

19 December, 2013

Bill Brown
Director of Development Services
Township of Esquimalt
1229 Esquimalt Rd
Esquimalt, BC, V9A 1P1

Re: McLoughlin Point Rezoning Revised Application - Transmittal Letter

Dear Bill Brown:

On behalf of the Capital Regional District and the Seaterra Program, we are pleased to submit revisions to the Zoning application for the McLoughlin Point Treatment Plant.

The attached submission proposes changes to the draft Zoning Bylaw 2805 terms, and explains proposed amenity contributions and impact mitigation measures as they differ from the original application. This submission responds to the concerns raised by the community, and which have been the subject of negotiations with representatives of the CRD and the Township over the past several months. The revisions, as submitted, have been approved by the Capital Regional District Board.

The Seaterra Program is on a very critical timeline and delays will have significant cost implications, affecting all core area residents. You have earlier provided to Mr. Bob Lapham a preliminary timeline to process the revisions to the application. Given the extent of understanding about the application and indeed, public information already provided regarding the proposed revisions, we would respectfully request consideration to expedite the preliminary schedule that would not see a public hearing until the third week in February 2014. We appreciate that the application must follow due process, but we would ask the Township to consider ways that could reduce the application process milestone dates.

Finally, would you kindly review the submitted material and let the writer know within two days of review if any further information is required or if clarification is needed, as we want to make sure you have all of the required information.

We look forward to working with you on this revised application.

Sincerely,



Deane Strongitharm,
CitySpaces Consulting Ltd.

cc Mr. Bob Lapham
Ms. Laurie Hurst
Mr. Albert Sweetnam

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Consulting Ltd.**

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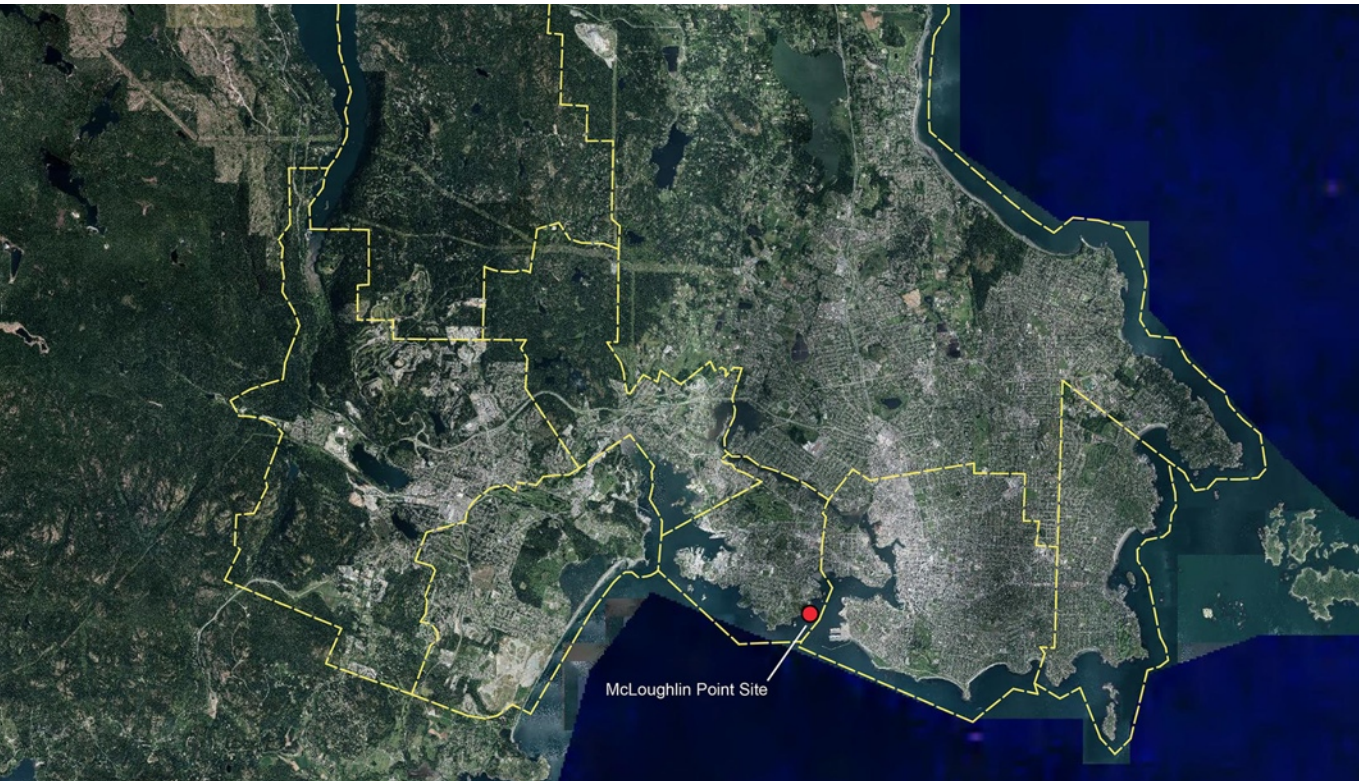
Victoria

Vancouver

Calgary

McLoughlin Point

Rezoning Application



Prepared for the
Corporation of the Township of Esquimalt

On behalf of the

Making a difference...together

Revisions December 2013 to the application
dated January 2013, revised June 2013

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INTRODUCTION & BACKGROUND

INTRODUCTION AND PURPOSE

This revised application is submitted, on behalf of the Capital Regional District (CRD), to the Township of Esquimalt to request a site specific zone that will permit construction of a Wastewater Treatment Plant and Marine Outfall at McLoughlin Point, as part of the Capital Regional District's Core Area Wastewater Treatment Program (CAWTP), now referred to as the "Seatterra Program".

Specifically, this request is to consider revisions to Bylaw 2805, that currently sits at second reading.

The Wastewater Treatment Plant and Marine Outfall is one of Seatterra's three main elements: McLoughlin Point Treatment Plant, Resource Recovery Centre, and Conveyance System Infrastructure. This revised application relates only to the treatment plant facility.

BACKGROUND

An application to rezone the former oil tank farm site at McLoughlin Point was submitted in January 2013, with revisions made in June 2013. The application included an Official Community Plan (OCP) amendment (Bylaw 2804) that was reviewed and adopted by Council at the same time as the Zoning Bylaw consideration. No further application to amend the OCP is contemplated.

The original amending Zoning Bylaw (2805) with terms requested by the Capital Regional District was forwarded to Council, along with an alternative Zoning Bylaw (2806), introduced by the Township. On July 15th, 2013 the Township adopted the Bylaw it initiated (2806) while holding the "CRD" Bylaw in abeyance, at the second reading stage. The terms of Bylaw 2806 were considered unworkable by the CRD to deliver the obligations required by Provincial and Federal mandates.



In late July 2013, CRD and Esquimalt staff were authorized to negotiate and make best efforts to reach an agreement on amending draft Bylaw 2805. That included consideration for the provision of host community amenities and mitigation measures, which the parties were prepared to recommend to their respective elected bodies.

Over the course of four months, from late July through November 2013, representatives for the Township of Esquimalt and the Capital Regional District met to seek solutions to the issues that had been raised with respect to the original submission that covered a variety of amenity and mitigation measures. The Province provided observers to the meetings held between the Township and CRD representatives. The outcome of those negotiations are reflected in the requested revisions to the application.

A copy of the requested amended Bylaw 2805 is attached as an Appendix to this revised application. In addition to the amendments to the Bylaw, there are two complementary agreements, the Host Community Impact 5-year Agreement and Community Impact Mitigation and Operating Agreement, that support the amendments to the revised Bylaw 2805 and provide additional descriptions of the bonus density amenity provisions and impact mitigation measures.

CRD ENDORSEMENT OF REVISED APPLICATION

The proposed revisions to draft Bylaw 2805, including the amenity provisions and mitigation measures outlined in the two additional agreements, were considered and adopted by the CRD Core Area Liquid Waste Management Committee at its December 11, 2013 meeting. The Board's endorsement of the proposed amendments to Bylaw 2805, along with the support agreements, provides the authorization to submit this revised application to be considered by the Township.



