



**REPORT TO CORE AREA LIQUID WASTE MANAGEMENT COMMITTEE
MEETING OF WEDNESDAY, NOVEMBER 13, 2013**

SUBJECT MCLOUGHLIN POINT REZONING

ISSUE

To present the proposed revisions to the Capital Regional District (CRD) rezoning application being considered by the Township of Esquimalt to permit the construction of the McLoughlin Point wastewater Treatment Plant. The submission includes proposed amendments to the Township of Esquimalt's Bylaw 2805 and two supporting agreements between the CRD and the Township of Esquimalt.

BACKGROUND

The CRD submitted a rezoning application to the Township of Esquimalt (Esquimalt) in January 2013. At the June 24 meeting of Esquimalt Council, an Official Community Plan amendment bylaw and two different Zoning Bylaw amendments were introduced followed by a public hearing on July 8 and 9. Bylaw 2805 reflected the requirements of the application submitted by the CRD. Bylaw 2806 reflected what Esquimalt Council considered as acceptable to the Esquimalt Community. Many of the conditions were considered unworkable by the CRD and in some instances considered to be outside the legislative authority of the CRD. Bylaw 2804 the OCP amendment bylaw and Bylaw 2806 were adopted by Esquimalt while Bylaw 2805 received first and second readings.

In late July CRD and Esquimalt staff were authorized to negotiate and make best efforts to reach an agreement that they were prepared to recommend to their respective elected bodies. Two representatives from the Province attended the meetings as observers and to report back to the Province on progress. Negotiations concluded on October 11. The following documents are attached:

Attachment 1: Backgrounder

The Backgrounder summarizes the negotiations and the outcomes from the negotiations.

Attachment 2: Bylaw 2805 Amendment

This document reflects the proposed amendments to Bylaw 2805. If acceptable, the second reading of the existing Bylaw 2805 will be rescinded and replaced with the amended bylaw. The amended bylaw will then be referred to a public hearing. (Note: At the time of writing this report the proposed wording for Section 2 subsection 5(b) had not been finalized and will be e-mailed to Committee members as soon as it is available). The following is a description of the main conditions in the proposed bylaw.

- A simpler base/bonus density framework;

The bylaw adopted by Esquimalt (Bylaw 2806, Attachment 1) contained four density levels (base plus 3 levels) permitting a 15 MI/d plant at the base density, progressing to a 108MI/d plant at bonus

density Level 3. The negotiated amendment to the bylaw (Bylaw 2805) proposes a base density plus a bonus density with conditions. These conditions include:

- Removal of excavated materials from site and delivery concrete and aggregate during the excavation and major concrete phase of construction.

The issue of truck traffic to the site through residential neighbourhoods during construction was one of the most significant issues raised by the public during community meetings and the public hearings. An addendum has been issued to the proponents requesting that the cost of barging during that phase of the work, likely to last 12 – 18 months be included in their proposal submission. Other materials will be delivered periodically by truck and will not result in a significant impact on the neighbourhood. A recent Esquimalt Bylaw amendment (Bylaw 2607) restricts truck traffic. In certain areas trucks over 10,000 kg are banned and in all other areas extraordinary traffic is regulated. An orthophoto showing the location of truck routes relative to the McLoughlin site and the existing barge docks in the Rock Bay area is attached for information (Attachment 3). Barging has been agreed to on the assumption that approval to construct a temporary moorage or dock can be obtained without an impact on the program schedule.

- Restoration of roads affected by the construction of the wastewater treatment plant;

The residential roads that will be used to access the site were not constructed to 'truck route' standards and may deteriorate under the heavy truck traffic. Despite the requirement for barging there will be delivery of heavy loads to the site. The successful proponent will be required to reach agreement with Esquimalt on the existing road condition prior to and after construction and restore the road to pre-construction condition. It is not possible to put a cost to this potential issue. The successful proponent will have to assess this risk and include it in their financial proposal. Road surfaces disturbed by trenches for the installation of underground pipelines will be restored and be warranted by the CRD in perpetuity against trench settlement in accordance with existing CRD policy. The restoration costs of trench cuts are not an incremental cost to the Seaterra Program (the Program).

- An upgraded pathway and bikeway system along Lyall street;

During the construction period there will be additional traffic along Lyall Street which is also used as an access to Macaulay Elementary Schools by car, bicycle and on foot. The bylaw includes for the provision of a pathway and bikeway system along Lyall up to a value of \$950,000. The pathway/bikeway system will reduce the risk to pedestrians and cyclists from construction traffic, particularly given the proximity of Macaulay Elementary School. If the heat loop is constructed, it would be routed along Lyall Street on the same alignment as the pathway and bikeway so that construction would largely be off the paved surface of Lyall Street. A similar approach is being taken along Dallas Road in Victoria. This work would be done under separate contracts. While this cost was not specifically identified in the Program budget it is a necessary program cost for public safety reasons.

- Provision of a meeting room and interpretive space at the wastewater treatment plant;

Given the history of the site and to provide an opportunity for public education, the bylaw requires the provision of space for interpretive materials and a meeting room that could be used when members of the public or school groups are on guided tours of the plant. The planned meeting room

in the Administration building for internal use will also be used as the public meeting space during plant tours and as such has minimal impact on the Program cost.

- A public walkway on site along the waterfront, and a boat dock;

In the future, Esquimalt plans to have a walkway from West Bay along the water front to Saxe Point Park. As part of the project a public path is to be provided around the perimeter of the site which will be accessible from a (seasonal) public dock on the waterfront. Physical separation will have to be provided between the workplace and the walkway. The incremental cost to the Program is estimated to be \$100,000. The CRD has sent a request to DND to permit public access to the site but to date has not had a response.

- Provision of on-site public art;

As is common with public projects there is a requirement for public art. An allowance of \$100,000 is being proposed for this purpose and included in the Request for Proposals (RFP).

- Provision of public open space with benches;

Given the prominence of the location a small public space is proposed as part of the public walkway where the public can sit and enjoy the view. This is included in the public walkway cost estimate.

- Aesthetic improvements to the Macaulay pump station;

As part of the Program there will be significant changes to the Macaulay Pump Station. Part of it will be demolished and replaced with a new pump station to pump sewage to the wastewater treatment plant (WWTP). As is the normal CRD practice, considerable effort is put into the aesthetics to ensure a suitable fit with the location, e.g. Currie Road, Trent and Craigflower pump stations. This is not considered an incremental cost to the Program.

- A minimum of 20% of natural or landscaped open space;

This area will include the walkway, road access, parking stalls and landscaped areas and is part of the plant design. This is not considered an incremental cost to the Program.

- Reduction of the setback from Victoria View Road; and

Esquimalt has requirements for setbacks from the property lines. In this case the plant will be built to the Department of National Defence (DND) property line. However, there will be a landscaped area between the plant and Victoria View Road. Landscaping is a requirement in the RFP and does not represent an incremental cost to the Program.

- Reasonable height and setback provisions that permit “stepping” back from the shore.

Not all of the design concepts that have been presented to the Esquimalt and Victoria design review panels are currently able to be accommodated within the existing zoning setback and height requirements, despite the designs being favourably received by the design panels. The proponents have been asked to comment on the proposed zoning setback and height requirements by November 12. If the designs cannot accommodate the proposed setback and height requirements, a variance would have to be sought by the CRD as part of the development permit process. While

this is potentially feasible and may ultimately be supported by the design panel review, this approval would have to be agreed to by Council as would a final development permit. Staff have confidence in the design panel review process, which has been excellent and has resulted in a good response and appreciation of design considerations by the proponents. Staff are confident that this process will result in the very positive consideration of the work done as part of the design review process when Esquimalt Council considers the proposals for development permit.

Attachment 4: Community Impact and Operating Agreement

The Community Impact and Operating Agreement is a longer term agreement intended to deal with measures of an operational nature, for longer term community concerns and to compensate Esquimalt for costs of long term impacts.

The Community Impact Mitigation and Operating Agreement is an agreement intended to address measures of an operational nature, for longer term community concerns and for compensating Esquimalt for costs of long term impacts. These include:

- Community Impact Mitigation Fee;

An annual community impact mitigation fee of \$55,000 for the first five years and potentially beyond, if Esquimalt, following its due diligence on the viability of a resource recovery/district energy system, decides not to accept the district energy system (DES). The proposed fee is to address the impact on Esquimalt of hosting the treatment plant as detailed in the preamble to the Community Impact & Operating Agreement and is considered to be an operational cost rather than a Program capital cost. There is similar agreement in place with the District of Saanich to compensate for municipal cost impacts from Hartland Landfill. The estimated cost of the DES to serve the core area of Esquimalt with capacity to expand to DND and into Victoria is \$7.5 million. Ownership of the DES would be transferred to Esquimalt which would be responsible for all O&M costs, including the DES pumps at the WWTP. There is an allowance in the Seaterra Program budget for the capital cost of a district energy system.

