

THE DISTRICT OF HOPE

SUBDIVISION AND DEVELOPMENT SERVICING

SERVICING AGREEMENT

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THIS AGREEMENT made this _____ day of _____ 20____:

BETWEEN: The District of Hope, a District Municipality incorporated under the Municipal Act of the Province of British Columbia, and having its Municipal Offices at 325 Wallace Street, Hope, British Columbia (hereinafter called the *Municipality*)

OF THE FIRST PART

AND: _____ (hereinafter called the *Owner*)
OF THE SECOND PART

WHEREAS:

A. The *Owner* is an owner of lands and premises within the *Municipality*, in the Province of British Columbia, more particularly known and described as follows (legal description):

(hereinafter called the "Lands").

- B. The *Owner* desires to subdivide the Lands or develop upon the Lands.
- C. The *Owner* proposes to construct and install at his expenses all *works and services* described and detailed on the drawings set out in Appendix "C" of this Agreement, all of which shall be completed in accordance with the provisions of the *Subdivision and Development Servicing Bylaw* (the "Bylaw") and to the satisfaction and approval of the *Municipality*.
- D. The *Approving Officer* for the *Municipality* has agreed to approve the *subdivision* of the Lands respectively, subject to the terms and conditions contained in this Agreement, and the posting with the *Municipality* of the *security deposit* described herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the promises, covenants and agreements hereinafter set forth, the parties hereto covenant, agree, represent and promise as follows:

Appendices

1. The following appendices will be read with and form part of this Agreement:
 - a) Appendix “A” – A copy of the *subdivision* plan for the Lands;
 - b) Appendix “B” – A list of the *Works and Services* and an estimate of their respective construction costs; and,
 - c) Appendix “C” – Construction drawings as per Section 20 to be used for the construction of the *Works and Services*.

Owner to Do Work

2. The *Owner* agrees to construct and provide, at the *Owner's* expense, all the *Works and Services* listed and shown on Appendices “B” and “C”, as approved by the *Municipality*, in accordance with the standards contained in the Bylaw.

Transfer of Interest in Works

3. The *Owner* agrees to assign, transfer and convey to the *Municipality* its rights, title and interest in the *Works and Services* on any and all of the Lands, upon or in which the *Works and Services* are situated, upon completion of the *Works and Services*.
4. Completion of the *Works and Services* shall be witnessed by the issuance of a *Certificate of Final Acceptance* by the *Municipality*.
5. So long as the *Owner* owns the Lands, the *Owner* will, upon the request of the *Municipality*, make, do, execute, or cause to be made, done, and executed, all such further acts, deeds, rights-of-way, easements, and assurances for the more effectual carrying out of this Agreement.

Permission to do the Work

6. The *Municipality* agrees to permit the *Owner* to construct the *Works and Services*, including that portion of the *Works and Services* to be constructed on dedicated *highways* controlled by the *Municipality*, on the terms and conditions herein and in the manner required by and at the places specified in the appendices.
7. Nothing in this Agreement shall be construed as an undertaking, promise, or covenant on the part of the *Municipality* to make available the use of or access to the *Works and Services* for any purpose and without limiting the foregoing, for the purpose of serving the Lands or any other real property whatsoever either owned or controlled by the *Owner* or its associates or otherwise.

8. The *Municipality* reserves the right in its sole and absolute discretion to make available, operate, alter, use, extend, diminish, discontinue, tear up, sell, rent or otherwise dispose of the *Works and Services* as its *Council* deems fit from time to time.

Changes to Bylaws

9. The *Owner* agrees to comply with any changes in the *subdivision* requirements and standards enacted by the Bylaw prior to the actual commencement upon the Land of the *Works and Services* contemplated by this Agreement.

Lot Grading

10. The *Owner* agrees to adhere in all respect to the contours, elevation and drainage patterns indicated on the Lot Grading & Individual Lot Storm Infiltration Plan and the Offsite Storm Infiltration Plan prepared by the Civic Consultants Ltd included in the *Engineering* Drawings which are attached as Appendix “C” to this Agreement.