REVISED APPLICATION & RELATIONSHIP TO PREVIOUS MATERIAL SUBMITTED

The information provided in this revised application identifies and explains the changes to the application. Information previously provided that is not identified here-in should be considered as part of this revised submission. Such background information that has not changed includes, but is not limited to: (1) site context and description, (2) zoning rationale, (3) treatment plant and facilities operations, (4) risk assessment, (5) sustainability, (6) traffic, except as otherwise amended herein, (7) community impacts and mitigation report, except as otherwise amended herein, (8) site survey, (9) design guidelines, (10) site services report, (11) archeological review, and (12) property value impacts opinion letter.

REVISED INFORMATION

New or revised information submitted consists of the following:

1. Revisions to Bylaw 2805:
 - i. Building height, setback and site coverage provisions; and
 - ii. Amenity provisions.
2. Design Review Process and Design Approvals.
3. Additional Mitigation Measures.

AMENDMENTS TO BYLAW 2805

Bylaw 2805 as currently drafted and now sitting ready for third reading can be briefly summarized as follows:

1. Permitted only wastewater treatment and associated waste water treatment uses.
2. Density provision restricted to 108 ML/day of sewage treatment capacity
3. No setback requirements from all boundaries and a maximum height of 15m.



4. Amenities of: (1) design guidelines, (2) fire hydrant and support equipment upgrades, (3) underground conduit for future hydro, (4) reinstatement of roads affected by works associated with the treatment plant installation, (5) Lyall Street pathway and bikeway system amounting to \$950,000, (6) dedicated conference room, and (7) design for a future perimeter walkway.

The Bylaw as now submitted and amended (see appendix A) contains the following changes:

1. Permitted Uses: Allows for a mix of uses in addition to wastewater treatment and its ancillary uses, including: education and interpretive centre, commercial instruction and education, research, professional offices, high tech office, hotel, ancillary retail, entertainment, boat moorage, and park.
2. Density Provisions: The draft amended Bylaw contains a bonus density provision that permits the construction and operation of the required treatment facility.
3. Setbacks, Siting, and Height: The amendments provide for a complicated series of siting, setback and height restrictions that influence designs to step back from the water's edge, require a minimum of 20% natural landscape and open space, make reference to a "Low Height Area" within 20 m of the high water mark and allows for buildings to be no higher than 12 m except for up to 15% of the site area, outside of the "Low Height Area" that can go as high as 15 m, but only to accommodate mechanical equipment or one odour control tower associated with the treatment system (note: see next section).
4. Additional Design Guideline: In addition to the existing Design Guidelines adopted as part of the OCP amendment, the following additional guideline may be considered : "building design and finish and site design should establish a strong architectural and functional relationship between the building facade and the public pedestrian walkway through one or more of the architectural, creative, artistic or other similar elements intended to provide enhanced visual interest for users of the pedestrian walkway".
5. Walkway and Access: Design and construct a public waterfront walkway along the entire site and plan in a manner that can connect to a future walkway to West Bay, if access through DND lands is permitted.
6. Public Open Space: Plan and build a public observation point connected to the public walkway, including the provision of public benches.
7. Public Dock: Provide a dock to allow for emergency access and seasonal public access to the walkway.
8. Public Art: Provide public art, including heritage interpretive signage having a value of \$100,000.
9. Macaulay Pump Upgrades: Make exterior aesthetic upgrades to Macaulay Point pump station, to a finish equivalent to the Craigflower, Carey Road, and Trent Pump Station facilities.

In addition to these new provisions, the amenities provided earlier are contained in the amended Bylaw. To reiterate, those amenities include:



- A) Road Upgrades: Reinstates roads (and sidewalks or boulevards) impacted by the plant construction to an equal or better condition. The successful proponent will be required to work with the Township on existing road conditions before construction.
- B) Lyall Street Enhancement: During construction there will be additional traffic along Lyall Street that is also used for access to Macaulay Elementary school. Lyall Street is a designated active transportation route in the Official Community Plan and Bikeways Plan. Draft Bylaw 2805 commits to provision of an upgraded pathway and bikeway trail, connecting to West Bay walkway to a value of \$950,000.
- C) Education and Interpretive Centre: Provide space within the treatment plant site for a meeting room of 75m² that is made available for students and the public to learn about waste water treatment.

DESIGN CONSIDERATION

Draft Bylaw 2805 provides a complicated description of siting, heights and setback requirements.

1. All three proponent design solutions, as approved by the Township's Design Review Committee, meet draft Bylaw 2805 requirements relating to height, siting and setbacks.
2. Generally, the Bylaw allows for greater height the further buildings are located away from the water. For example, within 20 metres of the high water mark, the "amount" of building or structure that can be greater than 5 metres high is restricted to a maximum coverage of the site and any building permitted within 7.5 m must be compensated by providing an equivalent and extra amount of open space beyond the setback area.
3. Because height, siting and setback requirements in the draft Bylaw 2805 address the design solutions of three different approaches, the actual extent of site coverage, setbacks or height will inevitably be less than the flexibility needed in the Bylaw to capture the three design solutions.
4. The amended Bylaw requires a 4.5 m setback from the north property line and a minimum 20% natural or landscaped/open space requirement.

IMPLICATIONS – PROCUREMENT PROCESS AND DESIGN REVIEW

Construction procurement, as required by the Province, is design-build. At the end of June 2013, a shortlist of three proponents was selected from a Request for Qualification process and invited to submit a Request for Proposal (RFP). The submission date for the RFP is the end of February 2014. It is a competitive process that must adhere to very strict confidentiality protocol which includes the appointment of a fairness commissioner to ensure that the process is fair and equal to all three proponents.

Because of the mandatory procurement process, it is not possible to provide detailed design drawings including building siting, elevations or landscape plans at this time, until the proponents have submitted their final plans. The



siting, height and setback standards that are provided in the attached amendments to Bylaw 2805 are based on a protocol as described and followed below. The Bylaw lot coverage, setback and height requirements represent the maximum requirements to meet the building design work that has taken place to date so that all three proponent designs can meet the zoning Bylaw standards. The final, selected proponent will have a design solution with less encroachment, site coverage or height standards than the collective total of all three.

To address matters relative to design and the attendant complexities relating to requiring flexibility in the zoning Bylaw, the following six-step process has been established:

- Design Guidelines developed and refined through a design charrette process that included bringing in outside design experts, members of Victoria Design Panel and council member representatives on the CALWMC from Esquimalt, Victoria and Saanich shall be followed by all three proponents;
- The Design Guidelines are included in OCP amendment Bylaw 2804, adopted in July 2103 and now form part of the Township's design requirements;
- Proponents have carried out (confidentially) a peer review process with the Township's Design Review Committee (see design review outcome below);
- McLoughlin Point has been designated a Development Permit Area;
- Design criteria forms part of the proponent evaluation process in determining the successful contractor/builder of the treatment plant; and
- The successful proponent must submit and be issued a Development Permit from the Township.

DESIGN REVIEW COMMITTEE OUTCOME

All proponent design teams met independently with the Township's Design Review Committee on three separate occasions between September and November. Members of the City of Victoria's Design Panel were also invited and attended at least some of the meetings. At the conclusion of this process the Township's Design Review Committee concluded that all proponents provided supportable design solutions that met design criteria and were consistent with Design Guidelines.



IMPACT MITIGATION MEASURES

In addition to amenities, construction and operating mitigation measures have been developed and approved by the CRD Board, that are integral to the entire application “package” and comprise part of the overall resubmission.

Since the original submission, the CRD commissioned an Environmental Impact Study. The study, prepared by Tera Environmental Consultants (October 2013) was submitted to the Province to comply with requirements of the BC Municipal Wastewater Regulation. The EIS contents were accepted by the Ministry of Environment. A copy of the full report can be found on the CRD website.

The concluding comment in the report states that:

- “Environmental and community impacts resulting from construction and operation of treatment and ancillary facilities can be effectively mitigated. The nature of the impacts and recommended mitigation measures are described in the EIS. The impacts of building and operating wastewater treatment facilities need to be considered in the context of the substantial improvements in the quality of effluent released into the marine environment by the CRD’s wastewater facilities.”

MITIGATION MEASURES

Additional mitigation measures that are provided include:

- A. Barging: The most significant community impact identified by the Township and the CRD was the issue of truck traffic to the site through residential neighbourhoods during construction. The Traffic Considerations report prepared by Bunt and Assoc. (previously submitted) indicated that the majority of truck traffic is associated with excavation of materials from the site. The CRD has agreed to the mitigation measure of requiring that removal of excavation material and the provision of concrete and aggregates during excavation and major concrete phases be by barge or other marine transport. The Bunt reports shows that the vast majority of the heavy truck traffic will be eliminated with the implementation of this mitigation measure. An addendum to the RFP has been issued to the proponents based on those conditions. Barging has



been agreed to on the assumption that approvals to construct a temporary moorage or dock can be obtained from regulatory authorities.

