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**OFF-SITE AND SIDEWALK WORKS AND SERVICES AGREEMENT**

This Agreement made in duplicate and dated at Esquimalt, British Columbia, this 16<sup>th</sup> day of October, 2017.

BETWEEN:

**CORPORATION OF THE TOWNSHIP OF ESQUIMALT**, a municipality under the *Local Government Act* (British Columbia) and having offices at 1229 Esquimalt Road, Esquimalt, British Columbia, V9A 3P1

(the "**Municipality**")

AND:

**ARAGON ESQUIMALT TC PROPERTIES LTD. (INC. NO. BC1068481)**, a corporation under the *Business Corporations Act* (British Columbia) and having offices at 201-1628 1<sup>st</sup> Avenue West, Vancouver, British Columbia, V6J 1G1

(the "**Owner**")

**WHEREAS:**

- A. The Owner is the registered owner in fee simple of all and singular that certain parcel or tract of land and premises situate in the Township of Esquimalt, British Columbia, and more particularly known and described as:

Parcel Identifier: 029-349-311, LOT 1, SECTION 11, SUBURBAN LOT 40, Esquimalt District, PLAN EPP32782

(the "**Lands**");

- B. The Owner wishes to develop the Lands pursuant to a Phased Development Agreement between the parties; and
- C. At the request of the Municipality, the Owner has agreed to design and construct the Municipal Works herein described in consideration for the Municipality reimbursing the Owner for its design and construction costs for the Municipal Works in accordance with this Agreement.

**NOW THEREFORE** in consideration of the mutual promises contained in this Agreement and in consideration of the Municipality entering into this Agreement to allow the construction and installation of the works and services after issuance of the building permit for development of the Lands, the Owner covenants and agrees with the Municipality as follows:

1. In this Agreement:
  - (a) "**Approved Design and Specifications**" means the approved design and specifications for the Works as detailed in Schedule A of this Agreement and as otherwise approved in writing by the Municipality;
  - (b) "**Complete**" or "**Completion**" with respect to the Works means completion to the

satisfaction of the Engineer of the Municipality evidenced by the Engineer's certificate under section 10(b);

- (c) “**Engineer**” means the Municipality’s Engineer and his or her duly authorized assistants and such consulting or professional engineers as may be appointed to act for the Municipality;
  - (d) “**Municipal Works**” means the curb and gutter, rainwater gardens and other related works as depicted in the drawings prepared by McEllhaney and Associates and Murdoch deGreef and approved by the Municipality together with the costs estimate prepared by Murdoch deGreef and attached as Schedule A;
  - (e) “**Phased Development Agreement**” means the Phased Development Agreement between the parties in respect of the Lands dated for reference October 16, 2017;
  - (f) “**Standard Works**” means the sidewalk and other improvements required to be provided under the Subdivision Bylaw and this Agreement as detailed in Schedule A to this Agreement;
  - (g) “**Subdivision Bylaw**” means the Municipality’s *Subdivision and Development Control Bylaw 1997, No. 2175*, as amended; and
  - (h) “**Works**” means the Municipal Works and Standard Works.
2. The Owner covenants and agrees:
- (a) to engage a contractor to install, construct and complete the Works in the location outlined and identified in Schedule B to this Agreement, including in those parts of the Lands included in the location outlined and identified in Schedule B to this Agreement;
  - (b) engage and consult with the Municipality in respect of the tendering and contracting for the construction of the Works and to obtain the Municipality’s written approval for any invitations to tender issued and contracts executed in respect thereof, including the provision of any holdbacks or security as may be required to ensure proper compliance with the contracts; and
  - (c) to transfer all applicable warranties for the Works and their design and construction to the Township upon completion of the Works.
3. In carrying out the Works the Owner covenants and agrees:
- (a) not to commence the construction or installation of the Works without first advising the Engineer in writing at least five days before commencement;
  - (b) to construct, install and complete the works in accordance with the Approved Design and Specifications;
  - (c) to obtain the prior written approval of the Engineer for any changes to the Approved Design and Specifications;
  - (d) to comply with any changes to the Approved Design and Specifications required by the Engineer as necessary to satisfy the Engineer that the Works will function and operate in a manner satisfactory to the Engineer;
  - (e) to pay the cost of all necessary connections by the Municipality of the Works to municipal water distribution, storm drainage and sewerage systems as the case may be, provided that it

shall be reimbursed for these costs as Municipal Works;

