

**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 )  
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 \_\_\_\_\_ )  
 Name: )  
 )  
 \_\_\_\_\_ )  
 Name: )

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