

SCHEDULE "A"

to

CORPORATION OF THE CITY OF NEW WESTMINSTER

BYLAW NO. 7142, 2007

WORKS AND SERVICES AGREEMENT

THIS AGREEMENT made as of the [] day of [], 20 [].

BETWEEN:

(the "Developer")

AND:

CORPORATION OF THE CITY OF NEW WESTMINSTER

City Hall

511 Royal Avenue

New Westminister, British Columbia

V3L 1H9

(the "City")

WHEREAS:

- A. The Developer is the owner of the Lands herein defined;
- B. The Developer has made application to develop the Lands and has requested that the City approve the Development prior to the construction and installation of the Works required under the Bylaw;
- C. In accordance with Section 940 of the *Local Government Act*, the City and the Developer have agreed to enter into this Agreement to provide for the construction and installation of, and the provision of Security for, the Works required under the Bylaw;

NOW THEREFORE in consideration of the premises contained herein, the sum of TEN DOLLARS (\$10.00) now paid by the City to the Developer, the receipt and sufficiency of which the Developer hereby acknowledges, and of other good and valuable consideration, the Developer and the City covenant and agree, each with the other, as follows:

Interpretation

1.(a) Unless otherwise defined in this Agreement, all terms used in this Agreement shall have the meanings assigned to them in the Bylaw, the *Local Government Act* or the *Community Charter*.

(b) In this Agreement:

“Bylaw” means City of New Westminster *Subdivision and Development Control Bylaw No. 7142, 2007*;

"Certificate of Acceptance" means the City's final approval and acceptance of ownership of the Works evidenced by a written certificate issued by the City Engineer following the Warranty Period;

"Certificate of Completion" means the completion of the Works by the Developer to the satisfaction of the City Engineer when so certified by the City Engineer in writing;

"City Engineer" means the person appointed from time to time by City Council as the Director of Engineering Services for the City and his duly authorized assistants or such consulting or other professional engineers as may be appointed to act for the City in that capacity;

“Civic Services Inspector” means an individual certified as a civil services inspector by the Council, of ASTTBC and the Public Works Inspectors Society at a minimum Level I (CPWI 1)

“Developer” means that person, persons or company entering into this agreement with the City,

“Development” means the subdivision of land or the construction of a building or structure on land which results in the requirement for the installation of the works and services under the Bylaw;

"Lands" means that certain parcel or parcels of real property situated in New Westminster, British Columbia which are legally described in Appendix "A" of this Agreement;

"Offsite Works" means that portion of the Works which are to be located on an existing highway or other public right of way in the City;

"Professional Engineer" means a professional engineer currently registered with the Association of Professional Engineers and Geoscientists of B.C. under the provisions of the *Engineers and Geoscientists Act*;

"Security" means the security required to be deposited with the City under Section 16 of this Agreement for the due and proper performance of all of the Developer's obligations under this Agreement;

"Warranty Period" means that 24 month time period specified in Section 18 of this Agreement during which time the Developer must, at the Developer's expense, maintain, repair, modify or reconstruct the Works to the satisfaction of the City Engineer ; and

"Works" means the works and services required to be constructed and installed under Section 3 of this Agreement both on and off the Lands and includes all things required to be done under this Agreement or the Bylaw or otherwise in relation to the construction and installation of the works and services.

Payments

2. The Developer shall, prior to obtaining approval of the proposed Development, pay to the City:
 - (a) \$ _____, being four (4%) percent of the estimated total cost of all Works required to service the Development, in payment of all engineering, project monitoring and administrative costs incurred by the City;
 - (b) \$ _____ as a credit towards the cost to the City of making connections to storm sewers, sanitary sewers, water mains and other City utilities located within a highway or other City right of way;
 - (c) \$ _____ as a credit towards the cost to the City of constructing and installing the Offsite Works;

- (d) \$ as a credit towards the cost to the City of supplying and installing street and traffic signs and providing miscellaneous emergency street maintenance;
- (e) \$1,620.00 as the cost of preparing this Agreement;
- (f) all arrears of taxes outstanding against the Lands; and
- (g) all current taxes levied or about to be levied on the Lands on the basis and in accordance with the assessment and collectors roll entries.