- (f) not to damage any works, services or property of the Municipality, or remove, alter or destroy any survey, pins, posts or monuments, and if in default to replace, repair and restore any damage of whatever nature to the reasonable satisfaction of the Engineer;
  - (g) to comply with all statutes, laws, regulations and orders of any authority having jurisdiction and without limiting the generality of the foregoing all bylaws of the Municipality;
  - (h) not to deposit or permit the deposit of any material or debris upon any highways or lands of the Municipality;
  - (i) to retain at all times a professional engineer to provide competent survey, layout and onsite supervision to ensure that the Works strictly conform to the Approved Design and Specifications, and to record the details of any field design or construction changes to the Approved Design and Specifications and to record all of the geometric information for preparation as "as-constructed" drawings;
  - (j) to advise the Engineer of the name and address of the professional engineer retained by the Owner and to ensure that such professional engineer maintains professional liability and errors and omissions insurance of not less than \$5,000,000 per occurrence during the term of his or her engagement. The Owner's engineer shall provide proof of such insurance before the Owner commences the construction and installation of the Works;
  - (k) not to employ any person or contractor in the construction of the Works who, in the reasonable opinion of the Engineer is unfit, incapable or unskilled, and at all times, in connection with the execution of the Works, to employ and keep on site a competent general works superintendent. Any explanations, directions and requests given by the Engineer to the superintendent shall be conclusively deemed to have been given to the Owner;
  - (l) not to engage any contractor in respect of the Works unless that contractor holds a valid and subsisting business license by the Municipality; and
  - (m) to transfer to the Municipality and to enforce all warranties applicable to the Works from the contractor engaged by the Owner.
4. The Owner shall prosecute the Works diligently without interruptions and shall complete the construction and installation of the Works by October 16, 2020.
5. Upon completion of the Works, the Owner covenants and agrees:
- (a) to assign to the Municipality all of its right, title and interest in and to the Works free and clear of all encumbrances;
  - (b) to grant or cause to be granted to the Municipality in registrable form all statutory rights-of-way reasonably required by the Engineer for the operation, maintenance, repair and replacement of the Works, on such terms as are satisfactory to the Engineer;
  - (c) to execute and deliver or cause to be executed and delivered at the request of the Municipality all such further transfers, instruments, agreements, documents and plans and to perform all such acts as may be necessary to give full effect to this Agreement; and
  - (d) to deliver to the Municipality final as-constructed drawings of the Works which drawings shall be prepared by the Owner's engineer in accordance with good engineering practice and be in a form satisfactory to the Engineer.

6. The Owner covenants and agrees that the contract with the contractor under section 2 of this Agreement shall include the following covenants by the contractor:
  - (a) to maintain the Works in complete repair for a period of one year from completion of the Works;
  - (b) to remedy any defects appearing within a period of one year from the date of completion and pay for any damage to other works or property resulting therefrom, save and except for defects caused by reasonable wear and tear, negligence of the Municipality, its servants or agents, or acts creed; and
  - (c) to provide security by the contractor to the Municipality to ensure performance of its obligations under subsections (a) and (b) on such terms as agreed by the Municipality.
  
