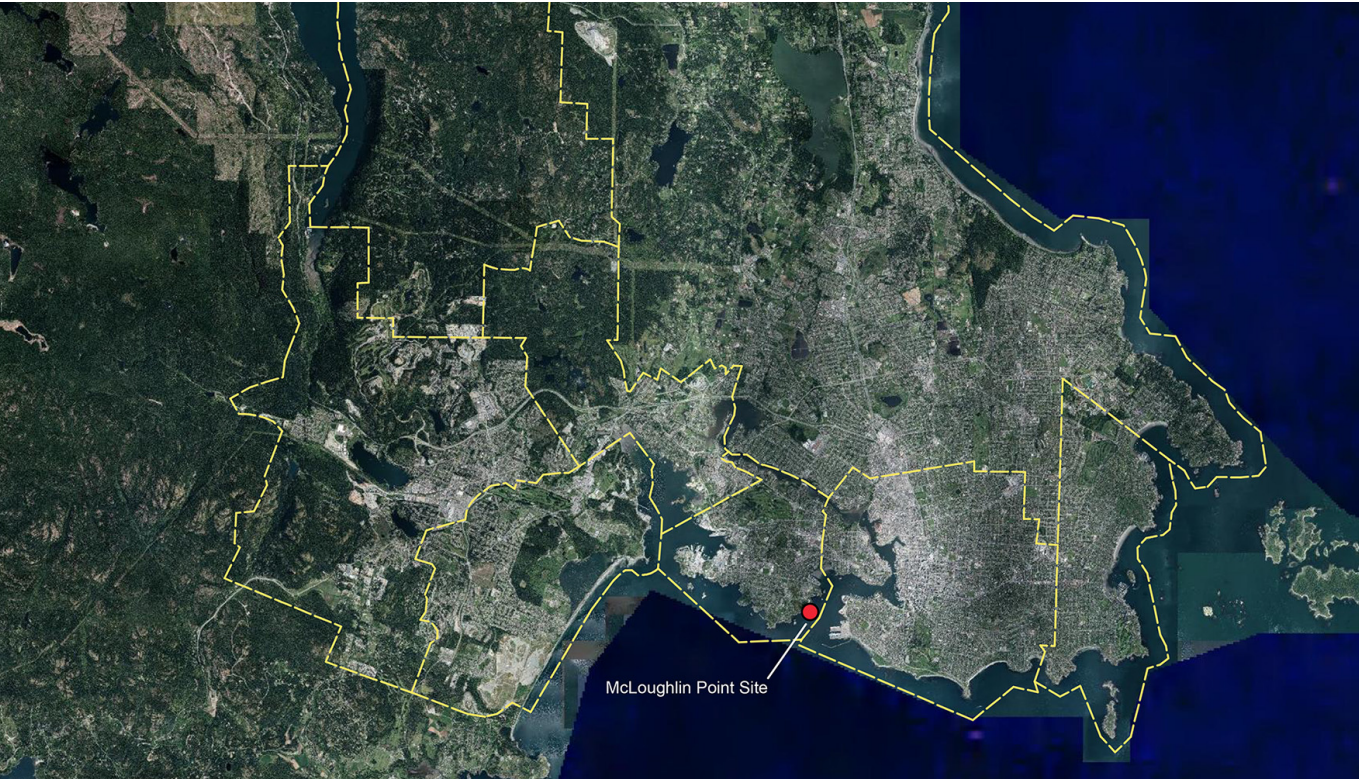


# McLoughlin Point

# Rezoning Application



Prepared for the  
**Corporation of the Township of Esquimalt**

On behalf of the  
**CRD**  
Making a difference...together

Revisions January 30, 2014 to the  
December 2013 submission

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## APPENDICES

Appendix A: Amended Bylaw 2805

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i) Host Community Impact 5-Year Agreement

ii) Community Impact Mitigation and Operating Agreement

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# INTRODUCTION & BACKGROUND

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## 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 "Seaterra 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 Seaterra'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.

Additional revisions to the application have been made since the amended application was submitted in late December 2013. This submission consolidates the revisions and are highlighted for the readers convenience.

## 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 five months, 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 Appendix A 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.

## ADDITIONAL REVISIONS – JANUARY 30, 2014

The revised application was submitted to the Township of Esquimalt on December 20th, 2013. The application has since been reviewed and comments received from Esquimalt staff, the Advisory Planning Commission and Township Council throughout January 2014. Those comments have led to further changes to the application to provide clarification or additional restrictions. This updated report has consolidated the additional changes and highlighted them in yellow.