Construction of the Works

- 3. (1) The Developer, at his own expense, shall:
 - (a) provide, design, construct and install on the Lands and, where permitted, off the Lands, all Works (including support structure and root zone for street trees) shown on the engineering drawings listed in Appendix "B" of this Agreement, all of which are incorporated into and form a part of this Agreement, to the specifications and standards prescribed by the Bylaw, and to the satisfaction of the City Engineer, as evidenced by the delivery of the Certificate of Completion to the Developer;
 - (b) not construct any buildings upon the Lands without the prior written approval of the City Engineer;
 - (c) complete the Works to the satisfaction of the City Engineer within _____ days of the date of this Agreement, such satisfaction to be evidenced by the delivery of the Certificate of Completion to the Developer; and
 - (d) perform all additional work that, in the opinion of the City Engineer, is necessarily incidental to the provision of the Works required pursuant to this Agreement, including, notwithstanding the generality of the foregoing, any work or extra work that arises out of soil conditions or the existence of utilities not shown or incorrectly shown on design or other drawings, including those prepared or provided by the City; and
 - (e) permit the City to install, at the Developer's expense, street and traffic signs as and where required by the City, at the City's discretion.

- (2) If for reasons beyond the control of the Developer, the Developer is not able to complete the Works substantially as provided for in this Agreement, the Developer shall carry out alternative or additional works of equivalent value at its cost to the satisfaction of the City Engineer

- (3) The Developer shall ensure that the Developer's employees responsible for supervising excavation on the Lands shall remain alert during excavation for unusual soil conditions indicative of contamination (discolouration or unusual odour). If soil is identified as potentially contaminated, the Developer shall arrange for the appropriate Professional Engineer to visit the Lands to survey the situation and make recommendations. All site profile reportage and, where applicable, subsequent remedial reports and activity schedules shall be provided to the City Engineer as soon as they are available to the Developer, to facilitate determination of remediation responsibilities, and the execution of appropriate remedial works.

Construction of the Offsite Works

- (5) (a) Subject to Subsection 5 (c) the City shall, at the Developer's expense, construct and install the Offsite Works shown on the engineering drawings listed in Appendix "B" of this Agreement.

- (b) Where the cost to the City under Subsection 5(a) of constructing and installing the Offsite Works exceeds the payments made to the City by the Developer under Subsections 2(b) and (c), the Developer shall forthwith on demand pay the deficiency to the City. Where the amounts paid by the Developer to the City under Subsections 2(b) and (c) exceed the cost of the City of constructing and installing the Offsite Works, the City shall refund the excess to the Developer.

- (c) Where permitted by the City Engineer, the Developer may construct and install the Offsite Works shown in the Engineering drawings in Appendix "B".

Site Personnel

- 4. The Developer shall:

- (a) undertake contract administration services using qualified personnel during construction and the maintenance period including:
 - (i) survey control to permit construction layout by contractors;
 - (ii) interpretation of plans and specifications;
 - (iii) periodic inspection to determine if the work substantially complies in all material respects with the Contract Drawings and with District bylaws and with the requirements of utility companies and government agencies;
 - (iv) full time inspections and attendance during actual installation of all underground facilities including pipe surround materials and during all required testing;
 - (v) inspection of the site and the drainage, erosion and sediment control works and receiving waters to ensure those works are constructed and functioning according to the approved plans, that they are being operated and maintained in accordance with MMCD Supplementary Specification 01561.1.3, and that no unacceptable materials are discharged;
 - (vi) review and interpretation of test and inspection reports;
 - (vii) determination, and advising the City Engineer of corrective action required as a result of c), d). e) and f);
 - (viii) keeping a record of site visits and any corrective action taken as a result of (vii)
 - (ix) attending construction progress meetings; and
 - (x) conducting final inspection to identify deficiencies;
- (b) submit summary reports during construction and the maintenance period as required by the City Engineer including test and inspection reports and his review and interpretation thereof;
- (c) submit Inspection and Compliance Certificates and other certifications required by the Bylaw;
- (d) conduct inspections with the City Engineer;
- (e) submit record drawings in reproducible Mylar and AutoCAD format, service record cards and operation and maintenance manuals.

Utilities

5. (1) The Developer shall:
 - (a) install for each of the parcels comprising the Lands at least one connection to the water mains, sanitary sewers, storm sewers, telecommunication installation, cablevision installation, electrical installation, gas installation and any other utilities to be installed as part of the Works on the Lands;
 - (b) contact Terasen Gas, Telus or other telecommunication companies, cable companies, and the City's Electrical Operations Department to advise of the proposed Development and to coordinate the supply and installation of any required gas, telephone, cablevision and electrical installations, respectively, on the Lands; and
 - (c) supply and install water pressure regulators where they, in the opinion of the City Engineer, are necessary.
- (2) The connection of any utility installed on the Lands by the Developer to and existing utility infrastructure shall be made only by the company, body or organization owning or controlling that infrastructure unless that body or organization otherwise agrees.