7. The Owner shall, to the extent that it is acting as an agent for the Municipality under this Agreement, release, and does hereby indemnify and save the Municipality harmless from and against:
  - (a) all costs, expenses, damages, claims, demands, actions, suits and liability by whomever brought or made and however arising whether directly or indirectly, from the construction or installation of the Works and any injury or damage thereby caused to person or property (including death) except that arising from the exclusive negligence or other fault of the Municipality;
  - (b) all costs and expenses incurred by the Municipality arising directly or indirectly, from any engineering operation, construction, repair, replacement or maintenance by the Municipality to or on any real or personal property which is affected by the Works and which the Municipality either owns or is by duty or custom obliged, directly or indirectly to construct, repair, replace or maintain; and
  - (c) all expenses and costs incurred by reason of liens for non-payment of labour or material; works' compensation assessments, unemployment insurance, federal or provincial tax check off in relation to the Works and for unlawful encroachments by the Works.
  
8. The Owner shall take out and maintain at all times from commencement of construction and installation of the Works until the Engineer issues a Certificate of Acceptance, insurance at its sole expense. Such insurance shall include comprehensive general liability insurance against claims for bodily injury including death and property damage or loss arising from its operations in or about the Lands, highways or other lands in carrying out the construction and installation of the Works and in performing its obligations under this Agreement. Such insurance shall name the Municipality as a co-insured and shall contain a cross-liability or severability of interest clause so that the Municipality and the Owner may be insured in the same manner and to the same extent as if individual policies had been issued to each. Such insurance shall be for the amount of not less than \$2,000,000 combined single limit or such other amount as the Engineer may reasonably require. The Owner shall provide to the Engineer proof in writing of such insurance before commencing the Works and again before the issuance of any Certificate of Completion. The policy of insurance shall contain a provision requiring the insurer to give to the Municipality 30 days' prior notice before any alteration or cancellation of the policy shall be effective.
  
9. The Owner acknowledges and agrees that the Owner relies exclusively on its own engineer and

contractor and that the Municipality does not, by its approvals, inspections or acceptance of the Works, warrant or represent that the Works are without fault or defect and that all approvals and inspection of the Works given or made by the Municipality are for the sole benefit of the Municipality and shall in no way relieve or excuse the Owner from constructing and installing the Works in strict compliance with the provisions of the Agreement.

10. The Municipality covenants and agrees that:
  - (a) it will permit the Owner to perform the Works on the terms and conditions contained in this Agreement and to occupy and use municipal highways and lands of the Municipality as necessary for the Works subject to such terms and conditions in any case and from time to time as the Engineer may impose;
  - (b) it will issue a Certificate of Completion signed by the Engineer upon the Owner satisfactorily completing the Works and performing all other requirements of this Agreement except the requirements of section 6; and
  - (c) upon the satisfactory completion by the Owner of the covenants and conditions in this Agreement, and without limiting the generality of the foregoing, it shall:
    - (i) provide to the Owner a Certificate of Acceptance of the Works, signed by the Engineer, and a release and discharge of the restrictive covenant granted under section 12 of this Agreement; and
    - (ii) pay the Owner the cost of the Municipality's Works on a progress draw basis, plus 10% for the Owner's overhead; and
  - (d) the Owner is not obligated to repair any roadways of the Municipality that are adjacent to the Works except to the extent necessary to repair damages during installation and construction of the Works.
11. Nothing in this Agreement shall exempt the Owner of the Lands from the ordinary jurisdiction of the council of the Municipality, its bylaws and regulations, and without limitation the construction of the Works shall not confer directly or indirectly any exemption of right of set-off from development cost charges, connection charges, application fees, user fees or other fee or charge, except as statutorily required.
12. If required by the Municipality, the Owner agrees to provide a covenant pursuant to section 219 of the *Land Title Act*, R.S.B.C. 1996, c.250, guaranteeing that no buildings or structures, except the Works, shall be placed, built or constructed upon the Lands until the Engineer has issued to the Owner the Certificate of Completion provided for in section 10(b) of this Agreement. All amounts of money due and owing to the Municipality from the Owner as provided for in this Agreement and without limiting the generality of the foregoing due and owing under section 15 of this Agreement shall constitute a rent charge charging the Lands.
13. Any letter of credit provided by the Owner to the Municipality shall be a clean unconditional and irrevocable letter of credit in favour of the Municipality drawn on a Canadian chartered bank or such other financial institution satisfactory to the Engineer. Such letter of credit shall be maintained as good and valid security by the Owner at all times as required by this Agreement, and if the Owner fails or omits to renew any letter of credit and deliver such renewal to the Municipality within 14 days before the expiry of any letter of credit then held by the Municipality, the Municipality may draw down on the then current letter of credit without notice or restriction, and hold these monies in lieu thereof.

