



**LAND USE PROCEDURES BYLAW**  
**BYLAW NO. 16-028**

This consolidation is a copy of a bylaw consolidated under the authority of section 139 of the *Community Charter*. (Consolidated on October 5, 2023 up to Bylaw No. 23-085)

This bylaw is printed under and by authority of the Corporate Administrator of the Corporation of the City of Victoria.

NO. 16-028

**LAND USE PROCEDURES BYLAW**

**A BYLAW OF THE CITY OF VICTORIA**

(Consolidated to include Bylaws No.16-059, No.17-006, No.17-012, No.17-023, No.17-054, No.17-107, No. 18-018, No.18-090, No.19-037, No.19-067, No.20-076, 21-055, 22-014, 22-021, 22-072, 22-057, 22-026, 23-066, 23-085)

A Bylaw to define procedures under which an owner of land may apply for an amendment to the Official Community Plan, Zoning Bylaw 2018, or the Zoning Regulation Bylaw, for the issuance of a permit, to impose application fees, to specify notification distances, and to delegate Council's authority to make decisions in certain circumstances.

**WHEREAS:**

A local government that has adopted an official community plan bylaw or a zoning bylaw must, by bylaw, define procedures under which an owner of land may apply for an amendment to the plan or bylaw or for a permit under Part 14 of the *Local Government Act*; and

The Council of the City of Victoria has adopted an official community plan and a zoning bylaw; and

A local government may, by bylaw, impose application fees for an application to initiate changes to an official community plan or zoning bylaw, the issuance of a permit under Part 14 or Section 617 of the *Local Government Act*, or an amendment to a land use contract or a heritage revitalization agreement; and

A local government may by bylaw specify a distance from affected land for the purpose of notifying owners and tenants in occupation of proposed bylaw amendments and permits; and

The Council may, by bylaw, delegate its powers, duties and functions to an officer or employee of the municipality;

**NOW THEREFORE**, the Council of the City of Victoria, in open meeting assembled, enacts as follows:

**PART 1 – INTRODUCTORY PROVISIONS**

1. Title
2. Repeal
3. Severability
4. Definitions
5. Applications Subject to this Bylaw

**PART 2 – APPLICATIONS**

6. Pre-Application Community Meeting Requirements
7. Notification Distance
8. Waiving a Community Meeting
9. Applications Forms
10. Application Requirements
11. Evidence of Participation in a Community Meeting
12. Receipt of Applications
13. Incomplete applications
14. Notification of incomplete applications
15. Application referral
16. Application review summary
17. Council referral
18. Application Fee
19. – 20. Affordable Housing application fee
21. Refund
22. Refund of administration fee
23. Landscape Security
24. Cancellation of Applications
25. Reapplication – cancelled file
26. Application Sign Posting Requirements – permits
27. – 28. Application Sign Posting Requirements – other applications
29. Public hearing
30. Right to waive a public hearing
31. Opportunity for public comment
32. Notice of public hearing or zoning bylaw amendment
33. Notice of opportunity for public comment
34. Notice requirements for temporary use permits
35. Reapplications

### **PART 3 – DELEGATION AND RECONSIDERATION**

- 36. Types of Permits
- 37. Referral
- 38. Referral consideration
- 39. Landscape security delegation
- 40. Council reconsideration
- 41. Time limit for reconsideration
- 42. Notice of reconsideration
- 43. Representation to Council
- 44. Council's authority

### **PART 4 – ENCROACHMENTS IN DELEGATED APPROVALS**

- 45. – 49. Encroachments for decorative features
- 50. – 53. Encroachments for anchor rods
- 54. General

### **SCHEDULES**

- Schedule A Application Fees
- Schedule B Procedures for Sign Posting– Permits
- Schedule C Procedures for Sign Posting – Other Applications
- Schedule C-1 Procedures for Sign Posting – Pre-Application Input
- Schedule D Delegated Approvals
- Schedule D-1 Criteria for Minor Variances
- 23-085 Schedule D-2 Guidelines for Development Variance Permits
- Schedule E Landscape Security
- Schedule F Encroachment for Decorative Features
- Schedule G Encroachment for Anchor Rods

## PART 1 – INTRODUCTORY PROVISIONS

### Title

1. This Bylaw may be cited as the "LAND USE PROCEDURES BYLAW, 2016".

### Repeal

2. Bylaw No. 09-048, the "Land Use Procedures Bylaw" is repealed.

### Severability

3. If any Section, subsection, sentence clause or phrase forming part of this Bylaw is for any reason held to be invalid by the decision of any Court of competent jurisdiction, the invalid portion shall be severed from the Bylaw without affecting the validity of the Bylaw or any remaining portion of the Bylaw.

### Definitions

4. In this bylaw,

**"affordable housing"** means

any housing unit which is:

- (a) part of a development wholly owned and operated by a registered non-profit residential housing society or government agency, or operated by a registered non-profit residential housing society or government agency pursuant to a legally binding arrangement with the property owner; and
- (b) subject to a housing agreement with the City, or a covenant in favour of the City, securing its use as a below-market housing unit in perpetuity",

**"ADP"** means

the City's Advisory Design Panel

**"anchor rod"** means

any steel or other rod, pipe or thing an intended purpose of which is to shore or support an excavation face or to prevent subsidence

**"CALUC"** means

Community Association Land Use Committee

**"Committee"** means

a select or standing committee of Council

**"Community Meeting"** means

a public meeting held in association with a Community Association Land Use Committee operating under the Community Association Land Use

Committee Procedures for Processing Rezoning and Variance Applications as approved by a resolution of Council

**“development permit”** or **“DP”** means

a permit authorized by Section 490 of the *Local Government Act*

**“development variance permit”** or **“DVP”** means

a permit authorized by Section 489 of the *Local Government Act*

**“Director”** means

the City's Director of Sustainable Planning and Community Development Department

**“Engineer”** means

the City's Director of Engineering and Public Works or a person acting under his authority

**“HAPL”** means

the City's Heritage Advisory Panel;

**“heritage alteration permit”** means

a permit authorized by Section 617 of the *Local Government Act*

**“heritage conservation area”** or **“HCA”** means

an area designated pursuant to section 614(1) of the *Local Government Act*

**“heritage registered property”** means

property listed on the community heritage register under section 598 of the *Local Government Act*

**“heritage revitalization agreement”** means

an agreement authorized by Section 610 of the *Local Government Act*

**“Official Community Plan”** or **“OCP”** means

the City's Official Community Plan Bylaw, 2012

**“public comment”** means

members of the public addressing Council, other than at a public hearing, regarding the subject matter of a decision Council proposes to make

**“public hearing”** means

a public hearing that is required to be held under the *Local Government Act* before Council adopts a bylaw

**“temporary use permit”** or **“TUP”** means – new as per 17-054

a permit authorized by Section 493 of the *Local Government Act*

**“TRG”** means

the Technical Review Group composed of City of Victoria staff

**“zoning bylaw”** means

the City’s Zoning Regulation Bylaw and Zoning Bylaw 2018

### **Applications subject to this bylaw**

5. This bylaw establishes fees and procedures in relation to applications for:
  - (a) an amendment to the zoning bylaw;
  - (b) an amendment to the OCP;
  - (c) an amendment to a land use contract;
  - (d) a temporary use permit;
  - (e) a heritage revitalization agreement;
  - (f) a development variance permit;
  - (g) a development permit;
  - (h) a heritage alteration permit.

## **PART 2 - APPLICATIONS**

### **Pre-application requirements**

6. Before submitting an application to initiate changes to the OCP or zoning bylaw, the applicant must:
  - (a) pay to the City the pre-application notification fee as calculated in accordance with Schedule A of this Bylaw;
  - (b) arrange and participate in a Community Meeting not more than six months in advance of the application submission date;
  - (c) submit plans for the proposed development to the City to post online for public comment not less than 30 days and not more than six months in advance of the application submission date; and
  - (d) post signage in accordance with Schedule C-1 of this Bylaw.
- 6A. The pre-application notification fee under section 6(a) does not apply where the requirements of section 6(b), (c) and (d) have all been waived pursuant to section 8.

- 6B. The Director may require the applicant to repeat the requirements in section 6 if the plans for the proposed development has had the following revisions:
- (a) additional uses added;
  - (b) increase in height or density; or
  - (c) decrease in setbacks or increase in site coverage equal to or greater than 20%.
- 6C. In the event section 6B is triggered and the requirements under 6(b), (c) and (d) have not been waived pursuant to section 8, the applicant must pay the pre-application notification fee as calculated in accordance with Schedule A.

### **Notification Distance**

7. The City will provide owners and occupiers within the areas specified in Section 7A with notification of the date of the processes under section 6(b) and (c), if applicable.
- 7A. The notification under section 7 will be provided to the owners and occupiers of properties located within:
- (a) 100 metres of the property that is the subject of the application (the “subject property”) if the application is for one of the matters listed in Section 27 of this Bylaw;
  - (b) 200 metres of the property that is the subject of the application if the application is to amend the zoning bylaw and also requires an amendment to the Urban Place Designation for the subject property in the *Official Community Plan*; or
  - (c) 200 metres of the property that is the subject of the application if the application is to amend the zoning bylaw and requires the creation of or amendment to guidelines in the *Official Community Plan* for one or more Development Permit Areas or Heritage Conservation Areas.

### **Waiving Pre-application Requirements**

8. The requirement under section 6(b) may be solely waived or the requirements under sections 6(b), (c) and (d) may be waived altogether, by:
- (a) Council;
  - (b) in writing by the CALUC in the area in which the proposed development is located; or

- (c) by the Director, if, in the Director's opinion:
  - i. the applicant has made reasonable attempts to hold a Community Meeting; or
  - ii. extraordinary circumstances exist that make it unsafe or impractical to hold a Community Meeting.

### **Application Forms**

- 9. The Director is authorized to establish and revise the application form for any application to be used from time to time pursuant to this Bylaw.

### **Application requirements**

- 10. All applications must be submitted to the Director on the form provided by the City for the purpose of the application, and must be accompanied by:
  - (a) all of the information and supporting documents specified in the application form;
  - (b) the fees set out in Schedule A to this Bylaw.

### **Evidence of participation in a Community Meeting**

- 11. If a Community Meeting was required in relation to an application, the applicant must submit evidence that the applicant has participated in the Community Meeting.

### **Receipt of applications**

- 12. If a person submits a complete application to the Director, the Director must process the application.

### **Incomplete applications**

- 13. If a person submits an incomplete application to the Director, the Director may:
  - (a) process the application; or
  - (b) refuse to process the application.

### **Notification of incomplete applications**

- 14. If the Director refuses to process an incomplete application, the Director must inform the applicant, either verbally or in writing, why the application is incomplete.

### **Application Referral**

- 15. When processing an application, the Director may refer the application to other agencies or associations, the TRG, Advisory Committees or other staff members.

### **Application Review Summary**

16. When processing an application the Director may provide an applicant with a summary of any feedback the Director receives following the referrals contemplated in Section 15.

### **Council Referral**

17. Council or a Committee of Council may refer a development permit application or a heritage alteration permit to ADP or HAPL or a joint meeting of ADP and HAPL for its recommendations concerning the design of the application or other matters within the ADP's or HAPL's terms of reference.