Start of Work

11. The *Owner* agrees not to commence work until the *Approving Officer* provides the *Owner* with written permission to proceed with construction.

Completion of Work

12. The *Owner* shall complete the construction of the *Works and Services*, specified in Appendix “C” as Project No. _____ of the *Municipality* to the satisfaction of the *Municipality*, within one (1) year from the date of this Agreement.

Owner to grant *rights-of-way*

13. The *Owner* agrees to grant to the *Municipality* all necessary road dedications, statutory *rights-of-way* and easements over the Lands to accommodate the *Works and Services*.
14. Where the *Works and Services* are located upon or under privately owned lands other than the Lands, the *Owner* agrees to obtain, at the *Owner's* expense, all necessary road dedications, statutory *rights-of-way* and easements over those privately owned lands, in favor of the *Municipality*, where applicable, to accommodate the *Works and Services*.

Design by a Professional Engineer

- 15. The *Owner* agrees that all required *works and services* shall be designed by a Professional *Engineer*, who shall be a registered member in good standing with the Association of Professional Engineers and Geoscientists of British Columbia and retained by the *Owner*.
- 16. Plans and specifications for the *Works and Services* shall be prepared by or under the direction supervision of the Professional *Engineer* and all plans shall bear his or her professional seal and signature.
- 17. The *Owner* agrees to ensure that his Professional *Engineer* maintains professional liability and errors and omissions insurance to a value of \$250,000 per occurrence during the term of his/her engagement.
- 18. The *Owner* agrees to retain the Professional *Engineer* during the construction period for the purposes of inspection to ensure compliance with the approved design and to provide certification of the Record Drawings.
- 19. The *Owner* agrees that the Professional *Engineer* shall be responsible for satisfying himself or herself of the adequacy of the design of the *Works and Services*.

Engineering Drawing

- 20. The *Owner* agrees that the intent of this Agreement is that the *Owner* shall construct fully completed *Works and Services* and grant all necessary easements as shown in the plans and specifications prepared by the Professional *Engineer*:

Under Drawings No.

And as received for the purposes of this Agreement by the *Approving Officer* of the *Municipality* on the ____ day of _____, 20____.

Changes to Design by *Municipality*

21. The *Approving Officer* may alter the plans, because of the conditions of the Lands, so that the *Works and Services* function and operate in a manner satisfactory to the *Approving Officer*.
22. Should the *Works and Services*, as provided herein, prove to be in any way defective or should they not operate to the satisfaction of the *Approving Officer*, then the *Owner* shall, at his own expense, modify and reconstruct the *Works and Services* so that the *Works and Services* shall be fully operative and function to the satisfaction of the *Approving Officer*.

Service Record Cards and Inspection Checklist

23. The *Owner* agrees to provide Service Record Cards for each parcel created by the *Subdivision*, a Certificate of Inspection, and an Inspection Checklist in the standard *Municipal* forms to the *Approving Officer* and to ensure that his *Engineer* prepares and signs his or her portion of the *Certificate of Substantial Performance* and his or her portion of the *Certificate of Total Performance* upon completion of the construction of the *Works and Services*.

Certificate of Substantial Performance

24. The *Developer* shall provide a *Certificate of Substantial Performance* for the *Works and Services*, oversee the correction of the major deficiencies, and coordinate the submission by the *Owner* of the documentation required by the *Municipality*.
25. The *Certificate of Substantial Performance* shall not be construed as acceptance of the *Works and Services* by the *Municipality*.

“Record Drawing” Submission

26. The *Owner* agrees to submit to the *Municipality* the final Record Drawings of the constructed works and records of construction test results, as accepted by the *Approving Officer*, pursuant to the Bylaw, with 60 days of the date of issuance of the *Certificate of Substantial Performance*.