14. If the Owner shall fail to observe, perform or keep any of the provisions of this Agreement to be observed, performed or kept by the Owner, the Municipality may at its sole discretion and without prejudice to any other remedy rectify the default of the Owner, at the Owner's expense and without limiting the generality of the foregoing may:
  - (a) enter onto the Lands and do or cause to be done through its servants, contractors and others, all such things as may be required to fulfill the obligations of the Owner including without limitation, the completion of the Works; and
  - (b) make any payments required to be made for and on behalf of the Owner;and for such purposes may without notice or limitation deduct all costs, and expenses incurred, payment and expenditures made, and monies due and owing to the Municipality.
15. Wherever in this Agreement the approval of the Engineer is required or some act or thing is to be done to the satisfaction of the Engineer:
  - (a) such provisions shall not be deemed to have been fulfilled or waived unless the approval or expression of satisfaction is in writing signed by the Engineer and no prior approval or expression of satisfaction and no condoning, excusing or overlooking by the Municipality or the Engineer on previous occasions when such approval or satisfaction was required shall be taken to operate as a waiver of the necessity for such approval or satisfaction wherever required by this Agreement; and
  - (b) such approval or satisfaction shall be at the discretion of the Engineer acting reasonably in conformance with sound and accepted public municipal engineering practice.
16. Unless otherwise expressly provided in this Agreement, whenever the Owner is obliged or required to do or cause to be done any act, matter or thing such act, matter or thing shall be done by the Owner at its sole expense.
17. Any notice to be give under this Agreement shall be in writing, and any letter may be delivered personally or sent by prepaid mail. The addresses of the parties for the purpose of notice shall be the addresses set out in this Agreement. Any party may at any time give notice in writing to the other of any change of address and from and after the third day after the giving of such notice the address specified shall be deemed to be the address of such party for the giving of notice.
18. The Owner agrees under section 943 of the *Local Government Act* that all bylaws of the Municipality adopted under Part 26 of the *Local Government Act* shall have effect in respect of the Lands and the subdivision and development of the Lands, provided that they are adopted before commencement of the construction and installation of the Works. The Owner agrees that to the extent that such bylaws modify, alter or add to the requirements or standards for works and services of the type constituting the Works, the Owner shall comply with such modifications, alterations or additions in constructing, installing and carrying out the Works. The Owner shall not, for the purpose of this section 19, have been deemed to commence construction of the Works until five days after the notice required by section 3(a) of this Agreement.
19. The Municipality has made no representations, warranties, guarantees, promises covenants or agreements to or with the Owner other than those in this Agreement.

- 20. Subject only to section 3(d) of this Agreement, no amendment to this Agreement is valid unless in writing and executed by the parties.
- 21. Wherever the singular or masculine is used in this Agreement, the same shall be construed as meaning the plural or the feminine or the body corporate or politic where the context or the parties so require.
- 22. If any section or lesser portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the invalidity of such section or portion shall not affect the validity of the remainder.
- 23. Time is of the essence of this Agreement.
- 24. This Agreement shall enure to the benefit of and be binding upon the parties, their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement on the date first above written.

