

HOST COMMUNITY IMPACT 5-YEAR AGREEMENT

THIS AGREEMENT made this day of , 2013.

BETWEEN:

CAPITAL REGIONAL DISTRICT

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

(the "**CRD**")

OF THE FIRST PART

AND:

THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT

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

(the "**Township**")

OF THE SECOND PART

W H E R E A S:

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

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

(the "**Project Lands**")

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

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

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

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

1.0 Term

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

2.0 Construction Method and Standards

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

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

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

(ii) Traffic Management Plan

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

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

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

(iii) Monitoring and Reporting of Traffic

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

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

(iv) CRD Contact

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

(v) Exception

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

(vi) Enforcement

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

2.2 LEED® Standard for Operations and Maintenance Building

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

2.3 Odour-Reducing Improvement

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

2.4 Design Review Process

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

- (iii) The CRD recognizes that the Project Lands are designated a development permit area in accordance with the *Local Government Act* and therefore the final decision on design and permit issuance rests with the Township's Council (subject however to appeals, judicial review and the authority of the Minister of Environment under the *Environmental Management Act*). The CRD will bring forward the final design as part of its development permit application for consideration by Township Council, but is free to seek input from Council in advance.

2.5 Restoration of Road Surfaces

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

3.0 Resource Recovery System

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

itself on or before a date that is nine (9) months from receipt of a revised analysis of the financial viability of the Heat Loop prepared by Kerr Wood Leidal that it wishes the Heat Loop to be constructed and transferred to the Township, the parties shall be under no further obligation to each other in relation to the Heat Loop, it being acknowledged and agreed that the notice under this section is a condition precedent to the obligations under this Section 3.0. The Township agrees that it shall expeditiously cause the review of the proposed Heat Loop Studies, with a view to determining whether it wishes to assume operational and financial responsibility for the operation and administration of the Heat Loop as a municipal service, and it may decide whether to proceed with acceptance of the Heat Loop or not, in its sole and unfettered discretion.

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

reimbursement in the construction budget relating to the Heat Loop to reimburse the Township's actual costs relating to:

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

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

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

4.0 Water System Upgrades

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

5.0 Conduits

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

6.0 Additional Traffic Integration Improvements

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

7.0 Emergency and Public Seasonal Access

In addition to the boat moorage identified in section 55(2)(c) of the Zoning Bylaw, the CRD shall construct a dock or other similar watercraft landing structure to permit emergency access and may include CRD employee access, and shall make reasonable efforts to provide for at least seasonal public use to be made of the dock, subject to Transport Canada approval, Department of Fisheries and Oceans Canada approval, and provided that the installation of a dock or similar

facility does not trigger a requirement for an environmental impact assessment, other than in connection with the emergency and CRD employee access.

8.0 Building Permit Fees

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

9.0 Amenity Conditions

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

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

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

the public walkway is 3 metres in width, and will only reduce the walkway to 1.5 metres in width where necessary because of physical constraints.

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

10.0 Satisfaction of Host Community Conditions

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

11.0 Dispute Resolution

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

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

mediator appointed jointly by the parties.

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

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

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

12.0 General Provisions

(a) No Fettering of Discretion

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

(b) Modification

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

(c) Entire Agreement

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

(d) No Assignment

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

(e) Applicable Law

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

(f) Notice

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

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

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

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

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

(g) Waiver

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

(h) Severability

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

(i) Interpretation

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

(j) Counterparts

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

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

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

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

Schedule "A"

Addendum to specify Barging in Schedule 5

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

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

"4.8 Barging, Access Roads; Laydown and Staging Areas

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

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

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

Schedule "B"

HEAT LOOP