A summary of the changes include:

1. Proposed zoning Bylaw 2805 setbacks has been amended to increase the distance of encroachment into the 7.5 m setback from a minimum of 1 metre to a minimum of 2 metres setback from the High Water Mark;



2. Proposed zoning Bylaw 2805 has been further amended to reduce the maximum percentage of building within the 7.5 metre setback from the High Water Mark from 15% coverage to a maximum of 10% coverage;
3. Further limit the extent of building encroachments into the 7.5 m setback from high water through the use of a Section 219 Restrictive Covenant that can more precisely identify encroachment points within the 7.5 metres of the High Water Mark; and
4. Clarification of zoning of the two small areas of land immediately adjacent to the shoreline, that was recently consolidated into the upland parent parcels. Zoning from M-4 Commercial to I-3 Industrial.





# REVISED APPLICATION & RELATIONSHIP TO PREVIOUS MATERIAL SUBMITTED

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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.
4. Additional revisions to Bylaw 2805, since December 20th, 2013 are:
  - i. Amend Section (8) (6) (a) of Bylaw 2805 to state that an encroachment into the 7.5 m setback is permissible to no more than 2 metres from the High Water Mark (see Appendix A, Bylaw 2805 highlighted in yellow);
  - ii. Amend Section (8) (6) (a) (i) to state that no encroachment shall be greater than 10% of the site area contained within the entire 7.5 m setback. The Bylaw previously stated 15% (See Appendix A, Bylaw 2805, highlighted in yellow); and
  - iii. Add Section 3 to Bylaw 2805 to rezone two very small pieces of land area that were recently consolidated with the upland parcels representing in total approximately 61.6 m<sup>2</sup>. The





amendment rezones the two small pieces of land from the water (M-4) zone to the upland industrial (I-3) zone (See Appendix A, Bylaw 2805, highlighted in yellow).

## 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 a minimum of 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 10% 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 75m<sup>2</sup> that is made available for students and the public to learn about waste water treatment.

## SECTION 219 COVENANT - ENCROACHMENT LIMITS

To provide further restrictions on the extent of building encroachment within 7.5 m of the High Water Mark, a Section 219 Covenant, in favour of the Township, will be executed, which specifically identifies the location and extent of building encroachments proposed by each of the three RFP proponents submitting proposals to design and build the treatment facility. Due to the procurement process (note: refer to the section on Procurement Process and Design Review below), full designs cannot be divulged by the proponents. However, each proponent has provided a site plan which shows the extent of encroachment within 7.5 m of the High Water Mark. The site plans have been surveyed and are attached as legal reference plans to the Section 219 Covenant. The covenant is more restrictive than the zoning bylaw (2805); no changes to the covenant can occur without the approval of the Township of Esquimalt.

The 219 Covenant showing the extent of encroachment by each of the three proponents is found in Appendix C attached.



## 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

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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, where appropriate.
  - 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 675m<sup>2</sup>, 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 4,500m<sup>2</sup>, 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 m<sup>2</sup>, 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”), 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.
- (c) 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.
- (d) 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 2.0 metres from the High Water Mark but only on satisfaction of all of the following conditions:
  - (i) such encroachment shall be no greater than 10% 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.”

**Lot 1 & 2 Plan VIP87823 Rezoned from M-4 to I-3**

3. That Bylaw no. 2050, cited as the “Zoning Bylaw, 1992, No. 2050” be amended by:

(1) changing the zoning destination of each of the following parcels, shown shaded in red on the plan attached as Schedule “A” to this bylaw, from Marine Navigation [M-4] Zone to McLoughlin Point Special Use [I-3] Zone:

(a) Lot 1 of the bed of Victoria Harbour Esquimalt District Plan VIP87823 PID 029-168-970

(b) Lot 2 of the bed of Victoria Harbour Esquimalt District Plan VIP87823 PID 029-168-988

(2) changing Schedule “A” Zoning Map, attached to and forming part of Zoning Bylaw, 1992, No. 2050 to show the changes in zoning classification effected by this bylaw.

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

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

A Public Hearing was held pursuant to Sections 890 and 892 of the *Local Government Act* on the 8<sup>th</sup> and 9<sup>th</sup> 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



**SCHEDULE "A" TO BYLAW NO. 2805  
LANDS REZONED FROM M-4 TO I-3**

PLAN VIP87823

Deposited in the Land Title Office at  
Victoria, B.C.  
this day of \_\_\_\_\_, 2013.

Registrar

SCALE: 1:500



The intended plot size of this plan is 432 mm in width  
by 560 mm in height (C size) when plotted at a  
scale of 1:500.