### **Application fee**

18. The application fee for an application under this Bylaw is the sum of the following amounts, each of which is set out in, or must be calculated in accordance with, Schedule A:
  - (a) the pre-application fee for giving notice;
  - (b) the base application fee;
  - (c) the administration fee; and
  - (d) the resubmission fee.

### **Affordable Housing application fee**

19. Notwithstanding Section 18, for an application under this Bylaw where all of the dwelling units proposed in the development are affordable housing dwelling units, no base application fee or variance fee is required.
20. Notwithstanding Section 18, for an application under this Bylaw where a portion of the dwelling units proposed in the development are affordable housing dwelling units, the base application fee and variance fee are reduced based on the floor area of affordable housing units as a percentage of the total floor area of the building. Fees are not reduced for floor areas associated with common areas, parking or amenity space.

### **Refund**

21. An applicant who has paid the base application fee is entitled to:
  - (a) a 90% refund if the application is withdrawn or cancelled within 15 business days from the date of submission; or
  - (b) a 75% refund if the application is withdrawn or cancelled within 40 business days from the date of submission.
- 22-057 21A. An applicant who has paid the base application fee pertaining to a proposed development in Development Permit Area 15F and complied with the applicable provisions of the City's Tenant Assistance Policy and a Tenant Assistance Plan consistent with such Policy is entitled to a refund of \$5000 of that fee after the City has issued an occupancy permit for the development.

### **Refund of administration fee**

22. An applicant who has paid the administration fee in relation to an application is entitled to a refund of that fee if the application is cancelled, withdrawn or abandoned, and the applicant requests a refund, before the City has incurred any expenses in relation to the giving notice of a public hearing, the waiver of a public hearing, or an opportunity for public comment in relation to the application.

### **Landscape security**

23. The City may require the applicant to provide landscape security calculated in accordance with Schedule E of this Bylaw, and if landscape security is required, it must be provided to the City before issuance of a building permit.

### **Cancellation of Applications**

24. (a) If an application has been accepted by the Director for processing and further information from the applicant is requested after review by the Director, TRG Committee or Council, the applicant is required to provide the requested information within 6 months. If the applicant does not provide the requested information within 6 months of the request, the City will provide a final written notification to the applicant and if the requested information is not provided within 3 months of the final written notification, the file will be closed.
- (b) If an application is declined by Council resolution, the file will be closed.

### **Reapplication - cancelled file**

25. (a) An applicant wishing to reopen a cancelled file under Section 24(a) must submit a new application and pay the applicable fee prescribed in Schedule A of this Bylaw, but the one year waiting period for reapplications under Section 35 of this Bylaw does not apply.
- (b) An applicant wishing to reopen a closed file under Section 24(b) must submit a new application in accordance with the timeline under Section 35 and pay the application fee prescribed in Schedule A of this Bylaw.

### **Application Sign Posting Requirements - Permits**

- 23-085 26. If Council is providing an opportunity for public comment in relation to any of the following, the applicant must post signage in compliance with Schedule B of this Bylaw:
  - (a) development variance permit;
  - (b) development permit with variances;
  - (c) heritage alteration permit with variances;
  - (d) a temporary use permit.

## Application Sign Posting Requirements – Other applications

27. A person who submits an application for any of the following must post signage in compliance with Schedule C of this Bylaw:
- (a) A zoning bylaw amendment;
  - (b) an *Official Community Plan Bylaw* amendment;
  - (c) an application to amend a land use contract, if the amendment relates to the use or density of an area covered by the contract;
  - (d) a heritage revitalization agreement bylaw if the agreement or an amendment would permit a change to the use or density of use that is not otherwise authorized by the applicable zoning.
28. Section 27 does not apply to City-initiated amendments:
- (a) that involve ten or more parcels; or
  - (b) where, in the opinion of the Director, the posting of signage is not practical because the owner of the affected site does not consent and there is no suitable public property for the signage in sufficiently close proximity to the affected site.

## Public hearing

29. In accordance with the *Local Government Act*, a public hearing is required before Council adopts a bylaw to:
- (a) amend the zoning bylaw, subject to section 29A and 29B;
  - (b) amend the OCP;
  - (c) amend a land use contract, if the amendment relates to density or use of an area covered by the contract;
  - (d) enter into or amend a heritage revitalization agreement, if the agreement or amendment would permit a change to the use or density of use that is not otherwise authorized by the applicable zoning or alter the zoning bylaw in relation to residential rental tenure;
  - (e) heritage designate a property.
- 29A. A public hearing on a proposed zoning amendment bylaw is not permitted if:
- 1. (a) the bylaw is consistent with the OCP,
  - (b) the sole purpose of the bylaw is to permit a development that is, in whole or in part, a residential development, and
  - (c) the residential component of the development accounts for at least half of the gross floor area of all buildings and other structures as part of the development; or

2. the sole purpose of the bylaw is to comply with section 481.3 of the *Local Government Act*.
- 29B. A public hearing is not required on a proposed zoning amendment bylaw if the bylaw is consistent with the OCP.

### **Right to waive a public hearing**

30. Council may waive the holding of a public hearing in relation to a zoning amendment bylaw if the proposed amendment is consistent with the OCP and does not meet the criteria in section 29A.

### **Opportunity for public comment**

31. Council may provide an opportunity for public comment before passing a resolution to issue:
  - (a) a development variance permit, other than a permit that varies a bylaw under Section 526 of the *Local Government Act*;
  - (b) a development permit with variances;
  - (c) a heritage alteration permit with variances; or,
  - (d) a temporary use permit.

### **Notice of public hearing or zoning bylaw amendment**

32. The distance specified for the purpose of the notification of a public hearing required in relation to any of the following is 100 metres:
  - (a) an amendment to the zoning bylaw;
  - (b) an amendment to the OCP;
  - (c) an amendment to a land use contract, if the amendment relates to density or use of an area covered by the contract;
  - (d) a heritage revitalization agreement bylaw or heritage designation bylaw.

32A. The distance specified for the purpose of notification of a zoning amendment bylaw where a public hearing is not permitted or has been waived is 100 metres.

### **Notice of opportunity for public comment**

33. If Council proposes to provide an opportunity for public comment, the City will mail or otherwise deliver notice of the opportunity to the owners and occupiers of all parcels that are the subject of, or that are adjacent to the parcels that are the subject of, the permit in relation to which Council proposes to make a decision.

### **Notice requirements for temporary use permits**

34. For the purposes of Section 494 of the *Local Government Act*, if Council proposes to pass a resolution to issue a temporary use permit, the distance

specified for the purpose of notification is all parcels that are the subject of, or that are adjacent to, the parcels that are the subject of the permit in relation to which Council proposes to make a decision.

### **Reapplications**

35. If the Council does not approve an application submitted in accordance with this bylaw, a person must not submit the same application within one year of the date of Council's decision to not approve the application. However, Council may, by an affirmative vote of at least 2/3 of its members that are eligible to vote on the reapplication, allow a person to reapply within the one year period.

## **PART 3 – DELEGATION AND RECONSIDERATION**

### **Types of permits**

36. Council delegates to the Director the authority to issue the types of permits listed in column A of the table attached as Schedule D to this Bylaw, in the areas listed in column B, accordance with the conditions set out in column C.

### **Referral**

37. Before exercising the delegated authority to make a decision under this Bylaw, the Director may refer an application to other agencies or associations, ADP, HAPL, the TRG, or other staff as required.

### **Referral consideration**

38. If the Director refers an application as contemplated in Section 37 above, the Director must consider but is not bound to accept any recommendations or comments of the body or bodies to which the Director has referred the application.

### **Landscape security delegation**

39. Council delegates to the Director the authority to require landscape security in accordance with Section 23, which amount shall be calculated in accordance with Schedule E of this Bylaw.

### **Council reconsideration**

40. If an application is refused, or if the applicant objects to a proposed provision of the permit or approval, the applicant may request that Council reconsider the decision of the Director in accordance with the provisions for reconsideration set out in this Part.

### **Time limit for reconsideration**

41. Within 10 days of being notified in writing of a decision of the Director the applicant may apply to the City's Corporate Administrator to have Council reconsider a decision of the Director.

### **Notice of reconsideration**

42. The City's Corporate Administrator must give the applicant at least 10 days' notice of the time and place of Council's reconsideration, and of the applicant's right to appear before Council to make representations concerning the application.

### **Representation to Council**

43. A person exercising the right of reconsideration may make oral or written submission to Council and may appoint a representative to make representation.

### **Council's authority**

44. Council may either confirm the decision made by the Director or substitute its own decision, including conditions of a permit or additional conditions of the permit.

## **PART 4 – ENCROACHMENTS IN DELEGATED APPROVALS**

### **Encroachments for decorative features**

45. Council delegates to the individual provided in section 46 the authority to approve an encroachment on the terms provided in sections 48 and 49, if all of the following requirements are satisfied:
  - (a) the application has been delegated to the Director in accordance with section 36 of this Bylaw;
  - (b) the proposed development does not require any approvals by Council;
  - (c) the application includes any awning, canopy, siding, sign or other decorative architectural feature that encroaches upon, under or over City property; and
  - (d) in the Engineer's opinion, the encroachment can be removed without affecting the support or stability of the building.
46. The delegated authority to approve an encroachment pursuant to section 45 is the following person (the "Delegated Authority"):
  - (a) for an encroachment upon, under or over City street, to the Engineer;
  - (b) for an encroachment upon, under or over City park, to the City's Director of Parks, Recreation and Facilities; and
  - (c) for an encroachment upon, under or over any other City property, to the City's Head of Strategic Real Estate.
47. The delegation authority in section 45 does not apply to any encroachment that contains habitable space, including balconies and bay windows.
48. Any owner of real property desiring permission to excavate for, construct, use or maintain any encroachment permitted by section 45 upon, under or over City property appurtenant to such real property, or desiring permission to continue the

existence, maintenance or use of any encroachment permitted by section 45 on City property appurtenant to such real property previously existing, maintained or used without City permission, shall submit to the Delegated Authority a written application accompanied by such plans as the Delegated Authority may require showing the details of such encroachment, to the satisfaction of the Delegated Authority; and the Delegated Authority, upon being satisfied as to the safety and advisability of such encroachment, may grant permission for such encroachment.

49. (a) Before proceeding with the excavation for or construction of or continuing the existence, use or maintenance of an encroachment for which permission has been granted by the City pursuant to section 48, the owner shall first enter into an agreement with the City in the form of Schedule F.
- (b) The Delegated Authority is authorized to execute the agreement in the Form of Schedule F if permission has been granted pursuant to section 48.

