

CITY OF VICTORIA

SUBDIVISION and DEVELOPMENT
SERVICING AGREEMENT

SCHEDULE E

TO BYLAW NO. 12-042

Victoria Subdivision and Development Servicing
Bylaw



2012



Victoria Subdivision and Development Servicing Bylaw

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THIS AGREEMENT made this _____ day of _____.

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA

#1 Centennial Square
Victoria, B.C. V8S 1P6

(the "**City**")

OF THE FIRST PART

AND:

[NAME OF OWNER]

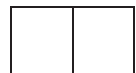
(the "**Owner**")

OF THE SECOND PART

WHEREAS:

- A. The Owner is the registered owner of those lands in the City of Victoria legally described as *[insert legal description]* (the "**Lands**");
- B. The City of Victoria Subdivision and Development Servicing Bylaw No. *[number]*, (the "**Subdivision and Development Servicing Bylaw**") requires the provision of various works and services upon the subdivision or development of land and regulates the standards to which such works and services must be constructed and installed;
- C. The Owner has applied to subdivide *[or develop]* the Lands as generally shown on the draft subdivision *[or, development]* plan attached as Schedule "A" to this Agreement, and has under section 940 of the *Local Government Act*, R.S.B.C., 1996, c. 323 requested the City to enter into this Agreement in order to enable the Approving Officer to approve the subdivision *[or, the Building Inspector to issue the building permit]* before the construction and installation of all works and services required by the Subdivision and Development Servicing Bylaw;
- D. The Owner has agreed to grant and transfer to the City all its right, title and interest in and to the works and services required to be constructed and installed by the Subdivision and Development Servicing Bylaw and the City has agreed to accept such transfer of the works and services on the terms set out in this Agreement.

NOW THEREFORE in consideration of the mutual promises contained in this Agreement and in consideration of the City entering into this Agreement to allow the construction and installation of the works and services after the approval of the subdivision of the Lands, *[or, after the issuance of the building permit for the development of the Lands]* the Owner covenants and agrees with the City as follows:



Part 1 - Definitions

1. In this Agreement:

"complete" or **"completion"** with respect to the works and services means completion to the satisfaction of the Director of Engineer evidenced by the certificate under section 18(b) of this Agreement;

"Director" or **"Director of Engineering"** means the Director of Engineering and Public Works of the City and any City employee authorized to act on his or her behalf;

"works and services" means all those works and services required to be provided in connection with the subdivision [*or development*] of the Lands under the Subdivision and Development Servicing Bylaw and, without limitation, includes those works and services described in the design and construction drawings that are listed in Schedule "B" to this Agreement (the "Approved Drawings").

2. All other words and expressions used in this Agreement that have a defined meaning under the Subdivision and Development Servicing Bylaw shall have the same meaning as under that bylaw.

Part 2 - Owner's Covenants

3. The Owner covenants and agrees:

- (a) to install, construct and complete the works and services;
- (b) that as security for the due and proper performance by the Owner of all of the covenants, agreements and obligations of the Owner under this Agreement, the Owner has deposited with the City either by cash or letter of credit the sum of \$[*amount*] (the "**Deposit**");
- (c) that the Deposit, less the amount required by section 12(c) to be maintained during the Warranty Period (as defined in section 12 herein), will only be returned to the Owner upon completion of the Works in strict conformance with this Agreement; and
- (d) that no interest on the Deposit shall be paid to the Owner.

4. The Owner covenants and agrees:

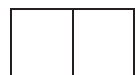
- (a) that the Owner has engaged a professional engineer to carry out the survey, design and field inspection of the works and services (other than any landscaping work), to lay out and supervise the construction and installation of the works and services, and to prepare and certify as-built drawings of the works and services as the engineer of record, all in conformity with the standards and specifications required under section 11 of the Subdivision and Development Servicing Bylaw (the "Specifications") and the other requirements of the Subdivision and Development Servicing Bylaw; and



