

**CORPORATION OF THE TOWNSHIP OF ESQUIMALT**

**SUBDIVISION AND CONTROL BYLAW**

**SCHEDULE 'F'**

**STANDARD FORMS AND AGREEMENTS**

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# SCHEDULE F-1

## SERVICES AGREEMENT FORM

Date: \_\_\_\_\_  
File: \_\_\_\_\_

Township of Esquimalt,  
1229 Esquimalt Road  
Victoria, British Columbia.  
V9A 3P1

Attention : Director, Planning and Engineering Services

Re: Proposed Subdivision of \_\_\_\_\_

This letter is to confirm and stand as proof to the Municipality, that an Engineer - Client Agreement has been executed between:

Consultants )  
Name )  
Address )  
Phone No. )  
Fax No. )

and

Owners/ )  
Developer )

in connection with the above referenced development. The agreement was executed on \_\_\_\_\_, 19\_\_ and provides for Engineering services as follows:

Circle as applicable

1. Consulting, advisory and predesign services.
2. Schematic and design development services.
3. Preparation of design drawings for approval in accordance with applicable sections of the Township of Esquimalt bylaws.
4. Construction layout.
5. Resident inspection and sampling to ascertain whether the Contractor is carrying out the work in conformity with the approved for construction drawings and the Township of Esquimalt bylaws. Full time resident inspection is required during the installation of storm drains, sanitary sewers, watermains, curb and gutter, asphalt pavement and during the construction of sewage disposal fields.
6. Interpreting specifications when requested by the Client or Contractor.

7. Perform certifications on cost of the work.
8. Attend meetings.
9. Maintaining project documentation.
10. Preparation and submission of certified as-constructed drawings and Auto Cad disk.
11. Final project review to approval.

If for any reason the said agreement is altered, modified or terminated in any manner, it is the duty of the Consultant to inform the Municipal Engineer of such changes 48 hours in advance of their taking effect.

Signed and Sealed

Consultants \_\_\_\_\_

Owners \_\_\_\_\_

## SCHEDULE F-2

### ASSURANCE OF PROFESSIONAL FIELD REVIEW AND COMPLIANCE FORM

Note: This letter must be submitted after completion of the project but before the subdivision plan is signed or a final inspection is made by the Township of Esquimalt.

To: Director, Planning and  
Engineering Services  
Township of Esquimalt  
1229 Esquimalt Road  
Victoria, British Columbia.  
V9A 3P1

Date \_\_\_\_\_

File: \_\_\_\_\_

Dear Sir:

Re: Proposed subdivision of \_\_\_\_\_

Legal Description of Project (Print)

I hereby give assurance that

- (a) I have fulfilled my obligations for field review as required by the Township of Esquimalt bylaws for the subdivision and development of land, and
- (b) those components of the project opposite my initials in the previously submitted Schedule F-1 comply in all material respects with
  - (i) the applicable requirements of the Township of Esquimalt bylaws and other applicable standards respecting the Works and Services, and
  - (ii) the plans and supporting documents submitted in support of the application for subdivision.
- (c) I have enclosed the as-constructed plans and supporting documents prepared by me for this project, and
- (d) I am a registered Professional Engineer licensed under the provisions of the Engineer and Geoscientists Act of the Province of British Columbia.

(Each registered professional engineer shall complete the following:)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

\_\_\_\_\_  
Address (Print)

\_\_\_\_\_  
Phone

(if the Registered Professional is a member of a firm, complete the following).

I am a member of the firm \_\_\_\_\_  
and I sign this letter on behalf of the firm. (Print name of firm)

NOTE: The above letter must be signed by a registered professional engineer.

**SCHEDULE F-3**

**SUBDIVISION SERVICING AGREEMENT**

THIS AGREEMENT made the                      day of                      ,199 .

BETWEEN:

THE TOWNSHIP OF ESQUIMALT

(the "Township")

AND:

(the "Developer")

**SUBDIVISION SERVICING AGREEMENT**

This AGREEMENT made the     day of                     , 199 .