#### **Encroachments for anchor rods**

50. Council delegates to the Engineer the authority to approve an encroachment on the terms provided in sections 51 to 53, if both of the following requirements are satisfied:
  - (a) the proposed development has already been approved by Council or under the Director's delegated authority; and
  - (b) the application includes any installation of anchor rods that encroach upon, under or over City property.
51. A person intending the installation of anchor rods under any City property shall, before commencing the installation, submit to the Engineer a written application for permission accompanied by plans sealed by a professional engineer indicating the proposed:
  - (a) depth, length and number of anchor rods;
  - (b) area of excavation face abutting City property;
  - (c) details of which anchor rods will be removed, de-tensioned or fully grouted and the time by which they will be removed, de-tensioned or fully grouted; and
  - (d) such other details as the Engineer may require.
52. The Engineer, if of the opinion that the use of anchor rods will not adversely affect the City's property or interests, may permit the installation of anchor rods pursuant to section 50 in accordance with plans submitted under section 51, if the owner of the real property to which the anchor rods will be appurtenant first:
  - (a) pays the City a non-refundable fee of \$750;
  - (b) pays the City a one-time charge of \$25 per square metre of area of the proposed excavation face that will be supported by anchor rods and abuts a street or lane as calculated by the Engineer; and
  - (c) enters into an agreement with the City in the form of Schedule G.

53. The Engineer is authorized to execute the agreement in the Form of Schedule G if permission has been granted pursuant to section 52.

**General**

54. Council delegates to the Engineer and the City Solicitor the authority to grant permission for and authorize the execution by the Engineer of:
- (a) a termination of any agreement authorized under this Part 4 pertaining to an encroachment when such encroachment has been removed to the satisfaction of the Engineer;
  - (b) the assignment of an existing encroachment agreement authorized under this Part 4 to a new property owner; and
  - (c) the release of an existing encroachment agreement authorized under this Part 4 when such agreement is to be replaced by a new agreement.

READ A FIRST TIME on the **10<sup>th</sup>** day of **March** 2016.

READ A SECOND TIME on the **10<sup>th</sup>** day of **March** 2016.

READ A THIRD TIME on the **24<sup>th</sup>** day of **March** 2016.

ADOPTED on the **24<sup>th</sup>** day of **March** 2016.

**“CHRIS COATES”**

**“LISA HELPS”**

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CORPORATE ADMINISTRATOR

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MAYOR

**City of Victoria**  
**Bylaw No. 16-028**  
**Schedule A**  
**APPLICATION FEES**

**1. Pre-application fee**

The pre-application fee for giving notice, is:

- (1) \$800 if notice must be given to owners and occupiers of properties within 100 metres of the subject property; or,
- (2) \$2400 if notice must be given to owners and occupiers of properties within 200 metres of the subject property.

**2. Base application fee**

- (1) The base application fee for an application to amend the Official Community Plan is \$2500.
- (2) The base application fee described in paragraph (3) applies to the following applications:
  - (a) a zoning bylaw amendment;
  - (b) an application to amend a land use contract, if the amendment relates to density or use of an area covered by the contract;
  - (c) a heritage revitalization agreement bylaw if the agreement or an amendment would permit a change to the use or density of use that is not otherwise authorized by the applicable zoning;
  - (d) a temporary use permit.
- (3) The base application fee for the applications listed in paragraph (2) is calculated as follows, plus \$250 for each variance that is requested or proposed in the application:
  - (a) For an application in which the proposed development is exclusively residential use:
    - (i) Proposal for one duplex: \$3000;
    - (ii) Proposal for one triplex: \$4000;

- (iii) Proposal for one, two or three dwelling units that are not captured by paragraph (3)(a)(i) or (ii): \$2000 per dwelling unit proposed;
    - (iv) Proposal pertaining to more than three dwelling units (regardless of dwelling unit type): \$6000 plus \$0.50 per square metre of floor area.
  - (b) For an application in which the proposed development is non-residential use or mixed use:
    - (i) Proposal equal to or under 500 square metres: \$3000 plus \$0.50 per square metre of floor area;
    - (ii) Proposal over 500 square metres: \$6000 plus \$0.50 per square metre of floor area.
  - (c) For an application in which the proposed development is not captured by paragraph (3)(a) or (b): \$2000.
  - (d) For an application described in paragraph (3)(a), (b), or (c), in which any accessory dwelling units are proposed, the accessory dwelling units are not counted as dwelling units for the purposes of calculating the base application fee.
  - (e) Notwithstanding paragraph (3)(d), an application in which only accessory dwelling unit(s) are proposed shall have a base application fee of \$2000.
- (4) The base application fee described in paragraph (5) applies to the following applications:
  - (a) a development permit;
  - (b) a heritage alteration permit.
- (5) The base application fee for the applications listed in paragraph (4) is calculated as follows, plus \$250 for each variance that is requested or proposed in the application:
  - (a) For an application in which the proposed development is exclusively residential use:
    - (i) Proposal for one duplex: \$3000;
    - (ii) Proposal for one triplex: \$4000;
    - (iii) Proposal for one, two or three dwelling units that are not captured by paragraph (5)(a)(i) or (ii): \$2000 per dwelling unit proposed;

- (iv) Proposal pertaining to more than three dwelling units (regardless of dwelling unit type): \$6000 plus \$2.50 per square metre of floor area;
- 22-057 (v) Notwithstanding the previous subparagraphs (i) – (iv), the following fees apply for proposed developments in Development Permit Area 15F:
  - (A) Proposal for up to six dwelling units: \$12,000,
  - (B) Proposal for more than six dwelling units: \$15,000.
- (b) For an application in which the proposed development is non-residential use or mixed use:
  - (i) Proposal equal to or under 500 square metres: \$3000 plus \$2.50 per square metre of floor area;
  - (ii) Proposal over 500 square metres: \$6000 plus \$2.50 per square metre of floor area.
- (c) For an application in which the proposed development is not captured by paragraph (5)(a) or (b): \$2000.
- 22-057 (d) With the exception of applications described in paragraph (5)(a)(v), for an application described in paragraphs (5)(a), (b), or (c), in which any accessory dwelling units are proposed, the accessory dwelling units are not counted as dwelling units for the purposes of calculating the base application fee.
- (e) Notwithstanding paragraph (5)(d), an application in which only accessory dwelling unit(s) are proposed shall have a base application fee of \$2000.
- (f) If a development permit or heritage alteration permit application is submitted under paragraph 5(a)(i), (ii) or (iii) in conjunction with an application under paragraph 2 for the same project:
  - (i) only one base application fee is payable, calculated in accordance with paragraph (3); and
  - (ii) only one variance fee is payable for each proposed variance, calculated in accordance with paragraph (3).
- (6) The base application fee for a development variance permit is \$750 (includes one variance), plus \$250 for each additional variance that is requested or proposed in the application beyond the first.

(7) The base application fee for a development permit for subdivision only is \$250 for each new lot that is proposed to be created in the application.

22-057

(8) Notwithstanding paragraphs (4) and (6), the base application fee for a permit which the Director is authorized to issue is as follows:

23-085

(a) the base application fee for a development permit in

(i) Development Permit Area 16 for buildings over 100 m<sup>2</sup> is 50% of the development permit fee as provided in paragraph (5);

(ii) Development Permit Area 15E is 50% of the development permit fee as provided in paragraph (5);

(iii) Development Permit Area 15F for a proposal for up to six dwelling units is \$10,000;

(iv) Development Permit Area 15F for a proposal for more than six dwelling units is \$13,000;

(b) the base application fee for a heritage alteration permit for a single family dwelling or duplex is \$0; and

(c) the base application fee for a permit not addressed in subparagraph (a) or (b) is \$200.

23-085

(9) Notwithstanding paragraph (4), the base application fee is \$500 for an application:

(a) proposing only emergency preparedness container(s) and equipment that are collectively under 100 m<sup>2</sup> in floor area; and

(b) that does not fall within paragraph (8).

(10) Notwithstanding paragraph (4), no base application fee is payable for a heritage alteration permit for a single family dwelling or duplex; however, where a variance is proposed, a fee of \$250 for each variance applies.

(11) Notwithstanding paragraph (2), the base application fee to allow any "storefront cannabis retailer" use is the greater of \$7500 and the application fee calculated in accordance with paragraph (3).

### **3. Administration Fee**

(1) The administration fee for an application that requires a public hearing, payable when the Council forwards the bylaw to a public hearing, is as follows:

(a) For an application for heritage designation: No fee;

- (b) For all other applications: \$1800.
- (2) The administration fee for an application in respect of which Council provides an opportunity for public comment, payable when Council determines the date of the opportunity for public comment, is as follows:
  - (a) For a temporary use permit: \$1800;
  - (b) For all other applications: \$200.

**4. Resubmission fee**

- (1) If the plans submitted in support of the application require revisions as set out in an Application Review Summary as provided by the TRG, revised plans will be reviewed by City staff and no additional fees will be charged.
- (2) If plans are revised as a result of changes proposed by the applicant, and not requested by staff, Committee, Council, ADP or HAPL, then an additional fee of \$500 shall be required for each new submission.
- (3) There is no resubmission fee when an applicant resubmits revised plans in response to comments arising from City staff, Committee, Council, ADP or HAPL.

**5. Amendments to existing legal agreements**

The fee to have an existing legal agreement with the City amended is \$500 plus the City's legal costs to complete the amendment.

**6. Request Council authorization**

The fee to request staff to prepare and present a report to Council in order to request Council authorization is \$1000.

**7. Site profile for contaminated sites**

If a site profile for contaminated sites is required in conjunction with an application, the fee is \$100.

**City of Victoria**

**Bylaw No. 16-028**

**Schedule B**

**PROCEDURES FOR SIGN POSTING – PERMITS**

23-085

1. Where a notice or sign is required pursuant to section 26 of this Bylaw, a sign or signs shall be posted on the property or properties subject to the application in compliance with this Schedule.
2. The City shall determine the specifications, format, and information content of the sign or signs.
3. The applicant shall:
  - (a) obtain the sign or signs from the City or obtain the specifications for the sign from the City;
  - (b) post the sign or signs on the subject property for a minimum of 10 days prior to the date of the Council's meeting concerning the application;
  - (c) post additional meeting notices and additional signs if required;
  - (d) maintain the sign or signs on the subject property for the required time period.
4. The applicant shall post the sign or signs in a prominent location, clearly visible from the street, and on the site that is subject to the application. The City shall determine the required number and location of the sign or signs, taking into account the configuration of the site and visibility to the public.

**City of Victoria**

**Bylaw No. 16-028**

**Schedule C**

**PROCEDURES FOR SIGN POSTING – OTHER APPLICATIONS**

23-085

1. Where a notice or sign is required pursuant to section 27 of this Bylaw, a sign or signs shall be posted on the property or properties subject to the application in compliance with this Schedule.
2. The City shall determine the specifications, format, and content of the sign or signs, and provide the specifications to the applicant or the applicant's agent.
3. The applicant shall, at its sole expense:
  - (a) prepare the sign or signs in accordance with the specifications provided by the City;
  - (b) post the sign or signs on the subject property for a minimum of 10 days prior to the initial Committee meeting;
  - (c) post additional meeting notices and additional signs if required by the City;
  - (d) maintain the sign or signs on the subject property until the Public Hearing for the application has been held.
4. The applicant shall post the sign or signs in a prominent location, clearly visible from the street, and on the site that is subject to the application. The City shall determine the required number and location of the sign or signs, taking into account the configuration of the site and visibility to the public.

