

TRANSFER AGREEMENT

THIS AGREEMENT dated for reference this 23rd day of November, 2018.

BETWEEN:

PROGRESSIVE CONSTRUCTION LTD. (Inc. No. 74269)
201-5631 No. 3 Road
Richmond, B.C. V6X 2C7
(the "**Progressive**")

OF THE FIRST PART

AND:

CORPORATION OF THE TOWNSHIP OF ESQUIMALT
1229 Esquimalt Road
Esquimalt, BC V9A 3P1
(the "**Township**")

OF THE SECOND PART

WHEREAS:

- A. In 1987, Progressive was the owner in fee simple of:
Lot 16, Section 2, Esquimalt District, Plan 4038, Except Part in Plan 15740; and
Lot 17, Section 2, Esquimalt District, Plan 4038, Except Part in Plan 20293.
(collectively the "**Parent Parcels**");
- B. In 1987, Progressive subdivided the Parent Parcels through the deposit in the Land Title Registry of subdivision plan 45523, entitled Plan of Subdivision of Lot 16, Except That Part in Plan 15740, and Lot 17, Except that Part in Plan 20293, Both in Section 2, Esquimalt District, Plan 4038 (the "**Subdivision Plan**");
- C. The Subdivision Plan shows nineteen new lots being created, including:
Lot 18, Section 2, Esquimalt District, Plan 45523; and
Lot 19, Section 2, Esquimalt District, Plan 45523
(collectively the "**Lands**");
- D. As part of the subdivision, Progressive was to transfer the Lands to the Township;

- E. At the time the Subdivision Plan was registered, the Lands were not recorded as being subdivided from the Parent Parcel;
- F. The Lands were never transferred to the Township;
- G. The Parties wish to effect the transfer of the Lands to the Township, on the terms and conditions contained in this Agreement.

NOW THEREFORE in consideration of one dollar (\$1.00), the covenants and agreements contained in this Agreement, and other good and valuable consideration, the sufficiency of which is hereby affirmed, the parties agree as follows:

1.0 DEFINITIONS

- 1.1 In this Agreement the following terms shall have the following meanings:

"Agreement" means this Agreement, including its Recitals and Schedules.

"Contaminants" means any explosives, radioactive materials, asbestos materials, urea formaldehyde, chlorobiphenols, hydrocarbon contaminates, underground or above ground tanks, pollutants, contaminants, hazards, corrosive or toxic substances, special waste, hazardous waste or waste of any kind or any other substance the storage, manufacture, disposal, handling, treatment, generation, use, transport, remediation or release into the environment of which is prohibited, controlled, regulated or licensed under Environmental Laws.

"Environmental Laws" means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, criteria, permits, codes of practice, and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Lands, now or hereafter in force relating in any way to the environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, product liability, or transportation of dangerous goods, including the principles of common law and equity.

"Improvements" means all buildings, improvements, structures and fixtures attached to and forming part of the Lands.

"Material Loss" means any loss or damage to the Improvements occurring prior to the passing of risk which cannot be substantially repaired or replaced within sixty (60) days.

"Permitted Encumbrances" means all exceptions, reservations, legal notations, liens, charges, and encumbrances listed in attached Schedule "A".

"Property" means the Lands and Improvements.

2.0 TRANSFER OF THE PROPERTY

- 2.1 Progressive agrees to transfer the Property to the Township, on the terms and conditions contained in this Agreement, a good and marketable freehold title to the Property, free and clear of all liens, charges and encumbrances, except for the Permitted Encumbrances.
- 2.2 In addition to consideration of \$1.00, the receipt and sufficiency of which is hereby acknowledged, the Township shall pay to Progressive amounts it has paid for property taxes for the Property, in the amount of two hundred and fifty six dollars and eighty eight cents (\$256.88).
- 2.3 The payment described in section 2.2 shall occur once the transfer of the Property has received final registration in the Land Title Office.
- 2.4 The transfer described in section 2.1 shall occur on or before December 20, 2018 (the "**Transfer Date**").
- 2.5 After the transfer occurs, the Township agrees to indemnify and save harmless Progressive, its officers, employees, servants, agents and contractors of and from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees whatsoever which anyone has or may have against Progressive or which Progressive incurs as a result of the transfer of the Property to the Township (collectively "**Claims**"), except such Claims resulting from the negligence of Progressive, its officers, employees, servants, agents and contractors.

