

## DELEGATION BYLAW

### A BYLAW OF THE CITY OF VICTORIA

The purpose of this bylaw is to facilitate more efficient operations by expanding the types of Council-approved documents that designated City positions may sign and to expand the types of delegations that designated City employees can approve, negotiate and administer on behalf of the City without a need for specific Council approval in individual instances.

#### Contents

1	Title
2	Definitions
3	Signing Authority
4	Delegated Authority
5	Power to Act for Directors
6	Policies to Govern Delegation
7	Referral to Council
8	No Sub-Delegating
9	Consequential Amendments
10	Commencement
	Schedule A: Signing Authority
	Schedule B: Delegated Authority
	Appendix 1: Decorative Encroachment Agreement
	Appendix 2: Anchor Rod Encroachment Agreement

Pursuant to its statutory powers, including sections 146 and 154 of the *Community Charter*, the Council of the Corporation of the City of Victoria in an open meeting assembled enacts the following provisions:

#### Title

- 1 This bylaw may be cited as the “Delegation Bylaw”.

#### Definitions

- 2 In this bylaw:

“acquiring department” means:

- a) the City department that will manage a purchase agreement and on whose behalf that purchase agreement is mainly solicited, negotiated, or entered into, or
- b) Supply Management Services, where no other City department is responsible for managing a purchase agreement.

“anchor rod” means any steel or other rod, pipe or thing an intended purpose of which is to shore or support an excavation face or prevent subsistence.

“authority to negotiate, enter into, execute, and administer” includes the power to offer, advertise, establish terms and conditions, register, extend, renew, amend, enforce, and otherwise exercise all City powers under an agreement or instrument.

“Chief Financial Officer” means the person exercising the powers, duties and functions described in section 149 of the *Community Charter*.

“Chief Information Officer” means the person employed by the City as the head of its Information Technology department or a successor position with the same responsibilities as the position designated in this bylaw.

“City Clerk” has the same meaning as in the *Council Procedures Bylaw*.

“City Manager” means the person exercising the powers, duties and functions described in section 147 of the *Community Charter*.

“City Property” means any land, other than street, that is owned or held under a lease by the City and includes buildings or other improvements on that land.

“City Solicitor” means the person employed by the City as the head of its Legal Services department and includes lawyers acting under their direction and authority.

“Department Director” means the person employed by the City as the head of a City department, and in relation to a purchase agreement, means the head of the acquiring department.

“Director of Business and Community Relations” means the person employed by the City as the head of its Business and Community Relations department or a successor position with the same responsibilities as the position designated in this bylaw.

“Director of Engineering” means the person employed by the City as the head of its Engineering and Public Works department or a successor position with the same responsibilities as the position designated in this bylaw.

“Director of Parks” means the person employed by the City as the head of its Parks, Recreation and Facilities department or a successor position with the same responsibilities as the position designated in this bylaw.

“Director, People and Culture” means the person employed by the City as the head of its People and Culture department or a successor position with the same responsibilities as the position designated in this bylaw.

“Director of Planning” means the person employed by the City as the head of its Planning and Development department or a successor position with the same responsibilities as the position designated in this bylaw.

“Director of Strategic Real Estate” means the person employed by the City as the head of its Strategic Real Estate department or a successor position with the same responsibilities as the position designated in this bylaw.

“Financial Plan” has the same meaning as in the *Community Charter*.

“Manager” means the person employed by the City as the manager of its Supply Management Services division of the City’s Finance Department.

“park” includes a public park, playground, square, green, footpath, beach, road in a park, Bastion Square, Centennial Square, garden, and other City land that is under the custody, care and management of the Director of Parks.

“Project Manager” means an employee of the City designated by the Department Director or their business unit manager for contract administration of a purchase agreement.

“public body” means a local, provincial, federal or Indigenous government or their agencies or corporations; or educational body or health care body as those terms are defined in the *Freedom of Information and Protection of Privacy Act*.

“purchase agreement” means a contract under which the City will obtain goods, services or both, but does not include partnering agreements, cooperative or cost-sharing agreements or grant agreements.

“remnant parcel” means a City-owned lot that cannot be practically developed unless it is consolidated with adjacent lots.

“street” includes a highway, as defined in the *Motor Vehicle Act*.

### **Signing Authority**

- 3 The authority to execute agreements in relation to matters identified in Column A of Schedule A is delegated to City positions identified in the corresponding row in Column B of that Schedule, subject to any terms or conditions identified in the corresponding row in Column C.

### **Delegated Authority**

- 4 (1) The authority to negotiate, enter into, execute, and administer agreements in relation to matters listed in Schedule B is delegated to City employees specified

in the corresponding row in Column B of Schedule B, subject to any terms or conditions in the corresponding row in Column C.

- (2) Where the agreement requires the publication of notice, the person to whom authority is delegated under subsection (1) is also delegated the duty to publish notice in accordance with the *Community Charter* or *Local Government Act*.

### **Power to Act for Directors**

- 5** (1) If a director to whom a power, duty, or function has been delegated under this bylaw is absent or unable to act, their deputy, assistant director or equivalent position, may exercise that power, duty, or function.
- (2) Subsection (1) applies whether or not the office of the director is vacant.

### **Policies to Govern Delegation**

- 6** (1) Council may, by resolution, adopt policies to govern the exercise of the powers, duties, or functions delegated under this bylaw.
- (2) If Council adopts a policy under subsection (1) or a City department has an established policy approved by the Department Director in relation to a power, duty, or function delegated under this bylaw, such power, duty, or function must only be exercised in accordance with that policy.

### **Referral to Council**

- 7** (1) Nothing in this bylaw prevents a person to whom a power, duty, or function has been delegated under this bylaw from referring the matter to Council for a decision.
- (2) Council may exercise any power, duty, or function delegated under this bylaw, provided that it has not been previously exercised in accordance with this bylaw.

### **No Sub-Delegating**

- 8** For clarity, a person to whom a power, duty, or function has been delegated under this bylaw has no authority to further delegate to another person that power, duty, or function.

### **Repeal**

- 9** The following bylaws or bylaw sections are repealed:
- (a) Delegation of Council Powers Bylaw No. 01-44;
- (b) Delegation of Signing Authority Bylaw No. 09-031;

- (c) Delegation Bylaw No. 23-079; and
- (d) Part 4 – Encroachments in Delegated Approvals, Schedule F – Encroachment for Decorative Features and Schedule G – Encroachment for Anchor Rods of the Land Use Procedures Bylaw No. 16-028.