- Establishment of an ongoing community liaison committee;

The community liaison committee is to ensure ongoing communication between the community and the CRD to address any issues that may arise during the construction and operation of the plant and other related activities. On a project the size of the WWTP establishing a liaison committee is in the best interest of the proponent and is not considered to be an incremental cost.

- Agreement not to construct the biosolids facility in Esquimalt; and

The CRD Board has confirmed Hartland as the site of the Resource Recovery Centre (biosolids facility).

- CRD obligations relating to odour.

The treatment plant will employ state of the art odour control equipment. Prior to the CRD accepting the plant the proponent will have to demonstrate that the odour control specifications (no greater than 5 odour units at the boundary of the plant) have been met. The CRD will also be holding back funds during the two year operations period to ensure plant specifications continue to be met. There is no incremental cost associated with odour control.

Attachment 5: Host Community Impact 5-Year Agreement

The Host Community 5 Year Agreement addresses some additional items related to the amenities contemplated in the Zoning bylaw and more thoroughly describes how impacts occurring primarily through the construction period, will be mitigated. These items have already been addressed in this report except for:

- A design review process;

As part of the RFP process each of the proponents is meeting with the Esquimalt Design Review Committee (EDRC) to review the architectural designs. Members of the Victoria Advisory Design Panel Committee have also been invited to participate in the design reviews. The intent is to get an indication from the Esquimalt Advisory Planning Commission (APC) that the designs meet the design guidelines and are will be supported by the APC when the CRD applies for the development permit. Two meetings have been held with each of the proponents with positive feedback from the EDRC. A third meeting is being planned for later in November or early December. As the CRD places importance on the architectural treatment of new facilities (e.g. Trent and Craigflower pump stations) the architectural treatment of the WWTP is not considered an incremental cost to the Program.

ALTERNATIVES

Alternative 1:

That the Core Area Liquid Waste Management Committee recommend that the Capital Regional District Board:

1. Receive the Backgrounder for information;
2. Support the negotiated Bylaw 2805;
3. Approve the Community Impact and Operating Agreement; and
4. Approve the Host Community Impact 5-Year Agreement.

Alternative 2:

That the Core Area Liquid Waste Management Committee provide direction to staff to negotiate changes to one or more of the attached documents (Attachments 2, 3 and 4).

IMPLICATIONS

SOCIAL IMPLICATIONS

The proposed bylaw amendments and the agreements have largely addressed the main concerns expressed by the public at the public hearings in July. A key concern expressed was traffic during the excavation and concrete delivery for the process tanks. This has been addressed by requiring the proponents to barge materials to and from the site during that phase of the work. The Proponent is also required to work with Esquimalt and the community to develop a traffic management plan to minimize community impacts.

ECONOMIC IMPLICATIONS

It is expected that the measures that have financial implications for the Seaterra Program can be accommodated within the current capital budget. However, the exact cost implication will not be

known until the financial proposals are received. The core area operating budget would be adjusted, if necessary, to include the Community Impact Fee of \$55,000.

INTERGOVERNMENTAL IMPLICATIONS

The agreements reflect a genuine effort by staff to accommodate Esquimalt's concerns with the siting of the wastewater treatment plant at McLoughlin Point within the scope of the Seaterra Program. It is anticipated that in the event that the bylaw and agreements are not acceptable to Esquimalt or the CRD that it will be necessary to seek provincial intervention likely with the appointment of a mediator. Such an eventuality will have serious consequences for the program schedule and cost.

SEATERRA PROGRAM IMPLICATIONS

Esquimalt staff have agreed to bring the matter to Council on November 18 and seek direction from council to send the amendment bylaw to Public Hearing in the first week of December, provided CRD advises staff it is prepared to proceed immediately following the November 13 Board meeting. The process is likely to be extended more than a month if a decision is not made on November 13 due to scheduling Council meetings and Public Hearing notification requirements. The deadline for submitting technical proposals for the McLoughlin WWTP is January 7 followed by financial proposals on February 7. The proponents will not be able to finalize their designs until they have certainty about the zoning bylaw regulations and other requirements. Consequently any further delays in moving forward with the rezoning process will likely result in an extension of time for submission of proposals.

CONCLUSION

The amended Bylaw 2805 and the two associated agreements reflect the best efforts of the CRD and Esquimalt staff to conclude a settlement that will allow the necessary approvals to be put in place so that construction of the wastewater treatment plant can proceed.

RECOMMENDATION

That the Core Area Liquid Waste Management Committee recommend that the Capital Regional District Board:

1. Receive the Backgrounder for information;
2. Support the negotiated Bylaw 2805;
3. Approve the Community Impact and Operating Agreement; and
4. Approve the Host Community Impact 5-Year Agreement.

J.A. (Jack) Hull, P.Eng, MBA
Seaterra Program

Robert Lapham, MCIP, RPP
Chief Administrative Officer
Capital Regional District
Concurrence

JH:hr

Attachments: 5



Making a difference...together

November 13, 2013

McLoughlin Point Rezoning Backgrounder

Negotiations between the Capital Regional District (CRD) and the Township of Esquimalt ('the parties')

In 2010, the Province approved an amendment to the Core Area Liquid Waste Management Plan to designate McLoughlin Point as the site for a central wastewater treatment plant to serve the Core Area municipalities. The CRD applied for rezoning, and in July 2013 the Township of Esquimalt adopted a rezoning bylaw that could not be supported by the CRD. The CRD and Esquimalt met separately with the Minister of the Environment, the Deputy Minister of the Environment and the Minister of Community, Sports and Cultural Development. The Ministers indicated that they expected the CRD and Esquimalt to negotiate in good faith and achieve an agreement on the rezoning of the McLoughlin Point site. The Ministers offered to have senior ministry staff attend the negotiations as observers.

Negotiating on behalf of the Township of Esquimalt were the CAO and the Director of Development Services assisted by legal counsel for Esquimalt and on behalf of the CRD, the CAO and Interim Program Director assisted by legal counsel and CitySpaces Consulting, who prepared the rezoning application.

Rezoning Application

The original rezoning application was submitted to the Township of Esquimalt in late January 2013. The application included background information on the historic use of the site, servicing requirements, environmental impact and risk assessment, archaeological review, community impact assessment, indicative design framework, land-use rationale as well as other technical information.

Design Guidelines were also developed and refined through a design charrette process in mid-April that included bringing in outside design experts and council members from the Township of Esquimalt and City of Victoria as well as other members of the Core Area Liquid Waste Management Committee. Design panel members from the City of Victoria and Township of Esquimalt were also invited. Esquimalt's Design Review Committee panel members did not participate since they would ultimately be adjudicating the proposals and providing advice to Esquimalt Council as part of the development permit process. The charrette process included a public open house that allowed public comment. The purpose of the enhanced Design Guidelines was to provide greater assurance that the ultimate design is respectful of the site.

Consultation meetings were held with the West Bay Neighbourhood Association, Lyall Street Action Group, and the Esquimalt Chamber of Commerce. A public open house was held at the Esquimalt Legion on May 23, 2013. In addition, conversations took place with representatives of the Macaulay School Parent Advisory Council (PAC) and the Esquimalt Residents Association. The Township referred the application to its Advisory Planning Committee, Advisory Design Committee, and Heritage Committee, as well as referring it to nearly 30 external agencies.

The CRD Board Chair sent a letter to Esquimalt Mayor and Council on June 21, 2013, elaborating on one sent from the consultation on June 12, outlining a number of measures that the CRD was prepared to offer, to mitigate the potential community impacts of a wastewater

McLoughlin Point Rezoning Backgrounder

Negotiations between the CRD and the Township of Esquimalt

treatment plant at McLoughlin Point. An Official Community Plan amendment and two different Zoning Bylaw amendments were introduced at the June 24 meeting of Esquimalt Council. Public hearings on the bylaws occurred the week of July 8.

One of the draft zoning bylaws reflected the requirements of the application submitted by the CRD (Bylaw No. 2805) and the other supplemented that with what Esquimalt considered acceptable and feasible for this important site at the entrance of Victoria Harbour. The Esquimalt Zoning Bylaw (Bylaw No. 2806) was adopted by Council on July 15.

Bylaw No. 2806 was structured with a base density, with three additional levels of bonus density with an increasing level of required conditions. Only the Level 3 bonus density permitted the construction of a 108ML/day wastewater treatment plant if all conditions were satisfied. Many of the conditions were of concern to the CRD.

Proposed Zoning Amendment Bylaw and Agreements

In late July, staff from the CRD and Esquimalt were authorized to negotiate and make best efforts to reach an agreement that both parties were prepared to recommend to their respective elected bodies. Since late July the parties have met, exchanged information and developed a consensus for moving forward.

