

CITY OF KELOWNA
SUBDIVISION, DEVELOPMENT AND
SERVICING BYLAW NO. 7900

REVISED: August 22, 2024

CONSOLIDATED FOR CONVENIENCE TO INCLUDE BYLAWS NO. 8382, 8398, 8349, 8572, 8680, 8712, 8762, 8847, 8993, 9051, 9549, 10124, 10481, 10640, 12066, 12356, 12512, 12555, 12584, 12624, 12685, and 12694

**A bylaw to set standards and specifications for works and services, and identify
the City’s application procedures, in connection with the subdivision and
development of land and the use of excess or extended services**

NOW THEREFORE, under its statutory powers, including without limitation Part 26 of the *Local Government Act*, and Parts 7, 8 and 9 of the *Land Title Act*, the Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

PART 1 - INTRODUCTION

1.0 Title

1.1 Title. This bylaw may be cited as the "Subdivision, Development and Servicing Bylaw No. 7900".

2.0 Applicability

2.1 Lands in City of Kelowna. This bylaw applies to all lands within the area incorporated as the City of Kelowna.

2.2 Subdivision and Development Applicants. Parts 1, 2 and 7 of this bylaw apply to all Owners who make an Application for Subdivision Approval or an Application for Building Permit.

2.3 Works and Services Requirements. Parts 3 to 5 inclusive of this bylaw apply to all Owners who make an Application for Subdivision Approval or an Application for Building Permit unless the City determines that the proposed Subdivision or Development does not require Works or Services.

2.4 Excess or Extended Services and Latecomers. Part 6 of this bylaw applies to all Owners who are required to provide Excess or Extended Services, and Parts 1, 6 and 7 apply to all Latecomers who connect to or use Excess or Extended Services.

BL8349 added sub-section 2.5:

2.5 Works and Services. This bylaw applies to all Works and Services provided within the City from time to time.

3.0 Interpretation

3.1 Grammatical. The singular includes a reference to the plural, the masculine includes a reference to the feminine or body corporate or politic where the context requires, and a reference to the plural includes a reference to the singular, unless the context requires otherwise.

- 3.2 Enactments. Any enactment referred to herein is a reference to an enactment of British Columbia or Canada, as the case may be, and regulations thereto, as amended, revised, consolidated or replaced from time to time, and any bylaw referred to herein is a reference to an enactment of the Council of the City of Kelowna, as amended, revised, consolidated or replaced from time to time.
- 3.3 Headings. The headings given to the Parts, Sections and Paragraphs in this bylaw are for convenience of reference only. They do not form part of this bylaw and will not be used in the interpretation of this bylaw.
- 3.4 Severability. If any Part, Section, Paragraph or phrase of this bylaw is for any reason held to be invalid by the decision of a Court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this bylaw.
- 3.5 Measurement. Any equivalent imperial units of measure shown, in parenthesis, after metric units in any Schedule to this bylaw are for information purposes only and do not form part of this bylaw.
- 3.6 Schedules. The schedules attached to this bylaw form part of this bylaw.
- 3.7 Conflict. In the event of a conflict between the provisions of this bylaw and the Specifications and Standard Detail Drawings, the provisions of this bylaw will prevail.

4.0 Definitions

- 4.1 Definitions. In this bylaw, unless the context otherwise requires:

BL12066 added definition:

"Active Transportation Corridor" means a corridor reserved for human powered and electric assisted transportation modes such as walking or bicycling, amongst other modes, as defined in the current version of the City of Kelowna Pedestrian and Bicycle Mater Plan. An Active Transportation Corridor, or ATC, may exist along a Highway right-of-way or it may exist along other public land such as but not limited to, the Okanagan Rail Trail or Mission Creek Greenway.

"Application for Building Permit" means the information, documents, agreements, covenants and fees referred to in Section 6.1 of this bylaw.

"Application for Subdivision Approval" means the information, documents, agreements, covenants and fees referred to in Section 5.2 of this bylaw.

"Approving Officer" means the person appointed by the City as the Approving Officer under the *Land Title Act*, and includes their lawful deputy.

"Benefiting Lands" means lands, other than lands that are the subject of the Owner's Application for Subdivision or Application for Development, that are capable of being connected to or serviced by Excess or Extended Services and are identified as such in a Latecomer Agreement.

"Building Bylaw" means the City of Kelowna Building Bylaw, 1993, No. 7245.

"Building Official" means the person appointed by the City as the Building Official under the Building Bylaw, and includes their lawful designate.

"Certificate of Acceptance" means a certificate issued by the City in accordance with Section 10.4 of this bylaw.

Consolidated Bylaw No. 7900 – Page 3.

BL12066 amended definition:

"Certificate of Substantial Performance" means a certificate issued by the Consulting Engineer in accordance with Section 9.5 of this bylaw, **verified by the City Engineer**, certifying that Substantial Performance of all of the Works and Services has been achieved.

BL12066 amended definition:

"Certificate of Total Performance" means a certificate issued by the Consulting Engineer in accordance with Section 10.2 of this bylaw, **verified by the City Engineer**, certifying that Total Performance of all of the Works and Services has been achieved.

"City" means the City of Kelowna.

"City Engineer" means the person appointed by the City as the City Engineer, and includes their lawful deputies.

"Construct" or "Construction" includes build, erect, install, repair, alter, add, enlarge, move, locate, re-locate, re-construct, upgrade, demolish, remove, excavate, or shore.

"Consulting Engineer" means a professional engineer, registered under the *Engineers and Geoscientists Act*, who is employed or retained by a Consulting Engineering Firm.

"Consulting Engineering Firm" means an engineering firm, retained by the Owner pursuant to Section 9.1 of this bylaw, which employs or retains the Consulting Engineer.

"Contract Administrator", as that expression is used in the General Conditions (as defined herein), means Consulting Engineer or the person appointed by the Consulting Engineer.

"Contract Documents", as that expression is used in the General Conditions (as defined herein), means the contract documents between the Owner and its contractor in connection with the Construction of Works and Services.

"Contract Drawings", as that expression is used in the General Conditions (as defined herein), means Design Drawings.

"day" means calendar day.