- (b) that the Owner has caused the professional engineer to deposit with the City a letter, signed by the professional engineer, outlining the scope of the professional engineer's engagement, including:
 - (i) the schedule of inspection of the works and services to be undertaken by the professional engineer;
 - (ii) the professional engineer's assurance that the works and services have been designed in accordance with the Specifications;
 - (iii) professional certification of all design and construction drawings for the works and services;
 - (iv) that the professional engineer will certify and submit as-built drawings for the works and services;
 - (v) a statement that the professional engineer has read and understands the requirements of all City bylaws that apply to and govern the works and services.
- 5. The Owner must cause the professional engineer to supervise the construction and installation of the works and services, including by way of sufficient on-site inspections, in such a manner as to ensure that the works and services are constructed and installed strictly in accordance with the Specifications. The Owner must not construct the works and services or any part of them except under the supervision of the professional engineer.
- 6. Without limiting the generality of section 5, "sufficient on-site inspections" means a minimum of one site visit per day, or such inspections as the Director agrees are sufficient to ensure the works and services are constructed in accordance with good engineering practice, during construction and installation of the works and services. The Owner shall cause the professional engineer to maintain daily inspection reports and to provide such daily inspection reports to the City upon request.
- 7. The Owner must immediately notify the Director of Engineering of any severance of the Owner's engagement of the professional engineer that occurs during the course of the design or construction of the works and services, and must provide the Director of Engineering with a letter signed by the professional engineer or landscape professional retained in their place, outlining the scope of that professional's engagement.
- 8. The Owner further covenants and agrees that the Owner has retained a landscape professional to carry out the design and field inspection of any landscaping work that is required as part of the works and services, and that the requirements of sections 4 to 7 of this Agreement, so far as they refer to the role and function of the professional engineer, shall with the necessary changes apply to the role and function of the landscape professional in respect of the design and construction of that landscaping work.
- 9. In carrying out the works and services the Owner covenants and agrees:



- (a) not to commence the construction or installation of the works and services without first advising the Director of Engineering in writing at least five days before commencement;
 - (b) to construct, install and complete the works and services in accordance with the Specifications, the Approved Drawings and in conformance with the other requirements of the Subdivision and Development Servicing Bylaw;
 - (c) to obtain the prior written approval of the Director of Engineering for any changes to the Approved Drawings;
 - (d) to comply with any changes to the Approved Drawings required by the Director of Engineering as may be necessary to satisfy the Director that the works and services will function and operate in a manner satisfactory to the Director;
 - (e) to pay the cost of all necessary connections by the City of the works and services to municipal water distribution, storm drainage and sewerage systems as the case may be;
 - (f) not to damage any works, services or property of the City, or remove, alter or destroy any survey, pins, posts or monuments, and if in default to replace, repair and restore any damage of whatever nature to the reasonable satisfaction of the Director of Engineering;
 - (g) to comply with all statutes, laws, regulations and orders of any authority having jurisdiction and without limiting the generality of the foregoing all bylaws of the City;
 - (h) to not deposit or permit the deposit of any material or debris upon any highways or lands of the City;
 - (i) not to employ any person or contractor in the construction of the works and services who, in the reasonable opinion of the Director of Engineering is unfit, incapable or unskilled, and at all times, in connection with the execution of the works and services, to employ and keep on site a competent general works superintendent capable of speaking, reading and writing the English language. Any explanations, directions and requests given by the Director of Engineering to the superintendent shall be conclusively deemed to have been given to the Owner; and
 - (j) not to engage any contractor in respect of the works and services unless that contractor holds a valid and subsisting business license issued by the City.
10. The Owner shall prosecute the works and services diligently without interruptions and shall complete the construction and installation of the Works by *[month, day, year]*.
11. Upon completion of the works and services, the Owner covenants and agrees:
- (a) to assign the City all of its right, title and interest in and to the works and services



free and clear of all encumbrances;

- (b) to grant or cause to be granted to the City in registrable form all statutory rights-of-way reasonably required by the Director of Engineering for the operation, maintenance, repair and replacement of the works and services, on such terms as are satisfactory to the Engineer;
- (c) to execute and deliver or cause to be executed and delivered at the request of the City all such further transfers, instruments, agreements, documents and plans and to perform all such acts as may be necessary to give full effect to this Agreement; and
- (d) to deliver to the City final as-constructed drawings of the works and services which drawings shall be prepared by the professional engineer in accordance with good engineering practice (and in the case of any landscaping work, which drawings shall be prepared by the landscape professional in accordance with the standards acceptable to that professional's governing body or professional association) and be in a form satisfactory to the Director of Engineering.

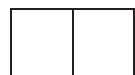
12. The Owner covenants and agrees to:

- (a) maintain the works and services by repairing any deficiencies in design, materials or workmanship in the works and services that may arise for a period of one year from completion of the works and services (the "**Warranty Period**");
- (b) remedy any deficiencies in design, materials or workmanship appearing within the Warranty Period and pay for any damage to other works or property resulting therefrom, save and except for defects caused by reasonable wear and tear, or by the negligence of the City, its servants or agents; and
- (c) keep deposited with the City throughout the Warranty Period, the sum of 10% of the initial Deposit, or \$1,000.00, whichever is greater, by cash or letter of credit.

