

NO. 17-054

## **LAND USE PROCEDURES BYLAW, AMENDMENT BYLAW (NO. 5)**

### **A BYLAW OF THE CITY OF VICTORIA**

The purpose of this Bylaw is to amend the Land Use Procedures Bylaw to:

1. clarify the application process for temporary use permits;
2. update application fees related to development applications;
3. eliminate or reduce application fees for developments with affordable housing;
4. delegate approvals of certain types of encroachments to staff; and
5. make housekeeping and process consistency amendments.

Under its statutory powers, including Parts 14 and 15 of the *Local Government Act* and section 154 of the *Community Charter*, the Council of the Corporation of the City of Victoria in a public meeting assembled enacts the following provisions:

#### **Title**

- 1 This Bylaw may be cited as the “LAND USE PROCEDURES BYLAW, AMENDMENT BYLAW (NO. 5)”.

#### **Amendments**

- 2 Bylaw No. 16-028, Land Use Procedures Bylaw, 2016, is amended as follows in the table of contents:
  - (a) in Part 2:
    - (i) by deleting sections 12, 13, and 26,
    - (ii) by renumbering sections 14 through 20 as new sections 12 through 18,
    - (iii) by inserting the following new section 19 – 20 after newly renumbered section 18:

“19. – 20. Affordable Housing application fee”,
    - (iv) by renumbering sections 23 through 25 as new sections 24 through 26,
    - (v) by inserting the following new section 23 after section 22:

“23. Landscape security”,
    - (vi) by renumbering sections 27 through 33 as new sections 29 through 35,
    - (vii) by inserting the following new section 27 – 28 after newly renumbered section 26:

“27. – 28. Application Sign Posting Requirements – other applications”,

- (b) in Part 3:
  - (i) by renumbering sections 34 through 36 as new sections 36 through 38,
  - (ii) by inserting the following new section 39 after newly renumbered section 38:

“39. Landscape security delegation”,

- (iii) by renumbering sections 37 through 41 as new sections 40 through 44,
- (c) after newly renumbered section 44, by inserting the following new Part 4:

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

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

- (d) in Schedules, after “Schedule D Delegated Approvals”, by inserting the following:

“Schedule E Landscape Security  
Schedule F Encroachment for Decorative Features  
Schedule G Encroachment for Anchor Rods”.

3 The Land Use Procedures Bylaw, 2016, is further amended as follows in section 4:

- (a) by adding the following new definition immediately before the definition for “ADP”:

““**affordable housing**” means

any housing units for which both of the following conditions are satisfied:

- (a) the development containing the unit is fully owned and operated by a registered non-profit residential housing society or government agency, or a private developer has entered into a legally binding arrangement in perpetuity with a registered non-profit residential housing society or government agency; and
- (b) the unit is secured as affordable in a housing agreement or covenant with the City”,

- (b) by adding the following new definition immediately after the definition for “ADP”:

““**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”,

- (c) by adding the following new definition immediately after the definition for “Director”:

““**Engineer**” means

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

- (d) by adding the following new definition immediately after the definition for “public hearing”:

““**temporary use permit**” or “**TUP**” means

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

4 The Land Use Procedures Bylaw, 2016, is further amended as follows:

- (a) in section 5(d), by striking out “commercial or industrial”,
- (b) in section 6, by repealing paragraph (b), and substituting the following:
 

“(b) arrange and participate in a Community Meeting not more than six months in advance of the application submission date.”,
- (c) in section 7(a), by striking out “Section 26” and substituting “Section 27”,
- (d) by repealing sections 12 and 13,
- (e) by renumbering sections 14 through 20 as new sections 12 through 18,
- (f) in newly renumbered section 16, by striking out “Section 17” and substituting “Section 15”,
- (g) in newly renumbered section 18, by repealing paragraph (c),
- (h) in newly renumbered section 18, by renumbering paragraphs (d) and (e) as new paragraphs (c) and (d),
- (i) by inserting the following new sections 19 and 20 after the newly renumbered section 18:

**“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.”,

- (j) in section 21, by striking out “, or the large project fee, or both,”,
- (k) by renumbering sections 23 through 26 as new sections 24 through 27,
- (l) by inserting the following new section 23 after section 22:

**“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.”,

- (m) in newly renumbered section 25, by striking out “Section 33” and substituting “Section 35”,
- (n) in newly renumbered section 26(d), by striking out “commercial or industrial”,
- (o) by inserting the following new section 28 after newly renumbered section 27:

“28. Section 27(a) does not apply to City-initiated *Zoning Regulation Bylaw* amendments that involve ten or more parcels.”,

- (p) by renumbering sections 27 through 36 as new sections 29 through 38,
- (q) in newly renumbered section 30, by striking out “consisted” and substituting “consistent”,
- (r) in newly renumbered section 31(d), by striking out “commercial or industrial”,
- (s) in newly renumbered section 36, by striking out “set out column C” and substituting “set out in column C”,
- (t) in newly renumbered section 38, by striking out “Section 35” and substituting “Section 37”,
- (u) by inserting the following new section 39 after newly renumbered section 38:

**“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.”,

- (v) by renumbering sections 37 through 41 as new sections 40 through 44,
- (w) in newly renumbered section 41, by striking out “Direction” and substituting

“Director”,

- (x) after newly renumbered section 44, by inserting the new Part 4 attached to this Bylaw as Schedule 1,
- (y) by repealing Schedule A and substituting the new Schedule A attached to this Bylaw as Schedule 2,
- (z) in Schedule B, section 1(d), by striking out “commercial or industrial”,
- (aa) in Schedule D, in the table for the following Permit Types:
  - (i) “Landscaping changes without an approved Development Permit or Heritage Alteration Permit”,
  - (ii) “DP for new buildings and building additions that are less than 150m<sup>2</sup> in floor area”, and
  - (iii) “DP for changes to landscaping previously approved under a Development Permit or Heritage Alteration Permit”,
 by repealing from Column C “A landscape security may be required to ensure compliance with the approved plans.”, and
- (bb) by adding the new Schedule E, Schedule F and Schedule G attached to this Bylaw as Schedule 3, Schedule 4 and Schedule 5.

### **Effective Date**

5. This Bylaw comes into force one month after the date of adoption.

READ A FIRST TIME the	day of	2017
READ A SECOND TIME the	day of	2017
READ A THIRD TIME the	day of	2017
ADOPTED on the	day of	2017

CITY CLERK

MAYOR

## Schedule 1

### “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; 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.”



## Schedule 2

### City of Victoria Bylaw No. 16-028

## Schedule A

### APPLICATION FEES

#### 1 Pre-application fee

The pre-application fee for giving notice of a Community Meeting, is:

- (1) \$750 if notice of a Community Meeting must be given to owners and occupiers of properties within 100 metres of the subject property; or,
- (2) \$1250 if notice of a Community Meeting 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 Regulation 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) Proposals pertaining to a single family dwelling unit: \$2000 per dwelling unit proposed;
    - (ii) Proposals pertaining to a duplex: \$3000;
    - (iii) Proposals pertaining to a triplex: \$4000;

- (iv) Proposals pertaining to one, two or three dwelling units that are not captured by paragraph (3)(a)(i), (ii) or (iii): \$2000 per dwelling unit proposed;
    - (v) Proposals 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) Proposals equal to or under 500 square metres: \$3000 plus \$0.50 per square metre of floor area;
    - (ii) Proposals over 500 square metres: \$6000 plus \$0.50 per square metre of floor area.
- (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) Proposals pertaining to a single family dwelling unit: \$2000 per dwelling unit proposed;
    - (ii) Proposals pertaining to a duplex: \$3000;
    - (iii) Proposals pertaining to a triplex: \$4000;
    - (iv) Proposals pertaining to one, two or three dwelling units that are not captured by paragraph (5)(a)(i), (ii) or (iii): \$2000 per dwelling unit proposed;
    - (v) Proposals pertaining to more than three dwelling units (regardless of dwelling unit type): \$6000 plus \$2.50 per square metre of floor area.
  - (b) For applications described in paragraphs (5)(a)(i), (ii) and (iii), no fee is required pursuant to paragraph (5) if the application also includes an application under (2), in which case the base application fee in paragraph (3) applies.

- (c) For an application in which the proposed development is non-residential use or mixed use:
  - (i) Proposals equal to or under 500 square metres: \$3000 plus \$2.50 per square metre of floor area;
  - (ii) Proposals over 500 square metres: \$6000 plus \$2.50 per square metre of floor area.
- (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.
- (8) The base application fee for a permit which the Director is authorized to issue is \$200.
- (9) Notwithstanding paragraph (8), the base application fee for a permit which the Director is authorized to issue in:
  - (a) Development Permit Area 16 for buildings over 100 m<sup>2</sup> is 50% of the development permit fee as provided in paragraph (5);
  - (b) Development Permit Area 15E is 50% of the development permit fee as provided in paragraph (5).
- (10) For a heritage alteration permit in which the proposed development is for a single family dwelling or a duplex:
  - (a) If there are no variances, no application fee is required;
  - (b) If there are variances, the base fee is not required, but the fee for each variance is \$250.
- (11) 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 to amend a bylaw that requires a public hearing, payable when the Council forwards the bylaw to a public hearing, is \$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. If the revised plans do not address the requirements as set out in the Application Review Summary, a fee of \$500 shall be required for each subsequent resubmission until all technical requirements have been addressed to the satisfaction of the Director.
- (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 Committee, Council, ADP or HAPL.

**6 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.

**7 Request Council authorization**

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

**8 Site profile for contaminated sites**

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

**Schedule 3****City of Victoria  
Bylaw No. 16-028****Schedule E****LANDSCAPE SECURITY****1 Landscape security amount**

The landscape security will be 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**

The landscaping costs 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;
- (5) Landscape structures;
- (6) Landscape fencing;
- (7) Landscape furnishings, such as benches;
- (8) Growing medium;
- (9) Labour;
- (10) Irrigation; and
- (11) Other landscape materials.

**Schedule 4**

**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.

(insert plan)



**Schedule 5**

**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 m<sup>2</sup> x \$25.00 / per m<sup>2</sup> [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 )  
)  
)  
)  
)  

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[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)