

WORKS AND SERVICES AGREEMENT

THIS AGREEMENT dated for reference this _____ day of _____, 2024.

BETWEEN:

CITY OF CAMPBELL RIVER

301 St. Ann's Road
Campbell River, B.C.
V9W 4C7

(the "**City**")

OF THE FIRST PART

AND:

«Name1»

«MailingAddress»

(the "**Owner**")

OF THE SECOND PART

WHEREAS:

- A. The Owner intends to develop land within the territorial area of the City, legally described as:

«LongLegals»

(the "**Land**");
- B. The Owner is the registered owner of the Land;
- C. The Owner has agreed to construct and provide certain works and services in accordance with the requirements and specifications of the Subdivision and Development Servicing Bylaw and as described in Appendices "A" and "B";
- D. The Owner has agreed to provide security to guarantee completion of the works and services;
- E. The Owner has agreed to enter into this Agreement with the City in accordance with section 509 of the *Local Government Act* to enable the Approving Officer to approve the subdivision of the Land, or to enable the Building Inspector to issue a building permit, as the case may be, prior to the construction of the required works and services.

NOW THEREFORE in consideration of the sum of \$1.00 paid to the Owner by the City and other good and valuable consideration, receipt of which is acknowledged, the Owner covenants and agrees with the City as follows:

1.0 INTERPRETATION

1.1. In this Agreement,

"Approving Officer" includes his or her deputy;

"Building Inspector" includes a person designated to act on his or her behalf;

"Certificate of Acceptance" means written certification by the City that all obligations under this Agreement are complete and the one year maintenance period under section 11 of this Agreement in respect of the Works or a defined portion of the Works has been satisfactorily completed;

"Certificate of Completion" means written certification by the City that the Works or a defined portion of the Works have been completed to the satisfaction of the City;

"Complete" or **"Completion"** means, with respect to the Works, completion to the satisfaction of the Approving Officer or Building Inspector, acting reasonably, as certified in writing;

"Consulting Professional" means a professional person who is retained by the Owner for a purpose referred to in this Agreement and who is qualified for that purpose, and includes an engineer, architect, landscape architect, registered professional forester, land surveyor, solicitor, arborist or biologist;

"Development" includes the provision of the Works including the construction and completion of all aspects of the improvement of the Land with buildings, structures, landscaping and supporting services;

"Letter of Credit" means an irrevocable Letter of Credit that allows for partial drawings and shall be automatically extending without amendment and is in a satisfactory form to the City.

"Maintain" or **"Maintenance"** includes to repair, reconstruct, and replace defective Works;

"Maintenance Period" means the period of time of at least one year determined under section 10 of this Agreement for the repair and remediation of defects in the Works by the Owner;

"**Security**" means the total amount of the cash, certified cheque or Letter of Credit deposited by the Owner pursuant to section 3 of this Agreement for completion of the Works and fulfilment of this Agreement;

"**Subdivision and Development Servicing Bylaw**" means "Subdivision and Development Servicing Bylaw No. 3419, 2010" as amended from time to time; and

"**Works**" means the whole of the work, equipment, materials, labour, matters and things to be provided, performed and constructed by the Owner under this Agreement and as defined in Appendices "A" and "B" attached to and forming part of this Agreement.

2.0 TIME FOR COMPLETION

- 2.1 The Owner shall commence (or has commenced) the Works and shall complete the Works by no later than DATE.
- 2.2 The Owner and its officers, employees, agents and contractors shall indemnify, release and save harmless the City, its elected officials, officers, and employees from any damages, costs, losses, expenses, claims, actions or proceedings incurred, arising from, or brought or alleged as a result of any failure to complete the Works by the date set out in section 2.1.
- 2.3 The release and indemnity in section 2.2 shall survive any termination of this Agreement in relation to any matter arising therefrom.