"Design Drawings" means the drawings identifying the Works and Services requirements of this bylaw, prepared by the Owner and submitted to the City pursuant to Section 9.2 herein.

"Develop" or "Development" means any Construction to which the Building Bylaw applies.

BL10640 deleted definition for "Excavation Permit" and all references.

Consolidated Bylaw No. 7900 – Page 4.

BL12624 amended definition:

“Excess or Extended Services” means those Works and Services in respect of:

- (a) a portion of a Highway system that will provide access to land other than the land being subdivided or developed; and
- (b) a portion of a water, sewage or drainage system that will serve land other than the land being subdivided or developed

BL12066 and BL12685 amended definition:

“Fees” means those fees payable to the City in connection with the Subdivision or Development of land, as prescribed by this bylaw or the current version of the City of Kelowna Development Fees Application Bylaw.”

BL12066 amended definition:

“General Conditions” means the following general conditions contained in Volume II of the Master Municipal Construction Document published by the Master Municipal Construction Documents Association, 2009, as may be amended from time to time, and referred to in the Specifications and Standard Detail Drawings located in Schedule 5.

BL12584 added definition:

“General Manager, Infrastructure” means the person appointed as such and includes their lawful designate(s).

BL12066 amended definition:

“Highway” includes a street, road, lane, bridge, viaduct, walkway, active transportation corridor and any other way open to public use, but does not include an easement on private property.

BL12066 amended definition:

“Highway Reservation Agreement” means an agreement between the Owner and the City, in the form prescribed by the City, as referred to in Section 513 of the *Local Government Act*.

“Latecomer” means an Owner of Benefiting Lands who wishes to connect to or use Excess or Extended Services prior to the expiration of a Latecomer Agreement to which the Benefiting Lands are subject; provided that a Latecomer who makes an Application for Subdivision Approval, or an Application for Building Permit, with respect to the Benefiting Lands will also be considered an “Owner” of a Parcel or proposed Parcel for the purpose of this bylaw.

BL12066 amended definition:

“Latecomer Agreement” means an agreement between the Owner and the City, in the form prescribed by the City, as referred to in Section 508 of the *Local Government Act*.

“Latecomer Charges” means those charges determined and imposed by the City in accordance with Section 11.2 of this bylaw.

“Maintenance Bond” means:

- (a) a deposit in the form of cash or a certified cheque, or
- (b) a surety bond or an unconditional irrevocable standby letter of credit in a form satisfactory to the City, expiring no earlier than one year from the date of issuance and providing for a right of renewal unless the bond or letter of credit is perpetual, issued to the City by a branch of a chartered bank, credit union or trust company located in Kelowna.

"Maintenance Period" means:

- (a) with respect to Works and Services that do not appear to be incomplete, defective or deficient at the time of Substantial Performance of all Works and Services, the period of one year from the date on which all obligations of the Owner and its Consulting Engineer pursuant to Section 9.5, 9.6 and 9.7 have been performed;
- (b) with respect to Works and Services that appear to be incomplete, defective or deficient at the time of Substantial Performance of all Works and Services, the period of one year from the date on which all obligations of the Owner and its Consulting Engineer pursuant to Section 10.2 have been performed; and

BL12066 amended definition:

- c) with respect to Works and Services that appear to be incomplete, defective or deficient during the Maintenance Period referred to in either (a) or (b) above, the period of one year from the date on which such Works and Services are completed or corrected in accordance with Section 10.3.

Notwithstanding, the Maintenance Period does not expire until the City has been contacted and conducts a final inspection of the Works.

"Notice to Proceed with Construction" means a notice issued by the City in connection with an application by an Owner to Construct Works and Services on, in or under a Highway or City lands, or to encroach upon a Highway or City lands in constructing Works and Services on the Owner's land.

BL12066 amended definition:

"OCP" means the current version of the City of Kelowna Official Community Plan Bylaw.

BL12624 amended definition:

"Owner" means the registered owner of an estate in fee simple, or their agent authorized in writing, and includes:

- (a) the tenant for life under a registered life estate;
- (b) the registered holder of the last registered agreement for sale; and
- (c) the holder or occupier of land held in the manner mentioned in Sections 228 and 229 of the *Community Charter*.

"Owner/Consulting Engineering Confirmation" means a confirmation letter from the Owner and the Consulting Engineering Firm, in the form prescribed by the City.

"Parcel" means any lot, block, or other area in which land is held or into which land is subdivided, but does not include a Highway.

"Performance Bond" means a surety bond or an unconditional irrevocable standby letter of credit, in a form satisfactory to the City, expiring no earlier than one year from the date of issuance and providing for a right of renewal unless the bond or letter of credit is perpetual, issued to the City by a branch of a chartered bank, credit union or trust company located in Kelowna.

"Preliminary Layout Review Information" means such drawings, plans, information and documents as the Approving Officer requires, and in such form as is required by the City, to determine, on a preliminary basis:

- (a) whether the proposed Subdivision would be against the public interest or otherwise unsuitable for Subdivision; and
- (b) if not against the public interest or otherwise unsuitable for Subdivision, what the Owner must include in the Application for Subdivision Approval.

"Preliminary Layout Review Letter" means a letter from the Approving Officer to the Owner, as referred to in Section 5.1 of this bylaw.

BL10640 added definition for "Road Usage Permit" and replaced all "Excavation Permit" references with "Road Usage Permit".

"Road Usage Permit" means a permit issued by the City in connection with an application by an Owner to Construct Works and Services on, in or under a Highway or City lands, or to encroach upon a highway or City lands in Constructing Works and Service on the Owner's lands.

"Service Application" means an application made by the Owner to connect to the City's Works and Services, in the form prescribed by the City.

"Servicing Agreement" means an agreement between the Owner and the City made pursuant to Section 219 of the *Land Title Act*, in substantially the form attached as Schedule 2 to this bylaw, as referred to in Section 940(2) of the *Local Government Act*.

BL12066 amended definition:

"Specifications and Standard Detail Drawings" means the specifications and standard detail drawings for construction of Works and Services, located in Schedule 5 of this bylaw.

"Statutory Declaration" means the Owner's sworn declaration that all amounts relating to the Works and Services due and owing to third parties as of the date on which the Statutory Declaration is given have been paid, including all amounts owing to contractors and sub-contractors, and all assessments and levies under social and labour legislation.