- B. Other Traffic Management Mitigation Measures: In addition to the mitigation measure of requiring marine transport for the excavation and, major concrete phases, a Traffic Management Plan will be prepared and approved by the Township that will include but be not limited to: (1) specify the use of staging areas (2) specify use of supplementary crossing guards (3) require ongoing monitoring (4) provide a commitment to CRD enforcement of the Plan.
- C. Odour: Commitment to incorporate odour-reducing technology that will result in odour levels that will not exceed five (5) odour units (not detectable to humans).
- D. Sustainability:
 - i. Commitment to LEED Gold standards: the CRD commits to the Operations and Maintenance Building being constructed to a LEED Gold standard including a green roof.
 - ii. Resource Recovery: The CALWMP commits to resource recovery as part of its sustainability principles. In response to this principle, and in consideration of mitigation measures to the Township, the CRD commits to construction of a district energy system, delivered to the Township, at the CRD's expense, subject to the Township conducting its due diligence, confirming that it is a viable program that will benefit the Township. The agreement provides funding of up to \$200,000 toward due diligence engineering reports and start-up costs.
- E. Additional Traffic Integration Improvements: In cooperation with the Township, provide additional traffic calming, bicycle lanes, boulevard curbs etc and other improvements within the neighbourhoods of West Bay/ Lyall Street most affected by the construction.
- F. Community Impact Mitigation Fee: The CRD agrees to, under a Community Impact Mitigation and Operating Agreement, to the payment of a fee of \$55,000 to offset impacts resulting from being the host community for the treatment plant that are described in the agreement and include, but are not limited to: additional demand on municipal services, annual fire/safety/utility inspections, response to public enquiries, monitoring and enforcement, additional liaison with DND etc. The indexed fee is payable annually until the WWTP is replaced or decommissioned, but with the proviso that the fee will be forfeited should the Township accept and become owners of the heat loop/resource recovery system.
- G. Liaison Committee: During the construction period, once the successful proponent is chosen, the CRD will establish a Liaison Committee to include representatives from the Township, West Bay and Lyall Street neighbourhoods, DND, the contractor and CRD to discuss issues relating to the construction and operation of the WWTP.
- H. Biosolids Treatment Site: The CRD commits that it will not develop the biosolids treatment facility within the Township's municipal borders.



APPENDIX A:

AMENDED BYLAW 2805

CORPORATION OF THE TOWNSHIP OF ESQUIMALT

BYLAW NO. 2805

A Bylaw to amend Bylaw No. 2050, cited as the
"Zoning Bylaw, 1992, No. 2050"

THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF ESQUIMALT, in
open meeting assembled, enacts as follows:

1. This bylaw may be cited as the *"ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW [NO. 2__], 2013, NO. 2805"*.

McLoughlin Point Special Use [I -3] Zone

2. That Bylaw No. 2050, cited as the Zoning Bylaw, 1992, No. 2050 be amended as follows:

- (1) By amending Section 30.1 to read as follows:

- "(2) The prohibition in Section 30.1(1) shall not apply to those lands in the McLoughlin Point Special Use [I-3] Zone."

- (2) By replacing the following words and figures "Bulk Petroleum Storage I - 3" in Section 31 – Zone Designations of PART 5 Zoning Districts with:

- "McLoughlin Point Special Use [I – 3]"

- (3) By amending Section 55 to read as follows:

- "McLoughlin Point Special Use [I-3]"

The intent of this zone is to accommodate the Core Area Liquid Wastewater Treatment Plant, including potential accessory or additional commercial, high tech industrial, recreational and educational uses, or any combination thereof to create a mixed use development".

- (4) By amending the uses permitted under Section 55 (1) to the following:

- (1) **Permitted Uses**

- The following Uses are permitted:

- (a) Wastewater Treatment Plant, including, without limitation, any or all of the following additional uses:
 - (i) Educational and Interpretive Centre
 - (ii) Commercial Instruction and Education

- (iii) Research Establishment
- (iv) Business and Professional Office
- (v) Marine Outfall
- (vi) Sewage Pumping Facility
- (vii) Accessory Uses
- (b) Business and Professional Office
- (c) High technology uses
- (d) Accessory Retail
- (e) Entertainment and Theatre
- (f) Hotel
- (g) Assembly Use
- (h) Boat Moorage Facility
- (i) Park
- (j) Accessory Uses

- (5) By deleting existing Section 55 (2) Density – Wastewater Treatment Plant, and replacing it with the following Section 55 (2):

“(2) Density – Wastewater Treatment Plant

In accordance with the provisions of section 904 of the *Local Government Act*, density for the Wastewater Treatment Plant Use is established by way of base density, for which no conditions apply, and bonus density on the provision or satisfaction of the conditions identified below. For greater certainty, the regulations of this section do not apply to other uses in this zone and the calculation of Floor Area Ratio and Floor Area shall not include any wastewater tank.

(a) Base Density:

- (i) The Floor Area Ratio shall not exceed 0.15;
- (ii) The Floor Area shall not exceed 675m², excluding processing tanks and generators completely enclosed within a Building;
- (iii) Site Coverage shall not exceed 15%;

(b) Bonus Density:

- (i) The Floor Area Ratio shall not exceed 0.35;
- (ii) The Floor Area shall not exceed 4,500m², excluding processing tanks and generators completely enclosed within a Building;
- (iii) Site Coverage shall not exceed 75%;

all on the provision or satisfaction of all of the conditions set out in section 55(2)(c).

(c) **Bonus Density Conditions**

The following conditions are applicable to the bonus density under section 55(2)(b):

- (i) **Design Guidelines:**
Development consistent with conditions identified in the document entitled “Design Guidelines – McLoughlin Point Wastewater Treatment Plant” prepared by CitySpaces Consulting Ltd. (Revised May 2013), (called the “Design Document”) a copy of which is attached to Official Community Plan Bylaw 2006, Bylaw No. 2646 as Schedule H;
- (ii) **Road Upgrades:**
Reinstatement of all roads (including but not limited to paved areas, sidewalks, boulevards) affected by establishment of a Wastewater Treatment Plant described in the Design Document to a condition equal to or better than that which existed before construction;
- (iii) **Lyall Street Enhancement:**
An upgraded pathway and bikeway system along Lyall Street, having a value of up to \$950,000, including upgrades and connection to the West Bay Walkway via the trailhead located at 537 Head Street;
- (iv) **Education and Interpretive Centre:**
Provision of a meeting room and interpretive space on-site having a minimum floor area of 75 m², to be available for students and the public to learn about wastewater treatment and management, made available at no charge to and for use by schools, government bodies, non-profit organizations and individuals as requested during normal hours of operation;
- (v) **Public Access and Public Walkway:**
Design of building and development of site to incorporate public pedestrian walkway secured through a statutory right of way of 2.25 metres average width and in any event not more than 3 metres nor less than 1.5 metres in width at any point along the waterfront in favour of Esquimalt for and on behalf of the public to the respective boundaries of the property to permit future public walkway connection to West Bay if access through abutting Department of National Defence lands is permitted;

(vi) **Boat Moorage:**

- (A) Temporary boat moorage, or other similar facility of sufficient size to permit the removal of excavated material and the provision of concrete and aggregate during the excavation and major concrete phase of the Wastewater Treatment Plant by barge or other marine transport; and
- (B) A dock or other similar watercraft landing structure to permit emergency and employee access to the site and at least seasonal public use secured by a statutory right of way in favour of Esquimalt for and on behalf of the public.

(vii) **Public Open Space:**

Public open space on the site to include a public observation point connected to the public pedestrian walkway;

(viii) **Public Art:**

Public art on the site having a value of \$100,000.00 to include heritage interpretive signage;

(ix) **Public Open Space Improvements:**

At least 3 benches to be installed in public open space referred to in paragraph (vii); and

(x) **CRD Facilities Visual Upgrade**

Aesthetic improvements to the exterior of the Macaulay Point Pump Station to a standard of quality and finish at least equivalent to the Craigflower Pump Station, the Currie Road Pump Station and the Trent Road Pump Station, recognizing the prominent location of the Macaulay Pump Station in an important waterfront park.”