**BETWEEN:**

THE TOWNSHIP OF ESQUIMALT,  
1229 Esquimalt Road  
Victoria, BC  
V9A 3P1  
(the "Township")

OF THE FIRST PART

**AND:**

(the "Developer")

OF THE SECOND PART

**WHEREAS:**

A. The Developer is the registered owner of the parcel or parcels described in Schedule "A" to this Agreement (the "Lands");

B. In order to obtain the approval of the Approving Officer of the Township of Esquimalt for the subdivision of the Lands generally in conformity with the preliminary subdivision plan attached as Schedule "B" to this Agreement, the Developer is required to construct and install certain works and services;

C. Section 940 of the Municipal Act provides that:

"940.(1) All works and services required to be constructed and installed at the expense of the owner of the land being subdivided or developed must be constructed and installed to the standards established in the bylaw under section 938 before the approving officer approves of the subdivision or the building inspector issues the building permit.

(2) As an exception, the approval may be given or the permit issued if the owner of the land

(a) deposits, with the municipality or regional district, security

(i) in the form and amount established in the bylaw, or

(ii) if no amount and form is established in the bylaw, in a form and amount satisfactory to the approving officer or building inspector having regard to the cost of installing and paying for all works and services required under the bylaw, and

(b) enters into an agreement with the municipality or regional district to construct and install the required works and services by a specified day or forfeit to the municipality or regional district the amount secured under paragraph (a)."

D. The Developer has requested approval of the subdivision of the Lands by the Approving Officer prior to the construction and installation of the works and services and is agreeable to entering into this Agreement pursuant to the Municipal Act and to depositing the security herein specified;

E. Section 219 of the Land Title Act, R.S.B.C. 1996, C.250 provides, inter alia, that a covenant, whether of a negative or positive nature, in respect of the use of land, or that land is or is not to be built upon in favour of a municipality may be registered as a charge against the title to that land and the Developer has agreed to incorporation of this Agreement into such a covenant.

F. The permitted uses and density of land use within the parcel to be subdivided shall comply with the Esquimalt Zoning Bylaw as amended from time to time.

NOW THEREFORE pursuant to Section 940 of the Municipal Act and pursuant to Section 240 of the Land Title Act, and in consideration of the premises and the agreement by the Township to permit subdivision of the Lands in advance 'of the construction of the works and services, and of the sum of \$1.00 now paid by the Township to the Developer, the receipt and sufficiency of which is acknowledged, the parties covenant and agree as follows:

## DEFINITIONS

1.1 In this Agreement:

"Completion" means completion of the Works and Services to the standards and specifications set out in the bylaws of the Township and this Agreement, acknowledged by the issuance of a Certificate of Completion signed by the Municipal Engineer;

"Municipal Engineer" means the Director, Planning and Engineering Services for the Township and duly authorised assistants, or such consulting or other professional engineers as may be appointed to act for the Township in that capacity;

"Security" means cash, a certified cheque or an unconditional, irrevocable letter of credit issued by a Canadian chartered bank or Credit Union in the form of Schedule "C" to this bylaw, or such equivalent form as may be accepted by the Township;

"Subdivision Bylaw" means the Subdivision and Development Control Bylaw of the TOWNSHIP OF ESQUIMALT;

"Works and Services" means all public services, facilities and utilities which are required to be installed pursuant to Section 2.2 of this Agreement and includes all things required under this Agreement or the bylaws of the Township to be done in relation to the construction and installation of those Works and Services.

1.2 Words and terms used in this Agreement and not defined in Section 1.1 of this Agreement have the meaning set out in the Subdivision Bylaw.

## COVENANTS OF THE DEVELOPER

2.1 The Developer covenants that the Lands shall not be subdivided until the Developer has provided Security in accordance with Sections 3.1 and 3.2 of this Agreement, as evidenced by the written acceptance of the Security by the Municipal Engineer.

