

WATERWORKS EXTENSION AGREEMENT

File No. _____

Account No. _____

THIS AGREEMENT made in triplicate

BETWEEN:

CAPITAL REGIONAL DISTRICT
479 Island Highway, Victoria, BC V9B 1H7

(hereinafter called the "District")

AND:

APPLICANT
Address

(hereinafter called the "Owner")

WHEREAS:

A. The Owner is the registered owner of, or the party empowered in writing by the registered owner to develop, the lands and premises situate in the Province of British Columbia more particularly known and described as:

LEGAL ADDRESS

(hereinafter called the "said Lands")

and such Owner proposes to develop the said Lands;

B. In order to develop the said Lands, the Owner has requested the District to allow the Owner to expand the District's water supply system for the purpose of servicing the said Lands;

C. The District has agreed that the Owner may expand the District's water supply system in accordance with the terms set out in this Agreement and the Owner has agreed to comply with the terms of this Agreement.

D. The District has agreed to share costs with the Owner in respect of those portions of the Works itemized in Schedule "A" hereto, if any (hereinafter called the "Shared Cost Works");

E. The Owner and the District have agreed that the water supply system constructed under this Agreement shall become the property of the District upon the issuance by the District of a Construction Completion Certificate as herein defined.

NOW THEREFORE BE IT KNOWN THAT in consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

Agreement and Consideration

1. The District agrees that the Owner may expand the District's water supply system for the purpose of servicing the said Lands, provided the Owner shall design and install all works related to the expansion of such water supply system (hereinafter called the "Works") in accordance with the specifications of the District, and more particularly without restricting the generality of the foregoing, in accordance with the District's Water Department Standard Engineering Specifications and Standard Drawings in force from time to time;
2. The Owner shall employ a professional engineer registered to carry on practice within the Province of British Columbia (the "Engineer") to design the Works and to carry out the survey, field inspection and preparation and certification of as constructed drawings, and the Owner shall employ a contractor satisfactory to the District (hereinafter called the "contractor") who is a paid-up member of the Workers Compensation Board to construct the Works;

3. The Owner shall provide the Engineer and the contractor with a copy of this agreement together with a copy of the District's Water Department Standard Engineering Specifications and Standard Drawings, and the Owner shall ensure that the contractor shall do likewise for all subcontractors engaged in the installation of the Works.
4. Design drawings signed and sealed by the Engineer shall be submitted by the Owner to the District for approval a minimum of one month prior to the Owner's intended date of commencement of installation of any of the Works, and the Owner shall not commence installation of any of the Works until the design drawings as well as specifications of Works set forth in documents prepared at the expense of the Owner have been approved by the District and by the District Engineer;
5. The Owner shall not commence installation of any of the Works until requirements of all approving authorities, including the applicable provincial ministries and municipal and regional governments, have been satisfied and any required permits have been obtained.
6. The Owner at its own cost and expense shall construct, install, execute and perform in a good, substantial and workmanlike manner and with materials sufficient and proper, the Works, except that the District agrees to share costs in respect of the Shared Cost Works itemized in Schedule "A" hereto, if any, by reimbursing the Owner for the share of costs specified in Schedule "A" hereto. The District shall reimburse the Owner for the District's agreed share of costs within 90 days following acceptance of the Shared Costs Works by the District as fully completed, provided the Owner has first provided to the District his statutory declaration declaring that all contractors and subcontractors have been paid and that no builder's liens have been filed against the District in relation to the Works. The share shall be calculated based on tendered prices and shall include any extras related to the installation and/or construction of the Shared Cost Works provided such extras are approved by the District in advance.
7. Nothing contained in this agreement including the review of any plans or specifications of the constructed Works by any employee of the District shall relieve the Owner and its servants and agents from full liability for any faulty design, workmanship or materials, or any resulting damages.

Requirement to Complete Works

8. The Owner covenants and agrees to complete the Works on or before the ??th day of *Month*, 20?? (hereinafter called the "Completion Date").

9. The District may in its discretion upon good cause (including but without limiting the generality of the foregoing, strikes and lock-outs) being shown extend the time for completion of the Works.
10. Where the Owner fails to complete the Works by the Completion Date or if the Owner becomes bankrupt or insolvent with its creditors, or commits any act of insolvency or if this agreement or the Works are, in the judgement of the District Engineer, not being constructed, installed, executed or performed in a sound and workmanlike manner or to his satisfaction or in all respects in strict conformity with the specifications of the Works approved by the District, the District may upon giving notice in writing by registered mail to the Owner at its address complete the Works on behalf of the Owner.
11. Where the District completes the Works, the Owner shall pay the actual construction and installation costs required to complete the Works, including an administration or overhead charge where the work is done by the District's own crews, which shall be decided solely by the District Engineer.