- (6) By deleting Section 55 (4) – **Lot Coverage**, and replacing it with the following:

“(4) **Site Coverage**

- (a) For the purposes of this Section 55, “Site Coverage” means the figure obtained using the sum of the areas of Building footprints, including covered wastewater tanks not located within a Building, measured from the outside of exterior walls, expressed as a percentage of the total area of all parcels in the McLoughlin Point Special Use [I-3] Zone covered by a Building;

- (b) For certainty, Site Coverage shall not include any surface parking area, seawall or pedestrian walkway or other paved public open space.

(7) By replacing Section 55 (5) – **Building and Structure Height**, with the following:

“(5) **Building and Structure Height**

- (a) For the purposes of this I-3 Zone, Height shall be measured from the Grade at seven (7.0) metres above the High Water Mark as such is determined as of January 1, 2014 (or earlier). For clarity, the purpose of this unique interpretation provision is to allow for sufficient tsunami protection for the proposed development in this Zone.
- (b) On the portion of the lands in the I-3 Zone within the area measured inland 20 metres from the High Water Mark (the “Low Height Area”):
- (c) In the case of use of land as a Wastewater Treatment Plant and uses accessory to a Wastewater Treatment Plant,
 - (i) No Building or Structure shall exceed a Height of 12.0 metres, but only up to a maximum of 35% coverage within the Low Height Area and the length of such a Building or Structure in the Low Height Area shall not exceed 35% of the length of the shoreline measured at the High Water Mark;
 - (ii) No Building or Structure shall exceed a Height of 5.0 metres for the remaining 65% coverage of the Low Height Area.
- (d) On the remaining portion of the lands in the I-3 Zone, no Building or Structure shall exceed a Height of 12.0 metres except that the maximum Height of a Building may be 15 metres provided that:
 - (i) Not more than 15% of the total area of the lands in the I-3 Zone is covered by a Building that exceeds 12.0 metres in Height; and
 - (ii) The sole purpose for exceeding 12.0 metres is to accommodate mechanical equipment or one odour control tower associated with the treatment of sewage.
- (e) In the case of a use of land other than a Wastewater Treatment Plant:

- (i) No Building or Structure shall exceed a Height of 10 metres;
- (ii) The Height of a Principal Building may be increased by 5 metres (to 15 m maximum) for uses under section 55(1)(f) [*hotel*] when such hotel includes convention facilities and if combined in a mixed-use development with one or more other uses under subsections 55(1)(b) through (h)."

(8) By replacing Section 55 (6) – **Siting Requirements**, with the following:

“(6) **Siting Requirements**

No setbacks are required except as follows:

- (a) In the case of use of land as a Wastewater Treatment Plant and uses accessory to a Wastewater Treatment Plant, Buildings shall be set back an average of 7.5 metres from the High Water Mark provided that an encroachment into this Setback is permissible to no more than 1.0 metre from the High Water Mark but only on satisfaction of all of the following conditions:
 - (i) Such encroachment shall be no greater than 15% of the site area contained within the area of the entire 7.5 metre Setback;
 - (ii) For every square metre that a building encroaches into the Setback area, an equal area of extra open space associated with that building is set back behind the 7.5 metre Setback;
 - (iii) That no part of the Building encroaching within the 7.5 metre Setback is taller than 10.5 metres in Height; and
 - (iv) Such encroachment does not prevent the establishment of a public pedestrian walkway, as identified in this zone.
- (b) For certainty, paragraph (a) Setback does not apply to the seawall, public walkway or public open space, other landscaping or hard exterior surface areas such as parking or similar structures.
- (c) In the case of a use of land other than a use referred to in paragraph (a), no Building shall be located within 7.5 metres of the High Water Mark.
- (d) In all cases, no building shall be located within 4.5 m of the most northerly lot line, between the water and Victoria View Road.”

- (9) By replacing Section 55 (7) – **Screening and Landscaping**, with the following:

“(7) **Screening and Landscaping**

Screening and landscaping shall be provided generally in accordance with the locations and standards shown in the Design Guidelines, provided that at least 20% of the total area used to calculate Site Coverage is left in its natural state, hard or soft landscaping (including pedestrian walkway and other public open space) or covered with a green roof.”

- (10) By replacing Section 55 (8) – **Off-Street Parking**, with the following:

“(8) **Off-Street Parking**

Notwithstanding the Township’s Parking Bylaws, as amended from time to time, the total number of off-street parking stalls required in this zone is 34.”

- (11) By inserting a new section 55(9) – **Development Permit Guidelines**, as follows:

“(9) **Development Permit Guidelines**

In the case of a development permit issued for a Building for a Wastewater Treatment Plant use that encroaches to a point less than 5 metres from the High Water Mark the following additional guideline may be considered in addition to the guidelines referred to in section 9.5.6 of the Official Community Plan:

- (a) building design and finish and site design should establish a strong architectural and functional relationship between the Building façade and the public pedestrian walkway through one or more of architectural, creative, artistic or other similar elements intended to provide enhanced visual interest for users of the pedestrian walkway,

- (12) By renumbering Section 55 (9) – **Severability and Satisfaction**, and replacing it with the following as Section 55(10) – **Severability**:

“(10) **Severability**

In addition to Section 5 of this Bylaw, and for greater certainty for this Zone, should any measure of density, associated condition or amenity be held to be invalid by a decision of a Court of competent jurisdiction, that measure of density, condition or amenity may be severed without affecting the validity of the density-bonusing scheme and other measures of density, conditions or amenities.”

- (13) By adding a new section 55 (11) – **Satisfaction**, as follows:

“(11) **Satisfaction**

- (a) For certainty, in the case of a condition under Section 55 (2), land may be developed and used for a Wastewater Treatment Plant even where all conditions have not been fulfilled or completed provided the property owner is proceeding with a reasonable plan to design, construct and install the amenities in accordance with the construction and proposed use of the Wastewater Treatment Plant, and such has been secured by agreement with the Township.
- (b) The Public Access and Public Walkway and Public Open Space referred to in Section 55 (2) shall be subject to the outcome of any environmental assessment process to be undertaken separately from the environmental assessment required in connection with the Wastewater Treatment Plant which may require the public walkway to be modified or relocated, but not eliminated entirely, to avoid impact on the inter-tidal zone.”

READ a first time by the Municipal Council on the 24th day of June, 2013.

READ a second time by the Municipal Council on the 24th day of June, 2013.

A Public Hearing was held pursuant to Sections 890 and 892 of the *Local Government Act* on the 8th and 9th day of July, 2013.

READ a second time as amended on the day of , 2013.

A Public Hearing was held pursuant to Sections 890 and 892 of the *Local Government Act* on the day of , 2013.

READ a third time by the Municipal Council on the day of , 2013.

ADOPTED by the Municipal Council on the day of , 2013.

“DRAFT”

“DRAFT”

BARBARA DESJARDINS
MAYOR

ANJA NURVO
CORPORATE OFFICER

APPENDIX B:

- I) HOST COMMUNITY IMPACT 5-YEAR AGREEMENT
- II) COMMUNITY IMPACT MITIGATION AND
OPERATING AGREEMENT

HOST COMMUNITY IMPACT 5-YEAR AGREEMENT

THIS AGREEMENT made this day of , 2013.