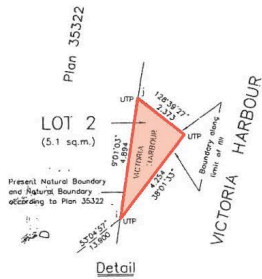
Integrated Survey Area #36, Esquimalt Municipality, NAD83(CSRS)  
Grid Bearings are derived from observations between  
Control Monuments 84H0144 & 84H0163  
This Plan Shows Ground Level Measured Distances.  
Prior to Computation of U.T.M. Co-ordinates  
Multiply by Combined Factor 0.9996117.

**Legend**

- Denotes Standard Iron Post (Type 5) Found
- Denotes Lead Plug (Type 3) Placed
- ⊙ Denotes Control Monument Found
- Denotes Monument Found
- UTP Denotes Unable To Post

This Plan lies within the  
Capital Regional District.

Line	Bearing	Distance
a-b	355°56'20"	6.050
b-c	327°22'45"	7.108
c-d	73°26'35"	3.818
d-e	142°10'25"	6.360
e-f	169°16'40"	6.915
g-h	280°28'15"	2.811
i-j	9°01'03"	4.894



Her Majesty The Queen in Right of Canada  
as represented by the Minister of Transport

Authorized Surveyor  
Witness

**Robert Prud'homme**  
Superintendent, Property Services  
Suite 620, 800 Burrard Street  
Vancouver, BC V6Z 2J8  
Address

John Matherwell & Associates  
B.C. Land Surveyors  
Victoria, B.C.  
File : 06-68

I, John L. Matherwell, a British Columbia Land Surveyor,  
of Victoria, in British Columbia, certify that I was present  
at and personally supervised the survey represented by  
this plan and that the survey and plan are correct.  
The survey was completed on the 30th day of Nov., 2012  
The plan was completed and checked, and the checklist  
filed under ECP #143718, on the 3rd day of Dec., 2012.

*John L. Matherwell*  
B.C.L.S.

Original

# 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 bonus 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:

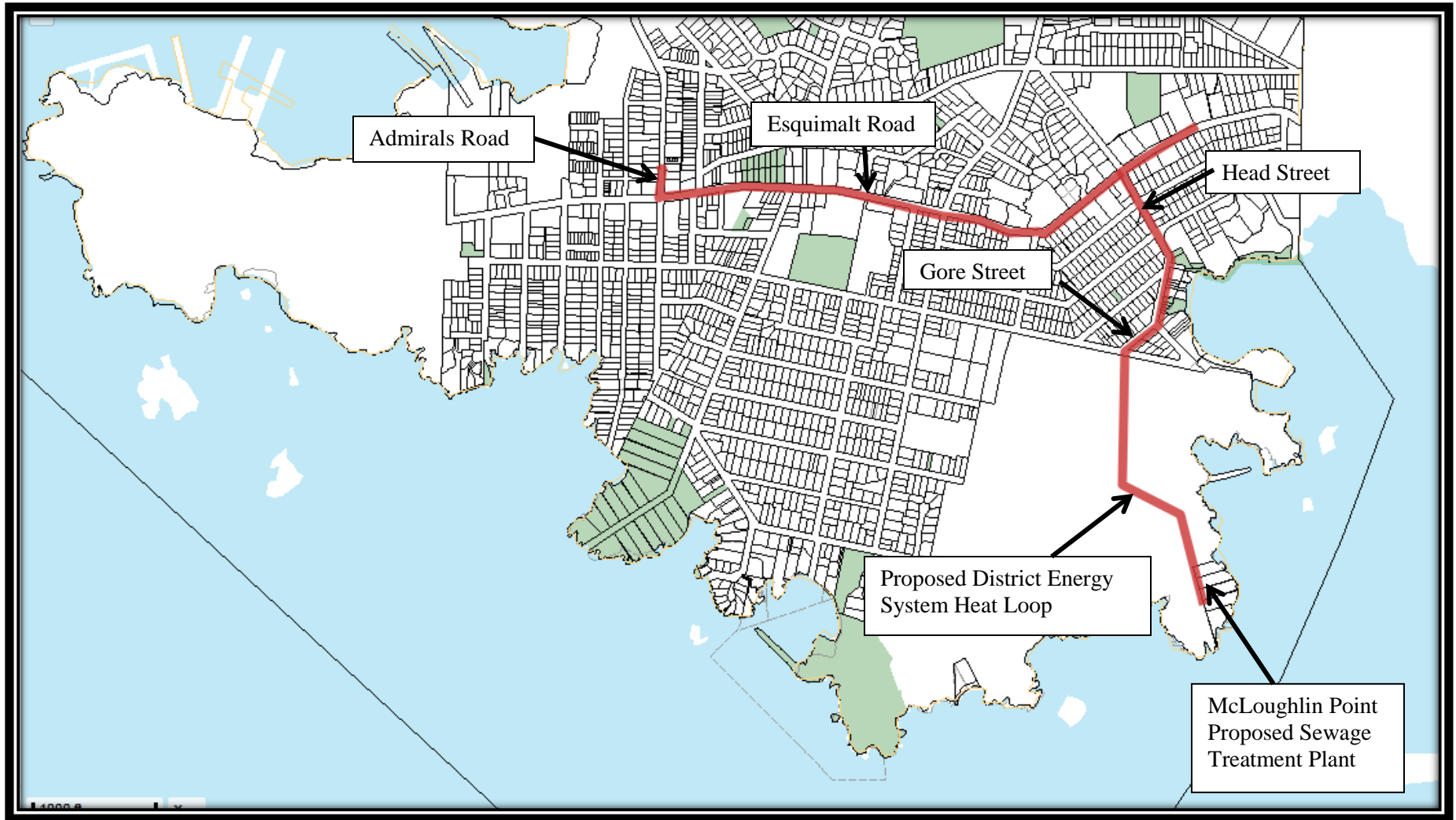
**"4.8 Barging, Access Roads; Laydown and Staging Areas**