BL12066 amended definition:

"Statutory Right-of-Way Agreement" means an agreement between the Owner and the City, in the form prescribed by the City, as referred to in Part 7, Division 11 of the *Land Title Act*.

"Subdivide" or "Subdivision" means:

- (a) the division of land into two or more Parcels whether by plan, apt descriptive words, or otherwise;
- (b) the consolidation of Parcels into one Parcel by plan; or
- (c) the creation of a Highway or a portion of a Highway by plan.

"Subdivision Approval" means the execution by the Approving Officer of a plan of Subdivision.

Consolidated Bylaw No. 7900 – Page 7.

BL12066 amended definition:

"Substantial Performance" means the stage of completion when:

All Works and Services, as certified by the Consulting Engineer, and verified and inspected by the City Engineer, is capable of completion or correction at a cost of not more than:

- (a) 3% of the first \$500,000 of the Works and Services;
- (b) 2% of the next \$500,000 of the Works and Services; and
- (c) 1% of the balance of the Works and Services; and

the Works and Services, or a substantial part of it, is ready for use or is being used for the purpose intended.

"Total Performance" means when all Works and Services, including all incomplete, defective or deficient Works and Services that were apparent when the Certificate of Substantial Performance was issued, but excluding all defective or deficient Works and Services that appeared during the Maintenance Period referred to in either (a) or (b) of that definition, have been completed or corrected, as certified by the Consulting Engineer and verified by the City Engineer.

BL12066 amended definition:

"Works and Services" includes Highways, sidewalks, boulevards, boulevard crossings, transit bays, street lighting, wiring, water distribution systems, fire hydrant systems, sewage collection and disposal systems, drainage collection and disposal systems and such other infrastructure or systems as may be provided within the City from time to time.

"Zone" means the zones identified and defined in City of Kelowna Zoning Bylaw No. 12375.

"Zone Amending Bylaw" means the bylaw passed by the City, following an application by the Owner in connection with the Subdivision or Development of the Owner's lands, to amend the City of Kelowna Zoning Bylaw No. 12375.

"Zoning Bylaw" means City of Kelowna Zoning Bylaw No. 12375.

PART 2 - SUBDIVISION AND DEVELOPMENT

5.0 Subdivision

- 5.1 Preliminary Layout Review. An Owner who wishes to Subdivide land, prior to making an Application for Subdivision Approval, must provide the City with Preliminary Layout Review Information and non-refundable Fees in connection therewith. Following receipt of the Preliminary Layout Review Information, the Approving Officer will provide the Owner with a Preliminary Layout Review Letter advising the Owner of the Approving Officer's preliminary determination. The provision by the Owner of Preliminary Review Layout Information will not constitute an Application for Subdivision Approval under this bylaw or the *Land Title Act*, and the Approving Officer's response, whether in the form of a Preliminary Layout Review Letter or otherwise, will not constitute approval, conditional or otherwise, of an application for Subdivision Approval under this bylaw or the *Land Title Act*, or require the Approving Officer to approve an Application for Subdivision Approval.
- 5.2 Application for Subdivision Approval. An Owner who wishes to Subdivide land must make an Application for Subdivision Approval and provide the Approving Officer with the information, documents, agreements, covenants, bonds and Fees required by the Approving Officer as set out in the Preliminary Layout Review Letter, or otherwise required by the City, to consider an Application for Subdivision Approval. The Application for Subdivision Approval must include:
- (a) an application, in the form required by the City, duly executed by the Owner;
 - (b) payment of the prescribed Fees, which will be non-refundable;
 - (c) a copy of the Preliminary Layout Review Letter from the Approving Officer, dated not more than 6 months prior to the date of the Application for Subdivision Approval;
 - (d) confirmation that, if the land is in the Agricultural Land Reserve, the Agricultural Land Commission permits the Subdivision;
 - (e) a layout for the Subdivision that conforms to the requirements of the City as to the size, shape and orientation of the Parcels, lot size, depth and frontage, street name, and such other matters as may be prescribed by the City from time to time;
 - (f) subdivision plans, in a form and number required by the City, with such endorsements as are required by the City;
 - (g) confirmation in writing that all taxes, impositions, charges (including Latecomer Charges payable by the Owner in their capacity as Latecomer) and fees applicable to the land have been paid, or, if utility taxes, rates or assessments are payable by installments to a local improvement district or service provider, written confirmation that the full balance owing has been paid.

If specified in the Preliminary Layout Review Letter, or otherwise required by the City, the Application for Subdivision Approval must also include:

- (h) such agreements and covenants as may be required by the Approving Officer pursuant to the *Land Title Act*, duly executed by the Owner in registrable form, including, without limitation, restrictive covenants regarding environmental and septic tank matters and vehicular access, easements of vehicular access, utility rights-of-way agreements and road reservation agreements and any previously unregistered City rights-of-way agreements;
- (i) confirmation that each of the beneficiaries of an existing or proposed right-of-way over the land approves the form of the proposed right-of-way;
- (j) confirmation that the Owner will remove or re-locate non-conforming structures on the lands;
- (k) a report on the impact of the proposed Subdivision on a natural feature on the land, if the natural feature is identified as such in the OCP;
- (l) site grading plan, storm water management plan, erosion control plan;
- (m) topographic, geotechnical and/or hydrological information;
- (n) a Servicing Agreement duly executed by the Owner in registrable form;
- (o) if the Preliminary Layout Review Letter indicates that Works and Services are required in connection with the Subdivision;
 - (i) an Owner/Consulting Engineering Firm Confirmation, duly executed by the Owner and the Consulting Engineering Firm;
 - (ii) a Servicing Agreement, duly executed by the Owner in registrable form;
 - (iii) Design Drawings for the Works and Services, as referred to in Section 9.2;
 - (iv) a Construction schedule for the Works and Services;
 - (v) subject to Paragraph 5.2(xi), a Certificate of Substantial Performance, a Maintenance Bond, a Statutory Declaration and as-built drawings and discs, all as more particularly set out in Sections 9.5 and 9.6 herein;
 - (vi) a grant or charge over the land on which the Works and Services are (or are to be) located, in a form required by the City, granted to the City in priority to all liens, charges and encumbrances, and executed in registrable form by the person who owns the land on which the Works and Services are (or are to be) located. The grant or charge may include a Highway dedication, Statutory Right-of-Way, Highway Reservation Agreement, easement, approval, permit or license, as required by the City. Notwithstanding the Works and Services Requirements Schedule 1 and the Highway Design Standards Schedule 4, if the Approving Officer believes that, due to terrain and soil conditions, the width of the Highway, boulevard or boulevard crossing prescribed by this bylaw cannot be adequately supported, protected or drained, the Approving Officer shall be entitled to require a grant or charge over such additional land as would, in the opinion of the Approving Officer,

permit the Highway, boulevard or boulevard crossing to be supported, protected or drained. All such grants or charges will be obtained at the Owner's risk and expense;

