

BYLAW NO. 09-040

**REVITALIZATION TAX EXEMPTION (GREEN POWER FACILITIES) BYLAW**

A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to establish a revitalization tax exemption program to encourage redevelopment of lands within the City and the use of environmentally sustainable energy systems for those developments.

Under its statutory powers including section 226 of the *Community Charter*, the Municipal Council of the City of Victoria enacts the following provisions:

**Title**

- 1 This Bylaw may be cited for all purposes as the “**Revitalization Tax Exemption (Green Power Facilities) Bylaw**”.

**Definitions**

2 In this Bylaw:

- a) “**eligible land**” means the area of a parcel of land on which a green power facility is situated and operates;
- b) “**eligible land and improvements**” means a green power facility and the area of a parcel of land upon which the green power facility is situated and operates;
- c) “**green power facility**” means a facility that:
  - i) produces energy to be used for cooling, heating or electricity through green power technology; and
  - ii) supplies that energy to at least two separate buildings each of which has achieved a LEED certification of silver or better, or has been constructed according to principles of energy efficiency and environmental sustainability that are substantially equivalent to a LEED certification of silver or better.
- d) “**green power technology**” means
  - i) biomass gasification thermal or electrical generation systems;
  - ii) geothermal heat or power generation systems;
  - iii) solar thermal or photovoltaic systems;
  - iv) wind turbine electrical generation systems; or
  - v) wastewater heat recovery systems.

- e) **“LEED”** means the Leadership in Energy and Environmental Design (LEED) Green Building System operated by the Canada Green Building Council.
- f) **“service recipients”** means the buildings referred to in sub-paragraph (c)(ii).
- g) **“municipal property taxes”** means the property value taxes imposed on eligible land by the City under section 197(1)(a) of the *Community Charter*.
- h) **“tax exemption agreement”** means an agreement that is substantially in the form attached as Schedule “B” to this Bylaw.
- i) **“term”** or **“term of the exemption”** means the term of a tax exemption given under this Bylaw.
- j) **“total capital cost”** means the total of all capital costs incurred by an owner in developing a green power facility.

### **Program**

- 3** A revitalization tax exemption program is established under this Bylaw in order to:
  - a) encourage the redevelopment of lands within the City according to principles of sustainability;
  - b) support the use of environmentally sustainable building construction methods and materials, and environmentally sustainable building heating, cooling or energy systems in connection with the redevelopment of lands in the City; and
  - c) reduce greenhouse gas emissions produced through the generation of energy for heating, cooling or the generation of electricity for new developments within the City.
- 4** The tax exemption program applies to eligible land and improvements commencing upon the completion, and the start-up of operation of a green power facility on the eligible land.

### **Establishment**

- 5** There is established a revitalization tax exemption program in respect of eligible land and improvements within the City of Victoria, on the terms and subject to the conditions set out in this Bylaw.

### **Tax Exemption**

- 6** The eligible land and improvements may be exempted from municipal property taxes during the term in an amount, or to the extent, that is the lesser of:
  - a) the total capital cost, and

- b) the total of the municipal property taxes payable in respect of the eligible land and improvements if a revitalization tax exemption under this Bylaw were not available.

7 For certainty, no further revitalization tax exemption is available once the total of all revitalization tax exemptions received is equal to the total capital costs incurred by the owner in developing the green power facility.

### **Term**

8 The term of the revitalization tax exemption for eligible land is a maximum of 10 years.

### **Application**

9 If the owner of eligible land wishes to receive a revitalization tax exemption under this Bylaw, the owner must apply to the City in writing and submit the following:

- a) a completed application form in the form of Schedule "A" attached to and forming part of this Bylaw, with all supporting documentation required as referred to in the application form.
- b) an application fee in the amount of \$100.00.

### **Tax Exemption Agreement**

10 The revitalization tax exemption does not apply to eligible land and improvements unless the owner of the eligible land and improvements has entered into a tax exemption agreement with the City.