(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



Proposed Route of the Esquimalt District Energy System Heat Loop  
November 12, 2013

NOTE: Routing of pipe to Esquimalt Road may change to correspond to the siting of other underground utilities associated with the Wastewater Treatment System.



**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 31<sup>st</sup> 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: )

# APPENDIX C:

219 COVENANT



## TERMS OF INSTRUMENT – PART 2

### RECITALS

- A. The Transferor is the registered owner in fee-simple of those lands described in Item #2 of Form C, in the Township of Esquimalt in Province of British Columbia, namely (the “Lands”).
- B. The Transferee is the Township of Esquimalt (“Transferee” or “Township”).
- C. The Transferor has submitted an application to the Township to rezone the Lands to permit a wastewater treatment plant to service the Capital Regional District and for other uses, further to Zoning Bylaw, 1992, No. 2050, Amendment Bylaw [No. 208], 2013 No. 2805 (the “Rezoning Bylaw”) and has made certain representations regarding anticipated setbacks from the high water mark despite requesting less stringent provisions be included in the Rezoning Bylaw to accommodate the designs of three (3) competing proponents.
- D. Acknowledging that it is in the public interest that the location of the development of the Lands be limited, the Transferor has volunteered and wishes to grant this covenant to the Transferee, and the Transferee has accepted this covenant and required its registration as a condition of rezoning (the “Agreement”).
- E. Section 219 of the *Land Title Act* gives authority for a covenant and indemnity, whether of a negative or positive nature, to be registered against the Lands and granted in favour of the Transferee with provisions:
- in respect of the use of land or the use of a building on or to be erected on land;
  - that land is to be built on in accordance with the covenant;
  - that land is not to be built on or subdivided except in accordance with the covenant;
  - that land is not to be used, built on or subdivided;
  - that parcels of land designated in the covenant and registered under one or more indefeasible titles are not to be sold or otherwise transferred separately; and
  - that land or a specified amenity in relation to it be protected, preserved, conserved, maintained, enhanced, restored or kept in its natural or existing state in accordance with the covenant and to the extent provided in the covenant..

**NOW THEREFORE** in consideration of the payment of the sum of \$10.00 by the Transferee to the Transferor (receipt and sufficiency acknowledged), the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the parties covenant and agree as to the following, including under Section 219 of the *Land Title Act*:

### Restrictions and Requirements

1. Notwithstanding broader or greater uses, density or other regulations in the Transferee’s Zoning Bylaw, and in particular less stringent setbacks and height regulations, the Transferor covenants and agrees that a Building must not be built upon the Lands in a manner that encroaches within a 7.5 metre setback from the High Water Mark for the entirety of the Lands, except:

- (a) only to the extent that a Building related to a wastewater treatment plant encroaches into the covenant areas as shown on one, and only one, of Plan EPP28150, Plan EPP28151, or Plan EPP28152, as follows:
- (i) The areas shown in thick black outline and labelled:
1. Covenant Part Lot A (Area 0.4 m<sup>2</sup>), and
  2. Covenant Part Lot E (Area 4.3 m<sup>2</sup>),
- both as shown on reference Plan EPP38150 (Control Number 139-119-4903) prepared by Rory O'Connell and dated January 31, 2014, a reduced copy of which is attached as Schedule "A"; or
- (ii) The areas shown in thick black outline and labelled:
1. Covenant Area A Part Lot C (Area 58.6 m<sup>2</sup>),
  2. Covenant Area B Part Lot E (Area 5.0 m<sup>2</sup>),
  3. Covenant Area C Part Lot E (Area 29.0 m<sup>2</sup>), and
  4. Covenant Area D Part Lot E (Area 27.7 m<sup>2</sup>),
- all as shown on reference Plan EPP38151 (Control Number 139-119-5049) prepared by Rory O'Connell and dated January 31, 2014, a reduced copy of which is attached as Schedule "B"; or
- (iii) The areas shown in thick black outline and labelled:
1. Covenant Part Lot A (Area 0.2 m<sup>2</sup>),
  2. Covenant Part Lot B (Area 45.7 m<sup>2</sup>),
  3. Covenant Part Lot D (Area 21.2 m<sup>2</sup>), and
  4. Covenant Part Lot E (Area 42.5 m<sup>2</sup>),
- all as shown on reference Plan EPP38152 (Control Number 139-119-5193) prepared by Rory O'Connell and dated January 31, 2014, a reduced copy of which is attached as Schedule "C";
- (b) for seawalls and for public walkways, including a public observation point and similar structures and appurtenances;
- (c) for temporary boat moorage purposes related to construction of a Wastewater Treatment Plant on the Lands including 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,

- (d) for a dock or other similar watercraft landing structure, including related structures and appurtenances,
  - (e) for public open space, assembly use and landscaping, and
  - (f) for hard exterior surface areas such as parking or similar structures, as permitted by the Transferee's bylaws.
2. The Transferor and Transferee agree that this Agreement shall be interpreted in accordance with the definitions in the Transferee's Zoning Bylaw, as of the date of execution of this section 219 covenant.

### **Indemnity and Release**

3. The Transferor covenants and agrees to indemnify and save harmless the Transferee from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) whatsoever, in law or equity, which anyone has or may have against the Transferee or which the Transferee incurs as a result of any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the restrictions or requirements of this Agreement or the breach of any covenant in this Agreement.
4. The Transferor releases and forever discharges the Transferee of and from any claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) whatsoever, in law or equity, which the Transferor can or may have against the Transferee for any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the restrictions or requirements of this Agreement or the breach of any covenant in this Agreement.

### **Registration**

5. The restrictions and requirements in this Agreement are covenants running with the Lands in favour of the Transferee and intended to be perpetual, and shall continue to bind all of the Lands when subdivided.
6. At the Transferor's sole cost, the Transferor will register this Agreement and must do everything necessary to secure priority of registration and interest for this Agreement over all encumbrances of a financial nature.
7. The Transferor agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement. However, the Transferee acknowledges that if the Rezoning Bylaw is not adopted, in its sole discretion, then this Agreement shall be discharged from the Lands.

### **General**

8. The Transferor covenants and agrees for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions set out in this Agreement.

9. It is mutually understood, acknowledged and agreed by the parties that the Transferee has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Transferor other than those contained in this Agreement.
10. Nothing contained or implied in this Agreement:
  - (a) prejudices or affects the rights, powers or discretion of the Transferee in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if the Agreement had not been executed and delivered by the Transferor;
  - (b) imposes any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement or the breach of any provision in this Agreement; or
  - (c) imposes any public law duty, whether arising from the principles of procedural fairness or the rules of natural justice, on the Transferee with respect to its exercise of any right or remedy expressly provided in this Agreement or at law or in equity.
11. The Transferor covenants and agrees that the Transferee may withhold development permits, building permits and other approvals related to the development of the Lands or construction of a Building on the Lands as necessary to ensure compliance with the covenants in this Agreement, and that the issuance of a permit or approval does not act as a representation or warranty by the Transferee that the covenants of this Agreement have been satisfied.
12. No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.
13. The waiver by a party of any breach of this Agreement or 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, and no waiver is effective unless it is written and signed by both parties.
14. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
15. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

### Priority

16. \_\_\_\_\_ (the "Chargeholder") is the registered holder of a charge by way of \_\_\_\_\_ against the Lands, registered under No. \_\_\_\_\_ (the "Charge"),

and agrees with the Transferee, in consideration of the sum of Ten Dollars (\$10.00) paid by the Transferee to the Chargeholder (receipt and sufficiency acknowledged), that the Agreement shall be an encumbrance upon the Lands in priority to the Charge in the same manner and to the same effect as if the Agreement had been dated and registered prior to the Charge.

The Transferor and Transferee acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached.

**SCHEDULE "A"**

**REFERENCE PLAN OF PART OF LOTS A AND E, SECTION 11, ESQUIMALT DISTRICT, PLAN 35322 FOR COVENANT PURPOSES**  
Pursuant to Section 99(1)(e) of the Land Title Act

PLAN EPP38150

BCGS 92B.044  
15 7.5 0 15 30 45 60

All distances are in metres and decimals thereof.