At the staff level, the parties have agreed to recommend amendments to proposed Bylaw No. 2805, which was given second reading by Esquimalt Council, for further consideration by Council and referral to a new Public Hearing. In addition, two agreements have been negotiated to elaborate on and supplement the Zoning Bylaw and to better assure the parties ability to work together to address issues as they arise. The two negotiated agreements comprise: 1) a short term agreement dealing with construction and associated site development issues (the "Host Community Impact 5 Year Agreement") and 2) a long term relationship agreement dealing with the longer term operational aspect of the wastewater treatment plant (the "Community Impact Mitigation and Operating Agreement"). The key elements of the proposed amendment bylaw and the agreements are as follows:

Bylaw 2805 Amendment Highlights:

The bylaw amendment includes the following:

- A simpler base/bonus density framework;
- Removal of excavated materials from site and delivery concrete and aggregate during the excavation and major concrete phase of construction.
- Restoration of roads affected by the construction of the wastewater treatment plant;
- An upgraded pathway and bikeway system along Lyall street, including connections to existing trails;
- Provision of a meeting room and interpretive space at the wastewater treatment plant;
- A public walkway on site along the waterfront, and a boat dock;
- Provision of on-site public art;
- Provision of public open space with benches;
- Aesthetic improvements to the Macaulay pump station;
- A minimum of 20% of natural or landscaped open space;
- Reduction of the setback from Victoria View Road; and
- Reasonable height and setback provisions that permit "stepping" back from the shore.

McLoughlin Point Rezoning Backgrounder Negotiations between the CRD and the Township of Esquimalt

Community Impact Mitigation and Operating Agreement

The Community Impact Mitigation and Operating Agreement is a longer term agreement intended to deal with measures of an operational nature and for longer term community concerns and compensating Esquimalt for costs of long term impacts. The agreement includes:

- An annual community impact mitigation fee of \$55,000 for the first five years and then that amount continuing or replaced by resource recovery benefits, such decision to be determined following a due diligence process carried out by Esquimalt on the resource recovery/district energy system;
- Establishment of an ongoing community liaison committee;
- Agreement not to construct the biosolids facility in Esquimalt or on adjacent DND lands; and
- CRD obligations relating to odour.

In the event that Esquimalt agrees to take over the proposed resource recovery/district energy system, the CRD will no longer be obligated to pay the annual mitigation fee.

Host Community Impact 5-Year Agreement

The Host Community 5 Year Agreement addresses some additional items related to the amenities contemplated in the Zoning bylaw and more thoroughly describes how impacts occurring primarily through the construction period, will be mitigated. The agreement describes requirements for:

- Barging of excavation material offsite and provision of concrete and aggregate to the site;
- A traffic management plan;
- LEED Gold® standard for the operations and maintenance building;
- Odour control standard specifications;
- Commitments regarding road restoration and provision of an underground conduit;
- Bike and pathway development along Lyall Avenue including connections to existing trails;
- A design review process;
- Resource recovery system, subject to Esquimalt satisfying itself as to its viability; and
- Public water access to the on-site public walkway.

Next Steps:

At a Meeting of Esquimalt Council on November 18, 2013 staff will advance amendments at Second Reading for revised Bylaw 2805 to reflect the above. The intent at this stage is simply to detail the updated bylaw and seek direction from Council to send the amendment bylaw to Public Hearing. Public Hearing may be held as early as the first week of December. Anyone who considers their interest in land is affected is invited to make representations, verbally and/or in writing. Copies of Bylaw 2805 and draft copies of the Agreements, and other relevant information are available at Esquimalt Municipal Hall. A final decision on the above will only be made in the weeks after Public Hearing.

CORPORATION OF THE TOWNSHIP OF ESQUIMALT

BYLAW NO. 2805

A Bylaw to amend Bylaw No. 2050, cited as the
"Zoning Bylaw, 1992, No. 2050"

THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF ESQUIMALT, in
open meeting assembled, enacts as follows:

1. This bylaw may be cited as the "*ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW [NO. 2__], 2013, NO. 2805*".

McLoughlin Point Special Use [I -3] Zone

2. That Bylaw No. 2050, cited as the Zoning Bylaw, 1992, No. 2050 be amended as follows:

- (1) By amending Section 30.1 to read as follows:

“(2) The prohibition in Section 30.1(1) shall not apply to those lands in the McLoughlin Point Special Use [I-3] Zone.”

- (2) By replacing the following words and figures “Bulk Petroleum Storage I - 3” in Section 31 – Zone Designations of PART 5 Zoning Districts with:

“McLoughlin Point Special Use [I – 3]”

- (3) By amending Section 55 to read as follows:

“McLoughlin Point Special Use [I-3]

The intent of this zone is to accommodate the Core Area Liquid Wastewater Treatment Plant, including potential accessory or additional commercial, high tech industrial, recreational and educational uses, or any combination thereof to create a mixed use development”.

- (4) By amending the uses permitted under Section 55 (1) to the following:

- (1) **Permitted Uses**

The following Uses are permitted:

- (a) Wastewater Treatment Plant, including, without limitation, any or all of the following additional uses:
 - (i) Educational and Interpretive Centre
 - (ii) Commercial Instruction and Education
 - (iii) Research Establishment
 - (iv) Business and Professional Office
 - (v) Marine Outfall
 - (vi) Sewage Pumping Facility
 - (vii) Accessory Uses

- (b) Business and Professional Office
- (c) High technology uses
- (d) Accessory Retail
- (e) Entertainment and Theatre
- (f) Hotel
- (g) Assembly Use
- (h) Boat Moorage Facility
- (i) Park
- (j) Accessory Uses

- (5) By deleting existing Section 55 (2) Density – Wastewater Treatment Plant, and replacing it with the following Section 55 (2):

“(2) **Density – Wastewater Treatment Plant**

In accordance with the provisions of section 904 of the *Local Government Act*, density for the Wastewater Treatment Plant Use is established by way of base density, for which no conditions apply, and bonus density on the provision or satisfaction of the conditions identified below. For greater certainty, the regulations of this section do not apply to other uses in this zone and the calculation of Floor Area Ratio and Floor Area shall not include any wastewater tank.

(a) **Base Density:**

- (i) the Floor Area Ratio shall not exceed 0.15;
- (ii) the Floor Area shall not exceed 675m², excluding processing tanks and generators completely enclosed within a Building;
- (iii) Site Coverage shall not exceed 15%;

(b) **Bonus Density:**

- (i) the Floor Area Ratio shall not exceed 0.35;
- (ii) the Floor Area shall not exceed 4,500m², excluding processing tanks and generators completely enclosed within a Building;
- (iii) Site Coverage shall not exceed 75%;

all on the provision or satisfaction of all of the conditions set out in section 55(2)(c).

(c) **Bonus Density Conditions**

The following conditions are applicable to the bonus density under section 55(2)(b):

- (i) **Design Guidelines:**

Development consistent with conditions identified in the document entitled "Design Guidelines – McLoughlin Point Wastewater Treatment Plant" prepared by CitySpaces Consulting Ltd. (Revised May 2013), (called the "Design Document") a copy of which is attached to Official Community Plan Bylaw 2006, Bylaw No. 2646 as Schedule H;

(ii) **Road Upgrades:**

Reinstatement of all roads (including but not limited to paved areas, sidewalks, boulevards) affected by establishment of a Wastewater Treatment Plant described in the Design Document to a condition equal to or better than that which existed before construction;

(iii) **Lyall Street Enhancement:**

An upgraded pathway and bikeway system along Lyall Street, having a value of up to \$950,000, including upgrades and connection to the West Bay Walkway via the trailhead located at 537 Head Street;

(iv) **Education and Interpretive Centre:**

Provision of a meeting room and interpretive space on-site having a minimum floor area of 75 m², to be available for students and the public to learn about wastewater treatment and management, made available at no charge to and for use by schools, government bodies, non-profit organizations and individuals as requested during normal hours of operation;

(v) **Public Access and Public Walkway:**

Design of building and development of site to incorporate public pedestrian walkway secured through a statutory right of way of 2.25 metres average width and in any event not more than 3 metres nor less than 1.5 metres in width at any point along the waterfront in favour of Esquimalt for and on behalf of the public to the respective boundaries of the property to permit future public walkway connection to West Bay if access through abutting Department of National Defence lands is permitted;

(vi) **Boat Moorage:**

(A) Temporary boat moorage, or other similar facility of sufficient size to permit the removal of excavated material and the provision of concrete and aggregate during the excavation and major

concrete phase of the Wastewater Treatment Plant by barge or other marine transport; and
(B) A dock or other similar watercraft landing structure to permit emergency and employee access to the site and at least seasonal public use secured by a statutory right of way in favour of Esquimalt for and on behalf of the public.

(vii) **Public Open Space:**

Public open space on the site to include a public observation point connected to the public pedestrian walkway;

(viii) **Public Art:**

Public art on the site having a value of \$100,000.00 to include heritage interpretive signage;

(ix) **Public Open Space Improvements:**

At least 3 benches to be installed in public open space referred to in paragraph (vii); and

(x) **CRD Facilities Visual Upgrade**

Aesthetic improvements to the exterior of the Macaulay Point Pump Station to a standard of quality and finish at least equivalent to the Craigflower Pump Station, the Currie Road Pump Station and the Trent Road Pump Station, recognizing the prominent location of the Macaulay Pump Station in an important waterfront park.”