### **Certificate**

11 Once the conditions established under this bylaw and the tax exemption agreement have been fulfilled, a revitalization tax exemption certificate must be issued with respect to the eligible land and improvements, substantially in the form attached as Schedule "C" attached to and forming part of this Bylaw.

12 A revitalization tax exemption certificate is subject to the following conditions:

- a) that the green power facility remains in operation on the eligible land for the term of the tax exemption;
- b) the green power facility supplies energy for heating, cooling or electricity to the service recipients for at least six (6) months in each calendar year;
- c) the owner of the eligible land continually meets all other terms and conditions of this Bylaw, the tax exemption agreement and the revitalization tax exemption certificate.

13 A revitalization tax exemption certificate may be cancelled by Council if the owner of the eligible land no longer meets the conditions set out in the revitalization tax exemption certificate.

- 14** If the revitalization tax exemption certificate is cancelled during a year in which the owner of eligible land has received an exemption from municipal taxes, a recapture amount is payable calculated as equal to a percentage of the amount of the exemption with the percentage being equivalent to the percentage of the taxation year remaining from the date of cancellation.

|                        |                        |        |              |      |
|------------------------|------------------------|--------|--------------|------|
| READ A FIRST TIME the  | <b>28<sup>th</sup></b> | day of | <b>May,</b>  | 2009 |
| READ A SECOND TIME the | <b>28<sup>th</sup></b> | day of | <b>May,</b>  | 2009 |
| AMENDED the            | <b>28<sup>th</sup></b> | day of | <b>May,</b>  | 2009 |
| READ A THIRD TIME the  | <b>28<sup>th</sup></b> | day of | <b>May,</b>  | 2009 |
| ADOPTED on the         | <b>25<sup>th</sup></b> | day of | <b>June,</b> | 2009 |

**“ROBERT G. WOODLAND”**  
CORPORATE ADMINISTRATOR

**“DEAN FORTIN”**  
MAYOR

**CITY OF VICTORIA**

**BYLAW NO. 09-040**

**REVITALIZATION TAX EXEMPTION (GREEN POWER FACILITIES) BYLAW**

**SCHEDULE "A"**

**APPLICATION FOR TAX EXEMPTION**

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Legal Description of Property: \_\_\_\_\_

Roll Number: \_\_\_\_\_

I hereby certify that:

- a) a green power facility has been constructed upon the above referenced lands and is fully operational; and
- b) that the green power facility will for the term of the tax exemption provide heating/cooling/electricity [please circle] to the following buildings:

\_\_\_\_\_ [specify the buildings that will receive service from the facility and attach copy of service agreement]

- c) that the buildings identified in paragraph (b) have been certified as LEED silver/gold/platinum by the Canada Green Building Council or an equivalent certification [attach documentary evidence of certification].
- d) that the total cost of developing the green power facility was \$ \_\_\_\_\_ [attach documentary evidence in support].

\_\_\_\_\_  
Signature of Applicant, or authorized signatory

The terms "green power facility", and "LEED" as used in this application form have the same meaning as under the Revitalization Tax Exemption (Green Power Facilities) Bylaw.

**CITY OF VICTORIA**

**BYLAW NO. 09-040**

**REVITALIZATION TAX EXEMPTION (GREEN POWER FACILITIES) BYLAW**

**SCHEDULE "B"**

**REVITALIZATION TAX EXEMPTION AGREEMENT**

**THIS AGREEMENT** dated for reference the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**BETWEEN:**

**THE CORPORATION OF THE CITY OF VICTORIA**

1 Centennial Square  
Victoria, BC, V8W 1P6

(the "City")

**AND:**

Name and Address of Owner of Eligible Land

(the "Owner")

**WHEREAS**

- A. The City has through Bylaw No. 09-040, the Revitalization Tax Exemption (Green Power Facilities) Bylaw (the "Tax Exemption Bylaw") established a revitalization tax exemption program for the purpose of encouraging the redevelopment of lands within the City and the use of environmentally sustainable building construction methods and materials, and the use of environmentally sustainable heating, cooling or energy systems for those developments;
- B. The Owner is the registered owner of the following lands:  
  
(the "Land");
- C. The Owner has constructed and intends to operate a green power facility on the Land (the "green power facility");
- D. The green power facility will supply [heat/cooling/electricity] to the following buildings:  
  
(the "service recipients")
- E. The service recipients are certified as LEED [silver/gold/platinum] by the Canada Green Building Council or have an equivalent certification.

