

AMENITY RESERVE FUND ADMINISTRATION 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

W H E R E A S:

- A. The CRD and the Township have entered into an agreement (the "**Host Community Impact 5-Year Agreement**") under which, among other things, the parties have agreed how the CRD's one-time contribution of \$17,000,000 [SEVENTEEN MILLION DOLLARS] to be made to the Township in accordance with section 55(2)(b)(16) of the Zoning Bylaw (as defined in the Host Community Impact 5-year Agreement) will be used; and
- B. The CRD and the Township wish to enter into this Agreement to set out certain terms and conditions under which the funds so contributed by the CRD to the Township will be administered.

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 Reserve Accounts for Cash Contributions

In accordance with section 16.4 of the Host Community Impact 5-Year Agreement, the cash contributions to be made by the CRD in accordance with section 55(2)(b)(16) of the Zoning Bylaw will be deposited in Reserve Funds (as defined in the Host Community Impact 5-Year Agreement). With respect to the ongoing administration of the Reserve Funds, the parties agree that:

- (a) the Township will be entitled to use the Reserve Funds to further the applicable purposes described in the Host Community Impact 5-Year Agreement and for no

other purpose;

- (b) the Reserve Funds may only be used to fund capital expenditures, which may include design development costs and engineering, consultation and professional fees but may not include operating costs;
- (c) at any time after the second anniversary of the date of this Agreement, the Township may, after conducting applicable public consultation and related planning processes, reallocate up to 20% of the amount contributed to any of the Reserve Funds to another of the Reserve Funds, but may not (despite other authority with respect to reserve funds under local government legislation) transfer or loan the amounts to other Township reserve funds;
- (d) Interest on the funds will be re-invested in the same Reserve Fund;
- (e) if the development permit for the Macaulay pump station project has not been issued by the Township within three (3) months of complete application being made to the Township, the CRD may in its discretion give notice to the Township of the delay and:
 - i. from the receipt of such notice until the issuance of a development permit for the Macaulay pump station that is acceptable to the CRD, acting reasonably, the Township will not spend or commit any of the Reserve Funds beyond what had already been spent or contractually committed prior to receipt of the notice;
 - ii. if CRD notifies that development of the WWTP use at McLoughlin Point is abandoned, then promptly upon demand from the CRD the Township will repay to the CRD all unspent and uncommitted amounts from the Reserve Funds;
- (f) the Township will advise the CRD at least annually on the status of each of the Reserve Funds and the projects to which the funds in the Reserve Fund are intended to be applied;
- (g) should an annual report not be provided, or should there be a substantial irregularity that cannot be resolved by the respective Chief Administrative Officers (including provision of supplemental report) within 30 days of the CRD's expression of initial concern, the CRD may require that the Township's use of the funds be audited to confirm that they are being used in accordance with this Agreement and the Host Community Impact 5-Year Agreement by giving notice to the Township:
 - i. The CRD shall propose the name of the auditor.
 - ii. The Township may, acting reasonably, object to the auditor proposed by the CRD and if it does so the CRD will propose a different auditor for approval by the Township, acting reasonably.
 - iii. The Township will fully cooperate with the auditor, including providing all information requested by the auditor.
 - iv. The audit will be completed, subject to unexpected delays, within 30 days.
 - v. The Township and the CRD will take such steps that are required, based on the auditor's report, to ensure the terms of this Agreement are complied with,

- including without limitation repayment of funds into the Reserve Funds.
- vi. The costs of the audit will be borne equally by the parties;
- (h) the Township intends to expend or commit (in an approved capital budget) the funds by:
- i. December 31, 2020 (plus an amount of time equal to the period of any suspension under Section 1(e) of this Agreement), for the funds contributed under Section 16.1 and 16.3 of the Host Community Impact 5-Year Agreement; and
 - ii. the fifth anniversary of the date the CRD advances the funds (plus an amount of time equal to the period of any suspension under Section 1(e) of this Agreement), for the funds contributed under Section 16.2 of the Host Community Impact 5-Year Agreement.

If the Township anticipates not spending or committing the funds by the dates noted above, the Township will so advise the CRD, will identify the amount of remaining funds, will provide evidence to the CRD that projects to achieve the original purposes and that will use the remaining funds will be approved and commenced, and will identify the reasonable revised timeframe for approving and commencing such project and spending the funds, for approval by the CRD acting reasonably; and

- (i) if any amount of the funds is not expended or contractually committed by the above dates, as extended, the Township shall return such amount to the CRD promptly upon the CRD's request.

2.0 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*.

3.0 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 Host Community Impact 5-Year 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:)

_____)
Name:)