Connections to City Services

6. (1) The Developer shall pay the full cost of connecting water mains, sanitary sewers storm sewers, electrical installations and other utilities installed on the Lands to existing City services located in a highway or other City right of way.
- (2) Unless the City otherwise agrees, the City shall perform the necessary work to connect the water mains, sanitary sewers, storm sewers, electrical installations, and other utilities located on the Lands to existing City services.
- (3) Where the cost to the City under Subsection 6(2) of connecting the utilities on the Lands to existing City services exceeds the payment made to the City by the Developer under Subsection 2(b), the Developer shall forthwith on demand pay the deficiency to the City. Where the amount paid by the Developer to the City under Subsection 2(b) exceeds the cost to the City of connecting the utilities to existing City services , the City shall refund the excess to the Developer.

Street Treatment

7. The Developer shall ensure that all roadwork and boulevard treatment are provided and constructed in accordance with the requirements and standards in the Bylaw.

Plans

8. Within two months of the delivery of the Certificate of Completion to the Developer, the Developer shall submit to the City "as constructed" drawings of the Works, prepared and sealed by a Professional Engineer in accordance with the requirements of this Agreement.

Compliance with Laws and Bylaws

9. The Developer covenants and agrees with the City that:
 - (a) the Developer will comply with all City bylaws and all applicable federal and provincial laws, regulations and rules throughout the term of this Agreement; and
 - (b) despite Section 943 of the *Local Government Act*, the Developer agrees that any and all changes in subdivision requirements or standards affecting the Developer's Development or the requirements under this Agreement to provide the Works that are established by adoption of a City bylaw, shall have immediate effect and be applicable to the Developer's Development regardless of when such bylaw is adopted.
 - (c) For the purposes of Part 3 [Occupational Health and Safety] of the Workers' Compensation Act, the Developer or its authorized contractor, provided the Developer will be completely responsible for all acts or omissions of the authorized contractor in connection with this Agreement as if they were the acts or omissions of the Developer, will be and will assume the responsibilities of the "prime contractor" for the workplace and will, as required in the Workers Compensation Act (British Columbia) and regulations thereunder:
 - (i) co-ordinate workplace safety, including for its own workers as well as those of subcontractors, utilities, suppliers, inspectors and all other contractors performing work on the workplace; and
 - (ii) do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with Part 3 of the Workers'

Compensation Act and the regulations in respect of the workplace.

- (iii) The Developer will provide the City, prior to commencement of the Works, with the name and telephone numbers (including a 24 hour emergency contact number) for the Developer's safety representative for the workplace

Debris

- 10. If any material or debris is left within any highway allowance during or after the construction of the Works and prior to issuance of the Certificate of Acceptance, the City may forthwith remove the material or debris at the expense of the Developer, the cost of the removal to be the actual cost to the City plus an administration fee equal to ten (10%) of that cost, and the Developer shall pay such amount to the City forthwith on demand.

Survey

- 11. The Developer shall protect all survey markers, pins, posts and similar things during the construction, installation, maintenance and repair of the Works and shall employ, at the Developers expense, a British Columbia Lands Surveyor to replace any such markers, pins, posts or similar things which may be moved, damaged or destroyed during the construction, installation, maintenance or repair of the Works.

Testing

- 12. The Developer shall pay for any testing required by the City Engineer or the Professional Engineer, including Benkleman Beam Testing of roads and video inspection of sewers, to confirm that the Works have been constructed and installed in accordance with the specifications and standards for the design and construction of the Works contained in the Bylaw as amended, and to the satisfaction of the City Engineer.

Building and Occupancy Permits

- 13. The City may refuse to issue a building permit or occupancy permit or both in respect of the Lands or any portion thereof until all Certificates of Completion relating to the Works are delivered to the Developer.

Completion

14. (1) The City shall:
 - (a) permit the Developer to install and construct the Works on the terms and conditions contained in this Agreement and in accordance with the Bylaw;
 - (b) issue the Developer a Certificate of Completion of the Works, signed by the City Engineer, when the Works have been constructed and installed to the satisfaction of the City Engineer and after the Professional Engineer has delivered to the City Engineer the certification required by Section 3(2); and
 - (c) issue the Developer a Certificate of Acceptance of the Works, signed by the City Engineer, on completion by the Developer of all its obligations under this Agreement and the Bylaw, including, without limitation, those obligations during the Warranty Period, to the satisfaction of the City Engineer.
- (2) The City may, in its discretion, issue separate Certificates of Completion for highways, water, sewer, drainage and underground civil ductwork.

Property

15. The Works, unless otherwise agreed between the parties hereto,
 - (a) become the property of, and shall vest absolutely in, the City when the City delivers the Certificate of Acceptance to the Developer; and
 - (b) remain at the full risk of the Developer until the Certificate of Acceptance is delivered to the Developer.

