

SCHEDULE J

STANDARD DEVELOPMENT AGREEMENT DOCUMENT

This is Schedule J of the City of
Vernon Subdivision and Development
Servicing Bylaw No. 3843, 1992

Updated June 22, 2009 - (Bylaw 5205)

Corporate Officer

SCHEDULE J – BYLAW NO. 3843

THIS AGREEMENT made this day of A.D., 20_____.

BETWEEN: THE CORPORATION OF THE CITY OF VERNON, a local government, duly incorporated under the laws of the Province of British Columbia, having an office at 3400 - 30th Street, in the City of Vernon, Province of British Columbia, V1T 5E6

(hereinafter called the "City")

AND:

(hereinafter called the "Owner")

WHEREAS:

A. The Owner is the registered owner or holder of a Registered Right to Purchase lands and premises situate, lying and being in the City of Vernon, Province of British Columbia, and more particularly known and described as:

(hereinafter called the "Land");

B. The Owner wishes to subdivide or develop the Land, or any part thereof, in the manner shown on a Plan of Subdivision or Building Permit Application which has been submitted by the Owner to the Approving Officer or the Chief Building Inspector, or his designate, of the City, as applicable, for approval, a copy of which plan is attached hereto as Schedule "One", and is hereinafter called the "Subdivision Plan" or "Development Plan", as applicable;

C. The Owner is desirous of entering into this Agreement with the City pursuant to the provisions of Section 940 of the Local Government Act, in order to obtain approval from the Approving Officer of the Subdivision Plan or a valid Building Permit prior to completion of the construction and installation on and/or off the Land of all works and services required by the City to be constructed and installed on the Land and/or on one-half of any highway immediately adjacent to the Land by the Owner.

D. The Owner is also desirous of voluntarily providing works and services beyond the Land and the highway immediately adjacent to the Land in order to obtain approval of the subdivision or the development, as applicable, as the City deems it to be too costly at this time to provide those works at the expense of its ratepayers.

NOW THIS AGREEMENT WITNESSETH that in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

1. In this Agreement, unless the context otherwise requires:

"Work" shall mean all works, services, roads and any other improvements required to be constructed and erected or installed, both on and off the Land, by the Owner under the provisions of this Agreement.

"Complete" or "Completion" or any variation of these words, when used with respect to the Work, shall mean completion of the Work, or a part thereof as the context requires, in accordance with the provisions of this Agreement and to the satisfaction of the City Engineer when so certified by them in writing.

"Warranty Period" is the period of time after the Works have been accepted that the Owner is responsible to repair the Works in the event of any defect in workmanship or materials. This does not include damage by others or normal wear and tear.

"City Engineer" shall mean the Manager of Engineering Services for the City or their designate.

"Approving Officer" shall mean the Approving Officer or their designate as appointed by the Council of the City.

"Project Engineer" shall mean the professional engineer retained by the Owner to complete the design and supervision of construction of the Work, to ensure conformance of the Work with the Approved Engineering Plans and provide the as-built drawings for the Work and service cards for the lots.

"Contractor" shall mean and include contractors and sub-contractors employed by the Owner, directly or indirectly, in the construction and installation of the Work.

2. The Owner covenants and agrees to construct and install on the Land and off-site as the case may be, in accordance with the plans and specifications initialed by the Owner, or his representative and the City Engineer for identification, the Work as follows:

- (a) Road works;
- (b) Drainage works and services;
- (c) Sewage works and services;
- (d) Water works and services;
- (e) Off-site sidewalk;
- (f) Boulevard landscaping;
- (g) Curbs and gutters;
- (h) Street lighting;
- (i) Underground electrical, telephone, cablevision, internet and gas works; and
- (j) Additional works required as a condition of approval;

Each of the parties hereto acknowledge having in its or his possession a true copy of the aforesaid plans and specifications (herein called the "Approved Engineering Plans"), and acknowledge and agree that the Approved Engineering Plans are hereby incorporated into and made part of this Agreement and are attached as Schedule "Two".

