

HOST COMMUNITY IMPACT 5-YEAR AGREEMENT

THIS AGREEMENT made this ___ day of February, 2017.

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

WHEREAS:

- A. The CRD is required under its liquid waste management plan and federal regulatory requirements 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**");

PID: 030-006-813, Lot 1, Section 11 and Part of the Bed of Victoria Harbour, Esquimalt District, Plan EPP36468 (the "**Project Lands**")

- B. The Township has raised concerns as host community of the WWTP regarding the direct and indirect impacts on the community of the presence of the WWTP within its boundaries and on the Project Lands. The Township has permitted the land use for the purpose of sewage treatment and disposal with both a base density and bonus density, the latter permitted only on the provision of amenities in accordance with section 482 of the *Local Government Act*. 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 municipal zoning;
- C. The CRD is mindful of those concerns and wishes to take reasonable measures to address such concerns, including:
- a. suggesting and agreeing to off-site amenities within the Township in order to permit the CRD to maximize the development intensity, coverage and density of the Project Lands for the WWTP use only; and

- b. registering, prior to the use of the Project Lands for the WWTP, a **Statutory Right of Way** for public access and future waterfront public trail;
- D. In order to address the impacts and consequences that the Township may experience in hosting the WWTP including but not limited to loss of opportunity for development of additional public waterfront space and commercial development on a prominent site on the entrance to Victoria Harbour, the parties have agreed to the terms and conditions of this host community impact agreement as more particularly set out in sections 2 to 16 of this Agreement (the “**Host Community Conditions**”).
- E. The CRD also acknowledges the significance of municipal zoning processes and has advised the preferred proponent to ensure that its design for the Plant complies with the applicable zoning and related Township of Esquimalt requirements.
- F. The Township has amended the Zoning Bylaw, 1992, No. 2050 through the adoption of Zoning Bylaw, 1992, No. 2050, Amendment Bylaw 2888 (the “**Rezoning Bylaw**”, and Zoning Bylaw, 1992, No. 2050 as amended by the Rezoning Bylaw is the “**Zoning Bylaw**”) which updates the density bonusing framework under section 482 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 have a term of five (5) years commencing on the calendar day following the date that the Zoning Bylaw is adopted.

2.0 Construction Phase - Traffic Management

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) Traffic Management Plan

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 materials and equipment (“**WWTP-related Truck Traffic**”) 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 shall:

- (A) specify the routes within the Township that must be taken by anyone going/coming to the Project Lands for the WWTP;
- (B) specify the streets where no WWTP-related Truck Traffic is permitted, except in the case of emergency;
- (C) specify the streets where no WWTP-related Truck Traffic is permitted;
- (D) specify the use of a staging area in proximity to the Project Lands to reduce truck parking on roadways waiting to make deliveries of materials;
- (E) specify the hours of operation for WWTP-related Truck Traffic;
- (F) specify the measures to be taken to reduce and mitigate noise, dust and other impacts from WWTP-related Truck Traffic;
- (G) implement supplementary crossing guards where appropriate; and
- (H) include other measures acceptable to the Township, acting reasonably, as the CRD and the WWTP Contractor develop to address the trucking of materials through the Township and other traffic associated with the WWTP Project.

(ii) Monitoring and Reporting of Traffic

The CRD shall, or shall cause the WWTP Contractor to, monitor and report monthly to the Township on traffic management matters 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.

(iii) CRD Contact

The CRD shall provide to the Township the name and contact details of a traffic management contact person (who may be employed by the WWTP Contractor).

(iv) Enforcement

The CRD has committed to vigilant enforcement of trucking requirements and implementation of the Traffic Management Plan. To evidence its commitment, and in recognition that breaches of the Traffic Management Plan 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:

- (A) to fully enforce its contractual rights and remedies related to traffic management against the WWTP Contractor;
- (B) to promptly respond to complaints from Township residents and to report to the Township; and
- (C) other measures may be supplemented by bylaw enforcement either by the CRD or the Township. The parties acknowledge that enforcement decisions remain at the discretion of the CRD Board and the Township Council.