- F. The Owner is the registered Owner of the Land and has applied for a tax exemption pursuant to the Tax Exemption Bylaw;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the mutual covenants and agreements contained herein and the payment by the Owner to the City of consideration in the amount of Ten Dollars (\$10.00), the receipt and sufficiency of which are acknowledged by the City, the City and Owner covenant and agree with each other as follows:

**1. DEFINED TERMS**

In this Agreement, the terms “eligible land”, “eligible land and improvements”, “green power facility”, “green power technology”, “LEED”, and “municipal property taxes” have the same meaning as under the Tax Exemption Bylaw.

**2. TERM**

This Agreement commences on the day of its execution and, subject to cancellation of the revitalization tax exemption certificate under section 3 (b), shall terminate on the day that is \_\_\_\_\_ years after the first day on which a tax exemption is provided hereunder.

**3. APPLICABLE LAND AND IMPROVEMENTS**

For certainty the tax exemption provided applies only in respect of the green power facility and that portion of the Land on which the green power facility is situated (the “eligible land and improvements”).

**4. REVITALIZATION TAX EXEMPTION CERTIFICATE**

Once the Owner has completed the construction of a green power facility on the eligible land, the Owner must submit to the City a Certificate of Completion as contemplated by section 7 of the *Builders Lien Act*, and other evidence of completion of the green power facility that is to the City’s satisfaction, as well as a copy of the Owner’s agreement for the supply of [heat/cooling/electricity] to the service recipients. Upon the Owner submitting that information, and upon its review and acceptance by the City and upon the City being satisfied that the conditions for a tax exemption under the Tax Exemption Bylaw have been met, a revitalization tax exemption certificate will be issued to the Owner with respect to the eligible land and improvements.

**5. CANCELLATION OF TAX EXEMPTION CERTIFICATE**

The revitalization tax exemption certificate may be cancelled by the City:

- (a) at the request of the Owner, or
- (b) if the owner fails to continuously meet any of the conditions in the tax exemption certificate, the Tax Exemption Bylaw, or this agreement.

## 6. TAX EXEMPTION

So long as the revitalization tax exemption certificate in respect of the eligible land has not been cancelled, the eligible land and improvements is exempt from municipal property taxation to the extent, for the term and subject to the conditions provided in the certificate.

## 7. OWNER'S COVENANTS

The Owner covenants with the City that it will:

- (a) comply with all laws and regulations governing the construction and operation of the green power facility on the eligible land;
- (b) comply promptly, at its own expense, with the legal requirements of all authorities in respect to construction and operation of the green power facility on the Land.

## 8. INDEMNITY

The Owner shall indemnify and save harmless the City, its elected officials, directors, officers, employees and agents from and against any and all claims, actions, causes of action, demands and judgments of any kind arising from or connected with:

- (a) a breach of this Agreement by the Owner;
- (b) any personal injury, including death, or property damage suffered by any person in or around, or as a result of the use of, the green power facility;
- (c) any negligence, fault or breach of any duty of care on the part of the Owner or those for whom it is in law responsible with respect to the development, operation or use of the green power facility.

## 9. CITY'S RIGHTS

Nothing contained or implied in this Agreement prejudices or affects the City's rights and powers in the exercise of its functions or its rights and powers under any public and private statutes, bylaws, orders or regulations to the extent the same are applicable to the eligible land and improvements, all of which may be fully and effectively exercised in relation to the eligible land and improvements as if this Agreement had not been executed and delivered by the Owner.

