

**WORKS AND SERVICES BYLAW**  
**SCHEDULE E**

*This Schedule contains a Subdivision Works and Services Agreement at Appendix 1  
and a Building Permit Works and Services Agreement at Appendix 2*

**APPENDIX 1**

**SUBDIVISION WORKS AND SERVICES AGREEMENT**

**SUBDIVISION FILE #:**

THIS AGREEMENT made [month, day, year].

**BETWEEN:**

The Corporation of the City of Victoria  
#1 Centennial Square  
Victoria, BC V8S 1P6

(the “**City**”)

**AND:**

[legal name of owner]  
[address]

(the “**Owner**”)

**WHEREAS:**

- A. Capitalized terms not otherwise defined herein are defined in section 1;
- B. The Owner is the registered owner of the Lands;
- C. The City’s Works and Services Bylaw requires the provision of various works and services upon the subdivision of land and establishes the standards to which such works and services must be constructed and installed;
- D. The Owner has applied to subdivide the Lands and has under section 509 of the *Local Government Act*, requested the City to enter into this Agreement in order to enable the Approving Officer to approve the subdivision before the construction and installation of all works and services required by the Works and Services Bylaw;
- E. As security for the due and proper performance by the Owner of all of the covenants, agreements and obligations of the Owner in this Agreement, the Owner has deposited with the City a letter of credit in the amount of the Deposit;
- F. 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 Works and Services Bylaw to the City and the City has agreed to accept such transfer of the works and services on the terms of 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, the Owner covenants and agrees with the City as follows:

## Part 1 - Definitions

1. In this Agreement:

**“Approved Design and Specifications”** has the meaning ascribed in section 3(b);

**“Certificate of Acceptance”** means a certificate issued by the Director of Engineering pursuant to section 45 of the Works and Services Bylaw and section 10(c) of this Agreement;

**“Certificate of Completion”** means a certificate issued by the Director of Engineering pursuant to section 44 of the Works and Services Bylaw and section 10(b) of this Agreement;

**“Complete”** or **“Completion”** with respect to the Works means completion to the satisfaction of the Director of Engineering as evidenced by the Director of Engineering’s Certificate of Completion;

**“Cost Estimate”** means the Owner’s approved cost estimate (as that term is defined in the Works and Services Bylaw) of all outstanding Works remaining to be completed at the time of this Agreement, attached at Schedule B;

**“Deadline”** means 24 months from the date of this Agreement, by [month, day, year];

**“Deposit”** means a security deposit of 120% of the Cost Estimate of the Works and Services, totaling [\$\_\_\_\_\_];

**“Director of Engineering”** or **“Director”** means the City’s Director of Engineering and Public Works and their duly authorized designates and such consulting or professional engineer as may be appointed to act for the City;

**“Full Cost Estimate”** means the owner’s approved cost estimate (as that term is defined in the Works and Services Bylaw) of all works required for the subdivision, attached at Schedule C;

**“Lands”** means:

Civic address: [Civic, Street]

PID: [XXX-XXX-XXX]

Legal description: [Lot X, VIP XXXXX, Full Plan Description here]

**“Professional Engineer”** has the meaning ascribed in the Works and Services Bylaw;

**“Qualified Professional”** has the meaning ascribed in the Works and Services Bylaw;

**“Warranty Period”** means [# year(s)], beginning from the Completion of the Works;

**“Works”** means all those works and services required to be provided under the Works and Services Bylaw and without limitation, those works and services described in Schedule A to this Agreement.

**Part 2 - Owner's Covenants**

2. The Owner covenants and agrees:
  - (a) to install, construct and complete the Works;
  - (b) to pay to the City in advance upon execution of this Agreement a damage deposit and other applicable fees and deposits in the amount specified in the Works and Services Bylaw;
  - (c) that the Deposit, less the amount required by section 6 to be maintained, 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.
  