**City of Victoria**  
**Bylaw No. 16-028**  
**Schedule C-1**

**PROCEDURES FOR SIGN POSTING – PRE-APPLICATION PUBLIC INPUT**

1. The City shall determine the specifications, format, and content of the sign or signs, and provide the specifications to the applicant or the applicant's agent.
2. The applicant shall, at its sole expense:
  - (a) prepare the sign or signs in accordance with the specifications provided by the City;
  - (b) post the sign or signs on the subject property for 30 consecutive days and no longer than 35 days, with such period of time to be calculated starting from the same day the plans are posted online by the City for public input;
  - (c) post additional signs if required by the City;
  - (d) maintain the sign or signs on the subject property for the duration of the notice period under section 1.
3. The applicant shall post the sign or signs in a prominent location, clearly visible from the street, and on the site that is subject to the application. The City shall determine the required number and location of the sign or signs, taking into account the configuration of the site and visibility to the public.

**City of Victoria**

**Bylaw No. 16-028**

**Schedule D**

**DELEGATED APPROVALS**

The Director is authorized to issue the types of permits listed in Column A, in the areas set out in Column B, subject to the conditions specified in Column C of the following table.

Row #	A. Permit Types	B. DPAs and HCAs	C. Conditions
1	DP for new buildings, building additions, structures and equipment	DPA 10A: Rock Bay  DPA 10B (HC): Rock Bay Heritage  DPA 16: General Form and Character	Permit valid for two years from the date of issuance.
2	HAP without variances for a single family dwelling or duplex	All DP Areas and all HCAs	The Director is satisfied that the application is consistent with any applicable guidelines in the OCP.  Permit valid for two years from the date of issuance.
3 23-085	DP , HAP, or DVP authorizing minor amendments to plans attached to or referenced in an existing approved permit	All DP Areas and all HCAs	The Director is satisfied that the proposed amendments are substantially in accord with the terms and conditions of the original approved permit, including variances and are consistent with the guidelines under the OCP.  The expiry date of the original permit applies.
4 23-085	DP or HAP for the renewal of an existing valid DP or HAP	All DP Areas and all HCAs	The permit being renewed must be: <ul style="list-style-type: none"> <li>○ unexpired at the time of application;</li> <li>○ unchanged from the original application, unless the changes are for consistency with new policies or regulations.</li> </ul> Permit valid for two years from the date of issuance.

22-057

Row #	A. Permit Types	B. DPAs and HCAs	C. Conditions
5	DP for new buildings, building additions, structures and equipment	DPA 8: Victoria Arm - Gorge Waterway	The guidelines set out in the OCP must be satisfied.  Permit is valid for two years from the date of issuance.
6	DP for new buildings, building additions, structures and equipment that are less than 100 m <sup>2</sup> in floor area	DPA 2 (HC): Core Business DPA 3 (HC): Core Mixed-Use Residential DPA 4: Town Centres DPA 5: Large Urban Villages DPA 6A: Small Urban Villages DPA 6B (HC): Small Urban Villages Heritage DPA 7A: Corridors DPA 7B (HC): Corridors Heritage DPA 10A: Rock Bay DPA 10B (HC): Rock Bay Heritage DPA 11: James Bay and Outer Harbour DPA 12 (HC): Legislative Precinct DPA 13: Core Songhees DPA 14: Cathedral Hill Precinct	Permit is valid for two years from the date of issuance.
7	DP for an accessory building or buildings	DPA 15A: Intensive Residential - Small Lot DPA 15B: Intensive Residential - Panhandle DPA 15D: Intensive Residential – Duplex DPA 15E: Intensive Residential – Garden Suites	Permit is valid for two years from the date of issuance.
8	DP for floating buildings, floating building additions or floating structures of any size	Fisherman’s Wharf Marine District Zone within DPA 11: James Bay and Outer Harbour	Permit is valid for two years from the date of issuance.
9	DP for floating buildings, floating building additions and	All DP Areas and all HCAs	Permit is valid for two years from the date of issuance.

Row #	A. Permit Types	B. DPAs and HCAs	C. Conditions
	floating structures that do not exceed 100 m <sup>2</sup> in floor area		
10	DP or HAP for the replacement of exterior materials on existing buildings	All DP Areas and all HCAs	Permit is valid for two years from the date of issuance.
22-057 22-026 23-085	11 DP or HAP for landscaping changes where there is an approved DP or HAP where no occupancy permit has been issued	All DP Areas and all HCAs, except: DPA 16A: General Urban Design, DPA 17 (HC): North Park Village Area, and HCA 2: Robert Street Heritage Conservation Area	The proposed landscaping must comply with applicable design guidelines or be in accordance with a landscape plan that is attached to and forms part of an approved permit.
22-026	12 DP or HAP for landscaping changes where there is an approved DP or HAP after the occupancy permit has been issued	DPA 1 (HC): Core Historic DPA 2 (HC): Core Business DPA 3 (HC): Core Mixed Use-Residential DPA 4: Town Centres DPA 5: Large Urban Village DPA 6A: Small Urban Village DPA 6B (HC): Small Urban Village Heritage DPA 7A: Corridors DPA 7B (HC): Corridors Heritage DPA 8: Victoria Arm-Gorge Waterway DPA 9 (HC): Inner Harbour DPA 10A: Rock Bay DPA 10B (HC): Rock Bay Heritage DPA 11: James Bay and Outer Harbour DPA 12 (HC): Legislative Precinct DPA 13: Core Songhees DPA 14: Cathedral Hill Precinct HCA 1: Traditional Residential	The proposed landscaping must comply with applicable design guidelines or be in accordance with a landscape plan that is attached to and forms part of an approved permit

Row #	A. Permit Types	B. DPAs and HCAs	C. Conditions
		HCA 2: Robert Street	
22-026 23-085	13 DP or HAP for landscaping changes without an approved Development Permit or Heritage Alteration Permit	DPA 1 (HC): Core Historic DPA 2 (HC): Core Business DPA 3 (HC): Core Mixed Use-Residential DPA 4: Town Centres DPA 6B (HC): Small Urban Villages Heritage DPA 7B (HC): Corridors Heritage DPA 8: Victoria Arm - Gorge Waterway DPA 9 (HC): Inner Harbour DPA 10B (HC): Rock Bay Heritage DPA 12 (HC): Legislative Precinct HCA 1: Traditional Residential HCA 2: Robert Street	The proposed landscaping must comply with applicable guidelines.  Permit is valid for two years from the date of issuance.
23-085	14 DP or HAP for temporary buildings and structures that do not exceed 100 m <sup>2</sup> in floor area	All DP Areas and all HCAs	Temporary buildings and structures located on private property.  Covenant in place to ensure removal of temporary buildings or structures within two years from the date of issuance of the Development Permit for the temporary building or structure.
22-085	15 DP or HAP for temporary construction trailers and temporary residential unit sales trailers	All DP Areas and all HCAs	Temporary construction trailers and temporary residential unit sales trailers located on private property.  Covenant is in place to ensure removal of temporary construction trailers and temporary residential unit sales trailers subject to the following time frame:

Row #	A. Permit Types	B. DPAs and HCAs	C. Conditions
			<ul style="list-style-type: none"> <li>○ Six months after the date the City issues an Occupancy Permit for the principal building or structure on the property; or</li> <li>○ Six months after the date that the principal building or structure on the property is no longer the subject of a valid and subsisting Building Permit; or</li> <li>○ If neither a Building Permit or Occupancy Permit is required or will be issued for the principal building on the property, then two years from the date of issuance of the Development Permit for the temporary construction trailers and temporary residential unit sales trailer.</li> </ul>
16	DP for new buildings and building additions that are less than 150m <sup>2</sup> in floor area.	CD-9 Zone, Dockside District within DPA 13: Core Songhees	<p>The proposed building and building addition must comply with applicable guidelines</p> <p>Permit is valid for two years from the date of issuance.</p>
17	DP for changes to landscaping previously approved under a Development Permit or Heritage Alteration Permit	CD-9 Zone, Dockside District within DPA 13: Core Songhees	<p>The proposed landscaping must comply with applicable guidelines or be in accordance with a landscape plan that is attached to and form part of an approved permit.</p> <p>Permit is valid for two years from the date of issuance.</p>
18	<p>A DP or HAP with a parking variance, where:</p> <ul style="list-style-type: none"> <li>i) the DP or HAP is delegated elsewhere in this table; and</li> <li>ii) the change of use is permitted in the zoning bylaw; and</li> <li>iii) the variance does not exceed 20 motor vehicle parking stalls; and</li> <li>iv) the total variance of long-term and/or short-</li> </ul>	All DP Areas and all HCAs	The Director is satisfied that the proposal associated with the proposed parking variance does not adversely impact the neighbourhood by unduly contributing to curb or on-street parking issues and that suitable Transportation Demand Management measures are

23-085

Row #	A. Permit Types	B. DPAs and HCAs	C. Conditions
	term bicycle parking stalls does not exceed 6 stalls.		secured by legal agreement as required.  Permit is valid for two years from the date of issuance.
22-085 19	A DP or HAP with a parking variance, where: i) the DP or HAP is delegated elsewhere in this table; and ii) the change of use is permitted in the zoning bylaw; and iii) the existing number of parking stalls is lawfully non-conforming pursuant to section 525 and 529 of the <i>Local Government Act</i> ; and iv) the proposed new use requires no more than 20 additional motor vehicle parking stalls, even if the total variance for the building exceeds 20 motor vehicle parking stalls; and v) the proposed new use requires no more than 6 additional bicycle parking stalls, even if the total variance for the building exceeds 6 bicycle parking stalls.	All DP Areas and all HCAs	The Director is satisfied that the proposal associated with the proposed parking variance does not adversely impact the neighbourhood by unduly contributing to curb or on-street parking issues and that suitable Transportation Demand Management measures are secured by legal agreement as required.  Permit is valid for two years from the date of issuance.
23-085 20	A DVP for a minor parking variance, where the criteria to determine if a variance is minor is as follows: i) the change of use is permitted in the zoning bylaw; and ii) the variance does not exceed 20 motor vehicle parking stalls; and iii) the total variance of long-term and/or short-term bicycle parking stalls does not exceed 6 stalls.	N/A	The Director is satisfied that the proposed variance is in accordance with the following guidelines:  i) the proposed parking variance does not adversely impact the neighbourhood by unduly contributing to curb or on-street parking issues, and  ii) suitable Transportation Demand Management

Row #	A. Permit Types	B. DPAs and HCAs	C. Conditions
			<p>measures are secured by legal agreement as required.</p> <p>Permit is valid for two years from the date of issuance.</p>
21	<p>A DVP for a minor parking variance, where the criteria to determine if a variance is minor is as follows:</p> <ul style="list-style-type: none"> <li>i) the change of use is permitted in the zoning bylaw; and</li> <li>ii) the existing number of parking stalls is lawfully non-conforming pursuant to section 525 and 529 of the <i>Local Government Act</i>; and</li> <li>iii) the proposed new use requires no more than 20 additional motor vehicle parking stalls, even if the total variance for the building exceeds 20 motor vehicle parking stalls; and</li> <li>iv) the proposed new use requires no more than 6 additional bicycle parking stalls, even if the total variance for the building exceeds 6 bicycle parking stalls.</li> </ul>	N/A	<p>The Director is satisfied that the proposed variance is in accordance with the following guidelines:</p> <ul style="list-style-type: none"> <li>i) the proposed parking variance does not adversely impact the neighbourhood by unduly contributing to curb or on-street parking issues, and</li> <li>ii) suitable Transportation Demand Management measures are secured by legal agreement as required.</li> </ul> <p>Permit is valid for two years from the date of issuance.</p>
22	<p>DP, with or without variances, for new buildings, building additions, structures and equipment for residential developments with secured affordability</p>	All DP Areas	<p>The proposed development complies with the applicable guidelines.</p> <p>The proposed development is:</p> <ol style="list-style-type: none"> <li>1. subject to a legal agreement securing affordability and rental tenure for a minimum period of 60 years, and is either: <ul style="list-style-type: none"> <li>a. wholly owned and operated by a public housing body, as prescribed in the <i>Residential Tenancy Act</i>, or</li> </ul> </li> </ol>