## 10. MISCELLANEOUS COVENANTS

And it is hereby mutually agreed:

### Representations

- (a) that the City has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise), express or implied with the Owner other than those expressly contained in this Agreement;



**Time**

- (b) that time is of the essence of this Agreement;

**Agreement**

- (c) this Agreement constitutes the entire agreement between the City and the Owner with regards to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the City, with the Owner;

**Notices**

- (d) that any notice required to be given under this Agreement shall be deemed to be sufficiently given:
  - a. if 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 City:

1 Centennial Square  
Victoria, BC, V8W 1P6

if to the Owner:

or at the address a party may from time to time designate, then the notice shall be deemed to have been received seventy - two (72) hours after the time and date of mailing. If, at the time of the mailing of the notice, the delivery of mail in the Province of British Columbia has been interrupted in whole or in part by reason of a strike, slow-down, lock-out or other labour dispute, then the notice may only be given by actual delivery of it;

**Binding Effect**

- (e) that this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, including future mayors and council members, administrators and permitted assignees:

**Amendment**

- (f) that the parties hereto may by agreement amend the terms of this Agreement, such amendment to be evidenced in writing and executed by both parties;

**Law Applicable**

- (g) that this Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia;

**Owner Warrants**

- (h) that:
  - (i) all necessary corporate actions and proceedings have been taken by the Owner to authorize its entry into and performance of this Agreement;
  - (ii) upon execution and delivery on behalf of the Owner, this Agreement constitutes a valid and binding contractual obligation of the Owner;
  - (iii) neither the execution and delivery, nor the performance of this Agreement shall breach any other Agreement or obligation, or cause the Owner to be in default of any other Agreement or obligation respecting the eligible land and
  - (iv) the Owner has the corporate capacity and authority to enter into and perform this Agreement;

**Interpretation**

- (i) that when the singular or neuter are used in this Agreement, they include the plural or the feminine or the masculine or the body politic or corporate where the context or the parties require;
- (j) all provisions of this Agreement are to be construed as covenants and agreements as though the words importing covenants and agreements were used in each separate paragraph;
- (k) that the headings to the clauses in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or provision of it.

**IN WITNESS WHEREOF** the parties have executed this Agreement the day and year first above written.

**THE CORPORATION OF CITY OF VICTORIA** by its authorized signatories:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Corporate Administrator

**OWNER** by its authorized signatory:

**CITY OF VICTORIA**

**BYLAW NO. 09-040**

**REVITALIZATION TAX EXEMPTION (GREEN POWER FACILITIES) BYLAW**

**SCHEDULE "C"**

**TAX EXEMPTION CERTIFICATE**

Date of Issuance: \_\_\_\_\_ Certificate Number: \_\_\_\_\_

Term: \_\_\_\_\_ Date of Expiry: \_\_\_\_\_

Eligible Land and Improvements: \_\_\_\_\_

Property Address: \_\_\_\_\_

Property Roll Number: \_\_\_\_\_

Amount of Exemption: The eligible land and improvements are exempt from municipal property taxes in each year of the term as follows:

This Certificate is transferable upon the sale of the eligible land and improvements.

Conditions:

1. This Certificate is subject to the condition that:
  - (a) the green power facility remains in operation on the eligible land for the term of the tax exemption;
  - (b) the green power facility supplies energy for heating, cooling or electricity for at least six (6) months in each calendar year;
  - (c) the owner of the eligible land continually meets all other terms and conditions of this Bylaw, the tax exemption agreement and this revitalization tax exemption certificate.
2. If this Certificate is cancelled during a year in which the owner of a parcel has received an exemption from municipal property taxes, a recapture amount is payable calculated as equal to a percentage of the amount of the exemption with the percentage derived from the period of the taxation year remaining from the date of cancellation.

The terms: "municipal property taxes" and "green power facility" as used in this certificate have the same meaning as under Revitalization Tax Exemption (Green Power Facilities) Bylaw No.09-040.

Effective Date: This certificate does not apply to taxation in a calendar year unless it is issued on or before October 31 of the preceding year.

Issued by: \_\_\_\_\_