3. In carrying out the Works, the Owner covenants and agrees:
  - (a) not to commence the construction or installation of the Works without first advising the Director of Engineering in writing at least five days before commencement and receiving the Director of Engineering's approval to proceed;
  - (b) to construct, install and complete the Works as designed and to the specifications and as shown in the "Issued for Construction" drawings authenticated by the Professional Engineer, and in the case of landscaping, authenticated by a landscaping professional, attached as Schedule A (the "**Approved Design and Specifications**") and in conformance with the Works and Services Bylaw;
  - (c) to obtain the prior written approval of the Director of Engineering for any changes to the Approved Design and Specifications;
  - (d) to comply with any changes to the Approved Design and Specifications required by the Director of Engineering as necessary to satisfy the Director that the Works will function and operate in a satisfactory manner;
  - (e) to pay the cost of all necessary connections required by the City to add to or modify existing City works for the purpose of accommodating or tying in the Works to those existing City works, including but not limited to concrete works (sidewalk, curb). signage, irrigation systems, electrical conduit, paving and landscaping on City streets that adjoin the Lands;
  - (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 with respect to any aspect of the Works 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) to retain at all times a Professional Engineer to provide competent survey, layout and onsite supervision to ensure that the Works strictly conform to the Approved Design and Specifications, and to record the details of any field design or construction changes to the Approved Design and Specifications and to record all of the geometric information for the preparation of record drawings;
  - (j) prior to commencing construction and installation of the Works, to advise the Director of Engineering of the name and address of the Professional Engineer retained by the Owner where not previously provided, and otherwise advise the Director of any change to or termination of the Professional Engineer;
  - (k) not to employ any person or contractor in the construction of the Works 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, 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
  - (l) not to engage any contractor in respect of the Works unless that contractor holds a business license issued by the City.
4. The Owner shall prosecute the Works diligently without interruptions and shall Complete the construction and installation of the Works by the Deadline.
5. Upon Completion of the Works, the Owner covenants and agrees:
- (a) to assign to the City all of its right, title and interest in and to the Works 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 and covenants reasonably required by the Director of Engineering for the operation, maintenance, repair and replacement of the Works, in the City's standard form for such instruments and, in the absence of a standard form, on such terms and in a form as are satisfactory to the Director of Engineering and the City Solicitor;
  - (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;
  - (d) to deliver to the City final record drawings of the Works which drawings shall be prepared and authenticated by the Owner's Professional Engineer in accordance with good engineering practice and be in a form satisfactory to the Director of Engineering; and

- (e) to cause the Owner's Professional Engineer to undertake testing to confirm appropriate connections to sanitary and storm drain sewers to verify no cross connections, with such confirmation to be submitted concurrent with the final record drawings.

**Part 3 - Maintenance and Warranty Period**

- 6. The Owner covenants and agrees to:
  - (a) maintain the Works in complete repair for the duration of the Warranty Period;
  - (b) remedy any defects appearing within a period of one year from the date of completion and pay for any damage to other work or property resulting therefrom, save and except for defects caused by reasonable wear and tear, negligence of the City, its servants or agents, or acts of God; and
  - (c) keep deposited with the City for the Warranty Period, the sum of 10% of the Full Cost Estimate in the form of cash or letter of credit.

**Part 4 – Indemnity, Release, Insurance, Reliance**

- 7. 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 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, construction, repair, replacement or maintenance by the City to or on any real or personal property which is affected by the Works and 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 nonpayment of labour or material, workers' compensation assessments, unemployment insurance, federal or provincial tax check off in relation to the Works and for unlawful encroachments by the Works.
- 8. The Owner shall take out and maintain at all times from commencement of construction and installation of the Works until the Director of Engineering issues a Certificate of Acceptance, insurance at its sole expense. Such insurance shall:
  - (a) 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 in performing its obligations under this Agreement;

- (b) name the City as a co-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;
  - (c) be for the amount of not less than \$5,000,000 combined single limit or such other amount as the Director of Engineering may reasonably require; and
  - (d) 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.
9. The Owner shall provide to the Director of Engineering proof in writing of such insurance before commencing the Works and again before the issuance of any Certificate of Completion.
10. The Owner acknowledges and agrees that the Owner relies exclusively on its own Professional Engineer and contractor and that the City does not, by its approvals, inspections or acceptance of the Works, warrant or represent that the Works are without fault or defect and that all approvals and inspection of the Works 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 in strict compliance with the provisions of this Agreement.

#### **Part 5 - City Covenants**

11. The City covenants and agrees that:
- (a) it will permit the Owner to perform the Works 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 Works subject to applicable City bylaws including the Works and Services Bylaw and Streets and Traffic Bylaw and other such terms and conditions in any case and from time to time as the Director of Engineering may impose;
  - (b) it will issue a Certificate of Completion signed by the Director of Engineering upon the owner satisfactorily completing the Works and performing all other requirements of this Agreement except the requirements of section 6; 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 constructed under this Agreement in complete repair for the length of the Warranty Period, it shall provide to the Owner a Certificate of Acceptance of the Works, signed by the Director of Engineering, together with the remaining Deposit.