- (vii) if part of the Works and Services are operated by an improvement district or a service provider other than the City, confirmation in writing from such improvement district or service provider of the adequacy of the design and Construction of such Works and Services and of the connection of such Works and Services to the system operated by the improvement district or service provider;

BL8572 amended Section 5.2(o)(viii):

- (viii) The Owner of any land being Subdivided or Developed must provide every Parcel in the proposed subdivision, or land being developed, with a sanitary sewage collection and disposal system, including service connections, designed and constructed in accordance with the Works and Services Requirements. In the absence of a Sewer collection system in the area, an on-site sewage disposal systems will be considered, if the proposed parcel or parcels:
 - are at least One (1) Hectare in area, AND
 - the on-site disposal system complies with Schedule 4, Section 2.18, AND
 - If the parcel is within 150m of Okanagan Lake or Mission Creek, the Ministry of Health Special Conditions for placing septic systems within Environmental Control Zones will apply;
- (ix) such information, documents, agreements, covenants and Fees as are required by the City;
- (x) and if the Works and Services include Excess or Extended Services:
 - (A) Design Drawings for the Excess or Extended Services, as referred to in Paragraph 11.1(a);
 - (B) an estimate from the Consulting Engineer of the cost of Excess or Extended Services as referred to in Paragraphs 11.1(b); and
 - (C) subject to Section 11.2, a Latecomer Agreement executed by the Owner; and
- (xi) and if a Performance Bond has been provided pursuant to Section 7.1:
 - (A) an estimate from the Consulting Engineer of the costs of the Works and Services to be designed and Constructed by the Owner;
 - (B) a Performance Bond for the Works and Services, as more particularly set out in Section 7.1; and
 - (C) with respect to any Works and Services that are to be designed and Constructed by the City, the payment referred to in Section 8.1(b).

The Approving Officer will not be required to approve the Owner's Application for Subdivision Approval until he or she is satisfied that the requirements of Section 5.2

have been met, and that the Zone Amending Bylaw has been adopted or that the Owner's land is otherwise zoned to permit the Subdivision.

6.0 Development

6.1 Application for Building Permit. An Owner who wishes to Develop land must make an Application for Building Permit in accordance with the Building Bylaw and provide the City with such other information, documents, agreements, covenants, bonds and Fees as it requires to consider the Application for Building Permit. The Building Official may impose such conditions on their approval of the Application for Building Permit as are required by the City in connection with the Development including, without limitation, the requirement that the Owner provide Works and Services, and that the Owner provide the City with a Servicing Agreement. If the City advises the Owner that Works and Services are required, the Application for Building Permit must include:

- (a) an Owner/Consulting Engineering Firm Confirmation executed by the Owner and the Consulting Engineering Firm;
- (b) a Servicing Agreement, duly executed by the Owner in registrable form;
- (c) Design Drawings for the Works and Services, as referred to in Section 9.2;
- (d) a Construction schedule for the Works and Services;
- (e) subject to Paragraph 6.1(k), a Certificate of Substantial Performance, a Maintenance Bond, a Statutory Declaration and as-built drawings and discs, all as more particularly set out in Sections 9.5 and 9.6 herein;
- (f) a grant or charge over the land on which the Works and Services are (or are to be) located, in a form required by the City, granted to the City in priority to all liens, charges and encumbrances, and executed in registrable form by the person who owns the land on which the Works and Services are (or are to be) located. The grant or charge may include a Highway dedication, Statutory Right-of-Way, Highway Reservation Agreement, easement, approval, permit or license, as required by the City. All such grants or charges will be obtained at the Owner's risk and expense.
- (g) if part of the Works and Services are operated by an improvement district or a service provider other than the City, confirmation in writing from such improvement district or service provider of the adequacy of the design and Construction of such Works and Services and of the connection of such Works and Services to the system operated by the improvement district or service provider;

BL8572 amended Section 6.1(h):

- (h) The Owner of any land or parcel on which exclusively a Building Permit is desired, and which is not being Subdivided or otherwise Developed, must service the building with a sanitary sewage collection and disposal system, including a service connection, designed and constructed in accordance with the Works and Services Requirements. In the absence of a Sewer collection system in the area, an on-site sewage disposal system will be considered, if:
 - the on-site disposal system complies with Schedule 4, Section 2.18, AND
 - If the parcel is within 150m of Okanagan Lake or Mission Creek, the Ministry of Health Special Conditions for placing septic systems within Environmental Control Zones will apply;

- (i) such information, documents, agreements, covenants and Fees as are required by the City;
- (j) and if the Works and Services include Excess or Extended Services:
 - (i) Design Drawings as referred to in Paragraph 11.1(a);
 - (ii) an estimate of the cost of Excess or Extended Services as referred to in Paragraph 11.1(b); and
 - (iii) subject to Section 11.2, a Latecomer Agreement duly executed by the Owner; and
- (k) and if a Performance Bond has been provided pursuant to Section 7.1:
 - (i) an estimate from the Consulting Engineer of the costs of the Works and Services to be designed and Constructed by the Owner;
 - (ii) a Performance Bond for the Works and Services, as more particularly set out in Section 7.1; and
 - (iii) with respect to any Works and Services that are to be designed and Constructed by the City, the payment referred to in Section 8.1(b).

