

Seḥákw Services Agreement



**Skwxwú7mesh
Úxwumixw**

Squamish Nation

**Skwxwú7mesh Úxwumixw (Squamish
Nation)**

- and -

City of Vancouver



This document confirms the mutual understanding of the Parties that has resulted in this

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which is to agree with

CONTENTS

BACKGROUND:	1
A. Service Agreement Context/Legal Framework	1
B. Historical Context	2
C. City Council's Guiding Principles	2
D. Applications of the Guiding Principles	3
E. Open Government and Transparency	5
F. Public Interest Benefits of Relationship	5
G. City Goals and City/Nation Acknowledgements	6
H. Implementation of Agreement	6
AGREEMENT:	7
1.0 Protocol and Municipal Services Coordination	7
2.0 Definitions	8
3.0 Term	15
4.0 The Municipal Services	16
5.0 City Access Rights to Reserve	17
6.0 Municipal Service Standards Integration	19
7.0 Triggered Infrastructure	19
8.0 On-Reserve Public Amenities and Contributions	19
9.0 Potential Public Amenities	20
10.0 Delivery of and Payment for Municipal Services	21
11.0 Changes in Scope of Services	23
12.0 Financial Terms	25
13.0 Bylaws	26
14.0 Release and Indemnity	26
15.0 Archaeological Protocols/Discoveries	29

16.0	Dispute Resolution.....	30
17.0	Remedies for Default/Specific Remedies	31
18.0	Aboriginal Rights and Title	32
19.0	General Contractual Provisions	33
	SCHEDULES A - R	37
	SCHEDULE A - PLAN OF RESERVE	38
	SCHEDULE B - TAX SUPPORTED MUNICIPAL SERVICES	40
	SCHEDULE C - ADOPTION AND ENFORCEMENT OF SENÁKW VERSIONS OF CITY BY-LAWS.....	54
	SCHEDULE D – SEWER SERVICES.....	60
	SCHEDULE E - WATER SERVICES.....	67
	SCHEDULE F - TRIGGERED INFRASTRUCTURE	73
	SCHEDULE G - ON-RESERVE PUBLIC AMENITIES AND CONTRIBUTIONS.....	163
	SCHEDULE H - POTENTIAL PUBLIC AMENITIES	165
	SCHEDULE I – CITY STAFF COSTS REIMBURSEMENT AGREEMENT	166
	SCHEDULE J – SENÁKW-SPECIFIC DESIGN STANDARDS	174
	SCHEDULE K - BURRARD BRIDGE AND CITY ROADS/UTILITIES AGREEMENT	176
	SCHEDULE L – DEVELOPMENT	215
	SCHEDULE M – PROTOCOL	223
	SCHEDULE N – EXCLUDED SERVICES	224
	SCHEDULE O – SAMPLE INVOICE	226
	SCHEDULE P – MUNICIPAL SERVICES COORDINATION GUIDE.....	229
	SCHEDULE Q – NATION ASSUMPTION OF SERVICES.....	235
	SCHEDULE R – ADDING/DELETING MUNICIPAL SERVICES AND CANCELLATION	237

SENÁKW SERVICES AGREEMENT

THIS AGREEMENT is dated as of May 25, 2022 (the “Effective Date”)

BETWEEN:

SQUAMISH NATION

(the “Nation”)

AND:

CITY OF VANCOUVER

(the “City”)

BACKGROUND:

A. Service Agreement Context/Legal Framework

- 1) The Nation wishes to have a phased residential and commercial project to be known as Seṇákw (the “Development”) developed on the Nation’s Lands.
- 2) The City is the local municipal government for Vancouver and wishes to assist the Nation by providing the Municipal Services to the Development, and calculating the payment for them on the same basis as they are provided and paid for across Vancouver.
- 3) Despite the Lands being “lands reserved for Indians” under Section 91(24) of the *Constitution Act, 1867*, and therefore being subject to federal laws and jurisdiction:
 - (a) all laws of general application in force in the Province of British Columbia from time to time will apply to Indians on the Lands, subject to the terms of any applicable treaty, or any Act of Parliament, and except to the extent that those laws are inconsistent with the *Indian Act* or any order, rule, regulation, or law of the Nation made under a federal Act;
 - (b) in addition to the application of laws referenced in paragraph (a) above, the laws of the Province of British Columbia will apply to the Lands to the extent incorporated by reference in any regulation made under FNCIDA, with any adaptations to those laws that Canada considers necessary or desirable, all with the agreement of the Province of British Columbia and the Nation;
 - (c) the use and occupation of the Lands will be subject to by-laws of the Nation that are passed in accordance with the requirements of the *Indian Act*, including any by-laws of the Nation adopted pursuant to Schedule C [Adoption and Enforcement of Seṇákw Versions of City By-laws]; and
 - (d) the City’s normal taxation and user fee collection powers do not apply to the Reserve and the City’s normal municipal services are not required to be provided

to the Reserve except to the extent that the Nation and the City enter into a contractual agreement to do so.

- 4) The Nation and the City have agreed on the legal terms and conditions which will facilitate the provision of and payment for the Municipal Services, taking into account the historical context, the City's reconciliation objectives, the Equity Principle, the Parties' government-to-government objectives, and the Guiding Principles.

B. Historical Context

- 1) In 1868, the Colony of British Columbia established the historic Kitsilano Indian Reserve No. 6 (the "**Historic Reserve**"), which included the village of Seḥákw, consisting of approximately 37 acres of land which, in 1877, was expanded to approximately 80 acres.
- 2) The Squamish were dispossessed of the Historic Reserve through an unlawful purported acquisition in 1913 on behalf of the Province of British Columbia that saw the residents evacuated by barge to the North Shore and their homes at Seḥákw burned down. Though unlawful, this purported acquisition led to a chain of events that eventually compelled the Nation to surrender its legal interest in the Historic Reserve in 1946. An action in the Federal Court regarding the Historic Reserve (excluding the Lands) went to trial in 1996 and, after three years of trial, resulted in a substantial settlement for the Nation.
- 3) A separate action was brought by the Nation in the British Columbia Supreme Court concerning the Lands that had been taken (lawfully under the Indian Act) from the Historic Reserve by the Canadian Pacific Railway in 1886 and 1902. When the Canadian Pacific Railway ceased using the Lands for railway purposes, it attempted to sell the Lands but a court action by the Nation in the BC Supreme Court succeeded in stopping the sale and recovering the Lands (being 10.5 acres of the Nation's original Seḥákw homeland and part of the Historic Reserve). In 2002, the Lands were restored to reserve status as Kitsilano Indian Reserve No. 6.

C. City Council's Guiding Principles

- 1) The following principles ("Guiding Principles") are intended to guide the City's overall engagement regarding the Development as well as the terms of this Agreement with the Nation. These principles are:

(a) Commitment to being a City of Reconciliation

The City recognizes the Nation as a separate order of government and respects its right to develop the Lands as it sees fit, particularly in light of the Nation's living history in Vancouver, including the False Creek area, and the federal nature of the Lands. The aim will be to further develop the Parties' government-to-government relationship, the foundation of which consists of respect, knowledge and recognition of the harms of colonialism, and an openness to learning about indigenous practices. This will form the basis for taking on a mutual commitment to shared goals to develop a mutual understanding of the Parties' respective values, culture, philosophy, processes and plans and a mutual understanding of the Parties' respective roles, responsibilities, authority and capacity, including the communications and operating protocols set out in this Agreement.

(b) Promotion of shared interests in a shared community

Acknowledging that the Nation is a level of government and has jurisdiction over its lands, the City has and will continue to listen to and learn about the Nation's aspirations for the Development. The Parties have established by this Agreement, and will continue to further, their shared understanding of their common goals and interests and, as appropriate and desired by both Parties, identify opportunities to collaborate to further shared interests in co-creating a sustainable and liveable community.

(c) Effective service capacity planning to ensure appropriate infrastructure and amenities

Utilities and infrastructure capacity, public amenities, and associated capital investment and a financial plan have been developed to support the growth projection contemplated by the Development. Recognizing the Parties' respective stewardship responsibilities and common desire to be good neighbors, the City and the Nation have agreed on an appropriate level of public amenities and infrastructure to build a liveable and sustainable community for those who will live, work, and play on the Development, within the context of its surrounding neighbourhoods. The Parties have taken a systems approach to capacity planning to inform the approach to addressing the infrastructure, amenity, and service needs of the Development and the broader community. All off-Reserve design and construction as well as all on-Reserve design and construction requiring provision of or integration with Municipal Services and City infrastructure will be to City-Wide Standards, as further detailed in this Agreement.

(d) Consistent and fiscally responsible global service approach

The City and the Nation have agreed to adopt a global service approach, covering the full range of both 'hard' and 'soft' municipal services (except for those services which the Nation has elected to provide itself or separately contract for). The City has agreed with the Nation to deliver the Municipal Services to the Lands with the same degree of priority, professionalism and efficiency as those services delivered elsewhere in Vancouver. In return, the Nation has agreed on a fair and equitable compensation to the City for the Municipal Services so that occupants of the Development and of the rest of Vancouver are paying for Municipal Services and such services, respectively, on an equitably analogous basis, with consideration for the growth impact of the Development in its neighbourhood context.

D. Applications of the Guiding Principles

- 1) Based on the Guiding Principles, City Council has asked and the Nation has agreed to how the Guiding Principles should be applied with respect to key costs, community integration, land rights issues, and open and transparent government as follows (collectively, the "**Equity Principle**"):

(a) Costs

- (i) The Parties have agreed on the Triggered Infrastructure which will be required to be built to mitigate the impact of the Development on the City's municipal infrastructure and services within the immediate vicinity of the Development.
- (ii) The Nation has agreed to provide the On-Reserve Public Amenities and Contributions and to work in collaboration with the City in accordance with Article 9.0 [Potential Public Amenities] to achieve the Potential Public Amenities to offset the additional demands and capacity utilization that the Development and its occupants will place across Vancouver on the City's public amenities and infrastructure generally over and above the demands and capacity utilization to be addressed by the Triggered Infrastructure, and the Parties agree that the On-Reserve Public Amenities and Contributions and Potential Public Amenities reflect the Nation's commitment to a guiding principle of creating shared interests in a shared community and effective service planning.
- (iii) The Nation has agreed to pay for full service delivery costs (ongoing operating and repair) and lifecycle costs (capital maintenance and renewal):
 - (A) determined on a basis that is broadly consistent with the same methodology and approach used to calculate property tax, utility fees and user fee levels off-Reserve; and
 - (B) subject to certain equitable adjustments to reflect any municipal services that are not required by or provided to the Development or its occupants by the City,all as further detailed in this Agreement, including without limitation Schedule B [Tax Supported Municipal Services] and the Utility Services Schedules.
- (iv) The Nation has agreed to reimburse the costs incurred by the City associated with understanding, assessing, and reflecting the needs of the Nation and the Development in this Agreement, which would normally be covered by permit costs or through cost recovery work programs typical of major projects in Vancouver, all as further detailed in this Agreement, including without limitation Schedule I [City Staff Costs Reimbursement Agreement], Schedule F [Triggered Infrastructure] and Schedule K [Burrard Bridge and City Roads/Utilities Agreement].

(b) Community Integration

The Parties have agreed on an effective integration of the Development into the broader community, and on how to build a liveable, resilient, and sustainable community and neighbourhood, so that:

- (i) the Development respects the principle of shared interests in a shared community and a global service approach;
- (ii) the Development will be well-integrated in terms of transportation, land use, and public amenities and infrastructure into the broader community;
- (iii) the eventual residents and businesses of the Development will be supported as if they were off-Reserve residents or businesses of Vancouver;
- (iv) the construction of the Development and its supporting infrastructure will have minimal detrimental impacts on, and risks to, the surrounding neighbourhoods of Vancouver; and
- (v) the Development will not impose on the City any risks which would not be acceptable for a similar project within Vancouver, including for example, financial risks associated with the delivery of off-site improvements and servicing.

(c) Burrard Bridge, Streets, and Utilities

Pursuant to Schedule K [Burrard Bridge and City Roads/Utilities Agreement], the Parties have addressed how each of them will be able to utilize and be responsible for the Burrard Bridge, as well as certain other roads and underground utilities within the Reserve which have typically been operated and maintained by the City, in a manner that works best for the occupants of the Development and the rest of Vancouver while respecting the City's and the Nation's existing claims.

(d) Equity Principle

For the purposes of this Agreement, the Parties acknowledge that the Equity Principle is an articulation of what the Parties have determined, as at the Effective Date, will provide for the fair and equitable treatment, in relation to the subject matter of this Agreement, of residents and businesses across Vancouver with the residents and businesses within the Development. The Equity Principle will be applied and extrapolated on a fair and equitable basis in order to address and adapt to circumstances existing at any future date on which the Equity Principle is applied.

E. Open Government and Transparency

- 1) As a government-to-government agreement with significant public impacts and profile, the Parties have agreed to make this Agreement a public document and therefore available to all members of the public.

F. Public Interest Benefits of Relationship

- 1) The Development represents the next chapter for the Lands and it is desired by both the Nation and the City that the Development (including its integration with the neighbouring communities) will:

- (a) demonstrate climate leadership on a global scale;
- (b) create a legacy project for the Nation that reflects its history and culture;
- (c) generate economic benefit for the Nation to allow it to meet its pressing housing, education and social services needs;
- (d) promote further reconciliation between the Nation and the City; and
- (e) help to alleviate Vancouver's pressing housing crisis.

G. City Goals and City/Nation Acknowledgements

- 1) As a City of Reconciliation, the City's long-term goals are to strengthen local First Nations and urban indigenous relations, promote indigenous peoples' arts, culture, awareness, and understanding, and incorporate First Nations and urban indigenous perspectives for effective City services, and the City intends this Agreement to reflect a significant step for the City towards the achievement of these goals.
- 2) The Parties acknowledge that the terms of this Agreement have been negotiated on a government-to-government basis. As such, the Parties have engaged in dialogue and information-sharing in a fair, honourable, respectful and transparent manner. The Nation and the City have shared their historical perspectives.
- 3) The City acknowledges that the Nation has a distinct language, culture, history and identity, and has used and occupied the lands within its traditional territory for thousands of years.
- 4) The City and the Nation believe that the terms agreed upon in this Agreement are fair to both sides, reflect the Equity Principle, and create greater certainty for both governments in exercising their responsibilities to protect the rights and interests of their residents and businesses.

H. Implementation of Agreement

- 1) The Nation represents and warrants to the City that a Band Council Resolution has been passed by the Nation's Council authorizing the execution and delivery of this Agreement.
- 2) The City represents and warrants to the Nation that a City Council resolution has been passed by City Council authorizing the City's execution and delivery of this Agreement.
- 3) In furtherance of the above, the Nation and the City wish to enter into this Agreement as authorized by their respective Councils to record how the above will be achieved.

AGREEMENT:

THE PARTIES NOW LEGALLY AGREE AS FOLLOWS:

1.0 Protocol and Municipal Services Coordination

1.1 Protocol

The Parties agree that this Agreement is an example of a successful implementation of the relationship-building and government-to-government agreements they intend to pursue as part of the objectives laid out in the Protocol.

1.2 Municipal Services Coordination Guide

The Parties further acknowledge that the Municipal Services Coordination Guide (the initial version of which is attached as Schedule P [Municipal Services Coordination Guide] is another example of a document created in furtherance of the good faith objectives of the *Protocol* that supports the effective implementation of this Agreement by setting out the day to day operational and administrative roles, responsibilities, activities and contacts of the City and the Nation. Pursuant to Section 19.1 [Entire Agreement], and for further certainty, the Parties agree that the Municipal Services Coordination Guide is non-contractual and will not create legal rights or obligations nor operate as an amendment to this Agreement under any circumstances.

1.3 Maintain Municipal Services Coordination Guide

The Parties will up-date and refine the Municipal Services Coordination Guide from time to time as changes in personnel, infrastructure, amenities, and other operational and administrative details occur or are refined or clarified.

1.4 Right to Delegate

- (a) Subject always to Section 1.4(b) below, the Nation will have the right to delegate to any number of Persons any or all of its rights and obligations under this Agreement and, if the Nation gives written notice of any such delegation to the City and updates the Municipal Services Coordination Guide accordingly, the City will be entitled to deal with any such Person for the respective delegated purposes under this Agreement as if such Persons were agents of the Nation until such time as the Nation delivers written notice to the City that the Nation has revoked such delegation. The Nation will have the right to delegate any or all of its rights and obligations under this Agreement to another Person at any time after it has revoked the appointment of a previous delegate.
- (b) Despite Section 1.4(a), in no event will any delegation or re-delegation pursuant to Section 1.4(a) operate as an assignment of this Agreement or release of the Nation from any of its legal obligations under this Agreement to the City.

2.0 Definitions

2.1 Special Purpose Defined Terms

In this Agreement, where certain terms are used only or almost exclusively in a specific Schedule to this Agreement, that term is defined in that Schedule. For example, the terms specific to the provision of Sewer Services are defined in Schedule D [Sewer Services].

2.2 General Purpose Defined Terms

In this Agreement, the following general purpose terms have the following meanings (including those terms initially defined in the Background section above (with the below definitions superseding those in the Background section above)) unless the context otherwise requires:

- (a) **“Abnormal Weather”** means temperature, precipitation, wind, or other weather condition which, in any two-week period, differs from the statistical average for that condition in that period by more than one standard deviation, calculated based on relevant data available from Environment Canada, but for further certainty, expressly excludes an isolated weather-related act of God such as by way of example only, a hurricane or flood;
- (b) **“Affordable Units”** has the meaning set out in the Notes at the bottom of the fourth page of Schedule “L” [Development];
- (c) **“Archaeological Discovery”** or **“Archaeological Discoveries”** has the meaning set out in Section 15.1 [Archaeological Protocols];
- (d) **“Archaeological Protocols”** has the meaning set out in Section 15.1 [Archaeological Protocols];
- (e) **“Agreement”** means this Seḥákw Services Agreement, including all the Schedules and Appendices (and including without limitation, and by way of example only, the Sub-Licence, TI Implementation Agreements, and all Replacement Tenures);
- (f) **“Bridge/Street/Utilities Access Areas”** has the meaning set out in Schedule K [Burrard Bridge and City Roads/Utilities Agreement];
- (g) **“Bridge/Street/Utilities Assets”** has the meaning set out in Schedule K [Burrard Bridge and City Roads/Utilities Agreement];
- (h) **“Cancellation Provisions”** mean the cancellation provisions referred to in Schedule R [Adding/Deleting Municipal Services and Cancellation];
- (i) **“Change in Circumstances”** has the meaning set out in paragraph (d) of Section 11.1 [Future Changes];
- (j) **“City”** means the City of Vancouver, a municipal corporation continued pursuant to the Vancouver Charter;

- (k) **“City Engineer”** means the chief administrator, from time to time, of the City’s Engineering Services Department and their successors in function and their respective nominees;
- (l) **“City Infrastructure Rights”** means any and all rights of the City with respect to access over the Reserve to provide Municipal Services, including those pursuant to Article 5.0 [City Access Rights to Reserve], as well as the City’s rights to Bridge/Street/Utilities Assets pursuant to Schedule K [Burrard Bridge and City Roads/Utilities Agreement], and any rights of the City under Schedule F [Triggered Infrastructure];
- (m) **“City Personnel”** means all officials, officers, employees and other agents of the City and includes where the context permits, the Vancouver Police Board, Vancouver Public Library Board, Vancouver Board of Parks and Recreation, any other affiliate or subsidiary of the City (by way of example only, and without limitation, Pacific National Exhibition, Vancouver Economic Commission, or Parking Corporation of Vancouver (currently doing business as EasyPark) and all officials, officers, employees and other agents of same;
- (n) **“City-Wide Standards”** means the then-current (as opposed to any standard previously in place and previously designed or built to) standards applied by the City to any person or activity off-Reserve including without limitation and by way of example only all applicable by-laws, policies, and operating procedures which mandate or recommend how persons are to conduct themselves or design, build, operate, maintain, or undertake anything else provided for or regulated by the City, such as by way of example only and without limitation the City’s Engineering Design Manual;
- (o) **“Development”** means the phased residential and commercial project described in Schedule L [Development] to be designed, constructed, operated and utilized on the Lands;
- (p) **“Development Amenity Impact”** means the additional demands and capacity utilization the Development and its residents and businesses will place Vancouver-wide on the City’s public amenities and infrastructure generally over and above the demands and capacity utilization to be addressed by the Triggered Infrastructure;
- (q) **“Effective Date”** means the date defined as such on page 2 of this Agreement;
- (r) **“Engineering Design Manual”** means the then-current City document that provides comprehensive guidance for most municipal infrastructure design, and documents the typical design processes and criteria to be used for projects conducted by and for the City as published by the City Engineer and as updated, supplemented, clarified, or replaced from time to time by the City Engineer and which forms an integral part of the City-Wide Standards;
- (s) **“Equity Principle”** has the meaning set out in Background D [Application of the Guiding Principles] above, and for certainty, will have the meaning, when applied in the future, set out in paragraph (d) of Background D [Application of the Guiding Principles];

- (t) **“Excluded Services”** has the meaning set out in Schedule N [Excluded Services];
- (u) **“FNCIDA”** means the *First Nations Commercial and Industrial Development Act* (Canada), S.C. 2005, c. 53;
- (v) **“Guiding Principles”** has the meaning set out in Background C [City Council's Guiding Principles];
- (w) **“Historic Reserve”** has the meaning set out in Background B [Historical Context] above;
- (x) **“Impact Remedy Request”** has the meaning set out in Section 8.3 [Changes to Amenities];
- (y) **“Indian Act”** means the *Indian Act* (Canada), R.S.C., 1985, c. I-5;
- (z) **“Lands”** has the same meaning as the “Reserve” as described in Schedule A [Plan of Reserve];
- (aa) **“Losses”** means all:
 - (i) direct and indirect, as well as
 - (ii) consequential,

claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs, and expenses (including without limitation all legal and other professional fees and disbursements, interest, penalties, and amounts paid in settlement whether from a third person or otherwise);
- (bb) **“Main Agreement”** means this Agreement, excluding Schedules;
- (cc) **“Material Impact”** means any material impact on the City or the Nation, including, but not limited to, increasing or lowering the amount of Municipal Services required, changing the capacity, configuration, form, or timing of the Triggered Infrastructure Works, and altering the Development Amenity Impact as well as (but without limitation) the events listed as examples in Section 11.2(d) [Changes to Development];
- (dd) **“Municipal Services”** means the Tax Supported Municipal Services, the Utility Services, and (where provided by the City) any emergency services, but excluding the Municipal Services referred in Section 4.4 [Exclusions from the Municipal Services];
- (ee) **“Municipal Services Coordination Guide”** means the non-contractual, general administrative reference document that is intended to enable effective communications and operations and maintenance activities between the Nation and the City, the initial form of which is attached as Schedule P, as may be amended from time to time;

- (ff) **“Nation”** means the Squamish Nation, an Indian Band constituted pursuant to the Indian Act;
- (gg) **“Nation Infrastructure”** means the municipal infrastructure located on the Reserve, including, but not limited to, the Seḥákw Water System, the Seḥákw Sewer System, and the streets, street lighting, curbs and gutters located on the Reserve, but excluding the Bridge/Street/Utilities Assets;
- (hh) **“Nation Personnel”** means all officials, officers, employees and other agents of the Nation;
- (ii) **“Neighbourhood Energy Utility”** has the meaning set out in Schedule G [On-Reserve Public Amenities and Contributions];
- (jj) **“Non-Discriminatory Basis”** means:
 - (i) in relation to any change by the Nation, a change that affects all Nation members on-Reserve the same as all non-members of the Nation on-Reserve; and
 - (ii) in relation to any change by the City, a change that affects all residents of the Reserve and businesses operating on-Reserve the same as all residents and businesses located off-Reserve;
- (kk) **“On-Reserve Public Amenities and Contributions”** has the meaning set out in Section 8.2 [Amenities to be Delivered];
- (ll) **“Park Board”** means the Vancouver Board of Parks and Recreation, established under Section 485 of the Vancouver Charter;
- (mm) **“Parties”** means the City, as represented by its City Council, and the Nation, as represented by its Nation Council, and **“Party”** means either one of them;
- (nn) **“Partnership”** means Seḥákw (Head Lease) Limited Partnership, as represented by its general partner, Seḥákw (Head Lease) GP Holdings Inc., which will be the tenant of a lease of the Lands to be granted by Canada for a term of 120 years;
- (oo) **“Person”** means an individual, partnership, trust, trustee, syndicate, association, corporation, or any combination of them, and **“Persons”** is plural for Person;
- (pp) **“Phase”** means each area and phase of the Development as defined by the areas noted on Schedule A [Plan of Reserve] and the buildings and other improvements shown on Schedule L [Development] and so for example “Phase 1” means the area designated as such in Schedule A [Plan of Reserve] and the buildings, areas, and improvements designated as such in Schedule L [Development];
- (qq) **“Potential Public Amenities”** has the meaning set out in Article 9.0 [Potential Public Amenities];
- (rr) **“Prime Rate”** has the meaning set out in Section 12.4(a) [Late Payment Interest Charge];

- (ss) **“Protocol”** means the agreement entitled “Memorandum of Understanding and Protocol Agreement” entered into between the City and the Nation on May 17, 2010 and attached as Schedule M [Protocol];
- (tt) **“Regional Amounts”** has the meaning set out in Section 10.6 [Payment of Regional Amounts];
- (uu) **“Regional Governments”** has the meaning set out in Section 10.6 [Payment of Regional Amounts];
- (vv) **“Rental”** and **“rental”** means the rental of units on a term of no less than a month-to-month basis (so excluding rentals or licences on terms of less than 30 days, such as hotel, motel, or short-term accommodation sharing platforms such as “AirBNB” or “VRBO” and the like), and excluding the rental of units for terms that are in excess of three years and excluding the rental of units (no matter what the term) which require more than one month pre-paid rent and for certainty includes the rental of Affordable Units for terms that are restricted as set out in this definition;
- (ww) **“Reserve”** has the same meaning as “Lands” as set out in Schedule A [Plan of the Reserve], namely the lands legally described as Kitsilano Indian Reserve No. 6;
- (xx) **“Schedules”** means the Schedules listed as such in the Table of Contents above;
- (yy) **“Señákw-Specific Standards”** means the City-Wide Standards applicable to the Development as further set out in Schedule J [Señákw-Specific Design Standards];
- (zz) **“Service Bundle”** means any or all of the Water Services, the Sewer Services or the Tax Supported Municipal Services;
- (aaa) **“Sewer Services”** has the meaning set out in Schedule D [Sewer Services];
- (bbb) **“Tax Supported Municipal Services”** means the Municipal Services listed as such in Schedule B [Tax Supported Municipal Services];
- (ccc) **“Term”** has the meaning set out in Section 3.1 [Term];
- (ddd) **“TI Implementation Agreement”** means an agreement between the Parties with respect to the design and construction of the Triggered Infrastructure described as Nation Delivered Works, as further set out in Section 7.2 [TI Implementation Agreement] and Schedule F [Triggered Infrastructure];
- (eee) **“Transferred Services”** has the meaning set out in Schedule Q [Nation Assumption of Services];
- (fff) **“Triggered Infrastructure”** means, in aggregate, all of the Triggered Infrastructure Works;
- (ggg) **“Triggered Infrastructure Works”** has the meaning set out in Schedule F [Triggered Infrastructure];

(hhh) **“Unavoidable Delay”** means any circumstances beyond the Parties’ reasonable control such as, by way of example only, and without limitation:

- (i) Abnormal Weather;
- (ii) despite paragraph (B) below, circumstances (even if they might be within the City’s reasonable control) that affect the Nation or the Reserve on a Non-Discriminatory Basis, for example strikes or lockouts involving City employees;
- (iii) subject to paragraph (E) below, stop work orders issued by a court or public authority;
- (iv) quarantine restrictions;
- (v) governmental action;
- (vi) acts of God or public enemy;
- (vii) war (declared or undeclared), or other strife (such as revolutions, riots, insurrections, protests, civil disobedience);
- (viii) freight embargos; or
- (ix) power failures,

which result in a material delay, interruption or failure by a Party in carrying out its duties, covenants or obligations under this Agreement, but does not include any delay caused by the following:

- (A) the Nation’s lack of funds or its financial condition;
- (B) subject to paragraph (ii) above, strikes or lockouts (including illegal work stoppages or slowdowns), or other disputes between a Party and its employees, between a Party’s contractors and their respective employees, or between a Party’s suppliers and their respective employees, but for further certainty, neither Party will be considered the other Party’s contractor or supplier;
- (C) delays by any third party supplying goods or services necessary for a Party to carry out its obligations under this Agreement where other third parties are available to provide such delayed goods or services on a timely basis at commercially reasonable prices;
- (D) unfavourable soil and weather conditions of any kind, (except for Abnormal Weather, acts of God, Archaeological Discoveries, and contaminated soils and other things or events defined as TI Assumptions in Schedule F [Triggered Infrastructure]);
- (E) stop work orders or the like issued by the City in its capacity as a regulatory authority or any other governmental authority as a result

of a breach by the Nation or Nation Personnel of any applicable law, regulation, permit or licence (including by way of example only and without limitation, any TI Implementation Agreement); and

- (F) the loss or destruction of financial information required to be provided under this Agreement except where and to the extent that a Party has consistently and diligently used all commercially reasonable methods to secure and produce multiple back-up records in multiple geographical locations of all such financial information and in spite of such efforts all original and back-up information has been lost or destroyed as a result of circumstances beyond the Party's control that have affected both the on-site and multiple off-site information data storage facilities maintained by such Party;
- (iii) **"Utility Services Schedules"** means Schedule D [Sewer Services] and Schedule E [Water Services], which, collectively, set out the terms and conditions of delivery of and payment for the Utility Services;
- (jjj) **"Utility Services"** means, collectively, the Sewer Services and Water Services (as defined in the Utility Services Schedules);
- (kkk) **"Vancouver"** means the geographical area known as the City of Vancouver, the boundaries of which are described in Section 6 of the Vancouver Charter;
- (III) **"Vancouver Charter"** means the *Vancouver Charter*, [SBC 1953] Chapter 55 as amended or replaced from time to time; and
- (mmm) **"VanIAC"** has the meaning set out in Section 16.1(c) [Dispute Resolution Process] and all references to the *Arbitration Act* (British Columbia), VanIAC, as well as the Domestic Arbitration Rules of the VanIAC, include all amendments and replacements of or updates to them, as the same may be adopted, implemented, or enacted from time to time.

2.3 Effects of Unavoidable Delay

- (a) An Unavoidable Delay does not apply to the performance of any obligation to pay money.
- (b) Whenever the Nation or the City is aware of an event or any circumstance which constitutes or could constitute an Unavoidable Delay, it will promptly provide the other Party with a written notice of:
 - (i) the particulars of the cause of any Unavoidable Delay;
 - (ii) the expected length of the Unavoidable Delay; and
 - (iii) the steps it intends to take to mitigate or overcome any delays caused by the actual or expected Unavoidable Delay (to the extent that such steps are reasonably identifiable and commercially reasonable).

- (c) The time given for the performance of an obligation by the City or the Nation under this Agreement, as the case may be, will be extended by the period of time during which its performance is delayed or prevented due to an Unavoidable Delay and neither Party will be liable to the other for any delay, interruption or failure in the performance of its duties, covenants, or obligations under this Agreement if caused by an Unavoidable Delay, but only to the extent of its compliance with paragraph (d) below.
- (d) The Party whose performance is affected by the Unavoidable Delay will (to the extent that same are reasonably identifiable and commercially reasonable to undertake) use commercially reasonable efforts to mitigate or overcome any delays caused by the Unavoidable Delay and to resume, with the least possible delay, its compliance with its duties, covenants and obligations under this Agreement.
- (e) Each Party acknowledges that it is familiar with the soil and weather conditions in and around the Reserve and, in carrying out their respective obligations, will change the type of operation or equipment as required to suit the soil and weather conditions. However, for further certainty, this clause does not and will not operate so as to apply to Archaeological Discoveries, soil contamination and other matters which constitute any change to the TI Assumptions (as defined in Schedule F [Triggered Infrastructure]).

3.0 Term

3.1 Term

Subject to Section 3.2 [Deemed Extension of Term] below, the term (“**Term**”) of this Agreement will start on the Effective Date and end on the earlier of:

- (a) the 120th anniversary of the Effective Date; or
- (b) the effective date on which the Parties cancel this Agreement in accordance with the Cancellation Provisions (but then only to the extent of such cancellation).

3.2 Deemed Extension of Term

Despite Section 3.1 [Term] where, upon the expiry of this Agreement, the Parties continue to deal with each other as though this Agreement has not expired and neither Party has given written notice to the other stating that this Agreement will not be extended at the end of the initial Term or the then applicable extension term (as the case may be), the Term will be deemed to be extended for a 5 year period with perpetual successive 5 year extension periods after that, subject only to the Cancellation Provisions and except as otherwise provided in this Article 3.0, such additional successive 5 year extensions of the Term will be upon the same terms and conditions as contained in this Agreement.

4.0 The Municipal Services

4.1 Scope and Standard of Municipal Services

The City will provide the Municipal Services to the Lands. The Municipal Services will be provided to the residents and businesses of the Lands to substantially the same quantity and quality that such Municipal Services are provided by the City to its other residents and businesses. For further certainty, the Municipal Services will be delivered with the same degree of priority, professionalism and efficiency as those Municipal Services delivered elsewhere in Vancouver.

4.2 Timing of Municipal Services

The City will start providing the Municipal Services on the Effective Date:

- (a) as and to the extent that they are required on the Reserve and can be used;
- (b) noting that, as with other land in Vancouver, real property taxes are payable on vacant and unoccupied land; and
- (c) the Nation will commence paying for same as described in Schedule B [Tax Supported Municipal Services] and elsewhere in this Agreement.

4.3 Construction Coordination/Communication

In order to facilitate the effective and timely provision of the Municipal Services:

- (a) the City will provide the Nation with notice of and an opportunity to comment on work being planned by the City within the vicinity of the Development that would or could impact the construction of the Development so as to afford the Parties a reasonable opportunity to better coordinate their respective activities, provided always that this Section 4.3(a) does not fetter in any way City Council's and the City Engineer's legal rights and duties to manage the City street right of way in the public interest;
- (b) the Nation will provide, and regularly update, the City with a detailed schedule of design and construction activities associated with the Development as reasonably required by the City in order to be able to understand what Municipal Services the Development is ready to receive and when, including at a minimum the expected dates for completion of the various major stages of design and construction for the Nation Infrastructure;
- (c) the Nation will provide, and regularly update, the City with (in addition to the usual permit application information requirements) a detailed schedule of dates of work requiring the use of City streets (the use of which will be subject to the City's usual permitting process for work in roadways), dates of work that will result in increased heavy vehicle traffic on City streets, and dates where temporary construction traffic controls or traffic control persons will need to be used in City streets (all of which will be subject to the City's usual permitting process for construction traffic controls);

- (d) the Nation will also provide, without limiting the scope of Sections 4.3(a) and 4.3(b) above, all information that the City would normally receive via its off-Reserve permitting process from a developer such as copies of all conceptual, detailed design, and detailed construction drawings and specifications for the Development, as well as consultant inspection reports (for example, geo-tech, hydrogeologists, structural, civil, fire and life safety), copies of permits (where the Nation has enacted Nation by-laws requiring the issuance of same), Nation Infrastructure street names, and the like for the Development; and
- (e) the Nation and the City will, as soon as possible after entering into this Agreement, add the relevant details of the types and timing of the information needed by the City under Sections 4.3(a) through 4.3(d) above into the Municipal Services Coordination Guide.

4.4 Exclusions from the Municipal Services

Except where the Parties have first signed a written amendment to this Agreement setting out the allocation of risk, division of responsibility, cost-sharing, and other applicable terms and conditions of same, the City's obligations under this Agreement do not include the Excluded Services.

5.0 City Access Rights to Reserve

5.1 Entry by the City

Subject to:

- (a) Section 5.4 [Municipal Services Subject to Access]; and
- (b) the City's compliance with Section 5.2 [Terms of Entry by the City] and the rights of tenants and subtenants,

the Nation irrevocably consents during the Term of this Agreement, and will not object to or interfere with, the City and City Personnel entering from time to time upon the Reserve during the Term for the purposes of constructing, installing, repairing, replacing, maintaining, connecting, delivering, supplying, inspecting, performing, and operating any Municipal Services to be provided by the City in respect of the Reserve from time to time pursuant to and in accordance with this Agreement.

5.2 Terms of Entry by the City

In entering upon the Reserve for the purposes described in Section 5.1 [Entry by the City], the City will:

- (a) make all reasonable efforts to cause as little interference as possible with the use and enjoyment of the Reserve and its improvements;
- (b) rectify, to the satisfaction of the Nation (acting reasonably), any damage to the Reserve or its improvements arising from the exercise of any such rights by the City or City Personnel; and

- (c) with respect to any work that does not involve the routine provision of the Municipal Services, such as the installation or replacement of capital improvements, the City will give the Nation at least 14 days' prior written notice of such work (except in the case of an emergency, in which case no prior notice is required),

provided always that the City's obligations under paragraphs (a), (b), and (c) will be deemed to be modified to the extent that they are inconsistent with the City's rights and obligations when performing the same type of service off-Reserve.

5.3 Legal Access Rights

The Nation will be responsible for all costs and expenses (excluding the City's internal legal and administrative costs) of securing any legal access rights which may be required in order to provide to the City and City Personnel the legal access rights to the Reserve necessary for the City to efficiently and effectively provide the Municipal Services, whether:

- (a) pursuant to a right of way granted by Canada pursuant to the *Indian Act*;
- (b) by causing the Partnership to grant a leasehold right of way;
- (c) by enacting and maintaining in effect any necessary Nation by-laws; or
- (d) in any other way the Nation deems appropriate,

in order to provide for the same kind and degree of access to the Reserve as is provided in like circumstances elsewhere in Vancouver and with the same type of legal and financial risk allocation which would apply elsewhere in Vancouver. In the event that any of the above instruments or mechanisms require the City to execute additional agreements or documents, the Nation will concurrently execute all such further agreements as are reasonably necessary to fully indemnify and save the City harmless so as to preserve the legal and financial risk allocation already agreed to under this Agreement.

5.4 Municipal Services Subject to Access

The City will not be obligated to provide the Municipal Services to the extent that access to the Reserve is delayed or hindered by reason of the Nation not providing the City with the necessary physical and legal access to the Reserve. Despite Section 5.1 [Entry by the City], the Nation is solely responsible for ensuring that all rights granted to tenants, sub-tenants, and any other third parties are consistent with the Nation's obligations to provide the same type and degree of access to the City as is provided to the City off-Reserve for the provision of Municipal Services.

5.5 Nation Access to City Property

The City agrees that, in connection with the construction of the Development and the Triggered Infrastructure, it will review any request from the Nation or from any other person or entity carrying out any phase of the Development or undertaking any portion of the Triggered Infrastructure Works for the right to use any public streets for construction-related activities or for the right to swing construction cranes over public property, and will cause any necessary licences to be granted for such uses on the same terms and

conditions as it generally grants such licences for similar construction projects carried out in Vancouver including, without limitation, the requirement to make the necessary application for a permit and the payment of the associated fees for same.

5.6 Bridge/Street/Utilities Assets

The Parties agree that all rights and obligations of the Parties under this Agreement with respect to the Bridge/Street/Utilities Assets are governed by Schedule K [Burrard Bridge and City Roads/Utilities Agreement] and not by the other parts of this Agreement.

6.0 Municipal Service Standards Integration

6.1 Señákw-Specific Standards

To ensure the safe delivery of the Municipal Services to the Development, the Nation will cause the Development to be designed and constructed in accordance with the Señákw-Specific Standards, all as further described under Schedule J [Señákw-Specific Design Standards].

7.0 Triggered Infrastructure

7.1 Determination of Triggered Infrastructure

The City and the Nation have determined the suite of Triggered Infrastructure necessary to support the Development as currently designed, and to mitigate impacts to the City's existing infrastructure in the vicinity of the Lands, and have agreed on the rights and obligations that will apply to the process for determining what new infrastructure will need to be built and what existing infrastructure will need to be upgraded or expanded in order to properly serve the Development and allow the City to provide the Municipal Services to the standards and quality it provides such Municipal Services in other areas of Vancouver.

7.2 Triggered Infrastructure

The Parties now agree that the Triggered Infrastructure will be designed, delivered and paid for on the terms and conditions described in Schedule F [Triggered Infrastructure].

7.3 Ownership of Triggered Infrastructure

The Parties have addressed ownership and Long-Term Responsibility for Triggered Infrastructure in Schedule F [Triggered Infrastructure].

8.0 On-Reserve Public Amenities and Contributions

8.1 Shared Vision

The City acknowledges and agrees that the Reserve is not subject to typical City community planning processes or financial requirements, but both the City and the Nation share a vision of a complete community on the Reserve with a high quality of life, similar to that enjoyed by residents of Vancouver generally.

8.2 Amenities to be Delivered

The City acknowledges that the Development is currently anticipated to deliver those public benefits, amenities and services generally described in Schedule G [On-Reserve Public Amenities and Contributions] (the “**On-Reserve Public Amenities and Contributions**”) and that such On-Reserve Public Amenities and Contributions are expected to contribute to a high quality of life for residents of the Development and of Vancouver generally.