The intended plot size of this plan is 432mm in width by 560mm in height (C size) when plotted at a scale of 1:750.

**LEGEND**

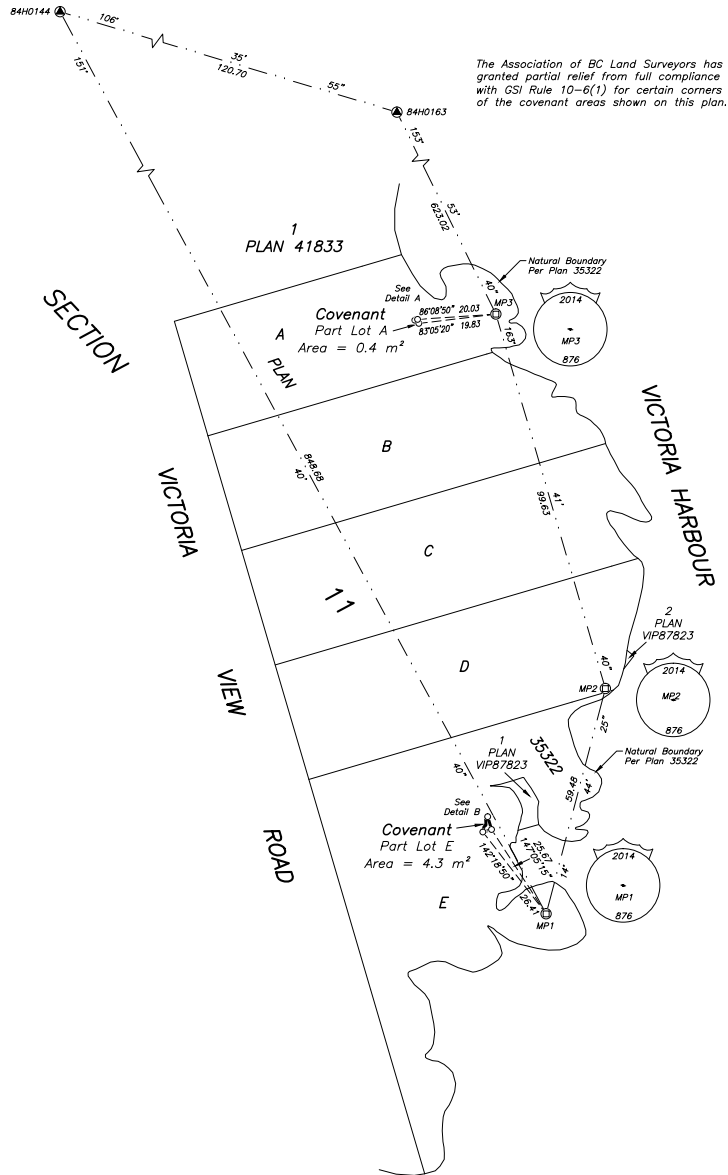
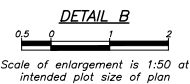
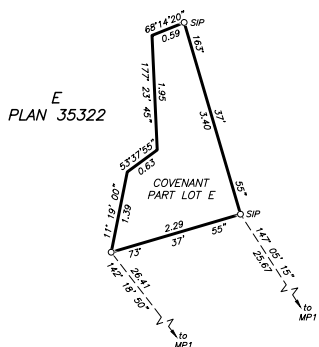
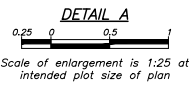
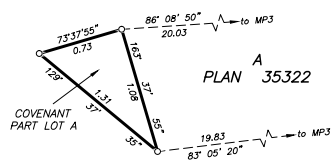
Integrated Survey Area No. 17, City of Victoria, NAD83 (CSRS).

Grid bearings are derived from observations between geodetic control monuments 84H0144 and 84H0163.

This plan shows horizontal ground-level distances unless otherwise specified. To compute grid distances, multiply ground-level distances by the average combined factor of 0.9996119 which has been derived from geodetic control monuments 84H0144 (GCM #153767) and 84H0163 (GCM #99777).

- ⊙ denotes control monument found
- ⊙ denotes standard rock post placed
- denotes standard iron post placed
- SIP denotes short IP drilled in rock

BOOK OF REFERENCE	
PART OF	AREA
Lot A, Plan 35322	0.4 m <sup>2</sup>
Lot E, Plan 35322	4.3 m <sup>2</sup>



The Association of BC Land Surveyors has granted partial relief from full compliance with GSI Rule 10-6(1) for certain corners of the covenant areas shown on this plan.