If requested by the Building Official, or otherwise required by the City, the application for building permit must also include:

- (l) site grading plan, stormwater management plan, erosion control plan.

The Building Official will not be required to approve the Owner's Application for Building Permit until he or she is satisfied that the requirements of Section 6.1 have been met, and that the Owner's land is otherwise zoned to permit the Development.

PART 3 - SECURITY FOR WORKS AND SERVICES

7.0 Performance Bond, Maintenance Bond and Insurance

BL8680 amended subsection 7.1:

7.1 Performance Bond. If the Owner wishes to submit an Application for Subdivision Approval or Application for Building Permit to the City before a Certificate of Substantial Performance has been issued in respect of Works and Services, the Owner, in accordance with Paragraphs 5.2(o)(xi) and 6.1(k), must provide the City with a Performance Bond. The Performance Bond must be in the amount of 140% of the cost (130% of the cost if engineering design is complete), as estimated in writing by the Consulting Engineer and verified by the City Engineer, of Constructing any Works and Services for which a Certificate of Substantial Completion has not been issued prior to the Owner making such an application. The City may release or draw upon the Performance Bond, in whole or in part, on or at any time prior to Substantial Performance of the Works and Services, as more particularly described in the Servicing Agreement.

7.2 Maintenance Bond. Upon the issuance of the Certificate of Substantial Performance, the Owner who Constructed the Works and Services must provide the City with a Maintenance Bond equal to:

- (a) 5% of the cost of the Works and Services; or
- (b) \$1,000.00,

whichever is greater. The Maintenance Bond may be withheld by the City from the balance of the Performance Bond otherwise payable to the Owner. The City may draw upon the Maintenance Bond, in whole or in part, at any time prior to the issuance of the Certificate of Acceptance, as more particularly described in the Servicing Agreement.

7.3 Insurance. The Owner must provide and maintain, at the Owner's expense, at all times until the Certificate of Acceptance is issued, Comprehensive General Liability Insurance coverage, covering premises and operations liability, contingency liability with respect to the operations of contractors and sub-contractors, completed operations liability, contractual liability and automobile liability for owned, non-owned and hired units. The limits of liability must be not less than \$5,000,000.00 for each occurrence for bodily injury, death and damage to property. The policy or policies must be with a company or companies, and on such terms, as are acceptable to the City. Each policy must provide that it cannot be cancelled, lapsed, or materially altered without at least thirty (30) days' notice in writing to the City by registered mail, must name the City and its officials and employees as an additional insured, and must contain a cross-liability clause. The insurance coverage required to be provided by the Owner may be embodied in a blanket insurance policy obtained by the Owner generally in connection with this Section 7.3. The Owner must deliver a copy of each insurance policy to the City prior to the commencement of Construction of the Works and Services. If the Owner fails to obtain and maintain the said insurance or deliver the said policy or policies to the City, the City may but will not be obliged to obtain and maintain such insurance at the expense of the Owner.

PART 4 - CITY TO PERFORM WORK

8.0 City to Perform Work

BL12685 amended sub-section 8.1:

8.1 Design and Construction of Works and Services. The City may elect to design and Construct all or certain parts of the Works and Services (other than Excess or Extended Services) that are otherwise required to be designed and Constructed by an Owner pursuant to this bylaw. These Works and Services would be part of a larger project being planned by the City and are not immediately required to service the development. In such an event:

- (a) the City will advise the Owner of the specific Works and Services that it has elected to design and Construct;
- (b) the City will advise the Owner that they must pay the City, in cash,
 - (i) 125% of the cost, as estimated by the Consulting Engineer and approved by the City Engineer, of designing and Constructing such Works and Services, or
 - (ii) if applicable, a program fee for the Works and Services as outlined in Schedule 7; and

- (c) such Works and Services will be designed and Constructed as and when required by the City.

The City will in no way be acting as the Owner's agent, employee, partner, sub-contractor or contractor in designing or Constructing such Works and Services.

8.2 Connection to City Works and Services. The City may elect to connect all or certain parts of the Works and Services to the City's Works and Services. In such an event:

- (a) the City will advise the Owner of the specific Works and Services that it has elected to connect to the City's Works and Services;
- (b) the Owner must pay the City, in cash, the cost, as estimated by the City Engineer, of connecting such Works and Services; and
- (c) such Works and Services will be connected following confirmation that the provisions of Section 9.7 have been satisfied.

The City will in no way be acting as the Owner's agent, employee, partner, sub-contractor or contractor in connecting such Works and Services.

PART 5 - OWNER TO PERFORM WORK

9.0 Design and Construction Requirements

9.1 Consulting Engineer. The Owner, at its expense, shall retain a Consulting Engineering Firm to design, inspect, test and certify all Works and Services.

BL12624 amended sub-section 9.2:

9.2 Drawing Approval. The Owner must not Construct Works and Services without obtaining the City Engineer's prior approval of the Owner's Design Drawings. The Owner shall submit Design Drawings to the City in the form and number required by the City for this purpose. In the event that Works and Services include Excess or Extended Services, the Owner must submit Design Drawings in accordance with the further requirements set out in Paragraph 11.1(a). The Consulting Engineer must complete and submit the Design Drawings in accordance with the Engineering Drawing Submission Requirements. If the City Engineer rejects the drawings, the Owner will be provided with reasons for the rejection and advice as to the City's requirements. The Owner may re-submit the Design Drawings for approval and the provisions of this Section 9.2 will apply to the re-submittal. Except as otherwise set out in this bylaw, Works and Services must be designed, at a minimum, to the design standards for Works and Services as set out in Schedules 1, 4, 5 and 6, unless a change in the design is required for engineering reasons and such change has been approved in writing by the City Engineer.