Maintenance Period and Responsibility

27. The *Owner* agrees to maintain every part of the *Works and Services* in perfect working order and in complete repair for a period of one year from the date shown on the *Certificate of Substantial Performance* in accordance with the Bylaw.
28. Should the *Owner*, for any reason, fail to maintain the *Works and Services* or remedy any defect or damage when ordered to do so by the *Approving Officer*, then the *Approving Officer*, at his option, after giving the *Owner* seven days written notice, may maintain the *Works and Services* and charge the *Owner* with all costs, charges and expenses for doing the Work.
29. The decision of the *Approving Officer* shall be final with respect to the necessity for repairs, or the adequacy of any work done.
30. Once any water mains covered by this Agreement are connected to the *Municipal* water system, only *Municipal* crews or *contractors* under the direct supervision of the *Municipality* may undertake work on such water mains.
 - a) *Municipal* crews and contractors retained by the *Municipality* shall correct any defects, imperfections, acts of vandalism, settlements or rechlorination and flushing on such watermains, as deemed necessary by the *Approving Officer*, during the one year period from the date shown on the *Certificate of Substantial Performance*.
 - b) The *Owner* shall pay all costs, charges and expenses incurred by the *Municipality* in undertaking such work including, but not limited to, *contractor* costs.
31. Any rechlorination and flushing work on any water main shall be considered to be “emergency” work and as such, the *Owner* may not receive prior notice from the *Municipality* that such work is being undertaken by the *Municipality*.

Certificate of Final Acceptance

32. Upon satisfactory completion by the *Owner* of all the terms and conditions in this Agreement, including the maintenance of the *Works and Services* in complete repair for a period of one year, the *Municipality* agrees to provide the *Owner* with a *Certificate of Final Acceptance*, signed by the *Approving Officer*.
 - a) The *Certificate of Final Acceptance* of the works will be issued by the *Approving Officer* when all deficiencies have been corrected, the Record

Drawings and service records have been received by the *Municipality*, and the *Maintenance Period* outlined herein has expired.

- b) All such *Works and Services* remain at the risk of the *Owner* until the *Certificate of Final Acceptance* has been issued by the *Municipality*.

Final Building Inspection Withheld

- 33. The *Owner* agrees that the *Municipality* will withhold the granting of a Final Occupancy Inspection for the use of any building or part of a building, constructed upon the Land until all of the essential *Works and Services* have been completed to the satisfaction of the *Approving Officer*.

Owner Indemnifies the Municipality

- 34. The *Owner* agrees to save harmless and effectually indemnify the *Municipality* against:
 - a) All actions and proceedings, costs, damages, expenses, claims and demands whatsoever and by whomsoever brought by reason of the construction, installation, maintenance or repair of the *Works and Services*;
 - b) All expenses and costs which may be incurred by reason of the construction, installation, maintenance or repair of the *Works and Services* resulting in damage to any property owned in whole or in part by the *Municipality* for which the *Municipality* by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, install, maintain or repair;
 - c) All expenses and costs which may be incurred by reason of liens for non-payment of labour or materials, Workers' Compensation, Employment Insurance, Federal or Provincial Taxes, encroachments owing to mistakes in surveying;
 - d) All actions proceeding, costs, damages, expenses, claims and demands arising from the *Owner's* trespass or damage to private property or properties owned by a person other than the *Municipality*;
 - e) All expenses and costs which may be incurred by the *Municipality* as a result of faulty workmanship, defective material or both in any of the *Works and Services* installed by the *Owner*.

35. The above clause shall not be construed as to extinguish any rights that the *Municipality* would have, were it not for the inclusion of that clause.

Insurance by *Owner*

36. The *Owner* agrees, at his sole expense throughout the term of this Agreement, to carry the following policies of insurance with limits of not less than the following:
- a) Comprehensive public liability insurance and property damage insurance providing coverage of at least \$3,000,000 inclusive against liability for bodily injury or death and/or damage to property on an all risk occurrence basis;
 - b) Motor vehicle insurance for public liability and property damage providing coverage of at least \$3,000,000 inclusive on owned, non-owned or hired vehicles;
 - c) Completed operations coverage on all-risk coverage basis of at least \$4,000,000 inclusive against liability for bodily injury, death and/or damage to property of others arising out of the existence of any condition in the work when completed or in any installation or repair operations during the *maintenance period*.