This plan lies within the Capital Regional District

The field survey represented by this plan was completed on the 27th day of January, 2014.  
Rory C. O'Connell, BCLS #876

ECR#157563

S:\Projects\2014\01\01\101520064\02\Map\11020064.ecr\11020064

**FOCUS**  
Focus Surveys (BC) Limited Partnership  
333 Cordova Ave, Victoria, BC V8Z 1T2  
PROJECT REF./DRAWING NO.  
010040904-ENCV01-RO0

**SCHEDULE "B"**

**REFERENCE PLAN OF PART OF LOT C AND PARTS OF LOT E,  
SECTION 11, ESQUIMALT DISTRICT, PLAN 35322 FOR  
COVENANT PURPOSES**

PLAN EPP38151

Pursuant to Section 99(1)(e) of the Land Title Act

BCGS 92B.044



All distances are in metres and decimals thereof.

The intended plot size of this plan is 432mm in width by 560mm in height (C size) when plotted at a scale of 1:750.

**LEGEND**

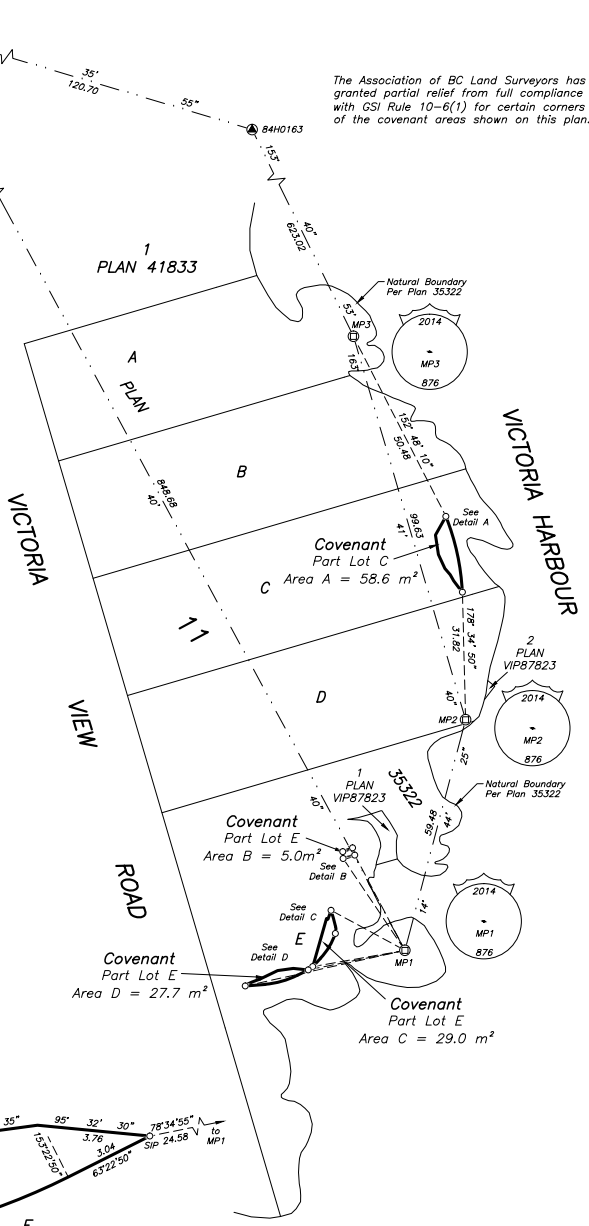
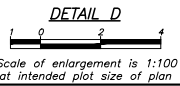
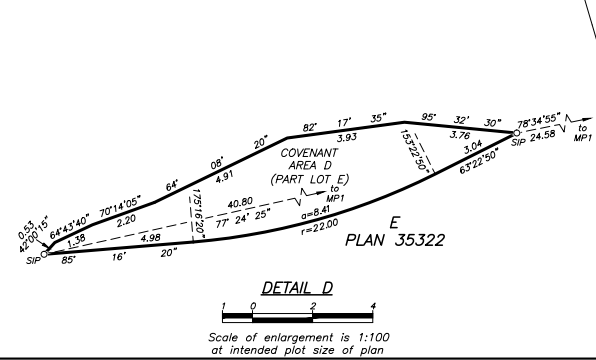
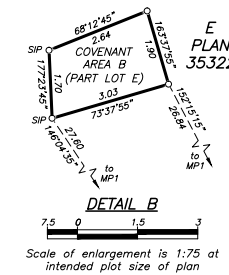
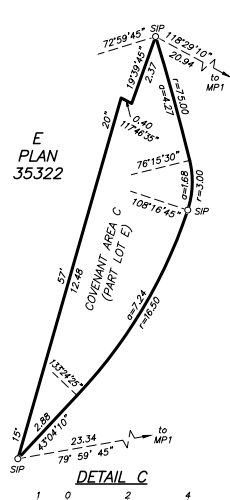
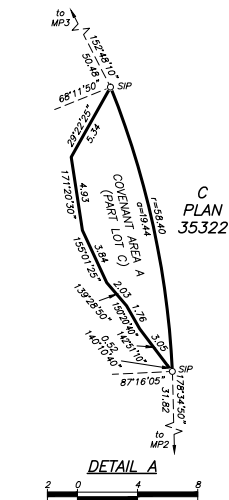
Integrated Survey Area No. 17, City of Victoria, NAD83 (CSRS).