BETWEEN:

CAPITAL REGIONAL DISTRICT

625 Fisgard Street
Victoria, B.C.
V8W 1R7

(the "**CRD**")

OF THE FIRST PART

AND:

THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT

1229 Esquimalt Road
Victoria, B.C.
V9A 3P1

(the "**Township**")

OF THE SECOND PART

W H E R E A S:

- A. The CRD is required under its liquid waste management plan to construct and operate a facility to provide sewage treatment for the residents of the Township and the municipalities of Victoria, Saanich, Oak Bay, Colwood, View Royal and Langford (collectively the "**Core Area**") and the CRD has identified the following lands at McLoughlin Point as the site for the Waste Water Treatment Plant (the "**WWTP**"):

P.I.D. 000-336-491 Lot A, Section 11, Esquimalt District, Plan 35322
P.I.D. 000-336-505 Lot B, Section 11, Esquimalt District, Plan 35322
P.I.D. 000-336-513 Lot C, Section 11, Esquimalt District, Plan 35322
P.I.D. 000-336-521 Lot D, Section 11, Esquimalt District, Plan 35322
P.I.D. 000-336-530 Lot E, Section 11, Esquimalt District, Plan 35322
P.I.D. 029-168-970 Lot 1 of the Bed of Victoria Harbour, Esquimalt District, Plan
VIP87823
P.I.D. 029-168-988 Lot 2 of the Bed of Victoria Harbour, Esquimalt District, Plan
VIP87823

(the "**Project Lands**")

- B. The Township has raised concerns as host community of the WWTP regarding the direct impacts on the community of the presence of the WWTP within its boundaries. The Township has permitted the land use with both a base density and bonus density, the

latter associated with the provision of amenities in accordance with section 904 of the *Local Government Act*;

- C. The CRD is mindful of those concerns and wishes to take reasonable measures to address such concerns;
- D. In order to address the impacts and consequences that the Township may experience in hosting the WWTP, the parties have agreed to the terms and conditions of this host community impact agreement.
- E. The CRD also acknowledges the significance of municipal zoning processes and has advised the proponents “to ensure that its design for the Plant complies with the applicable zoning and related Township of Esquimalt requirements”.
- F. The CRD is seeking an amendment to the Zoning Bylaw through the adoption of Zoning Bylaw, 1992, No. 2050, Amendment Bylaw [No. 208], 2013, No. 2805 (the “**Rezoning Bylaw**”) which would incorporate a density bonusing framework under section 904 of the *Local Government Act* and the parties wish to address some additional issues relating to the amenities contemplated in the Zoning Bylaw in this Agreement .

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and covenants contained in this Agreement and other good and valuable consideration, the CRD and the Township covenant and agree with each other as follows:

1.0 Term

This Agreement shall be for a period of five (5) years commencing on the calendar day following the date that the Rezoning Bylaw is adopted.

2.0 Construction Method and Standards

- 2.1 Recognizing that the construction phase of the WWTP will generate construction traffic, emissions associated with construction and noise in the Township, especially on adjacent residential neighbourhoods, the CRD agrees to do the following at its cost:

- (i) Use of Barges for Bringing Materials to the Site

The CRD shall amend the Request for Proposals dated the 12th day of July, 2013 entitled Capital Regional District – McLoughlin Point Wastewater Treatment Plant Project for the construction of the WWTP to require the successful proponent (the “WWTP Contractor”) to construct temporary boat moorage, or other similar facility of sufficient size to permit the removal of excavated material and the provision of concrete and aggregate during the excavation and major concrete phase of the WWTP by barge or other marine transport, with the text of the addendum to the RFP to be substantially as set out in Schedule A attached to this Agreement (the “**Barging Requirements**”).

(ii) Traffic Management Plan

Despite the significant reduction in heavy vehicle traffic expected to be achieved by the Barging Requirements, the CRD shall cause the WWTP Contractor to work with the Township, and the Township shall work with the WWTP Contractor in good faith on the preparation of a traffic management plan (the "Traffic Management Plan") to apply to the transport through the Township of those materials and equipment that are not subject to the Barging Requirements taking into account issues of community concern regarding the frequency, times and type of heavy vehicle traffic. The Traffic Management Plan shall be subject to the approval of the Township, acting reasonably.

Without limiting the generality or scope of what the Traffic Management Plan may address, the Traffic Management Plan may:

- (A) specify the use of a staging area in proximity to the WWTP site to reduce truck parking on roadways waiting to make deliveries of materials;
- (B) retain implement supplementary crossing guards where appropriate; and
- (C) include other measures acceptable to the Township, as the CRD and the WWTP Contractor develop to address the trucking of materials through the Township that are not subject to the Barging Requirements and other traffic associated with the WWTP Project.

(iii) Monitoring and Reporting of Traffic

The CRD shall monitor and report monthly, or cause the WWTP Contractor, to monitor and report monthly to the Township and in particular shall identify:

- (a) the number and frequency of trips to the Project Lands by truck; and
- (b) the purpose of truck trips and identification of materials and equipment.

(iv) CRD Contact

The CRD shall provide to Esquimalt the name and contact details of a contact person for complaints regarding non-compliance with the Barging Requirements.

(v) Exception

In exceptional circumstances explained with the advance provision of notice from the CRD to the Township, the Township may agree to permit additional truck traffic.

(vi) Enforcement

The CRD has committed to vigilant enforcement of the Barging Requirements, including the full array of contractual penalties to the WWTP Contractor, which

may be supplemented with bylaw enforcement either by the CRD or the Township. The parties however acknowledge that enforcement decisions remain at the discretion of the CRD Board and the Township Council. To evidence its commitment and in recognition that breaches of the Barging Requirements increase the negative effects on and costs to the Township (e.g. for enforcement, inspections, administration of complaints, additional wear and tear on roads, etc.), the CRD agrees to give due consideration to breaches of the Barging Requirements by the WWTP Contractor.

2.2 LEED® Standard for Operations and Maintenance Building

The CRD shall cause the operations and maintenance building of the WWTP to be constructed to the level of LEED® Gold standard.

2.3 Odour-Reducing Improvement

- (i) The CRD shall cause the WWTP to be designed and constructed to incorporate odour-reducing technology intended to result in odour levels that will not exceed five (5) odour control units as measured at the boundary of the Project Lands.
- (ii) The CRD will not accept the WWTP until the standard under paragraph 2.3(i) can be met.
- (iii) If, following commissioning, the WWTP emits odour in excess of 5 odour control units as measured at the boundary of the Project Lands, the CRD shall, expeditiously and in good faith, use best efforts to investigate and remediate the source of the odour in order to reduce odour to the agreed level.

2.4 Design Review Process

- (i) Recognizing the importance of the visual impact of the WWTP, and respecting the Development Permit requirements of the Township's Official Community Plan, the CRD agrees to involve the City of Victoria, along with the Township, in a collaborative design review process involving the three (3) shortlisted proponent teams relating to the exterior design and finish of the WWTP, with the intent that such discussions will result in concurrence among the CRD, the Township's staff and the City of Victoria. It is intended to hold the collaborative design review process during October and November 2013, in advance of the final submissions from the proponent teams.
- (ii) As the design review process will take place during the competitive RFP process, participants including those from the Township shall sign a confidentiality agreement prior to participating in the design review process. The parties acknowledge that such agreement cannot be applicable to the exercise of the Township's statutory powers in relation to the required development permit(s).
- (iii) The CRD recognizes that the Project Lands are designated a development permit area in accordance with the *Local Government Act* and therefore the final

decision on design and permit issuance rests with the Township's Council (subject however to appeals, judicial review and the authority of the Minister of Environment under the *Environmental Management Act*). The CRD will bring forward the final design as part of its development permit application for consideration by Township Council, but is free to seek input from Council in advance.

2.5 Restoration of Road Surfaces

- (i) The CRD shall cause the road surfaces affected by the construction of the WWTP, as determined by the Township acting reasonably, to be reinstated (including but not limited to affected paved areas, sidewalks and boulevards) to a condition that reflects current conditions or better, including the installation of sidewalks and curbs.
- (ii) The CRD, the Township and the WWTP Contractor shall, without cost to the Township, conduct pre-construction and post-construction assessments of the conditions of road surfaces referred to in section 2.5(a).

3.0 Resource Recovery System

- 3.1 **Heat Loop:** The CRD shall construct or cause to be constructed a district energy system as generally described in Resource Recovery and Use Plan Technical Memorandum by Kerr Wood Leidal dated September 20, 2013 to connect the WWTP to the intersection of Admirals Road and Esquimalt Road (collectively "**Heat Loop**").
- 3.2 **Licence:** The Township grants a licence to the CRD for the construction of the Heat Loop within the Township's streets, such licence to be formalized in writing in the Township's customary form prior to the commencement of construction of the Heat Loop.
- 3.3 **Infrastructure Costs:** The CRD shall be responsible for all infrastructure costs associated with the construction of the Heat Loop to/from the intersection of Admirals Road and Esquimalt Road.
- 3.4 **Transfer of Title:** Upon completion, inspection and commissioning of the Heat Loop, the CRD shall transfer title to the Heat Loop and related appurtenances to the Township for consideration of \$10.00 and following such transfer the Township shall thereafter be responsible for the operation and maintenance of the Heat Loop and for the use and distribution of the heat.
- 3.5 **Condition Precedent:** Despite this Section, if the CRD has not received written notice from the Township that the Township has reviewed the operation and maintenance costs associated with the proposed Heat Loop and all other studies regarding the Heat Loop (collectively the "**Heat Loop Studies**") and has satisfied itself on or before a date that is nine (9) months from receipt of a revised analysis of the financial viability of the Heat Loop prepared by Kerr Wood Leidal that it wishes

the Heat Loop to be constructed and transferred to the Township, the parties shall be under no further obligation to each other in relation to the Heat Loop, it being acknowledged and agreed that the notice under this section is a condition precedent to the obligations under this Section 3.0. The Township agrees that it shall expeditiously cause the review of the proposed Heat Loop Studies, with a view to determining whether it wishes to assume operational and financial responsibility for the operation and administration of the Heat Loop as a municipal service, and it may decide whether to proceed with acceptance of the Heat Loop or not, in its sole and unfettered discretion.