Row #	A. Permit Types	B. DPAs and HCAs	C. Conditions
			<p>b. operated by a public housing body, as prescribed in the <i>Residential Tenancy Act</i>, pursuant to a legally binding arrangement with the property owner; or</p> <p>2. subject to a legal agreement securing affordability for a minimum period of 60 years and is either wholly owned and operated by a housing cooperative meeting the below requirements, or operated by a housing cooperative that meets the below requirements and operates the development pursuant to a legally binding arrangement with the property owner:</p> <p>a. the housing cooperative must</p> <p>i. be a housing cooperative pursuant to the <i>Cooperative Association Act</i>,</p> <p>ii. have purposes including the provision of affordable housing to low- or moderate-income households, and</p> <p>iii. have constating documents preventing the remuneration of directors and providing for the disposition of assets on dissolution or wind-up to an organization with similar purposes and restrictions.</p> <p>Permit is valid for two years from the date of issuance.</p>

22-072  
23-085

Row #	A. Permit Types	B. DPAs and HCAs	C. Conditions
23	<p>A Development Variance Permit, a DP with a variance or a HAP with a variance where the variance relates to:</p> <ul style="list-style-type: none"> <li>i) the number of accessible parking spaces or van accessible parking spaces</li> <li>ii) the design specifications of spaces described in i) above</li> <li>iii) the number of motor vehicle parking stalls resulting from a requirement to install accessible parking spaces or van accessible parking spaces</li> </ul>	All DP Areas	<p>The proposed development complies with the applicable guidelines</p> <p>The applicant has provided evidence to the satisfaction of the Director that demonstrates that site conditions prevent:</p> <ul style="list-style-type: none"> <li>i) the number of required accessible or van accessible parking spaces from being installed;</li> <li>ii) full compliance with the design specifications;</li> </ul> <p>and that all reasonable efforts have been made to maximize the provision of accessible or van accessible parking spaces and/or to comply with the design specifications.</p> <p>Where the provision of accessible parking results in a variance relating to motor vehicle parking stalls, including visitor stalls, the Director is satisfied that this variance does not adversely impact the neighbourhood by unduly contributing to on-street parking issues.</p> <p>Permit is valid for two years from the date of issuance.</p>
24	DPs for new buildings, building additions, structures, landscaping and equipment	DPA 15F: Missing Middle Housing	<p>The proposed development complies with the applicable guidelines.</p> <p>Permit is valid for two</p>

22-057  
23-085

23-085

23-085

Row #	A. Permit Types	B. DPAs and HCAs	C. Conditions
			years from the date is issuance.
25	DPs or HAPs, with or without variances, for new buildings, building additions, structures and equipment for child care facilities	All DP Areas	The proposed development complies with the applicable guidelines  Permit is valid for two years from the date of issuance.
26	A DP or HAP with minor variance(s) related to size, siting, or dimensions of a building, structure or use that is permitted on the land, where: i) the DP or HAP is delegated elsewhere in this table; and ii) the criteria to determine if a proposed variance is minor is in Schedule D-1.	All DP Areas and all HCAs	The proposed development complies with the applicable guidelines.  Permit is valid for two years from the date of issuance.
27	A DVP for minor variance(s) related to size, siting, or dimensions of a building, structure or use that is permitted on the land, where the criteria to determine if a proposed variance is minor is in Schedule D-1.	N/A	The Director is satisfied that the proposed variance is in accordance with the guidelines in Schedule D-2.  Permit is valid for two years from the date of issuance.
28	A DP or HAP with minor variance(s) related to design standards of parking, where: i) the DP or HAP is delegated elsewhere in this table; and ii) the criteria to determine if a proposed variance is minor is when the variance is related to any of the following: • Sections 2-3 of Schedule C of the Zoning Regulation Bylaw; or • Sections 5.1.2-5.1.5 of Zoning Bylaw 2018.	All DP Areas and all HCAs	The Director is satisfied that the proposed variance would not result in any safety or accessibility concerns or operational issues.  Permit is valid for two years from the date of issuance.

Row #	A. Permit Types	B. DPAs and HCAs	C. Conditions
29	<p>A DVP for minor variance(s) related to design standards of parking, where the criteria to determine if a proposed variance is minor is when the variance is related to any of the following:</p> <ul style="list-style-type: none"> <li>• Sections 2-3 of Schedule C of the Zoning Regulation Bylaw; or</li> <li>• Sections 5.1.2-5.1.5 of Zoning Bylaw 2018.</li> </ul>	N/A	<p>The Director is satisfied that the proposed variance is in accordance with the following guidelines: the proposed variance would not result in any safety or accessibility concerns or operational issues.</p> <p>Permit is valid for two years from the date of issuance.</p>

**City of Victoria**

**Bylaw No. 16-028**

**Schedule D-1**

**CRITERIA FOR MINOR VARIANCES**

A permit for or with minor variances related to size, siting, or dimensions of a building, structure or use that is permitted on the land, may be considered by the Director if the variance is minor pursuant to the following criteria.

23-085

A variance is minor if:

1. the applicant has demonstrated to the satisfaction of the Director that:
  - a. they have explored all reasonable alternative solutions to the variance and none are available; and
  - b. any possible mitigations to issues related to the variance have been incorporated into the proposal; and
2. the Director is satisfied based on evidence provided by the applicant and the particular circumstances of the application, that the variance would:
  - a. be unnoticeable by a typical user of the site, and nearby private and public property; or,
  - b. not have a substantial negative impact on the livability and functionality of any of the subject site, nearby private property, or nearby public property, including impacts on:
    - i. Shadowing
    - ii. Privacy
    - iii. Usable outdoor space
    - iv. Natural features and vegetation
    - v. Access, connectivity or function for any pedestrians or vehicles (motorized and non-motorized)
    - vi. Access to or operations of underground infrastructure
    - vii. Street Vitality

**City of Victoria**  
**Bylaw No. 16-028**  
**Schedule D-2**

**GUIDELINES FOR DEVELOPMENT VARIANCE PERMITS**

23-085

These guidelines are intended to provide a framework for the Director when reviewing a development variance permit for minor variances related to siting, size, and dimensions of a building, structure, or use permitted on the land, in conjunction with the specific circumstances of the proposal including the site conditions, constraints, and context.

The Director shall consider the following guidelines when deciding whether to issue any development variance permit application for minor variances:

- a. For applications within the *Downtown Core Area Plan* (2011) boundaries:
  - i. Downtown Core Area Plan (2011) – with special attention to the following sections:
    - 1. Appendix 1: Public Outward View Guidelines
    - 2. Appendix 2: Public External View Guidelines
    - 3. Appendix 3: Sidewalk Width Guidelines
    - 4. Appendix 4: Building Design Guidelines
- b. For applications located outside of the *Downtown Core Area Plan* (2011) boundaries related to:
  - i. mixed-uses, uses other than residential, or residential with seven or more dwelling units:
    - 1. General Urban Design Guidelines (2022).
  - ii. residential uses with less than seven dwelling units:
    - 1. Missing Middle Design Guidelines (2022).



**City of Victoria**

**Bylaw No. 16-028**

**Schedule E**

**LANDSCAPE SECURITY**

**1 Landscape security amount**

The landscape security shall be calculated at 120% of the total landscaping cost, based on an estimate of the landscaping costs that the applicant provides to the Director, with a minimum landscape security of \$2000.

**2 Landscaping costs**

(a) The landscaping costs that must be included within the estimate provided to the Director include but are not limited to the following:

- (1) Tree protection measures;
- (2) Landscape grading;
- (3) Landscape retaining walls;
- (4) Landscape paving including structural bases;
- (5) Landscape structures, such as fences, screen walls, living walls, built-in planters, and shade structures;
- (6) Landscape furnishings, such as benches and seating, bicycle parking facilities, waste and recycling containers, recreational equipment, and play equipment;
- (7) Plant materials, such as trees, shrubs, perennials, grasses or other ground cover;
- (8) Green roofs;
- (9) Sod and seeding;
- (10) Growing medium;
- (11) Structural soil cells;
- (12) Water features;

- (13) Site lighting;
  - (14) Labour;
  - (15) Irrigation; and
  - (16) Other landscape materials.
- (b) All estimated costs provided under subsection (a) must include applicable taxes.

City of Victoria

Bylaw No. 16-028

Schedule F

**ENCROACHMENT FOR DECORATIVE FEATURES**

**EASEMENT (ENCROACHMENT) AGREEMENT**

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THIS AGREEMENT dated for reference the \_\_\_<sup>th</sup> day of \_\_\_\_, \_\_\_\_\_

BETWEEN:

\_\_\_\_\_

\_\_\_\_\_

(the "Owner")

AND:

**CITY OF VICTORIA**

1 Centennial Square, Victoria, British Columbia, V8W 1P6

(the "City")

**WHEREAS:**

- A. The Owner is the owner of the Lands (as defined in this Agreement);
- B. The Owner has requested that the City grant its permission for the use of the Easement Area (as hereinafter defined), which areas are portions of City property in the City of Victoria, for the purposes of erecting and maintaining a part of a building such part being \_\_\_\_\_*[insert description of encroaching structures]* and all support structures related thereto (the "**Structures**") over City property as shown on the Easement Area (as hereinafter defined);
- C. The City agrees to grant the Owner's request to encroach on the Easement Area, subject to the provisions of the City's bylaws as amended from time to time and subject to the terms and conditions of this Agreement, and the City agrees to grant the Owner an easement in that regard;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of permission to encroach herein granted, the sum of ONE DOLLAR (\$1.00) of lawful money of Canada paid by the Owner to the City, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both parties, the Owner hereby covenants, promises and agrees with the City as follows:

## 1. LANDS

- 1.1 The Owner owns lands situated in Victoria, British Columbia, which is more particularly described as:  
Parcel Identifier: \_\_\_\_\_

\_\_\_\_\_

(the “**Lands**”);

- 1.2 The City is the owner of that portion of \_\_\_\_\_ [insert legal description or name of street if roadway] comprising an area of \_\_\_\_\_ square meters as more particularly identified on Plan \_\_\_\_\_ [insert specifics of Plan or sketch] as the easement (the “**Easement Area**”), a reduced copy of which is attached hereto as Schedule “A” (the “**Servient Tenement**”).