Insurance Coverage

37. The *Owner* agrees to provide the following insurance coverage and to provide the *Municipality* with a copy of the insurance policy prior to the commencement of any construction of *Works and Services*:
- a) To protect the *Owner* and the *Municipality* against all claims arising out of
 - b) Death or injury to persons; and
 - c) Damage to or loss of use of any property of third persons, including but not limited to the following classes of property: real property, chattels, land, works, buildings, structures, wires, conduits, pipes, mains, shafts, sewers, tunnels and apparatus in connection therewith, even when the damage or loss of use is caused by vibration, moving, shoring, underpinning, raising, rebuilding or demolition of any building, structure or support or by excavation, tunnelling or other work below the surface of the ground or water; and
 - d) Damage to or loss of any *Municipal* buildings, structure, stores, equipment and materials included in or required for the carrying out of the works.

38. Every policy of insurance required will:
- a) Name the *Municipality* as an additional insured;
 - b) State that the policy applies to each insured in the same manner and to the same extent as if a separate policy had been issued to each insured; and
 - c) State that the policy cannot be cancelled, lapsed or materially changed without at least thirty days written notice to the *Municipality*, delivered to the *Municipal Clerk*.

Security Deposit

39. As security for the due performance of all of the covenants and promises contained in this Agreement, the *Owner* has forthwith deposited with the *Municipality* a *security deposit* in the amount of \$_____, in the form of cash, certified cheque, or an irrevocable and automatically renewable Letter of Credit acceptable to the *Municipality* (the “*Security Deposit*”).

Forfeit of the Security Deposit

40. In the event that the *Owner* fails to construct and install the *Works and Services* prescribed within the time specified in Section 12, the *Owner* shall forfeit the *Security Deposit* to the *Municipality*.

Design Guarantee

41. Where security is provided in lieu of Record Drawings, (the “*Design Guarantee*”), the *Owner* agrees to have the Record Drawings completed to the satisfaction of the *Approving Officer* within 90 days of the date when the *Design Guarantee* was given.
42. Failure to complete the Record Drawings will result in the forfeiture of the *Design Guarantee* in the amount of \$5,000 which shall be used by the *Municipality* to complete the Record Drawings.
43. Should the *Owner* fail to complete the Record Drawings, the *Owner* agrees to give to the *Municipality* digital and paper copies of the most recent drawings.
44. Once the *Design Guarantee* is forfeited, the *Design Guarantee* becomes non-refundable in whole or in part.

Use of Security

45. The *Owner* agrees that, if all the *Works and Services* or obligations are not completed, installed or performed pursuant to this Agreement, the *Municipality* may complete or fulfill the *Works and Services* or obligations at the cost of the *Owner*, deduct the cost of completion from the *Security Deposit*, and return the balance, if any, of the *Security Deposit* to the *Owner*, less any additional administration fees or costs incurred.
46. If there is insufficient money on the *Security Deposit*, the *Owner* agrees to pay any such deficiency to the *Municipality* immediately upon receipt of the *Municipality's* bill of completion.
47. The *Municipality* may do the work itself or by *contractors* employed by the *Municipality*.
48. If the *Owner* completes the *Works and Services*, then the *Municipality* shall return the *Security Deposit* to the *Owner*.

Release of Security

49. If the *Approving Officer* is of the opinion that the *Works and Services* or any portion thereof have been adequately completed and the *Owner* has provided the required documentation and has complied with this Agreement, the *Municipality* may return all or part of the *Security Deposit* to the *Owner*, provided that there is no litigation pending or threatened by any third party against the *Municipality* as a result of, or arising from, the construction of the *Works and Services*.
50. The *Approving Officer* may return all or part of the *Security Deposit* to the *Owner* at such time and in such amounts as he may deem proper, provided that he retains an amount equal to 15% of the *Security Deposit*, with a minimum of \$2,500, to secure performance of the maintenance required of the *Owner*. (the "*Maintenance Deposit*").

Return of *Maintenance Deposit*

51. If the *Approving Officer* is satisfied that the *Owner* has complied with the terms of this Agreement, the *Maintenance Period* has expired, and if there is no litigation pending or threatened by any third party against the *Municipality* as a result of or arising from the construction of the *Works and Services*, the *Municipality* shall return the *Maintenance Deposit* to the *Owner*.