Bonding

12. Prior to commencement of installation of any of the Works, the Owner shall provide to and lodge with the District security (hereinafter called the "Security") for the due and proper performance of this Agreement in the amount required by the District and in the form required by the District of one or more of the following:
 - (a) cash;
 - (b) certified cheque;
 - (c) irrevocable Letter of Credit;
 - (d) bond;
 - (e) irrevocable Letter of Credit or bond carried by the Owner's contractor where the District is named to draw from such security in any of the events set out in clause 13 below.

13. The District shall have the right to draw from the Security:
 - (a) to complete the Works in the event that the Works as approved by the District have not been properly and fully completed by the Completion Date; and/or
 - (b) to repair any pipeline failure or rupture of a service connection resulting from installation of the Works or actions of the Owner or contractor or their servants or agents or subcontractors, or to repair any other similar damage resulting from installation of the Works or actions of the Owner or contractor or their servants or agents or subcontractors that the District deems damage requiring emergency repair; and/or
 - (c) to repair any damage resulting from the installation of the Works, where the Owner has failed to repair the damage after receiving notification to do so from the District.
14. The District shall have the right to charge the Owner, and the Owner shall pay, in advance for any and all work that the District determines is required to upgrade the District's systems in order to prevent the Owner's development of the said Lands from adversely impacting on or resulting in a lower level of service to other customers of the District, and for any and all work that the District determines is required to allow the Owner's contractor to install the Works including enlargement and/or addition of pipelines, pumping plants, reservoirs and control systems and including provision of temporary service connections.
15. The Owner acknowledges that the District will only operate and maintain Works that are located along publicly gazetted roads or through Rights-of-Way or Easements registered in favour of the District or on property owned by the District, and the Owner acknowledges and agrees that any new Rights-of-Way or Easements that are required for installation of the Works, or required pursuant to the District's requirements under clause 14 above, shall be obtained by the Owner at his expense.
16. The Owner shall engage the Engineer for supervision consisting of general and sufficient resident inspections to ensure that the Works are constructed and installed in accordance with the design drawings and specifications referred to in clause 4 above, as accepted by the District, and the standards and specifications of the District;

17. When the District Engineer issues a Construction Completion Certificate confirming that the Works have been satisfactorily completed, the Security (less any drawings pursuant to clause 13 above) shall forthwith be returned to the Owner and the Owner shall provide to the District a bond (hereinafter called the "Warranty Bond"), which percentage and value shall be determined by the District in its sole discretion, for a period of one year from the date of completion as certified by the District Engineer (hereinafter called the "warranty period");
18. The Warranty Bond shall be held by the District during the warranty period and if at the completion of the warranty period there are no outstanding claims or deficiencies, the Warranty Bond shall be returned to the Owner.

Warranty Period

19. The issuance of a Construction Completion Certificate by the District Engineer establishes the commencement of the warranty period.
20. At the Owner's own cost and expense, he shall promptly upon receipt of notice in writing from the District, make all repairs arising out of defective materials, workmanship, and equipment during the warranty period.
21. The District may make such repairs if, ten days after giving notice in writing by registered mail to the Owner at its address, the Owner has failed to make or undertake with due diligence the said repairs.
22. In the case of an emergency, where delay would cause serious loss or damage, or would affect supply to customers, repairs may be made without notice being sent to the Owner. The Owner will be informed as soon as practical of the work done.
23. All expenses included by the District in making any repairs shall be charged to the Owner and if the Owner fails to reimburse the District for any costs incurred during the warranty period, the District shall have the right to deduct such costs from the Warranty Bond.

Insurance

- 24. During this agreement, the Owner shall insure and keep insured at the Owner's expense, Comprehensive General Liability insurance coverage covering the minimum amount of \$3,000,000.00.
- 25. The District shall be named as an additional insured under the Comprehensive General Liability Insurance.
- 26. A Cross Liability clause shall be made part of the Comprehensive General Liability Insurance.
- 27. Prior to the commencement of any construction or installation of the Works, the Owner shall file with the District a copy of any insurance policy and other required certificates. Until filed, the Owner shall have no right to expand the District's water supply system under this agreement.
- 28. Any such insurance shall be maintained until final completion of the Works, including the making good of faulty work or materials, except that coverage of completed operations liability shall in any event be maintained during the warranty period as hereinafter defined.
- 29. The Owner may file with the District, prior to the start of construction, copies of the Insurance policies of the Owner's contractor and the District may accept these in place of the Owner's insurance policies.