**Commencement**

**10** This bylaw comes into force on adoption.

READ A FIRST TIME the	<b>18<sup>th</sup></b>	day of	<b>July</b>	2024
READ A SECOND TIME the	<b>18<sup>th</sup></b>	day of	<b>July</b>	2024
READ A THIRD TIME the	<b>18<sup>th</sup></b>	day of	<b>July</b>	2024
ADOPTED on the	<b>25<sup>th</sup></b>	day of	<b>July</b>	2024

**“CURT KINGSLEY”**  
CITY CLERK

**“MARIANNE ALTO”**  
MAYOR

## SCHEDULE A

### Signing Authority

<b>Row #</b>	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>
1.	Agreement, contract, memorandum of understanding, deed, debenture, instrument or plan	Mayor and City Clerk; or City Manager	Approved by Council resolution or bylaw
2.	Heritage revitalization agreements	Director of Planning	Approved by heritage revitalization agreement bylaw
3.	Heritage tax exemption agreements	Director of Planning	Associated heritage tax exemption bylaw; exemption agreement terms approved by Council resolution or bylaw
4.	Housing agreements	Director of Planning	Approved by housing agreement bylaw
5.	Housing grant (Victoria Housing Fund Reserve) agreements	Director of Planning	Approved by Council resolution or bylaw
6.	Land title documents including Form A (freehold transfer), Form C (charges or release of charge), Form 17 (fee simple registration or charge, notation or filing or release of charge, notation or filing), Application to Deposit Plans, Claim of Lien ( <i>Builders Lien Act</i> ), declarations, land owner transparency forms	City Solicitor; or City Clerk; or City Manager	<ol style="list-style-type: none"><li>1. Must be one of the following types of documents:<ol style="list-style-type: none"><li>a. Documents required as a condition of subdivision or building permit</li><li>b. Documents entered into to secure commitments in a development approved by Council or by delegated employee</li><li>c. Documents to complete an agreement or transaction approved by Council or by delegated employee</li><li>d. Documents that, in the</li></ol></li></ol>

			<p>opinion of the City Solicitor, do not impose a duty or obligation on the City</p> <p>e. Releases or cancellation of charge, notation or filing approved by Council</p> <p>2. Signatures witnessed in accordance with <i>Land Title Act</i></p>
7.	Lease or licence, in relation to:		<p>1. Approved by Council resolution or bylaw</p> <p>2. In a form satisfactory to the City Solicitor</p>
	a. all matters	City Manager	
	b. City Property	Director of Strategic Real Estate	
	c. parks	Director of Parks	
	d. streets	Director of Engineering	
8.	Offers to purchase, purchase and sale agreement and all documents necessary to complete a purchase or sale including land title documents	Director of Strategic Real Estate	<p>1. Approved by Council resolution or bylaw</p> <p>2. In a form satisfactory to the City Solicitor</p> <p>3. Land title documents witnessed by City Solicitor</p>
9.	Revitalization tax exemption agreements	Director of Planning	In the form prescribed by bylaw or on terms approved by Council resolution
10.	Works and services agreements	Director of Engineering	In the form prescribed by Subdivision and Development Servicing bylaw

**SCHEDULE B****Part 1: Land**

<b>Row #</b>	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>
1.	Lease or licence (City as landlord or licensor), in relation to:		1. Maximum term, including any rights of renewal, not to exceed 15 years 2. Fair market rent or licence fee of no more than \$250,000 per year, except renewals not subject to this limit 3. Rent or licence fee to non-profit organization or public body (except housing-related entities or entities operating a business) may be nominal (\$10/year) subject to a term limit of 10 years including any rights of renewal 4. Leases or licences may include terms and conditions for operating on behalf of City 5. In a form satisfactory to City Solicitor
	a. City Property	Director of Strategic Real Estate	
	b. parks	Director of Parks	
	c. streets	Director of Engineering	
	d. emergency shelter on City Property	Fire Chief	
e. Victoria Conference Centre, excluding retail or business units	Director of Business and Community Relations		
2.	Lease or licence (City as tenant or licensee), in relation to:		1. Rent or licence fee up to maximum funding amount in Financial Plan 2. In a form satisfactory to City Solicitor
	a. non-City owned real property	Director of Strategic Real Estate	
	b. public art installation on private property	Director of Business and Community Relations	
	c. emergency shelter on non-City owned property	Fire Chief	
3.	Acquisition of real property including interests not covered elsewhere in this schedule,	Director of Strategic Real Estate	1. Acquisition is either: i) necessary to facilitate a Council-approved project,



	and all documents necessary to complete the transaction		<p>program or initiative and budget approved in Financial Plan or capital plan; or</p> <p>ii) consistent with Strategic Plan and purchase price and expenditures to a maximum of \$250,000</p> <p>2. In a form satisfactory to the City Solicitor</p> <p>3. Land title documents witnessed by City Solicitor</p>
4.	Sale of remnant parcel and all documents necessary to complete the transaction	Director of Strategic Real Estate	<p>1. Sale price to be based on independent appraisal</p> <p>2. Sale agreement and all associated documents necessary to complete transaction in a form satisfactory to the City Solicitor</p> <p>3. Land title documents witnessed by City Solicitor</p>
5.	Amendment to purchase and sale agreement where the original acquisition was approved by Council	Director of Strategic Real Estate	<p>1. Original acquisition approved by Council resolution or bylaw</p> <p>2. Minor amendments including to make corrections, alter transaction or condition removal dates or other deadlines or procedures</p> <p>3. In a form satisfactory to City Solicitor</p>
6.	Acting or voting on behalf of City in relation to City-owned strata lots or airspace parcels and related agreements	Director of Strategic Real Estate	Agreements in a form satisfactory to City Solicitor
7.	Release of registered charge or cancellation of charge, filing or notation on title to property	City Solicitor	<p>1. Expired, obsolete or superseded by new documents</p> <p>2. Signature witnessed in accordance with <i>Land Title Act</i></p>