8.3 Changes to Amenities

The Parties acknowledge that if changes to the Development result in material changes to the nature, scale and purpose of the On-Reserve Public Amenities and Contributions, and such changes materially reduce, or are expected to materially reduce, the overall benefit provided, or expected to be provided, by the On-Reserve Public Amenities and Contributions, the Nation now agrees to contribute additional public benefits, amenities and/or services, in kind or in cash, to off-set resulting service level impacts in accordance with the Equity Principle. If the City reasonably believes that any such changes to public benefits, amenities and/or services are needed, the City will provide the Nation with a written request (“**Impact Remedy Request**”) for compensation (in-kind or cash) sufficient to address the cost or impact on public amenities including written reasons explaining such need together with reasonable supporting evidence.

8.4 Amendment

The Parties will, within 60 days of the Nation receiving an Impact Remedy Request, enter into an amendment to this Agreement to formalize any changes to the On-Reserve Public Amenities and Contributions as may be agreed upon by the Parties pursuant to this Section 8.4 and, in particular, such amendment will amend the descriptions of the On-Reserve Public Amenities and Contributions in Schedule G [On-Reserve Public Amenities and Contributions] accordingly. In the event that there is any disagreement between the Parties as to how to address the impact of the change, the matter will be resolved pursuant to Article 16.0 [Dispute Resolution].

9.0 Potential Public Amenities

9.1 Parties to Work Co-operatively

The Parties acknowledge that a number of public benefits, amenities and services in addition to the On-Reserve Public Amenities and Contributions are envisioned as part of the Development and the most notable examples of same are listed in Schedule H [Potential Public Amenities] (the “**Potential Public Amenities**”) but that the realization or completion of such Potential Public Amenities is subject to approvals, land partnerships, collaboration, agreements, funding and/or other contributions from or with other parties (including, without limitation, the City and the Nation) and, accordingly, cannot be implemented or confirmed by the Parties as of the Effective Date. In the interim:

- (a) both Parties confirm their good faith intent to work together diligently, as appropriate, to determine, agree upon, design, plan for and develop the Potential Public Amenities; and

- (b) both Parties will apply reasonable commercial efforts (provided always that such efforts are and remain approved and endorsed by the Parties' respective Councils) to secure any third party approvals, land partnerships, collaboration, agreements, funding and other contributions necessary to deliver such Potential Public Amenities as may be agreed upon by the Parties pursuant to the collaborative process contemplated in Section 9.1(a) above.

9.2 Timing of Process and Outcome

For the avoidance of doubt, both Parties acknowledge that:

- (a) this Agreement is a government-to-government relationship and the Nation or the City may not share certain of the other Party's policy goals;
- (b) the processes contemplated in Section 9.1 [Parties to Work Co-operatively] may require substantial time and effort and should therefore proceed in parallel with the planning and construction of the Development and not delay the completion of any obligations of the Parties under other sections of this Agreement, as may be required to permit the planning, construction, occupation and use of the Development or any of its parts or Phases (including, without limitation, the provision of the Municipal Services to the Lands and the Development or any portion of them);
- (c) neither Party will be responsible for the delivery or funding of any Potential Public Amenities if, despite the Parties' participation in the collaborative processes contemplated in Section 9.1 [Parties to Work Co-operatively] and the application of reasonable commercial efforts (subject to each Party's respective Council's continuing approval and endorsement of same) in accordance with Section 9.1 [Parties to Work Co-operatively], the Parties fail to provide such Potential Public Amenities for any reason (other than a failure to participate in the collaborative processes contemplated in Section 9.1 [Parties to Work Co-operatively] and/or apply reasonable commercial efforts in accordance with Section 9.1(b)), including, without limitation, as a result of a failure to secure any requisite third party approvals, land partnerships, collaboration, agreements, funding or other contributions; and
- (d) Article 16.0 [Dispute Resolution] will not apply to this Article 9.0 since (despite anything to the contrary in this Article 9.0) this Article 9.0 is not intended to be legally binding on the Parties.

10.0 Delivery of and Payment for Municipal Services

10.1 Tax Supported Municipal Services

The City agrees to provide the Tax Supported Municipal Services to the Reserve on the terms and conditions set out in this Agreement, including, without limitation, Schedule B [Tax Supported Municipal Services].

10.2 Payment for Tax Supported Municipal Services

The Nation agrees to pay the City for the Tax Supported Municipal Services on the terms and conditions set out in this Agreement, including, without limitation, Schedule B [Tax Supported Municipal Services].

10.3 Utility Services

The City agrees to provide the Utility Services to the Reserve on the terms and conditions set out in this Agreement, including, without limitation, the Utility Services Schedules.

10.4 Payment for Utility Services

The Nation agrees to pay the City for the Utility Services on the terms and conditions set out in this Agreement, including, without limitation, the Utility Services Schedules.

10.5 Application of Equity Principle

The Nation and the City acknowledge that payment for the Municipal Services is intended to be continuously governed by the Equity Principle as supplemented by Article 8.0 [On-Reserve Public Amenities and Contributions], Section 11.1 [Future Changes], and Section 11.2 [Changes to Development], and that the detailed calculations set out in Schedule B [Tax Supported Municipal Services] and those incorporated by reference into the Utility Services Schedules are agreed to be an accurate and fair application of the Equity Principle as of the Effective Date but subject to revision for future periods pursuant to Article 8.0 [On-Reserve Public Amenities and Contributions], Section 11.1 [Future Changes], and Section 11.2 [Changes to Development].

10.6 Payment of Regional Amounts

The Nation and the City acknowledge that there are currently no comprehensive statutory mechanisms for the collection and remittance of payments (“**Regional Amounts**”) to certain third party governmental authorities (“**Regional Governments**”) of the types described in Section N.1 of Schedule N [Excluded Services]. Although Regional Amounts are collected by the City from off-Reserve residents and businesses and then remitted to the applicable Regional Governments, they are not as of the date of signing this Agreement payable by Reserve occupants due to the status of “Lands Reserved for Indians” under the *Constitution Act*, 1867 and due to the current legislative regime in place in Canada and British Columbia with respect to same. To ensure that all residents and businesses within Vancouver pay an equitable portion of Regional Amounts, the Nation intends to make commercially reasonable efforts to determine those cases where the Nation considers it appropriate to pay Regional Amounts on behalf of its occupants to such Regional Governments, so as to ensure such equity between Reserve and off-Reserve residents and businesses of Vancouver. In this regard, the Nation acknowledges its good faith intent to, where no equivalent agreement or arrangement is in place between the federal government or the Nation and any Regional Government for such services,

negotiate agreements with such Regional Governments as would normally receive Regional Amounts via the City.

11.0 Changes in Scope of Services

11.1 Future Changes

Despite any other term of this Agreement, if at any time during the Term, there is a:

- (a) change to the Development that has a Material Impact;
- (b) change which, but for Section 11.1(B) below, would have resulted in the issuance of an Impact Remedy Request pursuant to Article 8.0 [On-Reserve Public Amenities and Contributions], but is also a change affecting more than the On-Reserve Public Amenities and Contributions;
- (c) new agreement, change in any agreement existing prior to the Effective Date, or change in any agreement between the Nation and a Regional Government, including any agreements entered into pursuant to Section 10.6 [Payment of Regional Amounts]; or
- (d) material change in any applicable:
 - (i) laws or regulations (excluding laws or regulations enacted by either Party), or any other material change beyond the Parties' reasonable control; or
 - (ii) laws, regulations, policies, service methods, billing methods, or any other material change within the control of a Party, provided that such change is made on a Non-Discriminatory Basis,

affecting the Parties' rights and obligations under this Agreement (any such change referred to in the above paragraphs (a) through (c) being a "**Change in Circumstances**"), then the Parties will, within 60 days of the Change in Circumstances, enter into an amendment to this Agreement in order to ensure continued compliance with the Equity Principle.

In the event that there is any disagreement between the Parties as to how to address the impact of the Change in Circumstances, the matter will be resolved pursuant to Article 16.0 [Dispute Resolution].

During the period required to reach an agreement on an amendment under this Section 11.1 or resolve any dispute with respect to same, the Nation will make payment under this Agreement on the basis reasonably requested by the City provided that the City will reimburse the Nation (or the Nation will pay the City) to the extent necessary for any over-payments by the Nation (or under-payments by the Nation) with interest determined under Section 12.4 [Late Payment Interest Charges] once the Parties have agreed on such amendment or the dispute has been resolved.

For greater certainty:

- (A) the term “change” in this Section 11.1 does not include an Unavoidable Delay as defined in the Main Agreement; and
- (B) where the Change in Circumstances also involves a change of the type described in Section 11.1(b), the City is not required to issue an Impact Remedy Request and is entitled to address the matter with the Nation and, if necessary proceed to dispute resolution, pursuant to this Section 11.1 independently of Article 8.0 [On-Reserve Public Amenities and Contributions].

11.2 Changes to Development

- (a) The Parties acknowledge that this Agreement has been settled on the assumption that the Nation will undertake the Development in substantially the form, density, schedule, and other features and details set out in Schedule L [Development] and in the Phases and order of Phases (from 1 to 4) set out in Schedule A [Plan of Reserve] and timing of Phases set out in Section F.2 [Current Estimated Construction Schedule] of Schedule F [Triggered Infrastructure].
- (b) The City acknowledges the Nation has unfettered authority and jurisdiction to modify the Development in any way at any time.
- (c) The Nation acknowledges that any modification to the Development could have a Material Impact on, including without limitation, the On-Reserve Public Amenities and Contributions or Triggered Infrastructure, and therefore constitute a Change in Circumstances and be dealt with in accordance with Section 11.1 [Future Changes] or, if applicable, Article 8.0 [On-Reserve Public Amenities and Contributions].
- (d) Accordingly, for the purposes of this Agreement, the following are deemed to be examples of change to the Development that has a Material Impact and are therefore deemed to be, without limitation, a Change in Circumstances to which Section 11.1 [Future Changes] would apply if either Party sought relief under same:
 - (i) 5% or more change in the overall density of the Development;
 - (ii) any change in water or sewer demand from that determined and agreed upon by the Parties pursuant to Schedule F [Triggered Infrastructure] or the Utility Schedules;
 - (iii) 5% or more change in either the proportion or overall number of units designated for Rental;
 - (iv) 5% or more change in either the proportion or overall number of Affordable Units; and
 - (v) Any change in the size of the Reserve, including any change resulting from the ATR process (except the ATR of the Road and Storm Sewer Area as

provided for in Section F.13 [Vanier Park Road and Storm Sewer] of Schedule F [Triggered Infrastructure]).

For the purposes of the above references to “5%”, all such measurements are to be taken utilizing the metrics set out in Schedule L [Development] as the base from which the percentage is measured.

12.0 Financial Terms

12.1 Credit for Taxable City Property

Subject to Sections 12.1(a) and 12.1(b), the Nation will automatically credit the City for the full amount of any taxation payable to the Nation with respect to any City Infrastructure Rights but for greater certainty, this Section 12.1 will:

- (a) not apply following the expiry or sooner cancellation of this Agreement in its entirety; and
- (b) not apply to City interests which are not City Infrastructure Rights and which are acquired after the Effective Date for any purpose which are separate from providing Municipal Services.

12.2 Federal and Provincial Taxes

If the payments to be made by the Nation to the City under this Agreement are subject to taxation under any federal or provincial sales, value-added, goods and services, or other tax legislation, the Nation will pay such tax in addition to the amounts specified in this Agreement to the City or as otherwise required by law.

12.3 Billing and Payment

The City will prepare and deliver to the Nation the invoices reasonably required to show the amounts due and owing for the Municipal Services for each applicable type of Municipal Service and for each applicable payment period substantially in the form attached as Schedule O [Sample Invoice]. Such invoices will be delivered to the Nation at least 30 days before the due date for such invoice. Where an invoice is delivered later than required, the Nation will not be required to pay interest on that invoiced amount for the period of time between the delivery of the invoice and 30 days after such delivery.

12.4 Late Payment Interest Charge

- (a) Subject to Section 12.4(b), where either Party fails to pay, when due, any amount owing to the other Party under this Agreement, that Party will pay interest at the Prime Rate from the due date to the date of payment. For the purposes of this Agreement, the “Prime Rate” means the floating annual percentage rate of interest established from time to time by the City’s primary banking services provider (currently the Bank of Montreal) as the base rate that is used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the City’s primary banking services provider as its prime rate.

- (b) Despite Section 12.4(a), where the late payment is in respect of the Nation's payment for any Municipal Services, the Nation will, instead of paying interest at the Prime Rate, pay such interest and late payment charges as are then payable by off-Reserve residents and businesses of Vancouver under the City's by-laws for late payments of that applicable Municipal Service.

13.0 Bylaws

13.1 Timing and Process

The Parties have acknowledged the complexity of the laws applicable to the Reserve in Background A and have set forth their understanding of timing and process for the adoption by the Nation of by-laws required to facilitate the provision of the Municipal Services, in Schedule C [Adoption and Enforcement of Seḥákw Versions of City By-laws].

13.2 Inability of City to Provide Municipal Services

The Nation acknowledges and agrees that the City may not be able to provide the Municipal Services if the Nation does not adopt the Utilities Services By-laws in the manner contemplated by Schedule C [Adoption and Enforcement of Seḥákw Versions of City By-laws], and that the City may therefore elect not to enter into a TI Implementation Agreement with respect to the construction of any relevant Triggered Infrastructure Works, pending the completion of such adoption.

14.0 Release and Indemnity

14.1 Release and Indemnity – Specially Defined Terms

In this Article 14.0:

“Accidental Breach” means any breach by the City of this Agreement that occurs despite the good faith and diligent efforts of the City to perform its obligations;

“Capped Losses” means those types of Losses described in Section 14.5(b) [Application of Limitation of Liability];

“Payments” means those amounts payable by the Nation to the City pursuant to Schedule B [Tax Support Municipal Fees] and the Utility Schedules. “Payments” expressly excludes all other amounts payable under this Agreement, including without limitation and by way of example only, amounts payable pursuant to Schedule F [Triggered Infrastructure], Schedule G [On-Reserve Public Amenities and Contributions], and Schedule I [City Staff Costs Reimbursement];

“Aggregate Payments” means the deemed amount of Aggregate Payments calculated in accordance with Section 14.4(b) below;

“Uninsured Losses” means those Losses which are not reimbursed by the Nation's or the City's insurers, and are not part of any self-insured portion or deductible payable by either Party, and for further certainty, include Losses arising under any Schedule or Appendix to this Agreement, such as by way of example only and without limitation, the

Sub-Licence, any Provincial Storm Licence or Discharge Permit, as well as any Replacement Tenure;

“willful misconduct” means any breach of this Agreement by the City that is not an Accidental Breach and continues to occur after written notice from the Nation that it considers the breach to be willful misconduct and the City fails or neglects to promptly remedy the breach using good faith and diligent efforts; and

“Year” means any year long period starting from the Effective Date or an anniversary of the Effective Date, with “Year 1” being from the Effective Date to the 1st anniversary of same and “Year 2” being the next year and so on.

14.2 Release

The Nation releases the City and City Personnel from all Uninsured Losses in any way associated or connected with the performance by the City of its obligations under this Agreement and waives all rights and causes of action against the City and City Personnel for all loss and damage to property and for all bodily injury (including bodily injury resulting in death) which may be caused by the City or City Personnel in respect of the performance of the City’s obligations under this Agreement, provided always that (subject always to Section 14.7 [Limitation on Standard of Care]) this release and waiver does not apply in any case where the City or City Personnel have been negligent or have acted or failed to act in a manner which amounts to willful misconduct.

14.3 Indemnity

The Nation now indemnifies and will hold the City and City Personnel harmless from all Uninsured Losses in respect of bodily injury (including bodily injury resulting in death) or damage to property occurring within the Reserve which is caused by the City or City Personnel in respect of or in connection with the performance by the City and City Personnel of any of the rights or obligations of the City under this Agreement, provided that (subject always to Section 14.7 [Limitation on Standard of Care]) this indemnity does not apply in any case where the City or City Personnel have been negligent or have acted or failed to act in a manner which amounts to willful misconduct.

14.4 Limitation of Liability of City

- (a) Despite any other term of this Agreement except for Section 14.5 [Application of Limitation of Liability] and Section 14.6 [Application of the Equity Principle], the Nation agrees that the maximum and total liability of the City for Capped Losses suffered by the Nation arising from any and all breaches by the City of this Agreement over the Term will be the Aggregate Payments received by the City over the Term.
- (b) The Aggregate Payments will be deemed to be as follows over the course of the Term:
 - (i) during Year 1, the amount of the Payments paid in Year 1, multiplied by five;

- (ii) during Year 2, the greater of: (a) the amount of the Payments paid in Year 2, multiplied by four; and (b) the sum of all Payments paid from and after the Effective Date to the end of Year 2;
- (iii) during Year 3, the greater of: (a) the amount of the Payments paid in Year 3, multiplied by three; and (b) the sum of all Payments paid from and after the Effective Date to the end of Year 3;
- (iv) during Year 4, the greater of: (a) the amount of the Payments paid in Year 4, multiplied by two; and (b) the sum of all Payments paid from and after the Effective Date to the end of Year 4;
- (v) during Year 5, the sum of all Payments paid from and after the Effective Date to the end of Year 5; and
- (vi) during Year 6 and all subsequent Years, the sum of all Payments paid to the end of the relevant Year.

14.5 Application of Limitation of Liability

Despite Section 14.4 [Limitation of Liability], the limitation on the liability of the City in Section 14.4 [Limitation of Liability] will be:

- (a) subject only to Section 14.6 [Application of the Equity Principle] a cumulative limitation of liability and applied to multiple breaches whether within the same Year or over multiple Years and so by way of example only and without limitation of the preceding wording, Capped Losses would be applied against the then current Aggregate Payments and if such Capped Losses exhausted or reached such limit of Aggregate Payments, the City's limitation of liability for future Capped Losses would be the Aggregate Payments less the amount paid out previously on account of all prior Capped Losses;
- (b) applicable only to Losses that are Uninsured Losses caused or contributed to by an Accidental Breach (but only to the extent of such Accidental Breach) ("**Capped Losses**"); and
- (c) inapplicable to willful misconduct.

14.6 Application of the Equity Principle

Despite Section 14.4 [Limitation of Liability] and Section 14.5(a) [Application of Limitation of Liability], in the event that the Nation ever incurs Capped Losses which, after the application of their liability limits results in Capped Losses which are in excess of such limits, then the Nation will have the right to submit the matter to the process set out in Article 16.0 [Dispute Resolution]. The matter will then be resolved by applying the Equity Principle.

14.7 Limitation on Standard of Care

Despite any other term of this Agreement, the City will not under any circumstances be obligated to provide the Municipal Services to any greater standard of care or assume any

greater degree of liability in doing so than that which would apply in providing the same services to the City's inhabitants off-Reserve. All defences available to the City under the Vancouver Charter with respect to the provision or interruption of services will be made available to the City by the Nation enacting the Nation by-laws contemplated pursuant to Schedule C [Adoption and Enforcement of Seḥákw Versions of City By-laws] that are necessary to provide the City with such defences, and in the absence of such by-laws, by indemnifying the City to the same extent as provided in Section 14.3 [Indemnity] (and as though the Vancouver Charter applied as fully and effectively on-Reserve as off-Reserve and without regard to the words "this indemnity does not apply in any case where the City or City Personnel have been negligent or have acted or failed to act in a manner which amounts to willful misconduct" in Section 14.3 [Indemnity]).

14.8 Add City to Nation Insurance Coverages

The Nation will ensure that all of its commercial general liability insurance and other similar policies in effect from time to time in relation to the Lands and the Development add the City and City Personnel as additional insureds and that all property insurance carried by the Nation in relation to the Lands and the Development contains a waiver of subrogation by the insurer in favour of the City and City Personnel. Upon request, the Nation will provide the City with copies of its insurance policies and will assist the City to obtain the necessary certificates, amendments, and endorsements from the Nation's insurers, insurance agents and brokers. The Nation will pay any costs imposed by its insurer or agents in complying with this Section 14.8.

14.9 Add Nation to City Insurance Coverages

The City will ensure that all of its commercial general liability insurance and other similar policies in effect from time to time add the Nation and Nation Personnel as additional insureds. Upon request, the City will provide the Nation with copies of its insurance policies and will assist the Nation to obtain the necessary certificates, amendments, and endorsements from the City's insurers, insurance agents and brokers. The City will pay any costs imposed by its insurer or agents in complying with this Section 14.9.

14.10 Equal Contributions

The City and the Nation agree that for all claims against their respective insurance policies, such policies will contribute equally and no policy will be considered as "primary" or "non-contributing" as against the other policy.

15.0 Archaeological Protocols/Discoveries

15.1 Archaeological Protocols

- (a) It is anticipated that known or suspected archaeological discoveries (including without limitation archaeological material or features (either intact or disturbed)) may be encountered by either Party or their respective Personnel while exercising such Party's respective rights or performing its respective obligations under this Agreement including, without limitation, in the course of carrying out any Triggered Infrastructure Works or providing the Municipal Services (each such encounter an

“Archaeological Discovery” and more than one being **“Archaeological Discoveries”**).

- (b) Both Parties have policies or protocols (**“Archaeological Protocols”**) published by them from time to time in order to assist and guide their employees, contractors and other agents in dealing respectfully and appropriately with Archaeological Discoveries.
- (c) Each Party will ensure that it provides the other Party with an up-to-date copy of its Archaeological Protocols as at the Effective Date and then provides the other Party with a consolidated updated version each time any of its Archaeological Protocols are modified or updated. The Parties agree to maintain these Archaeological Protocols as appendices to the Municipal Services Coordination Guide for ease of reference by their respective Personnel.

15.2 Archaeological Discoveries

Upon any Archaeological Discovery, all ground disturbance must stop in the immediate vicinity unless and until the pre-conditions for the continuation of any ground disturbance are satisfied in accordance with the applicable Archaeological Protocols. If an Archaeological Discovery is:

- (a) on-Reserve, and is made by the City or City Personnel, the Archaeological Discovery will be reported to the Nation immediately and will be governed by the Nation’s Archaeological Protocols and all applicable laws; or
- (b) off-Reserve, and is made by the Nation or Nation Personnel, the Archaeological Discovery will be reported to the City immediately and will be governed by the City’s Archaeological Protocols and all applicable laws (such as, as at the Effective Date, the *Heritage Conservation Act* (British Columbia)). To the extent the following process is consistent with the then applicable Archaeological Protocols and applicable laws, the City will then promptly notify Musqueam, Tsleil-Waututh and Stó:lō Nations, as well as the applicable Provincial government representative where required (for example if the Archaeological Discovery is confirmed to be archaeological in nature).

16.0 Dispute Resolution

16.1 Dispute Resolution Process

Subject always to the limited exceptions set out in Article 17.0 [Remedies for Default/Specific Remedies] and Schedule R [Adding/Deleting Municipal Services and Cancellation], the City and the Nation commit to a proactive and progressive approach to dispute resolution. If the City and the Nation are unable to agree to the interpretation or application of any part of this Agreement, or are unable to resolve any other issue related to this Agreement through good faith dialogue between the applicable representatives of the matter or service in dispute as set out in the Municipal Services Coordination Guide, the following process will be initiated:

- (a) the matter will be escalated in writing to each Party’s dispute resolution representatives in the order set out in the Municipal Services Coordination Guide;

- (b) each Party's representative at each level of the escalation is to undertake diligent, good faith measures to resolve the dispute;
- (c) if for any reason (whether due to lack of escalation, failure of either Party to undertake good faith efforts, or any other reason) the foregoing is unsuccessful within 60 days of the first written notice issued under Section 16.1(a) above, the Parties may request the assistance of a skilled mediator agreed to by the Parties within 30 days' written notice of a request to appoint a mediator by either Party, failing which the mediator will be appointed by the Vancouver International Arbitration Centre ("**VanIAC**") and unless agreed otherwise, this mediation will follow VanIAC rules and will terminate 60 days after the appointment of the mediator;
- (d) if the Parties are unable to resolve the dispute under Section 16.1(b), the Parties agree, subject to Section 16.1(c), to refer the matter to a single arbitrator pursuant to the *Arbitration Act* (British Columbia), pursuant to the Domestic Arbitration Rules of the VanIAC and to accept the arbitration ruling as final and binding. If the Parties are unable to agree on a single arbitrator within 60 days following the end of mediations, the VanIAC will appoint an arbitrator;
- (e) for any dispute where a Party alleges that the amount in dispute is:
 - (i) greater than \$1,000,000, the Parties will, instead of appointing a single arbitrator pursuant to Section 16.1(d), appoint an arbitration panel comprised of three individual arbitrators. If the Parties are unable to agree on one or more of the three arbitrators to sit on such panel, the VanIAC will appoint such number of arbitrators as required to fill the arbitration panel with three arbitrators; and
 - (ii) greater than \$20,000,000, the Parties will (unless both Parties consent to arbitration of same) resolve the matter in a court of competent jurisdiction commencing the action in a registry located within Vancouver;
- (f) unless otherwise agreed by the Parties or ordered by an arbitrator, each Party will pay an equal share of the costs for any arbitrated dispute resolution process; and
- (g) no Party will terminate this Agreement during any attempt to resolve issues through the dispute resolution process set out in this Article 16.0 [Dispute Resolution], except as expressly provided for in Schedule R [Adding/Deleting Municipal Services and Cancellation].

17.0 Remedies for Default/Specific Remedies

17.1 No Termination on Default

Subject to Section 17.2 [Suspension on Default] below, if the Nation defaults on any of its payment obligations under this Agreement, the City will not be entitled to terminate this Agreement or reduce, limit, or suspend the provision of the Municipal Services as a result of such default, but it will be entitled to exercise all of its other rights and remedies at law or in equity including the right to make a claim for monetary damages in respect of any losses or costs suffered or incurred by the City as a result of such default in payment.

17.2 Suspension on Default

Despite Section 17.1 [No Termination on Default] and any other term of this Agreement:

- (a) where the City Council resolves, on the privileged and confidential advice of its City Solicitor and the financial records of its Director of Finance that the Nation has materially defaulted on its payments under this Agreement and that the Nation's debts to the City exceed \$1,000,000.00 including applicable interest, the City will be entitled, on 30 days' written notice to the Nation, to take any and all steps to limit or suspend the provision of Municipal Services until the Nation's debts to the City under this Agreement are fully re-paid;
- (b) where a default by the Nation or anything or any person on the Reserve limits or prevents or makes it unsafe (as defined below) for the City to provide any Municipal Service, the City is entitled to suspend or limit the Municipal Services as considered necessary by the City, acting reasonably and proportionately and providing as much notice as is practicable in the circumstances, until the default is remedied (and for the purposes of this clause, "unsafe" means only those situations where off-Reserve the same thing would result in City staff being required or permitted to refuse to provide the service such as for example the requirements to refuse unsafe work under the Workers Compensation Act regulations on worker safety or the collective agreement provisions applicable to the City's unionized employees and for further certainty, "unsafe" does not mean the services normally provided by the City's firefighters and police which are acknowledged to involve a certain degree of risk and which is inherent in the duties of those first responders);
- (c) neither Party is prevented by Article 16.0 [Dispute Resolution] from commencing an action in court where that Party is seeking a remedy of specific performance, injunction, or any other non-monetary remedy (as opposed to an action for damages for breach of contract as contemplated by this Article 17.0), and
- (d) nothing in Article 16.0 [Dispute Resolution] or this Article 17.0 prevents or limits each Party's rights to resolve disputes to which Section R.4 [Extraordinary Dispute Resolution of any Materialized Drafting Risk] applies in accordance with Schedule R [Adding/Deleting Municipal Services and Cancellation].

17.3 Financial Adjustments/Reconciliation on Cancellation

If this Agreement is cancelled or comes to an end, there will be a reconciliation and final adjustment of payments and contingent liabilities calculated up to the date of termination.

18.0 Aboriginal Rights and Title

18.1 Non-Derogation of Treaty or Aboriginal Rights

The City acknowledges and agrees that the City is entering into this Agreement as a municipal corporation and, although a creature of a provincial statute (namely, the Vancouver Charter), is not entering into this Agreement as an agent of the Crown in right

of the Province of British Columbia. The Parties agree that this Agreement will be legally enforceable by the City and the Nation independently of and entirely separately from:

- (a) any litigation; and
- (b) any treaty or other settlement or contract,

between the Nation or its members and either or both the Crown in right of the Province of British Columbia or the Crown in right of Canada and is without prejudice to the Nation's aboriginal rights and title and does not define, deny, abrogate, derogate from or in any way alter, suspend or affect these rights.

18.2 Nation's Rights Preserved

Except as specifically provided, this Agreement shall not be construed so as to prejudice or in any way affect the Nation's rights or interest in and over the Reserve or provide, in any manner, the City with any right or statutory jurisdiction it otherwise does not have over the Reserve.

19.0 General Contractual Provisions

19.1 Entire Agreement

This is the entire agreement between the Parties with respect to the matters referred to in this Agreement, and there are no representations, warranties, covenants, agreements, conditions, terms, collateral agreements by either of the Parties to the other, or between the Parties, in respect of its subject matter other than those expressed in this Agreement. Despite the Protocol and Municipal Services Coordination Guide being attached to this Agreement as Schedules, their provisions are not incorporated into and do not form part of this Agreement, and they do not have any function or weight in the context of any interpretation of this Agreement (except to the limited extent of documenting who to contact or provide a notice to under this Agreement).

19.2 Amendment

Despite any other provision in this Agreement, no supplement, modification or waiver of this Agreement will be binding on the Parties unless executed in writing by both the City and the Nation.

19.3 Notices

Any notice or other communication required or permitted to be given under this Agreement will be given in the manner and to the person as generally set out in the Municipal Services Coordination Guide.

19.4 Access to Records

Both Parties agree to keep reasonably detailed records of all matters related to the administration of this Agreement and to retain such records for a period of at least 10 years after the date of the event, activity or transaction to which such record relates. Upon

the request of any Party, the other Party agrees to provide reasonably detailed reports and summaries of such records and to permit the other Party access to all source records during the normal business hours of that Party. Where the inspecting Party wishes to obtain electronic copies or make physical photocopies or extracts of such records, the inspected Party will provide access to the applicable digital files or physical files as well as any computer, photocopying or reproduction equipment at no charge to the inspecting Party, however all labour costs associated with any such inspection will be to the account of the inspecting Party.

19.5 Openness/Transparency

As a government-to-government agreement, this Agreement will be considered and treated as a public document available for review by any member of the public.

19.6 Assignment

This Agreement may not be assigned by either Party except that the City may assign its rights to receive payments under this Agreement, provided that the prior written consent of the Nation has been given (such consent not to be unreasonably withheld or delayed). For certainty, where the City contracts out certain portions of the Municipal Services on a Vancouver-wide basis to a third party contractor, such contracting out will not be considered to be an assignment of this Agreement or release the City from its obligations with respect to such contracted out portions.

19.7 No Partnership

Nothing in this Agreement will be interpreted as creating (or operate to create) a partnership, agency or joint venture relationship between the Parties.

19.8 Severability

All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable; the balance of the obligations and covenants will remain and be binding and, where the provisions of Section R.9 [Severance] of Schedule R [Adding/Deleting Municipal Services and Cancellation] applies, the obligations and covenants will be amended in accordance Section R.9 [Severance].

19.9 Further Assurances

The Parties to this Agreement will do such things and execute such documents and in such form as may reasonably be necessary in order to perfect the intention of this Agreement.

19.10 No Waiver

Each Party acknowledges and agrees that no failure on the part of the other Party to exercise and no delay in exercising any right under this Agreement will operate as a waiver

of same nor will any single or partial exercise of a Party's right under this Agreement preclude any other or future exercise of that or any other right.

19.11 Remedies Non-Exclusive

The remedies provided for in this Agreement will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for a Party in this Agreement will be deemed to be in addition to and not, except as otherwise expressly stated, restrictive of the remedies of such Party at law or in equity.

19.12 Enurement

This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors, administrators and permitted assigns.

19.13 Electronic Execution


Execution and delivery of an executed signature page to this Agreement by either Party by electronic means (including with an electronic signature) shall be as effective as delivery of a manually executed copy of this Agreement by such Party. Pursuant to the *Electronic Transactions Act* (British Columbia), delivery of an email by one Party to the other stating their intent to be legally bound by this Agreement will also be as effective as signing and transmitting an executed signature page.

TO CONFIRM THEIR INTENT TO BE LEGALLY BOUND BY THIS AGREEMENT, the Parties have executed and delivered this Agreement to each other as of the Effective Date and in accordance with Section 19.13 above as indicated by their authorized signatory's signature below.

CITY OF VANCOUVER

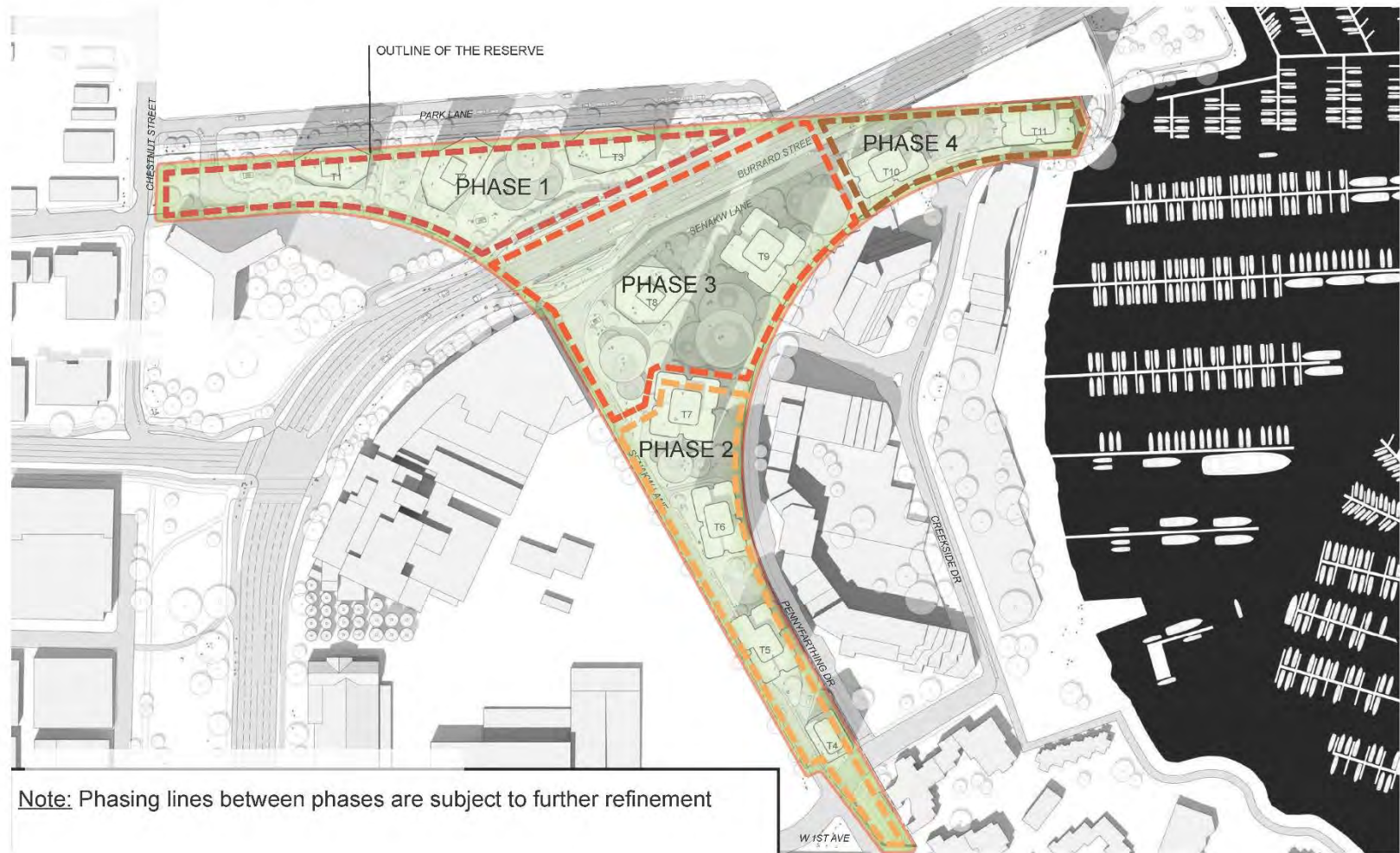
By: 
Mayor: Kennedy Stewart

SQUAMISH NATION

By: 
Dustin Rivers (Sxwchálten iy Xelsílem)
Council Chairperson

SCHEDULES A - R

SCHEDULE A - PHASING PLAN



SCHEDULE B - TAX SUPPORTED MUNICIPAL SERVICES

B.1 Specific Purpose Defined Terms

As set out in Section 2.1 [Special Purpose Defined Terms] of the Main Agreement, the following defined terms are used most often in relation to the Tax Supported Municipal Services and this Schedule B and so are defined in this Schedule B for convenience of reference and are as follows:

- (a) **“Actual Value”** has the same meaning as in the Assessment Act;
- (b) **“Aggregate Net Category Costs”** has the meaning set out in Section B.5(a) – Step 2;
- (c) **“Aggregate Tax Supported Category Costs”** has the meaning set out in Section B.5(a) – Step 2;
- (d) **“Annual Market Percentage Change”** has the meaning set out in Section B.4(c)(ii)(A);
- (e) **“AP Law”** has the meaning set out in Section B.10(b);
- (f) **“Arts, Culture and Community Services”** or **“ACCS”** means the Municipal Services normally provided without direct charge by the City within its boundaries and which are funded through the Real-Property Tax Supported budgets and resources allocated by the City for such services to the Arts, Culture and Community Services department;
- (g) **“Appeals Process”** has the meaning set out in Section B.10(a);
- (h) **“Assessment Change”** means a change to the use or permitted use of a Parcel that will cause the BCAA to change the valuation and/or classification of such Parcel, a non-exhaustive list of examples of which is set out in Section B.9 [Assessment Change];
- (i) **“Assessment Act”** means the *Assessment Act* (British Columbia) as amended or replaced from time to time;
- (j) **“Assessment-Based Fee”** means the fee payable by the Nation to the City pursuant to this Schedule B in consideration for the Tax Supported Municipal Services;
- (k) **“Assessment By-law”** means the Nation’s Property Assessment By-law as and when enacted, amended or replaced from time to time;
- (l) **“BC Assessment Authority”** or **“BCAA”** means the assessment authority continued under the *Assessment Authority Act* (British Columbia), as such Act is amended or replaced from time to time;
- (m) **“BCAA Decision”** has the meaning set out in Section B.10(a);

- (n) **“Category”** and **“Categories”** have the meanings set out in Section B.5(a) – Step 2;
- (o) **“Corporate Support/Debt/Capital Costs”** means the general costs of providing corporate support and services to City operational or public-facing departments as well as the debt servicing, contingency, reserve, and capital costs associated with the Tax Supported Municipal Services which costs will be equitably and proportionately allocated by the City’s Director of Finance each year substantially in accordance with the methodology outlined in Schedule O [Sample Invoice];
- (p) **“Engineering Public Works”** means the Municipal Services normally provided without direct charge by the City within its boundaries and which are funded through the Real-Property Tax Supported budgets and resources allocated by the City to the City’s Engineering Department’s budget line items for streets, sidewalks, street lights, sanitation, and everything else in the Engineering Services budget except for Sewer Services and Water Services;
- (q) **“Excavation”** means any excavation, addition to, disturbance, removal, or re-location of the soils within the Reserve which are intended to facilitate the construction of the Improvements within any given Phase, including without limitation pre-loading, pile-driving, diking, and contaminated soil remediation, but excluding:
 - (i) bore-holes made for the purposes of geo-technical, archeological, and other investigative testing of the soils, and
 - (ii) the deposit of soil excavated from any area within the Reserve onto another area of the Reserve;
- (r) **“Fire Services”** means the Municipal Services normally provided without direct charge by the City within its boundaries and which are funded through the Real-Property Tax Supported budgets and resources allocated by the City for such services to the Vancouver Fire and Rescue Services department of the City;
- (s) **“General Purpose Tax Rate”** means the tax rate established by City Council each year for each class of property as defined by the Assessment Act pursuant to the City’s annual rating by-law;
- (t) **“Implementation Plan”** has the meaning set out in Section B.7(d);
- (u) **“Improvements”** has the same meaning as in the Assessment Act;
- (v) **“Library Services”** means the Municipal Services normally provided without direct charge by the City within its boundaries and which are funded through the Real-Property Tax Supported budgets and resources allocated by the City for such services to the Vancouver Public Library Board;
- (w) **“Member”** means an individual member of the Nation under the Squamish Nation Membership Code 2000 (as amended or replaced from time to time), and **“Non-Member”** means an individual who is not a Member;

- (x) **“Member Taxable Lands”** means those portions of the Reserve which, as at each applicable valuation and classification date or dates which the BCAA uses for its valuation and classification purposes, are used exclusively by the Members for housing, culture, recreation, and administration purposes. For certainty, portions of the Reserve which are available for use and enjoyment of both Members and Non-Members are deemed to be Non-Member Taxable Lands;
- (y) **“Nation Business”** means a business which is wholly owned or effectively controlled by the Nation or one or more Members and which utilizes land on the Reserve which is held by the Nation, or by individual Members under a Certificate of Possession under the Indian Act, or by a Nation owned or controlled corporation under a licence or lease, but specifically excludes lands surrendered by licence or lease to the control of Non-Members such as by way of example only and without limitation the Partnership. For certainty, Nation Business will not include any businesses on any portion of the Reserve primarily used by Members for housing, culture, recreation, or administration purposes;
- (z) **“Net Category Cost”** has the meaning set out in Section B.5(a) – Step 2;
- (aa) **“Non-Member Taxable Lands”** means those portions of the Reserve which, as at each applicable valuation and classification date or dates which the BCAA uses for its valuation and classification purposes, are not Member Taxable Lands and are not used for Nation Businesses;
- (bb) **“Operating Budget”** means the estimates required to be presented by the Director of Finance to City Council and then approved by City Council pursuant to Section 219 of the Vancouver Charter for each calendar year of the City’s operations and, as of the Effective Date, typically referred to as the City’s “operating budget” and does not include for the purposes of this Schedule B, the “capital budget” portion of such estimates;
- (cc) **“Parcels”** mean, without duplication, the portions of the land and Improvements comprising the Reserve that are set out on the Seḥákw Assessment Roll for the purpose of being individually classified and valued (which Parcels are intended to be equivalent to the “properties” set out on the “assessment roll”, as such terms are used in the Assessment Act, prepared by the BCAA for off-Reserve lands);
- (dd) **“Parcel-Based Fee”** has the meaning set out in Section B.5(a) – Step 4;
- (ee) **“Parcel Changes”** has the meaning set out in Section B.6(b);
- (ff) **“Parcel Update Date”** means, in the ordinary operation of the BCAA for off-Reserve lands, the date in each calendar year on which the BCAA must obtain the “property” information required to prepare the “assessment roll” for the off-Reserve lands (as such terms are defined in the Assessment Act) in accordance with the Assessment Act which date, as of the Effective Date, is October 31;
- (gg) **“Parks Services”** means the Municipal Services normally provided without direct charge by the City within its boundaries and which are funded through the Real-Property Tax Supported budgets and resources allocated by the City for such services to the Park Board;

- (hh) **"Percentage Tax Rate"** has the meaning set out in Section B.5(a) – Step 3;
- (ii) **"Phase 1 Area", "Phase 2 Area", "Phase 3 Area" and "Phase 4 Area"** mean with respect to each Phase, the area shown on Schedule A [Plan of Reserve] as allocated to that Phase, as may be amended from time to time;
- (jj) **"Police Services"** means the Municipal Services normally provided without direct charge by the City within its boundaries and which are funded through the Real-Property Tax Supported budgets and resources allocated by the City for such services to the Vancouver Police Board;
- (kk) **"Real-Property Tax Supported"** means that the funding is derived from the assessment-based real property taxes levied by the City pursuant to Part XX – Real-Property Taxation of the Vancouver Charter;
- (ll) **"Reserve Tax Rate Fraction"** has the meaning set out in Section B.5(a) – Step 3;
- (mm) **"Señákw Assessment Roll"** means the roll prepared pursuant to Sections B.5 [Assessment-Based Fee] and B.6 [Assessment Roll] of this Schedule B. For certainty, the "Señákw Assessment Roll" will exclude all assessed values relating to City Infrastructure Rights and any other access rights entitled to an equivalent grant pursuant to Section 12.0 [Financial Terms] of the Main Agreement and any properties not situated within the Reserve;
- (nn) **"Tax Supported Category Cost"** has the meaning set out in Section B.5(a) – Step 2;
- (oo) **"Tri-Partite BCAA Services Agreement"** has the meaning set out in Section B.4(a); and
- (pp) **"Valuation Principles"** has the meaning set out in Section B.7(a).