2.2 The Developer shall:

- (a) design, construct and install the Works and Services specified in Schedule "D" to this agreement, in accordance with the requirements and standards in the Subdivision Bylaw, as amended from time to time, to the satisfaction of, and in the locations specified by the Municipal Engineer so that the Works and Services function and operate to the satisfaction of the Municipal Engineer;
- (b) modify or reconstruct the Works and Services should the Works and Services as constructed prove to be in any way defective or not operate to the reasonable satisfaction of the Municipal Engineer so that the Works and Services are fully operative and function to the reasonable satisfaction of the Municipal Engineer;
- (c) complete the design, construction and installation of the Works and Services within nine months of the date of this Agreement;

- (d) assign, transfer and convey to the Township all of the Developer's right, title and interest in and to the Works and Services upon issuance of the Certificate of Completion, without further documentation;
- (e) grant to the Township all necessary highway dedications, statutory rights-of-way and easements over the Lands to accommodate the Works and Services, in the locations specified by the Approving Officer; and where the Works and Services are located upon or under privately owned lands other than the Lands, obtain at the Developer's expense, all necessary highway dedications, statutory right-of-ways and easements over such lands, in favour of the Township, to accommodate the Works and Services;
- (f) submit to the Township final as-built record drawings consisting of one set of prints sealed by a Professional Engineer and on approval by the Municipal Engineer a disk with a digital record, compatible with Auto Cad, of the as-constructed Works and Services, within 30 days of Completion of the Works and Services;
- (g) comply with all laws, statutes, regulations and order of any authority having jurisdiction, including the Township, throughout the construction of the Works and Services;
- (h) pay within 30 days of receipt of any invoice from the Township the balance of costs of any Works and Services completed by Township forces in excess of the Deposit made and any costs for the removal by the Township of material or debris left on a highway during or after the construction of the Works and Services including 15% administration and supervision costs;
- (i) protect all survey markers, pins, posts and similar things during the construction, installation, maintenance and repair of the Works and Services and employ, a British Columbia Land Surveyor to replace any markers, pins, posts or similar things which may be moved, damaged or destroyed during the construction, installation, maintenance or repair of the Works and Services.

## **SECURITY**

- 3.1 As security for the due and proper performance of all of the terms and conditions of this Agreement, the Developer has upon execution of this Agreement deposited with the Township the Security in the amount of \$\_\_\_\_\_, being 120% of the cost of the Works and Services as reasonably determined by the Municipal Engineer.
- 3.2 The Security shall be valid for a minimum of one year from the date of this Agreement. Should a check be issued as Security, it shall be cashed and deposited in a Township account with any interest being accumulated in favour of the Township.
- 3.3 If the Security is in the form of a letter of credit and the Township has notified the Developer of any deficiency in the Works and Services, if the Security has not been renewed at least 10 days before its expiry, the Township may draw down the full amount of the Security and hold the funds so drawn as a deposit in lieu of the Security.
- 3.4 If the Developer fails to complete the Works and Services in the manner and within the time provided for herein, the Township may, at any time after the expiration of two weeks from the date of the Township mailing a registered letter to the Developer advising the Developer that is in default of its obligations under this Agreement, appropriate the Security to meet the costs of remedying the default.
- 3.5 The Township officers, employees and contractors are authorised to enter on the Lands as may be necessary to complete the Works and Services and to do all things necessarily incidental to completion, in the event the Developer fails to complete the Works and Services as required by this Agreement.



- 3.6 If the Township completes the Works and Services and the costs of Completion exceeded the amount of the Security, the Developer shall forthwith upon demand by the Township pay all the additional costs incurred by the Township towards completion of the Works and Services.
- 3.7 The Township shall not be obligated to complete the Works and Services within any specified period, nor shall the Township be required to expend an amount in excess of the Security toward completion of the Works and Services.
- 3.8 Completion of the Works and Services by the Township shall not relieve the Developer of any of its obligations under this agreement.
- 3.9 If the Works and Services are completed by the Developer, then the Security shall be returned to the Developer on receipt of the Certificate of Completion.