- 3.6 **Warranties:** At the time of transfer, the CRD shall assign the benefit of any warranties relating to the construction of the Heat Loop to the Township.
- 3.7 **Operation by the Township:** Following transfer of the Heat Loop to the Township, all subsequent costs associated with the operation and maintenance of the Heat Loop and the connection of individual parcels to the Heat Loop as shown substantially on Schedule "B" shall be borne by the Township.
- 3.8 **Heat Commitments:** The CRD commits to provide a sufficient amount of heat, or material for heat, in accordance with the assumptions and the equipment identified in the Heat Loop Studies to achieve the projected Heating Sales Revenues without exceeding the Operating and Maintenance costs so identified. The CRD agrees that there shall be no additional costs or charges imposed on the Township from the CRD or the operator of the WWTP, or the Project Lands generally, with respect to the provision of heat for the Heat Loop or otherwise in relation to the Heat Loop
- 3.9 **Other Users:** The parties acknowledge and agree that the WWTP will generate energy from the heat of its operations for use on the Project Lands. Provided that the heat delivered to the Township is sufficient to permit the Township to achieve the quantity of heat sufficient to achieve the projected heating sales revenues identified in the Heat Loop Studies, and provided the Township shall have exclusive rights to licence or sell the use of heat to the Department of National Defence Lands "DND"), the CRD may licence the use of heat to customers not within the boundaries of Esquimalt or DND.
- 3.10 **Transfer Agreement:** If the Township elects to accept the Heat Loop, the parties shall in good faith negotiate a transfer agreement for the transfer of title to that part of the Heat Loop required to permit the Township to operate a district energy utility within its boundaries and for the delivery of heat from the WWTP to the Township (the "Transfer Agreement").
- 3.11 **Reimbursement of Township Heat Loop Utility Costs:**
- (a) Notwithstanding section 3.5, if the Township elects to accept the Heat Loop the CRD shall, upon execution of the Transfer Agreement, allocate a budget of up to \$200,000 based on actual costs submitted by the Township for reimbursement in the construction budget relating to the Heat Loop to reimburse the Township's actual costs relating to:

- (i) its review of the Heat Loop Studies; and
- (ii) the establishment of a municipal service or utility for the purpose of providing heat, including without limitation, actual costs of legal, accounting, engineering and information technology services associated with the establishment of a municipal service or utility for the operation of the Heat Loop;

whether such costs are incurred prior to or after execution of the Transfer Agreement.

- (b) The CRD shall reimburse the costs incurred by the Township to a maximum of \$200,000 within 30 days of receipt of an invoice from the Township for such amounts.

4.0 Water System Upgrades

Recognizing that the WWTP will require the water service to be upgraded, the CRD agrees, as part of the water service upgrade, to provide fire hydrants and appurtenances as requested by the Township, to coincide with upgrades to the City of Victoria's water system located within the boundaries of the Township, as necessary for the proper operation of the WWTP.

5.0 Conduits

The CRD agrees that in connection with the excavation of highways in connection with construction of the WWTP, and the Heat Loop if accepted by the Township, the CRD shall install or cause to be installed a subsurface conduit to the standards of BC Hydro. It is acknowledged and agreed, however, that nothing in this Agreement obliges the CRD to install such underground wiring at the time of construction of the WWTP, the Heat Loop or otherwise.

6.0 Additional Traffic Integration Improvements

The CRD will, in good faith and in cooperation with the Township, design and install additional traffic calming and bicycle lane improvements on any streets between Lampson Road and Esquimalt Road and the Project Lands, which may include, as reasonably appropriate, speed bumps, speed cushions, enhanced boulevard curbing and landscaping, all at the sole cost of the CRD, and at the direction of the Township acting reasonably.

7.0 Emergency and Public Seasonal Access

In addition to the boat moorage identified in section 55(2)(c) of the Zoning Bylaw, the CRD shall construct a dock or other similar watercraft landing structure to permit emergency access and may include CRD employee access, and shall make reasonable efforts to provide for at least seasonal public use to be made of the dock, subject to Transport Canada approval, Department of Fisheries and Oceans Canada approval, and provided that the installation of a dock or similar facility does not trigger a requirement for an environmental impact assessment, other than in connection with the emergency and CRD employee access.

8.0 Building Permit Fees

The CRD agrees that it will apply to the Township for a building permit for the WWTP and pay an amount equal to the building permit fees that would be payable to the Township calculated in accordance with the Township's Building Bylaw, subject to any applicable deductions or reductions that would apply to complex projects of the nature of the WWTP under the Township's Building Bylaw, or in circumstances to which section 290 of the *Local Government Act* applies.

9.0 Amenity Conditions

The CRD acknowledges that the construction of the WWTP to a standard that permits the proper operation of the WWTP to meet the standards determined in the approved CRD liquid waste management plan will necessitate the CRD providing amenities under the Rezoning Bylaw.

With respect to the provision of those amenities, the parties agree as follows:

1. Lyll Street Enhancement: The CRD will work with the Township for the provision of the pathway and bikeway referred to in section 55(2)(c) of Rezoning Bylaw, along Lyll Street and Head Street to link West Bay to Admirals Road and having a value of approximately \$950,000 for the design and installation of the pathway and bikeway. The enhancement shall be of a design, materials and quality of construction and installation as directed by the Township acting reasonably, and shall be completed prior to the sooner of the commencement of WWTP operations or termination of this Agreement.
2. Public Access, Walkway and Open Space Improvements:
 - (a) The CRD will design and install a walkway system the length of the harbour side of the WWTP site and comprising a design that is consistent with the CRD Design Guidelines. A public observation deck will be installed at the end of the walkway. It is acknowledged and agreed that the improvements referred to in this section shall be subject to the outcome of any environmental assessment process to be undertaken separately from the environmental assessment required in connection with the WWTP. The CRD agrees that the value of the Open Space and Improvements will be at least \$75,000, and shall be completed prior to the sooner of the commencement of WWTP operations or termination of this Agreement.
 - (b) The statutory right of way referred to in section 55(2)(c) of the Zoning Bylaw shall be in a form acceptable to the Township, acting reasonably, under which the public will not have a right of access nor will the Township assume maintenance liability or operational responsibility unless or until the walkway to be provided under this section is connected to a public walkway providing public access from one or more boundaries of the Project Lands, or the Township elects to assume responsibility under subsection 2(c). The CRD shall make all reasonable efforts to ensure that the public walkway is 3 metres in width, and will only reduce the walkway to 1.5 metres in width where necessary because of physical constraints.

- (c) Notwithstanding section 9.2(b), upon the establishment of seasonal public use of the dock contemplated by section 7.0, the Township may, in its unfettered discretion, by written notice to the CRD elect to assume full responsibility for the dock, pedestrian walkway and observation area upon the opening of the dock to public use.
 - (d) If the Township does not elect to assume responsibility for the dock, pedestrian walkway and observation area under paragraph (c), the CRD shall establish a regional park or regional trail at McLoughlin Point to include the dock, pedestrian walkway and observation area.
- 3. Public Art and Interpretive Signage Improvements: In satisfaction of section 55(2)(c)(vii) of the Zoning Bylaw, the CRD will provide a cash allowance of \$100,000 to provide for public art and historical interpretive signage that may be internally or externally displayed. The historical interpretive signage shall be of a design, materials and quality of construction and installation as directed by the Township acting reasonably, and shall be completed prior to the termination of this Agreement. The public art shall be determined following a process that includes approval of both the CRD and the Township.
 - 4. Macaulay Point Pump Station and Related Facilities: The CRD will improve the aesthetics and operations, in particular to reduce odour, of the Macaulay Pump Station within Township boundaries to a standard of quality and finish at least equivalent to the Craigflower Road, Currie Road and Trent Road Pump Stations, recognizing the prominent location of Macaulay in an important waterfront park. The CRD shall also make aesthetic improvements to the appearance of the Lang Cove pump station in consideration of the visibility of its location.
 - 5. The CRD will in good faith consider extending access to the meeting room and interpretive space on weekends and evenings when booked through the CRD for educational purposes.