8.	Decorative encroachment agreements, in relation to encroachments over, under or on:		<p>1. Encroachments that meet the following criteria:</p> <ul style="list-style-type: none"> <li>a. Any awning, canopy, siding, sign or other decorative architectural feature that encroaches upon, under or over City land; and</li> <li>b. In the Director of Engineering's opinion, the encroachment can be removed without affecting the support or stability of the building;</li> <li>c. Encroachment does not contain any habitable space, including balconies or bay windows;</li> <li>d. Owner enters into encroachment agreement, which must be in the form prescribed at Appendix 1 of this bylaw and registered on title; and</li> <li>e. Land title documents witnessed in accordance with <i>Land Title Act</i></li> </ul>
	a. streets	Director of Engineering	
	b. City Property	Director of Strategic Real Estate	
	c. parks	Director of Parks	
9.	Anchor rod encroachment agreements	Director of Engineering	<ul style="list-style-type: none"> <li>1. Owner has applied to the City for permission in a form to the satisfaction of the Director of Engineering</li> <li>2. Owner has paid a non-refundable fee of \$750 and a one-time fee of \$25 per square metre of area of the proposed excavation face that will be</li> </ul>

			<p>supported by anchor rods and abuts a street, lane or park.</p> <p>3. In the Director of Engineering's opinion, the use of anchor rods will not adversely affect the City's property or interests.</p> <p>4. Owner enters into encroachment agreement in the form prescribed at Appendix 2 of this bylaw</p>
10.	Encroachment agreements, in relation to encroachments over, under or on:		<p>1. Owner enters into encroachment agreement in a form satisfactory the City Solicitor</p> <p>2. In the Director of Engineering's opinion, the encroachment will not structurally affect the City's property or interests.</p> <p>3. Land title documents witnessed in accordance with <i>Land Title Act</i></p>
	a. streets	Director of Engineering	
	b. City Property	Director of Strategic Real Estate	
	c. parks	Director of Parks	
11.	Statutory right of way agreements and associated s. 219 covenants, or road dedication, and all documents necessary for land title registration, in favour of:		<p>1. Acquisition is either:</p> <p>i) necessary to facilitate a Council-approved project, program or initiative and budget approved in Financial Plan or capital plan; or</p> <p>ii) consistent with Strategic Plan and expenditures to a maximum of \$250,000</p> <p>2. In a form satisfactory to the City Solicitor</p> <p>3. Land title documents witnessed by City Solicitor</p>
	a. the City, for City services (including sanitary, water, storm drainage or emergency access) necessary to facilitate a development; or to secure existing City services or access; or to secure public pedestrian or transportation access; or for any other	Director of Engineering	

	purpose that meets the City's objectives		
	b. a public or private utility or public body, on, over or under City Property	Director of Strategic Real Estate	
	c. the City, for any purpose, to facilitate a real estate transaction	Director of Strategic Real Estate	
12.	Section 219 covenants for private easements required to facilitate subdivision or development	City Solicitor	<ol style="list-style-type: none"> <li>1. Purpose of covenant to ensure private easement between property owners for servicing (including storm drainage, sanitary, water, etc.) or access is not discharged without the City's knowledge or consent.</li> <li>2. Agreement with contents to satisfaction of Approving Officer or Deputy Approving Officer for subdivision or the Director of Planning for development</li> <li>3. In a form satisfactory to the City Solicitor</li> <li>4. Signatures witnessed in accordance with <i>Land Title Act</i></li> </ol>
13.	Exempt a parcel from statutory or bylaw minimum parcel frontage on highway	Approving officer	<ol style="list-style-type: none"> <li>1. Pursuant to section 512, <i>Local Government Act</i></li> <li>2. Only applies to parcels being created by subdivision</li> </ol>
14.	Remediation indemnity agreements in relation to contamination that has migrated to City property	Director of Engineering	<ol style="list-style-type: none"> <li>1. Responsible person for source site to indemnify City for claims resulting from contamination migrating to City property</li> <li>2. In a form satisfactory to the City Solicitor</li> </ol>

**SCHEDULE B****Part 2: Financial or capital commitments**

<b>Row #</b>	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>
1.	Any contract, other than a purchase agreement, for which funding has been provided in the annual budget approved by Council	1. City Manager; or 2. Department Director	1. Up to a maximum of \$500,000 2. Contract is necessary to carry out budget item approved by Council and is in accordance with Strategic Plan 3. Agreement in a form satisfactory to City Solicitor
2.	Donation agreements for receipt of donations to the City, in relation to:		1. Must be in accordance with City's corporate donation policy; 2. Charitable tax receipt to be provided where applicable 3. Agreement in a form satisfactory to City Solicitor
	a. All matters	City Manager	
	b. Arts or culture	Director of Business and Community Relations	
	c. Land or statutory right of way	Director of Strategic Real Estate	
3.	Revenue agreements to receive revenue in relation to sponsorship of City assets	Director of Business and Community Relations	In accordance with Council-approved strategic revenue partnership policies
4.	Approval of annual grant allocations from Cultural Infrastructure Grant Program or Festival Investment Grant Program or other grant programs related to Business and Community Relations, and associated grant agreements	Director of Business and Community Relations	1. In accordance with Council-approved program guidelines 2. Up to the maximum annual program funding in the Financial Plan
5.	Agreement to sell carbon credits	Director of Engineering and Chief Financial Officer	1. Sale price must be at fair market as identified in low carbon fuel credit market reports 2. Agreement in a form satisfactory to the City Solicitor
6.	Approval of release and indemnification by City to owners of real property who allow City to use that property for training City employees	City Manager	1. Granting release from any claims made by the City in relation to its use of the real property for training purposes

			2. Indemnification by the City in connection with any claim made against the owner by a third party in relation to the City's use of real property for training purposes
7.	Software licence agreements	Chief Information Officer	Associated with approved software purchase agreement

**SCHEDULE B**

**Part 3: Intergovernmental or partnering agreements**

<b>Row #</b>	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>
1.	Grant funding agreement to receive grants from a public body or other entity	1. City Manager; or 2. Department Director	1. Purpose of grant to facilitate Council-approved project or initiative or further Strategic Plan goals 2. May include grant by City if approved in Financial Plan
2.	Agreements with BC Transit related to transit infrastructure, services and programs within the City	Director of Engineering	Agreement in a form satisfactory to the City Solicitor
3.	Partnering agreement with person or public authority, in relation to:		1. Purpose to provide municipal service, activity or works on behalf of the City that delivers Council priorities identified in the Financial Plan 2. Agreement in a form satisfactory to the City Solicitor
	a. any municipal service, activity or works	City Manager	
	b. events or downtown revitalization	Director of Business and Community Relations	
4.	Information sharing agreement with other public bodies	Head of the public body pursuant to the <i>Freedom of Information and Protection of Privacy Act</i>	1. Purpose for information sharing furthers Council priorities identified in Financial Plan 2. Agreement in a form satisfactory to the City Solicitor
5.	Non-disclosure agreement with person or public body	City Manager	Terms of agreement do not preclude sharing information with Council in a closed meeting
6.	Cost-sharing agreement with person or public body to install City infrastructure or services on behalf of City	Director of Engineering	1. In accordance with Financial Plan 2. Agreement in a form satisfactory to the City Solicitor
7.	Joint use agreement with School District No. 61 in relation to use or maintenance of parks or SD61 property	Director of Parks	Agreement in a form satisfactory to the City Solicitor