BL8993 amended sub-section 9.3:

9.3 Required Works and Services

- (1) (a) The Owner shall design and construct such Works and Services as are required by the City, which are:
- (i) in the case of a Subdivision:
- all onsite Works and Services, and

- all offsite Works and Services on that portion of a highway(s) immediately adjacent to the site, up to the centre line of that adjacent highway(s), insofar as their requirement is directly attributable to the Subdivision.
- (ii) in the case of a Development via Building Permit:
- all onsite Works and Services, insofar as their requirement is directly attributable to the Development; and
 - all offsite Works and Services on that portion of a highway(s) immediately adjacent to the site, up to the centre line of that adjacent highway(s), insofar as their requirement is directly attributable to the Development.
- (b) The determination of which Works and Services are required, in the case of a Subdivision shall be made by the Approving Officer, and in the case of a Development via Building Permit shall be made by the Building Inspector.
- (c) The Approving Officer or Building Official, as applicable, in determining whether a directly attributable impact is present shall have regard to the guidelines outlined in Schedule 7 to this Bylaw “Guidelines for Determining Servicing Requirements for Certain Developments Having a Directly Attributable Impact on Infrastructure”.

Where a determination has been made that certain Works and Services are required either at Subdivision or at Building Permit, those Works and Services shall be designed and constructed to the applicable standard for the zone or proposed zone in which the parcel or proposed parcel is located, as set out in Schedule 1 to this Bylaw “Works and Services Requirements.

- (2) The Owner shall design and construct such offsite Works and Services which are beyond that portion of a highway(s) immediately adjacent to the site, up to the centre line of that adjacent highway(s), which may be required by the City under this bylaw, provincial legislation or by agreement between the Owner and the City.

9.4 Construction Requirements. The Owner must at all times, until a Certificate of Acceptance is issued by the City, observe and perform the following:

- (a) Save and except as otherwise set out in this bylaw, Works and Services must be Constructed, at a minimum, (i) to the specifications set out in the City’s Specifications and Standard Detail Drawings unless a change in the Construction of Works and Services is required for engineering reasons and such change has been approved in writing by the City Engineer, (ii) in conformity with the quality control and assurance requirements for Works and Services as set out in Schedule 3, and (iii) in accordance with the Owner’s Construction schedule for Works and Services, as referred to in the Servicing Agreement.
- (b) Location of Works and Services. All Works and Services must be Constructed within the area dedicated as a Highway, or included in the plan attached to the Statutory Right-of-Way Agreement.

- (c) Road Usage Permits. The Owner must not Construct Works and Services on, in or under a Highway or any City lands, or encroach upon a Highway or any City Lands during the course of Constructing Works and Services on the Owner's lands, unless the Owner has obtained an Road Usage Permit in the form approved by the City. The Owner must maintain the Highway or City lands, as the case may be, in a tidy condition and free from the accumulation of waste, debris and waste products and shall restore the Highway or City Lands, as the case may be, to the condition required by the City Engineer.
- (d) Notice to Proceed with Construction. The Owner must not Construct Works and Services on, in or under a Highway or any City lands, or encroach upon a Highway or any City Lands during the course of Constructing Works and Services on the Owner's lands, unless the Owner has been issued a "Notice to Proceed with Construction" in the form approved by the City.
- (e) Underground Utilities. Before commencing Construction of Works and Services, the Owner must locate all underground utilities and structures that might be affected by the Construction of Works and Services and must consult with all public and private utilities to locate any underground utilities of which they have records. The Owner must also locate any other utilities or underground structures that are reasonably apparent from an inspection of the area in which the Works and Services are to be Constructed.
- (f) Survey Monuments. The Owner must ensure that the proposed Development of the lands and adjacent lands will be part of a coordinated survey area based on universal transverse mercator coordinates, and the Owner accordingly must install all necessary geodetic control monuments in completing the Works and Services and any Development on the lands. The Owner must protect all survey monuments and markers, pins, and posts during the Construction of the Works and Services and must employ, at the Owner's expense, a British Columbia Land Surveyor in good standing to replace any such monuments and markers, pins, and posts which may be moved, damaged, or destroyed during such Construction.
- (g) Safety. The Owner must provide all necessary safety devices and supervision in relation to the Construction of the Works and Services so as to protect the public.
- (h) Essential Services. The Owner must provide and maintain the essential services of:
 - (i) actual and reasonable access to and from the lands secured to the satisfaction of the City, suitable for use by fire and emergency vehicles and equipment at all times; and
 - (ii) a water supply system complete with operational fire hydrants for fire protection to each Parcel within the lands.

BL10640 amended sub-paragraph (i):

- (i) Traffic. The Owner must provide traffic signs, markers, barricades, and flag persons as required under the City's traffic regulation bylaw to permit the safe flow of traffic through the Construction area with a minimum of disruption and nuisance to the public and adjacent land owners. For any disruptions to traffic on a right of way including pedestrian sidewalks, bike lanes and pathways, traffic control plans(s) are required as part of Road Usage Permit approval process.

- (j) Watercourses. Unless otherwise permitted by the City, the Owner must use care to not disturb any of the natural watercourses in and around the lands, and must incorporate such protection and conservation methods as required by the City or by any enactments.
- (k) Access. The Owner must provide the City, its officers, employees and agents, at all reasonable times, with access to the Parcels, proposed Parcels and Works and Services. No person may prevent or obstruct, or attempt to prevent or obstruct, the entry of officials authorized under this paragraph upon any land.
- (l) Property Damage. The Owner must protect the Works and Services, underground utilities and structures and property owned by third parties (including municipal, provincial and federal property) from damage and make good any damage to such Works and Services, utilities and structures or third party property arising in connection with the Works and Services.
- (m) Compliance with Laws. The Owner must comply with all enactments, laws, statutes, regulations, and orders of any authority having jurisdiction, including bylaws of the City.
- (n) Licenses and Permits. The Owner must comply with and obtain all federal, provincial, municipal, and environmental licenses, permits, and approvals required under applicable enactments.
- (o) General Conditions. The Owner must, and must ensure that its Consulting Engineer and contractor, observe and perform the obligations on the part of the Owner, Contract Administrator and Contractor, respectively, to observe and perform under the General Conditions.
- (p) Materials and Workmanship. The Owner must provide materials and workmanship in Constructing the Works and Services that are not defective or faulty, materials provided must be new, and products that are not specified by this bylaw must be of a quality best suited to their purpose and use, as approved by the Consulting Engineer.
- (q) Encumbrance. The Owner must ensure that Works and Services are kept free and clear of any and all liens, charges or encumbrances.