52. Upon issuance of the *Certificate of Final Acceptance* and the return of the *Maintenance Deposit*, the *Owner's* responsibility for the *Works and Services* shall cease.

Administration Fee

53. The *Owner* agrees to pay the *Municipality* a non-refundable fee in the amount of \$ _____ to cover *Municipal* administration and processing costs.
54. These fees are payable prior to the signing of this agreement or the commencement of the construction of the *Works and Services*, whichever is earlier.

No Other Representations

55. It is understood and agreed that the *Municipality* has made no representations, covenants, warranties, guarantees, promises or agreements (verbal or otherwise) with the *Owner* other than those contained in this Agreement.

Compliance with Bylaws

56. Subject to this Agreement, the *Works and Services* shall comply with all the bylaws of the *Municipality*.

No Waiver

57. The *Owner* agrees that nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of the *Municipality* in the exercise of its functions under any public and private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Land as if the Agreement had not been executed and delivered by the *Owner*.

Municipal Charges and Taxes

58. The *Owner* agrees to pay the *Municipality* any and all costs and expenses of all connections and tie-ins to the said *Works and Services* to existing *Municipal water systems, storm drainage systems, and sanitary sewer systems*, water meters, driveways and any other *Municipal* services and the cost of installing all necessary street name and traffic control devices and any other work undertaken by the *Municipality* on behalf of the *Owner*.

59. The *Owner* agrees to make such payment within 30 days of the date of the invoice, mailed to the *Owner* by the *Municipality*.
60. Upon receiving payment and upon request of the *Owner*, the *Municipality* shall reduce the Letter of Credit by the invoiced amount.
61. If the *Municipality* does not receive the payment within 30 days of the date of the invoice, the *Municipality* shall draw the invoiced amount from the *Security Deposit* posted by the *Owner*.
62. The *Owner* agrees to pay to the *Municipality*, prior to the approval of the proposed *subdivision* of the Lands:
 - a) all arrears of taxes or charges outstanding against the Lands; and
 - b) all current taxes or charges levied or to be levied upon the Lands on the basis and in accordance with the assessment and collector's roll entries and with other applicable bylaws.

Excess or Extended Services

63. The *Owner* waives, relinquishes and abandons any right which the *Owner* now has or may have at any time thereafter for any contribution from the *Municipality* toward the *Owner*'s costs of installing the *Works and Services* and agrees that none of the *Works and Services* shall be construed as "*excess or extended services*" as set out in the Municipal Act, unless the *Owner* and the *Municipality* enter into this type of agreement at a later date.
64. The *Owner* releases and discharges the *Municipality* from all manner of actions, causes or action, debts, accounts, covenants, claims and demands whatsoever against the *Municipality* now and in the future which the *Owner* may have by reason of installation by the *Owner* of the *Works and Services* with no contribution toward the cost of the *Works and Services*, including but not limited to failure by the *Municipality* to impose or collect any *Latecomer Charges* from the owner's of lands which may connect to or use the *Works and Services*, unless the *Owner* and the *Municipality* enter into this type of agreement at a later date.

Additional provisions

65. When the words "will" or "shall" are used in this agreement, it will be construed as mandatory.

- 66. When the singular or the masculine is used in this agreement, it will be construed as meaning the plural or the feminine or body corporate or politic where the context of the parties hereto so require.
- 67. This Agreement shall ensure to the benefit of and be binding upon the parties, their respective successors and assigns.
- 68. Unless otherwise defined in this Agreement, the definitions used in the current *Subdivision and Development Servicing Bylaw* shall apply to this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this agreement this day and year first above written.

SIGNED, SEALED AND DELIVERED)	
in the presence of:)	
Signature: _____)	
Name: _____)	_____
Title: _____)	<i>Owner's Signature</i>

SIGNED, SEALED AND DELIVERED)	District of Hope by its
in the presence of:)	authorized signatory(ies):
Signature: _____)	_____
Name: _____)	<i>Approving Officer</i>
Title: _____)	