CORPORATION OF THE TOWNSHIP OF ESQUIMALT, by its authorized signatories this 17<sup>th</sup> day of October, 2017:

Barbara Desjardins  
 Name: Barbara Desjardins Mayor.

Laurie Hurst  
 Name: Laurie Hurst, CAO

RACHEL DUMAS  
 ADMINISTRATIVE ASSISTANT / DEPUTY CORPORATE OFFICER  
 Corporation of the Township of Esquimalt  
 1229 Esquimalt Rd, Esquimalt, BC V9A 3P1  
 A Commissioner for Taking Affidavits for British Columbia No: 2015 - 1130  
 Expiry: September 30, 2018

R. Dumas  
 (WITNESS TO BOTH SIGNATURES)

ARAGON ESQUIMALT TC PROPERTIES LTD., by its authorized signatories this \_\_\_ day of \_\_\_\_\_, 2017:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:



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IN WITNESS WHEREOF the Parties hereto have executed this Agreement on the date first above written.

**CORPORATION OF THE TOWNSHIP OF ESQUIMALT**, by its authorized signatories this \_\_\_ day of \_\_\_\_\_, 2017:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

**ARAGON ESQUIMALT TC PROPERTIES LTD.**, by its authorized signatories this 17 day of OCTOBER, 2017:

\_\_\_\_\_  
Name:

  
**Lenny Moy, President**

\_\_\_\_\_  
Name:



**SCHEDULE A**  
**APPROVED DESIGN AND SPECIFICATIONS FOR WORKS**



200 -524 Culduthel Road  
Victoria, BC, V8Z 1G1  
p 250.412-2891

**Esquimalt Town Center- Offsite Estimate of Probable Costs<sup>1</sup>**

(Based on Landscape Offsite Material Plan, dated 17.10.11-note that Area 2 and 4 have been deleted from the offsite areas)

**Area 1. South Frontage Municipal Hall<sup>7</sup>**

	Qty.	Units	Unit Cost		Cost
1	212	sq m	\$	15.00	\$ 3,180.00
2	170	sq m	\$	140.00	\$ 23,800.00
3	40	lin m	\$	100.00	\$ 4,000.00
4	12	lin m	\$	160.00	\$ 1,920.00
5	37	lin m	\$	300.00	\$ 11,100.00
6	22	sq m	\$	85.00	\$ 1,870.00
7	97	sq m	\$	75.00	\$ 7,275.00
8	17.5	lin m	\$	350.00	\$ 6,125.00
9	12	lin m	\$	135.00	\$ 1,620.00
10	10	sq m	\$	60.00	\$ 600.00
11	70	sq m	\$	120.00	\$ 8,400.00
12	5	each	\$	650.00	\$ 3,250.00
13	1	Lump Sum	\$	2,000.00	\$ 2,000.00
<b>Sub-Total</b>			\$		<b>75,140.00</b>
<b>Overhead 10%<sup>9</sup></b>			\$		<b>7,514.00</b>
<b>Contingency 15%</b>			\$		<b>11,271.00</b>
<b>Total Estimate for South Frontage Municipal Hall:</b>			\$		<b>93,925.00</b>

**Area 3. General Street Frontage & ROW improvements<sup>6</sup>**

	Qty.	Units	Unit Cost		Cost
14	832	sq m	\$	15.00	\$ 12,486.75
15	188	sq m	\$	140.00	\$ 26,320.00
16	40	lin m	\$	100.00	\$ 4,000.00
17	47	lin m	\$	180.00	\$ 8,460.00
18	339	lin m	\$	160.00	\$ 54,240.00
19	105	lin m	\$	160.00	\$ 16,800.00
20	2	lin m	\$	250.00	\$ 500.00
21	192	sq m	\$	85.00	\$ 16,320.00
22	492	sq m	\$	75.00	\$ 36,900.00
23	5	each	\$	8,000.00	\$ 40,000.00
24	8	sq m	\$	120.00	\$ 960.00
25	220	sq m	\$	175.00	\$ 38,500.00
26	1	Lump Sum	\$	1,400.00	\$ 1,400.00
27	13	each	\$	650.00	\$ 8,450.00
28	109	lin m	\$	24.00	\$ 2,616.00
29	1	Lump Sum	\$	4,500.00	\$ 4,500.00
30	1	Lump Sum	\$	5,000.00	\$ 5,000.00