This section 2.5 shall survive the transfer of the Property contemplated under this Agreement.

- 2.6 The Township also agrees to indemnify and save harmless Progressive against any payment for property taxes for the Property that Progressive makes after the transfer of the Property to the Township.

3.0 REPRESENTATIONS AND WARRANTIES

3.1 Progressive's Representations and Warranties

Progressive represents and warrants to the Township that as of the date of this Agreement and as of the date of transfer of the Lands:

- (a) Progressive is not a non-resident of Canada within the meaning of the *Income Tax Act (Canada)*;
- (b) Progressive is the registered and beneficial owner of the Property, and has good and marketable title to the Property free and clear of all liens, charges, and encumbrances except for the Permitted Encumbrances;

- (c) no lien under the *Builders Lien Act* exists or is claimed with respect to the Property nor any part of the Property;
- (d) there are no actions, proceedings, investigations or claims, pending or to Progressive's knowledge threatened, that would interfere with the use and enjoyment of the Property or that if decided adversely could materially affect the ability of Progressive to comply with its obligations hereunder or that relate to the presence of Contaminants in, on or migrating from the Property;
- (e) Progressive has fully disclosed to the Township any environmental reports, site assessments, audits, studies, permits, licences and records in the possession or control of Progressive with respect to the Property and relating to the Contaminants or Environmental Laws and Progressive has not obtained or performed any environmental reports, site assessments, audits or other studies with respect to the Property except as disclosed in writing to the Township;
- (f) Progressive is a body corporate duly incorporated and validly existing under the laws of British Columbia and duly qualified to purchase and own the Property and Progressive has full power, authority and capacity to enter into this Agreement and carry out the transactions contemplated herein, and any action required to allow Progressive to carry out the transactions contemplated hereby have been duly and validly authorized by all necessary corporate proceedings.

3.2 Survival of Progressive's Representations and Warranties

The representations and warranties contained in section 3.1 shall survive the Transfer of the Property and shall continue in full force and effect for the benefit of the Township after the transfer notwithstanding any independent inquiry or investigation by the Township.

4.0 **CONDITIONS**

4.1 Township's Conditions Precedent

The transfer of the Property is subject to the following conditions precedent being in effect or satisfied within the time herein provided:

- (a) on or before December 5, 2018 approval of the Council of the Township of the transfer of the Property on the terms and conditions set out in this Agreement;

- 4.2 In consideration of Ten (\$10.00) Dollars non-refundable paid by the Township to Progressive and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by Progressive, Progressive agrees not to revoke its acceptance of the terms of this Agreement while this Agreement

remains subject to any of the conditions precedent in section 4.1. The parties agree that this Agreement will become an unconditional contract for the transfer of the Property upon the satisfaction or waiver of all of the conditions precedent in section 4.1.

4.3 Waiver

The conditions precedent contained in section 4.1 are necessary preconditions of this Agreement and may not be waived by either party. If the conditions in section 4.1 are not satisfied within the time therein provided, this Agreement shall be void.

5.0 **RISK/POSSESSION**

5.1 The Passing of Risk

The Property is at the risk of Progressive until the Transfer Date.

5.2 Possession

The Township shall have the right to vacant possession of the Property on the Transfer Date, subject only to:

- (a) all exceptions, reservations, provisos contained in the original Crown grant; and
- (b) the Permitted Encumbrances referred to in section 1.1 above.

6.0 **CLOSING PROCEDURE**

6.1 The transfer of the Property will occur on the Transfer Date.

6.2 Progressive's Documents

On or before the Transfer Date, Progressive's solicitor will prepare the following:

- (a) a certificate regarding GST registration and status; and
- (b) such other documents and assurances as may be reasonably required by Progressive to give full effect to the intent and meaning of this Agreement.