10.0 Satisfaction of Host Community Conditions

The Township agrees that the satisfaction of the Host Community Conditions in Sections 2 to 9 inclusive of this Agreement and the payment of the amount under the Community Impact Mitigation & Operating Agreement will be full satisfaction of the Township's concerns relating to the WWTP.

11.0 Dispute Resolution

Where a matter in dispute arises under this Agreement, the Chief Administrative Officers shall meet promptly to attempt to resolve the dispute.

Where the Chief Administrative Officers are unable to resolve the dispute, then the matter may, with the concurrence of both the CRD and the Township, be submitted for mediation to a mediator appointed jointly by the parties.

If the matter cannot be resolved by mediation, or if the parties are unwilling to submit the matter to mediation, then the dispute shall be resolved by arbitration, by an arbitrator appointed jointly by the parties. The decision of the arbitrator shall be final and may include a requirement for specific performance by one or both parties.

The parties shall share the costs of the mediation or arbitration equally.

If the parties are unable to agree on the selection of an arbitrator within thirty (30) days of the later of the meeting of the Chief Administrative Officers, or the failure of the mediation, then either party may, upon giving written notice to the other party, apply to the Ministry of Community, Sport and Cultural Development (or the Ministry then having responsibility for local government affairs) for dispute resolution by way of binding arbitration contemplated by Division 3 of Part 9 of the *Community Charter*.

12.0 General Provisions

(a) No Fettering of Discretion

Nothing in this Agreement shall be considered to fetter any statutory discretion of the Board of the CRD or the Council of the Township nor to impair or waive any power, right or authority of the CRD or the Township under the *Community Charter*, the *Local Government Act* or any other enactment as defined in the *Interpretation Act*.

(b) Modification

No modification or amendment to this Agreement shall be binding unless executed in writing by both parties.

(c) Entire Agreement

This Agreement, along with the **Community Impact Mitigation & Operating Agreement**, constitutes the entire agreement between the parties and supersedes all previous discussions, negotiations, understandings, expectations, agreements of the parties, whether oral or written regarding the subject matter of these Agreements.

(d) No Assignment

This Agreement may not be assigned by either party, without the express written consent of the other party, which consent shall not be unreasonably withheld where the assignment is to another public authority.

(e) Applicable Law

This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia and in particular is subject to the jurisdiction of the Minister of Environment under the *Environmental Management Act*.

(f) Notice

It is hereby mutually agreed that any notice required to be given under this Agreement will be deemed to be sufficiently given:

- (a) to be delivered at the time of delivery; and
- (b) if mailed from any government post office in the Province of British Columbia by prepaid registered mail addressed as follows:

if to the CRD: 625 Fisgard Street
Victoria, B.C.
V8W 1R7

if to the Township: 1229 Esquimalt Road
Victoria, B.C.
V9A 3P1

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

(g) Waiver

The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

(h) Severability

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

(i) Interpretation

Wherever the singular or the masculine is used in this Agreement, this shall be deemed to include the plural, feminine or body politic or corporate as the context so requires.

(j) Counterparts

This Agreement may be executed in counterparts and when the counterparts have been executed by the parties, each originally executed counterpart, whether a facsimile, photocopy or original, will be effective as if one original copy had been executed by the parties to this Agreement.

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

CAPITAL REGIONAL DISTRICT by its)
authorized signatories)
)
)
_____)
Name:)
)
)
_____)
Name:)

THE CORPORATION OF THE TOWNSHIP OF)
ESQUIMALT by its authorized signatories)
)
)
_____)
Name:)
)
)
_____)
Name:)

Schedule "A"

Addendum to specify Barging in Schedule 5

Section 4.8(a) and 4.8 (b) Schedule 5 (Design and Construction Protocols)

Sections 4.8(a) and 4.8(b) of Schedule 5 (Design and Construction Protocols) are deleted and replaced with the following:

"4.8 Barging, Access Roads; Laydown and Staging Areas

(a) **Barging.** Project Co:

- (1) will use marine barging for the supply and transportation of materials and waste associated with excavation, backfill and concrete works on the Plant Site (including work associated with the Harbour Crossing and Outfall);
- (2) may use the access roads to the Plant Site in connection with the initial mobilization and demobilization of construction equipment associated with excavation, backfill and concrete works on the Plant Site;
- (3) may install a temporary concrete batch plant at the Plant Site (or adjacent DND laydown area) provided all concrete materials, including aggregates and cement, are barged to the Plant Site;
- (4) will obtain all permits and approvals required for barging and any construction and operation of a temporary concrete batch plant; and
- (5) will not undertake any construction, operations or other activities which affect the intertidal zone adjacent to the Plant Site.

- (b) **Access Roads.** Without limiting the barging obligations set out in section 4.8(a), Project Co will maintain the access roads to the Project Sites throughout Construction and restore such roads to their pre-existing condition or better following construction of the Facilities and as a condition of Acceptance. Project Co assumes the risk of the sufficiency of the access roads to provide access to the Project Sites for the performance of Construction, including the transportation and delivery of materials and equipment required for the performance of Construction."

Schedule “B”

HEAT LOOP

COMMUNITY IMPACT MITIGATION & OPERATING AGREEMENT

THIS AGREEMENT made this day of , 2013.

BETWEEN:

CAPITAL REGIONAL DISTRICT

625 Fisgard Street
Victoria, B.C.
V8W 1R7

(the "**CRD**")

OF THE FIRST PART

AND:

THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT

1229 Esquimalt Road
Victoria, B.C.
V9A 3P1

(the "**Township**")

OF THE SECOND PART

W H E R E A S:

- A. The CRD is required under its liquid waste management plan to construct and operate a facility to provide sewage treatment for the residents of the Township and the municipalities of Victoria, Saanich, Oak Bay, Colwood, View Royal and Langford (collectively the "**Core Area**") and the CRD has identified the following lands at McLoughlin Point as the site for the Waste Water Treatment Plant (the "**WWTP**");

P.I.D. 000-336-491 Lot A, Section 11, Esquimalt District, Plan 35322
P.I.D. 000-336-505 Lot B, Section 11, Esquimalt District, Plan 35322
P.I.D. 000-336-513 Lot C, Section 11, Esquimalt District, Plan 35322
P.I.D. 000-336-521 Lot D, Section 11, Esquimalt District, Plan 35322
P.I.D. 000-336-530 Lot E, Section 11, Esquimalt District, Plan 35322
P.I.D. 029-168-970 Lot 1 of the Bed of Victoria Harbour, Esquimalt District, Plan VIP87823
P.I.D. 029-168-988 Lot 2 of the Bed of Victoria Harbour, Esquimalt District, Plan VIP87823

(the "**Project Lands**")

- B. The Township has raised concerns as host community of the WWTP regarding the impacts on the community of the presence of the WWTP within its boundaries, including, without limitation:

- a. demand on municipal services,
 - b. annual fire and safety inspections,
 - c. utility inspections,
 - d. inspections and repairs of road surfaces,
 - e. response to public inquiries and complaints, including with DND and Victoria residents
 - f. monitoring of operations and enforcement,
 - g. additional street cleaning,
 - h. additional liaison, including with DND;
 - i. additional wear and tear on recreational facilities, parks and other Esquimalt services;
 - j. additional economic development, tourism promotion, business recruitment and marketing required to overcome perceived negative influence of regional wastewater facility; ...
 - k. additional security, policing and enforcement services;
 - l. for other social, environmental, and economic impacts generally, (collectively the **"Impacts"**)
- all caused by or contributed to by activity associated with the WWTP construction or operation and/or construction and installation of a district energy heat recovery system (the **"Heat Loop"**);

- C. The CRD is mindful of those concerns and, in addition to undertaking certain actions under a host community impact agreement dated the __ day of __, 2013, (the **"Host Community Impact 5-Year Agreement"**) has agreed to the payment of an annual amount by way of a community impact mitigation fee and other measures of an operational nature under, and in accordance with, this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and covenants contained in this Agreement and other good and valuable consideration, the CRD and the Township covenant and agree with each other as follows:

PART A – COMMUNITY IMPACT MITIGATION FEE

1.0 Community Impact Mitigation Fee

Subject to section 3 of this Agreement, the CRD shall pay the Township FIFTY-FIVE THOUSAND (\$55,000.00) DOLLARS per year as adjusted annually under section 2.0 (the **"Community Impact Fee"**) to compensate the Township for the Impacts.