**SCHEDULE B****Part 4: Legal Action**

<b>Row #</b>	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>
1.	Initiate legal proceedings on behalf of City: <ol style="list-style-type: none"> <li>a. for debt owing or damages; or</li> <li>b. to collect unpaid taxes (s. 231, 250, 251 <i>Community Charter</i>); or</li> <li>c. to prevent or restrain erection, alteration or use of a building or land in contravention of the <i>Community Charter</i>, <i>Local Government Act</i> or a City bylaw or resolution; or</li> <li>d. for orders respecting dangerous dogs (s. 49(10), <i>Community Charter</i>); or</li> <li>e. to enforce any agreement, contract or covenant where the City is a party</li> </ol>	City Manager	<ol style="list-style-type: none"> <li>1. On the recommendation of and with advice from City Solicitor</li> <li>2. In relation to item d., with advice from City Solicitor and on the recommendation of the animal control officer</li> </ol>
2.	Defend legal action, accept service on behalf of the City and take all steps necessary to defend the City		<ol style="list-style-type: none"> <li>1. To defend any action or proceeding, in any court of law or before any tribunal, arbitrator or any other person;</li> <li>2. May pursue a counterclaim, third party claim or similar ancillary claim in respect of an action or proceeding defended under this row</li> </ol>
	<ol style="list-style-type: none"> <li>a. in relation to all matters except employment or labour issues</li> </ol>	City Solicitor	
	<ol style="list-style-type: none"> <li>b. in relation to employment or labour issues</li> </ol>	Director, People and Culture	
3.	Settlement of any claims for or against the City:		
	<ol style="list-style-type: none"> <li>a. Up to \$250,000, in relation to all matters</li> </ol>	City Manager	<ol style="list-style-type: none"> <li>1. On the recommendation of and with advice from City Solicitor in relation to all matters</li> </ol>



			<p>except employment or labour issues</p> <p>2. On the advice of the Director, People and Culture in relation to employment or labour issues</p>
	b. Up to \$50,000, in relation to all matters except employment or labour issues	City Solicitor	
	c. Up to \$50,000, in relation to employment or labour issues	Director, People and Culture	

**SCHEDULE B****Part 5: Procurement**

<b>Row #</b>	<b>Column A</b>	<b>Column B</b>	<b>Column C</b>
1.	Purchase agreements over \$500,000	City Manager; or Project Manager but only in respect of administration, amendments and renewals	<ol style="list-style-type: none"> <li>1. Purchase agreement must be in writing and in a form satisfactory to the City Solicitor.</li> <li>2. Any amendments that add to the work, service, or goods must be integrally related to and necessary to fulfill the objectives of the subject contract as described in the underlying solicitation.</li> <li>3. Any renewal term not to exceed that set out in the underlying solicitation.</li> </ol>
2.	Purchase agreements up to and including \$500,000	Chief Financial Officer; or Project Manager, but only in respect of administration, amendments and renewals	<ol style="list-style-type: none"> <li>1. Purchase agreement must be in writing and in a form satisfactory to the City Solicitor.</li> <li>2. Any amendments that add to the work, service, or goods must be integrally related to and necessary to fulfill the objectives of the subject contract as described in the underlying solicitation.</li> <li>3. Any renewal term not to exceed that set out in the underlying solicitation.</li> </ol>
3.	Purchase agreements up to and including \$74,999.99	Department Director; or Manager; or Project Manager, but only in respect of administration, amendments and renewals	<ol style="list-style-type: none"> <li>1. Purchase agreement must be in writing and in a form satisfactory to the City Solicitor.</li> <li>2. Any amendments that add to the work, service, or goods must be integrally related to and necessary to fulfill the objectives of the subject contract as described in the underlying solicitation.</li> <li>3. Any renewal term not to exceed that set out in the underlying solicitation.</li> </ol>
4.	Purchase agreement for goods up to and including \$10,000	Project Manager	<ol style="list-style-type: none"> <li>1. Purchase agreement must be in writing and in a form satisfactory to the City Solicitor.</li> <li>2. Any amendments that add to the work, service, or goods must be integrally related to and necessary to fulfill the objectives of the subject contract as described in the underlying solicitation.</li> </ol>

			3. Any renewal term not to exceed that set out in the underlying solicitation.
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Appendix 1  
Decorative Encroachment Agreement

**ENCROACHMENT FOR DECORATIVE FEATURES**

**TERMS OF INSTRUMENT - PART 2**

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THIS EASEMENT (ENCROACHMENT) AGREEMENT (this "Agreement") is entered into by and

BETWEEN:

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

(the "Owner")

AND:

**THE CORPORATION OF THE CITY OF VICTORIA**  
1 Centennial Square, Victoria, British Columbia, V8W 1P6

(the "City")

**WHEREAS:**

- A. The Owner is the owner of the Lands;
- B. The Owner has requested that the City grant its permission for the use of the Easement Area for the purposes of erecting and maintaining the Structures over City property as shown on the Easement Area;
- C. The City agrees to grant the Owner's request to encroach on the Easement Area, subject to the provisions of the City's bylaws as amended from time to time and subject to the terms and conditions of this Agreement, and the City agrees to grant the Owner an easement in that regard;

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

**1. DEFINITIONS**

1.1 In this Agreement,

- a) "**Building**" means the *[describe the building to which the Structures are affixed to]* on the Lands;

- b) **“Director of Engineering”** means the person employed by the City as the head of its Engineering and Public Works department or a successor position with the same responsibilities as this position;
- c) **“Dominant Tenement”** means the Lands;
- d) **“Lands”** means:  
Civic address:  
PID:  
Legal description:
- e) **“Servient Tenement”** has the meaning ascribed to that term in section 2.1;
- f) **“Structures”** means \_\_\_\_\_ [*insert description of encroaching structures*] and all support structures related thereto;
- g) **“Term”** has the meaning ascribed to that term in section 4.1;
- h) **“Works”** means constructing, installing, maintaining, cleaning, repairing and replacing the Structures;
- i) **“Volumetric Easement Area”** has the meaning ascribed to that term in section 2.2.

