

LICENCE OF OCCUPATION – CLOVER POINT PUMP STATION

THIS LICENCE AGREEMENT dated for reference the 22nd day of February, 2017

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA

#1 Centennial Square
Victoria, BC
V8W 1P6

(the "City")

OF THE FIRST PART

AND:

CAPITAL REGIONAL DISTRICT

625 Fisgard Street
Victoria, BC
V8W 1R7

(the "CRD")

OF THE SECOND PART

WHEREAS:

- A. The City owns or has the right of possession and control of lands situated in the City of Victoria, in the Province of British Columbia, marked as Area A as shown on Schedule "A" attached hereto (the "**Licence Area**") with a civic address of 1303 Dallas Drive, Victoria, British Columbia, and having the following legal description:

Part of Dallas Road, Fairfield Farm Estate, Victoria City, being part of a Road dedicated by Plan 13;
- B. The CRD owns and operates a wastewater pumping station in a building that is currently located within the Licence Area;
- C. The CRD and participating municipalities, including the City, are undertaking a major upgrade of the regional wastewater collection and treatment infrastructure, including an expansion and upgrade of the existing wastewater pumping station within the Licence Area under the CRD's Core Area Liquid Waste Management Plan (the "**CALWMP**"), approved by the Minister of Environment under the Environmental Management Act, as amended from time to time;
- D. CALWMP was amended by Amendment No. 11 and conditionally approved by the Provincial Minister of Environment in November 2016 and further revised in the letter from the Minister of Environment on November 18, 2016;
- E. The CRD wishes to acquire the right by way of a non-exclusive licence of occupation to install, entrench, construct, expand, upgrade, operate, maintain, repair, replace and

relocate the existing wastewater pumping station within the Licence Area and the City has agreed to grant a licence on the terms outlined herein; and

- F. As part of the expansion and upgrade, the CRD has agreed to construct the Public Realm Improvements (as defined below) upon the Licence Area and the surrounding lands outlined in blue and shown on Schedule "C" (collectively, the "**Lands**").

NOW THEREFORE this Licence Agreement witnesses that in consideration of the mutual promises herein contained, the parties agree as follows:

1.0 DEFINITIONS

1.1 In this Licence Agreement:

- a) "**Bike Node**" means the pathway intersection for bicycle and pedestrian traffic to be constructed as part of the Public Realm Improvements within the location marked on the drawing attached as Schedule "C";
- b) "**Building**" means the building to be expanded on the Licence Area and containing the CRD's wastewater pumping facility;
- c) "**CALWMP**" has the meaning set out in Recital C;
- d) "**City**" means The Corporation of the City of Victoria;
- e) "**City Council**" means the Council of the City of Victoria, as duly constituted from time to time;
- f) "**Conceptual Plan**" means the preliminary drawings and description of the Public Realm Improvements attached as Schedule "D";
- g) "**Construction Area Licence**" means the grant of a non-exclusive licence detailed in section 5.1;
- h) "**Construction Lay Down Area**" means that portion of land shown on the explanatory plan attached as Schedule "F";
- i) "**CRD**" means the Capital Regional District;
- j) "**Dallas Road/Ross Bay Seawalk**" means that portion of Dallas Road outlined within green on the drawing attached as Schedule "C";
- k) "**Design Guidelines**" means the City's design specifications for the Public Realm Improvements as outlined in Schedule "E";
- l) "**Design Proposal**" means drawings, plans, and a description of sufficient detail to show the proposed design for the exterior of the Building and the Public Realm Improvements to be designed and built by the successful proponent;
- m) "**Design Workshop**" means a meeting organized by the CRD with the Directors, in accordance with section 11.2;

- n) **"Director of Engineering"** means the person appointed by the City to perform the duties and functions of the position of the Director of Engineering and Public Works, as that position title is amended from time to time, and persons acting under the authority of the Director of Engineering;
- o) **"Director of Parks"** means the person appointed by the City to perform the duties and functions of the position of the Director of Parks, Recreation, and Facilities, as that position title is amended from time to time, and persons acting under the authority of the Director of Parks;
- p) **"Director of Planning"** means the person appointed by the City to perform the duties and functions of the position of the Director of Sustainable Development and Community Planning, as that position title is amended from time to time, and persons acting under the authority of the Director of Planning;
- q) **"Directors"** mean the Director of Engineering, the Director of Parks and the Director of Planning;
- r) **"Environmental Law"** means all federal, provincial, municipal or local laws, statutes or ordinances relating to environmental matters, including all rules, regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws;
- s) **"Hazardous Substance"** means a contaminant, pollutant, dangerous good, waste, toxic substance, special waste or hazardous substance as defined in or pursuant to any Environmental Law;
- t) **"Investigations"** includes searches, testing, drilling, and sampling;
- u) **"Lands"** has the meaning set out in Recital F;
- v) **"Licence"** means the grant of licence detailed in section 3.1;
- w) **"Licence Area"** has the meaning set out in Recital A;
- x) **"Notice"** means any citation, directive, order, claim, litigation, investigation, proceedings, judgment, letter or other communication, written or oral, actual or threatened, from any person, including any governmental agency;
- y) **"Permit"** means any authorization, permit licence, approval or administrative consent issued pursuant to Environmental Law;
- z) **"Project"** means the upgrade of the CRD wastewater collection and treatment infrastructure at the Licence Area and includes the Works and the Public Realm Improvements;
- aa) **"Public Plaza"** means the public viewing plaza to be installed as part of the Public Realm Improvements in the location marked on the drawing attached as Schedule "C";
- bb) **"Public Realm Improvements"** means the improvements more particularly

described in section 7.1;

- cc) **"Road Closure Period"** means the period between November 1 and February 1 of the year during the term of the Construction Area Licence detailed in section 5.2;
- dd) **"Term"** means the term of this Licence Agreement set forth in section 4.1;
- ee) **"Warranty Period"** means a period of one year from completion of the Public Realm Improvements; and
- ff) **"Works"** means the existing wastewater pumping station, the Building, and the upgrades and related equipment to be installed within the Licence Area.