(6) By deleting Section 55 (4) – **Lot Coverage**, and replacing it with the following:

“(4) **Site Coverage**

(a) For the purposes of this Section 55, “Site Coverage” means the figure obtained using the sum of the areas of Building footprints, including covered wastewater tanks not located within a Building, measured from the outside of exterior walls, expressed as a percentage of the total area of all parcels in the McLoughlin Point Special Use [I-3] Zone covered by a Building;

(b) For certainty, Site Coverage shall not include any surface parking area, seawall or pedestrian walkway or other paved public open space.

(7) By replacing Section 55 (5) – **Building and Structure Height**, with the following:

“(5) **Building and Structure Height**

- (a) For the purposes of this I-3 Zone, Height shall be measured from the Grade at seven (7.0) metres above the High Water Mark as such is determined as of January 1, 2014 (or earlier). For clarity, the purpose of this unique interpretation provision is to allow for sufficient tsunami protection for the proposed development in this Zone.
 - (b) On the portion of the lands in the I-3 Zone within the area measured inland 20 metres from the High Water Mark (the “Low Height Area”):
 - (i) No Building or Structure shall exceed a Height of 12.0 metres, but only up to a maximum of 12% coverage within the Low Height Area and the length of such a Building or Structure in the Low Height Area shall not exceed 35% of the length of the shoreline measured at the High Water Mark;
 - (ii) No Building or Structure shall exceed a Height of 5.0 metres for the remaining 88% coverage of the Low Height Area.
 - (c) On the remaining portion of the lands in the I-3 Zone, no Building or Structure shall exceed a Height of 12.0 metres except that the maximum Height of a Building may be 15 metres provided that:
 - (i) not more than 15% of the total area of the lands in the I-3 Zone is covered by a Building that exceeds 12.0 metres in Height;
 - (ii) the sole purpose for exceeding 12.0 metres is to accommodate mechanical equipment or one odour control tower associated with the treatment of sewage.”
- (8) By replacing Section 55 (6) – **Siting Requirements**, with the following:

“(6) **Siting Requirements**

No setbacks are required except as follows:

- (a) Buildings shall be set back an average of 7.5 metres from the High Water Mark provided that an encroachment into this Setback is permissible to no more than 3.5 metres from the High Water Mark but only on satisfaction of all of the following conditions:
 - (i) such encroachment shall be no greater than 10% of the site area contained within the area of the entire 7.5 metre Setback;

- (ii) for every square metre that a building encroaches into the Setback area, an equal area of extra open space associated with that building is set back behind the 7.5 metre Setback;
- (iii) that no part of the Building encroaching within the 7.5 metre Setback is taller than 5.0 metres in Height; and
- (iv) such encroachment does not overhang, or prevent the establishment of a public pedestrian walkway, as identified in this zone.

(b) For certainty, paragraph (a) Setback does not apply to the seawall, public walkway or public open space, other landscaping or hard exterior surface areas such as parking or similar structures.

(c) No building shall be located within 4.5 m of the most northerly lot line, between the water and Victoria View Road.

(9) By replacing Section 55 (7) – **Screening and Landscaping**, with the following:

“(7) **Screening and Landscaping**

Screening and landscaping shall be provided generally in accordance with the locations and standards shown in the Design Guidelines, provided that at least 20% of the total area used to calculate Site Coverage is left in its natural state, hard or soft landscaping (including pedestrian walkway and other public open space) or covered with a green roof.”

(10) By replacing Section 55 (8) – **Off-Street Parking**, with the following:

“(8) **Off-Street Parking**

Notwithstanding the Township’s Parking Bylaws, as amended from time to time, the total number of off-street parking stalls required in this zone is 34.”

(11) By replacing Section 55 (9) – **Severability and Satisfaction**, with the following:

“(9) **Severability**

In addition to Section 5 of this Bylaw, and for greater certainty for this Zone, should any measure of density, associated condition or amenity be held to be invalid by a decision of a Court of competent jurisdiction, that measure of density, condition or amenity may be severed without affecting the validity of the density-bonusing scheme and other measures of density, conditions or amenities.”

(12) By adding a new section 55 (10) – **Satisfaction**, as follows:

“(10) **Satisfaction**

- (a) For certainty, in the case of a condition under Section 55 (2), land may be developed and used for a Wastewater Treatment Plant even where all conditions have not been fulfilled or completed provided the property owner is proceeding with a reasonable plan to design, construct and install the amenities in accordance with the construction and proposed use of the Wastewater Treatment Plant, and such has been secured by agreement with the Township.
- (b) The Public Access and Public Walkway and Public Open Space referred to in Section 55 (2) shall be subject to the outcome of any environmental assessment process to be undertaken separately from the environmental assessment required in connection with the Wastewater Treatment Plant which may require the public walkway to be modified or relocated, but not eliminated entirely, to avoid impact on the inter-tidal zone.”

READ a first time by the Municipal Council on the 24th day of June, 2013.

READ a second time by the Municipal Council on the 24th day of June, 2013.

A Public Hearing was held pursuant to Sections 890 and 892 of the *Local Government Act* on the 8th and 9th day of July, 2013.

READ a second time as amended on the day of , 2013.

A Public Hearing was held pursuant to Sections 890 and 892 of the *Local Government Act* on the day of , 2013.

READ a third time by the Municipal Council on the day of , 2013.

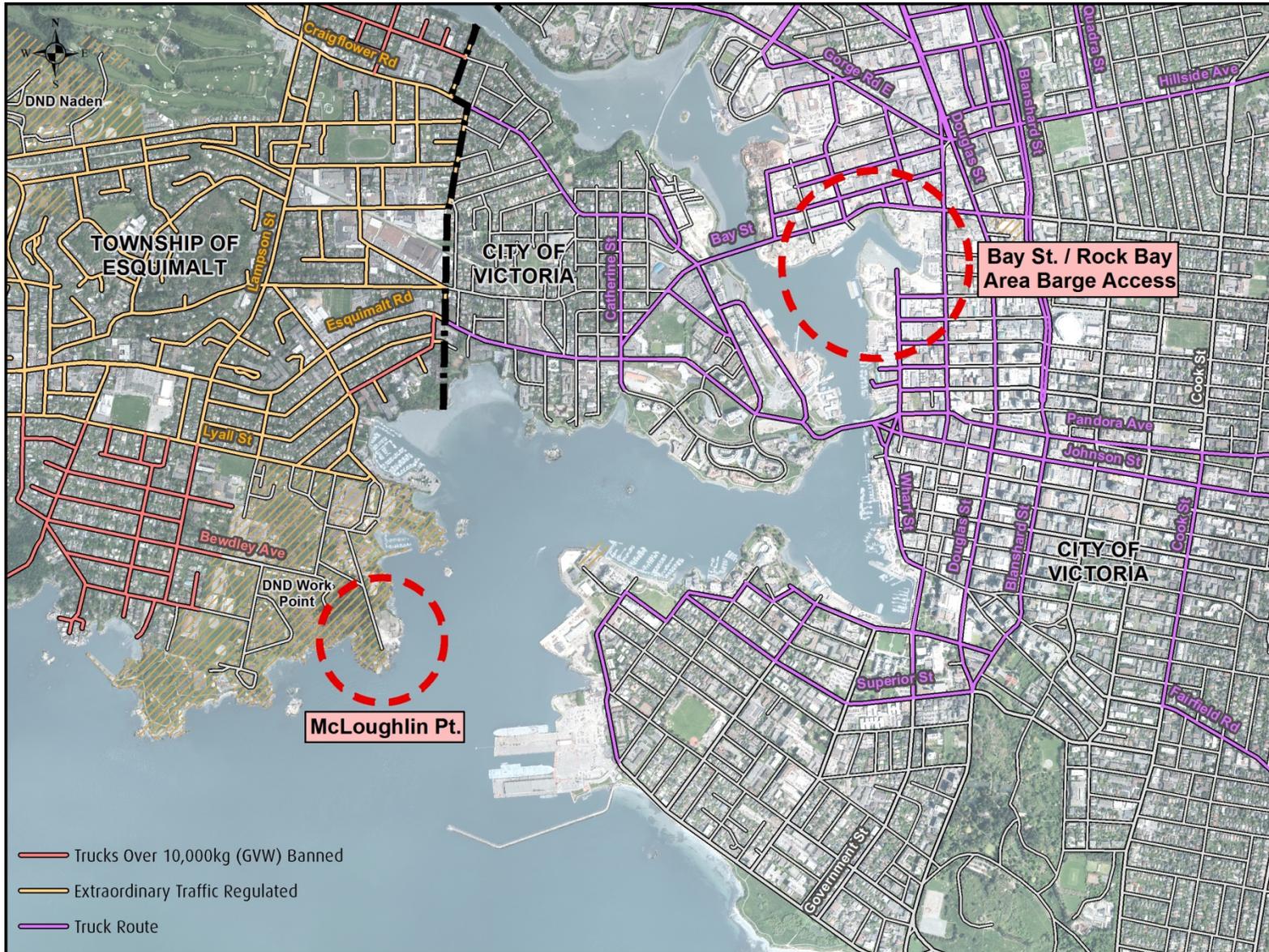
ADOPTED by the Municipal Council on the day of , 2013.