B.2 Scope of Tax Supported Municipal Services

As of the Effective Date, the scope of the Tax Supported Municipal Services to be provided by the City will be Police Services, Fire Services, Library Services, Parks Services, ACCS, Engineering Public Works, and the property tax portion of Sewer Services, and their proportionate share of Corporate Support/Debt/Capital Costs.

B.3 Correlation of Assessment By-law with Assessment Act

At all times during the term of, and for the purposes of, this Agreement, the Nation will ensure that the Assessment By-law (if one is enacted and only to the extent it pertains to the Reserve) classes and relevant definitions, are (a) materially the same as those of the Assessment Act, or (b) where they are not, use commercially reasonable efforts to ensure and assist the City and the BCAA to verify that the classes and definitions set out in the Assessment By-law (if one is enacted and only to the extent it pertains to the Reserve) have materially the same effect as though they were under the Assessment Act.

B.4 Access and Co-operation with Assessor

- (a) Subject to Section B.4(b) and (c), the City and the Nation will jointly engage the services of the BCAA in compliance with the valuation, classification and other applicable terms of this Schedule B (all at the Nation's sole expense) (the "**Tri-Partite BCAA Services Agreement**"). The Tri-Partite BCAA Services Agreement will contractually obligate the BCAA to comply with all of the terms and conditions applicable to the BCAA under this Schedule B and will provide the City and the Nation with equal rights to receive all classifications, assessments, and other information, attend meetings, and administer the Tri-Partite BCAA Services Agreement and ensure that all rights to direct the BCAA and administer the Tri-Partite BCAA Services Agreement will be limited to only those situations where both the City and the Nation agree on how to exercise same so that the BCAA is not subject to any conflicting directions, instructions, or notices. The Parties will make commercially reasonable efforts to enter into the Tri-Partite BCAA Services Agreement.
- (b) Despite Section B.4(a) but subject to Section B.4(c), the Nation will be entitled to be the main contact and to send all directions, instructions, and notices to the BCAA on behalf of the City and the Nation (provided the City is concurrently copied on same), as well as receive all invoices, assessments, and valuations from the BCAA (provided the City is concurrently copied on same).
- (c) Despite Section B.4(a) and (b) above:
 - (i) where the Nation and the City cannot agree (which event is to be determined by either Party deciding in its sole discretion and giving written notice to the other Party that they cannot agree despite any term to the contrary in Article 16.0 [Dispute Resolution] and regardless of what attempts if any have been made to agree on or resolve the matter) on how to exercise any given right under the Tri-Partite BCAA Services Agreement, the Nation will, on giving or receiving such notice, be obligated and entitled to:
 - (A) give the BCAA the applicable notice, request, or direction; and
 - (B) concurrently provide a full and complete copy of all resulting communications with the BCAA to the City,but same will apply without prejudice to the City's rights to dispute same under Article 16.0 [Dispute Resolution] of the Main Agreement;
 - (ii) where a notice is issued by either Party pursuant to Section B.4(c)(i) above, or for any other reason whatsoever, there is a delay in the City receiving the information necessary to calculate and invoice the Nation for the Assessment-Based Fee on time, the City will be entitled to give notice to the Nation of the reasonable particulars of the delay and the City will then be entitled to calculate and invoice the Nation for the Assessment-Based Fee using:

- (A) the then most recent Seḥákw Assessment Roll (if available), adjusted by the City for the Annual Market Percentage Change in assessed values off-Reserve for each applicable property class based on the Assessment Roll prepared by the BCAA for off-Reserve properties within Vancouver (where “**Annual Market Percentage Change**” means the percentage change from one assessment year to the next in aggregate assessed value of an entire property class after adjusting for non-market changes such as new construction and parcels re-classified into or out of that class); and
- (B) such other relevant information as is determined by the City (for example Parcel Changes, changes or deemed changes to the Implementation Plan),
- (C) where a prior Seḥákw Assessment Roll is available, any other information supplemental to that in (A) and (B) above which would have likely been used, calculated, or determined by the BCAA but for the delay,
- (D) where a prior Seḥákw Assessment Roll is not available, any other information in lieu of that in (A) and (B) above which would have likely been used, calculated, or determined by the BCAA but for the delay,

and the Nation will pay such invoice on the same basis as an invoice calculated using BCAA information, but will be entitled to pay same on a without prejudice basis pending the resolution of any underlying disputes then unresolved and being pursued by the Parties pursuant to Section 16.0 [Dispute Resolution];

- (iii) for further certainty, and in addition to the provisions of Section 16.0 [Dispute Resolution]:
 - (A) the arbitrator(s) resolving a dispute under this Schedule B may award the City or the Nation an interim determination on any interim invoice issued by the City; and
 - (B) upon the arbitrator(s) issuing any final ruling on any dispute under this Schedule B, any payment made by the Nation on an interim invoice or interim award will be adjusted in accordance with such final ruling so as to require the City or the Nation as the case may be to pay the balance owing to the other Party with interest pursuant to Section 12.4 [Late Payment Interest Charge],
- (iv) although the City and the Nation may be jointly responsible for paying the BCAA’s fees under the Tri-Partite BCAA Services Agreement, as between the City and the Nation, the Nation will remain solely liable to pay all amounts due and owing the BCAA under the Tri-Partite BCAA Services Agreement as provided in this Schedule B; and

- (v) for further certainty, all of the above provisions will also be incorporated into the Tri-Partite BCAA Services Agreement so as to ensure that BCAA is also bound to comply with and respect the arrangements set out in this Section B.4.

B.5 Assessment-Based Fee

- (a) For each calendar year, the Assessment-Based Fee will be calculated as set out below:

Step 1 - Subject to Section B.6 [Assessment Roll], Section B.7 [Valuation Services and Principles], and the balance of this Section B.5, the City and the Nation will, pursuant to Section B.4 [Access and Co-operation with Assessor], cause the BCAA to enter into a Tri-Partite Services Agreement to assess, value, and classify all Parcels comprising the Reserve in accordance with the Assessment Act and, subject to this Schedule B (including for certainty, the Valuation Principles in Section B.7 [Valuation Services and Principles]), utilizing the same methodology and principles as those used for off-Reserve lands.

Step 2 - The City will allocate the amount of operating and capital costs (including the Corporate Support/Debt/Capital Costs) set out in the City's Operating Budget for that calendar year among the categories (each a "**Category**" and collectively, the "**Categories**") of the Tax Supported Municipal Services using the same methodology it does for the City's financial planning and budget purposes generally. The amount that is allocated to each Category is the "**Tax Supported Category Cost**" for such Category and the sum of the Tax Supported Category Cost for all Categories is the "**Aggregate Tax Supported Category Costs**". In respect of each Category, the City will then multiply the Tax Supported Category Cost for such Category by the percentage applicable to such Category as set out in the column titled "Señákw Relative Rate to COV" in Table B.1 below. The product obtained from such calculation in respect of each Category is the "**Net Category Cost**". The City will then add the Net Category Costs for all the Categories together, the sum of which is the "**Aggregate Net Category Costs**".

Step 3 – The City will determine the percentage tax rate ("**Percentage Tax Rate**") by dividing the Aggregate Net Category Costs by the Aggregate Tax Supported Category Costs. The City will then apply the Percentage Tax Rate to the General Purpose Tax Rate for each property class as adopted by City Council each year to each property class within the Reserve, as classified by the BCAA ("**Reserve Tax Rate Fraction**").

Step 4 - The City will then, for each Parcel, multiply its assessed value as shown on the Señákw Assessment Roll produced by the BCAA for that year by the Reserve Tax Rate Fraction for the class of property for that Parcel so as to calculate the aggregate amount payable with respect to such Parcel for the Tax Supported Municipal Services (each a "**Parcel-Based Fee**").

Step 5 – The City will then aggregate all of the Parcel-Based Fees for the Reserve to form the Assessment-Based Fee for that year.

- (b) The City will provide a reasonably detailed summary of the above calculations with its invoice for the Assessment-Based Fee which invoice/summary will be generally in the form of the sample invoice attached as Schedule O [Sample Invoice], along with (unless already provided by the BCAA to the Nation directly) a copy of the invoices and receipts for the City's payments to the BCAA for its services pursuant to this Schedule B (for which the Nation will reimburse the City concurrently with payment of the Assessment-Based Fee).
- (c) The City will deliver the Tax Supported Municipal Services summary invoice to the Nation by no later than the last Business Day of May of each calendar year, except that for 2022, the City will deliver the summary invoice on or around 30 days following the receipt of the 2022 Señákw Assessment Roll from the BCAA or November 30, 2022, whichever is earlier.

Table B.1

Service	Proportion of Tax Supported City Operating Budget (2022)*	Señákw Relative Rate to COV**
Police Services	42%*	100%
Fire Services	18%*	100%
Tax Supported Portion of Sewers	6%*	100%
Engineering Public Works	7%*	100%
Library Services	7%*	100%
Parks Services	10%*	50%
Arts, Culture and Community Services	7%*	75%
Planning	3%*	0%
Council and City Clerk	1%*	0%
<p>*NOTE: These percentages are for 2022 and will vary each year depending on City Council's priorities and various other factors.</p> <p>**NOTE: The Señákw Relative Rate percentages which are less than 100% were negotiated by the Parties to reflect (with respect to Planning and City Clerk) the Nation's status as a governmental regulatory body carrying out its own planning and governance functions (with its own elected Council), and to reflect (with respect to Parks and ACCS) certain components of the On-Reserve Public Amenities being provided by the Nation.</p>		

- (d) The Assessment-Based Fee will be payable in full on the last Business Day of July in that year, except for the 2022 Assessment-Based Fee, the Assessment-Based Fee (pro-rated in accordance with Section B.5(e) below) is due within 30 days of the Nation's receipt of an invoice for same from the City.

- (e) Since, as of the Effective Date there is no BCAA Tri-Partite Services Agreement yet in place and since this is expected to take up to 90 days following the Effective Date, and since the BCAA will then need approximately 60 days after that to conduct its services and complete the 2022 Seḥákw Assessment Roll, the Reserve has not been assessed by the BCAA for 2022. The City and the Nation will work with the BCAA to, as soon as reasonably practicable starting on or around 40 days after the Effective Date, obtain the applicable classifications and assessments for 2022, calculate the Assessment-Based Fee for 2022 and for the City to then invoice the Nation for the same, utilizing the City's 2022 Operating Budget and the above-noted 2022 classifications and assessments from the BCAA, except that the City will pro-rate the Assessment-Based Fee for 2022 to reflect the number of days in 2022 that this Agreement was in effect (ie. 365 days minus the days from January 1 to the Effective Date).

B.6 Assessment Roll

- (a) The City and the Nation will, subject to the provisions of Section B.7 [Valuation Services and Principles] and B.8 [Promise to Give Assessment Change Notice], cause the BCAA (at the Nation's sole expense) to annually prepare and provide directly to the Parties (within approximately the same time periods as other assessment rolls are prepared by the BCAA for the rest of the Province) the BCAA's classification and valuation data pertaining to each Parcel within the Reserve (the "**Seḥákw Assessment Roll**"). The Seḥákw Assessment Roll will be used by the City in calculating the Assessment-Based Fee pursuant to Section B.5 [Assessment-Based Fee]. Neither the City nor the Nation will do anything which causes or might cause the BCAA to assess the Parcels within the Reserve utilizing a different methodology than is set out in Section B.7 [Valuation Services and Principles] without first notifying the other at least one year in advance of the date upon which such different methodology takes effect and then only after the Parties have agreed on how such different methodology will be factored into the calculation of the Assessment-Based Fee in order to preserve the intent and effect of this Schedule B.
- (b) The Nation may, from time-to-time, submit a written notice to the City that it has elected to:
 - (i) divide any then-specified Parcels into two or more Parcels (including into volumetric portions), as more particularly specified in the Nation's written request; or
 - (ii) consolidate two or more contiguous Parcels into a single Parcel, as more particularly specified in the Nation's written request,

(collectively, "**Parcel Changes**"),

and the Parties will consolidate all Parcel Changes, and on each Parcel Update Date, the City will provide the BCAA (with a copy to the Nation) with the particulars of all Parcel Changes received on or after the prior Parcel Update Date and will direct the BCAA to classify and value the Parcels resulting from the Parcel Changes accordingly starting with the next Seḥákw Assessment Roll and

continuing until any further Parcel Changes are submitted in accordance with this Section B.6(b).

B.7 Valuation Services and Principles

- (a) The Parties will, as noted in Section B.4(a) above, contractually obligate the BCAA to provide the classification and valuation services in accordance with the valuation principles ("**Valuation Principles**") set out below.
- (b) Despite any other term of this Schedule B, the Valuation Principles to be applied by the BCAA are as follows:
 - (i) For all Non-Member Taxable Lands, the BCAA will be instructed and directed to value such lands and Improvements as though they were:
 - (A) not encumbered by a long-term lease (or any other encumbrance which, but for being on a Reserve, the lands would not be encumbered by);
 - (B) located off the Reserve;
 - (C) not "Lands Reserved for Indians" under the *Constitution Act* (1867); and
 - (D) held by a Non-Member as an estate in fee simple under the *Land Title Act* (British Columbia).
 - (ii) For all Member Taxable Lands, the BCAA will be instructed and directed to value such lands and Improvements based on the same assessment methodology applicable to member taxable lands located on other First Nation Reserves, on account of the *Indian Act* (Canada) legal restrictions on transferring and mortgaging Member Taxable Lands particularly as it applies to Member Taxable Lands held under a Certificate of Possession pursuant to the *Indian Act* (Canada).
- (c) Subject to Section B.7(b), the BCAA will be directed to determine the Actual Value of each Parcel in the same manner as the BCAA determines Actual Value off-Reserve, which, without limitation and by way of example only, includes the BCAA's methodology of considering "highest and best use". In this regard:
 - (i) the Parties have agreed to use the Implementation Plan as the instrument which will mimic or operate as the equivalent to the off-Reserve concept of zoning and land use regulation;
 - (ii) the delivery of the Implementation Plan (and each required update to same) will therefore be analogous to an off-Reserve event which records the permitted density and use of land off-Reserve and therefore records the "highest and best use";
 - (iii) the Nation intends to prepare an Implementation Plan that only shows the portion of the Development being developed for each upcoming Phase,

with all future Phases to be shown on the Implementation Plan as having no assigned density or Improvements (and so that the BCAA will determine Actual Value in a manner similar to vacant land off-Reserve which has no permitted residential, business or industrial uses); and

- (iv) the Nation now warrants and represents that no part of the Development will be permitted to be designed or constructed except in accordance with the Implementation Plan (as updated from time to time in accordance with Section B.7(i)), and now acknowledges that this warranty and representation is of fundamental importance to the City since the Implementation Plan is the on-Reserve “equivalent” to zoning and land use regulation off-Reserve for the purpose of this Schedule B. Accordingly, to the extent that the Development ever deviates from the Implementation Plan, the City and the BCAA will have the right to determine Actual Value on the basis of the actual Development as opposed to the Implementation Plan until such time as the Nation provides an Implementation Plan which complies with this Schedule B.
- (d) In furtherance of Section B.7(c) above, the Nation will, at its sole expense, prepare, maintain and, from time to time, update in accordance with this Section B.7, an implementation plan (the “**Implementation Plan**”) to provide the City and the BCAA with sufficient information (being, to the extent possible, at least as sufficient as that which it would have available for off-Reserve properties) to inform the valuation and classification of the Lands during the life of the Development. The Nation will provide to the City and the BCAA the Implementation Plan (and each required update to same) in a form and with content that is sufficient and accurate for the above purposes and so will include, at a minimum, a detailed description of all Parcels, a detailed description of all Improvements (including by way of example only and without limitation, the aggregate gross floor area of all of the buildings, the permitted uses, location and gross floor area for each of the Parcels, the number of non-market residential housing units and the number of Nation member units).
- (e) Subject to Section B.7(f), the Nation:
 - (i) will deliver the first iteration of the Implementation Plan, and such other information as reasonably requested by the City or the BCAA, as soon as reasonably practicable following the Effective Date (and in any event within 30 days of the Effective Date), which the Implementation Plan must show all Improvements and other required information for Phase 1 and cover the entire Phase 1 Area;
 - (ii) will, in respect of Phase 2, Phase 3 and Phase 4, deliver an updated Implementation Plan, and such other information as reasonably requested by the City or the BCAA regarding such Phase, as soon as practicable but in any event no later than 18 months prior to the commencement of any Excavation (as determined pursuant to Section B.7(g)) within the Phase 2 Area, any Excavation within the Phase 3 Area and any Excavation within the Phase 4 Area, respectively; and

- (iii) is, until the deadlines set out in Section B.7(e)(ii) above have expired, permitted to show for each of Phase 2, Phase 3 and Phase 4, respectively, no permitted or approved uses or density on the Implementation Plan for those Phases and so for example up until 18 months (plus a day) before Excavation starting on Phase 2, the Implementation Plan is permitted to indicate no uses or density on Phase 2.
- (f) Despite Section B.7(e), the Nation will not be in default of this Agreement if it is determined, based on the actual date of Excavation for a Phase commences, that the Nation failed to meet the deadlines in Section B.7(e) but:
 - (i) the Parties will cause the BCAA to classify and value the Lands as though an Implementation Plan for each Phase had been delivered by the applicable deadline above by extrapolating from the description of the Development for each Phase set out in Schedule L [Development] (as well as all other available information) after which the City will have the right to recalculate the applicable Parcel-Based Fees if and when a compliant Implementation Plan is delivered to the City and the BCAA and issue an adjusted invoice for same (retroactive to the original interim invoice date with interest if applicable as determined in accordance with Section 12.4 [Late Payment Interest Charge] of the Main Agreement and indicating either a credit or an additional amount owing depending on the adjusted amount); and
 - (ii) the Nation will not commence Excavation on any given Phase unless and until an Implementation Plan prepared in full compliance with this Schedule B is delivered to the City and the BCAA.
- (g) For the purposes B.7(e)(ii), the Nation will, acting reasonably and in good faith, determine the date that is “18 months prior to the commencement of any Excavation” for any given Phase. The Nation’s determination will be set out in a written notice to the City and if the commencement of the Excavation occurs within the 18 month period following such notice, the parties will then adjust and recalculate any applicable Parcel-Based Fees based on the actual date that Excavation commenced, pursuant to Section B.7(f)(i).
- (h) In each calendar year, the Parties will meet prior to the end of August to review the then-current Implementation Plan, and any other information reasonably requested by the City or the BCAA, for the Development, in order to properly assess, classify, and value each Parcel of the Development.
- (i) For and during the life of the Development, the Nation will ensure that the Implementation Plan is promptly updated, and such updated Implementation Plan is delivered to the City, whenever there is any change to the Development from that shown on the Implementation Plan, as part of its notification obligations pursuant to Section B.8 [Promise to Give Assessment Change Notice].

B.8 Promise to Give Assessment Change Notice

The Nation will, as soon as reasonably practicable, and in any event within 30 days of Nation Personnel becoming aware of same, give the City and the BCAA written notice of

the occurrence of an Assessment Change, providing both the City and the BCAA with reasonable particulars of same.

B.9 Assessment Change

The Nation agrees that the following is a non-exhaustive list of assessment changes (each, an “**Assessment Change**”), of which the Nation will give notice to the City pursuant to Section B.8 [Promise to Give Assessment Change Notice]:

- (a) The Reserve is expanded by way of the ATR (addition to reserve) process;
- (b) The lease, licence or other interest through which certain Non-Member Taxable Lands are held is cancelled or expires or materially amended to permit a materially different use or to extend the current use beyond the current term; and
- (c) With respect to Member Taxable Lands:
 - (i) a portion of Member Taxable Lands ceases to be Member Taxable Lands;
 - (ii) a then-vacant portion of Member Taxable Lands are developed for the Development (or anything else); or
 - (iii) civic purpose Member Taxable Lands (such as a community centre or administration building) are re-developed into any use other than civic purposes.

The effective date of an Assessment Change will be the first assessment period following the date on which an Assessment Change has occurred. So, for example, if an Assessment Change occurs on September 1 and the BCAA typically views and assesses Parcels on October 31 for the following calendar year, then the effective date of the Assessment Change for the applicable Parcel will be deemed to be that following calendar year.

B.10 Assessment Appeals

- (a) The Nation may implement an appeals process (“**Appeals Process**”) to hear appeals and resolve disputes regarding:
 - (i) entries made by the BCAA on a Señákw Assessment Roll (including the classification and/or valuation of any Parcel) or any other determination made by the BCAA under this Schedule B (a “**BCAA Decision**”); and
 - (ii) assessments made by the Nation for its internal governance purposes (including assessments made against its tenants and occupants),utilizing its “Real Property Assessment Law” (or another law of the Nation), FNCIDA or the *First Nations Land Management Act* (or any other applicable laws relating to its Appeals Process).
- (b) If the Nation wishes to make the Appeals Process apply to BCAA Decisions, then the Nation’s law or legislation (and any and all subsequent amendments to the

same) implementing such Appeals Process (“**AP Law**”) must first be submitted, in full, to the City and approved by the City, such approval not to be unreasonably withheld or delayed, prior to the AP Law applying to any BCAA Decisions.

- (c) Accordingly, any and all disputes under this Schedule B will be addressed as follows:
 - (i) if such dispute relates to a BCAA Decision, such dispute will be resolved in accordance with the Appeals Process (provided same has been approved pursuant to Section B.10(b));
 - (ii) if such dispute relates to a matter other than a BCAA Decision, (or at such point in time there is no Appeals Process for a BCAA Decision) such dispute will be resolved in accordance with Article 16.0 [Dispute Resolution] of the Main Agreement; and
 - (iii) in the event that either Party disputes a matter under this Schedule B and the matter is determined to have been brought under the incorrect process, that Party will retain the full right to re-start the process under the correct process.

SCHEDULE C - ADOPTION AND ENFORCEMENT OF SENÁKW VERSIONS OF CITY BY-LAWS

C.1 BACKGROUND

- (a) The Reserve is subject to federal jurisdiction pursuant to section 91(24) of the *Constitution Act*, 1867;
- (b) Section 88 of the *Indian Act* provides:
88 Subject to the terms of any treaty and any other Act of Parliament, all laws of general application from time to time in force in any province are applicable to and in respect of Indians in the province, except to the extent that those laws are inconsistent with this Act or the *First Nations Fiscal Management Act*, or with any order, rule, regulation or law of a band made under those Acts, and except to the extent that those provincial laws make provision for any matter for which provision is made by or under those Acts;
- (c) The Nation, Canada and British Columbia are discussing the adoption of a Regulation pursuant to FNCIDA which may result in specified provincial legislation applying to the Reserve; and
- (d) The Parties wish to make arrangements which would provide for the City to have the right, in order to deliver the Municipal Services to the Reserve, to apply and enforce certain Nation by-laws on the Reserve where they mirror the equivalent City by-laws and where authorized to do so in accordance with those by-laws, or where otherwise authorized by the Nation.

C.2 INTERPRETATION

(a) Specific Purpose Defined Terms

As set out in Section 2.1 [Special Purpose Defined Terms] of the Main Agreement, the following terms are most applicable to the provision of bylaw enforcement aspects of the Municipal Services and so are defined in this Schedule C as follows:

- (i) **“Business Licensing and Regulation By-laws”** means the by-laws enacted by the City from time to time to support the provision of its Business Licensing and Regulation Services, including by way of example only and without limitation the Licence By-law, Business Premises Regulation of Hours By-law, Business Prohibition By-law, Club Regulation By-law, Noise Control By-law, Second-hand Dealers By-law, Shops Closing By-law, and Street Vending By-law;
- (ii) **“Business Licensing and Regulation Services”** means the business licensing and regulation services typically provided by the City within its boundaries as of the Effective Date using funds derived from permit fees, license fees, penalty fines, and other levies other than through real-property taxes, all as allocated by the City to the City’s Development, Building and Licensing Department’s budget line items for the licensing, regulation, and enforcement of businesses operating within

Vancouver, including without limitation and by way of example only, the net costs of administering and enforcing the Business Licensing and Regulation By-laws;

- (iii) **“Nation SSA By-laws”** means by-laws enacted by the Nation in support of the provision of the Municipal Services;
- (iv) **“Other By-laws”** means any other City by-laws in force from time to time that deal with subject matters other than the Business Licensing and Regulation By-laws and the Sewer and Water Utilities By-laws;
- (v) **“Sewer and Water Utilities By-laws”** means those City by-laws and GVS&DD Legislation relevant to the provision, administration, and enforcement of the Sewer Services and Water Services, including:

City of Vancouver Sewer and Watercourse By-Law 8093;

City of Vancouver Water Works By-Law 4848;

City of Vancouver Drinking Water Conservation By-Law 12183;

City of Vancouver By-Law Notice Enforcement By-Law 10201;

City of Vancouver Ticket Offences By-Law 9360; and

GVS&DD Legislation (as that term is defined in Schedule D [Sewer Services]; and

- (vi) **“SWS By-law Implementation Costs”** has the meaning set out in Section C.4(c) [Compensation for Utilities Services By-Laws] of this Schedule C.

C.3 LEGAL FRAMEWORK FOR NATION AND CITY BY-LAWS

(a) Relationship Between City and Nation By-laws

The Parties acknowledge and agree that:

- (i) the Sewer and Water Utilities By-laws are an integral part of the sewer and water municipal services provided off-Reserve;
- (ii) to the extent that the Sewer and Water Utilities By-laws, Business Licensing and Regulations By-laws, and Other Bylaws are not laws of general application or otherwise not effective or enforceable on the Reserve, similar versions of same or portions of same need to be adopted or enacted as Nation SSA By-laws in order to have legal force and effect on the Reserve; and
- (iii) the Nation has the authority pursuant to the *Indian Act* to enact by-laws relating to the use and occupation of land within the Reserve.

- (b) **Limit on City’s Enforcement Obligations** Despite any other term of the Main Agreement, the Nation acknowledges that the City may not be able to perform certain of its obligations under the Main Agreement, including the provision of one or more Municipal Services, unless and until the Nation provides the City with the required legal ability and authority

(as the Nation's agent) under the applicable Nation SSA By-law to do so. To the extent (but only to such extent) that the City is unable to perform any obligation or provide any Municipal Service under this Agreement due to a lack of legal authority related to the absence of, defect in, or gap in a Nation SSA By-law, the City will be relieved of such obligation to perform and the Nation will not be entitled to any credit or rebate from any obligation to pay for such Municipal Services unless the Parties otherwise agree in writing.

(c) **Enforcement by City**

The Parties agree that any and all proposed Nation SSA By-laws should provide for the City to enforce and prosecute them in the name of, or as agent of, the Nation, including all related administrative steps, communications and procedures, without further direction, permission or authority from the Nation. The City will take all steps and measures to enforce the Nation SSA By-laws as it would in comparable circumstances anywhere else within Vancouver. Subject to the Equity Principle, the Main Agreement, and any amendment to this Schedule C attached as an Appendix to this Schedule C:

- (i) the City will be fully responsible for all costs of any steps or measures it may take or incur pursuant to such Nation SSA By-laws in order to enforce them;
- (ii) the City will be entitled to receive and apply, as it considers appropriate, any money paid or collected pursuant to the Nation SSA By-laws as a result of its rights of inspection and enforcement;
- (iii) the Nation will have no obligation to reimburse the City for any shortfall between the City's inspection and enforcement costs and the money received or collected by the City in relation thereto;
- (iv) the City will be under no obligation to report to the Nation on its activities under such Nation SSA By-laws or the outcome of any enforcement process unless requested by the Nation; and
- (v) the Nation SSA By-laws will provide that the Nation will have the right, with the prior agreement of the City, to enforce the Nation SSA By-laws, where the Parties agree that it would be appropriate and in such case the Nation will be entitled to any money paid or collected in connection with such enforcement by the Nation.

C.4 ADOPTION PROCESS FOR SEWER AND WATER SERVICES

- (a) **Identification of Sewer and Utilities By-laws** The Parties agree to work together in the preparation of appropriate Nation SSA By-laws that would give the City the powers it requires to fully deliver the Sewer Services and Water Services to the Reserve, including access, inspection, prosecution, and enforcement powers. For that purpose, the City will provide the web-site link or otherwise make available to the Nation full copies of the Sewer and Water Utilities By-laws that it would ordinarily rely upon in the delivery of such services as the Municipal Services off-Reserve within Vancouver.

- (b) **Drafting of Nation SSA By-laws to Support Sewer and Water Services** Following receipt of the Sewer and Water Utilities By-laws, the Nation will prepare draft Nation SSA By-laws for consideration by the City. The Parties will review and identify all material portions of the Sewer and Water Utilities By-laws, to ensure they are expressed in the proposed Nation SSA By-laws. The proposed Nation SSA By-laws will be based on the Sewer and Water Utilities By-laws, with such modifications as are appropriate for the Development, and the City will provide such comments as it considers appropriate on the proposed drafts. The Parties agree that the Nation SSA By-laws must meet the requirements of the *Indian Act*, or any other legislation applicable to them. When agreement has been reached on the form of the Nation SSA By-laws, the Nation agrees to put the proposed Nation SSA By-laws before the Nation's Council for its consideration on a timely basis.

(c) **Compensation for Utilities Services By-laws**

The City will need to devote material City staff resources to the process described in Sections C.4(a) and C.4(b) above, and additionally may need to retain outside consulting services to expedite the process and, to the extent that same is required, the Nation agrees that any such implementation costs ("**SWS By-law Implementation Costs**") will be recoverable pursuant to Schedule I [City Staff Costs Reimbursement Agreement], provided that they are reasonably incurred in accordance with an approved budget. Pursuant to the City's current budget framework (as at the Effective Date), all of the costs of providing the Sewer Services and Water Services are addressed by Schedule B [Tax Supported Municipal Services] and the Utility Services Schedules and so no further compensation is expected to be required from the Nation for administering and enforcing the Nation SSA By-laws enacted under the above process following the Effective Date (except for the SWS By-law Implementation Costs).

C.5 ADOPTION PROCESS FOR BUSINESS LICENSING AND REGULATION BY-LAWS

(a) **Provision of Business Licensing and Regulation Services**

Despite any other term of this Section C.5, the parties have agreed not to pursue Nation SSA by-laws incorporating by reference the Business Licensing and Regulation By-laws, nor the provision of Business Licensing and Regulation Services, as of the Effective Date. At any time, and from time to time, the Nation may request that the City provide Business Licensing and Regulation Services and the City will consider such request in good faith but will not be bound to provide such services unless and until the parties have mutually agreed to do so.

(b) **Adoption of Business Licensing and Regulation By-laws**

The Nation may from time to time also exercise its powers under the *Indian Act* by enacting a Nation SSA By-law so as to adopt or incorporate by reference all or the material portions of the Business Licensing and Regulation By-laws. In this regard, but only on the request of the Nation, the Parties will work together in good faith to review and identify all material portions of the Business Licensing and Regulation By-laws and work collaboratively on the drafting of the Nation SSA By-law (following a similar process to that outlined in Section C.4 [Adoption Process for Sewer and Water Services] above) with a view to submitting the final product of that collaboration to the Nation's Council as a recommended Nation SSA By-law for their enactment. The Parties will agree in writing and then add such

agreement as an Appendix to this Schedule C that sets out how the Business Licensing and Regulation Services will be provided and paid for (for example, the City receiving and retaining all permit and other fees derived from providing the services) with such amendment taking legal force and effect upon the enactment of the applicable Nation SSA By-law by the Nation's Council.

(c) Compensation for Business Licensing and Regulation Services and By-laws

The City will need to devote material City staff resources to the process described in Section C.5(b) above, and additionally may need to retain outside consulting services to expedite the process and, to the extent that same is required, the Nation agrees that any such implementation costs will be recoverable pursuant to Schedule I [City Staff Costs Reimbursement Agreement], provided they are reasonably incurred in accordance with an approved budget. Pursuant to the City's current budget framework (as at the Effective Date), all of the costs of providing the Business Licensing and Regulation Services are recovered by administrative, permit and penalty fees, charges, and fines and so no further compensation is expected to be required from the Nation for providing these services following the Effective Date (except for the implementation costs recoverable under the first sentence of this Section C.5(c)).

C.6 ADOPTION PROCESS FOR OTHER BY-LAWS

(a) Adoption of Other By-laws

The Nation may from time to time also exercise its powers under the *Indian Act* by enacting a Nation SSA By-law so as to adopt or incorporate by reference all or the material portions of any Other By-laws. In this regard, but only on the request of the Nation, the Parties will work together in good faith to review and identify all material portions of the Other By-laws and work collaboratively on the drafting of the Nation SSA By-law (following a similar process to that outlined in Section C.4 [Adoption Process for Sewer and Water Services] above) with a view to submitting the final product of that collaboration to the Nation's Council as a recommended Nation SSA By-law for their enactment. The Parties will also negotiate and settle an amendment to the Main Agreement by adding it as an Appendix to this Schedule C that sets out how the new Municipal Services covered by the Nation SSA By-law will be provided and paid for (for example, the City receiving and retaining all permit and other fees derived from providing the services) with such amendment taking legal force and effect upon the enactment of the applicable Nation SSA By-law by the Nation's Council. In this regard, the Equity Principle will be applied to ensure that the Nation does not make duplicate payments for the new Municipal Service if it is already covered by Schedule B [Tax Supported Municipal Services] and ensure that the City is fairly compensated for all costs not covered by Schedule B [Tax Supported Municipal Services].

(b) Compensation for Other By-laws

The City will need to devote material City staff resources to the process described in Section C.6(a) above, and additionally may need to retain outside consulting services to expedite the process and, to the extent that same is required, the Nation agrees that any such implementation costs will be recoverable pursuant to Schedule I [City Staff Costs Reimbursement Agreement], provided they are reasonably incurred in accordance with an approved budget. For example, to the extent that the costs of providing the new

Municipal Services covered by the Nation SSA By-law are recovered by administrative, permit and penalty fees, charges, and fines, no further compensation will be required from the Nation for providing these new Municipal Services (except for the implementation costs recoverable under the first sentence of this Section C.6(b)).

C.7 GENERAL

(a) Notify City of Proposed Nation By-laws

In exercising any of its powers under the *Indian Act* to adopt or amend any Nation by-laws (whether or not a Nation SSA By-law) which in any way might affect the use, occupation, development or improvement of the Reserve in a manner that would or could affect the City's delivery of the Municipal Services, the Nation will:

- (i) notify the City by giving it a copy of the proposed by-law for comment and consultation;
- (ii) following enactment, give the City a certified copy of each such by-law; and
- (iii) where available, give the City a consolidated form of the new by-law.

(b) Limited Enforcement Scope for Certain By-laws

Despite any other term of this Schedule C, and in furtherance of the Equity Principle, the Parties agree that the City's by-laws will only be enforced by the City to the extent that their provisions have been mirrored or replicated on effectively the same terms and conditions within a Nation SSA By-law.

SCHEDULE D – SEWER SERVICES

D.1 BACKGROUND

- (a) The Parties have agreed that the Sewer Services will be provided as follows:
- (i) the Nation will construct, operate and maintain the Señákw Sewer System at its expense; and
 - (ii) the City will permit the connection of the Señákw Sewer System to the City Sewer System, and will provide the Sewer Services to the Nation with respect to accepting Sewage, Wastewater and Storm Water flows where the Señákw Sewer System connects to the City Sewer System;
- (b) Accordingly, the following fees have been allocated to align with the above by, generally speaking, the Nation paying for the provision of the Sewer Services by the City to the Development at the same rates charged to other Vancouver developments similar to the Development, as of the Effective Date:
- (i) the Sewer Use Rate;
 - (ii) as provided for in Schedule B [Tax Supported Municipal Services], the assessment-based component of the City Sewer System costs (which are net of the costs referred to in paragraph (i) above) calculated and payable in accordance with Schedule B [Tax Supported Municipal Services]; and
 - (iii) any and all additional fees for permitting and use pursuant to the Sewer Permit or any applicable Waste Discharge Permit (which would be applicable in similar circumstance off-Reserve and provided they are not part of the Sewer Use Rate or assessment based component of the City Sewer System costs), which may be required for certain uses which may be permitted by the Nation within the Lands such as, by way of example only and without limitation, fermentation;
- (c) As set out in further detail in Schedule F [Triggered Infrastructure], in addition to the Señákw Sewer System, the Nation will construct at its own expense (the following terms are defined in Appendix F.2 [Nation Delivered Works], except where otherwise defined in this Schedule D) Vanier Park Storm Sewer (subject to access permission from Canada as further set out in Schedule F [Triggered Infrastructure]), the Creekside Drive Outflow Upgrades, Sanitary Sewer Extension, the Sanitary Connections and the Storm Connections.

D.2 INTERPRETATION

(a) Specific Purpose Defined Terms

As set out in Section 2.1 [Special Purpose Defined Terms] of the Main Agreement, the following terms are most applicable to the provision of Sewer Services and so are defined in this Schedule D as follows:

- (i) **“Capacity Limits”** means the quantity limits of flows through each of the Sanitary Connections and the Storm Connections set out in the Sewer Permit and any applicable Waste Discharge Permit;
- (ii) **“City Sewer System”** means the sewer system, including the Sewer Connections, located within the City’s rights of way and not located within the Lands, including for certainty any portion of the Vanier Park Storm Sewer following the ATR (addition to reserve) process referred to in Section F.13 [Vanier Park Road and Storm Sewer] of Schedule F [Triggered Infrastructure] even though it will then be part of the Lands (as expanded by the ATR process);
- (iii) **“Groundwater”** means water in a saturated zone or stratum beneath the surface of land or below a surface water body;
- (iv) **“GVS&DD”** means the Greater Vancouver Sewerage and Drainage District, a body corporate and politic, created and constituted pursuant to the GVS&DD Legislation;
- (v) **“GVS&DD Legislation”** means the Greater Vancouver Sewerage and Drainage District Act as amended or replaced from time to time as well all by-laws enacted, amended or replaced from time to time pursuant that Act, including for certainty, the GVS&DD Sewer Use By-law No. 299 (2007), Food Sector Grease Interceptor By-Law No. 268, Fermentation Operations By-Law No. 294, and Sani-Dump By-Law No. 346;
- (vi) **“GVS&DD Sewer System”** means the means the sewer system owned and operated by the GVSⅅ
- (vii) **“Sanitary Connections”** means the connections of the sanitary portion of the Señákw Sewer System to the City Sewer System;
- (viii) **“Señákw Sewer System”** means the entire Storm Water, Wastewater and Sewage system, including without limitation and by way of example only, the connections, pipelines, pumping stations and other components, as they may exist from time to time within the Reserve, but for certainty, excluding:
 - (A) the Sanitary Connections, Storm Connections, and City Sewer System; and
 - (B) the portion of the City Sewer System within the Vanier Park Road and Storm Sewer Area (as defined in Schedule F [Triggered Infrastructure]), if and when such area is added to the Reserve;
- (ix) **“Sewage”** means any liquid waste other than uncontaminated water or Storm Water;
- (x) **“Sewer By-law”** means the City’s Sewer and Watercourse By-law No. 8093 as amended or replaced from time to time;
- (xi) **“Sewer Connections”** means the Sanitary Connections and Storm Connections which connections will be shown on the Conceptual Design and then Detailed

Design and Construction Drawings and then the Issued-for-Construction Drawings, as defined in, and to be created pursuant to Schedule F [Triggered Infrastructure];

- (xii) **“Sewer Permit”** means the permit or permits for Storm Connections and Sanitary Connections to the Reserve to be issued by the City to the Nation upon the City’s receipt and review of an acceptable application from the Nation, which sets out conditions for the Nation’s discharges of Sewage, Wastewater and Storm Water and as further described in D.3(a) but for clarity is not a Waste Discharge Permit;
- (xiii) **“Sewer Services”** means the services to be provided by the City and the other rights and benefits to which the Nation is entitled pursuant to this Schedule D with respect to the acceptance by the City into the City Sewer System of Storm Water, Wastewater and Sewage discharged from the Seňákw Sewer System;
- (xiv) **“Sewer Use Rate”** means the rate payable pursuant to the Sewer By-law and GVS&DD Legislation as applied to the provision of Sewer Services by the City to the Development utilizing the same metrics as set out in the Sewer By-law and GVS&DD Legislation to the extent applicable to those Sewer Services;
- (xv) **“Storm Connections”** means the connections of the Storm Water portion of the Seňákw Sewer System to the City Sewer System;
- (xvi) **“Storm Water”** means water resulting from rainfall, snowfall or groundwater but does not mean water containing Wastewater;
- (xvii) **“Waste Discharge Permit”** means one or more waste discharge or other permits which might be required under the GVS&DD Legislation, to be issued to the Nation by either the GVS&DD or the City, which set out conditions for the Nation’s connection to, discharge of Sewage, Wastewater and Storm Water through, and ongoing use or taking the benefit of, the Sanitary Connections and the Storm Connections pursuant to the GVS&DD Legislation but which is separate from the Sewer Permits; and
- (xviii) **“Wastewater”** means the wasted water of the community derived from human, animal, mineral or vegetable sources including domestic wastewater and industrial wastewater, but does not include Storm Water or uncontaminated water.