3.0 LEED® Gold Certification for Operations and Maintenance Building

The parties acknowledge and agree that LEED® Gold certification is given by an authority beyond the control of the CRD and that accordingly section 55(7)(b) and (c) of the Zoning Bylaw applies to the LEED® Gold certification requirement of section 55(2)(b)(4) of the Zoning Bylaw.

4.0 Odour-Reducing Improvements

- (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 4.0(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 all reasonable efforts to investigate and remediate the source of the odour in order to reduce odour to the agreed level.

5.0 Design Review Process

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 Township Staff and Council in advance.

6.0 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. For efficiency, the implementation of such reinstatement

work will be coordinated with the implementation of the traffic integration amenities contemplated in section 10.0 of this Agreement.

- (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 6.0(i) of this Agreement.

7.0 Air Filters for Schools

The CRD will work with the Township and the School District to determine the reasonable timing, scope and implementation methodology for the provision of high efficiency air filter systems (which for certainty does not require the CRD to pay for the replacement of HVAC systems) to improve air quality and odour reduction for the four schools referred to in section 55(2)(b)(3) of the Zoning Bylaw, including:

- (i) establishing monitoring in each school to determine current (i.e. pre-construction) air quality and odour levels;
- (ii) monitoring the effect of construction activity on air quality and odour at each school, and within 4 weeks after the start of construction reporting to the School District the results of that monitoring;
- (iii) in a timely manner, consulting with the School District regarding measures to be taken at each school to mitigate the effect of construction activity on air quality and odour, for the approval of the School District and the CRD, each acting reasonably;
- (iv) continuing to monitor the effect of construction activity at each school throughout the construction period; and
- (v) promptly implementing all such approved mitigation measures.

8.0 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, acting reasonably, 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.

9.0 Conduits

The CRD will advise the Township regarding the timing and extent of excavation of highways in the Township in connection with construction of the WWTP. Upon the request of the Township, in conjunction with highway excavation and reinstatement the CRD shall install or cause to be installed underground conduit. It is acknowledged and agreed, however, that nothing in this Agreement obliges the CRD to install anything within the conduit at the time of construction of the WWTP or otherwise.

10.0 Traffic Integration Amenities

With respect to the amenities referred to in section 55(2)(b)(1)c. of the Zoning Bylaw, the CRD will, in good faith and in cooperation with the Township having regard to its plans for such improvements, design and install additional traffic calming and bicycle lane improvements on streets between Lampson Road and Esquimalt Road and the Project Lands that are materially affected by WWTP construction activity, which improvements 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.

11.0 Lyall Street Enhancement

With respect to the amenities referred to in section 55(2)(b)(1)a. and b. of the Zoning Bylaw, the Township will design such amenities based on public consultation and will provide the design and estimated cost to the CRD for its approval, acting reasonably. The CRD will pay the cost of the design and installation of such approved amenities up to \$950,000.

12.0 Open Space Improvements

Provision of a statutory right of way for a future public waterfront walkway 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 a walkway is constructed on the WWTP site that is connected to a public walkway providing public access from one or more boundaries of the Project Lands

13.0 Public Art and Interpretive Signage Improvements

In satisfaction of sections 55(2)(b)(7) and 55(2)(b)(11) of the Zoning Bylaw, the CRD will provide a cash contribution 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 and will be determined and implemented in accordance with the Township's public art policy.

14.0 Macaulay Point

In recognition of the prominent waterfront location and park, the CRD shall further investigate the relocation of the works yard located at Macaulay Point. The Township will assist by providing office and parking space for related office staff in emergency services and public safety facilities, however the works yard would not be relocated to such facilities.

15.0 Access Hours for WWTP Spaces

The CRD will in good faith consider allowing access to the meeting room and interpretive space to be included in the WWTP on weekends and evenings when booked through the CRD for educational purposes.