**Part 6 - Miscellaneous**

12. 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 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.
13. 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 in a form and on terms satisfactory to the Director of Engineering and the Chief Financial Officer. Such letter of credit shall be maintained as good and valid security by the Owner at all times as required by this Agreement.
14. 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 and do or cause to be done through its servants, contractors and others, all such things as may be required to fulfill the obligations of the Owner including without limitation, the Completion of the Works;
  - (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 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.
15. If the City incurs any costs and expenses or makes payments, all as either provided in section 14 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 2% per annum 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.
16. 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 of Engineering 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.

- 17. 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.
- 18. Any notice to be given under this Agreement shall be in writing, and any letter may be delivered personally or sent by prepaid mail. The addresses of the parties for the purpose of notice shall be the addresses set out in this Agreement. Any party may at any time give notice in writing to another of any change of address and from and after the third day after the giving of such notice the address specified shall be deemed to be the address of such party for the giving of notice.
- 19. The City has made no representations, warranties, guarantees, promises, covenants or agreements to or with the Owner other than those in this Agreement.
- 20. Subject only to section 3(d) of this Agreement, no amendment to this Agreement is valid unless in writing and executed by the parties.
- 21. Wherever the singular or masculine is used in this Agreement, the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties so require.
- 22. Time is of the essence of this Agreement.
- 23. This Agreement shall enure to the benefit of and be binding upon the parties, their respective heirs, executors, administrators, successors and assigns.

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

**THE CORPORATION OF THE CITY OF** )  
**VICTORIA** by its authorized signatories this )  
 \_\_\_\_ day of \_\_\_\_\_, 202\_ )  
 )  
 \_\_\_\_\_ )  
 Director of Engineering and Public Works

**[NAME OF OWNER]** )  
by its authorized signatories this \_\_\_\_ day )  
of \_\_\_\_\_, 202\_ )  
 )  
\_\_\_\_\_) )  
Name: )  
 )  
\_\_\_\_\_) )  
Name: )

- Schedule A – Approved Design and Specifications
- Schedule B – Cost Estimate of Outstanding Works
- Schedule C – Full Cost Estimate

**APPENDIX 2**

**BUILDING PERMIT WORKS AND SERVICES AGREEMENT**

**BUILDING PERMIT FILE #:**

THIS AGREEMENT made [month, day, year].

**BETWEEN:**

The Corporation of the City of Victoria  
#1 Centennial Square  
Victoria, BC V8S 1P6

(the “**City**”)

**AND:**

[legal name of owner]  
[address]

(the “**Owner**”)

**WHEREAS:**

- A. Capitalized terms not otherwise defined herein are defined in section 1;
- B. The Owner is the registered owner of the Lands;
- C. The City’s Works and Services Bylaw requires the provision of various works and services upon the development of land and establishes the standards to which such works and services must be constructed and installed;
- D. The Owner has applied for a building permit for a development on the Lands and has under section 509 of the *Local Government Act*, requested the City to enter into this Agreement in order to enable the City’s building official to issue the building permit before the construction and installation of all works and services required by the Works and Services Bylaw;
- E. As security for the due and proper performance by the Owner of all of the covenants, agreements and obligations of the Owner in this Agreement, the Owner has deposited with the City a letter of credit in the amount of the Deposit;
- F. 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 Works and Services Bylaw to the City and the City has agreed to accept such transfer of the works and services on the terms of 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 issuance of the building permit for the development on the Lands, the Owner covenants and agrees with the City as follows:

## Part 1 - Definitions

1. In this Agreement:

**“Approved Design and Specifications”** has the meaning ascribed in section 3(b);

**“Certificate of Acceptance”** means a certificate issued by the Director of Engineering pursuant to section 45 of the Works and Services Bylaw and section 10(c) of this Agreement;

**“Certificate of Completion”** means a certificate issued by the Director of Engineering pursuant to section 44 of the Works and Services Bylaw and section 10(b) of this Agreement;

**“Complete”** or **“Completion”** with respect to the Works means completion to the satisfaction of the Director of Engineering as evidenced by the Director of Engineering’s Certificate of Completion;

**“Cost Estimate”** means the Owner’s approved cost estimate (as that term is defined in the Works and Services Bylaw) of all outstanding Works remaining to be completed at the time of this Agreement, attached at Schedule B;