2.0 Change in CPI

From 2015 and for the remainder of the Term, the amount of the fee payable under section 1 of this Agreement shall be changed to reflect the change in the Consumer Price Index for Victoria, British Columbia (all items) (the **"CPI"**) for the previous year. If the change in the CPI is not known at the date of payment under section 4.2, the CRD may pay the amount paid the previous year and shall make any additional payment (or Esquimalt shall pay any refund where CPI has decreased) as required within 30 days of the change in CPI becoming known.

3.0 Exemption to Community Impact Fee

If Esquimalt elects to assume ownership of the Heat Loop referred to in Section 3.0 of the Host Community Impact 5-Year Agreement, the Community Impact Fee will not be payable and the obligations of the CRD to pay the Community Impact Fee under this Agreement shall thereafter be at an end following execution of the Transfer Agreement and upon the actual transfer of the constructed and operational Heat Loop infrastructure to the Township following execution of the Transfer Agreement referred to in section 3.10 of the Host Community Impact 5 Year Agreement. In the event of a transfer of the Heat Loop during a calendar year, the amount of the Community Impact Fee shall be pro-rated to represent that portion of the year prior to the transfer of the Heat Loop to Esquimalt.

4.0 Invoice and Payment of Community Impact Fee

- 4.1 The Township shall provide to the CRD as of the 31st day of December in each year an invoice for the sum of FIFTY-FIVE THOUSAND (\$55,000.00) DOLLARS (as adjusted annually under section 2.0) in relation to the impact on the Township of the WWTP for the previous calendar year.
- 4.2 The CRD shall cause the amount of the invoice to be paid to the Township on or before January 31 of the following year.
- 4.3 For greater certainty, the Township is not required to itemize or calculate the Impacts in any given year other than further to Section 2 of this Agreement, and there is no set-off or reduction other than further to Section 3 of this Agreement.

PART B – TERM

5.0 Term of Agreement

- 5.1 The obligations of the CRD under this Agreement shall be from January 1, 2014 until such time as the WWTP is replaced or decommissioned.
- 5.2 For greater certainty, the first payment is due by January 30, 2014 in the full amount of FIFTY-FIVE THOUSAND (\$55,000.00) DOLLARS.
- 5.3 If the WWTP is replaced on the Project Lands, the parties shall in good faith negotiate a replacement agreement, and notwithstanding section 5.1, this Agreement shall remain in effect until replaced.

PART C – LIAISON COMMITTEE & OTHER OPERATING MATTERS

6.0 Liaison Committee

- 6.1 To provide a forum for the discussion of issues relating to construction and operation of the WWTP and other related activities, the CRD shall establish and maintain a liaison committee (the “**Liaison Committee**”) to include representatives from the Township, the West Bay Neighbourhood Association, the Lyall Street Neighbourhood Association, Department of

National Defence, CRD and, until acceptance of the WWTP by the CRD, the CRD's WWTP contractor.

- 6.2 The Liaison Committee will meet within thirty (30) days of the CRD's WWTP Contractor commencing work on site and thereafter at times established in the first meeting, and at least twice annually while the WWTP is in operation.
- 6.3 At the first meeting of the Liaison Committee, the members shall elect a chair and vice chair.
- 6.4 The CRD shall not be considered to be in breach of this section if any person invited to participate in the Liaison Committee or to send representatives to the Liaison Committee fails to do so.

7.0 Biosolids Treatment Plant

- 7.1 The CRD acknowledges and agrees that it will not make use of land situated within the Township for the purpose of a biosolids treatment facility or any other purpose associated with the treatment of biosolids or recovery of energy from biosolids.
- 7.2 The CRD further agrees to consult with the Township prior to establishing any use of property within the Township.
- 7.3 For clarity, the Township includes all lands owned by the federal crown including the Graving Dock and lands commonly referred to as the "DND lands" including but not limited to: Work Point, Macaulay Point, Buxton Green, Dockyards, Naden, and Naden North.

8.0 Odour

If the WWTP emits odour in excess of 5 odour control units as measured at the boundary of the Project Lands, the CRD shall expeditiously and in good faith, use best efforts to investigate and remediate the source of the odour in order to reduce the odour to the agreed level.

PART D – DISPUTE RESOLUTION

9.0 Dispute Resolution

- 9.1 Where a matter in dispute arises under this Agreement, the Chief Administrative Officers shall meet promptly to attempt to resolve the dispute.
- 9.2 Where the Chief Administrative Officers are unable to resolve the dispute, then the matter may, with the concurrence of both the CRD and the Township, be submitted for mediation to a mediator appointed jointly by the parties.
- 9.3 If the matter cannot be resolved by mediation, or if the parties are unwilling to submit the matter to mediation, then the dispute shall be resolved by arbitration, by an arbitrator appointed jointly by the parties. The decision of

the arbitrator shall be final and may include a requirement for specific performance of the provisions of this Agreement by one or both parties.

9.4 The parties shall share the costs of the mediation or arbitration equally.

9.5 If the parties are unable to agree on the selection of an arbitrator within thirty (30) days of the later of the meeting of the Chief Administrative Officers, or the failure of the mediation, then either party may, upon giving written notice to the other party, apply to the Ministry of Community, Sport and Cultural Development (or the Ministry then having responsibility for local government affairs) for dispute resolution by way of binding arbitration contemplated by Division 3 of Part 9 of the *Community Charter*.

PART E – GENERAL PROVISIONS

10.0 General Provisions

(a) No Fettering of Discretion

Nothing in this Agreement shall be considered to fetter any statutory discretion of the Board of the CRD or the Council of the Township nor to impair or waive any power, right or authority of the CRD or the Township under the *Community Charter*, the *Local Government Act* or any other enactment as defined in the *Interpretation Act*.

(b) Capital Liabilities

Nothing in this Agreement shall be interpreted as imposing any obligation or liability of a capital nature on the CRD.

(c) Modification

No modification or amendment to this Agreement shall be binding unless executed in writing by both parties.

(d) Entire Agreement

This Agreement, along with the Host Community Impact 5-Year Agreement, constitute the entire agreement between the parties and supersede all previous discussions, negotiations, understandings, expectations, agreements of the parties, whether oral or written regarding the subject matter of these Agreements.

(e) No Assignment

This Agreement may not be assigned by either party, without the express written consent of the other party, which consent shall not be unreasonably withheld where the assignment is to another public authority.

(f) Applicable Law

This Agreement is to be construed in accordance with and governed by the laws

applicable in the Province of British Columbia and in particular is subject to the jurisdiction of the Minister of Environment under the *Environmental Management Act*.

(g) Notice

It is hereby mutually agreed that any notice required to be given under this Agreement will be deemed to be sufficiently given:

- (a) to be delivered at the time of delivery; and
- (b) if mailed from any government post office in the Province of British Columbia by prepaid registered mail addressed as follows:

if to the CRD: 625 Fisgard Street
Victoria, B.C.
V8W 1R7

if to the Township: 1229 Esquimalt Road
Victoria, B.C.
V9A 3P1

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

(h) Waiver

The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

(i) Severability

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

(j) Interpretation

Wherever the singular or the masculine is used in this Agreement, this shall be deemed to include the plural, feminine or body politic or corporate as the context so requires.

(k) Counterparts

This Agreement may be executed in counterparts and when the counterparts have been executed by the parties, each originally executed counterpart, whether a facsimile,

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

CAPITAL REGIONAL DISTRICT by its)
 authorized signatories)
)
)
 _____)
 Name:)
)
)
 _____)
 Name:)

THE CORPORATION OF THE TOWNSHIP OF)
ESQUIMALT by its authorized signatories)
)
)
)
 _____)
 Name:)
)
)
 _____)
 Name:)



Suite 585, 1111 West Hastings Street, Vancouver BC V6E 2J3 | 604.687.2281

5th Floor, 844 Courtney Street, Victoria BC V8W 1C4 | 250.383.0304

Suite 300, 160 Quarry Park Boulevard SE, Calgary AB T2C 3G3 | 403.336.2468

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