2.0 CONDITIONS PRECEDENT

- 2.1 The obligation of the City and the CRD to perform their respective obligations as contemplated herein is subject to the City rezoning the Lands to permit the operation and expansion of the Works pursuant to proposed Bylaw no. 17-001, Zoning Regulation Bylaw, Amendment Bylaw (No. 1086) on or before April 1, 2017.
- 2.2 If the CRD has not received a development permit and the rezoning required for the construction of a regional sewage treatment facility at the site referred to as McLoughlin Point in the municipality of Esquimalt within one (1) year from the date this Licence Agreement is executed by both parties, then this Licence Agreement and the Licence granted will automatically terminate and be of no further force or effect.

3.0 GRANT OF LICENCE

- 3.1 Subject to the terms and conditions of this Licence Agreement, the City hereby grants to the CRD a non-exclusive licence of occupation to install, entrench, construct, expand, upgrade, operate, maintain, repair, replace and relocate the Works within the Licence Area, for the Term.
- 3.2 The CRD, together with its employees, agents, contractors and all other licensees and invitees of the CRD may enter upon and pass and repass over and use the Licence Area and may bring onto the Licence Area such machinery, vehicles, equipment, materials and all other such things as may be reasonably necessary to carry out the purposes set out in section 3.1.
- 3.3 The City agrees that the CRD will have for itself and its employees, agents and contractors, for the purposes of access to and from the Licence Area, the non-exclusive right to use the Dallas Road/Ross Bay Seawalk, subject to such rules and regulations as may be set forth the from time to time by the City, provided such rules and regulations do not restrict access to the Works.
- 3.4 The City and the CRD agree that upon completion of the construction and installation of the Works, the CRD shall, at its sole cost and expense, cause a British Columbia Land Surveyor to prepare an explanatory or reference plan defining the actual boundaries of the Licence Area, being an area that encompasses:
 - (a) the Works, as built;

- (b) sufficient space around the Works required for the maintenance and operation of the Works and for parking, subject to approval by the City, acting reasonably; and
- (c) access to the Works, as set out in section 3.3,

and thereafter any reference in this Licence Agreement to the "Licence Area" shall be interpreted as a reference to the Licence Area as surveyed pursuant to this section 3.4.

4.0 TERM

- 4.1** The term of this Licence Agreement is for a period of 99 years commencing on the 1st day of June, 2017 and ending on the 31st day of May, 2116, unless otherwise terminated in accordance with this Licence Agreement.
- 4.2** Notwithstanding any other provision of this Licence Agreement to the contrary, the City or the CRD may terminate this Licence Agreement upon 60 days written notice to the other party if the Works are, in the sole opinion of the CRD, no longer required by the CRD as part of the regional wastewater collection and treatment infrastructure.
- 4.3** At the end of the Term, the City and the CRD may, by mutual agreement, renew this Licence Agreement on such terms and conditions as the City and the CRD may agree upon.

5.0 CONSTRUCTION AREA LICENCE

- 5.1** Subject to the terms and conditions of this Licence Agreement, the City hereby grants to the CRD a Construction Area Licence within the Construction Lay Down Area to be used for the temporary storage of machinery, equipment, materials, vehicles, and other things reasonably necessary to complete the Project.
- 5.2** The term of the Construction Area Licence is for a period of 24 months commencing on a date determined by the CRD and unless otherwise terminated in accordance with this Licence Agreement.
- 5.3** The CRD will provide the Director of Engineering and the Director of Parks with a minimum of fifteen (15) working days' written notice prior to commencing the term of the Construction Area Licence pursuant to section 5.2.
- 5.4** The parties agree that the Construction Area Licence will terminate upon the end of the term in section 5.2 unless the parties mutually agree in writing to extend the term for a further period. The parties further agree that the Construction Area Licence will terminate upon termination of the Licence Agreement in accordance with section 4.2.
- 5.5** The CRD, together with its employees, agents, contractors and all other licensees and invitees of the CRD may enter upon and pass and repass over and use the Construction Lay Down Area to carry out the purposes set out in section 5.1.
- 5.6** In recognition of the scenic character of Clover Point, the CRD will minimize the visual impact of the Construction Lay Down Area by:

- (a) maintaining the storage of machinery, equipment, materials, vehicles, and other things in a neat and tidy condition;
- (b) installing fencing and fence screens that may reasonably be required for containment, safety, and visual appeal; and
- (c) minimizing, to the extent possible, impacts to views from Dallas Road.