Grid bearings are derived from observations between geodetic control monuments 84H0144 and 84H0163.

This plan shows horizontal ground-level distances unless otherwise specified. To compute grid distances, multiply ground-level distances by the average combined factor of 0.9996119 which has been derived from geodetic control monuments 84H0144 (GCM #153767) and 84H0163 (GCM #9977).

- ⊙ denotes control monument found
- ⊙ denotes standard rock post placed
- denotes standard iron post placed
- SIP denotes short IP drilled in rock

BOOK OF REFERENCE	
PART OF	AREA
Lot C, Plan 35322 (AREA A)	58.6 m <sup>2</sup>
Lot E, Plan 35322 (AREA B)	5.0 m <sup>2</sup>
Lot E, Plan 35322 (AREA C)	29.0 m <sup>2</sup>
Lot E, Plan 35322 (AREA D)	27.7 m <sup>2</sup>



The Association of BC Land Surveyors has granted partial relief from full compliance with GSI Rule 10-6(1) for certain corners of the covenant areas shown on this plan.

This plan lies within the Capital Regional District

The field survey represented by this plan was completed on the 27th day of January, 2014.  
Rory C. O'Connell, BCLS #876

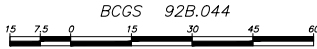
ECR#157565

**FOCUS**  
Focus Surveys (BC) Limited Partnership  
57 Cassiar Ave, Victoria, BC V8Z 1T3  
PROJECT REF: FOCUSNO. No.  
010040904-BNCOV02-ROO

**SCHEDULE "C"**

**REFERENCE PLAN OF PART OF LOTS A, B, D AND E, SECTION 11, ESQUIMALT DISTRICT, PLAN 35322 FOR COVENANT PURPOSES**  
Pursuant to Section 99(1)(e) of the Land Title Act

PLAN EPP38152



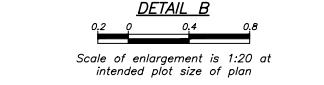
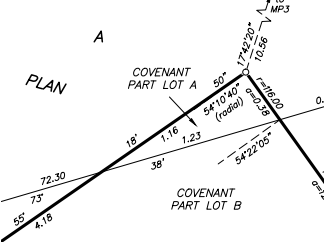
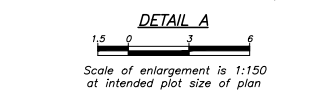
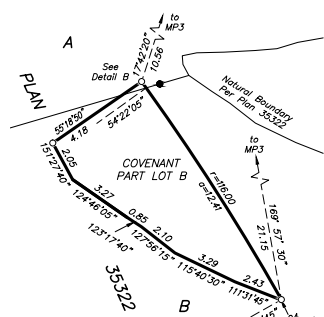
All distances are in metres and decimals thereof.  
The intended plot size of this plan is 432mm in width by 560mm in height (C size) when plotted at a scale of 1:750.

**LEGEND**

Integrated Survey Area No. 17, City of Victoria, NAD83 (CSRS).  
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- ⊙ denotes control monument found
- ⊙ denotes standard iron post found
- ⊙ denotes standard rock post placed
- denotes standard iron post placed

BOOK OF REFERENCE	
PART OF	AREA
Lot A, Plan 35322	0.2 m <sup>2</sup>
Lot B, Plan 35322	45.7 m <sup>2</sup>
Lot D, Plan 35322	21.2 m <sup>2</sup>
Lot E, Plan 35322	42.5 m <sup>2</sup>



The Association of BC Land Surveyors has granted partial relief from full compliance with GSI Rule 10-6(1) for certain corners of the covenant areas shown on this plan.

**FOCUS**  
Focus Surveys (BC) Limited Partnership  
57 Cordova Ave, Victoria, BC V8Z 1T3  
PROJECT REFERENCE No. 010040904-BNCV03-R00

This plan lies within the Capital Regional District

The field survey represented by this plan was completed on the 27th day of January, 2014.  
Rory C. O'Connell, BCLS #876

ECR#157568





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