9.5 Substantial Performance. Upon Substantial Performance of all of the Works and Services, the Consulting Engineer must schedule a field inspection with the City Engineer, and provide the City with the quality control test results as set out in the Specifications. Upon verification by the City Engineer that Substantial Performance of all Works and Services has been achieved, the Owner must provide the City with:

- (a) a Certificate of Substantial Performance prepared by the Consulting Engineer with respect to all Works and Services;
- (b) a Maintenance Bond, as referred to in Section 7.2;
- (c) a Statutory Declaration; and
- (d) As-built drawings and disks as detailed in Section 9.6.

Following receipt of the foregoing the City will return the balance of the Performance Bond to the Owner.

BL12066 and BL12584 amended:

- 9.6 As-Built/Record Drawings and Electronic Information. The Owner must provide the City in accordance with Section 9.5, Item (d) and Engineering Drawing Submission Requirements with detailed, reproducible as-built drawings of the Works and Services, sealed by the Consulting Engineer, and City compatible electronic information, as Constructed as of the date of Substantial Performance.
- 9.7 Connections to and Use of City Systems. Subject to the City's election to perform the work in accordance with Section 8.2, the Owner must connect the Works and Services to the City's Works and Services; provided that the Owner must not connect the Works and Services to any of the City's Works and Services or use the City's Works and Services until:
- (a) the Approving Officer or Building Official, as the case may be, has approved the Owner's Application for Subdivision Approval or Application for Building Permit;
 - (b) the Owner has registered in the Kamloops Land Title Office all documents required by the City to be registered therein;
 - (c) the Owner, in their capacity as a Latecomer wishing to use or connect to Excess or Extended Services, if applicable, has complied with the provisions of Section 11.3 of this bylaw; and
 - (d) the Owner has made a Service Application, paid any assessed charges and the Service is installed.

All Works and Services, save and except for Works and Services that are operated by an improvement district or service provider other than the City, will be and remain at the sole risk of the Owner until connected to the City's Works and Services, at which time the Works and Services will vest in and become the property of the City.

10.0 Maintenance Period, Total Performance and Acceptance

- 10.1 Routine Maintenance By City. Subject to the fulfilment of the obligations of the Owner and its Consulting Engineer pursuant to Section 9.5, 9.6 and 9.7, the City will be responsible, at its expense, for the ordinary and routine maintenance of the Works and Services; provided that if during a Maintenance Period the Works and Services cease to function for their intended purpose through no fault of the City, the City will not be responsible for such maintenance until a Certificate of Substantial Performance has been re-issued by the Consulting Engineer and the Maintenance Bond restored in full.
- 10.2 Total Performance. The Owner, at its expense, must promptly complete, modify or re-construct any incomplete, defective or deficient Works and Services that appeared on the date of the Certificate of Substantial Performance of the Works and Services. The Consulting Engineer must thereafter schedule a field inspection with the City Engineer. Upon verification by the City Engineer that Total Performance of all Works and Services has been achieved, the Owner must provide the City with:
- (a) a Certificate of Total Performance, prepared by the Consulting Engineer with respect to all Works and Services;
 - (b) an Assurance of Professional Field Inspection in the form prescribed by the City;
 - (c) confirmation in writing from the Land Surveyor (B.C.L.S.) that all survey pins have been installed on the Parcel;

- (d) any revisions to the detailed, reproducible and sealed as-built drawings of the Works and Services, and City compatible computer disks, as Constructed as of the date of Total Performance;
 - (e) a Statutory Declaration; and
 - (f) cash-in-lieu of construction for integrated survey monuments disturbed or destroyed as a result of construction of the Works and Services.
- 10.3 Repair by Owner During Maintenance Period. The Owner must correct, repair or otherwise remedy any defects or deficiencies in the Works and Services that become apparent during a Maintenance Period within 15 calendar days' notice from the City.
- 10.4 Acceptance by City. Upon the expiration of all Maintenance Periods, receipt from the Owner of a Statutory Declaration and verification by the City Engineer that all information, documents, agreements, covenants and Fees required from the Owner and Consulting Engineer pursuant to this bylaw have been provided to the City, the City will:
- (a) provide the Owner with a Certificate of Acceptance of all Works and Services; and
 - (b) release to the Owner the balance of the Maintenance Bond.

PART 6 - EXCESS OR EXTENDED SERVICES AND LATECOMERS

11.0 Excess or Extended Services and Latecomers

BL12624 amended:

11.1 Information Requirements. If the City requires the Owner to provide Excess or Extended Services, the Owner, in addition to providing the information set out in Part 2 of this bylaw, and prior to Constructing any Works and Services, must provide the City with such information, documents, and agreements as may be required by the City Engineer, including without limitation:

- (a) Design Information for the Excess or Extended Services, including:
 - (i) Design Drawings of the Excess or Extended Services, including which lands are intended to be Benefiting Lands;
 - (ii) In the case of Excess Services, a written technical brief to inform the determination of the Excess Services portion of the Works and Services provided under Part 2 of this bylaw.
- (b) the Consulting Engineer's estimate of the Owner's costs in connection with any such Excess or Extended Services, verified by the City Engineer. The Owner's costs may include the following:
 - (i) the cost of the Owner's interest in the land used for Excess or Extended Services if such interest was acquired by the Owner for the specific purpose of providing Excess or Extended Services;
 - (ii) the cost of Constructing the Excess or Extended Services; and
 - (iii) the cost of designing and inspecting the Excess or Extended Services, to a maximum of 10% of the cost referred to in Paragraph 11.1(b)(ii),but shall not include the Owner's cost of connections or the Owner's financing costs in connection with any such Excess or Extended Services.
- (c) a draft Latecomer Agreement in the City's standard form.