6.0 LICENCE FEE AND OTHER PAYMENTS

- 6.1** In addition to the CRD's obligations in Part 7, the CRD has paid a licence fee of ten dollars (\$10.00) for the Term.
- 6.2** The CRD shall pay all charges, impositions, taxes, and costs of every nature and kind in any way relating to its use of the Licence Area and the Works during the Term and any renewal and the Construction Area Licence during the period set out in Section 5.2, whether or not referred to in this Licence Agreement and whether or not of a nature or kind now existing or within the contemplation of the parties hereto.
- 6.3** Without limiting section 6.2, the CRD will pay as and when due during the Term and any renewal, or the period set out in Section 5.2, as applicable, to the applicable utilities suppliers or to the City if the City so directs, all costs for water, sewer, gas, electricity, telephone, telecommunications and all other utilities supplied to the Licence Area, Construction Lay Down Area, or the Works. If paid or payable directly to the utilities suppliers, the CRD will, upon each request by the City from time to time, acting reasonably, furnish to the City satisfactory written proof of full payment of all such costs. In no event will the City be liable for or have any obligation in respect of an interruption or failure in the supply of utilities to the Licence Area or the Works.
- 6.4** In constructing the Works and the Public Realm Improvements, the CRD will pay for all necessary costs that are incurred in upgrading any utilities that require upgrades in order to operate the Works and the Public Realm Improvements.
- 6.5** The CRD acknowledges and agrees that under no circumstances or conditions shall the City be expected or obligated by virtue of this Licence or its ownership or right to possess the Licence Area (including any improvements or building thereon) or otherwise, to make any payment of any kind whatsoever or be under any obligation or liability in respect of the Licence Area or the Works and that all costs, expenses, obligations and liabilities of every kind and nature whatsoever relating to the Works or the CRD's use of the Licence Area which may arise or become due during or in respect of the Term and any renewal shall be payable and shall be paid by the CRD and the CRD covenants to indemnify the City from and in respect of any and all such costs, expenses, obligations and liabilities, except if due to the negligence or misconduct of the City, its servants, agents, employees, contractors or any others for whom the City is responsible at law. For greater certainty and without limiting the foregoing, the City shall not be under any obligation to provide, maintain or repair any third party services or utilities in respect of the Licence Area including without limitation gas, electricity, telephone and telecommunications.
- 6.6** The CRD will pay to the City a one-time payment of \$100,000.00 after the Design Workshop at the 90% design completion stage toward the construction of additional capital improvements by the City.

- 6.7** For clarity, the \$100,000.00 payment is the total amount to be granted for both this Licence Agreement and the licence agreement between the CRD and the City dated February 22, 2017 for the Dallas Road conveyance pipe, which is related to the Project. The City may, at its discretion, allocate the funds to the improvements in section 6.6 in the amounts it deems appropriate.
- 6.8** The City, with approval from City Council, will determine the specific improvements to be implemented under subsection 6.6 following consultation with the community and the City will submit a report to the CRD outlining the community's feedback and the final improvements to be installed.

7.0 PUBLIC REALM IMPROVEMENTS

- 7.1** In consideration of and as a condition of the City granting the Licence to the CRD, the CRD agrees that, within 12 months following installation or expansion of the Works, (whether or not pursuant to the CALWMP) it will, at its sole cost and expense:

- (a) construct and install the Public Plaza to be accessible to pedestrians and cyclists and replace the existing public parking lot located above the Building;
- (b) construct and install the Bike Node;
- (c) interpretive signage and wayfinding signs at the Public Plaza;
- (d) two replanted grassed open spaces to the west and east of the Public Plaza;
- (e) install, as part of the Public Plaza, street furniture and bicycle facilities including benches, bike racks, a bike rack for bicycle maintenance and repair, and a drinking fountain;
- (f) install two (2) public washrooms, each with one sink, one toilet and one urinal, including all necessary sanitary sewer, electrical, and water connections;
- (g) construct intersection improvements at Clover Point Road and Dallas Road;
- (h) construct a pedestrian path from Dallas Road alongside Clover Point Road and connecting to the existing Clover Point Park Path; and
- (i) construct a new connecting walkway and bike path across Clover Point Road to the Dallas Road/Ross Bay Seawalk,

(collectively, the "**Public Realm Improvements**").

- 7.2** Unless otherwise indicated, construction of the Public Realm Improvements will be in accordance with the Conceptual Plan and the Design Guidelines. However, the parties acknowledge that the Conceptual Plan does not provide sufficient detail with respect to

proposed Public Realm Improvements and therefore the parties will work collaboratively to finalize the final design of the Public Realm Improvements in accordance with Part 11 and construction of the Public Realm Improvements will be in accordance with the approved final design.

- 7.3** Upon completion, the Public Realm Improvements shall become the sole and absolute property of the City at no cost to the City, and thereafter but subject to sections 7.5, 15.1, 15.2 and 15.3, the operation, maintenance and repair of the Public Realm Improvements shall be the sole responsibility of the City, and the CRD shall not be liable to the City or to any other person for any loss, liabilities, claims, costs or expenses whatsoever arising out of or in connection with the ownership, use, operation, maintenance or repair of the Public Realm Improvements. For greater certainty, except as expressly provided for in this Licence Agreement, the Public Realm Improvements do not form part of the "Works" for the purposes of this Licence Agreement.
- 7.4** Upon completion of the Public Realm Improvements and concurrently with the notice to be provided to the City pursuant to section 7.6, the CRD will pay to the City a one-time payment of \$75,000 for the maintenance of the public washrooms to be constructed pursuant to subsection 7.1(d).
- 7.5** The CRD covenants and agrees to:
- (a) repair any deficiencies in design, materials or workmanship in the Public Realm Improvements that may arise during the Warranty Period; and
 - (b) remedy any deficiencies in design, materials or workmanship appearing within the Warranty Period and pay for any damage to other works or property resulting therefrom, save and except for defects caused by reasonable wear and tear, or by the negligence of the City, its servants, agents, employees, contractors or any others for whom the City is responsible at law.
- 7.6** Completion of the Public Realm Improvements shall be deemed to have occurred upon the CRD giving written notice of completion to the City, and the City giving written notice of acceptance to the CRD. If ten (10) days elapse without a written response from the City, following the giving of notice of completion by the CRD, completion shall be deemed to have occurred on the tenth day.
- 7.7** The CRD will provide as-built drawings of the Public Realm Improvements within a reasonable period of time following substantial completion of the Public Realm Improvements.

8.0 USE OF THE LICENCE AREA

- 8.1** The CRD covenants and agrees that the Licence Area will be used only for the purposes of installing, entrenching, constructing, expanding, upgrading, operating, maintaining, repairing, replacing and relocating a regional wastewater collection and pumping facility, which may include the screening and grit removal of solids from the wastewater and that the CRD will not use the Licence Area or allow the Licence Area to be used for any other purposes, except as otherwise permitted by this Agreement. For clarity, the CRD covenants and agrees that the Licence Area and the Works may not and will not be used for the purposes of wastewater treatment, beyond screening and the removal of grit and

solids. The parties hereto agree that the provisions of this Licence Agreement are to be interpreted and applied in a manner consistent with such purposes.