3. The Work shall be carried out by the Owner or his contractors in accordance with the Approved Engineering Plans, and in accordance with the provisions of the Subdivision and Development Servicing Bylaw of the City from time to time in force. Wherever the provisions of the plans and specifications and the said Subdivision Bylaw shall conflict, the City Engineer shall determine and consent in writing to the provisions which shall be enforced and constructed.
4. The cost of the Work shall be borne by the Owner, and the Owner shall employ only bonded contractors to carry out and complete the Work.
5. The Owner shall obtain and provide to the City upon request and free of charge true copies of all contracts and sub-contracts entered into by the Owner or its contractors in relation to the Work.
6. The decision of the City Engineer shall be final and binding on all parties hereto in determining whether or not the Work or any part thereof has been carried out and completed in accordance with the provisions of this Agreement. The date of acceptance of the Works will be the initiation date for the Warranty Period for the Works.
7. As soon as the Owner is satisfied that he has caused the Work to be completed, and prior to final acceptance of the Work, the Owner shall submit to the City Engineer final as-built drawings of the Work and service cards for each lot, sealed by a Professional Engineer. This information forms part of the overall project and therefore must be submitted within ninety (90) days of the Completion Date. The as-built drawings must be provided in formats acceptable to the City Engineer which shall include one digital copy in the latest AutoCAD version being used by the City at the time of submission, one digital copy in dwf format and two (2) paper copies. Each drawing in digital format, whether dwg or dwf must be digitally stamped by the Project Engineer. Each paper copy must be stamped and signed by the Project Engineer. All information required by the City on as-built drawings and service cards must be clearly presented and must be correct. Service cards are to be submitted on individual 8 ½ x 11 paper sheets and in digital dwf format. Until the City accepts the final as-built drawings, the City will hold \$2,500 per sheet that is missing or deficient. Until the City accepts the final service cards, the City will hold \$500.00 per card for each card that is missing or deficient. Corrections to the service cards made by the City shall be at the sole cost of the owner, which cost will be deducted from the securities to be refunded.

8. The Owner shall cause the Work to be carried out and completed not later than the day of _____, 20__ (hereinafter called the "Completion Date").
9. Prior to obtaining approval of the subdivision by the Approving Officer or the development by the Chief Building Inspector, or his designate, the Owner:
 - (a) Shall pay all arrears of property taxes chargeable against the Land by the City; and
 - (b) Shall pay all current assessed property taxes levied against the Land by the City.
10. The Owner further covenants and agrees to pay to the City, prior to commencement of the subdivision or the development, as applicable, charges for the engineering development review and inspection of the Work, in accordance with the City of Vernon's current Fees and Charges Bylaw as approved by the City Engineer; and further, to pay when the same are billed by the City, administration fees, engineering fees and legal costs incurred by the City and relating to the subdivision or development of the Land and construction and installation of the Work, and the cost of connecting the Work to the City's drainage and sewage collection systems and, where applicable, the GVS waterworks. Phased subdivisions and developments under the same owner are eligible for fee calculations and charges based on the entire project. *(Mar 23/15, Bylaw 5549)*
11. Prior to approval of the Subdivision Plan by the Approving Officer or the Development Plan by the Chief Building Inspector, or his designate, and as security for the due and proper performance by the Owner of all his covenants and agreements herein contained, the Owner shall deposit with the City, an unconditional, irrevocable Letter of Credit, in a format acceptable to the City and drawn on a chartered bank in Canada for a term of not less than twelve (12) months, in the amount of _____ (\$ _____), which is equal to One Hundred and Fifty percent (150%) of the cost of constructing and providing underground pipe works, services and appurtenances including trench backfill to the road structure level (Section 2b and 2c) and One Hundred and Twenty Five percent (125%) of all other works required to be constructed and installed by the Owner under the terms of this Agreement. The cost of constructing and providing Works shall be estimated by the Project Engineer and confirmed as acceptable by the City Engineer This estimated cost for the purposes of determining securities required shall exclude engineering inspection, testing and taxes. .

The Owner agrees that, upon the City Engineer providing the Owner an estimate of any increase in the cost of the Work, the Owner shall deposit with the City an additional unconditional, irrevocable Letter of Credit equal to One Hundred and Fifty percent (150%) of the increase in the estimate of the cost of constructing and providing underground pipe works, services and appurtenances including trench backfill to the road structure level (Section 2b and 2c) and One Hundred and Twenty Five percent (125%) of the increase in the cost of all other works required to be constructed and installed by the Owner under the terms of this Agreement.

The Owner shall ensure that the Letters of Credit required under this Agreement are kept up to date and in force for the entire period of the Owner's obligations under this Agreement.

The Owner agrees that, if the Owner should be adjudged bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the Owner, the City may, without prejudice to any other right or remedy the City may have, immediately draw down on the Letters of Credit held by it under this Agreement and use the funds for the purpose of completing the Work in accordance with this Agreement.

The Owner agrees that, if the Owner intends to seek protection from its creditors under any statute, including the Companies Creditors Arrangement Act, the Owner will give the City at least five (5) days written notice of its intention to do so and agrees that the ability of the City to draw down on the Letters of Credit held by it under this Agreement and use the funds for the purpose of completing the Work in accordance with this Agreement shall not be affected by the creditor protection.