D.3 SEWER SERVICES – GENERAL CONDITIONS

(a) Necessity of Sewer Permits

The provision of the Sewer Services will be subject to the acceptance by the City of a Sewer Permit application by the Nation and compliance by the Nation with the terms of the issued Sewer Permit and, if applicable, a Waste Discharge Permit. The terms of the Sewer Permit (and if applicable, any Waste Discharge Permit(s)) will include items related to:

- (i) applicable requirements pursuant to City-Wide Standards, the Sewer By-law, and the GVS&DD Legislation;

- (ii) payment of the Sewer Use Rate and any additional fees payable under Section D.1(b)(iii) and any other fees which would normally be payable for similar services to the Sewer Services off-Reserve;
- (iii) the Capacity Limits;
- (iv) quality requirements of flows for both Wastewater and Storm Water;
- (v) requirements for flow metering and monitoring;
- (vi) emergency procedures;
- (vii) operating parameters for the pump station comprised in the Seńákŵ Sewer System; and
- (viii) any other items necessary to ensure the continued safe and environmentally sound operation of the City Sewer System.

(b) Capacity and Overall Limitations

- (i) In accordance with this Schedule D and the process outlined in Schedule F [Triggered Infrastructure], the Parties acknowledge that the Capacity Limits will be determined pursuant to and set out in the Sewer Permit and, if applicable, any Waste Discharge Permit(s).
- (ii) The City acknowledges that, provided the Capacity Limits are not exceeded:
 - (A) the Nation can add new sewer service connections on the Reserve and otherwise increase the demand for Sewer Services on the Sewer Connections; and
 - (B) such changes in demand will not result in costs to upgrade the City Sewer System.
- (iii) The Nation agrees not to exceed the Capacity Limit unless it has first applied for and received permission from the City to increase the Capacity Limits (such permission not to be unreasonably withheld). The City anticipates that there may be some costs related to upgrading or modifying the City Sewer System that are chargeable to the Nation for accommodating Sewer Services in excess of the Capacity Limits and provided that such costs or charges must be incurred in order to accommodate such increase over and above the Capacity Limits, the City will have the right to require the Nation to contribute its equitable share of the costs of upgrading the City Sewer System as a condition of increasing the Capacity Limits and all in accordance with the Equity Principle.
- (iv) When considering any application by the Nation to increase the Capacity Limits, the City and the Nation will work together cooperatively to assess the costs/benefits to each of all available options and the City reserves the right to require that (a) the Nation submit, with any such application, an engineering report prepared by a qualified professional setting out whether or not the additional flows being applied for can be accommodated without any direct or adjacent City Sewer

System upgrades, with or without any upgrades to the Seḥákw Sewer System and in any event confirming that such applied for increase will meet the City's Sewer Design Standards (as published by the City's Engineering Department from time to time), and (b) to install at the Nation's cost, a flow meter on any new Sewer Connections (if applicable) so as to afford the Nation and the City the ability to verify and confirm current versus additional flows.

- (v) In any event, and subject always to Sections D.3(b)(iii) and D.3(b)(iv) above, the City agrees to duly consider and to not unreasonably withhold approval of any requested increases to the Capacity Limits.
- (vi) Any and all permitted increases to the Capacity Limits will only be legally effective upon the issuance of an applicable amended Sewer Permit and, if applicable amended Waste Discharge Permit(s).
- (vii) The Nation agrees that it is not permitted to discharge Sewage, Wastewater and Storm Water into the City Sewer System in excess of the Capacity Limits.
- (viii) The Capacity Limits will be used in assessing any potential infrastructure upgrades and in designing Storm Connections, Sanitary Connections and new infrastructure required to service the Lands.
- (ix) The Nation will construct, operate and maintain its buildings and other infrastructure on the Lands to ensure that there is no permanent (post construction) dewatering or drainage of groundwater into the City Sewer System.
- (x) The Nation agrees that any construction related dewatering or drainage will be discharged by the Nation into the City Sewer System only with the City's approval, and that the Nation will obtain such approval from the City through the same process typically followed in connection with other developments located in Vancouver that are similar to the Development, and prior to the start of any Excavation (as defined in Schedule B [Tax Supported Municipal Services]. All such construction related dewatering or drainage water management will be undertaken in compliance with all applicable municipal, regional, provincial and federal environmental laws, regulations and/or policies, including the Sewer By-law.

(c) Scope of Sewer Services

During the term of this Agreement, the City will, to the standard set out in Section 4.1 [Scope and Standard of Municipal Services] of the Main Agreement and subject always to the exclusions set out in Schedule N [Excluded Municipal Services]:

- (i) accept and convey Sewage, Wastewater and Storm Water from the Seḥákw Sewer System at the Sanitary Connections and Storm Connections as set out in the Sewer Permit;
- (ii) process all Sewer Permit and Waste Discharge Permit applications (including the application for the initial Capacity Limits and any subsequently increased Capacity Limits) brought by the Nation to the City and will prepare, submit and manage such applications to the GVS&DD, with all costs of the City's consultants in connection with same to be borne by the Nation and all costs of City staff time being borne by

the City, provided that the City will not be liable for any delays caused or refusals committed by the GVSⅅ and

- (iii) enforce the Sewer By-law, GVS&DD Legislation, or the Nation SSA By-law (where enacted in accordance with Schedule C [Adoption and Enforcement of Señákw Versions of City By-laws] to substantially reflect the Sewer By-law and applicable GVS&DD Legislation), but only where and to the extent that the Sewer By-law, GVS&DD Legislation, or applicable Nation SSA By-law is legally enforceable on the Reserve or enacted, as applicable, and no court or governmental authority has disallowed or otherwise vitiated their legal enforceability.

(d) Waste Permit and Sewer By-laws Will Have Contractual Force

The City and the Nation acknowledge and agree that, to the extent (and only to such extent), during any period that either or both of the Sewer By-law and the GVS&DD Legislation have no or limited legal force or effect within the Reserve and to the extent (but only to such extent) that the Nation has not enacted the applicable Nation SSA By-law in accordance with Schedule C [Adoption and Enforcement of Señákw Versions of City By-laws]:

- (i) the Nation will nevertheless comply fully with the terms and conditions set out in this Schedule D, the Sewer Permit (and if applicable, any Waste Discharge Permit(s)), as well as all amendments and modifications to the Sewer Permit (and if applicable, any Waste Discharge Permit(s)) which may be made from time to time;
- (ii) the City and the Nation will be bound by all of the terms and conditions of the City's Sewer By-law and by the GVS&DD Legislation as though they were contractual terms incorporated by reference into this Schedule D instead of laws, but only insofar as they relate to matters arising from this Schedule D and the Señákw Sewer System; and
- (iii) the City and the Nation will do and sign anything reasonably necessary to make the legal relationship between the City and the Nation as similar as possible to the relationship which would exist if the City and an owner of land elsewhere in Vancouver were receiving similar sewer services off-Reserve including without limitation and by way of example only, signing such further agreements as might be reasonably necessary to ensure that the Nation's use of the Sewer Connections complies at all times with all applicable federal and provincial laws and regulations.

(e) Ownership of Sewer System

For further certainty, but subject always to Section F.13 [Vanier Park Road and Storm Sewer] of Schedule F [Triggered Infrastructure]:

- (i) the City retains full ownership of, responsibility for, and control over the City Sewer System; and
- (ii) the Nation retains full ownership of, responsibility for, and control of the Señákw Sewer System and the Nation will not do or allow anything to be done to interfere with the City Sewer System.

D.4 TERM OF SCHEDULE D

This Schedule D is effective as of the Effective Date and will continue for so long as Sewer Services have not been cancelled pursuant to Schedule R [Adding/Deleting Municipal Services and Cancellation] or (but only with respect to the Vanier Park Storm Sewer) modified pursuant to Section F.13 [Vanier Park Road and Storm Sewer] of Schedule F [Triggered Infrastructure].

D.5 COMPLIANCE MONITORING

- (a) The Nation, at its sole cost, will monitor and report on sewer discharges at all points of connection between the Señákw Sewer System and the City Sewer System in a manner acceptable to the City.
- (b) In the case of non-compliance of the Señákw Sewer System with this Schedule D, the Nation will, at its sole expense, undertake such work as is considered by it to be desirable or necessary in order to bring the Señákw Sewer System into compliance with this Schedule D.

SCHEDULE E - WATER SERVICES

BACKGROUND:

- E.A. The Nation has agreed to pay the City to upgrade the City's water system so as to accommodate the anticipated demand for water from the Development.
- E.B. The above upgrades are described in Schedule F [Triggered Infrastructure].
- E.C. This Schedule E sets out the details of the Water Services to be provided to the Nation in anticipation of the completion of the Triggered Infrastructure Works Projects (as defined in Schedule F [Triggered Infrastructure]) applicable to Water Services.

E.1 SPECIFIC PURPOSE DEFINED TERMS

As set out in Section 2.1 [Special Purpose Defined Terms] of the Main Agreement, the following terms are most applicable to the provision of Water Services and so are defined in this Schedule E as follows:

- (a) **"City Water Rates"** means the amounts payable pursuant to the Water By-laws as applied to the Water Services provided to the Nation utilizing the same metrics as set out in the Water By-laws as applicable to those Water Services but subject to Appendix E.1 to this Schedule E;
- (b) **"City Water System"** means the water system, including the Water Connections located within the City's rights of way and not located within the Lands;
- (c) **"Current Capacity Limit"** has the meaning given in Section E.3(a)(i) of this Schedule E;
- (d) **"GVWD"** means the Greater Vancouver Water District, a body corporate and politic, created and constituted pursuant to the GVWD Legislation;
- (e) **"GVWD Legislation"** means the *Greater Vancouver Water District Act* as amended or replaced from time to time as well all By-laws enacted, amended or replaced from time to time pursuant that Act;
- (f) **"Señákw Water System"** means the entire water system as it may exist from time to time within the Reserve (including valves, hydrants and pipes);
- (g) **"Water By-laws"** means, collectively, the City's *Water Works By-Law No. 4848*, *Drinking Water Conservation By-Law 12183*, City of Vancouver By-Law Notice Enforcement By-Law 10201, and City of Vancouver Ticket Offenses By-Law 9360, as amended or replaced from time to time;
- (h) **"Water Connections"** means the connections of the City Water System to the Señákw Water System which connections will be shown on the Conceptual Design and then Detailed Design and Construction Drawings and then the Issued-for-Construction Drawings, as defined in, and to be created pursuant to, Schedule F [Triggered Infrastructure];

- (i) **“Water Permit”** means the permit or permits for Water Connections to the Reserve to be issued by the City to the Nation upon the City’s receipt and review of an acceptable application from the Nation, which sets out conditions for the Nation’s Water Services and as further described in Section E.3(a); and
- (j) **“Water Services”** means the services to be provided by the City and the other rights and benefits to which the Nation is entitled pursuant to this Schedule E with respect to the provision of water to the Reserve.

E.2 UTILITY FEES FOR WATER SERVICES

Further to the Equity Principle, the Nation now agrees to pay for the Water Services on the same basis and in the same manner as owners, residents and businesses pay for services supplied by the City across Vancouver pursuant to the Vancouver Charter, GVWD Legislation and Water By-laws, provided always that such payments do not duplicate the amounts payable by the Nation pursuant to Schedule B [Tax Supported Municipal Services], Schedule I [Staff Cost Reimbursement Agreement] and Schedule F [Triggered Infrastructure].

E.3 WATER SERVICES – GENERAL CONDITIONS

(a) Necessity of Water Permits

The provision of the Water Services will be subject to the acceptance by the City of a Water Permit application by the Nation and compliance by the Nation with the terms of the issued Water Permit. The terms of the Water Permit will include items related to:

- (i) applicable requirements pursuant to City-Wide Standards, the Water By-laws, and the GVWD Legislation;
- (ii) payment of the City Water Rates and any other fees which would normally be payable for similar services to the Water Services off-Reserve;
- (iii) the Capacity Limits;
- (iv) requirements for flow metering and monitoring;
- (v) emergency procedures;
- (vi) operating parameters for the Señákw Water System; and
- (vii) any other items necessary to ensure the continued safe and environmentally sound operation of the City Water System.

(b) Water Service Capacity

- (i) Subject always to the process outlined in Schedule F [Triggered Infrastructure], the City’s very preliminary understanding of the water requirements for the Development indicates a need to design the capacity of the Water Connections to be sufficient to supply:
 - (A) 1920 litres/minute at the currently proposed Chestnut Street service connection, 4644 litres/minute at the currently proposed W 1st Avenue

service connection, and 2172 litres/minute at the currently proposed Creekside Drive service connection measured over the highest volume “peak period” of 4 hours during any given day; and

- (B) in lieu of and not in addition to the capacity set out in Section E.3(b)(i)(A) above, 15,000 litres/minute when such water is directed from the Reserve boundary to the network which distributes the water to the fire hydrants on the Reserve (normally called “fire flow capacity”) on the assumption that this demand would be limited to supplying water to two fully opened fire hydrants and only for the amount of time typically required to suppress or extinguish a fire within the Development (once same is fully built-out),

(collectively, the “**Current Capacity Limit**”) and, subject always to the Current Capacity Limit with respect to each of the Water Connections, will not require any upgrades to the City’s Water System. However, for certainty, the Nation acknowledges that the Señákw Water System may need to be upgraded from time to time at the Nation’s sole cost in order to utilize the Water Connections up to the Current Capacity Limit (for example where the pressure of the flows within the GVWD’s system requires the Señákw Water System to accommodate a higher pressure than they are currently or in future are able to withstand). The Parties agree to amend this Section E.3 and restate the Current Capacity Limit once the Detailed Design and Construction Drawings have been completed pursuant to Schedule F [Triggered Infrastructure].

- (ii) The City acknowledges that, provided the Current Capacity Limit is not exceeded:
 - (A) the Nation can add new water service connections on the Reserve and otherwise increase the demand for Water Services on the Water Connections; and
 - (B) such changes in demand will not result in costs to upgrade the off-Reserve water system.
- (iii) The Nation agrees not to exceed the Current Capacity Limit unless it has first applied for and received permission from the City to increase the Current Capacity Limit (such permission not to be unreasonably withheld). The City anticipates that there may be some costs related to upgrading or modifying the City Water System that are chargeable to the Nation for accommodating Water Services in excess of the Current Capacity Limit and provided that such costs or charges must be incurred in order to accommodate such increase over and above the Current Capacity Limit, the City will have the right to require the Nation to contribute its equitable share of the costs of upgrading the City Water System as a condition of increasing the Current Capacity Limit and all in accordance with the Equity Principle.
- (iv) When considering any application by the Nation to increase the Current Capacity Limit, the City and the Nation will work together cooperatively to assess the costs/benefits to each of all available options (for example between paying to upgrade off-Reserve capacity versus increasing the size of the Water Connections) and the City reserves the right to require that (a) the Nation submit, with any such application, an engineering report prepared by a qualified

professional setting out whether or not the additional flows being applied for can be accommodated without any direct or adjacent City Water System upgrades, with or without any upgrades to the Seḥákw Water System and in any event confirming that such applied for increase will meet the City's Water Design Standards (as published by the City's Engineering Department from time to time), and (b) to install at the Nation's cost, a flow meter on any new Water Connections (if applicable) so as to afford the Nation and the City the ability to verify and confirm current versus additional flows.

- (v) In any event, and subject always to Sections E.3(a)(iii) and E.3(a)(iv) above, the City agrees to duly consider and to not unreasonably withhold approval of any requested increases to the Current Capacity Limit.
- (vi) The Parties acknowledge that the Capacity Limits will be determined pursuant to and set out in the Water Permit.
- (vii) The Nation agrees that it is not permitted to consume Water Services in excess of the Capacity Limit.
- (viii) The Capacity Limit will be used in assessing any potential infrastructure upgrades and in designing Water Connections and new infrastructure required to service the Lands.
- (ix) The Nation will construct, operate and maintain its buildings and other infrastructure on the Lands to ensure that there is no more risk (post construction) of inadvertent consumption of Water Services than in developments similar to that Phase of the Development built within one year of that Phase of the Development.

(c) Scope of Water Services

During the term of this Schedule E, the City will, in furtherance of the Equity Principle and to the standard set out in Section 4.1 [Scope and Standard of Municipal Services] of the Main Agreement and subject always to the exclusions set out in Schedule N [Excluded Municipal Services]:

- (i) deliver water to Water Connections on the same terms and conditions as water is supplied elsewhere in Vancouver all as more particularly set out in the Water By-laws except as modified by this Agreement;
- (ii) process all applications brought by the Nation to the City for increased capacity and will, where necessary, prepare, submit and manage such applications to the GVWD in the same manner as prior applications with all costs of City staff time and external consultants if required being borne by the Nation in accordance with Schedule I [City Staff Costs Reimbursement Agreement] and Schedule F [Triggered Infrastructure], provided that the City will not be liable for any delays or refusals committed by the GVWD; and
- (iii) enforce the Water By-laws, GVWD Legislation, or the Nation SSA By-law (where enacted in accordance with Schedule C [Adoption and Enforcement of Seḥákw Versions of City By-laws] to substantially reflect the Water By-laws and the applicable GVWD Legislation), but only where and to the extent that the Water By-

laws, GVWD Legislation, or applicable Nation SSA By-law is legally enforceable on the Reserve or enacted, as applicable, and no court or governmental authority has disallowed or otherwise vitiated the legal enforceability thereof.

(d) Water By-laws Will Have Contractual Force

The City and the Nation now acknowledge and agree that, to the extent (but only to the extent) that the Water By-laws and the GVWD Legislation have no legal force or effect within the Reserve, and to the extent (but only to the extent) that the Nation has not enacted the applicable Nation SSA By-law in accordance with Schedule C [Adoption and Enforcement of Seḥákw Versions of City By-laws]:

- (i) the Nation will nevertheless comply fully with the terms and conditions set out in this Schedule E, any applicable Water Permit, as well as all amendments and modifications to such permits which may be made from time to time;
- (ii) the City and the Nation will be bound by all of the terms and conditions of the Water By-laws and by the GVWD Legislation as though they were contractual terms incorporated by reference into this Schedule E instead of laws, but only insofar as they relate to all matters arising from this Schedule E and the Seḥákw Water System; and
- (iii) the City and the Nation will do and sign anything reasonably necessary to make the legal relationship between the City and the Nation as similar as possible to the relationship which would exist if the City and an owner of land elsewhere in Vancouver were receiving similar water services off-Reserve including without limitation and by way of example only, signing such further agreements as might be reasonably necessary to ensure that the Nation's use of the Water Connections complies at all times with all applicable federal and provincial laws and regulations.

E.4 TERM OF AGREEMENT

This Schedule E will take effect as of the Effective Date and will continue for so long as the Water Services have not been cancelled pursuant to Schedule R [Adding/Deleting Municipal Services and Cancellation].

APPENDIX E.1 - BILLING AND COST-SHARING WATER SERVICES

E.1.A All Properties to be Metered.

Despite the terms of the Water By-laws, for the purposes of billing the Nation for Water Services, the Parties agree that all of the Water Connections will be metered and will be billed at the City Water Rates as set by the Water By-laws from time to time for metered properties.

Except as set out above, the Parties now confirm that all Water Services provided by the City to the Nation will be billed by the City and paid by the Nation in accordance with the Water By-laws as though the Nation were the authorized agent for each individual within the Reserve receiving such service and the Nation now confirms that it will pay for same regardless of whether it receives any payment for the service from any individual or business receiving the service within the Reserve.

SCHEDULE F - TRIGGERED INFRASTRUCTURE

F.1 Schedule F Specific Definitions

As set out in Section 2.1 [Special Purpose Defined Terms] of the Main Agreement, the following terms are most applicable to the Triggered Infrastructure and so are defined in this Schedule F [Triggered Infrastructure] (in both this Schedule F as well as the beginning of Appendix F.1 [City Delivered Works]) as follows:

- (a) **“Actual Costs”** means:
 - (i) with respect to City Delivered Works, any and all direct and indirect costs, expenses, losses, and amounts of any kind or description related in any way to the City Delivered Works or any City Delivered Works Project; and
 - (ii) with respect to Nation Delivered Works, any and all direct and indirect costs, expenses, losses, and amounts of any kind or description related in any way to the Nation Delivered Works or any Nation Delivered Works Project;
- (b) **“Archaeology Costs”** has the meaning set out in Appendix F.1 [City Delivered Works];
- (c) **“ATR”** has the meaning set out in Section F.13(h);
- (d) **“City Delivered Works”** means those Triggered Infrastructure Works described in Appendix F.1 [City Delivered Works] and **“City Delivered Works Project”** means a defined sub-set of, or a project within the City Delivered Works as a whole, as defined by the Functional Objectives and general scope descriptions set out in each segregate row of the table in Appendix F.1 [City Delivered Works];
- (e) **“City-Initiated Development”** means a land development project initiated by the City in its capacity as a landowner as opposed to its capacity as a regulatory authority;
- (f) **“Conceptual Design”** means the design for the Triggered Infrastructure Works which is sufficiently detailed and comprehensive to provide the City Engineer with the ability to approve or request modifications to same on the basis that it (i) provides sufficient (in the City Engineer’s sole discretion) pictorial or graphic detail to describe, conceptually, how the Functional Objectives applicable to the Triggered Infrastructure Works Project will be achieved, and (ii) is sufficient to allow a professional engineer to use it to draft the Detailed Design and Construction Drawings;
- (g) **“Cost Escalation”** means a proxy formula agreed upon by the Parties to share the risk of inflation following the completion of the Order of Magnitude Preliminary Cost Estimates carried out on certain City Delivered Works in Q1 2020. The Cost Escalation will be calculated by taking the Order of Magnitude Preliminary Cost Estimate and adjusting it in direct proportion to the change in the index published from time to time by Statistics Canada as its Building construction price indexes data table, Table 18-10-0135-01 for Non-residential buildings [622] for Vancouver

between January 1, 2020 and the date of full occupancy of the Phase Which Triggers Start of Work or the actual date of total completion of each City Delivered Works Project, whichever is earliest;

- (h) **“Deferred TI”** has the meaning set out in Section F.7(e)(iv);
- (i) **“Deferred TI Payment”** has the meaning set out in Section F.7(e)(iv)(B);
- (j) **“Detailed Design and Construction Drawings”** means the detailed design and construction drawings and specifications for the Triggered Infrastructure Works that are sufficiently complete and comprehensive to be utilized to prepare Issued-for-Construction Drawings;
- (k) **“Discharge Permits”** has the meaning set out in Section F.13(c)(iii);
- (l) **“Eligible Adjustment”** has the meaning set out in Section F.12(h);
- (m) **“Estimated Nation Costs”** has the meaning set out in Section F.10(b);
- (n) **“Excavation”** has the meaning set out in Schedule B [Tax Supported Municipal Services];
- (o) **“Expected Terms”** has the meaning set out in Section F.13(n);
- (p) **“Functional Objective”** means the functional objective intended to be achieved by the particular Triggered Infrastructure Works Project, as the same is understood as at the Effective Date and as more particularly set out in the far right column of the table at Appendix F.1 [City Delivered Works] and the far right column of the table at Appendix F.2 [Nation Delivered Works] in respect of each Triggered Infrastructure Works;
- (q) **“Head Licence”** has the meaning set out in Section F.13(c)(i);
- (r) **“Initial CDW Payment”** has the meaning set out in Section F.12(b);
- (s) **“Issued-for-Construction Drawings”** means the detailed design drawings and specifications for the Triggered Infrastructure Works (which must be consistent with the Conceptual Design and Detailed Design and Construction Drawings) sealed by a professional engineer and approved by the City Engineer, including any subsequent revisions proposed by the Nation and approved by the City Engineer;
- (t) **“Licence Area”** means the area set out in Appendix F.5 [Vanier Park Licence Area] in bold and marked “Vanier Park Licence Area”;
- (u) **“Long-Term Responsibility”** means the legal responsibility for carrying out and paying for the operation, maintenance and repair of a completed Triggered Infrastructure Works Project as well as the eventual capital replacement obligations and costs for same;

- (v) **“Nation Delivered Works”** means those Triggered Infrastructure Works described in Appendix F.2 [Nation Delivered Works] and **“Nation Delivered Works Project”** means a defined sub-set of, or project within the Nation Delivered Works as a whole, as defined by the Functional Objectives and general scope descriptions set out in each segregate row of the table in Appendix F.2 [Nation Delivered Works];
- (w) **“Nation Structure-Dependent Works”** means any and all portions of the Triggered Infrastructure Works which are located above or below a structure comprising part of the Development, such as, by way of example only and without limitation:
 - (i) portions of improvements to Chestnut Street located above the proposed Neighbourhood Energy Utility or the various parkades, and as further described in Section F.7(f); and
 - (ii) portions of the Development which overhang sidewalks comprising the Triggered Infrastructure Works;
- (x) **“Phase Which Triggers Start of Work”** means: (i) in respect of City Delivered Works, the Phase of the Development indicated in the column in Appendix F.1 [City Delivered Works] entitled “Phase Which Triggers Start of Work”; and (ii) in respect of Nation Delivered Works, the Phase of the Development indicated in the column in Appendix F.2 [Nation Delivered Works] entitled “Phase Which Triggers Start of Work”;
- (y) **“Provincial Storm Licence”** has the meaning set out in Section F.13(c)(ii);
- (z) **“Provincial Storm Section Replacement Tenure”** has the meaning set out in Section F.13(l)(iii);
- (aa) **“Reference Right-of-Way”** has the meaning set out in Section F.13(m);
- (bb) **“Replacement Tenure”** has the meaning set out in Section F.13(l);
- (cc) **“Road and Storm Sewer Area”** means the area outlined in bold and identified as the “Road and Storm Sewer Area” on the sketch plan attached as Schedule A to Appendix F.6 [Form of Head Licence];
- (dd) **“Road Replacement Tenure”** has the meaning set out in Section F.13(l)(i);
- (ee) **“Storm Sewer Area”** means the area outlined in bold and identified as the “Storm Sewer Area” on the sketch plan attached as Schedule A to Appendix F.6 [Form of Head Licence];
- (ff) **“Storm Sewer Replacement Tenure”** has the meaning set out in Section F.13(l)(ii);
- (gg) **“Sub-Licence”** has the meaning set out in Section F.13(f);

- (hh) **“Temporary Turnaround and Storm Sewer Area”** means the area outlined in bold and identified as the “Temporary Turnaround and Storm Sewer Area” on the sketch plan attached as Schedule A to Appendix F.6 [Form of Head Licence];
- (ii) **“Third Party Permits”** has the meaning set out in Section F.13(c)(ii);
- (jj) **“TI Implementation Agreement”** or **“TI Implementation Agreements”** means an agreement or agreements of the type described in Section F.5 [TI Implementation Agreements for Nation but Not City Delivered Works] below and a representative template for which is attached as Appendix F.3 [TI Implementation Agreement];
- (kk) **“TI Appendices”** means the appendices attached to this Schedule F;
- (ll) **“TI Assumptions”** has the meaning set out in Section F.7(b);
- (mm) **“Transit Hub”** means the Nation Delivered Works Project denoted under the second column and second last row of Appendix F.2 [Nation Delivered Works] as “Transit Hub” and as pictorially described in Appendix F.4 [Transit Hub Figures];
- (nn) **“Triggered Infrastructure Works”** means, as applicable, the works defined in Appendix F.1 [City Delivered Works] and Appendix F.2 [Nation Delivered Works];
- (oo) **“Triggered Infrastructure Works Project”** means a defined sub-set of, or project within the Triggered Infrastructure Works as a whole as defined by the Functional Objectives and general scope descriptions set out in each segregate row of the tables in Appendix F.1 [City Delivered Works] and Appendix F.2 [Nation Delivered Works];
- (pp) **“Vanier Park Lease”** has the meaning set out in Section F.13(a);
- (qq) **“Vanier Park Road”** means all Nation Delivered Works (excluding the Vanier Park Storm Sewer) to be constructed within the Licence Area as well as any and all improvements, replacements, and repairs to same made by the City in its sole discretion from time to time in the course of carrying out the City’s rights under the Sub-Licence or its obligations under this Agreement with respect to Long-Term Responsibility for same; and
- (rr) **“Vanier Park Storm Sewer”** is the Nation Delivered Works Project described as such in Appendix F.2 [Nation Delivered Works].

F.2 Current Estimated Construction Schedule

- (a) The Nation currently anticipates the following schedule for the Development:
 - (i) Phase 1 – Excavation start in Q3 2022; full occupancy in Q4 2026
 - (ii) Phase 2 – Excavation start by Q3 2023; full occupancy in Q3 2027
 - (iii) Phase 3 – Excavation start by Q3 2024; full occupancy not earlier than Q4 2027

- (iv) Phase 4 – Excavation start by Q1 2025; full occupancy not earlier than Q3 2029
- (b) The City acknowledges the above schedule and agrees to make all good faith efforts to complete the City Delivered Works and the City's obligations related to the Nation Delivered Works in a manner which accommodates the above schedule. The Nation agrees to provide regular updates to this schedule to the City as set out in Section 4.3 [Construction Coordination/Communication] of this Agreement.
- (c) The Parties agree to work together cooperatively to coordinate the Conceptual Design, and then Detailed Design and Construction Drawings and then the Issued-for-Construction Drawings such that each Triggered Infrastructure Works Project can be completed prior to the date of first occupancy by a resident or business in the applicable Phase Which Triggers Start of Work.
- (d) For the Fir and 1st Intersection Improvements, where the responsibility for Conceptual Design rests with the City, the City will prepare and submit the Conceptual Design in a manner and to a level of detail consistent with conceptual designs prepared by the City for other development projects off-Reserve within Vancouver, to the Nation within 180 days of the Nation's written request for same, except that the City will not be required to deliver a Conceptual Design prior to June 1, 2024.

F.3 Phase Which Triggers Start of Work

- (a) For Nation Delivered Works, the applicable TI Implementation Agreement will require the Nation to complete such Nation Delivered Works Project covered by that TI Implementation Agreement prior to the date on which the first resident or business commences the use or occupancy of the Phase Which Triggers Start of Work.
- (b) As noted in Section F.2 [Current Estimated Construction Schedule], for City Delivered Works, the City will make all good faith efforts to complete the applicable City Delivered Works Project prior to the date on which the first resident or business commences the use or occupancy of the Phase Which Triggers Start of Work.

F.4 Triggered Infrastructure Baseline for Equity Principle

Further to the Equity Principle, the City and the Nation have agreed that the Triggered Infrastructure Works represent an appropriate amount of new and upgraded City infrastructure to address the local impacts of the Development on the sewer, water, and transportation-related City infrastructure and services within the immediate vicinity of the Development (and acknowledging that other types of impacts have been addressed in Schedule G [On-Reserve Public Amenities and Contributions]).

F.5 TI Implementation Agreements for Nation but Not City Delivered Works

The Parties will enter into TI Implementation Agreements for all Nation Delivered Works, as further set out in this Schedule F prior to the date for commencement of the Triggered

Infrastructure Works Project for such TI Implementation Agreement. For greater certainty, no TI Implementation Agreements will be required for City Delivered Works, which will be governed by this Schedule F, Appendix F.1 [City Delivered Works], and the Utility Services Schedules.

F.6 Rights and Obligations – Generally

(a) The Parties' respective legal rights and obligations with respect to Triggered Infrastructure are agreed to be reflected in the Utility Services Schedules, this Schedule F and the TI Appendices, all of which will be read together as a whole and without any given part being given priority over any other part (except where paramountcy is explicitly set out, including by use of phrases such as "despite any other term" or "subject to"). For further certainty, the references in Appendix F.1 [City Delivered Works] and Appendix F.2 [Nation Delivered Works] to:

- (i) "City Portion" and "Nation Portion", are intended to and will operate to allocate legal responsibility for the payment for the matters described in each row of the tables in the TI Appendices; and
- (ii) "Conceptual Design Responsibility" and "Detailed Design and Construction Responsibility" (a) are intended to and will operate to allocate legal responsibility for the performance of the matters described in each row of the tables in the TI Appendices, and (b) for greater certainty, will have the meanings ascribed to those terms in Appendix F.1 [City Delivered Works],

even if elsewhere in this Schedule F the allocation of such responsibility is not specified.

(b) By way of example only and without limitation, in respect of the Nation Delivered Works denoted under:

- (i) the first column and applicable row of Appendix F.2 as "Storm Sewers" and "Sanitary Sewers", the Nation will be responsible for costs, design and construction of all on-site and off-site sanitary infrastructure installations, improvements, or modifications required to service the peak site flows, the specific nature of which is to be determined through consultation with the City and approved by the City as part of an overall sanitary sewer servicing strategy and will help to determine the Capacity Limits (as defined in Schedule D [Sewer Services]). Scope includes all newly required sewer mains, connections, pump stations and other sewer infrastructure, as well as all modifications or upgrades to existing off-site sewerage infrastructure required, and necessary modification or relocation of existing infrastructure. For added clarity, the scope of the Nation's responsibilities includes all studies, system analysis, design, and direct and indirect construction activities required to provide Sewer Services to the satisfaction of the City Engineer; and
- (ii) the second column and second last row of Appendix F.2 as "Transit Hub", the Nation will be responsible for all costs associated with the Transit Hub including design and construction, and modification of existing utilities and infrastructure.

F.7 Risk Allocation

(a) Generally

The Parties have expended considerable time and resources to develop the TI Assumptions and the TI Appendices and have a preliminary level of confidence that the Triggered Infrastructure can be implemented substantially as contemplated by this Schedule F. Nevertheless, in recognition that certain elements of the design and analysis of the TI Assumptions is, as of the Effective Date, preliminary and that certain of the TI Assumptions may not prove to be valid, or other circumstances beyond the reasonable control of the Parties may occur, there may be unforeseen challenges in designing or constructing the Triggered Infrastructure as outlined in the TI Appendices and this may result in a need for the Parties to reassess the suite of Triggered Infrastructure, even if the nature of the Development does not change. Accordingly, subject always to the Equity Principle, the Nation agrees that, except for those risks and costs which the City has expressly assumed under this Schedule F, or which may be caused by City-initiated unilateral changes to the TI Assumptions, the Nation will continue to bear all risks and costs of addressing the capacity, safety and comfort impacts to the City's transportation, sewer and water systems and other City owned infrastructure, resulting from the Development.

(b) TI Assumptions

Despite anything to the contrary in Appendix F.1 [City Delivered Works] and Appendix F.2 [Nation Delivered Works], the City has had to make certain assumptions about the impacts of the Development and in some cases has not yet completed the required analysis to understand the impacts (for example the required sewer and sanitary flow capacities), including by way of example only and without limitation, the following:

- (i) the Development is not changed from that described in Schedule L [Development] in any respect which materially impacts the Triggered Infrastructure Works;
- (ii) the preliminary traffic impact studies provided by the Nation are accurate analyses of traffic impacts in all material respects;
- (iii) preliminary water flow calculations for fire suppression and domestic water are accurate in all material respects;
- (iv) preliminary flow estimates for storm and sanitary sewer requirements are accurate in all material respects;
- (v) estimated scope of work for the Triggered Infrastructure Works is materially accurate (including implied assumptions that no contaminated soil, groundwater, or Archaeological Discoveries will be encountered);
- (vi) assumptions around the order and general timing of the Phases of the Development as noted in Section F.2 [Current Estimated Construction Schedule] are materially accurate and/or are realized;

- (vii) no changes to the scope of work of the Triggered Infrastructure Works will be required as a result of the design, development, realization or completion of Potential Public Amenities; and
- (viii) any other fact or circumstance in respect of the Development in relation to which the City can provide reasonable evidence that an incorrect assumption was made for the purpose of its analysis, whether such incorrect assumption was made due to preliminary estimates, calculations, studies, plans or other documentation, or due to a lack of information regarding the assumption,

(subsections (i) through (viii) collectively, the “**TI Assumptions**”).

(c) Risk of Change in TI Assumptions Allocated to Nation

- (i) Subject to Section F.7(c)(ii) below, the Nation confirms that the risks of all TI Assumptions not being accurate are assumed by the Nation and that any and all delays, costs, and losses suffered or incurred by the Nation or City as a result of the matters being different than assumed by the TI Assumptions will be to the account of the Nation and paid for by the Nation or reimbursed by the Nation to the City where incurred by the City, except only for any costs related to changes to the scope of work of the Triggered Infrastructure Works as a result of third party land development projects permitted by the City or City-Initiated Development, which for greater certainty will be to the account of the City and paid for by the City or reimbursed by the City to the Nation where incurred by the Nation.
- (ii) Despite Section F.7(c)(i) above, where the TI Assumption described in Section F.6(b)(vii) above is not correct, the Nation’s liability for same will be adjusted in accordance with the Equity Principle having regard to:
 - (A) the Nation’s and the City’s respective contributions to the Potential Public Amenity;
 - (B) the Nation’s and the City’s respective benefits derived from the Potential Public Amenity for their residents, businesses, and Members, including economic benefits resulting from the Potential Public Amenities;
 - (C) the cost of the change to the Triggered Infrastructure Works Project as a result of the Potential Public Amenity;
 - (D) the strategy for the delivery of the Potential Public Amenity, including funding contributions being made by other levels of government (or any other third parties), as well as in-kind support and contributions such as land; and
 - (E) without modifying Article 9.0 [Potential Public Amenities] or otherwise making it legally binding, the Parties will record such adjustment as part of the amending agreement signed to amend this Schedule F to record their respective rights and obligations

respecting such Potential Public Amenity (and failing such agreement on how to implement this Section F.7(c)(ii) as determined pursuant to Article 16.0 [Dispute Resolution] of the Main Agreement).

(d) **Risk of Changes to Sanitary and Storm Services Allocated to Nation**

- (i) Where a Functional Objective is related to the provision of sanitary services (for certainty, being those denoted under the first column and applicable row of Appendix F.2 as “**Sanitary Sewers**”) and needs to be revised due to a different assessment of the impact of the Development on the City Sewer System, due to a different assessment of the requirements of the Development than initially utilized to estimate the Order of Magnitude Preliminary Cost Estimates set out in Appendix F.2 [Nation Delivered Works], or due to impacts to existing or planned City infrastructure or third party infrastructure that are considered undesirable by the City Engineer at their sole discretion, such revision to the Functional Objective will be at the risk and cost of the Nation and the updated cost estimates for same will replace the Order of Magnitude Preliminary Cost Estimates and related dollar amounts set out in the columns entitled “Order of Magnitude Preliminary Cost Estimates” and “Nation Portion” in Appendix F.2 [Nation Delivered Works] for same.
- (ii) Where a Functional Objective is related to the provision of storm sewer services (for certainty, being those denoted under the applicable column and row of Appendix F.2 as “**Storm Sewers**” or “**Outflow**”) and needs to be revised due to a different assessment of the impact of the Development on the City Sewer System, due to a different assessment of the requirements of the Development than initially utilized to estimate the Order of Magnitude Preliminary Cost Estimates set out in Appendix F.2 [Nation Delivered Works], or due to impacts to existing or planned City infrastructure or third party infrastructure that are considered undesirable by the City Engineer at their sole discretion, or due to the inability to acquire the necessary access rights or Discharge Permits (as further set out in Section F.13 [Vanier Park Road and Storm Sewer]), such revision to the Functional Objective will be at the risk and cost of the Nation and the updated cost estimates for same will replace the Order of Magnitude Preliminary Cost Estimates and related dollar amounts set out in the columns entitled “Order of Magnitude Preliminary Cost Estimates” and “Nation Portion” in Appendix F.2 [Nation Delivered Works] for same.