## 2. EASEMENT - PERMISSION TO ENCROACH

- 2.1 Subject to the terms of this Agreement, the City as owner of the Servient Tenement, does hereby grant, convey and confirm unto the Owner as owner of the Lands (as Dominant Tenement) for the benefit of the Lands and to be appurtenant to the Lands for the use and enjoyment of the Owner and its servants, agents, tenants, invitees and licensees and the owner or owners of all or any part of the Lands an easement for the non-exclusive use from time to time in common with the City as owner of the Servient Tenement and its servants, agents, tenants, invitees and licensees, any other persons to whom the City has granted rights to use the Easement Area for the purposes of constructing, installing maintaining, repairing and replacing the Structures (the “**Works**”) including the right on the part of the Owner to allow the Structures to remain in and encroach upon the Easement Area in accordance with the terms of this Agreement.
- 2.2 The Owner shall not erect any work or encroachment in the Easement Area other than the Structures. The Owner shall not permit the Structures to encroach on any City property other than the Easement Area.

## 3. TERM

- 3.1 This Agreement commences on the date that it is fully signed by both parties and, subject to Part 13 hereof, expires when the building which the Owner has constructed on the Lands (the “**Building**”) is demolished or significantly structurally altered such that the Easement Area is no longer required for the purposes of erecting and maintaining the Structures. For certainty, the easement herein granted will terminate, and will be of no further effect in the event the Building is demolished or removed from the Lands or in the event that the Building is modified such that it no longer encroaches on the Servient Tenement.

## 4. TITLE

- 4.1 This Agreement does not give the Owner any legal or equitable interest of any kind in the Easement Area or any exclusive right to occupy the Easement Area. The Easement Area retains its status as a \_\_\_\_\_ [highway, park, City property].

## **5. MAINTENANCE**

- 5.1 The Owner will carry out the Works in a proper and workmanlike manner so as to do as little injury to the Servient Tenement as possible.
- 5.2 The Owner shall at all times and at its own expense keep and maintain the Structures and the Easement Area in good and sufficient repair and in a neat and clean condition and in a manner which does not pose any risk to persons or property, all to the satisfaction of the City (without any obligation on the part of the City to determine what is sufficient repair or a safe condition).
- 5.3 The Owner shall make good at its own expense, all damage or disturbance which may be caused to the surface of the Servient Tenement in the exercise of their rights hereunder.
- 5.4 The Owner shall not make any structural alterations to any Structures in the Easement Area without the prior written consent of the City, which consent will not be unreasonably withheld or delayed, but provided that the Owner may make temporary alterations to any Structures in the event of an emergency in order to prevent or avoid risks to persons or property and that the Owner so soon thereafter as is reasonable in the circumstances applies for the consent of the City with respect to any necessary permanent structural alterations to such Structures.
- 5.5 If the Owner fails to keep the Structures and Easement Area in good repair and maintenance to the satisfaction of the City, the City may give notice to the Owner demanding that repairs and maintenance be done within the time specified by the City and if the Owner fails to do so, to the City's satisfaction, the City may, in its sole discretion (without any obligation to do so), cause such repairs to be made, including structural changes, as it deems necessary at the Owner's expense. The Owner shall pay the costs of the repairs to the City forthwith on demand.
- 5.6 In making repairs or doing maintenance, the City may bring and leave upon the Lands and the Easement Area, the necessary materials, tools and equipment and the City shall not be liable to the Owner for any inconvenience, annoyance, loss of business or other injuries suffered by the Owner by reason of the City effecting the repairs or maintenance or doing any work hereunder.

## **6. DESIGN SPECIFICATIONS**

- 6.1 The Owner shall ensure that any Structures placed in the Easement Area conform to the requirements and specifications of the British Columbia Building Code and all other applicable statutes, regulations, bylaws and codes.

## **7. ENVIRONMENTAL PROTECTION**

- 7.1 The Owner shall not do or permit to be done anything which may or does contaminate the Easement Area or any surrounding area and the Owner shall be solely responsible to remove all such contamination and remediate it to residential standards.

## **8. COMPLIANCE WITH LAWS**

- 8.1 The Owner shall in respect of its use of the Easement Area and in relation to the Works and the use of the Structures comply with all applicable statutes, laws, regulations, bylaws, orders and other requirements of every governmental authority having jurisdiction.

## **9. INDEMNITY AND INSURANCE**

- 9.1 The Owner shall indemnify and hold harmless the City and its elected and appointed officials, officers, employees and agents from all suits, proceedings, losses, damages, expenses, demands, claims, costs (including actual costs of professional advisors and costs associated with remediation of contamination) and harm of any kind, howsoever caused, whether related to death, bodily injury, property loss, property damage or consequential loss or damage, arising out of or in any way connected with:
- (a) The permission to encroach granted by this Agreement;
  - (b) The existence and use of the Easement Area for the purposes of the Works;
  - (c) Construction, maintenance, existence, use or removal of the Structures;
  - (d) The Owner's occupation or use of the Servient Tenement or the ground below or the air above for the purpose of such encroachment by the Building;
  - (e) Any failure to pay for labour and materials relating to the Structures;
  - (f) Any breach or default by the Owner under this Agreement; and
  - (g) Any wrongful act, omission or negligence of the Owner, its members, directors, officers, employees, contractors, subcontractors, licensees, invitees, customers and others for whom it is responsible.
- 9.2 The indemnity in Section 9.1 survives the expiry or earlier termination of this Agreement.
- 9.3 The Owner will take out and maintain during the Term, a policy of commercial general liability insurance against claims for bodily injury, death or property damage arising out of the use of the Lands by the Owner in the amount of not less than five million dollars per single occurrence, or such greater amount as the City may from time to time designate and shall provide the City with a certificate of insurance evidencing coverage, or a certified copy of such policy or policies if requested .
- 9.4 All policies of insurance required under section 9.3 shall:
- (a) name the City as an additional insured;
  - (b) contain a provision requiring the insurer not to cancel or change the insurance without first giving the City thirty (30) days notice in writing;
  - (c) contain a cross liability clause in favour of the City; and
  - (d) be in a form and on such terms, including with respect to deductible amounts, as are satisfactory to the City, in the City's sole and absolute discretion.
- 9.5 If the Owner does not provide or maintain in force the insurance required by this Agreement, then without limiting the City's right to terminate this Agreement, the City may take out the necessary insurance and pay the premium for periods of one year at a time and the Owner shall pay to the City the amount of the premium immediately on demand.

- 9.6 If both the City and the Owner claim to be indemnified under any insurance required by this Agreement, the indemnity shall be applied first to the settlement of the claim of the City and the balance, if any, to the settlement of the claim of the Owner.
- 9.7 Maintenance of such insurance shall not relieve the Owner of liability under the indemnity provisions of this Agreement.
- 9.8 The foregoing provisions shall not limit the insurance required by law, nor relieve the Owner from the obligation to determine what insurance it requires for its own purposes.
- 9.9 No finding of negligence, whether joint or several, as against the City in favour of any third party shall operate to relieve or shall be deemed to relieve the Owner in any manner from any liability to the City, whether such liability arises under this Agreement, under the provisions of the *Community Charter* as amended from time to time, or otherwise.

## **10. RELEASE**

- 10.1 The Owner releases the City and its elected and appointed officials, officers, employees and agents from all claims of any kind, whether known or unknown, whether or not relating to negligence, which the Owner now has or at any future time may have, however caused, arising out of or in any way connected with the permission to encroach granted by this Agreement, the existence and use of the Easement Area, the Works, or the exercise by the City of any of its rights pursuant to this Agreement.
- 10.2 The release in Section 10.1 survives the expiry or earlier termination of this Agreement.

## **11. REMEDIES**

- 11.1 The City retains the right on the termination of this Agreement to proceed with the enforcement of any indemnity or other remedy provided in this Agreement or otherwise.

## **12. COMPENSATION**

- 12.1 Notwithstanding any provision of this Agreement, the Owner shall not be entitled to compensation for injurious affection or disturbance resulting in any way from the removal of the Structures in accordance with the terms of this Agreement and, without limitation, shall not be entitled to business losses, loss of profit, loss of market value, relocation costs or other consequential loss by reason of the removal of the Structures or by reason of the termination of this Agreement.

## **13. TERMINATION**

- 13.1 If the Owner fails to comply with the provisions of this Agreement, including, but not limited to, sections 5.2, 6.1, 7.1, 8.1 and 9.3 of the Agreement, this Agreement shall be terminated and all rights of the Owner hereunder shall thereupon lapse and be absolutely forfeited.
- 13.2 The City may, at any time, in its sole discretion, but acting in good faith, withdraw the rights it has granted to the Owner in this Agreement and terminate this Agreement on 12 months' written notice.
- 13.3 On receipt of notice under Section 13.1 or 13.2, the Owner shall, within the time period stated in the notice, at its expense, remove the Structures and otherwise restore the Easement Area to the satisfaction of the City.

- 13.4 If the Owner fails to remove the Structures as required by the City within the time period specified pursuant to this Agreement, the City may, in its sole discretion, cause the Structures to be removed at the Owner's expense.
- 13.5 In the circumstances described in Section 13.1, the City may, acting reasonably and in good faith, remove the Structures without notice if the subsistence of the Structures constitutes an immediate hazard to the public and if there is no other practical remedy available to the City to alleviate such immediate hazard, at the sole cost of the Owner.

#### **14. ASSIGNMENT**

- 14.1 The Owner shall not assign any of its rights and obligations arising from this Agreement to any person other than to the then-current owner of the Lands.
- 14.2 The Owner covenants and agrees not to transfer the Lands, or any portion thereof, without advising the purchaser or transferee of this Agreement and assigning the Owner's rights and obligations pursuant to this Agreement to the new owner of the Lands by mutual agreement.
- 14.3 In the event that the Owner fails to assign the rights and obligations of this Agreement to a new owner of the Lands as described in Section 14.2, the Owner shall continue to be bound by this Agreement in all respects notwithstanding that the Owner no longer owns the Lands.

#### **15. RIGHT OF ENTRY**

- 15.1 The City's employees or agents shall have the right at any and all times to enter into and upon the Lands and the Building for the purpose of maintaining or removing the Structures under this Agreement.

#### **16. ALTERATION TO CITY PROPERTY AND PUBLIC STRUCTURES**

- 16.1 In the event of any alteration or change made necessary to any present or future meter, water service, sewer, or other public structures or utility in the vicinity of the Lands by the construction, maintenance, use or removal of the Structures, the Owner shall reimburse the City or other utility provider for whatever expenses it may incur in making the alterations or changes that are deemed necessary by the City or the utility provider.

#### **17. CITY'S RIGHTS RESERVED**

- 17.1 This Agreement does not in any way restrict the right of the City at any time to widen, raise or lower, or otherwise alter the Servient Tenement abutting or adjoining the Lands (including by allowing the installation of utilities by various utility providers), or make orders or regulations for the use of the Servient Tenement, even if the effect of the alteration or the order or regulation may be to render the Structures, the Easement Area, or both, useless for the purposes of the Owner.
- 17.2 Nothing contained or implied in this Agreement will derogate from the obligations of the Owner under any other agreement with the City
- 17.3 Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of the City in the exercise of its functions under any public or private statutes, bylaws, order and regulations, all of which may be fully and effectively exercised in relation

to the Easement Area as if this Agreement had not been executed and delivered by the parties.