**“Deadline”** means 24 months from the date of this Agreement, by [month, day, year];

**“Deposit”** means a security deposit of 120% of the Cost Estimate of the Works and Services, totaling [\$\_\_\_\_\_];

**“Director of Engineering”** or **“Director”** means the City’s Director of Engineering and Public Works and their duly authorized designates and such consulting or professional engineer as may be appointed to act for the City;

**“Full Cost Estimate”** means the owner’s approved cost estimate (as that term is defined in the Works and Services Bylaw) of all works required for the development, attached at Schedule C;

**“Lands”** means:

Civic address: [Civic, Street]

PID: [XXX-XXX-XXX]

Legal description: [Lot X, VIP XXXXX, Full Plan Description here]

**“Professional Engineer”** has the meaning ascribed in the Works and Services Bylaw;

**“Qualified Professional”** has the meaning ascribed in the Works and Services Bylaw;

**“Warranty Period”** means [# year(s)], beginning from the Completion of the Works;

**“Works”** means all those works and services required to be provided under the Works and Services Bylaw and without limitation, those works and services described in Schedule A to this Agreement.

**Part 2 - Owner's Covenants**

2. The Owner covenants and agrees:
  - (a) to install, construct and complete the Works;
  - (b) to pay to the City in advance upon execution of this Agreement a damage deposit and other applicable fees and deposits in the amount specified in the Works and Services Bylaw;
  - (c) that the Deposit, less the amount required by section 6 to be maintained, 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.
  
3. In carrying out the Works, the Owner covenants and agrees:
  - (a) not to commence the construction or installation of the Works without first advising the Director of Engineering in writing at least five days before commencement and receiving the Director of Engineering's approval to proceed;
  - (b) to construct, install and complete the Works as designed and to the specifications and as shown in the "Issued for Construction" drawings authenticated by the Professional Engineer, and in the case of landscaping, authenticated by a landscaping professional, attached as Schedule A (the "**Approved Design and Specifications**") and in conformance with the Works and Services Bylaw;
  - (c) to obtain the prior written approval of the Director of Engineering for any changes to the Approved Design and Specifications;
  - (d) to comply with any changes to the Approved Design and Specifications required by the Director of Engineering as necessary to satisfy the Director that the Works will function and operate in a satisfactory manner;
  - (e) to pay the cost of all necessary connections required by the City to add to or modify existing City works for the purpose of accommodating or tying in the Works to those existing City works, including but not limited to concrete works (sidewalk, curb). signage, irrigation systems, electrical conduit, paving and landscaping on City streets that adjoin the Lands;
  - (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 with respect to any aspect of the Works 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) to retain at all times a Professional Engineer to provide competent survey, layout and onsite supervision to ensure that the Works strictly conform to the Approved Design and Specifications, and to record the details of any field design or construction changes to the Approved Design and Specifications and to record all of the geometric information for the preparation of record drawings;
  - (j) prior to commencing construction and installation of the Works, to advise the Director of Engineering of the name and address of the Professional Engineer retained by the Owner where not previously provided, and otherwise advise the Director of any change to or termination of the Professional Engineer;
  - (k) not to employ any person or contractor in the construction of the Works 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, 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
  - (l) not to engage any contractor in respect of the Works unless that contractor holds a business license issued by the City.
4. The Owner shall prosecute the Works diligently without interruptions and shall Complete the construction and installation of the Works by the Deadline.
5. Upon Completion of the Works, the Owner covenants and agrees:
- (a) to assign to the City all of its right, title and interest in and to the Works 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 and covenants reasonably required by the Director of Engineering for the operation, maintenance, repair and replacement of the Works, in the City's standard form for such instruments and, in the absence of a standard form, on such terms and in a form as are satisfactory to the Director of Engineering and the City Solicitor;
  - (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;
  - (d) to deliver to the City final record drawings of the Works which drawings shall be prepared and authenticated by the Owner's Professional Engineer in accordance with good engineering practice and be in a form satisfactory to the Director of Engineering; and

- (e) to cause the Owner's Professional Engineer to undertake testing to confirm appropriate connections to sanitary and storm drain sewers to verify no cross connections, with such confirmation to be submitted concurrent with the final record drawings.