“DRAFT”

“DRAFT”

BARBARA DESJARDINS
MAYOR

ANJA NURVO
CORPORATE OFFICER



COMMUNITY IMPACT MITIGATION & OPERATING AGREEMENT

THIS AGREEMENT made this day of , 2013.

BETWEEN:

CAPITAL REGIONAL DISTRICT

625 Fisgard Street
Victoria, B.C.
V8W 1R7

(the "**CRD**")

OF THE FIRST PART

AND:

THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT

1229 Esquimalt Road
Victoria, B.C.
V9A 3P1

(the "**Township**")

OF THE SECOND PART

W H E R E A S:

- A. The CRD is required under its liquid waste management plan to construct and operate a facility to provide sewage treatment for the residents of the Township and the municipalities of Victoria, Saanich, Oak Bay, Colwood, View Royal and Langford (collectively the "**Core Area**") and the CRD has identified the following lands at McLoughlin Point as the site for the Waste Water Treatment Plant (the "**WWTP**"):

P.I.D. 000-336-491 Lot A, Section 11, Esquimalt District, Plan 35322
P.I.D. 000-336-505 Lot B, Section 11, Esquimalt District, Plan 35322
P.I.D. 000-336-513 Lot C, Section 11, Esquimalt District, Plan 35322
P.I.D. 000-336-521 Lot D, Section 11, Esquimalt District, Plan 35322
P.I.D. 000-336-530 Lot E, Section 11, Esquimalt District, Plan 35322
P.I.D. 029-168-970 Lot 1 of the Bed of Victoria Harbour, Esquimalt District, Plan VIP87823
P.I.D. 029-168-988 Lot 2 of the Bed of Victoria Harbour, Esquimalt District, Plan VIP87823

(the "**Project Lands**")

- B. The Township has raised concerns as host community of the WWTP regarding the impacts on the community of the presence of the WWTP within its boundaries, including, without limitation:
- a. demand on municipal services,
 - b. annual fire and safety inspections,
 - c. utility inspections,
 - d. inspections and repairs of road surfaces,

- e. response to public inquiries and complaints, including with DND and Victoria residents
- f. monitoring of operations and enforcement,
- g. additional street cleaning,
- h. additional liaison, including with DND;
- i. additional wear and tear on recreational facilities, parks and other Esquimalt services;
- j. additional economic development, tourism promotion, business recruitment and marketing required to overcome perceived negative influence of regional wastewater facility; ...
- k. additional security, policing and enforcement services;
- l. for other social, environmental, and economic impacts generally, (collectively the “**Impacts**”) all caused by or contributed to by activity associated with the WWTP construction or operation and/or construction and installation of a district energy heat recovery system (the “**Heat Loop**”);

- C. The CRD is mindful of those concerns and, in addition to undertaking certain actions under a host community impact agreement dated the ___ day of ___, 2013, (the “**Host Community Impact 5-Year Agreement**”) has agreed to the payment of an annual amount by way of a community impact mitigation fee and other measures of an operational nature under, and in accordance with, this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and covenants contained in this Agreement and other good and valuable consideration, the CRD and the Township covenant and agree with each other as follows:

PART A – COMMUNITY IMPACT MITIGATION FEE

1.0 Community Impact Mitigation Fee

Subject to section 3 of this Agreement, the CRD shall pay the Township FIFTY-FIVE THOUSAND (\$55,000.00) DOLLARS per year as adjusted annually under section 2.0 (the “**Community Impact Fee**”) to compensate the Township for the Impacts.

2.0 Change in CPI

From 2015 and for the remainder of the Term, the amount of the fee payable under section 1 of this Agreement shall be changed to reflect the change in the Consumer Price Index for Victoria, British Columbia (all items) (the “CPI”) for the previous year. If the change in the CPI is not known at the date of payment under section 4.2, the CRD may pay the amount paid the previous year and shall make any additional payment (or Esquimalt shall pay any refund where CPI has decreased) as required within 30 days of the change in CPI becoming known.

3.0 Exemption to Community Impact Fee

If Esquimalt elects to assume ownership of the Heat Loop referred to in Section 3.0 of the Host Community Impact 5-Year Agreement, the Community Impact Fee will not be

payable and the obligations of the CRD to pay the Community Impact Fee under this Agreement shall thereafter be at an end following execution of the Transfer Agreement and upon the actual transfer of the constructed and operational Heat Loop infrastructure to the Township following execution of the Transfer Agreement referred to in section 3.10 of the Host Community Impact 5 Year Agreement. In the event of a transfer of the Heat Loop during a calendar year, the amount of the Community Impact Fee shall be pro-rated to represent that portion of the year prior to the transfer of the Heat Loop to Esquimalt.

4.0 Invoice and Payment of Community Impact Fee

- 4.1 The Township shall provide to the CRD as of the 31st day of December in each year an invoice for the sum of FIFTY-FIVE THOUSAND (\$55,000.00) DOLLARS (as adjusted annually under section 2.0) in relation to the impact on the Township of the WWTP for the previous calendar year.
- 4.2 The CRD shall cause the amount of the invoice to be paid to the Township on or before January 31 of the following year.
- 4.3 For greater certainty, the Township is not required to itemize or calculate the Impacts in any given year other than further to Section 2 of this Agreement, and there is no set-off or reduction other than further to Section 3 of this Agreement.

PART B – TERM

5.0 Term of Agreement

- 5.1 The obligations of the CRD under this Agreement shall be from January 1, 2014 until such time as the WWTP is replaced or decommissioned.
- 5.2 For greater certainty, the first payment is due by January 30, 2014 in the full amount of FIFTY-FIVE THOUSAND (\$55,000.00) DOLLARS.
- 5.3 If the WWTP is replaced on the Project Lands, the parties shall in good faith negotiate a replacement agreement, and notwithstanding section 5.1, this Agreement shall remain in effect until replaced.

PART C – LIAISON COMMITTEE & OTHER OPERATING MATTERS

6.0 Liaison Committee

- 6.1 To provide a forum for the discussion of issues relating to construction and operation of the WWTP and other related activities, the CRD shall establish and maintain a liaison committee (the "**Liaison Committee**") to include representatives from the Township, the West Bay Neighbourhood Association, the Lyall Street Neighbourhood Association, Department of National Defence, CRD and, until acceptance of the WWTP by the CRD, the CRD's WWTP contractor.
- 6.2 The Liaison Committee will meet within thirty (30) days of the CRD's WWTP

Contractor commencing work on site and thereafter at times established in the first meeting, and at least twice annually while the WWTP is in operation.

- 6.3 At the first meeting of the Liaison Committee, the members shall elect a chair and vice chair.
- 6.4 The CRD shall not be considered to be in breach of this section if any person invited to participate in the Liaison Committee or to send representatives to the Liaison Committee fails to do so.

7.0 Biosolids Treatment Plant

- 7.1 The CRD acknowledges and agrees that it will not make use of land situated within the Township for the purpose of a biosolids treatment facility or any other purpose associated with the treatment of biosolids or recovery of energy from biosolids.
- 7.2 The CRD further agrees to consult with the Township prior to establishing any use of property within the Township.
- 7.3 For clarity, the Township includes all lands owned by the federal crown including the Graving Dock and lands commonly referred to as the “DND lands” including but not limited to: Work Point, Macaulay Point, Buxton Green, Dockyards, Naden, and Naden North.

8.0 Odour

If the WWTP emits odour in excess of 5 odour control units as measured at the boundary of the Project Lands, the CRD shall expeditiously and in good faith, use best efforts to investigate and remediate the source of the odour in order to reduce the odour to the agreed level.

PART D – DISPUTE RESOLUTION

9.0 Dispute Resolution

- 9.1 Where a matter in dispute arises under this Agreement, the Chief Administrative Officers shall meet promptly to attempt to resolve the dispute.
- 9.2 Where the Chief Administrative Officers are unable to resolve the dispute, then the matter may, with the concurrence of both the CRD and the Township, be submitted for mediation to a mediator appointed jointly by the parties.
- 9.3 If the matter cannot be resolved by mediation, or if the parties are unwilling to submit the matter to mediation, then the dispute shall be resolved by arbitration, by an arbitrator appointed jointly by the parties. The decision of the arbitrator shall be final and may include a requirement for specific performance of the provisions of this Agreement by one or both parties.
- 9.4 The parties shall share the costs of the mediation or arbitration equally.