- 8.2 The CRD will not construct or alter the exterior of the Building, unless it has submitted or caused to be submitted to the City, drawings, elevations (where applicable), specifications (including materials to be used), location (where applicable) and the exterior design of the proposed construction or alteration and they have been approved in writing by the City. For certainty, any proposed construction or alteration of the exterior of the Building will be carried out in accordance with the plans approved by the City, in the manner set out in section 11 of this Licence Agreement.
- 8.3 The CRD will not construct any building or structure on or within the Licence Area, other than the Building, without prior written approval by the City.
- 8.4 The CRD will provide the City with a minimum of fifteen (15) working days' written notice prior to entering upon the Licence Area to commence the construction or expansion of the Building.
- 8.5 Subject to the terms of this Licence Agreement, the CRD, together with its employees, agents, contractors and all other Licencees and invitees of the CRD, will have the right to carry away soil and other subsurface materials, clear off all trees, growth, or other obstructions now or hereafter in existence on, in or under the Licence Area as may be necessary in connection with the operations of the CRD in relation to the Works and provided the CRD has first obtained the prior written consent of the City's Director of Engineering, which consent may not be unreasonably withheld by the Director of Engineering.
- 8.6 The CRD will make all reasonable efforts to coordinate construction of the Works and the Public Realm Improvements, or any replacement of or substantive upgrade to the Works, so as to mitigate the impact of construction activity on the surrounding properties, neighborhood and residents and so as not to unduly interfere with or disrupt any public event scheduled or permitted by the City that may be impacted by the construction of the Works, and the City will provide the CRD with a schedule of such events to take place within the planned period of construction.
- 8.7 The City shall, upon fifteen (15) working days' written notice from the CRD, close Clover Point Park Road during the Road Closure Period or such shorter period as the CRD may request. The City will consider periodic road closures outside the Road Closure Period upon the written request of the CRD. Prior to the commencement of any road closure permitted pursuant to this section 8.6, the CRD will provide public notice of the proposed road closure as directed by the City's Director of Engineering.

9.0 PUBLIC ACCESS ALONG THE WATERFRONT

- 9.1 The CRD will take all necessary steps, including the installation of fencing, barriers and signage, to ensure that the public does not access those portions of the Licence Area, or the area along the Dallas Road/Ross Bay Seawalk, which are under construction or are unsafe for public use. In that regard, the CRD will ensure that the City and the public will be able to access the other portions of the Licence Area and the area along the Dallas Road/Ross Bay Seawalk that are safe for public access.

10.0 PUBLIC ENGAGEMENT

- 10.1** Prior to commencing construction of the Works, the CRD will provide the Director of Engineering with a public engagement plan that outlines how the CRD will manage inquiries, complaints, and correspondence from the public that are directed to the City regarding the Project.
- 10.2** As part of the public engagement plan in section 10.1, the CRD must, at a minimum provide to the public, a project information line phone number and email address for the sole purpose of enabling the CRD to respond to inquiries and complaints from the public in relation to the Project.
- 10.3** The project information line phone number and email address in section 10.2 shall be monitored by a CRD staff person on a daily basis during construction of the Works and Public Realm Improvements.

11.0 DESIGN DEVELOPMENT

- 11.1** The CRD invited the City to participate in confidential collaborative meetings with each of the CRD's shortlisted design--builder proponents for the Project to allow the City to review and comment on each proponent's design proposal for the exterior of the Building and the Public Realm Improvements. The purposes of these meetings were to ensure the CRD did not select a design-build proposal that was not acceptable to the City. Upon awarding the contract for the Project, the CRD will provide to the City the Design Proposal for approval by the City. Subject to sections 11.4 and 11.5, the City will not withhold its approval of the Design Proposal provided the Design Proposal is, in the opinion of the City, consistent with the proposals reviewed by the City in the confidential collaborative meetings.
- 11.2** For the purposes of the City approving the final design of the Building and the Public Realm Improvements, the CRD will hold three (3) Design Workshops at the 30%, 50% and 90% design completion stages of the exterior of the Building and the Public Realm Improvements. The purpose of the Design Workshops will be for the City and the CRD to work collaboratively on the development and finalization of the design details related to the exterior design of the Building and the design of the Public Realm Improvements. The CRD will provide the City with copies of the design documents to be reviewed not less than five (5) days prior to each Design Workshop. The CRD will ensure attendance of the design-builder at each Design Workshop, including senior design staff and representatives of the design-builder with authority to make decisions on behalf of the design-builder. The CRD and the City agree that at all stages the design of the exterior of the Building and the Public Realm Improvements must be consistent with the Conceptual Plan, the Design Proposal, approved by City Council, and must meet the Design Guidelines. Without limiting the foregoing, the CRD will accommodate all reasonable design amendments requested by the City, provided that they are consistent with the Conceptual Plan and meet the Design Guidelines.
- 11.3** The CRD will invite the Songhees First Nation and the Esquimalt First Nation to nominate a representative to participate in the Design Workshops in order to provide meaningful opportunities to consider the Songhees First Nation and the Esquimalt First Nation's input in the final design of the exterior of the Building and the Public Realm Improvements,

provided that such input is consistent with the Conceptual Plan, the Design Proposal and the Design Guidelines.