3.0 SECURITY

- 3.1 As security for the performance of all the terms and conditions in this Agreement, the Owner has deposited with the City:
 - (a) Cash, certified cheque or Letter of Credit in the amount of \$____, **125% of COST/DEFICIENCY TOTAL**; or
- 3.2 The City may draw upon the Security at any time when the Owner is in default under this Agreement and may hold or use the proceeds in accordance with this Agreement.
- 3.3 The amount of the Security may be reduced at any time with the approval of the City in writing, evidenced by the signature of the Approving Officer or Building Inspector.
- 3.4 If the Works or a specified portion of the Works are not commenced or completed by the applicable date stated in Section 2 of this Agreement, the City may, without notice, undertake and complete the Works at the cost of the Owner and for that purpose may expend the Security in whole or in part.

- 3.5 The City may complete the Works either by itself or by contractors employed by it. The City shall be under no obligation to complete the Works and may complete the Works in whole or in part, at the City's discretion.
- 3.6 If the Owner is in default on the Works required under this Agreement, and if there are insufficient monies included in the Security to complete the Works, the Owner shall pay the amount of the insufficiency to the City forthwith upon receipt of the City's invoice for that amount, whether or not the City has then completed the balance of the Works.
- 3.7 The cost of the Works which is payable by the Owner shall include the actual costs of construction plus the costs of engineering, supervision, legal, contract administration, tendering, survey, other professional services and all other costs reasonably required for Completion of the Works.
- 3.8 If the Owner completes the Works or if the City's costs towards the Works are less than the amount of the Security, then the Security or the unused part of it, less the amount of the maintenance security required under section 10.1, shall be returned to the Owner by the City, without interest, not more than 60 days after Completion of the Works.
- 3.9 If the City incurs any costs in correcting any breach of the Owner's obligations under this Agreement (in addition to non-completion of the Works) and those costs are not paid by the Owner within 30 days of receipt of the City's invoice, the City may recover those costs from the Security.
- 3.10 The Owner acknowledges that the City has relied on cost estimates prepared by one or more Consulting Professionals in establishing the amount of the Security and that the Owner has so advised the Consulting Professionals prior to submission of those estimates to the City by the Owner.
- 3.11 It shall be a default of the Owner under this Agreement, and the City shall be entitled to draw upon the Security and complete the Works or remedy any defects in the Works if any of the following occurs:
- (a) the Owner 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 Owner; or
 - (c) a receiver or receiver-manager of the Owner, or the Land or any part thereof, is appointed or any encumbrance-holder takes possession of the Land or any part thereof.

4.0 ENTRY ON LAND

- 4.1 The Owner authorizes the City, its agents and contractors to enter upon the Land at any time as may be necessary or convenient for the carrying out of this Agreement, including without limitation for the purpose of inspecting or undertaking the Works.
- 4.2 The Owner may enter onto the City land specified in Appendices "A" and "B" for the purpose of installing the Works referred to in section 2.1 of this Agreement provided that nothing in this Agreement shall be construed as a covenant or representation by the City that the Owner has any right to own, operate or make use of the Works.

5.0 STANDARDS

- 5.1 Subject to section 6.1, the Works shall be provided and constructed in accordance with Appendices "A" and "B".

6.0 COMPLIANCE WITH REGULATIONS AND DEBRIS REMOVAL

- 6.1 The Owner shall comply with the provisions of all municipal bylaws, permits and resolutions, and all applicable statutes and regulations, throughout the Development, including changes in subdivision regulations or requirements enacted by Bylaw prior to commencement of construction of the Works.
- 6.2 In the event that any material or debris is left upon any highway or other public property during or after the construction of the Works, the City may remove the material or debris at the expense of the Owner.

