

COMMUNITY IMPACT MITIGATION & OPERATING 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 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 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 the Department of National Defence ("**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 a 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;
- C. The CRD is mindful of those concerns and, in addition to undertaking certain actions under a host community impact agreement dated the same date as this Agreement (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

The amount of the fee payable under section 1 of this Agreement shall be adjusted as of January 1 of each year to reflect the increase, if any, in the Consumer Price Index for Victoria, British Columbia (all items) (the “**CPI**”) for the 12 months ending the most recent December 1.

3.0 Invoice and Payment of Community Impact Fee

- 3.1 The Township shall provide to the CRD as of the 31st 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.
- 3.2 The CRD shall cause the amount of the invoice to be paid to the Township on or before January 31 of the following year.
- 3.3 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

4.0 Term of Agreement

- 4.1 The obligations of the CRD under this Agreement shall be from January 1, 2017 until such time as the WWTP is replaced or decommissioned.
- 4.2 If the WWTP is replaced on the Project Lands, the parties shall in good faith negotiate a replacement agreement, and notwithstanding section 4.1, this Agreement shall remain in effect until replaced.

PART C – LIAISON COMMITTEE & OTHER OPERATING MATTERS

5.0 Liaison Committee

- 5.1 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.
- 5.2 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.
- 5.3 At the first meeting of the Liaison Committee, the members shall elect a chair and vice chair.
- 5.4 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.
- 5.5 The CRD will contact the Township’s communications department staff when preparing press releases, preparing for the release of any public information, or organizing public events, to ensure the Township has an opportunity to provide input prior to the release of information about the construction and operation of the WWTP.

6.0 Biosolids Treatment Plant & Conveyancing

- 6.1 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 (other than the conveyance of residual solids from the WWTP to a location not in the Township) associated with the treatment of biosolids or recovery of energy from biosolids.
- 6.2 The CRD further agrees that the conveyance of residual solids shall be located within dedicated highway corridors; if crossing over private land is required or anticipated, the CRD shall first consult with and obtain the

consent of the Township, acting reasonably, to such crossings, with the parties agreed that any crossing of private lands shall not substantially affect the development potential of those lands in accordance with existing zoning or anticipated through the Township's Official Community Plan.

- 6.3 The CRD further agrees to consult with the Township directly, not solely through the Township's representation on the CRD Board, prior to planning for, committing to or establishing any use of property associated with new or incremental solid or liquid waste management within the Township.
- 6.4 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.

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

8.0 Density

CRD acknowledges and agrees that it will not seek to increase the authorized rate of discharge for effluent of 384,000 cubic metres per day without first consulting with the Township. The CRD further acknowledges that an amendment to the Zoning Bylaw is required prior to increasing WWTP capacity beyond 108 million litres per day, Average Dry Weather Flow. At the request of the Township not more than once per calendar year, the CRD will certify to the Township (in a form acceptable to the Township, acting reasonably) the capacity and authorized rate of discharge of the WWTP, including the maximum capacity and rate of discharge (both dated) since the last report under this section.

PART D – DISPUTE RESOLUTION

9.0 Dispute Resolution

- 9.1 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.
- 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 (i) the Host Community Impact 5-Year 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.

(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: 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.

(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)

_____))
Name:)

_____))
Name:)

THE CORPORATION OF THE TOWNSHIP OF)
ESQUIMALT by its authorized signatories)

_____))
Name:)

_____))
Name:)