- 11.4** The CRD will, and will cause its design-builder to, present to City Council in a public meeting the Design Proposal for the exterior of the Building and the Public Realm Improvements prior to the commencement of the detailed design and prior to the commencement of any construction on the Lands. The CRD will amend the Design Proposal as it relates to the Public Realm Improvements in accordance with any recommendations or resolutions of City Council, provided that they are consistent with the Conceptual Plan and meet the Design Guidelines.
- 11.5** At the 50% design stage, the CRD will, and will cause its design-builder to present the 50% design to City Council at a public meeting and to the Fairfield-Gonzales Community Association in a separate presentation. The CRD will amend the 50% Design Proposal as it relates to the Public Realm Improvements in accordance with any recommendations or resolutions of the City Council, provided that they are consistent with the Conceptual Plan and meet the Design Guidelines.
- 11.6** The final design of the exterior of the Building (including dimensions and elevations) and the Public Realm Improvements must be to the satisfaction of the City. The City will not withhold its approval provided the final design:
- (a) is consistent with the Design Proposal, Design Guidelines, and Conceptual Plan;
 - (b) is consistent with the design approved by the Directors, at each Design Workshop;
 - (c) incorporates all recommendations received from City Council pursuant to sections 11.4 and 11.5, provided that such recommendations are consistent with the Conceptual Plan and meet the Design Guidelines
 - (d) does not include design details not presented at a Design Workshop and not otherwise approved by the City.
- 11.7** For certainty, no review or acceptance of the Works or the Public Realm Improvements by the City, its officers, employees or agents will in any way create a duty of care of the City or otherwise relieve the CRD of its obligations for all aspects of the Works and Public Realm Improvements.

12.0 NUISANCE

- 12.1** The CRD will not carry on or do or allow to be carried on or done on the Lands or the Licence Area anything that:
- (a) in the opinion of the City, acting reasonably, may be a nuisance to the City or the public;
 - (b) increases the hazard of fire or liability of any kind;
 - (c) creates or results in odours that pose a risk to public health or the environment or constitute a public nuisance; or

- (d) exceeds, during the nighttime, when measured with a sound meter approved by the City, over a representative time period, an equivalent sound level of 45 dBA when received at a point of reception outside the Licence Area.

12.2 Prior to commencing construction of the Works, the CRD will provide to the reasonable satisfaction of the Director of Engineering, a construction management plan that specifies how the CRD will manage and mitigate impacts to the public during construction of the Works and the Public Realm Improvements, including:

- (a) mitigation measures to reduce impacts to traffic flow and traffic infrastructure;
- (b) timing and method of communication to impacted neighbouring parcel owners to notify affected residents of construction activity timing and noise levels;
- (c) mitigation measures to reduce or prevent noise impacts; and
- (d) parking management for construction crews.

12.3 The CRD will not at any time make or cause sound or noise resulting from construction of the Works or the Public Realm Improvements, the equivalent sound level of which exceeds 85 dBA on a sound meter approved by the City, over a representative time period when measured at the greater of the following distances from that source of sound or noise:

- (a) at the point of reception; or
- (b) 15.2 m. (50 ft.).

12.4 Subject to Section 12.3, the CRD may carry out construction of the Works and the Public Realm Improvements:

- (a) between 7:00 a.m. and 7:00 p.m. on a weekday that is not a holiday; and
- (b) between 10:00 a.m. and 7:00 p.m. on a Saturday that is not a holiday,

except in the event of an emergency or if otherwise required due to operational requirements, as determined by the CRD, acting reasonably, or as otherwise agreed to by the City and the CRD, each acting reasonably.

13.0 LAWS, BYLAWS, RULES AND REGULATIONS

13.1 The CRD will comply with all laws, bylaws, rules and regulations of every municipal, governmental or other authority which affect its use and occupation of the Licence Area and the construction of the Works and the Public Realm Improvements. The CRD acknowledges that the fact that this Licence is granted by the City does not excuse the CRD from obtaining building permits, development permits, business licences or other required permissions.

14.0 MAINTENANCE AND INSPECTION

14.1 The CRD is responsible to repair, maintain and keep the Works in a good and safe

condition at all times and will, as far as is reasonably possible, carry out all work in a proper and workmanlike manner so as to do as little injury to the Lands and the Licence Area as possible. Without limiting the foregoing, the CRD will repair and maintain the structure and exterior of the Building in a state of good repair and maintenance, including all structural elements and components, roof and roof membranes.

- 14.2** The CRD is responsible to repair, maintain and keep the Public Realm Improvements in a safe condition at all times until completion of the Public Realm Improvements as determined in accordance with Section 7.6 and will, as far as is reasonably possible, carry out all work in a proper and workmanlike manner so as to do as little injury to the Lands and the Licence Area as possible.
- 14.3** The City will not be obliged to make any repairs or alterations in or to, any of the Works, and the CRD hereby assumes the full and sole responsibility for the repair, maintenance and operation of the Works, including for certainty the Building.
- 14.4** The City may upon reasonable prior written notice review and inspect the Works to determine if the CRD is in compliance with the terms of this Licence Agreement.

15.0 DAMAGE AND RESTORATION

- 15.1** The CRD will not, nor will it knowingly permit any other person to do or permit to be done, anything which damages any of the Lands or any improvements thereon or the subsurface or subsoil structure thereof, and will make good at its own expense any such damage or disturbance which may be caused in the exercise by the CRD of its rights under this Licence Agreement.
- 15.2** The CRD will thoroughly clean the Lands to which it has access of all rubbish and construction debris created or placed thereon by the CRD and will leave the Lands in a neat and clean condition, to the satisfaction of the City.
- 15.3** The CRD will not, nor knowingly permit any other person, to bury any debris or rubbish of any kind in excavations or backfill and will remove shoring and like temporary structures as backfilling proceeds.
- 15.4** Without limiting the foregoing or any obligation herein, the CRD will, upon completion or expansion of the Works, replant and landscape the grassed open spaces to the east and west of the Works and shall reinstate the existing ramp from Dallas Road down to Dallas Road/Ross Bay Seawalk that may be removed during construction and expansion of the Works to the satisfaction of the Director of Parks.
- 15.5** Notwithstanding the foregoing, at the expiry or earlier termination of this Licence Agreement and provided that the Works are no longer required, the CRD may, at its option, remove all or part of the Works from the Licence Area but the CRD may not remove the Public Realm Improvements from the Lands.
- 15.6** If the CRD opts not to remove all of the Works from the Licence Area, then the CRD will, at the City's request, decommission the internal equipment and components of the Works and secure the Building in accordance with a decommissioning plan approved by the Director of Engineering.