6.3 Township's Documents

On or before the Transfer Date, the Township's solicitor will prepare the following:

- (a) a Form A Freehold Transfer for each of the two parcels making up the Property (the "Transfer");
- (b) a certificate regarding GST registration and status; and

- (c) such other documents and assurances as may be reasonably required by the Township to give full effect to the intent and meaning of this Agreement.

6.4 Delivery of Transfer Documents

The closing documents referred to in section 6.2(a) will be delivered to the Township's solicitors at least 3 days before the Transfer Date.

The closing documents referred to in section 6.3(a) to (b) will be delivered to Progressive's solicitors at least 5 days before the Transfer Date. The executed Transfer shall be returned to the Township's solicitors at least 2 days before the Transfer Date.

6.5 Registration

The Township will cause the Township's solicitors to file the Transfer in the appropriate Land Title Office promptly following the receipt by the Township's solicitors of the executed Transfer and documents and assurances referred to in section 6.2.

6.6 Election

If on the Transfer Date any of the representations or warranties made by Progressive are untrue (in any material respect) or Progressive is in default in any material respect under any of the covenants and agreements to be observed or performed by Progressive under this Agreement, the Township may elect not to complete the transfer of the Property under this Agreement or to complete the transfer of the Property under this Agreement, in either case without prejudice to any rights or remedies the Township may have in respect of the Progressive's breach or default.

7.0 **MISCELLANEOUS**

7.1 Time

Time is of the essence of this Agreement and the transactions contemplated in this Agreement notwithstanding the extension of any of the dates under this Agreement.

7.2 Relationship of the Parties

Nothing in this Agreement shall be construed so as to make the Township a partner of Progressive, and Progressive shall indemnify and save the Township harmless from any and all costs, expenses, damages, claims, or liabilities which may be incurred with respect to the Property before the Transfer Date which the Township is not obligated to assume under this Agreement, and this provision shall survive the Transfer Date or the termination of this Agreement.

7.3 Notices

- (a) Each notice sent pursuant to this Agreement ("**Notice**") shall be in writing and shall be sent to the relevant Party at the relevant address, facsimile number or e-mail address set out below. Each such Notice may be sent by registered mail, by commercial courier, by facsimile transmission, or by electronic mail.
- (b) The Contact Information for the parties is:

Progressive Construction Ltd.	Corporation of the Township of Esquimalt
201-5631 No. 3 Road Richmond, BC V6X 2C7	1229 Esquimalt Road, Esquimalt, BC V9A 3P1
Attention: Victor Farmer	Attention: Corporate Officer
vicfarmer@telus.net	Corporate.services@esquimalt.ca

- (c) Each Notice sent by electronic mail ("E-Mail Notice") must show the e-mail address of the sender, the name or e-mail address of the recipient, and the date and time of transmission, must be fully accessible by the recipient, and unless receipt is acknowledged, must be followed within twenty-four (24) hours by a true copy of such Notice, including all addressing and transmission details, delivered (including by commercial courier) or sent by facsimile transmission.
- (d) Subject to S. 7.3(f) through (h) each Notice shall be deemed to have been given or made at the following times:
 - (i) if delivered to the address (including by commercial courier), on the day the Notice is delivered;
 - (ii) if sent by registered mail, seven (7) days following the date of such mailing by sender;
 - (iii) if sent by facsimile transmission, on the date the Notice is sent by facsimile transmission; or
 - (iv) if sent by electronic mail, on the date the E-Mail Notice is sent electronically by e-mail by the sender.