7.0 OWNER'S CONSULTING PROFESSIONALS

- 7.1 At all times during the construction and provision of the Works, the Owner shall retain one or more Consulting Professionals to oversee the Completion of the Works and any such Consulting Professional shall be considered to be the agent of the Owner.
- 7.2 Any explanations, order, instructions, directions and requests give by the City to the Consulting Professional shall be deemed to have been given to the Owner.
- 7.3 The Owner acknowledges and agrees that the Owner relies exclusively on its own Consulting Professionals and contractors and that the City 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 City are for the sole benefit of the City and shall in no way relieve or excuse the Owner from constructing the Works in strict compliance with the provisions of this Agreement.

8.0 LAND TITLE OFFICE DOCUMENTS

- 8.1 On or before Completion of the Works, the Owner shall prepare, execute and register in the Land Title Office, each for consideration from the City of one (\$1.00) dollar, the covenants, easements, rights of way, releases and any other Land Title Office documents and plans necessary to transfer the Owner's interest in the Works or as otherwise described in the Appendices to this Agreement, all in the City's usual standard form or as otherwise agreed by the City.
- 8.2 The Owner acknowledges that Completion of the Works includes registration of the documents and plans referred to in section 8.1.

9.0 DRAWINGS

- 9.1 The Owner shall submit to the City final as-built drawings and supporting documentation, to the satisfaction of the City, of all the Works as constructed and as approved by the City, before issuance of the Certificate of Completion.
- 9.2 The Owner acknowledges that Completion of the Works includes providing the documents and plans referred to in section 9.1.

10.0 MAINTENANCE OF WORKS

- 10.1 The Owner shall:
- (a) prior to the issuance of the Certificate of Completion, deposit with the City the sum of \$___, **5% of \$ COST TOTAL** in cash, cheque or Letter of Credit to this Agreement as security for performance of the Owner's obligations under this section;
 - (b) maintain the Works in complete repair for a minimum period of one year from the date of the Certificate of Completion; and
 - (c) upon ten (10) days' notice from the City or immediately, in the case of an emergency, remedy any defects in the Works appearing within a period of one year from the date of the Certificate of Completion.
- 10.2 If the Land is the subject of an application for subdivision, the commencement date of the Maintenance Period under this section shall be the later of the date of the Certificate of Completion and the date that the subdivision plan is approved.
- 10.3 If the Owner fails to maintain the Works, or remedy any defect in design, materials or workmanship or pay for any damage resulting from the Development, the City may deduct from the Security posted under this section the cost of repairing the Works, remedying such defect or paying for such damage, and sections 3.5 through 3.10 of this Agreement shall apply.

- 10.4 The City may extend the Maintenance Period to permit correction of any defects which have not been corrected before the end of the Maintenance Period.
- 10.5 Upon expiry of the Maintenance Period, as extended under section 10.4, the City will release the Owner from any obligations under this section and return any unused Security held by the City under this section.

11.0 CERTIFICATE OF ACCEPTANCE

- 11.1 The City shall provide the Owner with a Certificate of Acceptance upon satisfactory completion by the Owner of all of the covenants and conditions in this Agreement, including but not limited to maintaining the Works and keeping them in complete repair for the Maintenance Period, correction of defaults and deficiencies in the Works, and the receipt of all drawings and documents by the City.

12.0 INDEMNIFICATION

- 12.1 The Owner shall indemnify and save harmless the City, its officers, employees, Council members, contractors and agents:
- (a) against all damages, costs, losses or expenses incurred by the City as a result of the Owner's breach of this Agreement or damage to any property during the construction or provision of the Development;
 - (b) against all expenses and costs which may be incurred by reason of liens, non-payment of labour or materials, Workers Compensation assessments, employment insurance, Federal or Provincial tax or union dues check off; and
 - (c) from any claims, actions or proceedings brought or alleged by any person relating to the construction or provision, maintenance or repair of the Works by the Owner.
- 12.2 This indemnity shall survive any termination of this Agreement in relation to any matter arising while this Agreement is in effect.