16.0 ENVIRONMENTAL

- 16.1** The CRD will conduct its business and operation on the Lands in compliance with all Environmental Laws and all Permits.
- 16.2** The CRD will forthwith notify the City of the occurrence of any of the following and will provide the City with copies of all relevant documentation in connection therewith:
- (a) a release of a Hazardous Substance on the Lands, except as is authorized under Environmental Law;
 - (b) the receipt by the CRD of a Notice from any governmental agency of non-compliance pursuant to any Environmental Law, including a Notice of non-compliance respecting a Permit;
 - (c) the receipt by the CRD of a Notice of a claim by a third party relating to environmental concerns; or
 - (d) the receipt by the CRD of information which indicates that Hazardous Substances are present in or on the Lands.
- 16.3** The CRD will not permit the storage, treatment or disposal of Hazardous Substances on the Lands except in accordance with all Environmental Laws.
- 16.4** The CRD will conduct such Investigations as may at any time be required by the City, acting reasonably, where reasonable evidence exists that the CRD's current or prior use or occupation of the Lands may be introducing or increasing the existence of any Hazardous Substance on the Lands. If the CRD does not complete the Investigations to the satisfaction of the City, acting reasonably, the City may enter on the Lands and take any actions necessary to complete the Investigations, the cost of which actions will be borne by the CRD.
- 16.5** If Hazardous Substances are present on or in the Licence Area as a result of the CRD's use or occupation of the Lands, other than authorized by Environmental Laws, the CRD will take all necessary action, at the cost of the CRD to remediate the Lands in the manner required by Environmental Law.
- 16.6** Prior to the termination of the Licence, the CRD will conduct all Investigations required by the City where any reasonable evidence exists that the CRD's use or occupation of the Licence Area introduced or increased the existence of any Hazardous Substance on, in or initiated from the Licence Area. The CRD will provide the result of all Investigations to the City. Where any Hazardous Substance is found on, in or from the Lands as a result of the CRD's use or occupation of the Licence Area, the CRD will take all necessary action, at the cost of the CRD, to remediate the Lands in the manner required by Environmental Law.
- 16.7** The CRD will provide to the City satisfactory documentary evidence that all Permits are valid and in good standing as requested by the City, acting reasonably, from time to time.

17.0 INDEMNIFICATION

17.1 The CRD hereby releases the City and shall at all times indemnify and save harmless the City and each of its elected and appointed officials, employees and agents, and their respective administrators, successors and permitted assigns, from and against any and all loss, liabilities, claims, costs or expenses whatsoever arising out of, resulting from or in connection with:

- (a) any breach or non-performance of any covenant or agreement herein on the part of the CRD to be fulfilled, observed or performed,
- (b) any act, omission, or negligence of the CRD, its elected officials or appointed officials, employees, agents, contractors, subcontractors, licencees, invitees or others for whom it is responsible,
- (c) any damage to property or any injury to any person(s), including death, occasioned by any act or omission of the CRD or the CRD's use and occupation of the Lands, including the Licence Area and Construction Lay Down Area, and
- (d) the exercise of any rights or the fulfillment of any obligation hereunder or the granting of this Licence,

except to the extent that the loss, damage, injury or expense was caused or contributed to by the negligence of the City, its servants, agents, employees, contractors or any others for whom the City is responsible at law.

18.0 SPECIFIC PERFORMANCE

18.1 The CRD acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Licence Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Licence Agreement.

19.0 NO ASSIGNMENT

19.1 The CRD will not assign this Licence Agreement without the prior written consent of the City, such consent not to be unreasonably withheld.

19.2 The City will not dispose of the Licence Area or any part of it, or assign or transfer this Licence or any interest in it, unless the City first does one of the following:

- (a) Grants in favour of the CRD, and at the expense of the CRD registers in the Victoria Land Title Office, a statutory right of way in a form satisfactory to the CRD, acting reasonably, providing the CRD with substantially the same rights as those enjoyed by the CRD pursuant to this Licence; or
- (b) Causes the transferee or assignee of the Licence Area or this Licence, as the case may be, to execute in favour of the CRD an agreement in substantially the same form as this Licence, and providing the CRD with substantially the same rights as those enjoyed by the CRD pursuant to this Licence.

20.0 NOTICES

- 20.1** Any notice or demand required to be served upon or given to the parties shall be sufficiently served upon or given if the same is delivered to the parties or mailed by prepaid post addressed as follows:

If to the CRD:

PO Box 1000,
Victoria, BC V8W 2S6
Attn: Real Estate Services

If to the City:

1 Centennial Square
Victoria, BC V8W 1P6
Attn: Director of Engineering and Public Works

Notices mailed as aforesaid shall be deemed to be delivered four (4) days after mailing unless there is a disruption in postal delivery resulting from strike or lock-out. In the event of such disruption Notice may only be given by actual delivery.

21.0 BINDING EFFECT

- 21.1** This Licence Agreement will be binding on the successors and permitted assigns of the CRD and enure to the benefit of the successors and assigns of the City.
- 21.2** If any part of this Licence Agreement is determined by a court of competent jurisdiction to be illegal or unenforceable, then such part will be considered separate and severable from this Licence Agreement and the remainder of this Licence Agreement will remain in full force and effect and will be binding on the parties as though such illegal or unenforceable part had never been included.

22.0 TIME

- 22.1** Time is of the essence of this Licence Agreement.

23.0 NO DEEMED WAIVER

- 23.1** The failure of either of the parties hereto to insist upon performance of any covenant or condition contained in this Licence Agreement or to exercise any right or option hereunder shall not be construed or operate as a waiver or relinquishment for the future of any such covenant, condition, right or option and no waiver shall be inferred from or implied by anything done or omitted by any of the parties hereto save only an express waiver in writing.