BL12624 amended:

11.2 Latecomer Agreements. If the City determines that all or part of the costs referred to in Paragraph 11.1(b) are excessive and shall be paid for by the Owner, the City Engineer will:

- (a) determine:
 - (i) whether all or part of the costs of the Excess or Extended Services referred to in Paragraphs 11.1(b) must be paid for by the Owner;
 - (ii) which lands are Benefiting Lands;
 - (iii) which part of the Excess or Extended Services would benefit each of the Benefiting Lands; and
 - (iv) the Latecomer Charges that would apply to each of the Benefiting Lands.
- (b) prepare a Latecomer Agreement for execution by the Owner, which will set out, inter alia, the matters referred to in Paragraph 11.2(a), fix the rate of interest to be charged on Latecomer Charges accruing from the Date of Substantial Performance of the Works and Services until the Latecomer Charges

are paid in accordance with Bylaw No. 6519-89, a bylaw to provide for an interest rate payable on Latecomer Charges; and fix the term of the Latecomer Agreement, which term shall be 1 day unless otherwise agreed to by the City and the Owner;

- (c) notify all potential Latecomers of the Latecomer Charges and interest thereon that would be payable upon a Latecomer connecting to or using Excess or Extended Services prior to the expiration of a Latecomer Agreement to which the Benefit Lands are subject; and
- (d) collect and remit to the Owner or their permitted assign, in accordance with the Latecomer Agreement, any Latecomer Charges collected by the City from a Latecomer.

11.3 Connection to and Use of Excess or Extended Services. A Latecomer must not connect to or use Excess or Extended Services until:

- (a) the Owner has complied with the provisions of Section 9.5, 9.6 and 9.7 of this bylaw;
- (b) in the event that an application to connect to the Excess or Extended Services is required by the City, the Latecomer's connection application has been approved by the City; and
- (c) the Latecomer has paid the Latecomer Charge and interest thereon.

PART 7 - GENERAL

12.0 General

12.1 No Duty of Care. This bylaw does not create a duty of care on the City, Council members, the Approving Officer, the Building Official, the City Engineer, or employees or agents of the City in respect of:

- (a) the issuance of the Preliminary Layout Review Letter;
- (b) the approval of an Application for Subdivision Approval;
- (c) the issuance of a building permit in connection with an Application for Building Permit;
- (d) the review of a layout and Subdivision plans;
- (e) the review of Works and Services specification requirements, design and Construction drawings, and supporting documents;
- (f) a verification of Substantial Performance of the Works and Services;
- (g) a verification of Total Performance of the Works and Services;
- (h) the issuance of a Certificate of Acceptance;
- (i) inspections made by the Building Inspector, site visits made by the Approving Officer or City Engineer, or failure to make such inspections or site visits;
- (j) the approval of a Servicing Application;
- (k) the approval of an application to connect to Excess or Extended Services; or

- (l) the enforcement or failure to enforce the *Local Government Act, Land Title Act, Building Bylaw, or the provisions of this bylaw.*

The Owner will not be entitled to rely upon the results of any investigations, inspections, field visits or other due diligence conducted by the City in connection with the Subdivision or Development of the lands.

12.2 No Cause of Action. Neither a failure to administer or enforce, nor incomplete or inadequate administration or enforcement of the *Local Government Act, Land Title Act, Building Bylaw, or the provisions of this bylaw, nor any error, omission or other neglect in relation to any matter set out in Section 12.1 of this bylaw will give rise to a cause of action in favour of any person including the Owner.*

12.3 No Warranty or Representation.

- (a) A review, or failure to review, by the City Engineer of Works and Services specification requirements, design and Construction drawings, and supporting documents will not, in any way, constitute a representation, warranty or statement that the design of the Works and Services complies with the design standards as set out in Schedule 4 of this Bylaw, or that the Construction of the Works and Services complies with the construction standards as set out in Schedules 5 and 6 of this Bylaw, and no person, including the Owner, will rely on such review or failure to review as establishing compliance with this bylaw.
- (b) A verification by the City Engineer as to Substantial Performance or Total Performance of the Works and Services will not, in any way, constitute a representation, warranty or statement that the Construction of the Works and Services have reached Substantial Performance or Total Performance.
- (c) The issuance by the City Engineer of a Certificate of Acceptance will not, in any way, constitute a representation, warranty or statement that the Construction of the Works and Services have reached Total Performance.
- (d) Site visits made by the Approving Officer, City Engineer, Council members, or any other officer, employee or agent of the City, or the failure to make such site visits, will not, in any way, constitute a representation, warranty or statement that the Works and Services have been designed and Constructed in accordance with this bylaw.

12.4 Owner's Responsibility for Works and Services. It will be the full responsibility of the Owner to design and Construct any Works and Services that are required hereunder to be designed and Constructed by the Owner, and to ensure that the Works and Services are inspected, tested and certified in accordance with this bylaw and other bylaws of the City, and none of the issuances, approvals, reviews, verifications or inspections referred to in Section 12.1 which are performed or failed to be performed by the City, including the Approving Officer, City Engineer, Council members, or any other officer, employee or agent of the City, will relieve the Owner from this responsibility. Without limiting the generality of the foregoing, neither the review and approval of the City Engineer of the Owner's Design Drawings in connection with the Works and Services, the expiration of any or all Maintenance Periods, nor the issuance of a Certificate of Acceptance, will relieve the Owner, Consulting Engineer or Consulting Engineering Firm from any responsibility or liability for the faulty, defective or deficient design or Construction of the Works and Services, or for any breach of this bylaw or any agreement between the City and the Owner in connection with this bylaw, whether such responsibility or liability arises before or after the City Engineer's

approval of the Owner’s Design Drawings or the City’s issuance of the Certificate of Acceptance.

12.5 Owner’s Cost. Notwithstanding anything else contained herein, all documents, agreements, covenants and information required from the Owner in connection with the Subdivision or Development of the Owner’s land, the registration of any documents requiring registration, and the performance of the Owner’s obligations hereunder, must be provided at the sole cost and expense of the Owner.

12.6 Offenses and Penalties

(a) Every person who violates a provision of this bylaw commits an offence and is liable on summary conviction to a penalty not exceeding ten thousand dollars (\$10,000.00) and costs of prosecution.

(b) The penalties imposed under this Section 12.6 supplement and are not a substitute for any other remedy to an infraction of this bylaw.

12.7 Repeal

City of Kelowna Subdivision Bylaw No. 6050-86, as amended, is repealed.

Read a first time by the Municipal Council this 10th day of August, 1998.

Read a second and third time by the Municipal Council this 26th day of October, 1998.

Adopted by the Municipal Council of the City of Kelowna this 3rd day of November, 1998.

“Walter Gray”

Mayor

“D.L. Shipclark”

City Clerk