13.0 INSURANCE

- 13.1 The Owner shall take out and maintain at all times from commencement of construction of the Works until the City issues a Certificate of Acceptance, insurance at its sole expense. Such insurance shall include commercial general liability insurance against claims for bodily injury including death and property damage or loss arising from its operations in or about the Land, highways or other lands in carrying out the construction of the Works and in performing its obligations under this Agreement. Such insurance shall name the City as an additional insured and shall contain a cross-liability or severability of interest

clause so that the City and the Owner are insured in the same manner and to the same extent as if individual policies had been issued to each. Such insurance shall be in the amount of not less than three million dollars (\$ 3,000,000.00) per occurrence or such other amount as the City may reasonably require. The Owner shall provide to the Approving Officer or Building Inspector, as the case may be, proof in writing of such insurance before commencing the Works, again before the issuance of a Certificate of Completion, and again before the issuance of a Certificate of Acceptance. The policy of insurance shall contain a provision requiring the insurer to give to the City 30 days prior written notice before any alteration or cancellation of the policy is effective. Nothing in this Agreement shall relieve or excuse the Owner from maintaining any other insurance that a prudent owner or developer of land, or a prudent contractor, would maintain, and nothing in this Agreement shall constitute a warranty or representation by the City that the types and amounts of insurance coverage required are adequate for any purpose.

14.0 NO REPRESENTATIONS

14.1 The Owner acknowledges that the City has made no representations, covenants, warranties, guarantees, promises or agreements with the Owner with regard to the subject matter of this Agreement, other than those in this Agreement.

15.0 MUNICIPAL PROPERTY IN WORKS

15.1 Upon issuance of the Certificate of Completion, all of the Works located within any highway in the possession of the City or within any easement or statutory right of way held by the City shall become the property of the City, free and clear of any claim by the Owner or any person claiming through the Owner, without payment of any further compensation or consideration. The Owner shall make, do, execute and cause to be made, done and executed, all such further acts, deeds, rights of way, covenants or assurances in favour of the City as are required for the effectual transfer of the Owner's right, title and interest in the Works to the City.

16.0 TERMINOLOGY

16.1 Wherever the singular or the masculine are used in this Agreement, they shall be interpreted as meaning the plural or the feminine or body corporate where the context requires.

17.0 ASSIGNMENT

17.1 The Owner's obligations under this Agreement shall not be assigned without the written consent of the City, such consent not to be unreasonably withheld.

18.0 BINDING EFFECT

18.1 This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Subject to the terms of an approved

assignment under section 17 of this Agreement, the Owner's obligations under this Agreement shall continue in effect notwithstanding any transfer of title to all or part of the Land.

19.0 TIME OF THE ESSENCE

19.1 Time is of the essence of this Agreement.

20.0 JURISDICTION AND POWERS OF CITY

20.1 Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of the City and its council in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, and without limiting the generality of the foregoing the construction of the Works shall not confer directly or indirectly any exemption or right of set-off from development cost charges, connection charges, application fees, user fees or other fees or charges, except as statutorily required.

21.0 ACKNOWLEDGMENT

21.1 The Owner acknowledges having read and fully understood all the terms and conditions of this Agreement and confirms that this Agreement has been entered voluntarily.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day, month and year first above written.

CITY OF CAMPBELL RIVER by its authorized)
signatories)

_____)
Signature:)

_____)
Name:)

«Name1» by its authorized signatories)

_____)
Owner Signature:)

_____)
Owner Name:)

APPENDIX "A"

1. The Works shall be provided and constructed in accordance with the Subdivision and Development Servicing Bylaw standards and completed to the satisfaction of the City.
2. If the Works are in any way defective or do not operate in a satisfactory manner, the City shall give notice to the Owner and the Owner shall, at the Owner's expense, immediately modify and reconstruct the Works so that the Works are fully operative and function in accordance with the Subdivision and Development Servicing Bylaw standards.

APPENDIX "B"

Components of the Work

<insert table of costs>

* See Engineer's Cost Estimate attached