Support Services procured by the ToG will include:
 - a. evaluating ways through strengthened infrastructure and coordinated water supply strategies to bolster the level of service the ToG and the SCRD can reliably provide;
 - b. aligning well head and aquifer protection strategies, development permit area requirements, and aquifer monitoring and modelling programs, to enable common understanding of the aquifer characteristics and consistent application of aquifer protection measures;
 - c. planning for sustainable operation of the two water systems over the year to align with the drought forecasts and to consider the limitations of each system;
 - d. reviewing and aligning emergency response plans to provide better integration and communication; and
 - e. developing and sharing emergency operating procedures for each system in Aquifer 560 to ensure rapid response time for cross system supply is possible in urgent situations.



Watershed Agreement at a Glance

2023-05-30



0.30.15 0 0.3 0.6 0.9 1.2 Kilometers

Regional: British Columbia, Southern Coast Regional District, District of British Columbia, Fort Covell; Data: British Columbia, Canada; Information: USGS, NAD 83, GNSS, LIDAR, USGS, AASC, IBCEC

Legend		
TOG WELLS	SCRD Well	SUB WATERSHEDS
● Monitoring Well	▲ SCRD Monitoring Well	■ Charman Creek
● Water Supply Well	— SCRD Water Main	■ Charter Creek
● ToG Future Monitoring Well	▲ SCRD Reservoir	■ Gibson Creek
● ToG Reservoir	■ Aquifer 560 Recharge Area	■ Soanres Creek
— ToG Water Main	— Stream Network	↔ Systems Connection-Two Way
▲ ToG Hydrometric Station	■ Aquifer 560 Extent	→ Systems Connection-One Way
■ ToG Weather Station	□ Town Boundary	

Cartography: Data Source: A. Beck, 2023