## 2. LANDS

- 2.1 The City is the owner of that portion of \_\_\_\_\_ [*insert legal description or name of street if roadway*] comprising an area of \_\_\_\_\_ square metres as more particularly identified on plan EPP \_\_\_\_\_ a reduced copy of which is attached at Schedule A (the **“Servient Tenement”**).
- 2.2 The Owner has requested and the City has agreed to grant an easement over a volumetric area of \_\_\_ cubic metres within the Servient Tenement as more particularly identified on volumetric plan EPP \_\_\_\_\_, a reduced copy of which is attached at Schedule B (the **“Volumetric Easement Area”**).

## 3. EASEMENT - PERMISSION TO ENCROACH

- 3.1 Subject to the terms of this Agreement, the City grants the Owner as owner of the Lands (and Dominant Tenement) for the benefit of the Lands and to be appurtenant to the Lands for the use and enjoyment of the Owner and its servants, agents, tenants, invitees and licensees, an easement for the non-exclusive use from time to time for the Works and to keep the Structures within the Easement Area.
- 3.2 The easement in section 3.1 is held in common with the City as owner of the Servient Tenement and its servants, agents, tenants, invitees and licensees, and any other persons to whom the City has granted rights to use the Easement Area.
- 3.3 The Owner shall not:
  - a) erect any structure or encroachment in the Easement Area other than the Structures; or

- b) permit the Structures to encroach on any City property other than the Easement Area.

#### **4. TERM**

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

#### **5. TITLE**

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

#### **6. MAINTENANCE**

- 6.1 The Owner will carry out the Works in a proper and workmanlike manner so as to do as little injury to the Servient Tenement as possible.
- 6.2 The Owner shall, at all times and at its own expense, keep and maintain the Structures and the Easement Area in good and sufficient repair and in a neat and clean condition and in a manner which does not pose any risk to persons or property, all to the satisfaction of the City (without any obligation on the part of the City to determine what is sufficient repair or a safe condition).
- 6.3 The Owner shall make good at its own expense, all damage or disturbance which may be caused to the surface of the Servient Tenement in the exercise of their rights hereunder.
- 6.4 The Owner shall not make any structural alterations to any Structures in the Easement Area without the prior written consent of the Director of Engineering, which consent will not be unreasonably withheld or delayed.
- 6.5 Notwithstanding section 6.4, the Owner may, without prior consent of the Director of Engineering, make temporary alterations to any Structures in the event of an emergency in order to prevent or avoid risks to persons or property. The Owner as soon thereafter as is reasonable in the circumstances, shall apply for the consent of the Director of Engineering with respect to any necessary permanent structural alterations to such Structures.
- 6.6 If the Owner fails to keep the Structures and Easement Area in good repair and maintenance to the satisfaction of the City, the City may give notice to the Owner demanding that repairs and maintenance be done within the time specified by the City and if the Owner fails to do so to the City’s satisfaction, the City may, in its sole discretion (without any obligation to do so), cause such repairs to be made, including structural changes, as it deems necessary at the Owner’s expense. The Owner shall pay the costs of the repairs to the City forthwith on demand.
- 6.7 In making repairs or doing maintenance, the City may bring and leave upon the Lands and the Easement Area, the necessary materials, tools and equipment and the City shall not be liable to the Owner for any inconvenience, annoyance, loss of business or other injuries

suffered by the Owner by reason of the City effecting the repairs or maintenance or doing any work hereunder.

## **7. DESIGN SPECIFICATIONS**

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

## **8. ENVIRONMENTAL PROTECTION**

- 8.1 The Owner shall not do or permit to be done anything which may or does contaminate the Easement Area or any surrounding area and the Owner shall be solely responsible to remove all such contamination and remediate it to standards required by the *Environmental Management Act* (BC) and all applicable laws.

## **9. COMPLIANCE WITH LAWS**

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

## **10. INDEMNITY AND INSURANCE**

- 10.1 The Owner shall indemnify and hold harmless the City and its elected and appointed officials, officers, employees and agents from all suits, proceedings, losses, damages, expenses, demands, claims, costs (including actual costs of professional advisors and costs associated with remediation of contamination) and harm of any kind, howsoever caused, whether related to death, bodily injury, property loss, property damage or consequential loss or damage, arising out of or in any way connected with:
- (a) the permission to encroach granted by this Agreement;
  - (b) the existence and use of the Easement Area for the purposes of the Works;
  - (c) construction, maintenance, existence, use or removal of the Structures;
  - (d) the Owner's occupation or use of the Servient Tenement or the ground below or the air above for the purpose of such encroachment by the Building;
  - (e) any failure to pay for labour and materials relating to the Structures;
  - (f) any breach or default by the Owner under this Agreement; and
  - (g) any wrongful act, omission or negligence of the Owner, its members, directors, officers, employees, contractors, subcontractors, licensees, invitees, customers and others for whom it is responsible.
- 10.2 The indemnity in Section 10.1 survives the expiry or earlier termination of this Agreement.
- 10.3 The Owner will take out and maintain during the Term, a policy of commercial general liability insurance against claims for bodily injury, death or property damage arising out of the use of the Lands by the Owner in the amount of not less than five million dollars per single occurrence, or such greater amount as the City may from time to time designate

and shall provide the City with a certificate of insurance evidencing coverage, or a certified copy of such policy or policies if requested .

- 10.4 All policies of insurance required under section 10.3 shall:
- (a) name the City as an additional insured;
  - (b) contain a provision requiring the insurer not to cancel or change the insurance without first giving the City thirty (30) days notice in writing;
  - (c) contain a cross liability clause in favour of the City; and
  - (d) be in a form and on such terms, including with respect to deductible amounts, as are satisfactory to the City, in the City's sole and absolute discretion.
- 10.5 If the Owner does not provide or maintain in force the insurance required by this Agreement, then without limiting the City's right to terminate this Agreement, the City may take out the necessary insurance and pay the premium for periods of one year at a time and the Owner shall pay to the City the amount of the premium immediately on demand.
- 10.6 If both the City and the Owner claim to be indemnified under any insurance required by this Agreement, the indemnity shall be applied first to the settlement of the claim of the City and the balance, if any, to the settlement of the claim of the Owner.
- 10.7 Maintenance of such insurance shall not relieve the Owner of liability under the indemnity provisions of this Agreement.
- 10.8 The foregoing provisions shall not limit the insurance required by law, nor relieve the Owner from the obligation to determine what insurance it requires for its own purposes.
- 10.9 No finding of negligence, whether joint or several, as against the City in favour of any third party shall operate to relieve or shall be deemed to relieve the Owner in any manner from any liability to the City, whether such liability arises under this Agreement, under the provisions of the *Community Charter* as amended from time to time, or otherwise.