(e) **Risk of Changes to Traffic Related Functional Objectives**

- (i) Subject to Section F.7(e)(ii), where a Functional Objective is transportation related (for certainty, being those denoted under the first column and applicable rows of either Appendix F.1 or Appendix F.2 as “Transportation”) and needs to be revised due to a different assessment of the impact of the Development on transportation than initially set out by the Nation in the preliminary traffic impact studies provided to the City by the Nation, such revision to the Functional Objective will be at the risk and cost of the Nation and the updated cost estimates for same will replace the Order of

Magnitude Preliminary Cost Estimates and related dollar amounts set out in the columns entitled "Order of Magnitude Preliminary Cost Estimates" and "Nation Portion" at Appendix F.1 [City Delivered Works] and Appendix F.2 [Nation Delivered Works] for same and the difference between the two amounts will be invoiced by the City to the Nation and then paid by the Nation within 30 days of receiving the invoice for same (but for Cost Escalation purposes, the Order of Magnitude Preliminary Cost Estimate will be deemed to have been the adjusted amount as of and from the Effective Date).

- (ii) Despite Section F.7(e)(i), no change to the Functional Objectives, TI Assumptions, or other risk factors will alter the amount of money payable by the Nation on account of the City Delivered Works Project denoted as "Pine Street Final Build Out" in the second column and applicable row of Appendix F.1 [City Delivered Works].
- (iii) Where a Functional Objective is transportation related (for certainty, being those denoted under the first column of either Appendix F.1 or Appendix F.2 as "Transportation") and needs to be revised due to a change in impact on traffic and mobility caused by a third party land development project permitted by the City (excluding the Nation or anyone for whom the Nation is responsible at law) or City-Initiated Development, such revision to the Functional Objective will be at the risk and cost of the City.
- (iv) Where a Functional Objective is transportation related and a Nation Delivered Work (for certainty, being those denoted under the first column and applicable row of Appendix F.2 as "Transportation"), the City may choose to defer all or a portion of that Functional Objective in response to a future third party development or potential future development, or future infrastructure project including Potential Public Amenities, provided that, if the City elects to defer same (the "**Deferred TI**") the following terms will apply:
 - (A) the Deferred TI will be recorded and the City will give written notice to the Nation setting out with reasonable particulars what the Deferred TI is comprised of;
 - (B) the Nation will no longer be required to design, construct, and pay for the Deferred TI under any applicable TI Implementation Agreement but will instead pay to the City on request the then fair market value of the Deferred TI (the "**Deferred TI Payment**") as determined by the City Engineer and acceptable to the Nation acting reasonably, within 30 days of the City's invoice for same; and
 - (C) Upon receipt of the Deferred TI Payment, the Parties will amend and execute such amendment to any applicable TI Implementation Agreement as is reasonably necessary to reflect the deletion of the Deferred TI from that TI Implementation Agreement and the Nation's release from any of its then un-performed obligations to design, construct and pay for the Deferred TI (other than by paying the Deferred TI Payment).

(f) Long-Term Responsibility for Nation Structure-Dependent Works

The Parties agree to identify, and delineate clearly on any Conceptual Design and Detailed Design and Construction Drawings for which such Party is responsible, all Nation Structure-Dependent Works. The Parties will confirm, in any applicable TI Implementation Agreement for such Triggered Infrastructure Works, that Long-Term Responsibility for such Nation Structure-Dependent Works will be assumed by the Nation all at the Nation's sole cost and expense.

F.8 TI Standards, Post-Construction/Warranty Obligations and Ownership

(a) Bridge and City Engineer Requirements

- (i) All Nation Delivered Works must be designed so that they meet the approval of the City Engineer and are built to the satisfaction of the City Engineer.
- (ii) All Nation Delivered Works which are located in or around Bridge/Streets/Utilities Access Areas will be carried out in accordance with Section 11.1 [Nation Covenants] of Schedule K [Burrard Bridge and City Roads/Utilities Agreement].
- (iii) Without limiting the general scope of Section (i) and (ii) above, all Nation Structure-Dependent Works must be designed and constructed to the load-bearing and seismic capacities set out in the City's Engineering Design Standards which, for clarity, include loadings appropriate for the support of heavy machinery and equipment as well as sufficient margins of seismic integrity with respect to any portion of the Nation Structure-Dependent Works which overhangs the Triggered Infrastructure Works.

(b) Compliance with City-Wide Standards

Despite any other term of this Schedule F:

- (i) all Functional Objectives are deemed to include all ancillary components normally included in such projects. By way of example only and without limitation, Functional Objectives for all Triggered Infrastructure Works which are denoted under the first column and applicable rows of Appendix F.1 or Appendix F.2, as applicable, (a) as "Transportation" include without limitation catch basin relocations, upgrades of street lighting, provision of high density duct banks, all necessary adjustments to adjacent infrastructure, incorporation of green infrastructure and landscaping, and (b) as "Water", Storm Sewers" or "Sanitary Sewers" include all ancillary components referred to in the Utility Services Schedules; and
- (ii) all Triggered Infrastructure to be designed and constructed to achieve the Functional Objectives and in accordance with the City-Wide Standards.

(c) Post-Construction/Warranty Obligations

- (i) The City will have Long-Term Responsibility for all City Delivered Works, except for any Nation Structure-Dependent Works.
- (ii) Following completion or expiry, as applicable, of the Nation's warranty and other obligations under the applicable TI Implementation Agreement, the City will have Long-Term Responsibility for all Nation Delivered Works, except for the Transit Hub, any Nation Structure-Dependent Works and, subject to Section F.8(c)(iv), any Nation Delivered Works which are located on the Reserve (as described in Section F.10(e)).
- (iii) The Nation will have Long-Term Responsibility for the Transit Hub, any Nation Structure-Dependent Works and, subject to Section F.8(c)(iv), any Nation Delivered Works which are located on the Reserve (as described in Section F.10(e)) in addition to the Nation's warranty and other obligations for same under the applicable TI Implementation Agreement.
- (iv) Despite any other term of this Section F.8(c), but subject always to Section F.13 [Vanier Park Road and Storm Sewer], the City will have Long-Term Responsibility for the Vanier Park Road and Vanier Park Storm Sewer regardless of whether all or any part of the Vanier Park Road and Vanier Park Storm Sewer is located on the Reserve at some point in the future.

(d) Ownership of Triggered Infrastructure Works

Upon completion of Triggered Infrastructure Works by either Party from time to time:

- (i) all Nation Structure-Dependent Works, portions of the Transit Hub located on-Reserve, and all or any Nation Delivered Works located on-Reserve (as described in Section F.10(e)), will be owned by the Nation;
- (ii) all other Triggered Infrastructure Works will be owned by the City; and
- (iii) for further certainty, if at any point in the future, the Road and Storm Sewer Area is added to the Reserve, the Vanier Park Road and Vanier Park Storm Sewer will continue to be vested in and owned by the City (unless decommissioned or transferred to the Nation pursuant to Section F.13 [Vanier Park Road and Storm Sewer]).

F.9 Third Party Utilities

In addition to the Triggered Infrastructure Works outlined in the TI Appendices, the Nation acknowledges and agrees to pay all costs related to the delivery of services by third party utilities to the Development including, but not limited to, electricity, communications, sewage (related to transfer of sewage to and from the Neighbourhood Energy Utility within the Development) and gas, and the Nation agrees to coordinate and fund all costs associated with the delivery of these services, including remediation work done on City property, and that the work conducted for the benefit of the Development by third party utilities will be conducted in the same manner as for a similar development off-Reserve in

Vancouver, including among other things, permitting, traffic control and all associated costs and risks being the sole responsibility of the Nation.

F.10 Nation Delivered Works

- (a) The Nation will not start the Excavation for any given Phase unless and until TI Implementation Agreement(s) for all Triggered Infrastructure Works Projects applicable to that Phase Which Triggers Start of Work have been executed and delivered by the City and the Nation and the required Letter(s) of Credit have been delivered to the City in accordance with such TI Implementation Agreement(s).
- (b) As part of the completion of each TI Implementation Agreement, the City Engineer will make a good faith estimate of the Actual Costs to the Nation (the “**Estimated Nation Costs**”) to complete the applicable Nation Delivered Works and will provide written notice of such Estimated Nation Costs to the Nation. In completing the Estimated Nation Costs, the City Engineer will use the same methodology used by the City Engineer in similar situations with third party developers pursuant to the City’s standard municipal off-site servicing agreements. The Estimated Nation Costs will form the basis for the amount of the Letter of Credit required to be initially posted pursuant to, and in accordance with the terms of, that particular TI Implementation Agreement.
- (c) The Nation will not occupy, issue permits to occupy, or otherwise allow the use of any portion of any particular Phase of the Development unless all of the Nation Delivered Works set out in Appendix F.2. [Nation Delivered Works] for the applicable Phase Which Triggers Start of Work have been completed.
- (d) The Nation Delivered Works will meet or exceed the City-Wide Standards, provided such standards are then being applied by the City to other analogous developments off-Reserve within Vancouver.
- (e) The Parties anticipate that a portion of the Vanier Park Road, Fir and 1st Intersection, Chestnut Street, and Seawall Improvements Triggered Infrastructure Works Projects (each as described in Appendix F.1 and Appendix F.2, as applicable) will be located within the Reserve. Accordingly, the Parties agree that:
 - (i) the City, in its development of the Conceptual Design for the 1st and Fir Intersection and Chestnut Street, will seek to minimize the amount of space required within the Reserve; and
 - (ii) the Nation will construct the portions of the applicable Triggered Infrastructure Works within the Reserve, subject to the acceptability of the design to the Nation, at the Nation’s sole cost and expense.
- (f) Subsection (e) above will be incorporated into:
 - (i) the applicable TI Implementation Agreement; and
 - (ii) an amendment to Schedule K [Burrard Bridge and City Roads/Utilities Agreement] to the extent necessary to reflect the portions of these Triggered Infrastructure Works which will form additions to the

Bridge/Street/Utilities Assets and Bridge/Street/Utilities Access Areas as those terms are defined in Schedule K [Burrard Bridge and City Roads/Utilities Agreement].

- (g) The costs for the design and construction of the Nation Delivered Works will be the responsibility of the Nation and no payment from the City to the Nation will be due for any part of the works listed in Appendix F.2 [Nation Delivered Works], except that:
 - (i) the City will pay to the Nation, 50% of the Actual Costs of the Nation Delivered Works described as “Seawall Improvements” in Appendix F.2 [Nation Delivered Works] only, up to \$250,000, upon completion and acceptance of the Seawall Improvements in accordance with the applicable TI Implementation Agreement, which amount may be subtracted from the amounts owing to the City under the applicable TI Implementation Agreement; and
 - (ii) the City may request that the design for the Nation Delivered Works described as “**Vanier Park Storm Sewer**” accommodate flows from the existing Burrard Bridge storm sewer, in which case the Incremental Costs for this change to the Vanier Park Storm Sewer will be paid by the City to the Nation upon completion and acceptance of such works pursuant to the applicable TI Implementation Agreement, which amount may be subtracted from the amounts owing to the City under the applicable TI Implementation Agreement.

F.11 Triggered Infrastructure Agreements for Nation Delivered Works

- (a) Pursuant to the Equity Principle, no particular Nation Delivered Works will be commenced unless and until the City and the Nation have entered into a TI Implementation Agreement for such Nation Delivered Works which provides the City with the same degree of legal protection against financial, legal, and other risks as a standard “servicing agreement” typically entered into between the City and a private sector developer for what are typically called off-site services agreements pursuant to a rezoning, which may include, among other things, terms relating to:
 - (i) the design process and design approvals, including standards of quality, finish and design typical of similar work newly built within the City for each item, including provisions:
 - (A) requiring the Nation to, prior to construction, installation or performance of any Nation Delivered Works, submit to the City Engineer for approval the applicable Conceptual Design and Issued-for-Construction Drawings, along with other documentation reasonably requested by the City which would typically be requested as part of a development off-Reserve in Vancouver, such as reference drawings, technical reports, analyses, surveys and calculations;

- (B) providing that the City agrees to provide comments or approval on all Nation Delivered Works submittals and will make good faith efforts to reply within 90 days of receipt of any given submittal or more quickly than that, subject always to the City's obligations to serve all residents and developers/applicants equally; and
 - (C) requiring the Nation to make changes and amendments to the Conceptual Design and Issued-for-Construction Drawings as are stated by the City Engineer to be necessary or desirable, until the City Engineer gives final written approval to such Conceptual Design and Issued-for-Construction Drawings, which procedure will be more particularly set out in the applicable TI Implementation Agreement but will generally follow the approvals process outlined in the Engineering Design Manual;
- (ii) insurance;
- (iii) financial security (e.g. Letters of Credit or deposits) for the work and their release;
- (iv) schedules setting out particulars of the Nation Delivered Works subject to the TI Implementation Agreement;
- (v) permits for use of City streets including process, fees, traffic control, and timing;
- (vi) compliance with safety regulations and roles and responsibilities;
- (vii) prevention and remediation of environmental contamination;
- (viii) notice periods for various activities as part of the work;
- (ix) inspections by the City;
- (x) standards of work and materials;
- (xi) acceptance of work;
- (xii) deficiencies;
- (xiii) warranty periods and remedies; and
- (xiv) release and indemnity.
- (b) Provided always that the TI Implementation Agreement will:
 - (i) be based on Appendix F.3 [TI Implementation Agreement] which Appendix F.3 [TI Implementation Agreement] will be utilized as a "representative template" and basis for negotiating and settling each TI Implementation Agreement pursuant to the main body of this Schedule F, the Utility Services Schedules, and Appendix F.2 [Nation Delivered Works] and will

otherwise incorporate the specific provisions of this Agreement in relation to any such matters; and

- (ii) recognize and be consistent with the Guiding Principles and the Equity Principle set out in the Main Agreement.
- (c) In the event of inconsistency between Appendix F.3 [TI Implementation Agreement] and the rest of this Schedule F, the latter will prevail. In the event of inconsistency between an executed TI Implementation Agreement and this Schedule F, the former will prevail.
- (d) The Parties will work together in good faith to complete and execute a TI Implementation Agreement in accordance with this Schedule F and, where applicable, the Utility Schedules for each Nation Delivered Works and, upon the execution and delivery of each TI Implementation Agreement, the Nation and the City will then perform and complete their respective TI Implementation Agreement obligations.

F.12 City Delivered Works

- (a) Where, in Appendix F.1 [City Delivered Works], a portion of the Actual Costs are shown as:
 - (i) **“City Portion”**, the Nation will not be liable for that indicated portion of the Actual Costs with respect that particular City Delivered Works; and
 - (ii) **“Nation Portion”**, the Nation will be liable for the payment of same but only to the dollar amount shown, except as adjusted in accordance with this Schedule F.
- (b) The Nation will pay the City \$12,832,000 (the **“Initial CDW Payment”**) upon the execution of the first TI Implementation Agreement, on account of the Nation Portion of City Delivered Works as that amount has been determined as at the Effective Date, which for certainty is the sum of the column titled “Nation Portion” in Appendix F.1 [City Delivered Works].
- (c) Upon receipt of the Initial CDW Payment, the City will commence the Conceptual Design, and then proceed to Detailed Design and Construction Drawings, Issued-for-Construction Drawings, and construction of the City Delivered Works providing the Nation with the same degree of priority and timing of delivery for the City Delivered Works as would be provided for any other similar infrastructure works being carried out by the City for other developments off-Reserve in Vancouver, and taking into account the anticipated schedule set out in Section F.2 [Current Estimated Construction Schedule].
- (d) The Parties confirm that all design, construction, financial, legal and other risks associated with the City Delivered Works will be allocated as set out in this Schedule F and Appendix F.1 [City Delivered Works].
- (e) Where the City identifies an Archaeology Cost as part of its Actual Costs, or other matter for which the Nation is responsible under this Schedule F or Appendix F.1

[City Delivered Works], the City will provide reasonable particulars of same, along with an invoice for the City's reasonable Actual Costs in connection with same, to the Nation and the Nation will then pay such invoice within 30 days of receipt of same.

- (f) For each City Delivered Works, the City Engineer will retain complete control over the performance of the City's design and construction obligations but will provide the Nation with regular status reports and provide the Nation with a reasonable opportunity to provide comments to the City Engineer on the Conceptual Design, Detailed Design and Construction Drawings, and Issued-for-Construction Drawings, but only insofar as they relate to the Development. The City Engineer will consider and incorporate such comments as appropriate in the sole discretion of the City Engineer, provided always that such comments will not be binding on the City Engineer unless the City Engineer is not substantially complying with the City's obligations with respect to the City Delivered Works under this Agreement.
- (g) Upon the completion of each of the City Delivered Works or completion of the applicable Phase Which Triggers Start of Work, whichever is earlier, the Cost Escalation for that City Delivered Work will be determined and paid to the City by the Nation as follows:
 - (i) the Order of Magnitude Preliminary Cost Estimate as may have been adjusted under Sections F.7(d) and (e)(i) of this Schedule F, will be adjusted to the above noted date by the Cost Escalation;
 - (ii) the Cost Escalation less the Order of Magnitude Preliminary Cost Estimate, will then be payable by the Nation to the City within 30 days of the Nation's receipt of an invoice for same from the City; and
 - (iii) if for any reason the amount determined pursuant to paragraph (ii) above is negative, no payment will be made from the City to the Nation, and for clarity no amount will be payable by the Nation to the City.
- (h) For the purposes of this Schedule F, the City will be entitled to an adjustment to the Initial CDW Payment in the following circumstances (each an "**Eligible Adjustment**") and for certainty the below mechanism for Eligible Adjustment is what is referred to in the column entitled "Nation Portion" of Appendix F.1 [City Delivered Works] as "Archaeology Costs and Cost Escalation":
 - (i) the Order of Magnitude Preliminary Cost Estimate is adjusted pursuant to Sections F.7(d) or (e)(i);
 - (ii) the City encounters Archaeological Discoveries in the course of carrying out the City Delivered Works;
 - (iii) the City incurs additional Actual Costs as a result of a change in TI Assumptions, Functional Objectives, or other change entitling the City to an adjustment to the Initial CDW Payment under this Schedule F or the Utility Services Schedules;

- (iv) there are changes in scope of the City Delivered Works required as a result of changes to the Development or the timing of the Phases;
 - (v) changes in any Functional Objective of the City Delivered Work required as a result of additional or finalized analysis and technical design review; and
 - (vi) any other deviation from the TI Assumptions requiring a change to the City Delivered Works prior to, after, or during the finalization of the Conceptual Design, Detailed Design and Construction Drawings or Issued-for-Construction Drawings or the procurement or project management and construction phases.
- (i) Where the City is entitled to an Eligible Adjustment, such adjustment will be based on the changes in the Actual Costs to the City associated with the applicable City Delivered Works, including without limitation and for further certainty, the following:
- (i) all costs incurred by the City on internal City staff, City materials and supplies, and other City expenses plus an administrative fee of 20% on same, as well as all:
 - (A) external costs of professional, consulting, contracting costs incurred in the Conceptual Design, Detailed Design and Construction Drawings, Issued-for-Construction Drawings, all procurement processing costs, and the actual project management and construction of same; and
 - (B) all other costs reasonably and necessarily incurred by the City as the entity undertaking the design and construction of the City Delivered Works, including by way of example only and without limitation, the costs of exercising bond and surety rights or taking legal proceedings against a consultant or contractor who defaults in their obligations under any contract with the City for the City Delivered Works, including any warranty obligations, as well as by way of further example:
 - I. all costs incurred to address any archaeological, heritage, or Indigenous finds including permitting and monitoring;
 - II. all Incremental Costs incurred to address any soil contamination or remediation but only to the extent same are incurred as a result of the change in TI Assumptions, Functional Objectives, or other change entitling the City to an adjustment to the Initial CDW Payment under this Schedule F or the Utility Services Schedules;
 - III. direct and indirect costs that are incurred related to changes in scope of the City Delivered Work required as a result of changes to the Development or the timing of the Phases;

- IV. direct and indirect costs that are incurred related to changes in any Functional Objective of the City Delivered Work required as a result of additional or finalized analysis and technical design review; and
- V. reimbursement for actual costs experienced by the City related to archaeological, soils, groundwater, and other monitoring and reporting,

all to the extent not already paid pursuant to Schedule I [City Staff Costs Reimbursement] to the Main Agreement; and all except as a result of matters for which the costs are expressly allocated to the City pursuant to Section F.7 [Risk Allocation].

F.13 Vanier Park Road and Storm Sewer

- (a) Within Vanier Park. The Vanier Park Road and Storm Sewer Area is located on land owned by Canada and leased (the “**Vanier Park Lease**”) for park purposes to the City, as represented by its Park Board.
- (b) Within Park Board Jurisdiction. Pursuant to the Vancouver Charter, the Park Board has exclusive administration, jurisdiction and control over the City’s interests under the Vanier Park Lease. Accordingly, with respect to all Triggered Infrastructure taking place within Vanier Park, the Nation acknowledges that the City will be consulting with and seeking the agreement and approval of the Park Board with respect to all applicable TI Implementation Agreements related to Vanier Park, including without limitation and by way of example only with respect to the as yet undetermined final location of the Vanier Park Storm Sewer alignment as well as the grading plan for the transition of elevations between the Licence Area and the adjacent areas of Vanier Park.
- (c) Access Rights and Permits Needed. The Nation acknowledges that, in connection with the Vanier Park Road and Vanier Park Storm Sewer:
 - (i) the Nation will need to acquire a licence or right of way (the “**Head Licence**”) over Vanier Park from Canada for the Vanier Park Road and Vanier Park Storm Sewer;
 - (ii) the City or the Nation will need to acquire a licence or right of way over those provincial Crown lands located between the northern limits of Vanier Park and the proposed outflow location at the low water mark of False Creek for that section of the Vanier Park Storm Sewer as well as a licence or right of way over those lands not owned by the City and required to provide access rights for the Creekside Drive Outflow (collectively, the “**Provincial Storm Licence**”); and
 - (iii) the City or the Nation may need to acquire applicable outflow/discharge permits to build and operate the Vanier Park Storm Sewer as well as the Creekside Drive Outflow (the “**Discharge Permits**”) from any authorities having jurisdiction, such as the Province, GVS&DD, or the City.

- (d) Risk of Not Acquiring. The Nation acknowledges and agrees that:
- (i) all risk of not obtaining a Head Licence, substantially in the form attached as Appendix F.6 [Form of Head Licence], or a Provincial Storm Licence, on terms no less favourable than the Expected Terms, or not at all, is borne solely by the Nation;
 - (ii) all risk of not obtaining any necessary Discharge Permits is borne solely by the Nation;
 - (iii) the City has not made any representations or warranties of any kind as to the Nation's ability to obtain a Head Licence or the City's or the Nation's ability to obtain a Provincial Storm Licence or Discharge Permits; and
 - (iv) if Canada does not issue the Head Licence or the Province does not issue a Provincial Storm Licence, or the authorities having jurisdiction do not issue Discharge Permits, in time for the Development or at all, this may require the Nation to re-design the Development and will constitute a Material Impact as well as a substantial deviation from the TI Assumptions.
- (e) Head Licence Ready to Issue. Canada has advised the Nation that it will issue the Head Licence to the Nation shortly after the Effective Date over:
- (i) the Road and Storm Sewer Area for road access and storm sewer purposes;
 - (ii) the Storm Sewer Area for storm sewer and related access;
 - (iii) the Temporary Turnaround and Storm Sewer Area for emergency vehicles to turn around until such time as there is public access through the Reserve, and for storm sewer purposes; and
 - (iv) other ancillary rights,
- substantially in the form attached as Appendix F.6 [Form of Head Licence].
- (f) Sub-Licence Ready to Issue. Concurrently with Canada issuing the Head Licence to the Nation, the Nation will grant a Sub-Licence (the "**Sub-Licence**") to the City substantially in the form attached as Appendix F.7 [Form of Sub-Licence].
- (g) Still Need to Acquire Provincial Storm Licence and Discharge Permits. The Parties will work collaboratively, diligently and in good faith to secure the Provincial Storm Licence on terms no less favourable than the Expected Terms and any Discharge Permits that may be required. Despite the City's Long-Term Responsibility obligations, the Nation will be responsible for applying for and complying with any and all Discharge Permits at its sole cost and expense.
- (h) Addition to Reserve. The Head Licence provides that the Nation must apply to Canada to have the Vanier Park Road and Storm Sewer Area added to Reserve (the "**ATR**") as soon as reasonably possible after entering into the Head Licence,

and to act diligently and in good faith to advance the ATR process, and to take all steps reasonably necessary to secure the ATR.

(i) Parties will Cooperate on ATR/Replacement Tenure. The Nation will not support the completion of the ATR process, or take any steps to continue the ATR process, if the City advises the Nation in writing that the City has not been able to obtain from Canada a Replacement Tenure on terms that meet the requirements of this Section F.13 or are otherwise unsatisfactory to the City.

(j) Expiry of Head and Sub-Licence. Both the Head Licence and Sub-Licence will expire on the earlier of:

- (i) the completion of the ATR process; or
- (ii) the expiry or sooner termination of the Head Licence or Vanier Park Lease,

and in any event cannot extend past the term of the Vanier Park Lease under which they are created (the 99 year term of which expires August 31, 2064).

(k) Expiry of Provincial Storm Licence and Discharge Permits. It is not yet known if or when the Provincial Storm Licence and Discharge Permits might expire or require renewal or replacement.

(l) Replacement Tenure Required. The Parties acknowledge and agree that the City will require:

- (i) a replacement tenure (the “**Road Replacement Tenure**”) with respect to the Vanier Park Road;
- (ii) a replacement tenure (the “**Storm Sewer Replacement Tenure**”) with respect to the Vanier Park Storm Sewer,

to replace the Head Licence and Sub-Licence, either at the time of the ATR or, if the ATR is not effected, at the time that the Vanier Park Lease comes to an end, or in any other case where the Head Licence is terminated, as applicable; and

- (iii) a replacement tenure (the “**Provincial Storm Section Replacement Tenure**”),

to replace the Provincial Storm Licence and Discharge Permits (if applicable) in the event of expiry or termination of the Provincial Storm Licence or any Discharge Permits (collectively, the “**Replacement Tenures**” and singularly, a “**Replacement Tenure**”), or with respect to any of the above in the event that the City requires a Replacement Tenure at any time during which it has Long-Term Responsibility for the Vanier Park Road or Vanier Park Storm Sewer.

(m) Reference Right-of-Way. The Parties agree that the statutory right of way registered in the Vancouver Land Title Office under No.CA6382635 and CA 6382637 (excluding the priority agreements registered under Nos. CA6382636 and CA 26382628) (the “**Reference Right-of-Way**”) is representative of the terms

and conditions which the City would typically obtain from a developer off-Reserve for public access, roads and utilities.

- (n) Process and Benchmark for Acquiring Replacement Tenure. Whenever one of the Replacement Tenures are required in order to replace access or usage rights that have expired or terminated, the Nation will work collaboratively, diligently and in good faith to assist the City to secure the required Replacement Tenure on terms that are no less favourable to the City than the best terms for the City in either:

- (i) the Sub-Licence; or
 - (ii) the Reference Right-of-Way,
- (together, the “**Expected Terms**”)

for so long as the City has Long-Term Responsibility for either the Vanier Park Road or the Vanier Park Storm Sewer.

- (o) “Expected Terms” a Benchmark not an Obligation. Nonetheless, the Parties acknowledge one or more of the Replacement Tenures may not provide terms and conditions as favourable to the City as the Expected Terms.

- (p) Replacement Tenure Limit Acknowledgements. The Parties acknowledge that:

- (i) any Replacement Tenure granted by Canada to the City will likely be either a right of way, permit or licence granted pursuant to Section 53(1)(b) of the *Indian Act* (or applicable successor legislation), and likely will not be granted pursuant to Section 218 of the *British Columbia Land Title Act*, unless the subject lands are raised in the Land Title Office;
- (ii) the Road Replacement Tenure will likely not be granted in perpetuity and will likely expire when the lease for the Development expires;
- (iii) the Storm Sewer Replacement Tenure will likely not be granted in perpetuity and will likely expire when the Vanier Park Lease expires; and
- (iv) the Provincial Storm Section Replacement Tenure will likely not be granted in perpetuity and will likely expire prior to the City’s Long-Term Responsibility for the Vanier Park Storm Sewer expiring.

- (q) Pre-Replacement Tenure Indemnity. The Nation will indemnify the City from and against any and all Losses arising directly or indirectly from:

- (i) the Sub-Licence terms and conditions being less favourable to the City than the Expected Terms, including any Losses arising from a breach by the City of the Sub-Licence which would not have been a breach of the Reference Right-of-Way;
- (ii) the Provincial Storm Licence terms and conditions being less favourable to the City than the Expected Terms, including any Losses arising from a

breach by the City of the Provincial Storm Licence which would not have been a breach of the Reference Right-of-Way;

- (iii) applying for, paying for, complying with, extending, renewing or replacing all Discharge Permit terms and conditions, except where such Losses arise from the intentional or grossly negligent breach by the City of the Discharge Permit terms and conditions;
 - (iv) the City not being able to obtain (or the issuing authority not being able to issue) in spite of reasonable and good faith efforts to do so, any Discharge Permit, or any required renewal, extension, or replacement of same, sufficient to use, operate, and maintain the Vanier Park Storm Sewer; and
 - (v) the Nation breaching the Head Licence (except to the extent such breach is caused or contributed to by the City or City Personnel breaching the Sub-Licence).
- (r) Post-Replacement Tenure Indemnity. The Nation will indemnify the City from and against any and all Losses arising directly or indirectly from:
- (i) the lack of a Replacement Tenure whenever required by the City to carry out any related Long-Term Responsibility; or
 - (ii) the Replacement Tenure being less favourable to the City than the Expected Terms,

but only to the extent that such Losses would not have occurred had the City been provided with rights and obligations as favourable as the Expected Terms.

- (s) Nation Can Be Released if Nation Assumes Long-Term Responsibility. The Nation has the right, at any time, to end its obligations to indemnify pursuant to Section F.13 (q) and (r) above in respect of either (1) the Vanier Park Road, (2) the Vanier Park Storm Sewer (including the Provincial Storm Licence and Discharge Permits), or (3) the Creekside Drive Outflow (including the Provincial Storm Licence and Discharge Permits) by:
- (i) giving at least 180 days' prior written notice to the City; and
 - (ii) specifying in such notice the effective date that it intends to assume Long-Term Responsibility for any one or the whole of the (1) Vanier Park Road and (2) the whole of the Vanier Park Storm Sewer (including the Provincial Storm Licence and any necessary Discharge Permit), or (3) the whole of the Creekside Drive Outflow (including the Provincial Storm Licence and any necessary Discharge Permit), but no such notice can specify assumption of only a portion of the Vanier Park Road or a portion of the Vanier Park Storm Sewer or a portion of the Creekside Drive Outflow,

provided always that the transfers, consents, and assumptions referred to in Section F.13(t) below are permitted to be completed by the applicable governmental authorities and all applicable conditions can be and are fulfilled by the Nation.

- (t) Process for Assuming Long-Term Responsibility. To the extent that the Nation is assuming Long-Term Responsibility for any one or the whole of the (1) Vanier Park Road and (2) the whole of the Vanier Park Storm Sewer (including the Provincial Storm Licence and any necessary Discharge Permit), or (3) the whole of the Creekside Drive Outflow (including the Provincial Storm Licence and any necessary Discharge Permit), pursuant to a notice given under Section F.13(s):
- (i) the City will transfer title to the applicable infrastructure to the Nation, on the effective date of the Nation's notice;
 - (ii) the City will, if applicable, release and discharge the Nation from the Sub-Licence or applicable Replacement Tenure for same;
 - (iii) the City will be released from, and the Nation will assume Long-Term Responsibility for such infrastructure on the effective date of the Nation's notice;
 - (iv) the City will assign (if permitted, or if permitted on conditions, if the Nation assumes full responsibility for all such conditions) the applicable Provincial Storm Licence, Replacement Tenure for same, as well as any applicable Discharge Permit that it holds, to the Nation, and the Nation will accept responsibility for such Discharge Permit, or the Nation will obtain a replacement Discharge Permit;
 - (v) the Nation's indemnities in Section F.13 (q) and (r) above will be limited to those matters arising on or before the effective date of the Nation's notice; and
 - (vi) the Nation will thereafter only be liable to indemnify the City for Losses arising directly or indirectly as a result of:
 - (A) the City ceasing to provide Long-Term Responsibility for the infrastructure assumed by the Nation;
 - (B) the Nation assuming Long-Term Responsibility for same; and
 - (C) where any governmental authority has imposed conditions or terms on the transfer of Long-Term Responsibility and the City and the Nation have agreed to proceed despite those conditions or terms, anything incurred by or imposed on the City as a result of those conditions or terms.
- (u) Process Where Long-Term Responsibility is Frustrated. If, for any reason (except a default by the City of its obligations under this Agreement) neither Party is able to continue to have or assume Long-Term Responsibility for the applicable Vanier Park Road, Vanier Park Storm Sewer, or Creekside Drive Outflow infrastructure (including without limitation the inability to complete a transfer of same pursuant to Section F.13(t) above), either Party may, on giving at least 180 days' prior written notice to the other stating the effective date by which the applicable infrastructure should be de-commissioned and removed, at the sole cost and expense of the Nation, whereupon:

- (i) the City will be released, effective from and after the effective date of such notice, from all further obligations to provide Long-Term Responsibility for such infrastructure;
 - (ii) the Nation's indemnities in Section F.13 (q) and (r) above will be limited to those matters arising on or before the completion of the City's decommissioning and removal of the infrastructure; and
 - (iii) the Nation will thereafter only be liable to indemnify the City from and against all Losses arising directly or indirectly from third parties which would not have arisen but for the City decommissioning and removing such infrastructure and ceasing to provide Long-Term Responsibility for same.
- (v) Nation's Head Licence Obligations. The Nation will be responsible for complying with all obligations under the Head Licence which are not obligations of the City under the terms of the Sub-Licence, including without limitation and by way of example only:
 - (i) paying all taxes and licence and other fees payable to Canada under the Head Licence;
 - (ii) submitting and obtaining approval of the "development plan";
 - (iii) complying with or responding to Canada's exercise of its rights to control "hazards to people" (to the extent this imposes greater obligations on the City than those under the Sub-Licence);
 - (iv) seeking out and obtaining the ATR, all at its sole expense;
 - (v) assuming the obligations to indemnify Canada (to the extent not caused or contributed to by the City or City Personnel breaching the Sub-Licence and then only to the extent that the City or City Personnel would have been liable under the same circumstances pursuant to the Reference Right-of-Way); and
 - (vi) assuming the obligations and costs of resolving disputes with Canada (except that the City will be liable to reimburse the Nation for such costs to the extent such disputes arise from a breach by the City or City Personnel of the Sub-Licence but only to the extent that the City or City Personnel would have been liable for same under the Reference Right-of-Way).
- (w) Nation's Provincial Storm Section Obligations. The Nation will be responsible for complying with all obligations under the Provincial Storm Licence which would not be obligations of the City if the Provincial Storm Licence had been granted on the terms of the Reference Right-of-Way, including without limitation and by way of example only:
 - (i) pay all taxes and licence and other fees payable, if any, to the Province under the Provincial Storm Licence as well anything payable under any necessary Discharge Permit;

- (ii) indemnify the Province (to the extent not caused or contributed to by the City or City Personnel breaching the Provincial Storm Licence and then only to the extent that the City or City Personnel would have been liable under the same circumstances pursuant to the Reference Right-of-Way); and
 - (iii) resolve (at the Nation's sole expense) disputes with the Province (except that the City will be liable to reimburse the Nation for such costs to the extent such disputes arises from a breach by the City or City Personnel of the Provincial Storm Licence but only to the extent that the City or City Personnel would have been liable for same under the Reference Right-of-Way).
- (x) Limitation on Long-Term Responsibility. Where through no default by the City of its obligations under this Agreement, the City is not able to fulfil its Long-Term Responsibility respecting the Vanier Park Road or Vanier Park Storm Sewer due to a lack of or defect in its access or use rights over Vanier Park and the area needed between Vanier Park and the foreshore of False Creek, the City will be released from such obligations to the extent that such lack of or defect in such rights prevents or limits the City in performing its Long-Term Responsibility obligations.
- (y) Nation's Rights Under Head Licence. Unless and until (and then only to the extent that) the Nation assumes Long-Term Responsibility for the Vanier Park Road or Vanier Park Storm Sewer pursuant to Section F.13(t), the Nation now agrees not to exercise any of its rights under the Head Licence, except for:
 - (i) those rights necessarily required to comply with its obligations pursuant to Section F.13(v);
 - (ii) those rights (if any) not expressly granted to the City under this Section F.13, the Sub-Licence, or a Replacement Tenure; and
 - (iii) those rights (if any) expressly granted or acknowledged to be reserved to the Nation under the express terms of the Sub-Licence or a Replacement Tenure.
- (z) Head Licence Document Sharing. Subject to Section F.13(aa), the Nation will provide to the City all documents, including without limitation, all environmental impact assessments, federal directives, and other requirements associated with the Head Licence and ATR, and related reports issued by the Nation, its consultants, and the federal government, so that the City understands the obligations on the Nation for the Nation Delivered Works within the Licence Area, and what residual or ongoing obligations might be imposed on the City as the owner of such works and as the Party having Long-Term Responsibility for same. To the extent that such long-term obligations impose incremental costs on the City that are additional to those which the City would incur if the said areas were held by the City under a right-of-way such as the Reference Right-of-Way, the Nation will reimburse the City for same.

- (aa) Document Sharing Exceptions. Despite Section F.13(x), the Nation will not be required to disclose reports or other information which are subject to solicitor-client privilege. Also, in the event that there are reports or other information that are considered to be internally sensitive, the Nation will provide a copy of same to the City's legal counsel on a professional undertaking not to disclose same to City staff except to confirm that the Nation's basis for claiming internal sensitivity is justified or, if not, to then recommend initiation of the dispute resolution process set out in Article 16.0 [Dispute Resolution] but with that process modified to restrict disclosure of the disputed information to the City's legal counsel and the City Manager and then only after the City Manager has executed a non-disclosure agreement and the City's legal counsel has confirmed that the dispute resolution process (except the final outcome) will remain subject to the professional undertaking of non-disclosure.
- (bb) Agreement to Optimize Alignment of Vanier Park Storm Sewer. Despite the location of the Storm Sewer Area and Turnaround and Storm Sewer Area identified on the sketch plan attached as Schedule A to the form of Head Licence attached as Appendix F.6 [Form of Head Licence], the Nation agrees that it will, subject to professional engineering advice, make all commercially reasonable efforts to move the existing Storm Sewer Area and Temporary Turnaround and Storm Sewer Area as contemplated by Section 1.2 of the Head Licence as close to the Burrard Bridge as feasible, provided that such relocation is technically feasible and supported by the City Engineer. If the Storm Sewer Area and Temporary Turnaround and Storm Sewer Area are moved closer to the Burrard Bridge, then the relocated areas will be shown on the survey plan to be prepared under the applicable TI Implementation Agreement, and the Nation will use such survey plan for the purposes of modifying the Head Licence, as contemplated by Section 1.2 of the Head Licence and Section 1.2 of the Sub-Licence.
- (cc) Conflict or Inconsistency. In the event of any conflict or inconsistency between this Section F.13 and any of the sub-agreements (but excluding TI Implementation Agreements) referred to in this Section F.13, the former will prevail over any of the latter.

APPENDIX F.1

City Delivered Triggered Infrastructure

Specific Defined Terms (for Appendix F.1 and Appendix F.2)

In Appendix F.1 and Appendix F.2, the following terms as used in the Tables below and elsewhere in this Schedule F and this Agreement, have the following meanings:

“Archaeology Costs” means any and all costs arising directly or indirectly as a result of any findings of any Archaeological Discovery or Archaeological Discoveries which would not or could not have been incurred but for designing and carrying out the applicable City Delivered Works;

“City Portion” is the portion (if any) of the Actual Costs of any particular Nation Delivered Works Project or City Delivered Works Project payable by the City;

“Conceptual Design Responsibility” means the responsibility for undertaking and paying all costs of the preparation and eventual approval of the Conceptual Design by the City Engineer;

“Detailed Design and Construction Responsibility” means the responsibility for (1) undertaking and paying all costs of the preparation and eventual approval of the Detailed Design and Construction Drawings, and (2) the construction of the Triggered Infrastructure Works Project in accordance with same;

“Incremental Costs” means those costs incurred but only those costs which would not or could not have been incurred but for the inclusion of the extra matter or thing in the particular project, and expressly excludes all costs which would have been incurred whether or not the extra matter or thing had been added to the particular project;

“Interim” refers to a standard of design and construction that is serviceable as a long-term improvement with respect to utility and durability of materials but which may use design and construction techniques that minimize costs;

“Nation Portion” means the portion of the Actual Costs of any particular Nation Delivered Works Project or City Delivered Works Project payable by the Nation; and

“Order of Magnitude Preliminary Cost Estimates” means the very preliminary cost estimates made by the City Engineer utilizing the information available to the City Engineer on or around January 2020 and listed out in the third column of the tables in the TI Appendices.