## **INSURANCE**

- 4.1 The Developer shall, in respect of the Lands and the Works and Services, take out and maintain, with such insurers and on terms that are acceptable to the Township, at the Developer's expense
- (a) at all times while this Agreement is in force, comprehensive general liability insurance in the names of the Developer and the Township which insurance shall cover, without limitation, premises and operations liability, non-owned automobile liability and contractual liability; and
  - (b) at least until completion of the Works and Services, insurance as specified in subsection 4.1 (a), also covering contractor's contingency liability with respect to the operations of subcontractors.
- 4.2 The limits of liability for personal injury and property damage combined shall be for not less than \$5,000,000 for each occurrence, with a deductible amount of not more than \$10,000 per occurrence.
- 4.3 All insurance policies shall provide that they shall not expire, be cancelled or be materially changed without at least 30 days prior written notice to the Township, by registered mail to the attention of the Municipal Engineer.
- 4.4 The Developer shall, upon the request of the Township, file with the Township certified copies of each required insurance hereunder, or such other proof satisfactory to the Township that all such policies are in force as may be applicable.
- 4.5 If the Developer does not obtain and maintain the required insurance or when required does not deliver the policy or policies to the Township, the Township shall have the right, but shall not be obligated, to obtain and maintain the required insurance, and the Developer appoints the Township its lawful attorn do all things necessary for this purpose. All monies expended by the Township for insurance premiums under the provisions of this section shall be charged to the Developer and are payable by the Developer to the Township forthwith upon demand.

## **CERTIFICATES OF COMPLETION**

- 5.1 Upon satisfactory completion by the Developer of all the Works and Services in accordance with this Agreement, the Township shall provide the Developer with Certificates of Completion for all the Works and Services, and thereafter all Works and Services provided by the Developer under this Agreement shall, subject to the provisions of the Municipal Act, become the property of the Township.

- 5.2 The Works and Services shall remain at the full and sole risk of the Developer until they are certified as complete by the Township as evidenced by the Certificate of Completion.

## **INDEMNITY**

- 6.1 The Developer agrees to save harmless and indemnify the Township against all losses expenses, damages and costs of any proceeding, claim or demand related to any work or service done or provided under this Agreement:

- (a) which may be incurred by reason of the Township entering this Agreement;
- (b) resulting from damage to any property owned in whole or in part by the Township which the Township is obliged in any way to construct, repair or maintain; or
- (c) which may be incurred by reason of liens or non-payment for labour or material, Worker's Compensation assessments, unemployment insurance, or Federal or Provincial Tax;

provided that this indemnity does not apply to a cause of action arising after the date of issuance of the Certificate of Acceptance of the Works and Services or to an act or omission of the Township.

## **INSOLVENCY OF THE DEVELOPER**

- 7.1 Notwithstanding any other provision of this Agreement, the Township shall be entitled to draw on the Security and complete the Works and Services or remedy any defects in the Works and Services in the event that:

- (a) the Developer commits an act of bankruptcy or makes a proposal or general assignment for the benefit of its creditors;
- (b) an order is made or a resolution passed or petition filed for the liquidation or winding up of the Developer; or
- (c) if a receiver receiver-manager of the Developer or the Lands is appointed or any encumbrance-holder takes possession of the Lands or any part thereof.

## **COVENANTS OF THE TOWNSHIP**

- 8.1 The Township covenants and agrees as follows:

- (a) to permit the Developer to construct the Works and Services upon the terms and conditions herein contained and to not unreasonably refuse permission to enter into municipal and public lands in the vicinity of the Works and Services for the purpose of such construction;
- (b) to fulfil its duties and obligations hereunder promptly and in a reasonable manner; and
- (c) that the Township and the Municipal Engineer shall be reasonable in their requirements where this Agreement confers discretion upon the Township or the Municipal Engineer.

## **PRIORITY**

- 9.1 The Developer shall, use its best efforts to obtain the necessary consents to priority so that this Agreement may be registered as a Covenant in priority to all other financial charges registered against the Lands, except those specifically agreed to in writing by the Township.