Construct Works

- 30. The Owner shall construct and install the Works in accordance with the design drawings and specifications referred to in clause 4 above, as accepted by the District, and the standards and specifications of the District.
- 31. No deviation shall be made from the required line or grade, except with the written permission of the District Engineer.
- 32. Where the Owner fails to repair any damage resulting from the installation of the Works, the District, after notification to the Owner, may do any required repairs and charge the cost to the Owner and for this purpose may draw down on the Security.

Protection of the Public

33. The Owner shall effectively warn and protect the public from any damage as a result of Work being done, to the standards required by the Workers' Compensation Board, the B.C. Building Code and any other applicable code, regulation or law.

General - Existing Utilities and Services

34. The Owner shall investigate the presence of, locate and protect existing pipes or ducts forming part of any sewer, water, drainage or other utility system, including any other underground or above ground structures which his forces may encounter during the course of construction.
35. The Owner acknowledges that any plans or descriptions, verbal or otherwise, of existing pipes or structures that may be given to the Owner by the District are intended only as an aid to their location.
36. The Owner acknowledges that measurement and locations of the existing underground pipes and structures shown on drawings of the District are compiled from the most reliable information available, but are not guaranteed to be accurate or complete, and must be verified by the Owner prior to proceeding with construction.
37. The Owner shall exercise care when carrying out any Works adjacent to any existing privately or publicly owned utilities and services so as not to damage any such utilities and services.
38. The Owner shall notify the user of any utility or service sufficiently in advance of any potential or planned disruptions or interruptions that shall occur to these services as a result of the Works.
39. Where it is necessary to cut, move or alter any utility or service, the Owner shall make arrangements with the proper authorities for the carrying out of such work.
40. The Owner shall at his own expense ensure the uninterrupted flow of any existing water mains, sewers, drains or conduits which may be met within the course of construction and shall let none of these flow into the trench or pipes being constructed under this agreement without the permission of the District Engineer.

41. Temporary support, adequate protection and maintenance of all buildings, utility structures, including power and telephone poles, drains, cables, pipes, conduits and other obstructions encountered in the progress of the Work shall be furnished by the Owner under the direction of the Owner's Engineer and to the satisfaction of the District Engineer or other private or public owner.
42. Where the grade and location of the Works to be installed are obstructed by any existing underground or above-ground utilities, the Owner shall inform the Owner's Engineer who shall in turn advise the District and the appropriate utility owner.

Quality of Materials

43. All materials required for the Works shall be supplied by the Owner and shall conform to District specifications.
44. Where the Owner is required to furnish materials or manufactured articles or do work for which no detailed specifications are set forth, the materials or manufactured articles shall be of the best grade in quality and workmanship obtainable in the market from suppliers of established good reputation or, if not ordinarily carried in stock, shall conform to the usual standards for first-class materials or articles of the kind required, with due consideration to the use to which they are to be put. All materials must be approved by the District Engineer prior to use.
45. Where, in the opinion of the District Engineer, any materials do not conform to District specifications, or are unsuitable for the purposes for which they are intended, they shall be rejected.
46. Rejected materials shall not be used for the purposes of the Works and if incorrectly used they shall be removed from the site forthwith and shall be replaced by the Owner, at his own expense, with materials approved by the District Engineer.

Inspections and Testing

47. If the Owner covers or permits to be covered any Works which have been designated for special tests, inspections or approvals by the District Engineer before such special tests, inspections or approvals are made, given or completed, the Owner shall, if so directed, uncover the Works, have the inspections or tests satisfactorily completed and make good the Works at his own expense.

48. The District Engineer may order any part of the Works to be specifically examined or tested at the expense of the Owner should he believe that any Works are not in accordance with the requirements of the drawings approved by the District or the District's standards and specifications.
49. If, upon examination, Works are found to be non-conforming, the Owner shall correct the Works and pay the cost of examination and correction.

Indemnification

50. The Owner shall be responsible for and shall indemnify and save harmless the District against any claims and demands, loss, costs, liens, damages, actions, suits or other proceedings based upon, occasioned by, or attributable to the execution or performance of this agreement or failure to perform this agreement.
51. The Owner may settle or compromise any claim, demand, suit or action and any damages, compensation and costs paid or incurred by the District and all such claims, demands, suits or actions recoverable from the District or the property of the District shall be a debt due to it from the Owner and recoverable by action or by set-off against any money due from it to the Owner.
52. Nothing in this agreement shall be construed so as to make the District liable to pay the Owner's contractor for any of the Works.

Quality and Quantity of the Works

53. The District Engineer shall determine the engineering quality and engineering quantity of the Works to be constructed, installed and supplied by the Owner and his decision on all engineering questions in dispute shall be final.