16.0 Capital Improvement Amenities and Reserve Funds

The one-time contribution of \$17,000,000 [SEVENTEEN MILLION DOLLARS] to be provided by the CRD to the McLoughlin Point Amenity Reserve Fund(s) in accordance with section 55(2)(b)(16) of the Zoning Bylaw will be used as follows:

16.1 Waterfront Park Improvements

\$7,000,000 [SEVEN MILLION DOLLARS] is to be used by the Township for the improvement of the waterfront parks at: (i) Macaulay Point, (ii) Saxe Point and/or (iii) Gorge Point, or (iv) any other waterfront park area identified by the Township and approved by the CRD acting reasonably.

16.2 Recreational/Public Space Improvements

\$5,000,000 [FIVE MILLION DOLLARS] is to be used by the Township for the addition or improvement of public and/or community space within recreation facilities in the Township, noting:

- (i) funds shall only be expended in relation to lands made available for public recreation or other community use, and which are owned by the Township in fee simple, or granted/ dedicated as park (including but not limited to Archie Browning Centre and Bullen Park); and
- (ii) there is no intent to provide commercial space to business, and the expenditure of funds shall not violate the assistance to business restrictions under the *Community Charter*.

16.3 Emergency Services and Public Safety Facilities

\$5,000,000 [FIVE MILLION DOLLARS] is to be used by the Township for the construction, addition or improvement of emergency services and public safety facilities (which may include offices for other municipal functions) within the Township. The Township will make available to the CRD in one or more of such facilities approximately 250 square feet of office space and two (2) parking spaces, each acceptable to the CRD acting reasonably, for which the CRD will not pay rent but will pay its proportionate share of operating costs. The Township will consult with the CRD and act reasonably to accommodate any reasonable request by the CRD to rent additional office and/or parking space in such facility(ies) at market rates and terms.

16.4 Reserve Account for Certain Cash Contributions

The cash contributions referred to in this Section 16.0 will be dealt with as follows:

- (a) the Township will establish (and will maintain until all funds have been expended) one or more segregated accounts for such cash contributions and will confirm to the CRD when those accounts have been established ("**Reserve Funds**");
- (b) once the Reserve Funds have been established and a building permit for the WWTP

has been issued by the Township, the CRD will advance the above amounts to the Township for deposit into the Reserve Funds; and

- (c) the Township will be entitled to use the Reserve Funds to further the applicable purposes described in this Agreement and for no other purpose.

17.0 Satisfaction

The parties have worked extensively to cooperate and respect each other's respective jurisdiction, responsibilities and autonomy as local governments, and in recognition thereof:

- (a) The Township confirms that the fulfillment of the Host Community Conditions, the registration of the Statutory Right of Way, and the payment of the amounts under this Agreement and the amounts under the Community Impact Mitigation & Operating Agreement will be full satisfaction of the Township's concerns relating to the establishment of the WWTP on the Project Lands. For greater certainty, this confirmation does not relieve the CRD of compliance with this Agreement nor does it govern issues which may arise in the future in relation to ongoing use and operation, or replacement, of the WWTP that are not addressed in this Agreement.
- (b) Provided the Rezoning Bylaw is adopted and a development permit and other Township permits are issued as necessary such that all work may proceed as contemplated to enable the CRD to fulfill its obligations under the liquid waste management plan and applicable regulations under the *Fisheries Act*, and the Township remains in compliance with this Agreement, the CRD will not:
 - a. take or support any action to challenge the Township's Zoning Bylaw as pertaining to WWTP use and the Project Lands, these Agreements or the Statutory Right of Way (future trail use) and the Township and the CRD will work together to defend any such action by a third party; or
 - b. seek an order under the *Environmental Waste Management Act* or other Provincial intervention regarding the siting and establishment of the WWTP within Township boundaries

18.0 Dispute Resolution

Where a matter in dispute arises under this Agreement, the Chief Administrative Officers of the parties 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*.

19.0 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 (i) the Community Impact Mitigation & Operating Agreement, (ii) the Statutory Right of Way, (iii) the Amenity Reserve Fund Administration Agreement and (iv) the agreement of the CRD to reimburse the Township for professional and legal fees for all matters pertaining to the WWTP and related projects, including amendments, permits and approvals, since October 2016, 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: Chief Administrative Officer
 625 Fisgard Street
 Victoria, B.C.
 V8W 1R7

if to the Township: Chief Administrative Officer
 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:)
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Name:)