31	Storm Drains (See civil includes onstreet and 2x rain garden overflows. Please include municipal connections)	2	each	\$ 3,500.00	\$ 7,000.00
32	Landscape Drains (Includes 1x Nyloplast Drain, cleanouts, and all perforated underdrains.)	1	Lump Sum	\$ 4,200.00	\$ 4,200.00
<b>Sub-Total</b>					<b>\$ 288,652.75</b>
<b>Overhead 10%<sup>9</sup></b>					<b>\$ 28,865.28</b>
<b>Contingency 15%</b>					<b>\$ 43,297.91</b>
<b>Total Estimate for Street Frontages (Esquimalt , Park &amp; Carlisle):</b>					<b>\$ 360,815.94</b>

**Aragon Portion of Street Frontage & ROW improvements**

	Qty.	Units	Unit Cost	Cost
Aragon Sidewalk CIP Concrete Paving <sup>3</sup>	392	sq m	\$ 85.00	\$ 33,320.00
Cast in Place Concrete Seating Walls <sup>4</sup>	2	lin m	\$ 250.00	\$ 500.00
<b>Sub-Total</b>				<b>\$ 33,820.00</b>
<b>Contingency 15%</b>				<b>\$ 5,073.00</b>
<b>Total Estimate for Aragon Portion of Off Site Works:</b>				<b>\$ 38,893.00</b>

**Total Estimate for Offsite Improvements: \$ 454,740.94**

**Aragon's Portion of Offsite Improvements: \$ 38,893.00**

**Municipalities Portion of Offsite Improvements: \$ 415,847.94**

plus applicable taxes

<b>Notes/Assumptions:</b>	
1	All estimates are an <u>opinion of probable costs</u> . These estimates should be refined in conjunction with design development and should only be used for establishing budgets. Final proof costs to be provided by Aragon post construction.
2	Estimates assume slope cuts will extend approx 3.0m beyond edge of parkade (See L1.2 Offsite Material Plan). Demolition and disposal of material within this zone has not been included (to be completed by Aragon).
3	Aragons responsibility for off-site works is for the sidewalk portion of offsite works only. Their commitment is for cast in place concrete around Building C/D and sidewalks along the southern half of Park Place and along Carlisle Ave. In includes areas for items 15, 16 (calculated as length of band X 0.3 m width), and 21.
4	2 lin m of seating wall have also been included in Aragons cost. These costs relate to the artwalk entry walls on Carlisle Ave which cross the property line.
5	Area 1 costs are the responsibility of the municipality. The anticipated area of disturbance for excavation of the underground has not been included in the cities demolition and disposal costs, (estimated at 500sq. m.) (See item 2 above).
6	The municipal portion for Area 3 costs includes all curbs and gutters (including landscape curbs around rain gardens), all rain garden and boulevard landscape costs, all offsite lighting costs, and all south frontage works.
7	Municipal hall south offsite frontage works includes the concrete ramp, ramp railing, concrete planter walls, transformer gravel surround, all landscaping costs (trees/shrubs/soil/etc), all sidewalk and driveaisle unit paving with concrete banding, all curbs and gutters, asphalt paving, and fencing around the service area (includes 1 pedestrian gate and 1 vehicular gate).
8	All asphalt, cast in place concrete paving, concrete bands, and concrete unit paving unit rates include 150mm depth of base material per unit area.
9	An overhead amount has been added to factor in consulting, design, and field services related work associated with the offsite works.