**Part 3 - Maintenance and Warranty Period**

- 6. The Owner covenants and agrees to:
  - (a) maintain the Works in complete repair for the duration of the Warranty Period;
  - (b) remedy any defects appearing within a period of one year from the date of completion and pay for any damage to other work or property resulting therefrom, save and except for defects caused by reasonable wear and tear, negligence of the City, its servants or agents, or acts of God; and
  - (c) keep deposited with the City for the Warranty Period, the sum of 10% of the Full Cost Estimate in the form of cash or letter of credit.

**Part 4 – Indemnity, Release, Insurance, Reliance**

- 7. 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 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, construction, repair, replacement or maintenance by the City to or on any real or personal property which is affected by the Works and 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 nonpayment of labour or material, workers' compensation assessments, unemployment insurance, federal or provincial tax check off in relation to the Works and for unlawful encroachments by the Works.
- 8. The Owner shall take out and maintain at all times from commencement of construction and installation of the Works until the Director of Engineering issues a Certificate of Acceptance, insurance at its sole expense. Such insurance shall:
  - (a) 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 in performing its obligations under this Agreement;

- (b) name the City as a co-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;
  - (c) be for the amount of not less than \$5,000,000 combined single limit or such other amount as the Director of Engineering may reasonably require; and
  - (d) 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.
9. The Owner shall provide to the Director of Engineering proof in writing of such insurance before commencing the Works and again before the issuance of any Certificate of Completion.
10. The Owner acknowledges and agrees that the Owner relies exclusively on its own Professional Engineer and contractor and that the City does not, by its approvals, inspections or acceptance of the Works, warrant or represent that the Works are without fault or defect and that all approvals and inspection of the Works 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 in strict compliance with the provisions of this Agreement.

#### **Part 5 - City Covenants**

11. The City covenants and agrees that:
- (a) it will permit the Owner to perform the Works 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 Works subject to applicable City bylaws including the Works and Services Bylaw and Streets and Traffic Bylaw and other such terms and conditions in any case and from time to time as the Director of Engineering may impose;
  - (b) it will issue a Certificate of Completion signed by the Director of Engineering upon the owner satisfactorily completing the Works and performing all other requirements of this Agreement except the requirements of section 6; 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 constructed under this Agreement in complete repair for the length of the Warranty Period, it shall provide to the Owner a Certificate of Acceptance of the Works, signed by the Director of Engineering, together with the remaining Deposit.

**Part 6 - Miscellaneous**

12. 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 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.
13. 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 in a form and on terms satisfactory to the Director of Engineering and the Chief Financial Officer. Such letter of credit shall be maintained as good and valid security by the Owner at all times as required by this Agreement.
14. 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 and do or cause to be done through its servants, contractors and others, all such things as may be required to fulfill the obligations of the Owner including without limitation, the Completion of the Works;
  - (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 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.
15. If the City incurs any costs and expenses or makes payments, all as either provided in section 14 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 2% per annum 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.
16. 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 of Engineering 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.

- 17. 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.
- 18. Any notice to be given under this Agreement shall be in writing, and any letter may be delivered personally or sent by prepaid mail. The addresses of the parties for the purpose of notice shall be the addresses set out in this Agreement. Any party may at any time give notice in writing to another of any change of address and from and after the third day after the giving of such notice the address specified shall be deemed to be the address of such party for the giving of notice.
- 19. The City has made no representations, warranties, guarantees, promises, covenants or agreements to or with the Owner other than those in this Agreement.
- 20. Subject only to section 3(d) of this Agreement, no amendment to this Agreement is valid unless in writing and executed by the parties.
- 21. Wherever the singular or masculine is used in this Agreement, the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties so require.
- 22. Time is of the essence of this Agreement.
- 23. This Agreement shall enure to the benefit of and be binding upon the parties, their respective heirs, executors, administrators, successors and assigns.

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

**THE CORPORATION OF THE CITY OF** )  
**VICTORIA** by its authorized signatories this )  
 \_\_\_\_ day of \_\_\_\_\_, 202\_ )  
 )  
 \_\_\_\_\_ )  
 Director of Engineering and Public Works

**[NAME OF OWNER]** )  
by its authorized signatories this \_\_\_\_ day )  
of \_\_\_\_\_, 202\_ )  
 )  
\_\_\_\_\_) )  
Name: )  
 )  
\_\_\_\_\_) )  
Name: )

- Schedule A – Approved Design and Specifications
- Schedule B – Cost Estimate of Outstanding Works
- Schedule C – Full Cost Estimate