## **11. RELEASE**

- 11.1 The Owner releases the City and its elected and appointed officials, officers, employees and agents from all claims of any kind, whether known or unknown, whether or not relating to negligence, which the Owner now has or at any future time may have, however caused, arising out of or in any way connected with the permission to encroach granted by this Agreement, the existence and use of the Easement Area or the Structures, the Works, or the exercise by the City of any of its rights pursuant to this Agreement.
- 11.2 The release in Section 11.1 survives the expiry or earlier termination of this Agreement.

## **12. REMEDIES**

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

## **13. COMPENSATION**

- 13.1 Notwithstanding any provision of this Agreement, the Owner shall not be entitled to compensation for injurious affection or disturbance resulting in any way from the removal



of the Structures in accordance with the terms of this Agreement and, without limitation, shall not be entitled to business losses, loss of profit, loss of market value, relocation costs or other consequential loss by reason of the removal of the Structures or by reason of the termination of this Agreement.

#### **14. TERMINATION**

- 14.1 If the Owner fails to comply with the provisions of this Agreement, this Agreement shall be terminated and all rights of the Owner hereunder shall thereupon lapse and be absolutely forfeited.
- 14.2 The City may, at any time, in its sole discretion, but acting in good faith, withdraw the rights it has granted to the Owner in this Agreement and terminate this Agreement on 12 months' written notice.
- 14.3 On receipt of notice under Section 14.1 or 14.2, the Owner shall, within the time period stated in the notice, at its expense, remove the Structures and otherwise restore the Easement Area to the satisfaction of the City.
- 14.4 If the Owner fails to remove the Structures as required by the City within the time period specified pursuant to this Agreement, the City may, in its sole discretion, cause the Structures to be removed at the Owner's expense.
- 14.5 In the circumstances described in Section 14.1, the City may, acting reasonably and in good faith, remove the Structures without notice if the subsistence of the Structures constitutes an immediate hazard to the public and if there is no other practical remedy available to the City to alleviate such immediate hazard, at the sole cost of the Owner.

#### **15. ASSIGNMENT**

- 15.1 The Owner shall not assign any of its rights and obligations arising from this Agreement to any person other than to the then-current owner of the Lands.
- 15.2 The Owner covenants and agrees not to transfer the Lands, or any portion thereof, without advising the purchaser or transferee of this Agreement and assigning the Owner's rights and obligations pursuant to this Agreement to the new owner of the Lands by mutual agreement.
- 15.3 In the event that the Owner fails to assign the rights and obligations of this Agreement to a new owner of the Lands as described in Section 15.2, the Owner shall continue to be bound by this Agreement in all respects notwithstanding that the Owner no longer owns the Lands.

#### **16. RIGHT OF ENTRY**

- 16.1 The City's employees or agents shall have the right to enter into and upon the Lands and the Building for the purpose of:
- a) maintaining or removing the Structures in the event of an emergency or in order to prevent or avoid risks to persons or property;
  - b) inspecting the Structures; or
  - c) maintaining, repairing or replacing the Structures pursuant to sections 6.6 and 6.7.

- 16.2 Except in the case of section 16.1a), the City will make reasonable efforts to provide the Owner with 12 hours' notice prior to entering the Lands or Building. In the case of section 16.1a), the City will notify the Owner if such action was taken.

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

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

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

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

## **19. LICENCES AND PERMITS**

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

## **20. OTHER MATTERS**

- 20.1 The waiver by the City of default by the Owner shall not be deemed to be a waiver by the City of any subsequent default by the Owner. All waivers must be in writing.
- 20.2 Whenever it is required or desired that either party deliver a notice to the other, the delivery shall be deemed to be satisfactory if and deemed to have occurred when the notice has been:
- (a) delivered by hand, on the date of delivery; or
  - (b) mailed by Xpresspost (Canada Post) requiring signature of the addressee on delivery, on the date received or on the sixth day after receipt of mailing by any Canada Post Office, whichever is the earlier, except that in the event of a strike or disruption in postal service, the notice shall not be deemed to be received until actually received;

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

- 20.3 Whenever the singular or masculine is used in this Agreement, the same is deemed to include the plural or the feminine or the body politic or corporate as the context requires.
- 20.4 Every reference to each party is deemed to include the heirs, executors, administrators, corporate successors, permitted assigns, employees, agents, officers, elected officials and invitees of such party whenever the context so requires or allows.
- 20.5 Section headings are included for convenience only. They do not form a part of this Agreement and shall not be used in its interpretation.
- 20.6 If any part of this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.
- 20.7 This Agreement shall be governed and construed in accordance with the laws of the Province of British Columbia.
- 20.8 The parties hereto shall execute and do all such further deeds, acts, things, and assurances as may be reasonably required to carry out the intent of this Agreement.

## **21. TIME OF ESSENCE**

- 21.1 Time is of the essence of this Agreement.

## **22. INTERPRETATION**

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

The parties hereto acknowledge that this Agreement has been duly executed and delivered by the parties executing the land title forms to which these Terms of Instrument are attached.

**SCHEDULE A**

*(insert "flat" easement plan)*

**SCHEDULE B**

*(insert volumetric easement plan)*

Appendix 2  
Anchor Rod Encroachment Agreement

**ENCROACHMENT FOR ANCHOR RODS**

THIS AGREEMENT dated for reference the \_\_\_ day of \_\_\_, \_\_\_\_\_.