13. The Owner agrees that the Director of Engineering may upon written notice to the Owner, given before the issuance of the Certificate of Completion under section 18(b) of this Agreement, increase the Warranty Period to a period the Director of Engineering considers reasonable, given the nature of the works and services, but in any event not to exceed three years.

14. The Owner shall release, and does hereby indemnify and save the City harmless from and against:

- (a) all costs, expenses, damages, claims, demands, actions, suits and liability by whomever brought or made and however arising whether directly or indirectly, from the construction or installation of the works and services and any injury or damage thereby caused to person or property (including death) except that arising from the exclusive negligence or other fault of the City;
- (b) all costs and expenses incurred by the City arising directly or indirectly from any



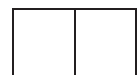
engineering operation, constructions, repair, replacement or maintenance by the City to or on any real or personal property which is affected by the works and services which the City either owns or is by duty or custom obliged, directly or indirectly to construct, repair, replace or maintain; and

- (c) all expenses and costs incurred by reason of liens for non-payment of labour or material, workers' compensation assessments, unemployment insurance, federal or provincial tax in relation to works and services and for unlawful encroachments by the works and services.
- 15. The Owner shall take out and maintain at all times from commencement of construction and installation of the works and services until the Director of Engineering issues a Certificate of Acceptance, insurance at its sole expense. Such insurance shall include comprehensive general liability insurance against claims for bodily injury including death and property damage or loss arising from its operations in or about the Lands, highways or other lands in carrying out the construction and installation of the works and services and in performing its obligations under this Agreement. Such insurance shall name the City as an additional insured and shall contain a cross-liability or severability of interest clause so that the City and the Owner may be insured in the same manner and to the same extent as if individual policies had been issued to each. Such insurance shall be for the amount of not less than \$5,000,000.00 combined single limit or such other amount as the Director of Engineering may reasonably require. The Owner shall provide to the Director of Engineering proof in writing of such insurance before commencing the works and service sand again before the issuance of any certificate of Completion. The policy of insurance shall contain a provision requiring the insurer to give to the City 30 days prior written notice before any alteration of or cancellation of the policy shall be effective.
- 16. The Owner acknowledges and agrees that the Owner relies exclusively on its own professional engineer, landscape professional and contractor and that the City does not, by its approvals, inspections or acceptance of the works and services, warrant or represent that the works and services are without fault or defect and that all approvals and inspection of the works and services given or made by the City are for the sole benefit of the City and shall in no way relieve or excuse the Owner from constructing and installing the works and services in strict compliance with the provisions of this Agreement.
- 17. The Owner acknowledges and agrees that the City makes no representation or warranty as to the subsurface soil conditions within the area in which the works and services are to constructed, including any road allowance or road right of way (collectively, the "**Works Area**"). Without limiting the foregoing, the City makes no representation or warrant as to whether the soil or groundwater within the Works Area contains any contaminant, waste, special waste or any other prescribed substance in a quantity or concentration that exceeds the standards permitted under the provisions of the *Environmental Management Act*, or any regulation thereunder including the *Contaminated Site Regulation*, or any enactment or regulation that may replace municipal, regional, provincial or federal (collectively, the "**Environmental Laws**"). The City will not be responsible for any costs incurred by the Owner as a result of the presence of any such contaminant, waste, special waste, prescribed substance or other soil or groundwater contamination within the Works Area, including without limitation any costs associated with delays in proceeding with the works and services, environmental



consultants' fees, the cost of any permits for removal or disposal of contaminated soils or groundwater under the provisions of the *Environmental Management Act* and the *Contaminated Site Regulation*, the removal, disposal or treatment of contaminated soil or groundwater that is required to be removed from the Works Area as a result of the work being undertaken, or any similar or related costs.