The Owner agrees that if the Work or any part thereof is not completed in accordance with the provisions of this Agreement and, in particular, by the Completion Date, or if the Owner shall be in default of any of his covenants herein contained, and such default shall continue for a period of fourteen (14) days after notice thereof has been given by the City to the Owner, the City may draw down on the Letters of Credit held by it under this Agreement and use the funds for the purpose of completing the Work in accordance with this Agreement.

If, after completing the Work in accordance with this Agreement, any portion of the funds drawn down by the City from the Letters of Credit held by it under this Agreement remain, the City shall return the remaining funds, if any, to the Owner less any administration fees required by the City.

If there are insufficient funds available under the Letters of Credit held by the City under this Agreement to complete the Work in accordance with this Agreement, the Owner shall, immediately upon being invoiced by the City, pay to the City all amounts in excess of the funds available under the Letters of Credit required to complete the Work.

Any invoice rendered by the City to the Owner under the provisions of this paragraph, shall be regarded as charges for work done or service provided under the provisions of Section 258 of the Community Charter and may in addition to any other remedy available to the City, be collected in the same manner and with the like remedies as ordinary taxes upon Land and improvements are collected under the said Act.

It is understood and agreed that the City may complete the Work using the funds drawn down by it from the Letters of Credit held by it under this Agreement either by itself, or by contractors employed by the City.

12. The City will consent to reduction in the amount of the Letters of Credit held by it under this Agreement from time to time, and in accordance with the following:
 - (a) The reduction in the amount of the Letters of Credit will be based on retention by the City of amounts calculated in accordance with paragraph 11 of this Agreement for all portions of the Work which the Project Engineer has not certified as being completed to City standards and/or which have not been accepted by the City Engineer.
 - (b) No reduction will be allowed for any amount less than 10% of the total cost of the Work unless said reduction is to release remaining securities;
 - (c) Upon completion of the Work any refund due will be debited in the amount of \$2,500 per sheet for each missing or deficient sheet of as-built drawings and \$500 per sheet for each missing or deficient service;
 - (d) Notwithstanding (a) and (b) herein, the City will not refund an amount whichever is the lesser of 10% of the total cost of construction and installation of the Work or \$75,000.00 for each \$1,000,000.00 or part thereof of the cost of construction and installation of the Work until the expiry of one (1) year following the full and final completion of all the Work other than landscaping related Works. The warranty period for landscaping works shall be a minimum of two (2) years. Notwithstanding the above, the minimum deposit required to be held shall be not less than \$5,000.00.;
 - (e) An inspection at the end of the one year warranty period of the Work is to be arranged by the Project Engineer and include City staff. Prior to authorization for release of the holdback amount the Owner is required to ensure that all as-built drawings and service cards have been received and accepted by the City and to provide the City written verification that all consultants, contractors and subcontractors have been paid in full.
 - (f) The warranty period provided for herein will be extended by the following periods of time if any of the following occurs:
 - i) from the time a deficiency is discovered until the time it is repaired; and
 - ii) if a deficiency is repaired and the sufficiency of that repair cannot be determined due to weather or soil conditions until such time as the City Engineer, acting reasonably, is able to determine the deficiency of the repair of the Work;

Notwithstanding the above, the City Engineer may waive the requirement to extend the warranty period as set out above in whole or in part;

- (g) Upon the expiry of the aforesaid warranty period or such further term as provided herein and provided that the Owner is not then in default under any of their covenants herein contained, and upon final approval of the Work by the City Engineer, the City will as soon as possible, reduce the remaining security to zero (nil).
- 13. The Owner covenants and agrees to indemnify and save harmless the City and its servants, agents and employees from and against all actions, proceedings, costs, damages, expenses, claims and demands whatsoever and by whomsoever brought or made against the City or its said servants, agents and employees, resulting directly or indirectly from the construction or installation of the Work.
- 14. In consideration of due and proper performance by the Owner of his covenants herein contained, the City covenants and agrees to permit the Owner to carry out and perform the Work.
- 15. Any demand or notice required or permitted to be given under the provisions of this Agreement shall be in writing and may be given by mailing such notice by prepaid registered post to the party concerned at the address for such party first above-recited, and any such notice or demand mailed as aforesaid shall be deemed to have been received by the party to whom it is addressed on the second business day after the date of posting thereof.
- 16. The Owner acknowledges and agrees that immediately upon issuance by the City Engineer of acceptance of the Work, all right, title and interest in and to the Work shall immediately pass to and vest in the City, but nothing herein contained shall derogate from the obligation of the Owner to maintain the Work for the warranty period noted in section 12 following completion as aforesaid.
- 17. It is understood and agreed that the City has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Owner other than those contained in this Agreement.
- 18. Wherever the singular or masculine is used herein, the same shall be construed as meaning the plural, feminine or body corporate or politic where the context or the parties so require.
- 19. This Agreement and the terms, covenants and conditions herein contained shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