BETWEEN:

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

(the “**Owner**”)

AND:

**THE CORPORATION OF THE CITY OF VICTORIA**  
1 Centennial Square, Victoria, British Columbia, V8W 1P6

(the “**City**”)

**WHEREAS:**

- A. The Owner is the owner of the Land.
- B. The Owner has applied to the City for approval of the construction of a ### [describe development] upon the Land, under the terms and conditions of the City of Victoria ### [insert permit type and number].
- C. In connection with the construction of the development referred to in Recital B, the Owner has requested the City to grant it permission to construct, use or continue the use or existence of an encroachment onto highways of which the City has the use and possession, which encroachment is appurtenant to the Land;
- D. The City has agreed to grant the Owner’s request, subject to the provision of all City bylaws and to the terms and condition herein set forth;

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

**1.0 DEFINITIONS**

**1.1** In this Agreement,

- a. "**As Built Drawings**" has the meaning ascribed to that term in section 5.12.
- b. "**Authenticate**" means the Owner's Consultant's seal, signature and date carried out in accordance with the *Professional Governance Act (BC)*.
- c. "**Director**" means the City's Director of Engineering and Public Works or their authorized designate.
- d. "**Highways**" has the meaning ascribed to that term in section 2.1.
- e. "**Land**" means the land and premises with the following address and legal description:  
  
Civic address: ##  
  
Parcel Identifier: ##  
Legal description: ##
- f. "**Owner's Consultant**" means a professional engineer licensed to practice in the Province of British Columbia with experience in the design and construction of works of a similar kind to those proposed to be installed under this Agreement.
- g. "**Term**" has the meaning ascribed to that term in section 4.1.
- h. "**Works**" means ### [insert description of works (e.g. anchor rods, shotcrete, soldier piles)] as shown in Schedule "A".

## 2.0 ENCROACHMENT

- 2.1 The City grants the Owner permission to construct and maintain an encroachment comprising of the Works into those parts of ### [insert street(s) names or intersection] (collectively, the "**Highways**") in the City that adjoin the Land, all in accordance with the plans and specifications attached hereto as Schedule "A".

## 3.0 USE

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

## 4.0 TERM

- 4.1 This Agreement commences on the date that it is fully signed by both parties and, subject to Sections 6.15 and 6.16 hereof, expires on ### [insert date] (the "**Term**").

## **5.0 CONSTRUCTION OF WORKS**

- 5.1** The Owner shall retain the Owner's Consultant who will be responsible for ensuring that the design and construction of the Works at all times is in accordance with sound engineering and construction practices, and is carried out in accordance with the terms of this Agreement.
- 5.2** The Owner's Consultant must provide written confirmation to the City, prior to the commencement of the construction of the Works, that they have thoroughly investigated the location of existing services and utilities, and that the installation of the Works in their proposed location will not interfere with or cause damage to any existing underground utilities or services, whether of the City, the Capital Regional District, or any private or public utility. The Owner shall be solely responsible for the cost of the investigation of all such services for the purpose of obtaining and providing such confirmation.
- 5.3** Prior to the commencement of construction of the Works, the Owner's Consultant must submit an Authenticated detailed plan indicating property lines showing in cross section the profile of all underground services within the area of the Highways covered by this Agreement, as well as, in relation thereto, the proposed location of all Works.
- 5.4** The City reserves the right to require that any portion of the Works be relocated, where in the reasonable opinion of the Director, the proposed location of the Works or any portion thereof may interfere with or damage underground services of the City, the Capital Regional District or any private or public utility, or may impact the protected root zones of City street trees.
- 5.5** The Works shall be installed strictly in accordance with the plans and specifications that are attached as Schedule "A" to this Agreement, unless the Director authorizes the modification of such plans or specifications.
- 5.6** The Owner shall at all times and at its own expense keep and maintain the Works and the Highways in good and sufficient repair and in a manner which does not pose any risk to persons or property, all to the satisfaction of the Director (without any obligation on the part of the Director to determine what is sufficient repair or a safe condition).
- 5.7** If the Owner fails to keep the Works and the Highways and City underground utilities in good repair and maintenance to the satisfaction of the Director, the Director may give notice to the Owner demanding that repairs and maintenance be done within the time specified by the City and if the Owner fails to do so, to the City's satisfaction, the City may, in its sole discretion (without any obligation to do so), cause such repairs to be made, including structural changes or filling up any excavation, as it deems necessary at the Owner's expense. The Owner shall pay the costs of the repairs to the City forthwith on demand.
- 5.8** The Owner shall in respect of its use of the Highways and in relation to the Works,



comply with all applicable statutes, laws, regulations, bylaws, orders and other requirements of every governmental authority having jurisdiction.

- 5.9** If during the course of construction of the Works, the Owner's Consultant determines that any part of the Works are required to be placed in a location other than shown on the plans and specifications attached as Schedule "A", or determines that additional works are required to be installed within the Highways, the Owner's Consultant must first obtain the authorization of the Director before proceeding with such modification to the Works.
- 5.10** The City makes no representation or warranty as to the subsurface soil conditions within the area of the Highways within which the Works are to be constructed, including as to whether the soil or groundwater within the Highways contains any contamination, special waste or prescribed substance in a quantity or concentration that exceeds the standards permitted under the *Environmental Management Act*. The City will not be responsible for any increased or additional costs (including, without limitation, any costs associated with delays in proceeding with the Works), incurred by the Owner in constructing the Works as a result of the presence of any such special waste, contamination or prescribed substance, or any other soil or groundwater contamination within the Highways, environmental consultant's fees, the cost of any permits for removal or disposal of contaminated soils or groundwater, or the removal, disposal or treatment of contaminated soil or groundwater that is required to be removed from the Highways as a result of the Works being undertaken, or any other similar costs.
- 5.11** When backfilling the excavation made in connection with the Works, the Owner's Consultant will ensure that all anchor rods are de-tensioned prior to backfilling, and that all works from the surface to a depth of at least 2 metres below grade, or greater if achievable, are removed. Backfilling must be brought up to existing grade and completed to City standards and specifications and to the satisfaction of the Director.
- 5.12** After the completion of backfilling, the Owner must provide to the City a set of engineered drawings prepared by the Owner's Consultant that identify in cross section and plan views the location of all anchor rods \_\_\_\_\_ [*insert any additional works*], as installed (referred to herein as the "**As Built Drawings**"). The Owner must also provide to the City a letter Authenticated by the Owner's Consultant, certifying that the Works have been installed in accordance with the As Built Drawings hereto modified with the approval of the Director, and that all anchor rods left within the Highways have been de-tensioned.
- 5.13** The Owner will be responsible throughout the construction of the Works to protect persons and property in the vicinity of the Works from injury, loss or damage.
- 5.14** The Owner shall not do or permit to be done anything which may or does contaminate the Highways or the surrounding area and the Owner shall be solely responsible to remove all such contamination and remediate it in accordance with

the *Environmental Management Act* (BC) and all applicable laws.