## **18. LICENCES AND PERMITS**

- 18.1 The Owner shall, at its own expense, obtain and maintain all permits and authorizations as may be necessary and required to erect and maintain the Structures, including any building permit or electrical permit. Nothing in this Agreement relieves the Owner from the ordinary jurisdiction of the City.

## **19. OTHER MATTERS**

- 19.1 The waiver by the City of default by the Owner shall not be deemed to be a waiver by the City of any subsequent default by the Owner. All waivers must be in writing.

- 19.2 Whenever it is required or desired that either party deliver a notice to the other, the delivery shall be deemed to be satisfactory if and deemed to have occurred when the notice has been:

- (a) Delivered by hand, on the date of delivery; or
- (b) Mailed by Xpresspost (Canada Post) requiring signature of the addressee on delivery, on the date received or on the sixth day after receipt of mailing by any Canada Post Office, whichever is the earlier, except that in the event of a strike or disruption in postal service, the notice shall not be deemed to be received until actually received;

to the address for that party on the first page of this Agreement or to whatever other address that may have, from time to time, been given by that party.

- 19.3 Whenever the singular or masculine is used in this Agreement, the same is deemed to include the plural or the feminine or the body politic or corporate as the context requires.

- 19.4 Every reference to each party is deemed to include the heirs, executors, administrators, corporate successors, permitted assigns, employees, agents, officers, elected officials and invitees of such party whenever the context so requires or allows.

- 19.5 Section headings are included for convenience only. They do not form a part of this Agreement and shall not be used in its interpretation.

- 19.6 If any part of this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.

- 19.7 This Agreement shall be governed and construed in accordance with the laws of the Province of British Columbia.

- 19.8 The parties hereto shall execute and do all such further deeds, acts, things, and assurances as may be reasonably required to carry out the intent of this Agreement.

## **20. TIME OF ESSENCE**

- 20.1 Time is of the essence of this Agreement.

**21. INTERPRETATION**

- 21.1 No part of the fee of the soil of the Servient Tenement will pass to or be vested under or by these presents in the Owner or the Owner’s invitees, agents or successors in title.
- 21.2 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators and permitted assignees.
- 21.3 All provisions of this Agreement are to be construed as covenants and agreements as though the word importing covenants and agreements were used in each separate paragraph.
- 21.4 This Agreement is the entire agreement between the parties and the City had made no representations, warranties, guarantees, promises, covenants or agreements (oral or otherwise), to or with the Owner other than those expressed in this Agreement.

**IN WITNESS WHEREOF** the said Owner has hereunto set his hand and seal the day and year first above written.

The Corporation of the City of Victoria by its )  
authorized signatories: )  
 )  
 )  
 )  
 )  
\_\_\_\_\_)  
[insert name and title of Delegated Authority] )

\_\_\_\_\_ *[name of owner]* )  
 )  
by its authorized signatories: )  
 )  
 )  
\_\_\_\_\_)  
Authorized Signatory )  
 )  
\_\_\_\_\_)  
Authorized Signatory )

**SCHEDULE "A"**

(insert plan)

**City of Victoria**

**Bylaw No. 16-028**

**Schedule G**

**ENCROACHMENT FOR ANCHOR RODS**

THIS AGREEMENT dated for reference the \_\_\_<sup>th</sup> day of \_\_\_\_, \_\_\_\_\_.

BETWEEN:

\_\_\_\_\_  
\_\_\_\_\_

(the “**Owner**”)

AND:

**CITY OF VICTORIA**

1 Centennial Square, Victoria, British Columbia, V8W 1P6

(the “**City**”)

**WHEREAS:**

A. The Owner is the owner of:

Parcel Identifier: \_\_\_\_\_

\_\_\_\_\_

(the “**Land**”)

in the City;

B. The Owner has applied to the City for approval of the construction of a \_\_\_\_\_ [*describe development*] upon the Land, under the terms and conditions of the City of Victoria \_\_\_\_\_ [*insert permit type and number*].

C. In connection with the construction of the development referred to in Recital B, the Owner has requested the City to grant it permission to construct, use or continue the use or existence of an encroachment onto highways of which the City has the use and possession, which encroachment is appurtenant to the Land;

D. The City has agreed to grant the Owner’s request, subject to the provision of all City bylaws and to the terms and condition herein set forth;

**NOW THEREFORE**, in consideration of the premises and the covenants herein contained and for other valuable consideration, receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto covenant and agree each with the other as follows:

## **1.0 ENCROACHMENT**

**1.1** The City (so far as it legally can, but not otherwise, and subject to this Agreement and applicable statutes and bylaws), grants unto the Owner permission to construct and maintain an encroachment comprising \_\_\_\_\_ [insert description of works (e.g. anchor rods, shotcrete, soldier piles)] into those parts of \_\_\_\_\_ [insert street(s) or intersection] (collectively, the “Highways”) in the City of Victoria that adjoin the Land, all in accordance with the plans and specifications attached hereto as Schedule “A”, (which encroachment, including all excavation or other work now or hereafter performed in connection therewith, is hereinafter referred to as the “Works”).

## **2.0 USE**

**2.1** The Owner shall not erect any work or encroachment in the Highways other than the Works, nor shall the Owner use the Highways for any purpose save and except the Works. The Owner shall not permit the Works to encroach on any City property other than those portions of the Highways depicted on Schedule “A”.

## **3.0 TERM**

**3.1** This Agreement commences on the date that it is fully signed by both parties and, subject to Sections 6.15 and 6.16 hereof, expires on \_\_\_\_\_ [insert date].

## **4.0 CONSTRUCTION OF WORKS**

**4.1** The Owner shall retain a professional engineer licensed to practice in the Province of British Columbia with experience in the design and construction of works of a similar kind to those proposed to be installed under this Agreement (the said engineer to be referred to herein as the “**Owner’s Consultant**”). The Owner’s Consultant will be responsible for ensuring that the design and construction of the Works at all times is in accordance with sound engineering and construction practices, and is carried out in accordance with the terms of this Agreement.

**4.2** The Owner’s Consultant must provide written confirmation to the City, prior to the commencement of the construction of the Works, that it has thoroughly investigated the location of existing services and utilities, and that the installation of the Works in their proposed location will not interfere with or cause damage to any existing underground utilities or services, whether of the City, the Capital Regional District, or any private or public utility. The Owner shall be solely responsible for the cost of the location of all such services for the purpose of obtaining and providing such confirmation.

**4.3** Prior to the commencement of construction of the Works, the Owner’s Consultant must submit a detailed plan, bearing his professional seal showing in cross section the profile of all underground services within the area of the Highways covered by this Agreement, as well as, in relation thereto, the proposed location of all \_\_\_\_\_ [insert description of works] that are to form part of the Works. The City reserves the right to require that any portion of the Works be relocated, where in the reasonable opinion of the City’s Director of Engineering and Public works (the “**Director**”), the proposed location of

the Works or any portion thereof may interfere with or damage underground services of the City, the Capital Regional District or any private or public utility, or may impact the protected root zones of City street trees.

- 4.4** The Works shall be installed strictly in accordance with the plans and specifications that are attached as Schedule “A” to this Agreement, unless the Director authorizes the modification of such plans or specifications.
- 4.5** The Owner shall at all times and at its own expense keep and maintain the Works and the Highways in good and sufficient repair and in a manner which does not pose any risk to persons or property, all to the satisfaction of the Director (without any obligation on the part of the Director to determine what is sufficient repair or a safe condition).
- 4.6** If the Owner fails to keep the Works and the Highways in good repair and maintenance to the satisfaction of the Director, the Director may give notice to the Owner demanding that repairs and maintenance be done within the time specified by the City and if the Owner fails to do so, to the City’s satisfaction, the City may, in its sole discretion (without any obligation to do so), cause such repairs to be made, including structural changes or filling up any excavation, as it deems necessary at the Owner’s expense. The Owner shall pay the costs of the repairs to the City forthwith on demand.
- 4.7** The Owner shall in respect of its use of the Highways and in relation to the Works comply with all applicable statutes, laws, regulations, bylaws, orders and other requirements of every governmental authority having jurisdiction.
- 4.8** If during the course of construction the Owner’s Consultant determines that any part of the \_\_\_\_\_ [insert description of works] comprising the Works are required to be placed in a location other than shown on the plans and specifications attached as Schedule “A”, or determines that additional \_\_\_\_\_ [insert description of works] are required to be installed within the Highways, the Owner’s Consultant must first obtain the authorization of the Director before proceeding with such modification to the Works.
- 4.9** The City makes no representation or warranty as to the subsurface soil conditions within the area of the Highways within which the Works are to be constructed, including as to whether the soil or groundwater within the Highways contains any contamination, special waste or prescribed substance in a quantity or concentration that exceeds the standards permitted under the provisions of the *Environmental Management Act* and Regulations thereto. The City will not be responsible for any increased or additional costs (including, without limitation, any costs associated with delays in proceeding with the Works), incurred by the Owner in constructing the Works as a result of the presence of any such special waste, contamination or prescribed substance, or any other soil or groundwater contamination within the Highways, environmental consultant’s fees, the cost of any permits for removal or disposal of contaminated soils or groundwater, or the removal, disposal or treatment of contaminated soil or groundwater that is required to be removed from the Highways as a result of the Works being undertaken, or any other similar costs.
- 4.10** When backfilling the excavation made in connection with the Works, the Owner’s Consultant will ensure that all anchor rods are de-tensioned prior to backfilling, and that all \_\_\_\_\_ [insert description of works] are removed to a depth of at least 4 feet below grade, or greater if achievable. Backfilling must be brought up to existing grade and completed to City standards and specifications and the satisfaction of the Director.

- 4.11 After the completion of backfilling, the Owner must provide to the City a set of engineered drawings prepared by the Owner's Consultant that identify in cross section and plan views the location of all anchor rods \_\_\_\_\_ [*insert any additional works*], as installed (referred to herein as the "**As Built Drawings**"). The Owner must also provide to the City a letter prepared by the Owner's Consultant and bearing his professional seal, certifying that the Works have been installed in accordance with the As Built Drawings hereto modified with the approval of the Director, and that all anchor rods left within the Highways have been de-tensioned.
- 4.12 The Owner will be responsible throughout the construction of the Works to protect persons and property in the vicinity of the Works from injury, loss or damage.
- 4.13 The Owner shall not do or permit to be done anything which may or does contaminate the Highways or the surrounding area and the Owner shall be solely responsible to remove all such contamination and remediate it to residential standards.
- 4.14 The Owner shall at its sole cost arrange to have all of the City's storm drains and sewer mains within the Highways, in the area of the Works, inspected by video camera before commencement and after completion of the Works to ensure that no damage has resulted through construction of the Works. This work shall be coordinated through the City's Underground Utilities Division.

**5.0 NO RELIEF**

- 5.1 It is understood, covenanted and agreed by and between the parties hereto that no provision of this Agreement and no act or omission or finding of negligence, whether joint or several, as against the City, in favour of any third party, shall operate to relieve the Owner in any manner whatsoever from any liability to the City in the premises, or under these presents, or under the provisions of the *Community Charter*, or any bylaw of the City and amendments thereto, or otherwise.