## **GENERAL**

- 10.1 It is understood and agreed that the Township has made no representations, covenant, warrants, guarantees, promises or agreements, express or implied, with the Developer other than those in the Agreement.
- 10.2 The Developer shall, on the request of the Township, 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 Township be reasonably necessary to give full effect to the intent or meaning of this Agreement.
- 10.3 Time shall be of the essence in this Agreement. If a delay in performance of the Works and Services is caused by reason of labour disputes, fire, Act of God, unusual delay by common carriers or any other act which in the opinion of the Municipal Engineer is effectively beyond the Developer's control, the Municipal Engineer will extend the time for Completion of the Works and Services by the Developer for the length of time the Municipal Engineer deems to be reasonable in the circumstances.
- 10.4 The covenants herein are made pursuant to Section 219 of the Land Title Act, to run with and be a charge upon the Lands, provided that this Agreement shall be discharged and released in whole or in part by the Township after the granting of the Certificate of Acceptance by the Township to the Developer. The Lands shall not be subdivided except in accordance with this covenant, provided that the indemnity under Section 6.1 shall survive such release, in relation to any act or omission which occurs prior to the date of release.
- 10.5 Nothing in this Agreement shall prejudice or affect the rights and powers of the Township in the exercise of its functions under any public and private statutes, bylaws, order and regulations.
- 10.6 This Agreement shall enure to the benefit and be binding upon the parties hereto and their respective successors and assigns.
- 10.7 A reference in this Agreement to the Township or the Developer includes their assigns, heirs, successors, officers, employees and agents.
- 10.8 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; and
  - (b) mailed by prepaid registered mail to the address listed on the first page of this Agreement or other address of which that party has 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.
- 10.9 Should any clause or portion thereof of this Agreement be declared or held invalid for any reason, such invalidity shall not affect the validity of the remainder of that clause or of this

Agreement and this Agreement shall continue to be in force and in effect and be construed as if it had been executed without the invalid portion.

10.10 No amendment or waiver of any portion of this Agreement shall be valid unless in writing and executed by both of the parties to this Agreement.

10.11 Waiver of any default by either party shall not be deemed to be a waiver of any subsequent default by that party.

10.12 This Agreement shall be construed according to the laws of the Province of British Columbia.

10.13 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.

10.14 The following schedules are annexed to and form part of this Agreement:

- Schedule "A": Legal Description of Lands
- Schedule "B": Subdivision Plan
- Schedule "C": Irrevocable Letter of Credit
- Schedule "D": Works and Services to be Constructed

IN WITNESS WHEREOF the parties hereto have set their hands and seals the day and year first above written.

The Corporate Seal of the )  
**TOWNSHIP OF ESQUIMALT** was )  
hereunto affixed in the )  
presence of: )

C/S

\_\_\_\_\_) )  
Mayor

\_\_\_\_\_) )  
Clerk

The Corporate Seal of )  
\_\_\_\_\_ was )  
hereunto affixed in the )  
presence of: )

C/S

\_\_\_\_\_) )  
AUTHORISED SIGNATORY

\_\_\_\_\_) )  
AUTHORISED SIGNATORY

**SCHEDULE "A"**

Legal Description of Lands:

**SCHEDULE "B"**

Subdivision Plan

**SCHEDULE "C"**

**Form of Irrevocable Letter of Credit**

Date: \_\_\_\_\_  
Bank: \_\_\_\_\_  
\_\_\_\_\_

TOWNSHIP OF ESQUIMALT  
1229 Esquimalt Road  
Victoria, BC  
V9A 3P1

Dear Sirs:

Re: Irrevocable Letter of Credit No. \_\_\_\_\_.

Upon the instruction of \_\_\_\_\_ (the "Developer") we hereby establish in your favour our irrevocable credit for the sum of \_\_\_\_\_ dollars in Canadian currency. This credit shall be available to you or demand by sight drafts drawn on the Bank of \_\_\_\_\_ when supported by your written demand for payment made upon us.

This Letter of Credit is required in connection with an undertaking by the Developer to perform certain works and services required by you.

We undertake not to refuse to honour any sight draft that you present to use for payment under this Letter of Credit. We shall honour your demand without enquiring whether you have a right as between yourself and the Developer.

You may make partial drawings or full drawings at any time.

This Letter of Credit shall remain in force until 12:00 a.m., \_\_\_\_\_ 19\_\_.

Bank of \_\_\_\_\_

\_\_\_\_\_  
Authorized Signatory

**SCHEDULE "D"**

Works and Services To Be Constructed