9.5 If the parties are unable to agree on the selection of an arbitrator within thirty (30) days of the later of the meeting of the Chief Administrative Officers, or the failure of the mediation, then either party may, upon giving written notice to the other party, apply to the Ministry of Community, Sport and Cultural Development (or the Ministry then having responsibility for local government affairs) for dispute resolution by way of binding arbitration contemplated by Division 3 of Part 9 of the *Community Charter*.

PART E – GENERAL PROVISIONS

10.0 General Provisions

(a) No Fettering of Discretion

Nothing in this Agreement shall be considered to fetter any statutory discretion of the Board of the CRD or the Council of the Township nor to impair or waive any power, right or authority of the CRD or the Township under the *Community Charter*, the *Local Government Act* or any other enactment as defined in the *Interpretation Act*.

(b) Capital Liabilities

Nothing in this Agreement shall be interpreted as imposing any obligation or liability of a capital nature on the CRD.

(c) Modification

No modification or amendment to this Agreement shall be binding unless executed in writing by both parties.

(d) Entire Agreement

This Agreement, along with the Host Community Impact 5-Year Agreement, constitute the entire agreement between the parties and supersede all previous discussions, negotiations, understandings, expectations, agreements of the parties, whether oral or written regarding the subject matter of these Agreements.

(e) No Assignment

This Agreement may not be assigned by either party, without the express written consent of the other party, which consent shall not be unreasonably withheld where the assignment is to another public authority.

(f) Applicable Law

This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia and in particular is subject to the jurisdiction of the Minister of Environment under the *Environmental Management Act*.

(g) Notice

It is hereby mutually agreed that any notice required to be given under this Agreement will be deemed to be sufficiently given:

- (a) to be delivered at the time of delivery; and
- (b) if mailed from any government post office in the Province of British Columbia by prepaid registered mail addressed as follows:

if to the CRD: 625 Fisgard Street
Victoria, B.C.
V8W 1R7

if to the Township: 1229 Esquimalt Road
Victoria, B.C.
V9A 3P1

Unless otherwise specified herein, any notice required to be given under this Agreement by any party will be deemed to have been given if mailed by prepaid registered mail, or sent by facsimile transmission, or delivered to the address of the other party set forth on the first page of this Agreement or at such other address as the other party may from time to time direct in writing, and any such notice will be deemed to have been received if mailed or faxed, 72 hours after the time of mailing or faxing and, if delivered, upon the date of delivery. If normal mail service or facsimile service is interrupted by strike, slow down, force majeure or other cause, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice must utilize any other such services which have not been so interrupted or must deliver such notice in order to ensure prompt receipt thereof.

(h) Waiver

The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

(i) Severability

Each article of this Agreement shall be severable. If any provision of this Agreement is held to be illegal or invalid by a Court of competent jurisdiction, the provision may be severed and the illegality or invalidity shall not affect the validity of the remainder of this Agreement.

(j) Interpretation

Wherever the singular or the masculine is used in this Agreement, this shall be

deemed to include the plural, feminine or body politic or corporate as the context so requires.

(k) Counterparts

This Agreement may be executed in counterparts and when the counterparts have been executed by the parties, each originally executed counterpart, whether a facsimile,

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day, month and year first above written.

CAPITAL REGIONAL DISTRICT by its)
 authorized signatories)
)
 _____)
 Name:)
)
 _____)
 Name:)

THE CORPORATION OF THE TOWNSHIP OF)
ESQUIMALT by its authorized signatories)
)
)
 _____)
 Name:)
)
 _____)
 Name:)

HOST COMMUNITY IMPACT 5-YEAR AGREEMENT

THIS AGREEMENT made this day of , 2013.

BETWEEN:

CAPITAL REGIONAL DISTRICT

625 Fisgard Street
Victoria, B.C.
V8W 1R7

(the "**CRD**")

OF THE FIRST PART

AND:

THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT

1229 Esquimalt Road
Victoria, B.C.
V9A 3P1

(the "**Township**")

OF THE SECOND PART

W H E R E A S:

- A. The CRD is required under its liquid waste management plan to construct and operate a facility to provide sewage treatment for the residents of the Township and the municipalities of Victoria, Saanich, Oak Bay, Colwood, View Royal and Langford (collectively the "**Core Area**") and the CRD has identified the following lands at McLoughlin Point as the site for the Waste Water Treatment Plant (the "**WWTP**"):

P.I.D. 000-336-491 Lot A, Section 11, Esquimalt District, Plan 35322
P.I.D. 000-336-505 Lot B, Section 11, Esquimalt District, Plan 35322
P.I.D. 000-336-513 Lot C, Section 11, Esquimalt District, Plan 35322
P.I.D. 000-336-521 Lot D, Section 11, Esquimalt District, Plan 35322
P.I.D. 000-336-530 Lot E, Section 11, Esquimalt District, Plan 35322
P.I.D. 029-168-970 Lot 1 of the Bed of Victoria Harbour, Esquimalt District, Plan VIP87823
P.I.D. 029-168-988 Lot 2 of the Bed of Victoria Harbour, Esquimalt District, Plan VIP87823

(the "**Project Lands**")

- B. The Township has raised concerns as host community of the WWTP regarding the direct impacts on the community of the presence of the WWTP within its boundaries. The Township has permitted the land use with both a base density and bonus density, the latter associated with the provision of amenities in accordance with section 904 of the *Local Government Act*;

- C. The CRD is mindful of those concerns and wishes to take reasonable measures to address such concerns;
- D. In order to address the impacts and consequences that the Township may experience in hosting the WWTP, the parties have agreed to the terms and conditions of this host community impact agreement.
- E. The CRD also acknowledges the significance of municipal zoning processes and has advised the proponents “to ensure that its design for the Plant complies with the applicable zoning and related Township of Esquimalt requirements”.
- F. The CRD is seeking an amendment to the Zoning Bylaw through the adoption of Zoning Bylaw, 1992, No. 2050, Amendment Bylaw [No. 208], 2013, No. 2805 (the “**Rezoning Bylaw**”) which would incorporate a density bonusing framework under section 904 of the *Local Government Act* and the parties wish to address some additional issues relating to the amenities contemplated in the Zoning Bylaw in this Agreement .

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and covenants contained in this Agreement and other good and valuable consideration, the CRD and the Township covenant and agree with each other as follows:

1.0 Term

This Agreement shall be for a period of five (5) years commencing on the calendar day following the date that the Rezoning Bylaw is adopted.

2.0 Construction Method and Standards

- 2.1 Recognizing that the construction phase of the WWTP will generate construction traffic, emissions associated with construction and noise in the Township, especially on adjacent residential neighbourhoods, the CRD agrees to do the following at its cost:

- (i) Use of Barges for Bringing Materials to the Site

The CRD shall amend the Request for Proposals dated the 12th day of July, 2013 entitled Capital Regional District – McLoughlin Point Wastewater Treatment Plant Project for the construction of the WWTP to require the successful proponent (the “WWTP Contractor”) to construct temporary boat moorage, or other similar facility of sufficient size to permit the removal of excavated material and the provision of concrete and aggregate during the excavation and major concrete phase of the WWTP by barge or other marine transport, with the text of the addendum to the RFP to be substantially as set out in Schedule A attached to this Agreement (the “**Barging Requirements**”).

- (ii) Traffic Management Plan

Despite the significant reduction in heavy vehicle traffic expected to be achieved by the Barging Requirements, the CRD shall cause the WWTP Contractor to work with the Township, and the Township shall work with the WWTP Contractor in good faith on the preparation of a traffic management plan (the "Traffic Management Plan") to apply to the transport through the Township of those materials and equipment that are not subject to the Barging Requirements taking into account issues of community concern regarding the frequency, times and type of heavy vehicle traffic. The Traffic Management Plan shall be subject to the approval of the Township, acting reasonably.

(iii) Monitoring and Reporting of Traffic

The CRD shall monitor and report monthly, or cause the WWTP Contractor, to monitor and report monthly to the Township and in particular shall identify:

- (a) the number and frequency of trips to the Project Lands by truck; and
- (b) the purpose of truck trips and identification of materials and equipment.

(iv) CRD Contact

The CRD shall provide to Esquimalt the name and contact details of a contact person for complaints regarding non-compliance with the Barging Requirements.

(v) Exception

In exceptional circumstances explained with the advance provision of notice from the CRD to the Township, the Township may agree to permit additional truck traffic.

(vi) Enforcement

The CRD has committed to vigilant enforcement of the Barging Requirements, including the full array of contractual penalties to the WWTP Contractor, which may be supplemented with bylaw enforcement either by the CRD or the Township. The parties however acknowledge that enforcement decisions remain at the discretion of the CRD Board and the Township Council. To evidence its commitment and in recognition that breaches of the Barging Requirements increase the negative effects on and costs to the Township (e.g. for enforcement, inspections, administration of complaints, additional wear and tear on roads, etc.), the CRD agrees to give due consideration to breaches of the Barging Requirements by the WWTP Contractor.

2.2 LEED® Standard for Operations and Maintenance Building

The CRD shall cause the operations and maintenance building of the WWTP to be constructed to the level of LEED® Gold standard.