Security

16. (1) As security for the due and proper performance of all obligations of the Developer under this Agreement, the Developer shall deposit Security with the City consisting of:
 - (a) cash,
 - (b) a certified cheque payable to the City, or

- (c) an irrevocable clean Letter of Credit in substantially the form prescribed in the Bylaw to remain valid and subsisting until the Certificate of Acceptance is delivered to the Developer.

in the amount of \$ [REDACTED] .

- (2) The amount of the Security may be reduced at any time with the written approval of the City Engineer.
 - (3) The Developer may, on receipt of the Certificate of Completion, reduce the amount of the Security to 10% of its original amount or the estimated value of outstanding work as determined by the City Engineer, whichever is greater.
17. (1) If, in the sole discretion of the City, the City determines that the Developer has defaulted on any of its obligations in this Agreement, including without restricting the generality of the foregoing, the obligation under Subsection 3(1)(c) to satisfactorily complete the Works within the time period specified, the Security shall be forfeited and the City may:
- (a) enter on the Lands at all reasonable times and perform the obligations of the Developer under this Agreement at the cost of the Developer; and
 - (b) from time to time draw upon any or all of the Security:
 - A. to compensate the City for the costs it incurs or expects to incur in performing the obligations of the Developer; and
 - B. to satisfy any amount the Developer is required to pay to the City.
- (2) The cost to the City of performing the obligations of the Developer includes the actual costs of construction plus engineering, supervision, testing, legal, survey, and other costs incurred by the City in connection with performing the obligations together with an administration fee equal to ten (10%) percent of the total of these costs.
 - (3) If the Security is insufficient to compensate the City for the costs of performing the Developer's obligations or satisfying an amount required to be paid to the City, the Developer shall pay the insufficiency to the City forthwith on demand.

- (4) The City shall deliver the remaining balance of the Security, if any, to the Developer on delivery of the Certificate of Acceptance.
- (5) Despite any other provision of this Agreement, the City may, in the case of an emergency, enter on the Lands at any time and perform the obligations of the Developer relating to any of the Works and all such work shall be at the sole cost of the Developer. The City may, at its option, recover the costs of performing such work by drawing on the Security or by direct invoice to the Developer.

Warranty Period

18. For a period of twenty-four (24) months following the issuance of the Certificate of Completion, or where more than one Certificate of Completion has been issued, for a period of twenty-four (24) months from the date of the issuance of the last Certificate of Completion, the Developer, at its own expense, shall maintain, repair, modify or reconstruct the Works if in the opinion of the City Engineer the Works are in any way defective so that the Works are fully operative and have been constructed and function in accordance with the requirements and intent of the Bylaw and this Agreement and to the satisfaction of the City Engineer, or the Security shall be forfeited. The satisfaction of the City Engineer shall be evidenced by the delivery of the Certificate of Acceptance to the Developer.

Indemnity

19. The Developer releases, indemnifies and saves the City harmless from:
 - (a) any liability, cost, or expense of any kind arising from or in any way connected with the construction, installation, repair, or maintenance of all or any portion of the Works done or provided under this Agreement;
 - (b) without limiting subsection (a), any liability, costs or expense of any kind which the City may incur by reason of damage arising out of or in any way connected with the construction, installation, repair, or maintenance of the Works to any real or personal property owned in whole or in part by the City or which the City by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain; and

- (c) without limiting the foregoing, any liability, costs or expense of any kind incurred by reason of liens for nonpayment of labour or materials, workers' compensation assessments, unemployment insurance, federal or provincial tax, check-off or encroachments owing to mistakes in surveying or claims for injurious affection;

unless caused or contributed to by the negligence of the City.

Insurance

- 20. (1) The Developer shall take out and maintain, with a company licensed to carry on the business of insurance in the Province of British Columbia, on terms that are acceptable to the City, and at the Developer's expense:
 - (a) until the Certificate of Acceptance is issued, comprehensive general liability insurance covering without limitation premises and operations liability, non-owned automobile liability and contractual liability;
 - (b) without limiting subsection (a), at least until the Certificate of Completion has been delivered to the Developer, insurance covering contractor's contingency liability with respect to the operations of sub-contractors; and
 - (c) without limiting subsection (a), during the Warranty Period, insurance covering completed operations liability.
- (2) The limits of liability for personal injury and property damage combined shall be not less than \$5,000,000.00 for each occurrence.
- (3) The City shall be added as an additional insured under, and a cross liability clause shall be included within, the policies of comprehensive general liability insurance.
- (4) All policies shall provide that they shall not expire, be cancelled or be materially changed without at least 30 days prior written notice to the City.
- (5) If any of the policies are cancelled or materially changed, the City may require the Developer to cease the construction and installation of the Works.