24.0 INTERPRETATION

- 24.1** This Licence Agreement shall be construed in accordance with the laws of British Columbia. All provisions of this Licence Agreement are to be construed as covenants and agreements as though the words importing covenants and agreements were used in each separate paragraph.

25.1 Each of the parties hereto will execute and deliver all such further documents, do or cause to be done all such further acts and things, and give all such further assurances as may be necessary or advisable to give full effect to the provisions and intent of this Licence Agreement.

26.1 Nothing contained or implied in this Licence Agreement will derogate from the obligations of the CRD under any other agreement with the City or prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions under all public and private statutes, by-laws, orders and regulations, which may be as fully and effectively exercised in relation to the Lands and the Works as if this Licence Agreement had not been executed and delivered by the CRD and the City. Provided that the foregoing shall not restrict or limit the rights and remedies of the CRD resulting or arising from a breach of this Licence Agreement by the City.

27.1 This Agreement may be executed and delivered in several counterparts, including by facsimile (or other similar electronic means, including via pdf), each of which when so executed and delivered will be deemed to be an original and such counterparts together will be one and the same instrument.

THE CORPORATION OF THE CITY OF
VICTORIA by its authorized signatories this
24th day of February 2017:

Mayor Lisa Helps

Chris Coates
Corporate Administrator

CAPITAL REGIONAL DISTRICT by its)
authorized signatories)
this 23rd day of February, 2017:)
)


Name:)

Name:)

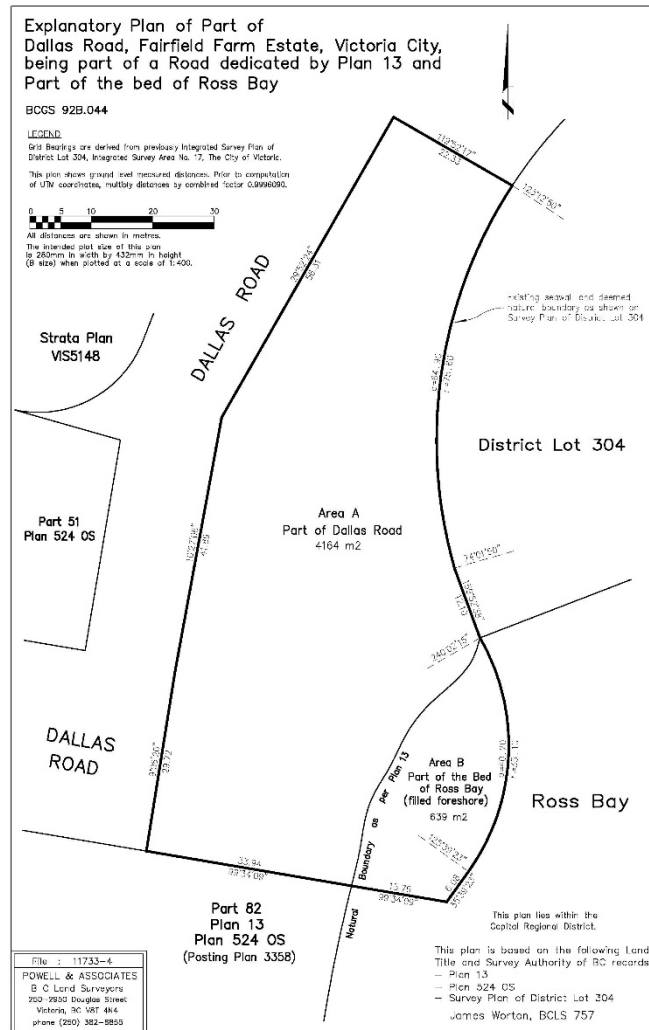
Schedule "A"

The Licence Area

STREET ADDRESS OF LICENCE AREA - 1303 Dallas Drive

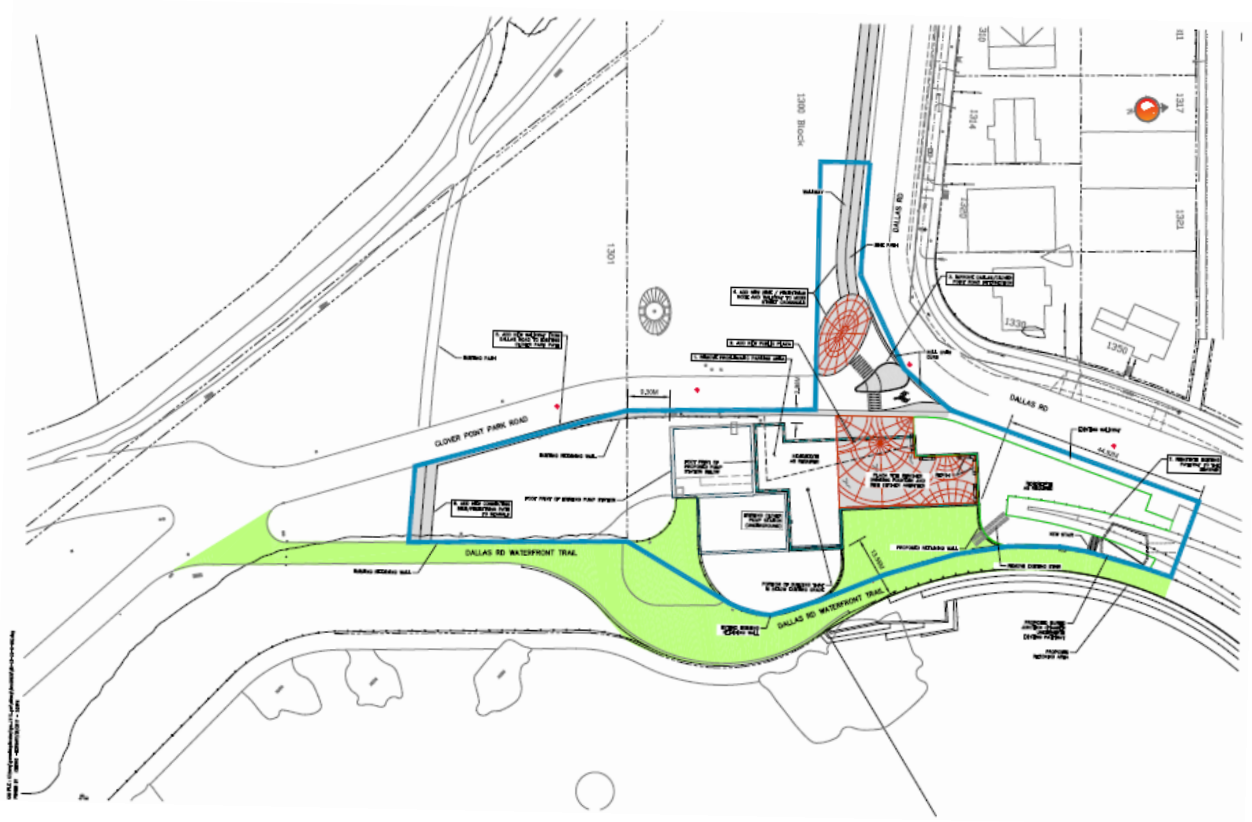
LEGAL DESCRIPTION (Area A) - "Part of Dallas Road, Fairfield Farm Estate, Victoria City, being part of a Road dedicated by Plan 13"