- (e) If a Notice is delivered, sent by facsimile transmission or sent by electronic mail after 4:00 p.m., or if the date of deemed receipt of a Notice falls upon a day that is not a Business Day, then the Notice shall be deemed to have been given or made on the next Business Day following.
- (f) Notice given by facsimile transmission in accordance with the terms of this Section 7.3 will only be deemed to be received by the recipient if the sender's facsimile machine generates written confirmation indicating that the facsimile transmission was sent.
- (g) If normal mail service, facsimile or electronic mail is interrupted by strike, slow down, force majeure or other cause beyond the control of the parties, 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 shall utilize any other such services which have not been so interrupted or shall personally deliver such Notice in order to ensure prompt receipt thereof.
- (h) Each Party shall provide Notice to the other Party of any change of address, facsimile number, or e-mail address of such Party within a reasonable time of such change.

7.4 Further Assurances

Each of the parties shall, at the expense of the other party, execute and deliver all such further documents and do such further acts and things as the other party may reasonably request from time to time to give full effect to this Agreement.

7.5 Assignment

The Town may assign its rights under this Agreement with the prior written consent of Progressive, not to be unreasonably withheld.

7.6 Non-merger

None of the provisions of this Agreement shall merge in the transfer of the Property or any other document delivered on the Transfer Date, and the provisions of this Agreement shall survive the Transfer Date.

7.7 Payment of Fees

Each party shall pay its own legal fees. The Township shall be responsible for all registration fees payable in connection with registration of the transfer of the Property. Progressive shall be responsible for the costs of clearing title of any Encumbrances other than Permitted Encumbrances.

7.8 Goods and Services Tax

The Township is registered for GST purposes, and will self-assess any GST payable as a result of the Transfer and account directly to the Canada Revenue Agency therefor.

7.9 Binding Effect

This Agreement shall enure to the benefit of and be binding upon the parties, their respective heirs, executors, administrators, and other legal representatives and, to the extent permitted in this Agreement, their respective successors and assigns.

7.10 No Derogation from Statutory Powers

Nothing in this Agreement shall be interpreted as prejudicing or impairing the Township in the exercise of any statutory legislative powers under the *Local Government Act*, the *Community Charter* or any other enactment all of which may be executed as if this Agreement had not been exercised. Provided that the foregoing shall not restrict or limit the rights and remedies of Progressive resulting or arising from a breach or non-performance of the terms of this Agreement by the Township.

7.11 Extended Meanings

Words importing the singular number include the plural and vice versa, and words importing the masculine gender include the feminine and neuter genders.

7.12 Headings

The headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

7.13 Articles

For the purposes of this Agreement, except as otherwise expressly provided herein all references in this Agreement to an article, section, subsection, paragraph, or other subdivision, or to a schedule, is to the article, section, subsection, paragraph or other subdivision of or schedule to this Agreement unless otherwise specifically stated.

7.14 Applicable Law

This Agreement shall be interpreted in accordance with the laws of British Columbia.

7.15 Waiver

Except as may be specifically agreed in writing, no action or failure to act by a party to this Agreement shall constitute a waiver of any right or duty afforded any of them under this Agreement nor shall any such action or failure to act constitute an approval of or acquiescence in any breach of this Agreement.

7.16 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter of the Agreement and contains all of the representations, warranties, covenants and agreements of the respective parties, and may not be amended or modified except by an instrument in writing executed by all parties. This Agreement supersedes all prior agreements, memoranda, and negotiations between the parties.

7.17 Counterparts

This Agreement may be executed in counterparts and delivered by facsimile or emailed PDF file, each of which will have the same effect as if all parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

7.18 Schedules

The Schedules attached to this Agreement form part of this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement.

PROGRESSIVE CONSTRUCTION LTD.)



Name: Victor J. Farmer
Senior Vice President

Name: _____)

**CORPORATION OF THE TOWNSHIP OF)
ESQUIMALT**

by its authorized signatories)

_____))
Name: _____)

_____))
Name: _____)

SCHEDULE "A"

Permitted Encumbrances

(a) Charges

Lot 18

Undersurface Rights No. M76301

Undersurface Rights No. 82166G

Right of Way No. 418565G

Right of Way No. 425907G

Lot 19

Undersurface Rights No. 82166G

Right of Way No. 418565G

Easement No. S80443