- (6) The Developer shall, prior to commencing the construction and installation of the Works and subsequently upon the request of the City, file with the City Certificates of each insurance policy required by this Agreement, or such other proof, satisfactory to the City, that all required policies are in force.
- (7) If the Developer does not obtain and maintain the required insurance or when required does not deliver the Certificates of the policy or policies to the City, the City shall have the right, but not the obligation, to obtain and maintain the required insurance. The Developer hereby appoints the City its lawful attorney to do all things necessary for this purpose. All amounts expended by the City for insurance premiums under the provisions of this section shall be charged to the Developer and are payable by the Developer to the City forthwith on demand.

Further Agreements

21. (1) The Developer shall provide and grant to the City all rights of way required by the City Engineer in terms acceptable to the City Engineer.
- (2) The Developer shall execute and deliver or use its best efforts to cause to be executed and delivered, all such further transfers, agreements, documents, instruments, easements, statutory rights of way, acts, deeds, and assurances and do and perform or cause or procure to be done, performed, executed and delivered all such acts and things as may in the opinion of the City be reasonably necessary to give full effect to the intent or meaning of this Agreement.

Delay

22. If in the opinion of the City Engineer a delay in performance of the Works is caused by reason of labour disputes, fire, Act of God, unusual delay by common carriers or any other act which is effectively beyond the Developer's control, the City Engineer will extend the time for completion of the Works by the Developer for whatever time the City Engineer deems to be reasonable in the circumstances.

Interpretation

23. (1) All references to each party herein are deemed to be references to the heirs, executors, administrators, successors, assigns, servants, agents and officials of the respective parties hereto whenever the context so allows.

- (2) This Agreement shall enure to the benefit of and be binding on the parties hereto.
- (3) Whenever the singular or masculine is used in this Agreement, the same shall be deemed to include the plural, the feminine, or the body politic or corporate as the context so requires.
- (4) Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default by that party.
- (5) The rights, powers and remedies of the City provided in this Agreement are cumulative and not exclusive of any right, power or remedy that may be available to City at law or in equity.
- (6) Time is of the essence of this Agreement.
- (7) Section headings are included for convenience only and do not form part of this Agreement and shall not be used in the construction or interpretation of this Agreement.

Entire Agreement

24. The whole Agreement between parties hereto is set forth in this Agreement and no representations, warranties, or conditions, express or implied, have been made other than expressed herein.

Notice

25. (1) Whenever it is required or desired that either party deliver or serve a notice on the other, delivery or service shall be deemed to be satisfactory and deemed to have occurred when:
 - (a) served personally, on the date of service; or
 - (b) mailed by prepaid registered mail to the address listed for that party on the first page of this Agreement or other address of which that party has in writing notified the other, on the earlier of the date received or on the fifth business day following date of mailing at any Canada post office, but in the event of interruption of mail service, notice shall be deemed to be delivered only when actually received by the party to whom it is addressed.
- (2) The Developer's general superintendent or person in control or apparently in control of the Developer's activities on the Lands shall

be deemed an agent of the Developer for the purpose of the service of notices.

City's Right Reserved

26. Nothing contained in or implied by this Agreement shall in any way prejudice or affect the rights and powers of the City in the exercise of its function under any public and private statutes, bylaws, orders and regulations.

Severance

27. Should any clause or portion of this Agreement be declared or held invalid for any reason, the invalid portion shall be severed and the severance shall not affect the validity of the remainder.

Excess and Extended Services

28. Except as and to the extent specified in Section 29 of this Agreement, the Developer hereby waives, relinquishes and abandons any right which the Developer now has or may at any time hereafter have under Section 939 of the *Local Government Act* for any contribution from the City or any other person connecting to or using the Works towards the Developer's cost of installing the Works.
29. The Developer shall be entitled to contribution under Section 939 of the Local Government Act for the following excess and extended services to be provided by the Developer:

- (a) **(NIL)**.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

THE COMMON SEAL OF DEVELOPER)

was hereunto affixed this)

_____ day of _____)

20 ____ in the presence of:)

)

_____)

AUTHORIZED SIGNATORY)

)

_____)

AUTHORIZED SIGNATORY)

THE CORPORATE SEAL OF THE)

CORPORATION OF THE CITY OF)

NEW WESTMINSTER was hereunto)

affixed this _____ day of)

_____ 20 ____ in the)

presence of:)

)

_____)

MAYOR)

)

_____)

CLERK)