The following explanatory plan shall be removed and replaced upon provision of the as-built drawings at completion of the Project, pursuant to section 3.4.





Schedule "C" The Lands



Schedule “D”

Conceptual Plan of the Public Realm Improvements



Schedule “E”

Design Guidelines for the Public Realm Improvements

The City's vision is that:

Clover Point Park should be reimagined as a “special place” of arrival and gathering and should acknowledge and reflect that the location is:

- the proposed beginning/terminus of the Trans Canada Trail and will form part of a future network of nationally significant “special places”
- a part of the Salish Sea Marine Trail
- a part of the federal Victoria Harbour Migratory Bird Sanctuary.

Public Realm Improvements

The public realm improvements will complement the City's vision by:

- functioning as a regional destination for multiple users to enjoy waterfront views, with a “rest area” linking to the proposed bikeway (“Cycle Track”) and Ross Bay Greenway.
- encouraging architectural elements that contribute to creating a visual identity for the site, and include distinctive features, such as seating, or lighting.
- considering low cost of maintenance and weather resistance as important factors.
- recognizing and celebrating the heritage and culture of the Songhees First Nation and the Esquimalt First Nation.
- where respectful and appropriate, considering the Songhees First Nation and the Esquimalt First Nation heritage and culture in the Public Realm Improvements, more specifically in the development of public art, associated signage, and any additional exterior design of Public Realm Improvements that the parties may agree upon.

Site Furnishings and Amenities

- Pavement will be concrete, brick or pavers.
- All landscaping will be low maintenance, with no or low long term irrigation requirements.
- The design of the public realm improvements will include at minimum:
 - o 4 benches
 - o 2 garbage cans (in-ground cans to be installed where feasible)
 - o 1 interpretive sign
 - o 2 bicycle racks
 - o 1 bicycle kitchen (i.e. a maintenance stand similar to those along Capital Regional District's Regional Trails)
 - o 1 water fountain
- All site furnishings should be consistent in design, style and quality as the City's current Park's standard.

Public Art

- Consider the inclusion of public art in consultation with the City's artist and aboriginal artist in residence.

Bikeway and Pathway Connectivity

- The location is a key connecting point to bikeways and pathways, including the pathway along Clover Point Park towards Beacon Hill Park, and Ross Bay Greenway (combined bikeway and pathway).
- The final design will link these existing bikeways and pathways with the Cycle Track along Dallas Road, maintain pedestrian and cycling flows along Clover Point Road, and, minimize conflicts between existing park users and users of the Cycle Track and Public Realm Improvements.
- A gathering/dismount area for the Cycle Track will be incorporated on the west side of Clover Point Road at Dallas Road.
- Bike amenities will be included on the east side of Clover Point Road, near the new washroom, and upgraded pump station facility.

Public Washroom

- The washroom facility will contain two gender neutral, universally accessible single use washrooms, each with a sink, toilet, urinal and electric hand dryer and a mechanical/janitors room. The total building will have an approximate footprint size of 3.5m x 8.5 m.
- In determining washroom location, existing view sheds will be a consideration. Building form and massing need to minimize impacts to the views from public vantage points along Dallas Road, Clover Point Road, and from the water.
- The washroom must be distinctive in appearance, yet the function is integrated into the site's topography and overall landscape design.
- Proposed location and building design must respond to public safety considerations and consider Crime Prevention Through Environmental Design (CPTED) principles and the need for lighting.
- High-quality materials will be used for the exterior design, and interior finishes.
- Building will be constructed to LEED Silver at minimum and should strive for LEED Gold.

Universal Access

- Universal access (i.e. wheelchair access) will be provided to all plazas and washrooms.
- Pathways will be universally accessible wherever possible to City standards.

Construction Specifications

- To provide pedestrian priority over vehicle movements and reduce vehicle speeds, the intersections improvements at Dallas and Clover Point Road are to be constructed as a standard driveway crossing, consistent with the City's Subdivision and Development Servicing Bylaw No. 12-042.
- Intersection improvements, roadways, sidewalks, landscaping and any other works or services must be designed and constructed in accordance with the requirements and specifications in the City's Subdivision and Development Servicing Bylaw No. 12-042.

Schedule “F”

The Construction Lay Down Area

The parties will work collaboratively to identify the appropriate Construction Lay Down Area and, once such area is identified and approved by the Director of Engineering, a plan of the agreed to Construction Lay Down Area will be inserted here.