18. The City covenants and agrees that:
- (a) it will permit the Owner to perform the works and services on the terms and conditions contained in this Agreement and to occupy and use municipal highways and lands of the City as necessary for the construction of the works and services subject to such terms and conditions as the Director of Engineering may impose from time to time;
 - (b) it will issue a Certificate of Completion signed by the Director of Engineering upon the Owner satisfactorily completing the works and services and performing all other requirements of this Agreement except the requirements of section 12; and
 - (c) upon the satisfactory completion by the Owner of all the covenants and conditions in this Agreement, and without limiting the generality of the foregoing, including the maintenance of the works and services constructed under this Agreement in complete repair throughout the Warranty Period, it shall provide to the Owner a Certificate of Acceptance of the works and services, signed by the Director of Engineering, together with the remaining Deposit.
19. Nothing in this Agreement shall exempt the Owner or the Lands from the ordinary jurisdiction of the council of the City, its bylaws and regulations, and without limitation the construction of the works and services shall not confer directly or indirectly any exemption or right of set-off from development cost charges, connection charges, application fees, user fees or other fee or charge, except as statutorily required.
20. Any letter of credit provided by the Owner to the City shall be a clean unconditional and irrevocable letter of credit in favour of the City drawn on a Canadian chartered bank or such other financial institution satisfactory to the Director of Engineering. Such letter of credit shall be maintained as good and valid security by the Owner at all times as required by this Agreement, and if the Owner fails or omits to renew any letter of credit and deliver such renewal to the City within 14 days before the expiry of any letter of credit then held by the City, the City may draw down on the then current letter of credit without notice or restriction, and hold the monies in lieu thereof.
21. If the Owner shall fail to observe, perform or keep any of the provisions of this Agreement to be observed, performed or kept by the Owner, the City may at its sole discretion and without prejudice to any other remedy rectify the default of the Owner, at the Owner's expense and without limiting the generality of the foregoing may:
- (a) enter onto the Lands or any highway, right of way or other place where the works and services are to be constructed, and do or cause to be done through its servants, contractors and others, all such things as may be required to fulfil the obligations of the Owner including without limitation, the completion of the works and services;



- (b) make any payments required to be made for and on behalf of the Owner; and
- (c) retain the services of a professional engineer or landscape professional to inspect the works and services in order to determine whether they have been constructed in accordance with the requirements of this Agreement.

and for such purposes may without notice or limitation deduct from the Deposit all costs, and expenses incurred, payment and expenditures made, and monies due and owing to the City.

- 22. If the City incurs any costs and expenses or makes payments all as either provided in section 21 of this Agreement or otherwise in this Agreement, or if the Owner is otherwise indebted to the City under this Agreement, and the Deposit is not sufficient to fully recompense the City, the Owner shall forthwith upon notice from the City pay to the City the amount of such deficiency together with interest thereon at the annual prime rate of interest charged by the Royal Bank of Canada plus 2%, calculated and compounded monthly from the date such cost or expense was incurred or payment or expenditure was made by the City. Such amounts required to be paid by the Owner shall constitute a debt due and owing to the City.
- 23. Wherever in this Agreement the approval of the Director of Engineering is required or some act or thing is to be done to the satisfaction of the Director of Engineering:
 - (a) such provisions shall not be deemed to have been fulfilled or waived unless the approval or expression of satisfaction is in writing signed by the Director of Engineering and no prior approval or expression of satisfaction and no condoning, excusing or overlooking by the City or the Director on previous occasions when such approval or satisfaction was required shall be taken to operate as a waiver of the necessity for such approval or satisfaction wherever required by this Agreement; and
 - (b) such approval or satisfaction shall be at the discretion of the Director of Engineering acting reasonably in conformance with sound and accepted public municipal engineering practice.
- 24. Unless otherwise expressly provided in this Agreement, wherever the Owner is obliged or required to do or cause to be done any act, matter or thing, such act, matter or thing shall be done by the Owner at its sole expense.

Part 3 - Time

- 25. Time shall be of the essence of this Agreement.

Part 4 - General

- 26. Nothing in this Agreement shall be interpreted as creating an agency, partnership or joint ventureship amongst or between the parties.
- 27. The City has made no representations, warranties, guarantees, promises, covenants or agreements to or with the Owner other than those set out in this Agreement.



- 28. No amendment to this Agreement is valid unless in writing and executed by the parties.
- 29. This Agreement will enure to the benefit of and be binding upon the parties and their respective heirs, administrators, executors, successors, and permitted assignees.
- 30. 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.
- 31. The headings in this Agreement are inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.
- 32. Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.
- 33. No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.
- 34. If any section or provision of this Agreement is found to be invalid by a court of competent jurisdiction, the invalid section or provision shall be severed and the invalidity of such section or provision shall not affect the validity of the remainder of this Agreement.
- 35. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

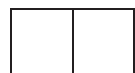
IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year first above written.

THE CORPORATION OF THE CITY OF VICTORIA by its authorized signatories this _____ day of _____, 20__.

[NAME OF OWNER] by its authorized signatories this _____ day of _____, 2010.

Name:

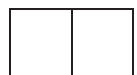
Name:



Schedule "A"
Subdivision [or Development] Plan



Schedule "B"
List of Approved Drawings





Victoria Subdivision and Development Servicing Bylaw

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