Damage to the Works

54. The Works shall be under the Owner's responsible care and charge until final completion.
55. (a) The Owner shall bear all loss and damage which may occur on or to the Works during the fulfillment of this agreement;

- (b) If any such loss or damage occurs, the Owner shall immediately make good any such loss or damage, and in the event of the Owner refusing or neglecting so to do, the District may make good such loss or damage, and the expense of so doing shall be paid by the Owner.

As Constructed Drawings

56. Prior to the Completion Date, the Owner shall cause the Engineer to deliver to the District Engineer as constructed drawings bearing the seal of the Owner's Engineer.
57. The drawings shall include the following statement, signed by the Owner's Engineer:

"I certify that I supervised and inspected the installation of the following Works more particularly defined on this drawing and to the best of my knowledge these Works were installed to the specifications and standards of the District's Water Department.

Completion of Works

58. The District will not accept the Works as complete until:
- (a) the Works have been certified by the Owner's Engineer in accordance with the preceding section;
 - (b) the Owner's Engineer has deposited with the District a complete set of certified "as constructed" drawings on mylar transparencies satisfactory to the District;
 - (c) the District Engineer has inspected the Works and issued a Construction Completion Certificate to the Owner;
 - (d) the Owner has deposited the Warranty Bond required by the District;
 - (e) the Owner has entered into a warranty agreement in the form required by the District;
 - (f) the builder's lien period has expired and the Owner has provided to the District a Statutory Declaration setting out the date of substantial completion and setting out that all contractors and subcontractors and all accounts for work and materials in respect of the Works have been paid in full.

Acceptance of the Works

- 59. At the end of the warranty period, the Owner shall request, in writing, an inspection from the District Engineer and the District Engineer shall perform an inspection within 7 days of receipt of the request.
- 60. The District Engineer shall notify the Owner in writing of any required remedial work and the Owner shall complete this work within a reasonable time, failing which the District may complete the Work on behalf of the Owner.
- 61. On satisfactory completion of the remedial work the District Engineer shall notify the Owner accordingly and shall return the Warranty Bond, less any costs that have been incurred by the District due to emergencies or the failure of the Owner to complete any remedial work as required and at this stage the Works are deemed to have been fully accepted by District, and the District will assume responsibility for the Works.
- 62. The Owner covenants and agrees that any Works constructed and installed pursuant to this agreement shall upon the issuance of a Construction Completion Certificate by the District Engineer become and be deemed to be the property of the District whether constructed in a street, District land or in any land over which the District has an easement or right of way except those works and services owned by any public utility company.

Approval of Contractor

- 63. The Owner may employ only such contractors as the District may approve, which approval may not be unreasonably withheld, but the Owner shall be fully responsible for all the acts and omissions of the contractors.

Assignment of Agreement

- 64. This agreement shall not be assignable by any party without the consent of the other, such consent not to be unreasonably withheld.

District Engineer Designates

- 65. A power or discretion exercisable by the District Engineer may be exercised by the Deputy District Engineer or their designate.

Official Notification

66. Any notice, approval or request given under this agreement may be given if served personally upon an officer of the party for whom it is intended or mailed by prepaid registered mail addressed to the parties as follows:
to the District:

District Engineer
Capital Regional District Water Services
479 Island Highway
Victoria, BC V9B 1H7

to the Owner:

OWNER
Address

or at such other address as a party may advise by notice in writing.

67. (1) The date of receipt of any notice, approval or request shall be deemed to be the date of delivery of the notice, approval or request if served personally, or on the third business day following the date of mailing.
- (2) Where there is a mail strike, slow down or other labour dispute which might affect mail delivery of any notice, approval or request, then the notice, approval or request shall only be effective if actually delivered to an officer of the party for whom it is intended or to the specified address of such party.

Enforceability of Agreement

68. If any portion of this agreement is held or declared by a Court of competent jurisdiction to be void or unenforceable, that portion shall be severed from the balance of this agreement and the balance of this agreement shall survive and be enforceable.
69. This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

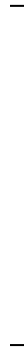
IN WITNESS WHEREOF the parties hereto have executed this agreement.

The Common Seal of
was hereunto affixed on the ____ day of
_____, 20 ____
in the presence of:



Signed, sealed and delivered by
on the ____ day of _____, 20 ____
in the presence of:

Derek Arthur
Engineering Technologist



sign

print

CAPITAL REGIONAL DISTRICT

Per: _____
J.A. (Jack) Hull, P.Eng., MBA
General Manager, Water Services

SCHEDULE "A"

Shared Cost Works, if any