APPENDIX F.1 City Delivered Works								
Type	Triggered Infrastructure Works Project General Title of Scope	Order of Magnitude Preliminary Cost Estimate	Nation Portion	City Portion	Phase Which Triggers Start of Work (as per Schedule L [Development])	Conceptual Design Responsibility	Detailed Design and Construction Responsibility	Functional Objective of the Triggered Infrastructure and Current Understanding of What Type of Design Will Achieve Same [Note: The below objectives are agreed upon and fixed but the design is conceptual only and remains subject to detailed design]
Water	Chestnut/Greer/Creelman Streets	\$492,000	\$492,000 plus risks/costs (if any) for Archaeology Costs and Cost Escalation	\$0	1	City	City	A water connection intended to meet deliver the Water Service Capacity described in Schedule E, E.3.1.(a) to the property line of the Lands
Water	1st Avenue at Fir	\$90,000	\$90,000 plus risks/costs (if any) for Archaeology Costs and Cost Escalation	\$0	2	City	City	A water connection intended to deliver the Water Service Capacity described in Schedule E, E.3.1.(a) to the property line of the Lands
Transportation	Kits Point Cycling/Walking to Cornwall (Greer, Cypress, Chestnut, and intersections)	\$6,370,000	\$5,670,000 plus risks/costs (if any) for Archaeology Costs and Cost Escalation (if any)	100% of Actual Costs if any in excess of Nation Portion	1	City	City	<p>The addition of all necessary works to provide for new and expanded walking, cycling, and vehicle infrastructure and associated rainwater management, as described for the following locations and including adjustment to all existing infrastructure to accommodate:</p> <ul style="list-style-type: none"> - Chestnut Street from Cornwall Avenue to Vanier Park Road: Raised bidirectional protected bike lane and widened sidewalks on the east side, geometric changes to bulges at Greer Avenue. - Greer Avenue: Raised bidirectional protected bike lane on the south side, or unidirectional protected bike lane on both sides, widened sidewalks - Cypress Street between Cornwall Avenue and Greer Avenue: Raised unidirectional protected bike lanes on both sides and widened sidewalks - Cypress Street & Cornwall Avenue: Construction of fully protected intersection with protected bike lanes, new sidewalks, tie-ins to adjacent infrastructure, and traffic signal modifications (referring to the intersection of Quebec Street & West 1st Avenue as a precedent for this implementation). - Cypress Street & Greer: Construction of a new un-signalized intersection with protected bike lanes, new sidewalks. - Chestnut Street & Greer: Construction of a new un-signalized intersection with protected bike lanes, new sidewalks. - Cornwall Avenue north side, west of Cypress Street: Reconstruction of the street, curb and sidewalk to provide for bus stop improvements including construction and installation of a concreted bus pad, bus shelter, expanded passenger waiting area, and lighting.

APPENDIX F.1 City Delivered Works								
Type	Triggered Infrastructure Works Project General Title of Scope	Order of Magnitude Preliminary Cost Estimate	Nation Portion	City Portion	Phase Which Triggers Start of Work (as per Schedule L [Development])	Conceptual Design Responsibility	Detailed Design and Construction Responsibility	Functional Objective of the Triggered Infrastructure and Current Understanding of What Type of Design Will Achieve Same [Note: The below objectives are agreed upon and fixed but the design is conceptual only and remains subject to detailed design]
Transportation	West 1 st Avenue, Burrard to Pine (intersection at Burrard, 1st Ave)	\$1,280,000	\$1,280,000 plus risks/costs (if any) for Archaeology Costs and Cost Escalation	100% of Actual Costs in excess of Nation Portion	2	City	City	<p>The addition of all necessary works to provide for new walking, cycling, and vehicle infrastructure and associated rainwater management, as described for the following locations and including adjustment to all existing infrastructure to accommodate:</p> <ul style="list-style-type: none">- Burrard Street & West 1st Avenue: Signal upgrades, partial reconstruction of the intersection and associated necessary modifications to the remainder of the intersection.- West 1st Avenue from Burrard to Pine: Bidirectional protected bike lane on the north side, or raised unidirectional protected bike lanes on both sides composed of durable Interim treatments.- Pine Street & West 1st Avenue: Intersection improvements including improved pedestrian and bicycle crossings.
Transportation	Fir St 2nd to 4th (intersections @ 2 nd , 3 rd , and 4 th Aves + Linear)	\$3,300,000	\$3,300,000 plus risks/costs (if any) for Archaeology Costs and Cost Escalation	100% of Actual Costs in excess of Nation Portion	3	City	City	<p>The addition of all necessary works to provide for new walking, cycling, and vehicle infrastructure and associated rainwater management, as described for the following locations and including adjustment to all existing infrastructure to accommodate:</p> <ul style="list-style-type: none">- Fir Street from West 2nd Ave to West 4th Ave: Full-depth pavement and sub-base reconstruction, sidewalk widening where feasible- Fir Street & West 2nd Avenue: New traffic signal and associated necessary geometric modifications- Fir Street & West 3rd Avenue: New signal and associated necessary geometric modifications, intersection reconstruction to support increased usage including normalizing the southeast corner.- Fir Street & West 4th Avenue: Signal upgrades to separate left turns and improve pedestrian accessibility, improvements to bus stops where possible.
Transportation	Pine Street Final Build Out	\$6,000,000	\$2,000,000	100% of Actual Costs in excess of Nation Portion	4	City	City	<p>Construction of a permanent cycling and walking connection between the Arbutus Greenway and Seaside Greenway with comparable comfort and quality to those facilities. No design work has been completed at this time.</p>

APPENDIX F.2
Nation Delivered Triggered Infrastructure

APPENDIX F.2 - Nation Delivered Works								
Type	Triggered Infrastructure Works Project General Title of Scope	Order of Magnitude Preliminary Cost Estimate	Nation Portion	City Portion	Phase Which Triggers Start of Work (per Schedule L [Development])	Conceptual Design Responsibility	Detailed Design and Construction Responsibility	Functional Objective of the Triggered Infrastructure and Current Understanding of What Type of Design Will Achieve Same [Note: The below objectives are agreed upon and fixed but the design is conceptual only and remains subject to detailed design]
Storm Sewers	Vanier Park Storm Sewer	\$3,348,000	100% of Actual Costs, except for the City Portion	Incremental Costs of portion or extent to which works serve and benefit the run-off of water from the Burrard Bridge	1	Nation	Nation	Approx. 622m of new and upgraded pipe and new Storm Connections to be located underneath the future Vanier Park Road and portions of the seawall pathway with diameter yet to be determined. Scope for adjustment of bridge storm drainage is not yet determined. New infrastructure to meet the requirements of Schedule D [Sewer Services] and in particular to accommodate the Capacity Limits (as defined in Schedule D [Sewer Services]) which have not yet been determined as well as to ensuring the Development will not impact the City's drainage system negatively (i.e additional surcharge/flooding) including under future sea level rise scenarios.
Storm Sewers	Creekside Drive Outflow Upgrades	\$600,000	100% of Actual Costs	N/A	1	Nation	Nation	Replacement storm sewer and storm water outflow in the location of the existing Creekside Drive Outflow to False Creek, and new Storm Connections. New infrastructure to meet the requirements of Schedule D [Sewer Services] and in particular to accommodate the Capacity Limits (as defined in Schedule D [Sewer Services]) which have not yet been determined as well as to ensure the Development will not impact the City's drainage system negatively (i.e additional surcharge/flooding) including under future sea level rise scenarios.
Sanitary Sewers	Sanitary Sewer Extension	TBD	100% of Actual Costs	N/A	1	Nation	Nation	All off-site sanitary infrastructure installations, improvements, or modifications required to meet the requirements of Schedule D [Sewer Services] and in particular to accommodate the Capacity Limits (as defined in Schedule D [Sewer Services]) and eliminate detrimental impacts to the City Sewer System, the specific nature of which is to be determined through consultation with the City and approved by the City as part of an overall sanitary sewer servicing strategy. Scope includes works related to all new, modified, or impacted components of the City Sewer System and new Sewer Connections. For clarity, the scope includes all studies, system analysis, design, and direct and indirect construction activities required to provide the Sewer Services to the satisfaction of the City Engineer at their sole discretion.

APPENDIX F.2 - Nation Delivered Works								
Type	Triggered Infrastructure Works Project General Title of Scope	Order of Magnitude Preliminary Cost Estimate	Nation Portion	City Portion	Phase Which Triggers Start of Work (per Schedule L [Development])	Conceptual Design Responsibility	Detailed Design and Construction Responsibility	Functional Objective of the Triggered Infrastructure and Current Understanding of What Type of Design Will Achieve Same [Note: The below objectives are agreed upon and fixed but the design is conceptual only and remains subject to detailed design]
Transportation	Vanier Park Road	\$6,270,000	100% of Actual Costs	N/A	1	Nation	Nation	The addition of all necessary works to provide for new walking, cycling, and vehicle infrastructure and associated rainwater management, as described for the following locations and including adjustment to all existing infrastructure to accommodate: <ul style="list-style-type: none">- Vanier Park Road from Chestnut Street to the turn under the Burrard Bridge (up to the property line of the Reserve): Construction of new roadway and tie in to Chestnut Street and the new roadway within Seḥákw, including vehicle lanes, curbs, raised bidirectional protected bike lane and wide sidewalks on the south side; parking/loading bays on the south side interspersed with green infrastructure, new and replacement trees, landscaping, or other public realm features; including any necessary or beneficial modifications to the Music Academy Parking Lot.- Construction extents to include the tie-in at Chestnut Street driveway and necessary modifications to Chestnut Street.- Site grading for the transition between the Licence Area and existing elevations in the adjacent areas within Vanier Park, which is to be kept to as small an area as possible.
Transportation	Cycling/Pedestrian Path East of Vanier Park Road	TBD	100% of Actual Costs	N/A	2 or at request of Park Board (whichever is later)	Nation	Nation	Connection from Vanier Park Road to the Seawall: Protected walking and cycling infrastructure that is also suitable for emergency vehicle access, associated public realm features, landscaping, and street furniture. Design and delivery will be based off input received through Vanier Park Master Planning Process and subject to Park Board's approval.

APPENDIX F.2 - Nation Delivered Works								
Type	Triggered Infrastructure Works Project General Title of Scope	Order of Magnitude Preliminary Cost Estimate	Nation Portion	City Portion	Phase Which Triggers Start of Work (per Schedule L [Development])	Conceptual Design Responsibility	Detailed Design and Construction Responsibility	Functional Objective of the Triggered Infrastructure and Current Understanding of What Type of Design Will Achieve Same [Note: The below objectives are agreed upon and fixed but the design is conceptual only and remains subject to detailed design]
Transportation	Fir and 1st Intersection (Including connections up to West 2 nd Ave, Pine St, Creekside Dr)	\$4,679,600	100% of Actual Costs	N/A	2	City	Nation	<p>The addition of all necessary works to provide for new walking, cycling, and vehicle infrastructure and associated rainwater management, as described for the following locations and including all necessary adjustments to all existing infrastructure to accommodate:</p> <ul style="list-style-type: none">- Fir Street & West 1st Avenue: Complete reconstruction of a fully protected intersection (referring to the intersection of Quebec Street & West 1st Avenue as a precedent for this implementation) including full depth pavement and sub-base reconstruction/upgrade and non-standard landscape architecture elements for a large plaza in the remaining space similar to that on the 800 block of Robson Street.- 1st Avenue from Pine to Fir: Raised bidirectional protected bike lane, or raised unidirectional protected bike lanes on both sides; widened sidewalks, and full-depth pavement reconstruction all to tie into the intersection at Pine Street and West 1st Avenue,- West 1st Avenue from Fir Street to Creekside Drive: Raised bidirectional protected bike lane, or raised unidirectional protected bike lanes on both sides; including tie-ins to the existing permanent infrastructure at Creekside Drive and West 1st Avenue- Fir Street from West 1st Ave to West 2nd Ave: Full depth pavement and sub-base reconstruction, raised bidirectional protected bike lane, or raised unidirectional protected bike lanes on both sides, widened and new sidewalks.
Transportation	Seawall Improvements	\$500,000	100% of Actual Costs minus City Portion	50% of Actual Costs up to \$250,000	4	Nation	Nation	<p>Precise scope to be determined. Design TBD by Nation and approved by City, scope includes the Seawall alignment between Creekside Drive and the Burrard Bridge for walking, cycling, and public realm. Form and function, including separated path of sufficient widths for people cycling and people walking to be consistent with newly constructed portions of the Seawall in south false creek.</p>
Transportation	Transit Hub	\$15,000,000	100% of Actual Costs	N/A	2	Nation	Nation	<p>Design to be completed by Nation and approved by City subject to acceptability of a feasibility study, Traffic Assessment and Management Study, Transit and Access Study, and documents pertaining to bridge seismic, structural and geotechnical considerations outlined in Schedule K [Burrard Bridge and City Roads/Utilities Agreement], all to be provided by the Nation. Generally to include separate structures functionally integrated but structurally and seismically isolated from the Burrard Street Bridge that will provide additional effective width to the bridge deck and allow for bus stops and queuing/waiting areas to be implemented in both the northbound and southbound directions while maintaining the space for people walking and cycling on the bridge in a manner at least as functional and comfortable as today.</p>

APPENDIX F.2 - Nation Delivered Works								
Type	Triggered Infrastructure Works Project General Title of Scope	Order of Magnitude Preliminary Cost Estimate	Nation Portion	City Portion	Phase Which Triggers Start of Work (per Schedule L [Development])	Conceptual Design Responsibility	Detailed Design and Construction Responsibility	Functional Objective of the Triggered Infrastructure and Current Understanding of What Type of Design Will Achieve Same [Note: The below objectives are agreed upon and fixed but the design is conceptual only and remains subject to detailed design]
Flood protection	Raise Seawall, Prepare for Future Flood Protection Works	\$500,000	100% of Actual Costs for soil densification and preparation	N/A	4	Nation	Nation	<p>Nation cost and scope to include densification and preparation of existing or replaced soils along the existing seawall alignment to a minimum of 15m back from the existing top of bank and at least to the elevation of the existing seawall, as needed to provide a competent base for a future potential dike system or similar flood protection work by others (but not necessarily the City), as well as provision of a 15m minimum setback from the high water mark (as of date that design work for same commences) to any building or other permanent structures in accordance with City and Provincial guidelines in order to allow for the future construction of a shoreline dike structure to mitigate sea level rise. Design of soil densification to be coordinated with and approved by the City Engineer.</p> <p>Nation cost and scope excludes construction of a future dike system or other flood protection works (unless required by future federal or other laws or regulations).</p>

APPENDIX F.3 – TI Implementation Agreement Template

[NOTE: Pursuant to Section F.11 [Triggered Infrastructure Agreements for Nation Delivered Works] of this Schedule F, this Appendix F.3 is agreed by the Parties to be a “representative template” and basis for negotiating and settling each TI Implementation Agreement pursuant to the main body of this Schedule F, the Utility Services Schedules, and Appendix F.2 [Nation Delivered Works]]

SENÁKW SERVICES AGREEMENT TRIGGERED INFRASTRUCTURE IMPLEMENTATION AGREEMENT PHASE [] TI WORKS

THIS Agreement is made as of and effective __, 20__

BETWEEN:

SQUAMISH NATION

PO BOX 86131,
North Vancouver,
British Columbia V7L 4J5

(the “**Nation**”)

and

CITY OF VANCOUVER

453 West 12th Avenue
Vancouver, B.C. V5Y 1V4

(the “**City**”)

(each a “**Party**” and together the “**Parties**”)

BACKGROUND:

- A. The Parties entered into an agreement on May 25, 2022 consisting of the Senákw Services Agreement with Schedules A through R (the “**Main Agreement**”);
- B. Pursuant to Schedule F [Triggered Infrastructure] (“**Schedule F**”) of the Main Agreement, the Parties have agreed to enter into supplemental agreements to record in further detail their agreements on designing, constructing and paying for the Nation Delivered Works (as defined in Schedule F); and
- C. The Parties have agreed on such a supplemental agreement with respect to the Nation Delivered Works to be delivered in connection with Phase [] of the Development, all as further set out in this Agreement (as defined below) with the intention of mitigating the adverse impact of the Development on Vancouver and ensuring that the residents and businesses of the Development have the necessary municipal services and infrastructure.

THE PARTIES NOW LEGALLY AGREE to the following terms:

**ARTICLE 1
DEFINITIONS**

1.1 Definitions. The terms defined in this Section 1.1 will have the following meanings for all purposes in this Agreement, except where specifically otherwise provided herein:

- (a) **“Acceptance”** means a written approval by the City Engineer pursuant to Article 5 [Acceptance of TI Works] confirming that the TI Works have been completed in accordance with the Issued-for-Construction Drawings and the Design Acceptance Letter, except for the Deficiencies, and that the City approves the portion of the TI Works covered by such approval subject to completion of the listed Deficiencies, if applicable;
- (b) **“Agreement”** means this Agreement, including the following Appendices:
 - (i) Appendix A [Preliminary Functional Description of TI Works]; and
 - (ii) Appendix B [Preliminary Drawings of TI Works].
- (c) **“Certificate”** means the certificate of inspection for the TI Works, or portion thereof, covered by such certificate, in form and content acceptable to the City Engineer, and prepared, signed, sealed and issued by the Consultant, certifying that the TI Works, or portion thereof, have been constructed and completed in accordance with the Issued-for-Construction Drawings and the Design Acceptance Letter, save and except for the listed Deficiencies;
- (d) **“City”** means the City of Vancouver in its capacity as a corporate entity;
- (e) **“City Engineer”** means the chief administrator, from time to time, of the City’s Engineering Services Department and their successors in function and their respective nominees;
- (f) **“City Lands”** means the City-owned land on which any Triggered Infrastructure Works Project is being performed;
- (g) **“City Landscaping”** means all City Landscaping, including, but not limited to, trees, plantings, sod, soil cells, tree surrounds and other natural or constructed elements;
- (h) **“City Manager”** means the chief administrator, from time to time, of the City and their successors in function and their respective nominees;
- (i) **“Construction Area”** means the area designated by the City Engineer in the applicable street use or other permit or licence granted to the Nation for use in carrying out the Triggered Infrastructure Works Project;
- (j) **“Consultant”** means the supervising professional engineer acceptable to the City Engineer who is a member in good standing of Engineers and Geoscientists British Columbia and who is employed or retained by the Nation to ensure that the TI

Works are completed by the Nation in accordance with the Issued-for-Construction Drawings and the Design Acceptance Letter;

- (k) **“Deficiencies”** means the conclusive list of defects, deficiencies and departures from the Issued-for-Construction Drawings or the Design Acceptance Letter identified by the Consultant, to the satisfaction of the City Engineer, attached to the Certificate as such list may be amended pursuant to Section 5.1(a);
- (l) **“Deficiency Amount”** means an amount equal to 150% of the sum estimated by the City Engineer to be required to complete the correction of all the Deficiencies;
- (m) **“Degradation Fee”** means a fee charged, pursuant to the fee schedule set out in the Street Utilities By-law No. 10361, for road cuts relating to, without limitation, coring, test holes, monitoring wells, utility exposures, installation of utilities, road and pavement reconstruction where grinding and overlaying does not apply, excavations into improved lanes and encroachment removals;
- (n) **“Design Acceptance Letter”** has the meaning set out in Section 3.1 [Design Acceptance Letter];
- (o) **“Director of Legal Services”** means the chief administrator, from time to time, of the City’s Legal Services Department and their successors in function and their respective nominees;
- (p) **“Estimated Amount”** means an amount equal to 150% of the Estimated Nation Costs;
- (q) **“Event of *Force Majeure*”** means acts of God or public enemy, wars (declared or undeclared), revolution, riots, insurrections, civil commotions, fires, floods, slides, quarantine restrictions, strikes or lockouts, including illegal work stoppages or slowdowns, or stop work orders issued by a court or public authority, including the City (provided that such orders were not issued as a result of an act or omission of the Nation, or anyone employed or retained by the Nation), freight embargos or power failures, provided that any such event or circumstance reasonably constitutes a material disabling event or circumstance which is beyond the reasonable control of a Party, does not arise from the neglect or default of a Party, and which results in a material delay, interruption or failure by a Party in carrying out its duties, covenants or obligations under this Agreement, but which does not mean or include any delay caused by the Nation’s lack of funds or financial condition (and for greater certainty, a strike or lockout, including illegal work stoppages or slowdowns, will be considered beyond the reasonable control of a Party and not to arise from the neglect or default of that Party, it being understood that the terms of settlement of any labour disturbance, dispute, strike or lockout will be wholly in the discretion of that Party);
- (r) **“Extended Warranty Period”** has the meaning set out in Section 7.4 [Extended Warranty Period];
- (s) **“Extended Warranty Period Letter of Credit”** has the meaning set out in Section 8.4 [Letter of Credit (Warranty Period)];

- (t) **“Letter of Credit”** means an irrevocable standby letter of credit that complies in all respects with the City’s requirements as set out in the City’s Corporate Policy, Policy Number AF-002-02 approved on June 24, 2016, as may be amended or replaced from time to time, and in all other respects, complies with any other terms and conditions stated elsewhere in this Agreement to be applicable and is in form and substance acceptable to the Director of Legal Services;
- (u) **“Off-Reserve Works”** has the meaning set out in Section 2.2 [City May Complete TI Works on Default];
- (v) **“Remedy Amount”** means an amount equal to 150% of the sum estimated by the City Engineer to be required to remedy a specified default as contemplated by Section 9.1(b)(ii);
- (w) **“TI Works”** means the works preliminarily and functionally described in Appendix A and Appendix B to this Agreement, including for certainty all developments and modifications to such works as set out in the Conceptual Design, Detailed Design and Construction Drawings, and Issued-for-Construction Drawings in respect of such works which are approved by the City Engineer in accordance with this Agreement;
- (x) **“TI Works Letter of Credit”** has the meaning set out in Section 8.1(a);
- (y) **“Utilities”** has the meaning set out in Section 3.2(r)(i);
- (z) **“Utility Companies”** has the meaning set out in Section 3.2(q);
- (aa) **“Vancouver”** means, save only for its use in Section 1.1(d), the City of Vancouver as a geographical location;
- (bb) **“Warranty Period”** means the warranty period established pursuant to Section 7.1 [Warranty Period] of this Agreement;
- (cc) **“Warranty Period Letter of Credit”** has the meaning set out in Section 8.4 [Letter of Credit (Warranty Period)];
- (dd) **“WCB”** has the meaning set out in Section 3.2(i)(iii);
- (ee) **“Workers Compensation Act”** means the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, and all amendments thereto and re-enactments thereof; and
- (ff) **“Works Location Plan”** means a sketch plan which shows the “as-built” location of the TI Works in or on City road or lane.

1.2 Interpretation.

- (a) This Agreement and the Main Agreement (including Schedule F and Appendix F.2 thereto) is the entire Agreement between the City and the Nation concerning the subject matter hereof.

[NTD: Parties to determine whether bolded language below is appropriate in each TI Implementation Agreement, based on level of detail of drawings in respect of the TI Works at the time of signing. Where level of detail is preliminary in nature, the bolded language may be required; where level of detail is more advanced, bolded language may be deleted.]

- (b) **[Subject to paragraph (c) below,]** to the extent of any inconsistency between this Agreement and the Main Agreement (including Schedule F and Appendix F.2), this Agreement will govern.
- (c) **[Despite paragraph (b) above, to the extent of any inconsistency between this Agreement and Schedule F, Schedule F will continue to govern until such time as the City Engineer provides final written approval of the Detailed Design and Construction Drawings in accordance with Section 3.2(c).]**
- (d) Capitalized terms used but not defined herein will have the meanings given to them in the Main Agreement.

ARTICLE 2 TI WORKS

2.1 TI Works.

The Nation will:

- (a) prior to commencing [_____ **NTD: Parties to specify appropriate pre-condition**], obtain the City Engineer's approval of the Conceptual Design for the TI Works in accordance with Section 3.2 [Design/Construction Obligations];
- (b) prior to commencing construction (other than [_____ **NTD: Re-iterate appropriate pre-condition from 2.1(a)**]), installation or performance of the TI Works, obtain from the City Engineer a Design Acceptance Letter in respect of the TI Works in accordance with Section 3.2 [Design/Construction Obligations]; and
- (c) not permit any resident or business to commence occupation of Phase [___] unless and until the City Engineer has issued an Acceptance in respect of the TI Works pursuant to Article 5 [Acceptance of TI Works] and the Nation has paid the Degradation Fee, if applicable, to the City.

- 2.2 City May Complete TI Works on Default.** If the Nation fails to properly carry out any TI Works or any of them or any portion of them which are located on City Land (the “**Off-Reserve Works**”) in accordance with the Issued-for-Construction Drawings and the requirements for remediation of disturbance and minimization of adverse impact on the public as required under this Agreement or the Main Agreement, or fails to commence Off-Reserve Works or fails to complete Off-Reserve Works or any portion of them in accordance with the construction schedule accepted by the City Engineer pursuant to Section 3.2(i)(i)3.2(j), as determined at the sole discretion of the City Engineer, and the Nation fails to remedy such breach within the cure periods set out in Article 9 [Default] hereof, the City may and is hereby authorized to construct, install and complete or cause

the construction, installation and completion of such Off-Reserve Works for and on behalf of and at the sole cost and expense of the Nation, or if the Nation is otherwise in default under this Agreement the City may remedy the default as set out in Article 9 [Default], it being understood that the City is not obligated to commence or complete any such Off-Reserve Works, or any part thereof, on the Nation's behalf or to remedy any default. Notwithstanding any other provisions of this Agreement, should the City undertake the construction, installation or completion of any such Off-Reserve Works, or any part thereof pursuant to this Section 2.2, neither the City nor the Nation will be bound by any timing, scheduling, or deadline requirements contained in or established pursuant to this Agreement in respect of such Off-Reserve Works, and neither the City nor the Nation will be bound by any construction obligations under this Agreement in respect of such Off-Reserve Works. Rather, decisions regarding the scheduling and timing and standard of construction or installation of any such Off-Reserve Works undertaken by the City will be at the sole discretion of the City Engineer, whose decisions will be final and without appeal. For greater certainty, once the Nation has reimbursed the City for all costs incurred by the City in accordance with Section 9.1(f), the amount of the Letter of Credit delivered by the Nation to the City pursuant to Article 8 [Letter of Credit] may be reduced by the amount reimbursed to the City.

2.3 City Access Rights to Reserve. The Parties now agree that Article 5.0 [City Access Rights to Reserve] of the Main Agreement applies at all times during the term of this Agreement (including the Warranty Period and Extended Warranty Period) to the City's and City Personnel's access to the Reserve including to permit the City and City Personnel to enter on the Reserve with workers, vehicles, equipment, tools and materials for the purposes of:

- (a) inspecting any TI Works that are to be located on the Reserve (as opposed to the City Lands); and
- (b) carrying out any of the Nation's obligations in accordance with Section 2.2 [City May Complete TI Works on Default], in which case the provisions of Section 2.2 [City May Complete TI Works on Default], Section 7.3 [City May Repair] and Article 9 [Default] will apply.

2.4 Nation Access Rights to City Lands. The Parties now agree that Section 5.5 [Nation Access to City Property] of the Main Agreement applies at all times during the term of this Agreement (including the Warranty Period and Extended Warranty Period) to the access by the Nation and its delegates to City Lands.

ARTICLE 3 DESIGN AND CONSTRUCTION OBLIGATIONS

3.1 Design Acceptance Letter. Upon the Nation's compliance with and completion of the process outlined in Sections 3.2(b) and 3.2(c) below, the City Engineer will cause to be issued to the Nation a written approval letter ("**Design Acceptance Letter**") confirming the City's approval and acceptance of the Issued-for-Construction Drawings and other design documents and studies required under this Agreement which Design Acceptance Letter may, if considered necessary or appropriate by the City Engineer, contain conditions of the approval as well as requirements or information for implementation such as contact information for design changes or next steps for permits and traffic control. Any such conditions or requirements will constitute obligations of the Nation under this

Agreement. The City Engineer will make good faith efforts to issue the Design Acceptance Letter (or, at a minimum, provide comments on the submittals) within 90 days of receipt from the Nation of the Issued-for-Construction Drawings pursuant to Section 3.2(c).

3.2 Design/Construction Obligations. Without derogating from the obligations of the Nation under Article 2 [TI Works]:

- (a) the Nation will at all times be familiar with the City-Wide Standards, and the TI Works will, when constructed or installed, comply with the City-Wide Standards;
- (b) prior to construction, installation or performance of any portion of the TI Works, the Conceptual Design for the TI Works will be sealed by the Consultant and will be submitted to the City Engineer for approval. The Nation will make such changes and amendments to the Conceptual Design as are stated by the City Engineer to be necessary or desirable, and this process will continue until the City Engineer gives final written approval of such Conceptual Design;
- (c) following approval by the City Engineer of the Conceptual Design, the Nation will cause the Detailed Design and Construction Drawings to be prepared based strictly on the approved Conceptual Design and will submit the Detailed Design and Construction Drawings to the City Engineer for approval. The Nation will make such changes and amendments to the Detailed Design and Construction Drawings as are stated by the City Engineer to be necessary or desirable, and this process will continue until the City Engineer gives final written approval of such Detailed Design and Construction Drawings;
- (d) following approval by the City Engineer of the Detailed Design and Construction Drawings, the Nation will cause the Issued-for-Construction Drawings to be prepared based strictly on the approved Detailed Design and Construction Drawings and will submit the Issued-for-Construction Drawings to the City Engineer for approval. The Nation will make such changes and amendments to the Issued-for-Construction Drawings as are stated by the City Engineer to be necessary or desirable, and this process will continue until the City Engineer gives final written approval of such Issued-for-Construction Drawings by issuing the Design Acceptance Letter;
- (e) the Nation will not commence construction, installation or performance of the TI Works, or cause, suffer or permit any construction, installation or performance of the TI Works, or any part thereof, to commence, until the City Engineer has issued a Design Acceptance Letter, and the Nation acknowledges that the invitation of any bids or any contracting for the construction, installation or performance of the TI Works prior to the City Engineer issuing such Design Acceptance Letter will be at the Nation's sole risk;
- (f) the TI Works will be designed, constructed, installed and performed at the cost of the Nation and in strict accordance with the Issued-for-Construction Drawings and the Design Acceptance Letter;
- (g) if, at any time before the City issues a Design Acceptance Letter in respect of the TI Works, the Issued-for-Construction Drawings for such TI Works no longer meet the City-Wide Standards, the City Engineer may revise the said

Issued-for-Construction Drawings with any necessary updates and revisions required to meet the City-Wide Standards and will promptly deliver the revised Issued-for-Construction Drawings to the Nation;

- (h) the Nation will keep the City Engineer properly and adequately advised of the progress of construction, installation and performance of the TI Works, and periodically provide to the City Engineer, as the City Engineer may require, construction schedules and progress reports, and co-ordinate the construction, installation and performance of the TI Works with construction, installation or performance of any other works undertaken by the City on City Lands or by the Nation on the Reserve;
- (i) in connection with the TI Works, the Nation will:
 - (i) comply with all applicable federal, provincial and municipal laws, statutes, regulations, by-laws, orders and policies;
 - (ii) obtain all applicable government approvals and permits concerning the TI Works and the construction, installation and warranty work with respect thereto, including all approvals and permits normally required by the City Engineer for work done on streets in Vancouver (which includes the requirement for obtaining commercial general liability insurance and property insurance and providing the City with evidence of same and providing an appropriate confirmation of professional insurance);
 - (iii) be the “prime contractor” (as defined in the *Workers Compensation Act*) for the TI Works for Workers Compensation Board (“WCB”) purposes and will accept all responsibilities of the prime contractor as outlined in the City’s Multiple-Employer Workplace/Contractor Coordination Program (2003), *Workers Compensation Act* (Part 3) and WCB *Occupational Health & Safety Regulation* and the City may consider any violation of the above requirements by the Nation as prime contractor as a material breach of this Agreement; provided that the Nation may with the City’s approval cause the contractor engaged to construct the TI Works or any of them to enter into an Agreement with the City whereby such contractor agrees to be the prime contractor (provided that the Nation will not be relieved of its obligations under this Section 3.2(i)(iii)).
 - (iv) construct, install, or otherwise perform and, to the extent that the Nation is required to maintain the TI Works pursuant to this Agreement, maintain the TI Works in compliance with all applicable federal, provincial, municipal and other laws, by-laws, regulations and statutes;
 - (v) ensure that all required payments are made in respect of the TI Works and the construction, installation or performance thereof, including, without limitation, workers’ compensation assessments, employment insurance and federal and provincial taxes;
 - (vi) not release or permit to be released any contaminants onto any street or other City property and “contaminants” means any deleterious, dangerous, hazardous, corrosive or toxic substances, pollutants, goods or waste the

manufacture, storage, handling, treatment, generation, use, transport, release, disposal or discharge into the environment of which any environmental laws control, regulate, licence or prohibit or which are or may be deleterious, dangerous or hazardous to human, animal or plant health or life or the environment;

- (vii) clean up any contaminants which the Nation released or permitted to be released on any street or other City property contrary to Section 3.2(i)(vi) to the satisfaction of the City; and
- (viii) test, excavate, remove or remediate any contaminants encountered during the installation or upgrading of any subsurface TI Works or utilities servicing the Construction Area, or which may need to be excavated, removed or remediated for the protection and safety of workers who may access such works for the purposes of constructing, installing or otherwise performing the TI Works, whether such work is carried out by the Nation or the City, all to the satisfaction of the City Engineer;
- (j) the Nation will give the City Engineer not less than 15 days' written notice before commencing construction, installation or performance of any TI Works, which notice will be accompanied by a construction schedule and a traffic management plan both of which must be acceptable to the City Engineer. The Nation may from time to time deliver an amended construction schedule to the City Engineer which, if accepted by the City Engineer, will be the accepted construction schedule. The Nation agrees:
 - (i) if such TI Works are not constructed within the accepted construction schedule, the construction may be stopped or completed by the City at the cost of the Nation, at the discretion of the City Engineer; and
 - (ii) the Nation will call for inspections, after giving the City Engineer not less than ten days' written notice, at all important stages as determined by the City Engineer who will give notice of such important stages requiring inspection prior to commencement of initial construction and which important stages may be revised by the City Engineer from time to time during construction with notice to the Nation;
- (k) the Nation will ensure that any comments or directions regarding the TI Works, including requests for alterations, given or made by the City Engineer at any time prior to issuance of an Acceptance of the subject portion of the TI Works by the City Engineer pursuant to Article 5 [Acceptance of TI Works] will be promptly responded to and complied with;
- (l) during construction, installation or performance of the TI Works, the Nation will, except as otherwise provided in this Agreement, no later than 15 days following receipt of a written request from the City, deliver to the City Engineer true copies of all inspection and testing reports prepared in respect of the TI Works during the construction, installation or performance thereof and all such reports will have been accepted by the Consultant, provided however that the Nation will immediately notify the City Engineer of the results of any failed tests;

- (m) the Nation will make the TI Works available to the City and City Personnel at all times for inspection and testing and, promptly, on written request, the Nation will pay the City the costs of reasonable inspections and tests; such inspections and tests may be carried out at such times, and as frequently, as the City Engineer deems necessary;
- (n) the Nation will restore, to the satisfaction of the City Engineer, any and all City property that is damaged, destroyed or degraded by the construction or installation of the TI Works or the construction of the Development, to the extent such damage, destruction or degradation was not the result of any act or omission on the part of the City or any City Personnel;
- (o) notwithstanding anything to the contrary in this Agreement, the TI Works will be constructed in a good and workmanlike manner and to the approval and satisfaction of the City Engineer;
- (p) where the City Engineer considers relevant, the TI Works will be constructed, installed and otherwise performed so that they can and do connect, in a manner satisfactory to the City Engineer, with existing City services and facilities, and all connection costs will be the responsibility of the Nation;
- (q) the TI Works (save and except those utilities that are constructed and installed on behalf of telecommunications companies, cablevision companies, BC Hydro, Fortis BC, Translink, or any district heat or energy companies (collectively called the “**Utility Companies**”) will be and will remain the absolute property of the City but not until the City Engineer has issued an Acceptance for the TI Works pursuant to Article 5 [Acceptance of TI Works], and until issuance of such Acceptance, the TI Works will be and remain the absolute property of the Nation except to the extent otherwise expressly set out in Schedule F to the Main Agreement and the Detailed Design and Construction Drawings; and
- (r) the Nation agrees that it will, at all relevant design stages, and before seeking the City Engineer’s review and subsequent approval of the Issued-for-Construction Drawings for the TI Works:
 - (i) co-ordinate and submit to the City Engineer for approval the designs and specifications of the Utility Companies to ensure the designs and specifications meet City-Wide Standards and maximize the efficiency in overall design and location of those TI Works consisting of telephone and telecommunication systems and cable and electrical, gas, power utilities, roads and transit facilities (the “**Utilities**”) that are within the general field of Utilities of concern to the Utility Companies; and
 - (ii) obtain the written approvals (all of which written approvals will be provided to the City Engineer) from the Utility Companies in respect of those TI Works consisting of the Utilities that are within the general field of Utilities of concern to the Utility Companies, and the Nation further agrees, that in obtaining such approval from the Utility Companies, the Nation will supply to the Utility Companies all information required by them in connection with such approval, in a timely manner.

3.3 Design & Construction Responsibility. Notwithstanding that the City Engineer may have:

- (a) approved the Conceptual Design or Issued-for-Construction Drawings or issued a Design Acceptance Letter;
- (b) required the Nation to revise the Conceptual Design or Issued-for-Construction Drawings for the TI Works or any portions thereof;
- (c) approved, accepted or confirmed the satisfactory nature of the Issued-for-Construction Drawings concerning the TI Works; or
- (d) inspected the TI Works, or portions thereof or supervised aspects of construction of the TI Works,

all design responsibility, construction responsibility and supervisory responsibility will remain exclusively with the Nation and no such responsibility will rest with the City Engineer or other City Personnel, and neither the City nor any City Personnel will be liable to the Nation for the safety, adequacy or soundness of the TI Works by reason of any inspections made, changes required or approvals given in respect of the TI Works. Any approval given by and any inspection carried out by the City Engineer or other City Personnel pursuant to this Agreement or concerning the TI Works will be for the purposes only of ensuring compliance with this Agreement from the point of view of the City as contracting Party, and no inspection or approval given by the City Engineer or other City Personnel will relieve the Nation from its obligation to comply strictly with the terms of this Agreement nor will the giving of any approval or confirmation of satisfaction constitute a waiver or release by the City of any duty or liability owed to the City or any indemnity given by the Nation to the City or City Personnel.

ARTICLE 4 RECORD DRAWINGS AND CERTIFICATION OF INSPECTION

4.1 Record Drawings. Upon completion of the TI Works, and prior to the issuance of the Acceptance pursuant to Section 5.1 [Acceptance of TI Works], the Nation covenants and agrees that it will, at its own cost, provide the City Engineer with:

- (a) a report that describes the work that was completed and includes, without limitation:
 - (i) permit drawings;
 - (ii) field reports with photographs;
 - (iii) backfill information and testing reports; and
 - (iv) the record drawings for the TI Works, satisfactory to the City Engineer, prepared, signed and sealed by the Consultant;
- (b) four signed and sealed paper prints, one mylar print and one electronic copy of the record drawings for the TI Works signed and sealed by the Consultant;

- (c) the record information must reference at least two Integrated Survey Monuments and use the horizontal N.A.D. 83 (North American Datum 83) U.T.M. (Universal Transverse Mercator) CSRS (Canadian Spatial Reference System) co-ordinate system and the vertical GVRD Datum, to the satisfaction of the City Engineer;
- (d) a plan of survey prepared by a British Columbia Land Surveyor showing the final “as-built” locations of any of the TI Works, as required by and to the satisfaction of the City Engineer; and
- (e) such other evidence of satisfactory completion of the TI Works as the City Engineer may request.

4.2 Certification of Inspection. Upon completion of the TI Works (or portion thereof if permitted under Section 5.1(c)) as required by this Agreement and to the satisfaction of the City Engineer, and prior to issuance of the Acceptance of the TI Works by the City Engineer, the Nation will deliver to the City Engineer the Certificate.

ARTICLE 5 ACCEPTANCE OF TI WORKS

5.1 Acceptance of TI Works.

- (a) Following the delivery to the City Engineer of a Certificate, the City Engineer and the Consultant will inspect the TI Works or portion of the TI Works covered by such Certificate, and if during such inspection, a defect, deficiency or departure in respect of the Issued-for-Construction Drawings or the Design Acceptance Letter is observed which is not included in the list of Deficiencies attached to such Certificate, then the list of Deficiencies will be amended by the Consultant to the satisfaction of the City Engineer to include such defect or deficiency. Following such inspection and amendment (if any) to such Certificate and subject to Section 5.1(b), the City Engineer will issue an Acceptance with the conclusive list of Deficiencies attached and will accept the TI Works or portion of the TI Works covered by such Acceptance, as of the date set out in such Acceptance. The City Engineer will make good faith efforts to issue the Acceptance (or, at a minimum, provide a response with reasonable particulars as to what Deficiencies remain outstanding) within 90 days of receipt from the Nation of the Certificate pursuant to Section 4.2 [Certification of Inspection]. Thereafter, the Nation will work diligently to complete the correction of all Deficiencies by the dates set out in the Acceptance.
- (b) During the inspection referred to in Section 5.1(a) certain Deficiencies may be identified by the City Engineer to be of such significance that the City Engineer is not prepared to issue an Acceptance. In such event, the City Engineer may delay the issuance of the Acceptance of the TI Works or portion of the TI Works until such Deficiencies have been rectified or completed as confirmed by a subsequent inspection by the City Engineer, whereupon Acceptance will be issued if the applicable Deficiencies have been rectified or completed to the satisfaction of the City Engineer.
- (c) The City Engineer may, in their sole discretion, agree to issue an Acceptance for less than all of the TI Works and, in that event, the Nation will deliver a Certificate

to the City Engineer for such portion of the TI Works as is permitted by the City Engineer and the provisions of Section 5.1(a) and Section 5.1(b) will apply.