**6.0 OWNER'S COVENANTS**

The Owner further covenants and agrees as follows:

**Fee**

- 6.1 That it will pay to the City a non-refundable fee of \$750.00 and shall pay a one-time charge of \$25 per square meter of area of the proposed excavation face that will be supported by anchor rods and abuts a street or lane as calculated by the Engineer.

\_\_\_\_\_ [*insert calculation of fee (e.g. 280 m2 x \$25.00 / per m2 [Face Area] = \$7000.00 + \$750.00 = \$ 7750.00)*] This fee is to be paid prior to the commencement of the Works.

**Save Harmless**

- 6.2 To indemnify and hold harmless the City and its elected and appointed officials, officers, employees and agents from all suits, proceedings, losses, damages, expenses, demands, claims, costs (including actual costs of professional advisors and costs associated with remediation of contamination) and harm of any kind, howsoever caused, whether related

to death, bodily injury, property loss, property damage or consequential loss or damage, arising out of or in any way connected with:

- (a) the Works encroaching upon under or over the Highways,
- (b) construction, maintenance, existence, use or removal of the Works,
- (c) the Owner's occupation or use of the Highways or the ground below or the air above for the purpose of such encroachment by the Works,
- (d) the negligence of the Owner or its employees, agents, contractors, subcontractors or consultants, including the Owner's Consultant, in relation to the design or construction of the Works, and
- (e) any failure of or damage to the Works at any time, including without limitation, failure due to errors in design of the Works, or faulty or defective materials or workmanship, whether or not the result of negligence on the part of the Owner or its employees, agents, sub-contractors or consultants including the Owner's Consultant.

**6.3** That the indemnity in section 6.2 survives the expiry or earlier termination of this Agreement.

**6.4** To charge his interest in the Land in favour of the City for the payment of all sums which may at any time hereafter be payable by the City in respect of any claims, loss, damage or expense of whatsoever kind arising:

- (a) from the construction, maintenance or existence of the Works, or
- (b) from the permission hereby granted,

and to answer any indemnity or payment provided in the bylaws of the City or under the terms of this agreement.

### **Insurance**

**6.5** To take out and maintain during the term a policy of commercial general liability insurance against claims for bodily injury, death or property damage arising out of the use of the Land by the Owner in the amount of not less than five million dollars per single occurrence, or such greater amount as the City may from time to time designate and shall provide the City with a certificate of insurance evidencing coverage, or a certified copy of such policy or policies if requested.

**6.6** All policies of insurance required under section 6.5 shall:

- (a) name the City as an additional insured;
- (b) contain a provision requiring the insurer not to cancel or change the insurance without first giving the City thirty (30) days notice in writing;
- (c) contain a cross liability clause in favour of the City; and
- (d) be in a form and on such terms, including with respect to deductible amounts, as are satisfactory to the City, in the City's sole and absolute discretion.

**6.7** That if the Owner does not provide or maintain in force the insurance required by this Agreement, then without limiting the City's right to terminate this Agreement, the City may

take out the necessary insurance and pay the premium for periods of one year at a time and the Owner shall pay to the City as additional licence fees the amount of the premium immediately on demand.

- 6.8** That if both the City and the Owner claim to be indemnified under any insurance required by this Agreement, the indemnity shall be applied first to the settlement of the claim of the City and the balance, if any, to the settlement of the claim of the Owner.
- 6.9** That maintenance of such insurance shall not relieve the Owner of liability under the indemnity provisions of this Agreement.
- 6.10** That the foregoing provisions shall not limit the insurance required by law, nor relieve the Owner from the obligation to determine what insurance it requires for its own purposes.

#### **Release**

- 6.11** To release the City and its elected and appointed officials, officers, employees and agents from all claims of any kind, whether known or unknown, whether or not relating to negligence, which the Owner now has or at any future time may have, however caused, arising out of or in any way connected with the permission to encroach granted by this Agreement, the use of the Highways, the Works, or the exercise by the City of any of its rights pursuant to this Agreement.
- 6.12** That the release in Section 6.11 survives the expiry or earlier termination of this Agreement.

#### **Remedies**

- 6.13** That the City retains the right on the termination of this Agreement to proceed with the enforcement of any indemnity or other remedy provided in this Agreement or otherwise.

#### **Compensation**

- 6.14** That notwithstanding any provision of this Agreement, the Owner shall not be entitled to compensation for injurious affection or disturbance resulting in any way from the removal of the Works in accordance with the terms of this Agreement and, without limitation, shall not be entitled to business losses, loss of profit, loss of market value, relocation costs or other consequential loss by reason of the removal of the Works or by reason of the termination of this Agreement.

#### **Termination**

- 6.15** That if the Owner fails to comply with the provisions of this Agreement, including, but not limited to, sections 4.5, 4.7, 4.13 and 6.5 of the Agreement, this Agreement shall be terminated and all rights of the Owner hereunder shall thereupon lapse and be absolutely forfeited, but the City, nevertheless, shall be entitled to proceed with the enforcement of any security or indemnity herein provided, or upon any bond or otherwise in satisfaction of any claim, loss or expenses of whatsoever kind arising under this Agreement, or from the permission hereby granted.
- 6.16** That the City may, at any time, in its sole discretion, but acting in good faith, withdraw the rights it has granted to the Owner in this Agreement and terminate this Agreement on 3 months' written notice.

**6.17** That on receipt of notice under Section 6.15 or 6.16, the Owner shall, within the time period stated in the notice, at its expense, remove the Works and otherwise restore the Highways to the satisfaction of the City.

**6.18** That if the Owner fails to remove the Works as required by the City within the time period specified pursuant to this Agreement, the City may, in its sole discretion, cause the Works to be removed at the Owner's expense.

### **Entry**

**6.19** That the City reserves the right for itself, its servants or agents, at any and all reasonable times, to enter into and upon the Land for the purpose of inspecting the Works so as to determine whether the Owner is in compliance with this Agreement.

### **Works**

**6.20** That in the event that the construction, maintenance, use or removal of the Works necessitates any alteration or change to any meter, water service, sewer or other public works or utility in the vicinity of the Works, the Owner will reimburse the City for whatever sums may be incurred by the City in making such alterations or changes as may be deemed necessary by the Director.

## **7.0 ASSIGNMENT**

**7.1** The Owner shall not assign any of its rights and obligations arising from this Agreement to any person other than to the then-current owner of the Land.

**7.2** The Owner covenants and agrees not to transfer the Land, or any portion thereof, without advising the purchaser or transferee of this Agreement and assigning the Owner's rights and obligations pursuant to this Agreement to the new owner of the Land by mutual agreement.

**7.3** In the event that the Owner fails to assign the rights and obligations of this Agreement to a new owner of the Land as described in Section 7.2, the Owner shall continue to be bound by this Agreement in all respects notwithstanding that the Owner no longer owns the Land.

## **8.0 ALTERATION OF MUNICIPAL WORKS**

**8.1** This Agreement shall not in any way operate to restrict the right of the City at any time to:

- (a) alter the road, curb, gutter, sidewalk or boulevard abutting or adjoining the Land, notwithstanding that the effect of such alteration in width or elevation may be to render the Works useless or of less value for the purposes of the Owner; or
- (b) construct or maintain any form of structure or utility on, over or under any portion of the Highways on or in which the Works encroach and for such purpose require that the Works be removed in part or in whole; and

the Owner covenants that, in the event of the City effecting any such alteration or construction or in requiring removal of all or part of the Works, the Owner will release and forever discharge, and hereby releases and forever discharges, the City from all manner of claims of any nature whatsoever, which may arise by reason of such alteration in width

or elevation as aforesaid, or by reason of the discontinuance and removal of the Works, as a result of such alteration in width or elevation or construction.

## **9.0 CITY'S RIGHTS RESERVED**

**9.1** Nothing contained or implied in this Agreement will derogate from the obligations of the Owner under any other agreement with the City.

**9.2** Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of the City in the exercise of its functions under any public or private statutes, bylaws, order and regulations, all of which may be fully and effectively exercised in relation to the Highways as if this Agreement had not been executed and delivered by the parties.

## **10.0 LICENCES AND PERMITS**

**10.1** The Owner shall, at its own expense, obtain and maintain all permits and authorizations as may be necessary and required to erect and maintain the Works, including any building permit or electrical permit. Nothing in this Agreement relieves the Owner from the ordinary jurisdiction of the City.

## **11.0 OTHER MATTERS**

**11.1** The waiver by the City of default by the Owner shall not be deemed to be a waiver by the City of any subsequent default by the Owner. All waivers must be in writing.

**11.2** Whenever it is required or desired that either party deliver a notice to the other, the delivery shall be deemed to be satisfactory if and deemed to have occurred when the notice has been:

- (a) Delivered by hand, on the date of delivery; or
- (b) Mailed by Xpresspost (Canada Post) requiring signature of the addressee on delivery, on the date received or on the sixth day after receipt of mailing by any Canada Post Office, whichever is the earlier, except that in the event of a strike or disruption in postal service, the notice shall not be deemed to be received until actually received;

to the address for that party on the first page of this Agreement or to whatever other address that may have, from time to time, been given by that party.

**11.3** Whenever the singular or masculine is used in this Agreement, the same is deemed to include the plural or the feminine or the body politic or corporate as the context requires.

**11.4** Every reference to each party is deemed to include the heirs, executors, administrators, corporate successors, permitted assigns, employees, agents, officers, elected officials and invitees of such party whenever the context so requires or allows.

**11.5** Section headings are included for convenience only. They do not form a part of this Agreement and shall not be used in its interpretation.

**11.6** If any part of this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.

11.7 This Agreement shall be governed and construed in accordance with the laws of the Province of British Columbia.

11.8 The parties hereto shall execute and do all such further deeds, acts, things, and assurances as may be reasonably required to carry out the intent of this Agreement.

**12.0 TIME OF ESSENCE**

12.1 Time is of the essence of this Agreement.

**13.0 INTERPRETATION**

13.1 No part of the fee of the soil of the Highways will pass to or be vested under or by these presents in the Owner or the Owner's invitees, agents or successors in title.

13.2 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators and permitted assignees.

13.3 All provisions of this Agreement are to be construed as covenants and agreements as though the word importing covenants and agreements were used in each separate paragraph.

13.4 This Agreement is the entire agreement between the parties and the City had made no representations, warranties, guarantees, promises, covenants or agreements (oral or otherwise), to or with the Owner other than those expressed in this Agreement.

**IN WITNESS WHEREOF** the said Owner has hereunto set his hand and seal the day and year first above written.

The Corporation of the City of Victoria by its )  
authorized signatory )  
 )  
 )  
\_\_\_\_\_)  
[Insert name] )  
Director of Engineering and Public Works )  
 )  
 )

\_\_\_\_\_) [name of owner]  
by its authorized signatories: )  
 )  
 )  
\_\_\_\_\_)  
Authorized Signatory )  
 )  
 )  
 )

\_\_\_\_\_)  
Authorized Signatory

**SCHEDULE "A"**

(insert plans and specifications)