- 5.15** The Owner shall at its sole cost arrange to have all of the City's storm drains and sewer mains within the Highways, in the area of the Works, inspected by video camera before commencement and after completion of the Works to ensure that no damage has resulted through construction of the Works, and provide the video recordings to the City. This work shall be coordinated through the City's Underground Utilities Division.

## **6.0 NO RELIEF**

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

## **7.0 OWNER'S COVENANTS**

The Owner further covenants and agrees as follows:

### **Fee**

- 7.1** That it will pay to the City, prior to commencement of the Works:

\$750.00, plus:

Open face excavation fee, calculated as follows:

Area of open face abutting City street (in square metres) x \$25

*(e.g. 280 m<sup>2</sup> x \$25.00 per m<sup>2</sup> = \$7000.00 + \$750.00 = \$ 7750.00)*

### **Save Harmless**

- 7.2** To indemnify and hold harmless the City and its elected and appointed officials, officers, employees and agents from all suits, proceedings, losses, damages, expenses, demands, claims, costs (including actual costs of professional advisors and costs associated with remediation of contamination) and harm of any kind, howsoever caused, whether related to death, bodily injury, property loss, property damage or consequential loss or damage, arising out of or in any way connected with:

- (a) the Works encroaching upon under or over the Highways,
- (b) construction, maintenance, existence, use or removal of the Works,

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

**7.3** That the indemnity in section 7.2 survives the expiry or earlier termination of this Agreement.

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

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

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

### **Insurance**

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

**7.6** All policies of insurance required under section 7.5 shall:

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

- 7.7 That if the Owner does not provide or maintain in force the insurance required by this Agreement, then without limiting the City's right to terminate this Agreement, the City may take out the necessary insurance and pay the premium for periods of one year at a time and the Owner shall pay to the City as additional licence fees the amount of the premium immediately on demand.
- 7.8 That if both the City and the Owner claim to be indemnified under any insurance required by this Agreement, the indemnity shall be applied first to the settlement of the claim of the City and the balance, if any, to the settlement of the claim of the Owner.
- 7.9 That maintenance of such insurance shall not relieve the Owner of liability under the indemnity provisions of this Agreement.
- 7.10 That the foregoing provisions shall not limit the insurance required by law, nor relieve the Owner from the obligation to determine what insurance it requires for its own purposes.

#### **Release**

- 7.11 To release the City and its elected and appointed officials, officers, employees and agents from all claims of any kind, whether known or unknown, whether or not relating to negligence, which the Owner now has or at any future time may have, however caused, arising out of or in any way connected with the permission to encroach granted by this Agreement, the use of the Highways, the Works, or the exercise by the City of any of its rights pursuant to this Agreement.
- 7.12 That the release in Section 7.11 survives the expiry or earlier termination of this Agreement.

#### **Remedies**

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

#### **Compensation**

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

#### **Termination**

- 7.15 That if the Owner fails to comply with the provisions of this Agreement, including,

but not limited to, sections 5.5, 5.7, 5.13 and 7.5 of the Agreement, this Agreement shall be terminated and all rights of the Owner hereunder shall thereupon lapse and be absolutely forfeited, but the City, nevertheless, shall be entitled to proceed with the enforcement of any security or indemnity herein provided, or upon any bond or otherwise in satisfaction of any claim, loss or expenses of whatsoever kind arising under this Agreement, or from the permission hereby granted.

- 7.16** That the City may, at any time, in its sole discretion, but acting in good faith, withdraw the rights it has granted to the Owner in this Agreement and terminate this Agreement on 3 months' written notice.
- 7.17** That on receipt of notice under Section 7.15 or 7.16, the Owner shall, within the time period stated in the notice, at its expense, remove the Works and otherwise restore the Highways to the satisfaction of the City.
- 7.18** That if the Owner fails to remove the Works as required by the City within the time period specified pursuant to this Agreement, the City may, in its sole discretion, cause the Works to be removed at the Owner's expense.

### **Entry**

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

### **Works**

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

## **8.0 ASSIGNMENT**

- 8.1** The Owner shall not assign any of its rights and obligations arising from this Agreement to any person other than to the then-current owner of the Land.
- 8.2** The Owner covenants and agrees not to transfer the Land, or any portion thereof, without advising the purchaser or transferee of this Agreement and assigning the Owner's rights and obligations pursuant to this Agreement to the new owner of the Land by mutual agreement.
- 8.3** In the event that the Owner fails to assign the rights and obligations of this Agreement to a new owner of the Land as described in Section 8.2, the Owner shall continue to be bound by this Agreement in all respects notwithstanding that the Owner no longer owns the Land.

**9.0 ALTERATION OF MUNICIPAL WORKS**

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

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

**9.2** The Owner covenants that, in the event of the City effecting any such alteration or construction or in requiring removal of all or part of the Works pursuant to section 9.1, the Owner will release and forever discharge, and hereby releases and forever discharges, the City from all manner of claims of any nature whatsoever, which may arise by reason of such alteration in width or elevation as aforesaid, or by reason of the discontinuance and removal of the Works, as a result of such alteration in width or elevation or construction.

**10.0 CITY'S RIGHTS RESERVED**

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

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

**11.0 LICENCES AND PERMITS**

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

**12.0 OTHER MATTERS**

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

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

the notice has been:

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

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

- 12.3** Whenever the singular is used in this Agreement, the same is deemed to include the plural or the body politic or corporate as the context requires.
- 12.4** Every reference to each party is deemed to include the heirs, executors, administrators, corporate successors, permitted assigns, employees, agents, officers, elected officials and invitees of such party whenever the context so requires or allows.
- 12.5** Section headings are included for convenience only. They do not form a part of this Agreement and shall not be used in its interpretation.
- 12.6** If any part of this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.
- 12.7** This Agreement shall be governed and construed in accordance with the laws of the Province of British Columbia.
- 12.8** The parties hereto shall execute and do all such further deeds, acts, things, and assurances as may be reasonably required to carry out the intent of this Agreement.

### **13.0 TIME OF ESSENCE**

- 13.1** Time is of the essence of this Agreement.

### **14.0 INTERPRETATION**

- 14.1** No part of the fee of the soil of the Highways will pass to or be vested under or by these presents in the Owner or the Owner's invitees, agents or successors in title.
- 14.2** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators and permitted assignees.
- 14.3** All provisions of this Agreement are to be construed as covenants and agreements

as though the word importing covenants and agreements were used in each separate paragraph.

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

**IN WITNESS WHEREOF** the parties have set their hand and seal the day and year first above written.

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

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



**Schedule A  
The Works**