- (d) Without limiting the rights of the City Engineer in respect of approval of the TI Works, and notwithstanding that the whole of the TI Works may have been completed, the City Engineer may delay issuance of the Acceptance of the TI Works or portion of the TI Works until such time as all cash payments, the Warranty Period Letter of Credit (pursuant to Section 8.4 [Letter of Credit (Warranty Period)]), and all record drawings required to be delivered to the City pursuant to this Agreement have been delivered, all to the satisfaction of the City Engineer.

5.2 Works Location Plan. Upon issuance of all Acceptances covering the TI Works and correction of all Deficiencies, the Nation will submit a Works Location Plan to the City Engineer for approval, and the Nation will make such changes and amendments to such Works Location Plan as are stated by the City Engineer to be necessary or desirable, and this process will continue until the City Engineer gives final written approval to such Works Location Plan. The Works Location Plan will clearly delineate:

- (a) the Parties' respective obligations and ownership of those TI Works for which they have Long-Term Responsibility (as defined in Schedule F) to the Main Agreement; and
- (b) the parameters of any Nation Structure-Dependent Works (as defined in Schedule F).

Upon approval by the City Engineer of the Works Location Plan, the Nation will (with respect to any Nation Structure-Dependent Works located on the City Lands) execute and deliver all such amendments and documentation as is required and contemplated by Section F.10(e) and (f) of Schedule F, if applicable.

ARTICLE 6

OBLIGATION TO COMPLETE TI WORKS AND ENSURE NO ADVERSE IMPACT

6.1 Obligation to Complete and No Adverse Impact. The Nation covenants and agrees with the City that notwithstanding that the Nation may be otherwise entitled:

- (a) the Nation will not permit any resident or business to occupy or use the Phase Which Triggers Start of Work unless and until the TI Works for such Phase have received Acceptance;
- (b) the Nation will not commence construction of the Phase Which Triggers Start of Work unless it is in substantial compliance with this Agreement so as to ensure that the TI Works are completed in the manner contemplated by this Agreement;
- (c) the City will not be under any obligation to issue any street use permit or similar licence to facilitate the TI Works on City Lands, until:
 - (i) the City Engineer has:
 - (A) approved the Conceptual Design for the TI Works pursuant to Section 3.2(b); and

- (B) approved the Issued-for-Construction Drawings for the TI Works by issuance of a Design Acceptance Letter pursuant to Section 3.2(c);
- (ii) the Nation has delivered to the City the Letter of Credit or Letters of Credit required pursuant to Section 8.1 [General Obligation to Deliver Letters of Credit]; and
- (iii) the Nation has obtained all necessary approvals, licenses and permits for the TI Works from all authorities having jurisdiction.

6.2 If Permit Issued Inadvertently. The Nation covenants and agrees that any permit issued by the City inadvertently or otherwise prior to the Nation complying with Sections 6.1 [Obligation to Complete and No Adverse Impact] and 8.1 [General Obligation to Deliver Letters of Credit] will be withdrawn upon notification thereof by the City, and further agrees that if the Nation commences construction of the Development in material contravention of this Agreement, the City may pursue all remedies, including, without limitation, injunctive relief.

ARTICLE 7 WARRANTIES

- 7.1 Warranty Period.** The Nation covenants that the TI Works will be of good workmanship and free of defects and deficiencies, including defects and deficiencies arising from or related to the construction or installation and materials used, and suitable for the purposes to which they are put for a period of two years following the date of the applicable Acceptance issued by the City Engineer pursuant to Article 5 [Acceptance of TI Works].
- 7.2 Nation's Obligations During Warranty Period.** The Nation, at its cost, during the Warranty Period or the Extended Warranty Period, as applicable, will keep and maintain the TI Works which will include the replacement of any dead or diseased City Landscaping, in a condition of good repair and free of defects and deficiencies to the satisfaction of the City Engineer and, on notice from the City Engineer, the Nation will expeditiously repair, replace or otherwise make good all defects and deficiencies in the TI Works.
- 7.3 City May Repair.** The Nation covenants and agrees that if the Nation fails to carry out repairs or otherwise make good any defects or deficiencies in the TI Works as required pursuant to this Article 7 or fails to remedy all defects and deficiencies within the period of time set out in Section 9.1 [Notice on Default], the City, at the Nation's expense, may effect such repair and make good such defects and deficiencies, but the City will have no obligation to effect such repair or to make good defects or deficiencies.
- 7.4 Extended Warranty Period.** If any portion of the TI Works requires repair or replacement pursuant to this Article 7 during the respective Warranty Period to the extent that the City Engineer determines, in their sole opinion, that such repair or replacement is major or significant, the City Engineer may, by written notice to the Nation, cause the Warranty Period for that portion of the TI Works so repaired or replaced to be extended, together with all consequential obligations of the Nation under this Agreement, by a period of two years from the date of completion of such repair or replacement (the "**Extended Warranty Period**").

ARTICLE 8 LETTER OF CREDIT

8.1 General Obligation to Deliver Letters of Credit.

Subject to Section 8.2 [Timing of Delivery], as security for the initial obligations of the Nation contained in this Agreement in respect of the TI Works, the Nation will:

- (a) deliver or cause to be delivered to the City, by the times set out in Section 8.2 [Timing of Delivery], a Letter of Credit or Letters of Credit (the “**TI Works Letter of Credit**”) in amounts equal to the Estimated Amount, plus an additional amount to cover the City’s normal overhead charges which additional amount will not exceed 20% of the Estimated Amount. The obligations of the Nation under Article 3 [Design and Construction Obligations] will not be lessened or reduced by reason of any Estimated Nation Costs determined by the City Engineer in accordance with this Agreement and Schedule F and at all times the Nation will be responsible for all costs of the obligations contained in this Agreement; and
- (b) ensure that the City is, at all times after delivery of the TI Works Letter of Credit and until commencement of the Warranty Period, in possession of Letters of Credit satisfactory to the City Engineer and the Director of Legal Services and in amounts no less than that required by the City Engineer from time to time to complete the TI Works.

8.2 Timing of Delivery.

- (a) The Nation will deliver to the City the TI Works Letter of Credit required pursuant to Section 8.1 [General Obligation to Deliver Letters of Credit] concurrently with the execution of this Agreement.
- (b) The Nation will not take any action, directly or indirectly, to compel the issuance of an Acceptance or street use permit or other approval, certificate or permit required to be issued by the City under this Agreement, and the City will be under no obligation to issue any such approvals, certificates or permits, unless and until the TI Works Letter of Credit has been delivered to the City in accordance with this Article 8. The Nation does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses which may derive from the withholding of any permit or other approval under this Article 8.

8.3 Changes to Amount of Estimated Amount and Letters of Credit. The Nation acknowledges and agrees that the amount of any Letter of Credit delivered by the Nation pursuant to this Agreement may, at the City Engineer’s discretion, be increased or decreased, from time to time, as a result of any revision in the Estimated Amount or, in the City Engineer’s discretion, the remaining portion of the TI Works determined by the City Engineer. The City Engineer, in their sole discretion, may allow reductions in the amount of the Letters of Credit referenced in this Article 8 up to a maximum reduction, in each case, of 90% of the amount of such Letter of Credit, as significant stages or portions of the TI Works are completed.

8.4 Letter of Credit (Warranty Period). Prior to the issuance of an Acceptance pursuant to Section 5.1 [Acceptance of TI Works], the Nation will deliver or cause to be delivered to

the City a Letter of Credit, as security for the Nation's respective Warranty Period financial obligations, in an amount equal to 10% of the amount of the original TI Works Letter of Credit first delivered pursuant to this Article 8, or of the amount of any replacement TI Works Letter of Credit as delivered where the City Engineer subsequently increases the amount of the original TI Works Letter of Credit pursuant to Section 8.3 [Changes to Amount of Estimated Amount and Letters of Credit] (the "**Warranty Period Letter of Credit**"). Upon delivery by the Nation of the Warranty Period Letter of Credit, provided the Nation is not in any material default under this Agreement which is continuing, the Nation will be entitled to the return of the TI Works Letter of Credit. Each Warranty Period Letter of Credit will be issued for a term expiring not sooner than 30 days after the day on which the related Warranty Period expires.

8.5 Letter of Credit (Extended Warranty Period). If any portion of the TI Works requires repair or replacement pursuant to Article 7 [Warranties] during the Warranty Period such that the Warranty Period for that portion of the TI Works is extended for the Extended Warranty Period pursuant to Section 7.4 [Extended Warranty Period], the Nation will, before being entitled to the return of the Warranty Period Letter of Credit, deliver or cause to be delivered to the City a Letter of Credit (the "**Extended Warranty Period Letter of Credit**") in an amount equal to the amount the City Engineer estimates is necessary to complete such repair or replacement pursuant to Section 7.4 [Extended Warranty Period]. Each Extended Warranty Period Letter of Credit will be issued for a term expiring not sooner than 30 days after the day on which the related Extended Warranty Period expires.

8.6 Calling Upon Letters of Credit. The City may cash or draw down upon, as necessary in the circumstances, any Letter of Credit held by the City in any of the following events:

- (a) if, at any time until it is returnable to the Nation under this Agreement, the balance of the term remaining of any Letter of Credit held by the City is less than 30 days and the Nation has not made arrangements satisfactory to the City for the delivery of a replacement or extension of such Letter of Credit;
- (b) if the Nation makes a general assignment for the benefit of creditors, or if the Nation institutes proceedings to have itself adjudicated as bankrupt or insolvent, including, without limitation, any application or order under the *Companies' Creditors Arrangement Act* (Canada) (or any legislation in *pari materia* therewith) or, if the Nation becomes the subject of bankruptcy or insolvency proceedings, or if a judgment, decree or order be entered by a court of competent jurisdiction judging the Nation bankrupt or insolvent, or if the Nation or its Councillors pass any resolution authorizing the dissolution or winding up of the Nation, or if a receiver, interim receiver, manager, receiver-manager, trustee or liquidator of all or any part of the Nation's property is appointed or applied for by the Nation or by one or more of the Nation's creditors; or
- (c) if, at any time the Nation breaches any provision of this Agreement or defaults in carrying out any of its obligations under the terms of this Agreement to an extent the City Engineer considers material, and the Nation fails to rectify such default in accordance with the terms set out in this Agreement; or
- (d) the City has pursuant to Section 2.2 [City May Complete TI Works on Default], undertaken in whole or in part, any part of the Off-Reserve Works.

8.7 Application of Funds.

- (a) If the City cashes or draws down upon any Letter of Credit pursuant to Section 8.6 [Calling Upon Letters of Credit], then:
 - (i) in respect of Sections 8.6(a) and 8.6(b), the City may; and
 - (ii) in respect of Section 8.6(c) and 8.6(d), the City will,
 apply the proceeds so far as possible:
 - (iii) first, toward completion of the TI Works or satisfaction of obligations of the Nation during any Warranty Period or Extended Warranty Period, as applicable; and
 - (iv) second, if there remains an unused balance of proceeds, toward completion of any other obligations of the Nation to the City pursuant to this Agreement in respect of which the Nation is in default, as determined by the City Engineer in their sole discretion.
- (b) The City will carry out any of the TI Works described in Sections 8.7(a)(iii) and 8.7(a)(iv), including construction of such TI Works, at such times and to such standards as the City Engineer, in their sole discretion, deems appropriate and the provisions of Article 2 [TI Works] will govern. If the proceeds from any Letter of Credit are not sufficient to pay all costs and expenses, plus the City's normal overhead charges, which will not exceed 20% of such costs and expenses, incurred by the City in completing the applicable TI Works, or any portion thereof, or in carrying out any Warranty Period or Extended Warranty Period, as applicable, obligations of the Nation, the Nation forthwith will pay to the City the difference upon receipt from the City of invoices for the same.

8.8 Return of Letters of Credit. After the:

- (a) issuance of an Acceptance for the TI Works in accordance with Section 5.1 [Acceptance of TI Works]; or
- (b) expiry of the Warranty Period; or
- (c) expiry of the Extended Warranty Period, if applicable,

the City will, in each such case, within a reasonable period of time following receipt of a written request of the Nation to do so, (i) return to the Nation any Letter of Credit then held by the City in respect thereof, or (ii) if the City cashes or draws down upon any Letter of Credit, return to the issuing bank, any funds not required for application in accordance with Section 8.7 [Application of Funds]. Notwithstanding the foregoing, if an Acceptance was issued with a list of Deficiencies attached pursuant to Section 5.1(a), the City will not return to the Nation the TI Works Letter of Credit held by the City for the applicable TI Works but rather will permit a reduction in the amount of the TI Works Letter of Credit to the amount equal to the Deficiency Amount plus an additional amount to cover the City's normal overhead charges which additional amount will not exceed 20% of the Deficiency Amount, all to the satisfaction of the City Engineer provided however that no Letter of

Credit will be reduced to less than 10% of the original value of such Letter of Credit. Upon completion of all the Deficiencies, the Nation may request the return of, and the City will return, the TI Works Letter of Credit pursuant to this Section 8.8.

ARTICLE 9 DEFAULT

9.1 Notice on Default.

- (a) Notwithstanding anything to the contrary contained in this Agreement, in the event that the City Engineer is of the opinion that the Nation is at any time in default of any of its obligations under this Agreement, the City Engineer will deliver written notice of such default to the Nation (save in respect of emergencies occasioned by such default, in which case the City Engineer is not obligated to deliver notice), which notice will specify the default and include reference to the relevant section of this Agreement.
- (b) From the date of delivery of the notice described in Section 9.1(a), the Nation will have 14 days in which either:
 - (i) to remedy the default, to the satisfaction of the City Engineer, or to commence remedying the default and diligently and continuously proceed to completion with remedying the default, to the satisfaction of the City Engineer; or
 - (ii) to pay to the City an amount, in cash, equal to the Remedy Amount, plus an additional amount to cover the City's normal overhead charges which additional amount will not exceed 20% of Remedy Amount,

and the City acknowledges that when the Nation has remedied a default pursuant to Section 9.1(b)(i), or has paid the Remedy Amount pursuant to Section 9.1(b)(ii), the Nation will be deemed to have rectified the specified default.

- (c) If the cash payment of the Remedy Amount is made, the City will apply the same to remedy the specified default as authorized by Section 2.2 [City May Complete TI Works on Default]. Any balance not required by the City to remedy the default will be returned to the Nation or, if the cash payment is insufficient to cover the costs incurred by the City in remedying the default, the Nation will pay the additional amount required to the City forthwith upon receipt of a written request for payment.
- (d) If the Nation neither remedies the default pursuant to Section 9.1(b)(i) nor makes the cash payment of the Remedy Amount, then the City may remedy the default at the sole cost and expense of the Nation upon giving the Nation not less than 14 days' notice of its intention to remedy the default and if the Nation commences remedying the default within the said 14 day period, the City will withdraw its notice and will not proceed to remedy such default.
- (e) In the event of an emergency or apprehended emergency occasioned by any default of the Nation under this Agreement (as determined by the City Engineer)

the City may remedy the default and will notify the Nation as soon as reasonably possible of the occurrence of such emergency.

- (f) If the City remedies a default of the Nation pursuant to Section 9.1(d) or Section 9.1(e) then the City may, by written request, require payment from the Nation of all costs incurred by the City in remedying the default, which costs will include all interest and other amounts paid by the City in obtaining the funds necessary to remedy the default, and the City's normal overhead charges, not to exceed 20% of such costs. The Nation will reimburse the City within 30 days (or such other period as the City Engineer may stipulate) of receiving written request from the City for payment of all costs incurred by the City in remedying the default.

9.2 Interest on Default. Whenever any amounts of money owing under this Agreement by the Nation to the City are not paid within 30 days following delivery by the City to the Nation of a written request for payment, such amounts will be considered to be in arrears and will bear interest at the rate of 3% above the Prime Rate per annum, calculated monthly not in advance, from the date due until paid.

ARTICLE 10 RELEASE AND INDEMNITY

10.1 Release. The Nation hereby agrees that it will not make any claims against the City or City Personnel and hereby releases and discharges the City and City Personnel from and against all Losses which may, at any time, arise or accrue to the Nation or the Nation's Personnel in connection with this Agreement including:

- (a) by reason of the City or City Personnel:
 - (i) reviewing, accepting or approving the materials and methods for construction of the TI Works;
 - (ii) inspecting, constructing, installing or performing the TI Works or any part thereof;
 - (iii) withholding any Permit pursuant to this Agreement;
 - (iv) performing any work in accordance with the terms of this Agreement (including construction, installation or performance of the TI Works) or requiring the Nation to perform any work pursuant to this Agreement; or
 - (v) accessing the Reserve in accordance with, and for the purposes set out in, this Agreement; or
- (b) that arise out of, or would not have been incurred but for:
 - (i) this Agreement;
 - (ii) the construction and installation (including any defective materials or faulty workmanship) of the TI Works; or

- (iii) any Warranty Period or Extended Warranty Period obligations of the Nation as contained in this Agreement including any failure to perform the same,

whether or not such Losses are the result of, or relate in any way to any negligent acts or omissions on the part of the City or the City Personnel, except to the extent any such Losses are the result of any gross negligence or wrongful intentional acts on the part of the City or City Personnel;

10.2 Indemnity. Subject to Section 10.5 [Conduct of Proceedings], the Nation hereby covenants and agrees with the City to indemnify and save harmless and reimburse the City and City Personnel from and against all Losses which may arise or accrue to the City or City Personnel or any person, firm or corporation against the City or City Personnel or which the City or City Personnel may pay, incur, sustain or be put to by reason of or which would not or could not have been sustained “but for” any of the following:

- (a) the City or City Personnel:
 - (i) reviewing, accepting or approving the materials and methods for construction of the TI Works;
 - (ii) inspecting, constructing, installing or performing the TI Works or any part thereof;
 - (iii) withholding any Permit pursuant to this Agreement;
 - (iv) performing any work in accordance with the terms of this Agreement (including construction, installation or performance of the TI Works) or requiring the Nation to perform any work pursuant to this Agreement; or
 - (v) exercising any of its rights under any right of way granted to the City pursuant to this Agreement;
- (b) this Agreement;
- (c) the construction and installation (including any defective materials or faulty workmanship) of the TI Works;
- (d) any Warranty Period or Extended Warranty Period obligations of the Nation as contained in this Agreement including any failure to perform the same;
- (e) any negligent act or omission or willful misconduct of the Nation or anyone for whom the Nation is responsible at law in connection with the exercise of the obligations or responsibilities of the Nation under this Agreement; or
- (f) any default in the due observance and performance of the obligations or responsibilities of the Nation under this Agreement,

whether or not such Losses are the result of, or relate in any way to any negligent acts or omissions on the part of the City or the City Personnel, except to the extent any such Losses are the result of any gross negligence or wrongful intentional acts on the part of the City or City Personnel.

10.3 Nature of Indemnity. The indemnities set out in Section 10.2 [Indemnity] will be personal covenants of the Nation and such indemnities will survive the expiration or earlier termination of this Agreement.

10.4 Indemnity During Warranty Period and Extended Warranty Period. The Nation and the City acknowledge and agree that the indemnity set out in Section 10.2 [Indemnity] will:

- (a) apply and continue in full force and effect in respect of the TI Works from the date of this Agreement notwithstanding:
 - (i) completion of the TI Works;
 - (ii) issuance of any Acceptance in accordance with Section 5.1 [Acceptance of TI Works]; or
 - (iii) termination of this Agreement,
 until the expiry of the Warranty Period or the Extended Warranty Period, as applicable; and
- (b) be deemed to be terminated as to any claim or cause of action arising subsequent to the expiry of the Warranty Period or the Extended Warranty Period, as applicable,

provided however that the indemnity contained in Section 10.2 [Indemnity] will remain in full force and effect in respect of any claim or cause of action arising prior to the expiry of the Warranty Period or the Extended Warranty Period, as applicable, whether or not any person, including the claimant or plaintiff, had knowledge of the claim or cause of action and regardless of when the claim or cause of action is brought.

10.5 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Nation to indemnify the City or City Personnel, then the City will give notice of such claim to the Nation and, subject to Section 10.4(b), the Nation will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 10.5(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 10.5(a) in the following circumstances:
 - (i) where the City Manager determines that the proper administration of the municipal government requires that decisions in respect of the claim be made by the City;
 - (ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or
 - (iii) where, in the opinion of the City Manager, the claim is of a nature where decisions in respect of settling or defending it would create a precedent in respect of other existing or potential claims affecting or involving the City,

provided however that if the City wishes to settle any claim, the City will not do so without the prior consent of the Nation, which consent will not be unreasonably withheld. In conducting any defence or making any settlement, the City will act in a manner reasonably consistent with the manner in which the City would act in connection with the defence or settlement of claims, suits, demands, actions or proceedings which would not be indemnified against under the provisions of this Agreement; and

- (c) Regardless of whether the claim is being defended under Section 10.5(a) or Section 10.5(b), the Party having conduct of the proceedings will, upon written request of the other Party, provide to the other Party all information in its possession relating to the proceedings which may be properly disclosed at law. If the Party not having conduct of the proceedings so requests in writing in a timely fashion, the Party having conduct of the proceedings will join the other Party as a third party to the proceedings.

10.6 Survival of Release and Indemnities.

- (a) The Nation's obligation to release, indemnify and save harmless the City and City Personnel pursuant to this Agreement will continue to apply even if the Nation's obligations are undertaken by the City pursuant to the terms of this Agreement or otherwise.
- (b) The release and indemnities in this Article 10 will remain effective, and survive any modification of, or partial release or release of the covenants created by this Agreement, and any termination of this Agreement, whether by fulfilment of the covenants contained in this Agreement or otherwise, subject to the provisions of Section 10.4 [Indemnity During Warranty Period and Extended Warranty Period].

ARTICLE 11 INSURANCE

11.1 Insurance. The Nation, at its cost, will ensure that the following insurance coverages are placed with a company licensed to do business in Canada and in a form acceptable to the City. In the case of the insurance required in Section 11.1(e), the Nation will ensure that the Consultant and all other professionals involved in the performance of the professional services provided in connection with the TI Works maintain such coverage and, in the case of the insurance required in Section 11.1(f), the Nation will carry or ensure that its contractor carry such coverage. The insurance shall not be cancelled or endorsed to reduce the coverage limit without thirty (30) days' notice in writing to the City. Should the policy be endorsed to restrict coverage midterm, notice of such restriction will be provided in writing to the City no later than the effective date of such change. Each policy will contain a waiver in favour of the City of any breach or violation of any warranties, representations, declarations or conditions contained in such policies:

- (a) wrap up liability insurance issued in the joint names of the Nation and the City and protecting all other participants, including subcontractors and their respective agents and employees, in all activities pertaining to the TI Works, with limits of not less than \$10,000,000 on an occurrence basis for bodily injury, death and property damage losses including loss of use thereof. This insurance will be maintained continuously throughout the entire term of the project until the City has accepted

the TI Works pursuant to Article 5 [Acceptance of TI Works], and thereafter, in the case of completed operations coverage, for a further period of not less than two years and will contain the following extensions of coverage:

- (i) broad form property damage and completed operations;
- (ii) personal injury;
- (iii) blanket contractual liability;
- (iv) cross liability and severability of interest clause;
- (v) contingent employer's liability;
- (vi) non-owned auto liability;

and where such further risk exists, the following extensions of coverage will be included:

- (vii) shoring, blasting, excavating, underpinning, demolition, removal, pile driving and grading, as applicable;
 - (viii) hoist liability; and
 - (ix) operation of attached machinery;
- (b) automobile liability insurance on all licensed vehicles used directly or indirectly in the construction of the TI Works, and the performance of all work associated therewith, protecting against damages arising from bodily injury (including death) and from claims for property damage arising from the operations of contractor(s) and subcontractor(s) and their servants, agents or employees. This insurance will be for a minimum amount of \$5,000,000, inclusive, per accident;
 - (c) contractor's equipment insurance covering all equipment owned or rented by the Nation and its contractor(s), subcontractor(s) and their respective servants, agents or employees against all risks of loss or damage with coverage sufficient to allow for immediate replacement, and will contain a waiver of subrogation against the City;
 - (d) all-risks course of construction insurance, including the perils of flood and earthquake, covering the TI Works and all property of every description to be used in the construction or installation of the TI Works. This insurance will be primary, include the City as named insured, and contain a waiver of subrogation against the City;
 - (e) a professional (errors and omissions) liability insurance policy with limits of not less than \$5,000,000 per occurrence with an aggregate of not less than \$5,000,000 and a deductible of not more than \$50,000 protecting against all claims for loss or damage arising out of any wrongful act or error or omission of the Consultant in the performance of the professional services provided in connection with the TI Works;

- (f) environmental impairment (pollution) liability insurance or contractor's pollution liability insurance if the City Lands are contaminated and the TI Works involve excavation activities and removal of contaminated soils; and
- (g) hull and machinery and protection and indemnity insurance if the TI Works involves the use of vessels, barges, dredging or other foreshore activities.

11.2 General Insurance Requirements. Prior to commencement of construction of the TI Works, the Nation will lodge or arrange for the lodging with the City Engineer evidence of the insurance coverage required in Section 11.1 [Insurance]. The Nation will forward similar evidence of renewals, extensions or replacement of any such insurance to the City Engineer. Receipt by the City of certificates of insurance or copies of insurance policies will in no way constitute confirmation by the City that the insurance complies with the terms of this Agreement. Responsibility for ensuring that the insurance coverages required by this Article 11 are in place rests solely with the Nation. If the Nation fails to perform its obligations pursuant to this Article 11, the City may effect such insurance on behalf of the Nation and all the City's costs in so doing will be paid by the Nation forthwith upon written request from the City therefor. The Nation expressly agrees to indemnify and save harmless the City or City Personnel from and against any claim, cost or expense incurred by the City or City Personnel if the Nation fails to obtain or maintain the required insurance coverages or does not comply with any of the other requirements of this Article 11.

11.3 Indemnities Independent. The Nation agrees with the City that the covenant to insure contained in this Article 11 does not fulfill the obligations of the Nation under the indemnities contained in Article 10 [Release and Indemnity], the provisions of which are separate and independent from the Nation's covenant to insure.

ARTICLE 12 EXERCISE OF AUTHORITY

12.1 City Engineer. A power or discretion exercisable hereunder by the City Engineer may be exercised by their designate or by the City's Deputy City Engineer or their designate. Any obligation hereunder of the City Engineer will be deemed to be an obligation of the City.

ARTICLE 13 NOTICES

13.1 Notices. Any notice, approval or request required or permitted to be given under this Agreement will be in writing and may be given in the manner provided in Section 19.3 [Notices] of the Main Agreement.

ARTICLE 14 MISCELLANEOUS

14.1 Agreement for Benefit of City. The Nation and the City hereby acknowledge, agree and declare that this Agreement is entered into for the sole purpose of benefiting the City and, in particular, acknowledge, agree and declare that this Agreement is not designed to protect or promote the interests of the Nation or any mortgagee of the Nation, or future occupier of the Reserve or City Lands and any improvements thereon, or any other person or corporation whatsoever.

- 14.2 Amendments.** Any amendment to this Agreement will have no force or effect unless in writing and the City and the Nation have signed the amendments.
- 14.3 Assignment by City.** The City, upon prior written notice to the Nation, may assign all or any part of this Agreement to any governmental agency or to any corporation or entity charged with the responsibility for providing such public facilities and services as are contemplated by this Agreement; and the City may designate licensees and permittees for any and all purposes of this Agreement.
- 14.4 City Court Costs.** In an action to enforce this Agreement in respect of which the Court determines that the position of the City will prevail, the City will be entitled to court costs on a solicitor-client basis.
- 14.5 City's Other Rights Unaffected.** Nothing contained or implied herein will derogate from the obligations of the Nation under any other Agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the Vancouver Charter, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the City Lands as if this Agreement had not been executed and delivered by the Nation and the City.
- 14.6 Damages Insufficient.** The Nation acknowledges that damages may be an inadequate remedy for the City for any breach by the Nation of its obligations under this Agreement and the Nation agrees that the City is entitled to seek and obtain an order for specific performance, injunctive relief (whether prohibitory, mandatory or otherwise) or other equitable relief in connection with any default by the Nation under this Agreement.
- 14.7 Entire Agreement.** This Agreement and the Main Agreement (including Schedule F and Appendix F.2 thereto) is the entire agreement between the City and the Nation concerning the subject matter hereof.
- 14.8 Enurement.** This Agreement will enure to the benefit of and will be binding upon the Parties hereto and their respective successors, administrators and permitted assigns.
- 14.9 Force Majeure.** If an Event of *Force Majeure* occurs or is likely to occur, the Nation will promptly notify the City of the particulars of the relevant event or circumstance and, if reasonably possible, supply supporting evidence. The Nation will use commercially reasonable efforts to remove, curtail or contain the cause of the delay, interruption or failure (provided that the terms of settlement of any labour disturbance, dispute, strike or lockout will be wholly in the discretion of the Nation) and to resume, with the least possible delay, its compliance with duties, covenants and obligations under this Agreement. Neither the City nor the Nation will be liable to the other for any delay, interruption or failure in the performance of its duties, covenants, or obligations under this Agreement if caused by an Event of *Force Majeure*, and the date limited for the performance of such duties, covenants or obligations under this Agreement will be postponed for a period equal to the delay occasioned by such an Event of *Force Majeure*.
- 14.10 Further Assurances.** The Parties to this Agreement will do such things and execute such documents and in such form as may reasonably be necessary in order to perfect the intention of this Agreement.

14.11 Joint and Several. Any covenants, agreements, conditions, or promises made by two or more persons shall be construed as joint as well as several, including any payments or compensation to be paid pursuant to this Agreement.

14.12 No Assignment. The Nation shall not assign this Agreement or any of its rights or obligations hereunder except in strict accordance with this Agreement.

14.13 Right to Delegate.

- (a) Subject always to Section 14.13(b) below, the Nation will have the right to delegate to any number of Persons any or all of its rights and obligations under this Agreement and, if the Nation gives written notice of any such delegation to the City and updates the Municipal Services Coordination Guide accordingly, the City will be entitled to deal with the respective Person for the respective delegated purposes under this Agreement as if such Person were an agent of the Nation until such time as the Nation delivers written notice to the City that the Nation has revoked such delegation. The Nation will have the right to delegate any or all of its rights and obligations under this Agreement to another Person at any time after it has revoked the appointment of the previous delegate.
- (b) Despite Section 14.13(a), in no event will any delegations or re-delegations pursuant to Section 14.13(a) operate as an assignment of this Agreement or release of the Nation from any of its legal obligations under this Agreement to the City.

14.14 No Waiver. No consent or waiver, expressed or implied, by the City of any default by the Nation in observing or performing its obligations under this Agreement will be effective unless given in writing, or be deemed or construed to be a consent or waiver of any other default. The Nation acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. Failure on the part of the City to complain of any act or failure to act by the Nation or to declare the Nation in default, irrespective of how long such failure continues, will not constitute a waiver by the City of its rights under this Agreement or at law or in equity. No waiver by the City of any breach of this Agreement operates as a waiver of any other breach of this Agreement.

14.15 Nation's Costs. Unless otherwise provided in this Agreement, the Main Agreement or any other written agreement between the Nation and the City, the Nation will be responsible for all costs and expenses incurred to comply with its obligations under this Agreement.

14.16 Nation's Duties as Occupier. Nothing in this Agreement will abrogate or limit the Nation's duties and liability as occupier of the City Lands.

14.17 Nation's Representations and Warranties. The Nation represents and warrants to the City that:

- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement;

- (b) this Agreement has been duly executed and delivered by the Nation and, assuming due execution and delivery of this Agreement by the City, this Agreement is fully and completely binding upon the Nation in accordance with its terms; and
- (c) the foregoing representations and warranties will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Nation with regard to any matter whatsoever.

14.18 Remedies Cumulative. The remedies provided for in this Agreement will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City in this Agreement will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity. No reference to nor exercise of any specific right or remedy under this Agreement or at law or in equity by the City will prejudice, limit or preclude the City from exercising any other such right or remedy. No such right or remedy will be exclusive or dependent upon any other such right or remedy, but the City may, from time to time, exercise any one or more of such rights or remedies independently, successively, or in combination.

14.19 Severability. If a court of competent jurisdiction finds that any provision contained in this Agreement is invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other provisions of this Agreement which will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein and such other provisions will be binding and enforceable to the fullest extent permitted at law or in equity.

14.20 Time of Essence. Time will be of the essence of this Agreement. If either Party expressly or impliedly waives this requirement, that Party may reinstate it by delivering notice to the other Party.

14.21 Waiver of Requirements. The Nation acknowledges that the City Engineer may, in their sole and absolute discretion, waive the application, in whole or in part, of any provision of this Agreement in accordance with this Section 14.21. Unless otherwise specified, the waiver will only operate to waive the application of the provision in question in the specific circumstances in which the waiver was provided and will not operate to waive the application of such provision generally. Waiver of the application of any provision of this Agreement will only be effective if it is in writing and signed by or on behalf of the City Engineer. The City Engineer may require the Nation to agree to alternate arrangements as a condition of waiving the application of any provision of this Agreement.

14.22 Electronic Execution. Execution and delivery of an executed signature page to this Agreement by either Party by electronic means (including with an electronic signature) shall be as effective as delivery of a manually executed copy of this Agreement by such Party. Pursuant to the *Electronic Transactions Act* (BC), delivery of an email by one Party to the other stating their intent to be legally bound by this Agreement will also be as effective as signing and transmitting an executed signature page.

[Signature page follows]

TO CONFIRM THEIR INTENT TO BE LEGALLY BOUND BY THIS AGREEMENT, the Parties have executed and delivered this Agreement to each other as of the Effective Date and in accordance with Section 14.22 [Electronic Execution] above as indicated by their authorized signatory's signature below.

CITY OF VANCOUVER

By: _____
Name: Paul Mochrie, City Manager

By: _____
Name: Frances J. Connell, QC, City
Solicitor

SQUAMISH NATION

By: _____
Name:

By: _____
Name:

APPENDIX A

PRELIMINARY FUNCTIONAL DESCRIPTION OF PHASE 1 TI WORKS

[NOTE: If possible, include detailed delineation of Nation Structure-Dependent Works, Long-Term Responsibility, and anticipated Works Location Plans. Otherwise, populate Table below in similar manner to Phase 1 TI Implementation Agreement]

Type	TI Works	Description Functional Objective of the Triggered Infrastructure and Current Understanding of What Type of Design

APPENDIX B

PRELIMINARY DRAWING OF PHASE 1 TI WORKS

[NTD: Attach most current preliminary drawings here]

APPENDIX F.4 - Transit Hub Figures

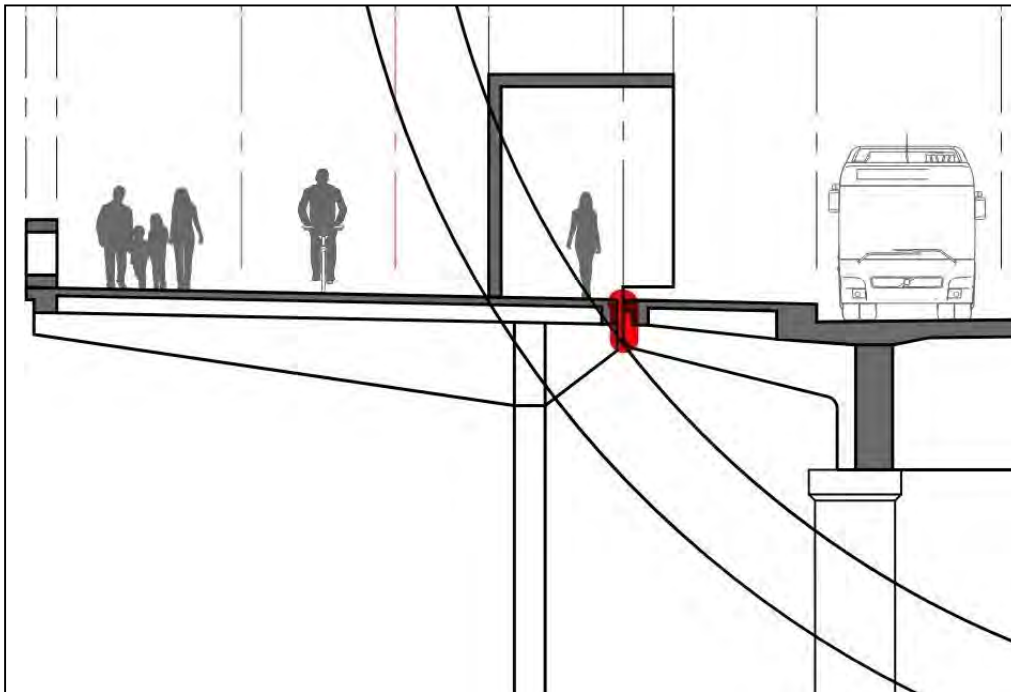


Figure 1 – Bridge Widening: Vertical Deck Interface Surface shown in Red

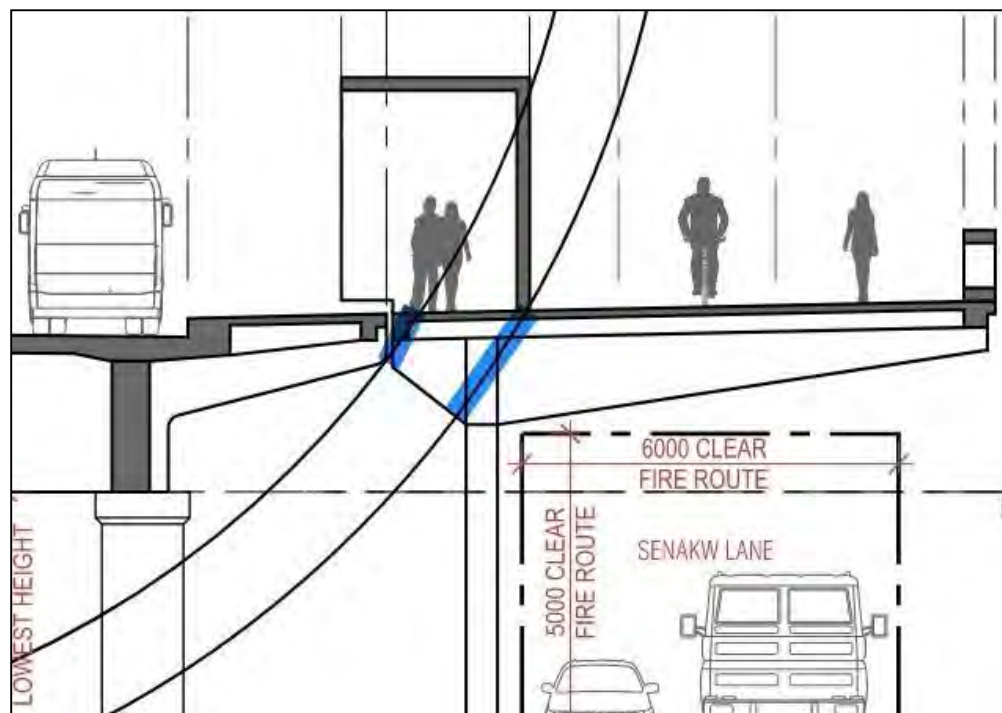


Figure 2 – Transit Hub Structure: Interface Surface shown in Blue



APPENDIX F.6 – FORM OF HEAD LICENCE

Vanier Park Road and Storm Sewer Head Licence

THIS LICENCE is made as of the 1st day of July, 2022 (the “**Effective Date**”),

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
as represented by the Minister of Public Works and
Government Services

(“**Canada**”)

AND:

SQUAMISH NATION, a “band” within the meaning of the
Indian Act, as represented by its Council, with an address at
320 Seymour Boulevard, North Vancouver, V7J 2J3

(the “**Nation**”)

BACKGROUND:

- A. Canada (as the owner and landlord) and the City of Vancouver (the “**City**”, as tenant) entered into a lease agreement (the “**Lease**”) dated August 15, 1966 granting the City the right to occupy and use the area legally described in the Lease (“**Vanier Park**”) for “public park, recreational and museum purposes”, and as otherwise authorized under the Lease, for a term of 99 years expiring August 31, 2064;
- B. Pursuant to the Vancouver Charter, the rights and obligations of the City under the Lease are administered, represented and controlled by the Vancouver Board of Parks and Recreation (the “**Park Board**”);
- C. For many years pedestrians and cyclists have used a gravel path (the “**Gravel Path**”) on the south-eastern boundary of Vanier Park as an alternate access route to facilities in Vanier Park;
- D. Canada holds Kitsilano I.R. No. 6 (the “**Reserve**”), which is adjacent to Vanier Park, for and on behalf of the Nation;
- E. The Nation has authorized, and is a partner in, the development of the Reserve;
- F. The expansion and upgrading of the Gravel Path to a paved road to the standards of a city street will facilitate better access to the Reserve and, together with related infrastructure, will allow for the better development of the Reserve;
- G. The total area of Vanier Park that is required by the Nation for access and infrastructure relating to its development of the Reserve is shown outlined in bold (the “**Licence Area**”) on the sketch plan attached hereto as Schedule “A” (the “**Sketch Plan**”);

- H. The Licence Area is comprised of three areas:
- (i) the area shown outlined in bold and identified as the Road and Storm Sewer Area on the Sketch Plan (the “**Road and Storm Sewer Area**”);
 - (ii) the area shown outlined in bold and identified as the Temporary Turnaround Area on the Sketch Plan (the “**Temporary Turnaround and Storm Sewer Area**”); and
 - (iii) the area outlined in bold and identified as the Storm Sewer Area on the Sketch Plan (the “**Storm Sewer Area**”);
- I. In addition to the benefits to the Nation relating to the development of the Reserve, the development of the Road and Storm Sewer Area will improve access to the southern extent of Vanier Park by fire service and emergency vehicles for the safety and protection of the public, while continuing to provide pedestrian public access to amenities within Vanier Park;
- J. In the Lease, Canada reserved and retained unto itself certain rights including, among other things, the right to make use of portions of Vanier Park for “any public purpose”. The parties agree that Canada may use those reserved and retained rights to issue this Licence to the Nation over the Licence Area for the public purposes described in this Licence, without removing such portions of Vanier Park from the Lease; and
- K. The Nation has asked Canada to issue this Licence on the following terms and conditions.