2.3 Odour-Reducing Improvement

- (i) The CRD shall cause the WWTP to be designed and constructed to incorporate odour-reducing technology intended to result in odour levels that will not exceed five (5) odour control units as measured at the boundary of the Project Lands.
- (ii) The CRD will not accept the WWTP until the standard under paragraph 2.3(i) can be met.
- (iii) If, following commissioning, the WWTP emits odour in excess of 5 odour control units as measured at the boundary of the Project Lands, the CRD shall, expeditiously and in good faith, use best efforts to investigate and remediate the source of the odour in order to reduce odour to the agreed level.

2.4 Design Review Process

- (i) Recognizing the importance of the visual impact of the WWTP, and respecting the Development Permit requirements of the Township's Official Community Plan, the CRD agrees to involve the City of Victoria, along with the Township, in a collaborative design review process involving the three (3) shortlisted proponent teams relating to the exterior design and finish of the WWTP, with the intent that such discussions will result in concurrence among the CRD, the Township's staff and the City of Victoria. It is intended to hold the collaborative design review process during October and November 2013, in advance of the final submissions from the proponent teams.
- (ii) As the design review process will take place during the competitive RFP process, participants including those from the Township shall sign a confidentiality agreement prior to participating in the design review process. The parties acknowledge that such agreement cannot be applicable to the exercise of the Township's statutory powers in relation to the required development permit(s).
- (iii) The CRD recognizes that the Project Lands are designated a development permit area in accordance with the *Local Government Act* and therefore the final decision on design and permit issuance rests with the Township's Council (subject however to appeals, judicial review and the authority of the Minister of Environment under the *Environmental Management Act*). The CRD will bring forward the final design as part of its development permit application for consideration by Township Council, but is free to seek input from Council in advance.

2.5 Restoration of Road Surfaces

- (i) The CRD shall cause the road surfaces affected by the construction of the WWTP, as determined by the Township acting reasonably, to be reinstated (including but not limited to affected paved areas, sidewalks and boulevards) to a condition that reflects current conditions or better, including the installation of sidewalks and curbs.

- (ii) The CRD, the Township and the WWTP Contractor shall, without cost to the Township, conduct pre-construction and post-construction assessments of the conditions of road surfaces referred to in section 2.5(a).

3.0 Resource Recovery System

- 3.1 **Heat Loop:** The CRD shall construct or cause to be constructed a district energy system as generally described in Resource Recovery and Use Plan Technical Memorandum by Kerr Wood Leidal dated September 20, 2013 to connect the WWTP to the intersection of Admirals Road and Esquimalt Road (collectively “**Heat Loop**”).
- 3.2 **Licence:** The Township grants a licence to the CRD for the construction of the Heat Loop within the Township’s streets, such licence to be formalized in writing in the Township’s customary form prior to the commencement of construction of the Heat Loop.
- 3.3 **Infrastructure Costs:** The CRD shall be responsible for all infrastructure costs associated with the construction of the Heat Loop to/from the intersection of Admirals Road and Esquimalt Road.
- 3.4 **Transfer of Title:** Upon completion, inspection and commissioning of the Heat Loop, the CRD shall transfer title to the Heat Loop and related appurtenances to the Township for consideration of \$10.00 and following such transfer the Township shall thereafter be responsible for the operation and maintenance of the Heat Loop and for the use and distribution of the heat.
- 3.5 **Condition Precedent:** Despite this Section, if the CRD has not received written notice from the Township that the Township has reviewed the operation and maintenance costs associated with the proposed Heat Loop and all other studies regarding the Heat Loop (collectively the “**Heat Loop Studies**”) and has satisfied itself on or before a date that is nine (9) months from receipt of a revised analysis of the financial viability of the Heat Loop prepared by Kerr Wood Leidal that it wishes the Heat Loop to be constructed and transferred to the Township, the parties shall be under no further obligation to each other in relation to the Heat Loop, it being acknowledged and agreed that the notice under this section is a condition precedent to the obligations under this Section 3.0. The Township agrees that it shall expeditiously cause the review of the proposed Heat Loop Studies, with a view to determining whether it wishes to assume operational and financial responsibility for the operation and administration of the Heat Loop as a municipal service, and it may decide whether to proceed with acceptance of the Heat Loop or not, in its sole and unfettered discretion.
- 3.6 **Warranties:** At the time of transfer, the CRD shall assign the benefit of any warranties relating to the construction of the Heat Loop to the Township.
- 3.7 **Operation by the Township:** Following transfer of the Heat Loop to the Township, all subsequent costs associated with the operation and maintenance of the Heat

Loop and the connection of individual parcels to the Heat Loop as shown substantially on Schedule "B" shall be borne by the Township.

- 3.8 **Heat Commitments:** The CRD commits to provide a sufficient amount of heat, or material for heat, in accordance with the assumptions and the equipment identified in the Heat Loop Studies to achieve the projected Heating Sales Revenues without exceeding the Operating and Maintenance costs so identified. The CRD agrees that there shall be no additional costs or charges imposed on the Township from the CRD or the operator of the WWTP, or the Project Lands generally, with respect to the provision of heat for the Heat Loop or otherwise in relation to the Heat Loop
- 3.9 **Other Users:** The parties acknowledge and agree that the WWTP will generate energy from the heat of its operations for use on the Project Lands. Provided that the heat delivered to the Township is sufficient to permit the Township to achieve the quantity of heat sufficient to achieve the projected heating sales revenues identified in the Heat Loop Studies, and provided the Township shall have exclusive rights to licence or sell the use of heat to the Department of National Defence Lands "DND"), the CRD may licence the use of heat to customers not within the boundaries of Esquimalt or DND.
- 3.10 **Transfer Agreement:** If the Township elects to accept the Heat Loop, the parties shall in good faith negotiate a transfer agreement for the transfer of title to that part of the Heat Loop required to permit the Township to operate a district energy utility within its boundaries and for the delivery of heat from the WWTP to the Township (the "Transfer Agreement").
- 3.11 **Reimbursement of Township Heat Loop Utility Costs:**
- (a) Notwithstanding section 3.5, if the Township elects to accept the Heat Loop the CRD shall, upon execution of the Transfer Agreement, allocate a budget of up to \$200,000 based on actual costs submitted by the Township for reimbursement in the construction budget relating to the Heat Loop to reimburse the Township's actual costs relating to:
 - (i) its review of the Heat Loop Studies; and
 - (ii) the establishment of a municipal service or utility for the purpose of providing heat, including without limitation, actual costs of legal, accounting, engineering and information technology services associated with the establishment of a municipal service or utility for the operation of the Heat Loop;whether such costs are incurred prior to or after execution of the Transfer Agreement.
 - (b) The CRD shall reimburse the costs incurred by the Township to a maximum of \$200,000 within 30 days of receipt of an invoice from the Township for such amounts.

4.0 Water System Upgrades

Recognizing that the WWTP will require the water service to be upgraded, the CRD agrees, as part of the water service upgrade, to provide fire hydrants and appurtenances as requested by the Township, to coincide with upgrades to the City of Victoria's water system located within the boundaries of the Township, as necessary for the proper operation of the WWTP.

5.0 Conduits

The CRD agrees that in connection with the excavation of highways in connection with construction of the WWTP, and the Heat Loop if accepted by the Township, the CRD shall install or cause to be installed a subsurface conduit to the standards of BC Hydro. It is acknowledged and agreed, however, that nothing in this Agreement obliges the CRD to install such underground wiring at the time of construction of the WWTP, the Heat Loop or otherwise.

6.0 Additional Traffic Integration Improvements

The CRD will, in good faith and in cooperation with the Township, design and install additional traffic calming and bicycle lane improvements on any streets between Lampson Road and Esquimalt Road and the Project Lands, which may include, as reasonably appropriate, speed bumps, speed cushions, enhanced boulevard curbing and landscaping, all at the sole cost of the CRD, and at the direction of the Township acting reasonably.

7.0 Emergency and Public Seasonal Access

In addition to the boat moorage identified in section 55(2)(c) of the Zoning Bylaw, the CRD shall construct a dock or other similar watercraft landing structure to permit emergency access and may include CRD employee access, and shall make reasonable efforts to provide for at least seasonal public use to be made of the dock, subject to Transport Canada approval, Department of Fisheries and Oceans Canada approval, and provided that the installation of a dock or similar facility does not trigger a requirement for an environmental impact assessment, other than in connection with the emergency and CRD employee access.

8.0 Building Permit Fees

The CRD agrees that it will apply to the Township for a building permit for the WWTP and pay an amount equal to the building permit fees that would be payable to the Township calculated in accordance with the Township's Building Bylaw, subject to any applicable deductions or reductions that would apply to complex projects of the nature of the WWTP under the Township's Building Bylaw, or in circumstances to which section 290 of the *Local Government Act* applies.

9.0 Amenity Conditions

The CRD acknowledges that the construction of the WWTP to a standard that permits the proper operation of the WWTP to meet the standards determined in the approved CRD liquid

waste management plan will necessitate the CRD providing amenities under the Rezoning Bylaw.

With respect to the provision of those amenities, the parties agree as follows:

1. Lyll Street Enhancement: The CRD will work with the Township for the provision of the pathway and bikeway referred to in section 55(2)(c) of Rezoning Bylaw, along Lyall Street and Head Street to link West Bay to Admirals Road and having a value of approximately \$950,000 for the design and installation of the pathway and bikeway. The enhancement shall be of a design, materials and quality of construction and installation as directed by the Township acting reasonably, and shall be completed prior to the sooner of the commencement of WWTP operations or termination of this Agreement.
2. Public Access, Walkway and Open Space Improvements:
 - (a) The CRD will design and install a walkway system the length of the harbour side of the WWTP site and comprising a design that is consistent with the CRD Design Guidelines. A public observation deck will be installed at the end of the walkway. It is acknowledged and agreed that the improvements referred to in this section shall be subject to the outcome of any environmental assessment process to be undertaken separately from the environmental assessment required in connection with the WWTP. The CRD agrees that the value of the Open Space and Improvements will be at least \$75,000, and shall be completed prior to the sooner of the commencement of WWTP operations or termination of this Agreement.
 - (b) The statutory right of way referred to in section 55(2)(c) of the Zoning Bylaw shall be in a form acceptable to the Township, acting reasonably, under which the public will not have a right of access nor will the Township assume maintenance liability or operational responsibility unless or until the walkway to be provided under this section is connected to a public walkway providing public access from one or more boundaries of the Project Lands, or the Township elects to assume responsibility under subsection 2(c). The CRD shall make all reasonable efforts to ensure that the public walkway is 3 metres in width, and will only reduce the walkway to 1.5 metres in width where necessary because of physical constraints.
 - (c) Notwithstanding section 9.2(b), upon the establishment of seasonal public use of the dock contemplated by section 7.0, the Township may, in its unfettered discretion, by written notice to the CRD elect to assume full responsibility for the dock, pedestrian walkway and observation area upon the opening of the dock to public use.
3. Public Art and Interpretive Signage Improvements: In satisfaction of section 55(2)(c)(vii) of the Zoning Bylaw, the CRD will provide a cash allowance of \$100,000 to provide for public art and historical interpretive signage that may be internally or externally displayed. The historical interpretive signage shall be of a design, materials and quality of construction and installation as directed by the Township acting reasonably, and shall be completed prior to the termination of this Agreement. The public art shall be determined following a process that includes approval of both the CRD and the Township.

4. Macaulay Point Pump Station and Related Facilities: The CRD will improve the aesthetics and operations, in particular to reduce odour, of the Macaulay Pump Station within Township boundaries to a standard of quality and finish at least equivalent to the Craigflower Road, Currie Road and Trent Road Pump Stations, recognizing the prominent location of Macaulay in an important waterfront park. The CRD shall also make aesthetic improvements to the appearance of the Lang Cove pump station in consideration of the visibility of its location.
5. The CRD will in good faith consider extending access to the meeting room and interpretive space on weekends and evenings when booked through the CRD for educational purposes.

10.0 Satisfaction of Host Community Conditions

The Township agrees that the satisfaction of the Host Community Conditions in Sections 2 to 9 inclusive of this Agreement and the payment of the amount under the Community Impact Mitigation & Operating Agreement will be full satisfaction of the Township's concerns relating to the WWTP.

11.0 Dispute Resolution

Where a matter in dispute arises under this Agreement, the Chief Administrative Officers shall meet promptly to attempt to resolve the dispute.

Where the Chief Administrative Officers are unable to resolve the dispute, then the matter may, with the concurrence of both the CRD and the Township, be submitted for mediation to a mediator appointed jointly by the parties.

If the matter cannot be resolved by mediation, or if the parties are unwilling to submit the matter to mediation, then the dispute shall be resolved by arbitration, by an arbitrator appointed jointly by the parties. The decision of the arbitrator shall be final and may include a requirement for specific performance by one or both parties.

The parties shall share the costs of the mediation or arbitration equally.

If the parties are unable to agree on the selection of an arbitrator within thirty (30) days of the later of the meeting of the Chief Administrative Officers, or the failure of the mediation, then either party may, upon giving written notice to the other party, apply to the Ministry of Community, Sport and Cultural Development (or the Ministry then having responsibility for local government affairs) for dispute resolution by way of binding arbitration contemplated by Division 3 of Part 9 of the *Community Charter*.

12.0 General Provisions

(a) No Fettering of Discretion

Nothing in this Agreement shall be considered to fetter any statutory discretion of the

Board of the CRD or the Council of the Township nor to impair or waive any power, right or authority of the CRD or the Township under the *Community Charter*, the *Local Government Act* or any other enactment as defined in the *Interpretation Act*.

(b) Modification

No modification or amendment to this Agreement shall be binding unless executed in writing by both parties.

(c) Entire Agreement

This Agreement, along with the **Community Impact Mitigation & Operating Agreement**, constitutes the entire agreement between the parties and supersedes all previous discussions, negotiations, understandings, expectations, agreements of the parties, whether oral or written regarding the subject matter of these Agreements.

(d) No Assignment

This Agreement may not be assigned by either party, without the express written consent of the other party, which consent shall not be unreasonably withheld where the assignment is to another public authority.

(e) Applicable Law

This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia and in particular is subject to the jurisdiction of the Minister of Environment under the *Environmental Management Act*.

(f) Notice

It is hereby mutually agreed that any notice required to be given under this Agreement will be deemed to be sufficiently given:

- (a) to be delivered at the time of delivery; and
- (b) if mailed from any government post office in the Province of British Columbia by prepaid registered mail addressed as follows:

if to the CRD: 625 Fisgard Street
 Victoria, B.C.
 V8W 1R7

if to the Township: 1229 Esquimalt Road
 Victoria, B.C.
 V9A 3P1

Unless otherwise specified herein, any notice required to be given under this Agreement by any party will be deemed to have been given if mailed by prepaid registered mail, or

sent by facsimile transmission, or delivered to the address of the other party set forth on the first page of this Agreement or at such other address as the other party may from time to time direct in writing, and any such notice will be deemed to have been received if mailed or faxed, 72 hours after the time of mailing or faxing and, if delivered, upon the date of delivery. If normal mail service or facsimile service is interrupted by strike, slow down, force majeure or other cause, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the notice must utilize any other such services which have not been so interrupted or must deliver such notice in order to ensure prompt receipt thereof.

(g) Waiver

The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

(h) Severability

Each article of this Agreement shall be severable. If any provision of this Agreement is held to be illegal or invalid by a Court of competent jurisdiction, the provision may be severed and the illegality or invalidity shall not affect the validity of the remainder of this Agreement.

(i) Interpretation

Wherever the singular or the masculine is used in this Agreement, this shall be deemed to include the plural, feminine or body politic or corporate as the context so requires.

(j) Counterparts

This Agreement may be executed in counterparts and when the counterparts have been executed by the parties, each originally executed counterpart, whether a facsimile, photocopy or original, will be effective as if one original copy had been executed by the parties to this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day, month and year first above written.

CAPITAL REGIONAL DISTRICT by its)
authorized signatories)

_____)
Name:)

_____)
Name:)

THE CORPORATION OF THE TOWNSHIP OF)
ESQUIMALT by its authorized signatories)

_____)
Name:)

_____)
Name:)

Schedule "A"

Addendum to specify Barging in Schedule 5

Section 4.8(a) and 4.8 (b) Schedule 5 (Design and Construction Protocols)

Sections 4.8(a) and 4.8(b) of Schedule 5 (Design and Construction Protocols) are deleted and replaced with the following:

"4.8 Barging, Access Roads; Laydown and Staging Areas

(a) **Barging.** Project Co:

- (1) will use marine barging for the supply and transportation of materials and waste associated with excavation, backfill and concrete works on the Plant Site (including work associated with the Harbour Crossing and Outfall);
- (2) may use the access roads to the Plant Site in connection with the initial mobilization and demobilization of construction equipment associated with excavation, backfill and concrete works on the Plant Site;
- (3) may install a temporary concrete batch plant at the Plant Site (or adjacent DND laydown area) provided all concrete materials, including aggregates and cement, are barged to the Plant Site;
- (4) will obtain all permits and approvals required for barging and any construction and operation of a temporary concrete batch plant; and
- (5) will not undertake any construction, operations or other activities which affect the intertidal zone adjacent to the Plant Site.

(b) **Access Roads.** Without limiting the barging obligations set out in section 4.8(a), Project Co will maintain the access roads to the Project Sites throughout Construction and restore such roads to their pre-existing condition or better following construction of the Facilities and as a condition of Acceptance. Project Co assumes the risk of the sufficiency of the access roads to provide access to the Project Sites for the performance of Construction, including the transportation and delivery of materials and equipment required for the performance of Construction."

Schedule "B"

HEAT LOOP