FOR GOOD AND VALUABLE CONSIDERATION the parties now covenant and agree as follows:

1.0 Licence

- 1.1 Canada now issues to the Nation the right and licence to use and access the Licence Area in accordance with the terms and conditions of this Licence.
- 1.2 Canada agrees that upon the joint written request of the Nation and the City, Canada will enter into a modification of this Licence by which the Sketch Plan will be replaced by a survey that identifies the as-built location of the Storm Sewer through the Storm Sewer Area and the Temporary Turnaround and Storm Sewer Area, as:
- (a) no more than two (2) meters east of the location shown in the attached Sketch Plan for the Storm Sewer Area and the Temporary Turnaround and Storm Sewer Area, and
 - (b) having the same dimensions as shown in the attached Sketch Plan.

2.0 Term

- 2.1 The Licence will commence on the Effective Date and continue in effect for a term of five years (the “**Original Term**”), unless renewed in accordance with Section 2.2.
- 2.2 The Original Term of this Licence will automatically renew for a further term of five years, and continue to automatically renew for successive five year terms (each a “**Renewal Term**”), and expire on August 31, 2064, unless:

- (a) Canada provides, at least sixty days before the expiry date of the Original Term, or the expiry date of any subsequent Renewal Term, notice in writing to the Nation that, in the determination of Canada, acting reasonably, the Nation is in breach of its obligations in Section 6.0 [Covenant of the Nation]; or
 - (b) the Licence Area is added to the Reserve in accordance with Section 6.0 [Covenant of the Nation], and, as part of the addition to reserve process, this Licence is terminated by agreement of the parties; or
 - (c) this Licence is otherwise terminated or surrendered as herein provided.
- 2.3 If the Nation disputes Canada's determination that it is in breach of its obligations under Section 6.0, the dispute may be submitted for resolution pursuant to the dispute resolution process in Article 8 [Dispute Resolution]. If the determination is submitted to dispute resolution, this Licence will remain in full force and effect, on the same terms and conditions then in effect, until such time as Canada's determination has been upheld and any right of appeal has been exhausted. If Canada's determination is upheld, the Licence will cease to be of any force and effect as of the date of the final decision, or on the date specified in the final decision, subject to any obligation existing immediately prior to its expiry. If Canada's determination is not upheld this Licence will continue in full force and effect until the Lease expires or is earlier terminated.
- 3.0 Fee**
- 3.1 The Nation will pay an annual fee (the "**Licence Fee**") for this Licence in the amount of \$_____ during each year of the Original Term. The first of such payments will be made on the Effective Date and subsequent payments of the Licence Fee will be made on or before the anniversary of such date for the next following four years.
- 3.2 The Licence Fee will be:
- (a) paid in Canadian dollars;
 - (b) made payable to the Receiver General for Canada;
 - (c) paid without any prior demand, set-off, deduction or abatement; and
 - (d) accompanied by any applicable GST.
- 3.3 The Licence Fee will be adjusted for each Renewal Term based on an appraisal of the fair market value of the Licence Area as unimproved park land. The appraisal will be prepared by an independent appraiser selected by Canada. The appraiser will assess the fair market value of the Licence Area in accordance with terms of reference prepared by Canada after giving the Nation an opportunity to review and comment on them. The fair market value of the Licence Area will be determined as at the date of the appraisal, and will be reasonably discounted to take into consideration the extent and nature of the Nation's rights under this Licence, and the proposed addition to reserve process in section 6.1. Canada will give the Nation a copy of the appraisal and a reasonable opportunity to review and comment on it before giving notice to the Nation of the proposed Licence Fee for the Renewal Term.

- 3.4 The Nation will then have 15 days to advise if it wishes to retain an appraiser, at its own expense, to conduct a second appraisal. Canada agrees to give reasonable consideration to the second appraisal and its recommendations before determining and giving notice to the Nation for a second time of the Licence Fee for the Renewal Term, provided Canada receives the second appraisal within sixty days of the date on which it was notified that the Nation intended to commission a second appraisal.
- 3.5 Canada acknowledges and agrees that the Licence Fee for each Renewal Term will be substantially comparable to the Licence Fee paid in respect of the Original Term or the previous Renewal Term, as applicable.
- 3.6 Except as provided in section 3.7, the first adjusted Licence Fee for a Renewal Term will be paid on or before the first day of the Renewal Term and thereafter on or before the anniversary of such date for the next following four years.
- 3.7 If the Nation has provided a second appraisal and still disputes Canada's determination of the adjusted Licence Fee, the dispute may be submitted for resolution pursuant to the dispute resolution process in Article 8. During the period in which the dispute is subject to dispute resolution this Licence will remain in full force and effect, on the same terms and conditions, except that the Nation will pay the Licence Fee as determined by Canada on the later of (a) the first day of the Renewal Term, or (b) 15 days after the date that Canada notifies the Nation of the Licence Fee for the Renewal Term pursuant to section 3.4. If a court, acting pursuant to Article 8, including on any appeal, determines that the proposed Licence Fee for the Renewal Term should be varied, the appropriate party will promptly remit the excess amount or pay the shortfall to the other party, as appropriate.

4.0 Use

- 4.1 The parties acknowledge that the Licence Area is comprised of three separate areas, as follows:
- (a) the Road and Storm Sewer Area;
 - (b) the Temporary Turnaround and Storm Sewer Area; and
 - (c) the Storm Sewer Area.
- 4.2 In addition to the definitions contained in the Recitals to this Licence, the following terms will have the follow meanings herein, respectively:
- (a) **"Access Control Rights"** means the right to temporarily restrict Access Rights at any time of day or night during construction, maintenance, repair, replacement, or removal of any works:
 - (i) if required for public order or safety; or
 - (ii) if required as a result of bylaws, duly enacted by the City or the Park Board, each acting within its lawful jurisdiction, that are applicable to the Licence Area and not inconsistent with the purposes of this Licence;

- (b) **“Access Rights”** means the full, free, and uninterrupted right and liberty, at all times of day or night, in all days of the week, to enter, go, pass and repass in, over and upon the Licence Area:
 - (i) as permitted or restricted for the public under the Lease;
 - (ii) as permitted or restricted for the public by the Nation; and
 - (iii) on foot or with vehicles of any description, with or without tools, materials, supplies and equipment, for rest and recreation on the Licence Area, as well as access to, from, and across the Licence Area, or for any other purpose authorized or incidental to the exercise or performance of the rights, privileges and obligations of the Nation in this Licence, on a non-exclusive basis, together with but in priority to other lawful users of Vanier Park;
- (c) **“Road Infrastructure Rights”** means the right to dig up the soil and lay down, construct, install, inspect, maintain, repair, renew, remove, replace, and modify:
 - (i) a road or street typical of streets in the City of Vancouver;
 - (ii) sidewalks, street lighting, vehicle charging devices, telecommunications devices, traffic control devices, temporary parking and storage facilities, and other safety or public amenity works ordinarily associated with other municipal streets and roads in the City of Vancouver; and
 - (iii) landscaping or public art, and other decorative features acceptable to the Park Board as tenant under the Lease;
- (d) **“Road Works”** means any works installed by the Nation pursuant to its Road Infrastructure Rights;
- (e) **“Storm Sewer Rights”** means the right to dig up the soil and lay down, construct, install, inspect, maintain, repair, renew, remove, replace, and modify, the Storm Sewer Works;
- (f) **“Storm Sewer Works”** means an underground storm sewer, or green infrastructure system, and any related landscaping, water mains, access hatches, pipes, ducts, conduits, equipment, apparatus, wires, lumber, shoring, bracing, shotcrete, and supports for conveyance of storm water, and granular substances;
- (g) **“Temporary Turnaround”** means the Road Works within the Temporary Turnaround and Storm Sewer Area;
- (h) **“Underground Utility Rights”** means the right to:
 - (i) dig up the soil, lay down, construct, install, bury, and cover with soil; and
 - (ii) inspect, maintain, repair, renew, alter, enlarge, remove, replace, and modify,

the following underground utilities:

- (A) pipes, ducts, conduits, equipment, apparatus, wires, lumber, shoring, bracing, shotcrete, and supports for conveyance of electricity, steam, gas, or other substances, and all other forms of energy and communication signals (including telecommunication), and such other services and utilities (including fire and life safety services) as are now or in the future typically installed under or about roadways;
- (B) environmental, amenity, energy, or telecommunications systems or other related works; or
- (C) any other utility and infrastructure works; and
- (D) as well as such surface-level components of same reasonably required to operate, maintain, and repair such works such as access hatches, clean-out openings, and the like provided that the surface-level components of same are level with the finished grade of the Licence Area and no more intrusive or excessive as similar works utilized by the owner of same elsewhere in their utility network;

that the Nation may wish to install for the purposes of its development on the Reserve, or as the Nation finds convenient from time to time;

- (i) **“Underground Utility Works”** means any works installed by the Nation pursuant to its Underground Utility Rights; and
- (j) **“Works”** means, collectively, the Road Works, Storm Sewer Works, and Underground Utility Works.

4.3 **Road and Storm Sewer Area**

Canada grants and issues to the Nation and its licensees and its permittees, and their respective officers, employees, agents, contractors and subcontractors, the following rights in the Road and Storm Sewer Area:

- (a) Access Rights;
- (b) Road Infrastructure Rights;
- (c) Storm Sewer Rights;
- (d) Underground Utility Rights; and
- (e) Access Control Rights.

4.4 **Temporary Turnaround and Storm Sewer Area**

Subject to Section 4.5, Canada grants and issues to the Nation and its licensees and permittees, and their respective officers, employees, agents, contractors and subcontractors, the following rights in the Temporary Turnaround and Storm Sewer Area:

- (a) Access Rights;
- (b) Road Infrastructure Rights;
- (c) Storm Sewer Rights; and
- (d) Access Control Rights.

4.5 Despite Section 4.4, the Nation agrees that:

- (a) the Road Infrastructure Rights within the Temporary Turnaround and Storm Sewer Area are to be utilized so as to limit the use of the Road Works to emergency vehicles only; and
- (b) as soon as public road access becomes available for vehicles travelling through the Road and Storm Sewer Area to and from the Reserve, the Nation will cease to use the Temporary Turnaround and Storm Sewer Area for any Road Infrastructure Rights, and will take up and remove the Temporary Turnaround including any road, gravel or asphalt surface that have been constructed in the Temporary Turnaround and Storm Sewer Area, and restore the area to an equal or better condition as may be reasonably required by the Park Board.

4.6 Storm Sewer Area

Canada grants and issues to the Nation and its licensees and permittees, and their respective officers, employees, agents, contractors and subcontractors, the following rights in the Storm Sewer Area:

- (a) Access Rights;
- (b) Storm Sewer Rights; and
- (c) Access Control Rights.

5.0 Development Process and Use

5.1 The Nation will provide a copy of the proposed development plan for the Licence Area to Canada at least sixty (60) days before commencing construction of any Works, and will, acting reasonably, respond promptly to any inquiries or requested changes from Canada, respecting either the development plan or the timing of construction.

5.2 The Nation will finalize the development plan for the Licence Area only after:

- (a) obtaining the advice of a qualified arborist on the most appropriate means of compensating for any impacts on trees, and by planting replacement trees where reasonably possible, at the sole cost and expense of the Nation; and
- (b) seeking comments from any third party whose parking rights within Vanier Park could be affected by the proposed development of the Licence Area, in order to ensure that parking spaces constructed pursuant to those rights are appropriately reconfigured to the Park Board's satisfaction and, if requested by the Park Board, any parking spaces that would be lost or reduced in size by the exercise of the

Nation's rights under this Licence will be reasonably replaced, at the sole cost and expense of the Nation.

- 5.3 Canada will have the right but no obligation to review, or approve, or comment on the proposed development plan for the Licence Area, and the Nation releases Canada from any liability for any error or omission in the development plan, whether or not Canada has commented on or contributed to it. Canada will have no responsibility for any loss, liability or expense arising out of the development plan or any works constructed or installed on the Licence Area.
- 5.4 Canada reserves the right, but will have no obligation to the Nation, to regulate, remove or control any activity or thing on the Licence Area which represents a hazard to persons or property or which is contrary to the terms of the Lease.
- 5.5 The Nation will maintain, repair and replace:
- (a) the Road and Storm Sewer Area and (during the temporary use period described in subsection 4.5(b)) the Temporary Turnaround and Storm Sewer Area, at its sole cost and expense throughout the Term, to a standard consistent with other comparable streets in the City of Vancouver; and
 - (b) the Storm Sewer Works, the surface of the Storm Sewer Area, and the surface of the Temporary Turnaround and Storm Sewer Area throughout the Term (following the temporary use period described in subsection 4.5(b)), at its sole cost and expense, to a standard consistent with other storm sewers within parks in the City of Vancouver, including the restoration of any paved and unpaved paths, fencing and paved areas affected by installation of the Works in these areas,
 - (c) and will, on request from Canada, remove all Works that it has constructed or installed on the Licence Area at the end of the Term.
- 5.6 Whenever the Nation is required under this Licence to remove or de-commission any of the Works, or has undertaken any construction or other work requiring the disturbance or alteration of the Licence Area, the Nation will restore the affected area to a standard consistent with that required by the Park Board in similar situations in other parks within the City of Vancouver, and will do so at the Nation's sole cost and expense.

6.0 Covenant of the Nation

- 6.1 The Nation covenants and agrees that it will take reasonable steps, with the co-operation and support of Canada, as represented by Indigenous Services Canada, to have the Road and Storm Sewer Area added to the Reserve. The Nation acknowledges that the addition to reserve process for the Road and Storm Sewer Area may require the Nation to consent to Canada granting a replacement permit or licence to any third party who has entered into an agreement in reliance on this Licence, to ensure that such third party will be able to continue using the Road or Storm Sewer Area on substantially the same terms and conditions, notwithstanding the addition of the Road and Storm Sewer Area to the Reserve.
- 6.2 The Nation will be responsible for all costs it incurs in taking steps to add the Road and Storm Sewer Area to the Reserve, including any necessary survey, environmental audit,

environmental remediation, or internal consultations, or the cost of its participation in meetings or communications with any applicable governmental authority or other First Nation.

6.3 The Nation will not cause any Environmental Contamination on or to the Licence Area contrary to applicable laws, and will notify Canada of any Environmental Contamination for which the Nation may have liability, or which may migrate off the Licence Area. For the purposes of this section the following terms will have the following meanings, respectively:

- (a) **“Environmental Contamination”** means any Pollutant or combination of Pollutant, which is now or hereafter prohibited, controlled or regulated under Environmental Laws, and which exceeds the legal limits permitted under Environmental Laws;
- (b) **“Environmental Laws”** means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, criteria, permits, codes of practice and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Licence Area in force with respect, in any way, to the environment, environmental assessment, health or occupational health and safety, including with respect, in any way, to the protection of people, plants, animals, natural ecosystems and the natural environment (including in the context of the development of land, workplace safety and otherwise) or transportation of dangerous goods, including the principles of common law and equity, and including all applicable guidelines and standards with respect to the foregoing as adopted by any of those governmental authorities from time to time; and
- (c) **“Pollutant”** means any substance which is capable of causing pollution or contamination to air, land, water and ground water and includes, without limitation, explosives, radioactive materials, contaminants, deleterious substances, underground or above-ground tanks, lead, asbestos, asbestos-containing materials, hazardous, corrosive or toxic substances, hazardous waste, special waste, waste (as defined in the *Environmental Management Act* (British Columbia)), polychlorinated biphenyls (**“PCBs”**), PCB-containing equipment or materials, pesticides, defoliants, fungi, including mould and spores arising from fungi, or any other solid, liquid, gas, vapour, odour, heat, sound, vibration, radiation, or combination of any of them.

6.4 The Nation covenants and agrees to take out and maintain, at its sole cost and expense, a comprehensive policy of liability insurance in relation to the use of the Licence Area under this Licence, in which Canada will be a named insured. The Nation will maintain such comprehensive liability insurance in place throughout the term of this Licence.

7.0 Indemnity

7.1 The Nation will at all times indemnify and save harmless Canada from and against all liabilities, claims, demands, losses, costs, damages, actions, suits or other proceedings by whomsoever made, arising out of the use by the Nation of the Licence Area, provided that Canada will give notice of any such third party claim to the Nation which will have the right to take all steps it considers necessary at its sole cost and expense, on behalf of

Canada and with the cooperation of Canada, to defend or settle the claim, and Canada agrees not to settle any claim that is the subject of this indemnity except with the involvement and agreement of the Nation, acting reasonably.

7.2 The obligations of the Nation in this Article 7.0 will survive the termination of this Licence.

8.0 Dispute Resolution

8.1 Any dispute involving the interpretation or performance of this Licence that is not resolved by negotiation will be resolved by referral, in the first instance, to the Federal Court of Canada or any replacement or successor court having jurisdiction.

8.2 If the Federal Court of Canada refuses jurisdiction or does not determine the dispute, then a party to the dispute may refer it to any other court that has jurisdiction and the parties may exercise any other right or remedy that they have under this Licence or otherwise.

9.0 Miscellaneous

9.1 The parties acknowledge and agree that:

- (a) this Licence, subject to its terms, is intended to operate in conjunction with the Lease, and does not otherwise derogate from or modify, the spirit, intent or terms of the Lease;
- (b) the Licence Area remains within the area leased under the Lease until such time as the Road and Sewer Area is added to the Reserve; and
- (c) this Licence will not continue beyond the term of the Lease unless arrangements are made between Canada, the Nation, and the Park Board on behalf of the City, for the tenant under the Lease to over hold in its use and occupancy of Vanier Park, and for this Licence to continue during the overholding period.

9.2 The Nation will abide by all applicable laws, regulations and requirements lawfully imposed and relating in any way to the rights granted in this Licence.

9.3 The Nation will not use or permit the use of the Licence Area for any purpose other than the purposes set out in Article 4.0 [Use] above.

9.4 This Licence will not create, or be deemed to create any interest in land in the Licence Area.

9.5 Canada acknowledges and consents to the Nation granting a sublicense of its rights under this Licence to the City on such terms and conditions as may be agreed between them, and further acknowledges and agrees that either the City, as sub-licensee, or the Nation, will have the right to grant sublicences or sub-sublicences to third parties, as applicable, so that they can construct, install, maintain, operate, modify, replace, remove and de-commission the Works from time to time, on, over, and under the Licence Area.

9.6 Subject to Section 9.5, the Nation will not assign this Licence but will be entitled to authorize one or more third parties, including without limitation the City, to construct, install, repair, maintain, replace, remove and de-commission the Works from time to time.

- 9.7 Everything required to be done or carried out by the Nation under this Licence will be at the sole cost and expense of the Nation.
- 9.8 Where the parties have agreed to involve the Park Board in any matter under this Licence, they will notify and involve both the City and the Park Board so that the City and the Park Board can more effectively coordinate their respective rights and obligations. Canada will give notice to the City and the Park Board, concurrently with notice to the Nation, of any Nation default, and agrees that either the City or the Park Board will have the right to cure the Nation's default if they should elect to do so.
- 9.9 Any notice required to be given under this Licence may be delivered, mailed, or emailed and will be deemed to be well and sufficiently given if mailed at any Government Post Office in British Columbia, by prepaid registered or certified mail or by email addressed as follows:

to the Nation:

SQUAMISH NATION

PO BOX 86131,
North Vancouver,
British Columbia, V7L 4J5

Attention: Chief and Council

Email: _____

With a copy to: _____

to the City:

CITY OF VANCOUVER

453 West 12th Avenue
Vancouver,
British Columbia, V5Y 1V4
Attention: Deputy City Manager

Email: karen.levitt@vancouver.ca

And a copy to: francie.connell@vancouver.ca

VANCOUVER BOARD OF PARKS AND RECREATION

2099 Beach Avenue
Vancouver, British Columbia, V6G 1Z4
Attention: General Manager

Email: donnie.rosa@vancouver.ca

and to Canada:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as
represented by the Minister of Public Works and Government Services
#219 - 800 Burrard Street
Vancouver, British Columbia V6Z 0B9

Attention: Regional Manager, Portfolio Management
Public Works and Government Services Canada –
Pacific Region

Email: _____

or to such other addresses as the parties may from time to time advise the other in writing, and any such notice will be deemed to have been received forty-eight (48) hours after mailing, or if delivered, when delivered, or if emailed upon electronic confirmation of its being sent, provided that if mailed should there be between the time of mailing and the actual receipt of the notice a mail strike, slow-down or other labour dispute which might affect delivery of such notice then such notice will only be effective if actually delivered.

9.10 Within seven (7) days of the Effective Date, Canada will provide a copy of this Licence to the City and Park Board (at the addresses set out in Section 9.9 above).

9.11 This Licence may be executed:

- (a) in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same agreement; and
- (b) using electronic signature technology (for example, via DocuSign or similar electronic signature technology) and may be delivered by facsimile or by email of a .pdf document (or a similar file format document capable of producing a printed record), and in each such case, such executed and delivered electronic record will be as valid and effective to bind the party so signing as a paper copy bearing such party's handwritten signature that has been manually delivered. The parties further consent and agree that (i) to the extent a party signs this Licence using electronic signature technology, by clicking "sign", such party is signing this Licence, and (ii) the electronic signatures appearing on this Licence will be treated, for purposes of validity, enforceability and admissibility, the same as handwritten signatures.

TO CONFIRM THEIR INTENT TO BE LEGALLY BOUND BY THIS LICENCE, the parties' authorized signatories have executed and delivered this Licence to each other as set out below.

CANADA

**HER MAJESTY THE QUEEN IN RIGHT OF
CANADA, AS REPRESENTED BY THE MINISTER
OF PUBLIC WORKS AND GOVERNMENT
SERVICES**

Ben Black, Regional Manager, Real Estate Services
Public Services and Procurement Canada
for the Minister of Public Works and Government Services

NATION

SQUAMISH NATION

Dustin Rivers
Sxwchalten iy Xelsilem
Authorized Signatory



APPENDIX F.7 – FORM OF SUB-LICENCE

Vanier Park Road and Storm Sewer Sub-Licence

THIS SUB-LICENCE is made as of the _____ day of _____, 2022 (the “**Effective Date**” [INSERT SAME DATE AS HEAD LICENCE]),

BETWEEN:

SQUAMISH NATION, a “band” within the meaning of the *Indian Act*, as represented by its Council, with an address at 320 Seymour Boulevard, North Vancouver, V7J 2J3

(the “**Nation**”)

AND:

CITY OF VANCOUVER

(the “**City**”)

BACKGROUND:

- A. Her Majesty in Right of Canada (“**Canada**”, as the owner and landlord) and the City (as tenant) entered into a lease agreement (the “**Lease**”) dated August 15, 1966 granting the City the right to occupy and use the area legally described in the Lease (“**Vanier Park**”) for “public park, recreational and museum purposes”, and as otherwise authorized under the Lease, for a term of 99 years expiring August 31, 2064;
- B. Pursuant to the Vancouver Charter, the rights and obligations of the City under the Lease are administered, represented and controlled by the Vancouver Board of Parks and Recreation (the “**Park Board**”);
- C. For many years pedestrians and cyclists have used a gravel path (the “**Gravel Path**”) on the south-eastern boundary of Vanier Park as an alternate access route to facilities in Vanier Park;
- D. Canada holds Kitsilano I.R. No. 6 (the “**Reserve**”), which is adjacent to Vanier Park, for and on behalf of the Nation;
- E. The Nation has authorized, and is a partner in, the development of the Reserve;
- F. The expansion and upgrading of the Gravel Path to a paved road to the standards of a city street will facilitate better access to the Reserve and, together with related infrastructure, will allow for the better development of the Reserve;
- G. The total area of Vanier Park that is required by the Nation for access and infrastructure relating to its development of the Reserve is shown outlined in bold (the “**Licence Area**”) on the sketch plan attached as Schedule “A” (the “**Sketch Plan**”) to the head licence (“**Head Licence**”) attached as Appendix “A” to this Sub-Licence;

- H. The Licence Area is comprised of three areas:
- (a) the area shown outlined in bold and identified as the Road and Storm Sewer Area on the Sketch Plan (the “**Road and Storm Sewer Area**”);
 - (b) the area shown outlined in bold and identified as the Temporary Turnaround Area on the Sketch Plan (the “**Temporary Turnaround and Storm Sewer Area**”); and
 - (c) the area outlined in bold and identified as the Storm Sewer Area on the Sketch Plan (the “**Storm Sewer Area**”);
- I. In addition to the benefits to the Nation relating to the development of the Reserve, the development of the Road and Storm Sewer Area will improve access to the southern extent of Vanier Park by fire service and emergency vehicles for the safety and protection of the public, while continuing to provide pedestrian public access to amenities within Vanier Park;
- J. In the Lease, Canada reserved and retained unto itself certain rights including, among other things, the right to make use of portions of Vanier Park for “any public purpose”;
- K. In accordance with its rights under the Lease, Canada granted the Head Licence to the Nation for public purposes, namely for a road, storm sewer, and other infrastructure required in connection with a proposed development on the Reserve;
- L. The City (as the local municipal government) and the Nation have entered into a services agreement (the “**Señákw Services Agreement**”) dated May 25, 2022 respecting the delivery of municipal services to the Reserve; and
- M. As provided in the Señákw Services Agreement, the Nation has agreed to grant this sub-licence (the “**Sub-Licence**”) of the Head Licence to the City, with the consent of Canada, so that the City can fulfill its Long-Term Responsibility for the Vanier Park Road and Vanier Park Road Storm Sewer Works to be constructed and installed within the Licence Area.

FOR GOOD AND VALUABLE CONSIDERATION the parties now covenant and agree as follows:

1.0 Sub-Licence and Interpretation

- 1.1 The Nation now issues to the City the right and licence to use and access the Licence Area in accordance with the terms and conditions of this Sub-Licence.
- 1.2 The Parties agree that upon any modification of the Head Licence pursuant to and in accordance with Section 1.2 of the Head Licence, Schedule “A” to Appendix “A” to this Sub-Licence will be replaced with the survey plan contemplated in such instance by Section 1.2 of the Head Licence.
- 1.3 All capitalized terms and phrases used in this Sub-Licence but not otherwise defined in this Sub-Licence will have the meanings given to them in the Head Licence and Señákw Services Agreement.

2.0 Term

- 2.1 The Sub-Licence will commence on the Effective Date of the Head Licence and will continue in effect until the expiry or sooner termination of the Head Licence.
- 2.2 If the Nation disputes Canada's determination under Section 2.2(a) of the Head Licence that the Nation is in breach of its obligations under Section 6.1 of the Head Licence, the Nation will provide the City and Park Board with prompt and reasonable particulars of the dispute so as to keep the City and Park Board reasonably apprised of the matter.

3.0 Fees

- 3.1 The Nation will pay all Licence Fees payable by the Nation to Canada under Article 3.0 [Fee] of the Head Licence.

4.0 Use

- 4.1 The Nation now grants by way of sub-licence, all of the same rights to the City as were granted to the Nation by Canada under the Head Licence, all as more particularly set out in Article 4.0 [Use] of the Head Licence and with the same intent and effect as if Article 4.0 [Use] were repeated in this Sub-Licence but with all references to "Canada" changed to "Nation" and all references to "Nation" changed to "City".

5.0 Development Process and Use

- 5.1 The Nation will be solely responsible for paying for and satisfying the obligations under Article 5.0 of the Head Licence and will also provide a copy of the proposed development plan for the Licence Area to the City and Park Board concurrently with providing it to Canada and will then also provide the City and Park Board with any and all inquiries or requested changes from Canada, respecting either the development plan or the timing of construction and coordinate all responses by the Nation back to Canada on same so that the Nation and the City can ensure that the development plan and timing of construction do not create any conflicts with the Seḥákw Services Agreement and applicable TI Implementation Agreement(s).
- 5.2 The City and Park Board will have no responsibility for any loss, liability or expense arising out of how Canada or the Nation exercise their respective rights and obligations under Article 5.0 [Development Process and Use] of the Head Licence, except to the extent that such loss, liability or expense is caused or contributed to by a default by the City of its obligations under the Seḥákw Services Agreement, any applicable TI Implementation Agreement(s), or this Sub-Licence.
- 5.3 The Nation now indemnifies the City and Park Board from and against any and all Losses incurred by them directly or indirectly as a result of Canada exercising its right under the Head Lease to regulate, remove or control any activity or thing on the Licence Area which represents a hazard to persons or property or which is contrary to the terms of the Lease (except to the extent such right was exercisable by Canada as a result of a default by the City or Park Board of an obligation under the Seḥákw Services Agreement or Lease, respectively).

- 5.4 Except as set out in the Seḥákw Services Agreement, any applicable TI Implementation Agreement(s), and Section 9.11 [Restore Turnaround After Temporary Use Period] below, the City is fully responsible to maintain, repair, and replace the Works within the Licence Area and to restore the Licence Area in accordance with Sections 5.5 and 5.6 of the Head Licence.

6.0 Covenants of the Nation

- 6.1 The Nation remains solely responsible for paying for and complying with the covenants and agreements regarding the addition of the Road and Storm Sewer Area to the Reserve as set out in Article 6.0 [Covenant of the Nation] of the Head Licence.
- 6.2 Except as set out in the Seḥákw Services Agreement and any applicable TI Implementation Agreement(s), the City assumes the responsibility under the Head Licence pursuant to Section 6.3 of the Head Licence to not cause any Environmental Contamination on or to the Licence Area contrary to applicable laws, and will notify the Nation and Canada of any Environmental Contamination for which the City may have liability, or which may migrate off the Licence Area.
- 6.3 The Nation remains solely liable under Section 6.4 of the Head Licence to take out and maintain, at its sole cost and expense, a comprehensive policy of liability insurance in relation to the initial construction and installation of the Works, and to add Canada as a named insured, and to maintain such policy in effect throughout the period of construction and installation and for a period of six months following substantial completion of the Works. For certainty, this obligation is in addition to and not in lieu of all of the Nation's obligations to insure under the Seḥákw Services Agreement and any applicable TI Implementation Agreement(s).

7.0 Indemnity and Risk Allocation

- 7.1 The Nation will remain solely liable under Section 7.1 of the Head Licence to indemnify and save harmless Canada as therein provided, except to the extent that such liability is caused or contributed to by a default by the City of its obligations under the Seḥákw Services Agreement, any applicable TI Implementation Agreement(s), or this Sub-Licence, or by any other actions of the City for which the City may be liable to the Nation under the Seḥákw Services Agreement as if this Sub-Licence formed a part thereof; provided, however, in no event will the foregoing exception operate so as to modify or increase the City's obligations and liabilities under Article 14.0 [Release and Indemnity] of the Seḥákw Services Agreement.
- 7.2 The obligations of the City and the Nation under the Seḥákw Services Agreement and this Article 7.0 will survive the expiry or sooner termination of this Sub-Licence.
- 7.3 For further certainty:
- (a) this Sub-Licence is intended to support and facilitate the City's performance of its Long-Term Responsibility for the Works within the Licence Area as part of the City's general obligations to provide Municipal Services under the Seḥákw Services Agreement. Accordingly, all matters of indemnity, release, default and dispute resolution will be dealt with pursuant to the applicable provisions of the

Señákw Services Agreement except as modified by Section 7.1, 7.2, and 8.1 of this Sub-Licence; and

- (b) in the event of any inconsistency between (1) the indemnity, release, default and dispute resolution provisions of the Señákw Services Agreement and (2) Section 7.1, 7.2, and 8.1 of this Sub-Licence, the items listed in (1) will prevail.

8.0 Dispute Resolution

- 8.1 Any dispute involving Canada will be resolved in accordance with Article 8.0 [Dispute Resolution] of the Head Licence. Any dispute between the Nation and the City which does not also involve Canada will be resolved in accordance with the dispute resolution process contemplated by the Señákw Services Agreement, save and except to the extent that, by virtue of the nature and substance of the dispute, the dispute resolution provisions of the applicable TI Implementation Agreement apply.

9.0 General Covenants and Acknowledgements

- 9.1 Nation to Install Works. Pursuant to the Señákw Services Agreement, the Nation will be responsible for constructing the Works through the Licence Area, at its sole cost and expense, in accordance with the requirements of the Señákw Services Agreement and any applicable TI Implementation Agreement(s).
- 9.2 City Access Rights Supplant Nation's After Completion of Works. Subject always to the Nation's warranty or other post-issuance obligations under any applicable TI Implementation Agreement, when the City Engineer has issued a certificate to the Nation confirming that Works have been constructed and installed in accordance with the requirements of the Señákw Services Agreement and any applicable TI Implementation Agreement, the Nation acknowledges, covenants and agrees that:
 - (a) the City will thereafter have the exclusive right to re-construct, repair, replace or maintain the Works, without the involvement or consent of the Nation or any interference by the Nation or notice to the Nation (except as provided for in the Señákw Services Agreement, Schedule F [Triggered Infrastructure], Section F.13 [Vanier Park Road and Storm Sewer]); and
 - (b) the Nation will thereafter have no right to construct or install any Works or other improvements under the Head Licence, or carry out any maintenance or repairs to the Works or any improvements within the Licence Area except to permit those telecommunications companies, cablevision companies, BC Hydro, Fortis BC, Translink, or any district heat or energy companies (collectively, "**Utility Companies**") to install, use, operate, and maintain Underground Utility Works within the Road and Storm Sewer Area only and then only in accordance with Section 9.4 [Access for Nation's Utilities] below.
- 9.3 To Support City's Long-Term Responsibility. This Sub-Licence is intended to support and facilitate the City's performance of its Long-Term Responsibility for the Works pursuant to the Señákw Services Agreement, and nothing in this Sub-Licence will be interpreted or construed to:

- (a) amend, limit or supersede the terms and conditions of the Sehákw Services Agreement nor any applicable TI Implementation Agreement; or
- (b) limit, modify or terminate the right of the Nation to enter on the Licence Area in accordance with its rights under the Head Licence in order to construct and install Vanier Park Road and the Vanier Park Storm Sewer.

- 9.4 Access for Nation's Utilities. The City acknowledges and agrees that the Nation specifically reserves the right to grant, from time to time, sub-licences and other rights to use the Road and Storm Sewer Area, as and to the extent permitted under the Head Licence, to Utility Companies for Underground Utility Works so long as the use is approved in accordance with Section 9.10 [Non-Interference by Nation Except for Underground Utility Works] below.
- 9.5 Access to Reserve. The City acknowledges and agrees that the Nation specifically reserves the right to permit residents of the Reserve from time to time and their respective invitees and permittees, and members of the public, to exercise Access Rights over the Road and Storm Sewer Area and, for the temporary use period, the Temporary Turnaround and Storm Sewer Area, in order gain access to and from the Reserve, provided that such exercise of the Access Rights does not conflict with the City's exercise of its rights and the performance of the City's obligations under this Sub-Licence.
- 9.6 Right to Regulate Public. For further certainty, the Nation acknowledges that the City (with respect to the Road and Storm Sewer Area and the initial temporary period for the Turnaround and Storm Sewer Area) and the Park Board (with respect to the Turnaround and Storm Sewer Area after the temporary use period) will have the right, in accordance with the usual operation of City streets and parks, respectively, to permit the public to stop, use and recreate on the Licence Area, provided access to the Reserve is not unreasonably obstructed or delayed.
- 9.7 Keep City and Park Board Apprised. Where the parties have agreed to involve the Park Board in any matter under this Sub-Licence, they will notify and involve both the City and the Park Board so that the City and the Park Board can more effectively coordinate their respective rights and obligations.
- 9.8 Restrictions on Nation's Use. The Nation covenants and agrees that the Nation will not use or permit the Licence Area to be used or occupied except in accordance with the following:
- (a) the Nation will not use the Licence Area and will not authorize anyone else, directly or indirectly, to use the Licence Area except in accordance with the terms of this Sub-Licence;
 - (b) the Nation will not at any time construct, install, place, repair, maintain, replace, alter, use, deposit, store, or accumulate any buildings, structures, or improvements, or other real or personal property or inorganic material, or cultivate, plant, or grow any trees, plants, or other organic material within the Licence Area, unless the Nation is expressly obligated to do so pursuant to an applicable TI Implementation Agreement, is permitted to do so pursuant to the terms of this Sub-Licence, or otherwise obtains the prior written consent of the City Engineer and complies with the City Engineer's requirements in respect thereto;

- (c) the Nation will not use the Licence Area for any purpose that, in the City Engineer's opinion, may interfere with current or future Works, damage or destroy them, impair their use or operation, obstruct access to them, create any hazard, or interfere with or interrupt use of the Licence Area as contemplated herein; and
- (d) the Nation will not excavate or dig any well, hole, trench, ditch, or other excavation, remove support for the Licence Area and the Works, add to or remove soil or other ground cover, add or remove fill, or install other roads, trails, paths, or embankments, unless the Nation obtains the prior written consent of the City Engineer and complies with the City Engineer's requirements in respect thereto.

9.9 Nation's Obligations. The Nation will:

- (a) maintain the Head Licence in full force and effect during the Term of this Sub-Licence, and not surrender, amend, or terminate the Head Licence without the prior written consent of the City, such consent not to be unreasonably withheld;
- (b) promptly pay, as and when due, any fee or tax assessed by Canada under the Head Licence; and
- (c) provide the City and Park Board with a copy of any notice received from Canada respecting any alleged breach or threatened termination of the Head Licence, and will keep the City and Park Board fully informed of all related communications with Canada, and will, on request, give the City an opportunity to comment on or to cure any alleged breach of the Head Licence.

9.10 Non-Interference by Nation Except for Underground Utility Works. The Nation will not:

- (a) construct or authorize any temporary or permanent buildings, structures or above or below-grade improvements within the Road and Storm Sewer Area, or anything that would prevent or restrict access to the Licence Area by the City or by Utility Companies that construct or install Underground Utility Works on the Licence Area or impede the City's ability to fulfill its Long-Term Responsibility for the Works within the Licence Area;
- (b) exercise any right under the Head Licence to attach or affix anything to the Licence Area, including Underground Utility Works, without first entering into a mutually acceptable arrangement with the City that allocates financial, legal, and operational responsibility for same on the Nation or Utility Companies; and
- (c) interfere with the bearing capacity or seismic stability of the Licence Area.

The City now agrees not to unreasonably withhold or delay any request for consent for the Nation to grant, from time to time, sub-licences and other rights to use the Road and Storm Sewer Area, as and to the extent permitted under the Head Licence, to Utility Companies for Underground Utility Works subject to paragraph 9.10(b) above being satisfied.

9.11 Restore Turnaround After Temporary Use Period. The Nation agrees to, at its sole cost and expense, remove any roadways, sidewalks, street lighting and other safety and associated works, from the Temporary Turnaround and Storm Sewer Area, and return it

to its previous natural condition, when road access through the Reserve has been constructed and installed and is available for public use, all in accordance with the Nation's obligations under Section 5.5 of the Head Licence.

10.0 Miscellaneous

10.1 The parties acknowledge and agree that:

- (a) this Sub-Licence, subject to its terms, is intended to operate in conjunction with the Head Licence and Lease, and does not otherwise derogate from or modify, the spirit, intent or terms of the Head Licence or Lease;
- (b) the Road and Storm Sewer Area remains within the area leased under the Lease until such time as the Road and Storm Sewer Area is added to the Reserve; and
- (c) this Sub-Licence will not continue beyond the term of the Head Licence or Lease unless arrangements are made among Canada, the Nation and the Park Board on behalf of the City, for the tenant under the Lease to over hold in its use and occupancy of Vanier Park, and for this Sub-Licence to continue during the over-holding period.

10.2 The City assumes the Nation's obligations under Section 9.2 of the Head Licence to abide by all applicable laws, regulations and requirements lawfully imposed and relating in any way to the rights granted in this Sub-Licence.

10.3 The City assumes the Nation's obligations under Section 9.3 of the Head Licence to not use or permit the use of the Licence Area for any purpose other than the purposes set out in Article 4.0 [Use] above.

10.4 This Sub-Licence will not create, or be deemed to create any interest in land in the Licence Area.

10.5 The Nation and the City will have the right to grant sub-licences or sub-sub-licences to third parties, as applicable, so that they can construct, install, maintain, operate, modify, replace, remove and de-commission the Works from time to time, on, over, and under the Licence Area.

10.6 Subject to Section 10.5 above, the City may not assign this Sub-Licence to any party without the prior written consent of the Nation, which consent will not be unreasonably withheld or delayed.

10.7 Any notice required to be given under this Sub-Licence may be delivered, mailed, or emailed in the manner set out in the Head Licence.

10.8 This Sub-Licence may be executed in the same manner as is set out for the Head Licence.

TO CONFIRM THEIR INTENT TO BE LEGALLY BOUND BY THIS LICENCE, the parties' authorized signatories have executed and delivered this Licence to each other as set out below.

SQUAMISH NATION

Dustin Rivers
Sxwchalten iy Xelsilem
Authorized Signatory

CITY OF VANCOUVER

By: _____
Name: Paul Mochrie
City Manager

By: _____
Name: Frances J. Connell, QC
City Solicitor and Director of Legal Services

Appendix "A"
[ATTACH COPY OF HEAD LICENCE]

SCHEDULE G - ON-RESERVE PUBLIC AMENITIES AND CONTRIBUTIONS

The On-Reserve Public Amenities and Contributions are as follows:

- G.1 The construction, operation and maintenance of the Rental (including for certainty the Affordable Units) described in Schedule L [Development] for the Term.
- G.2 The construction, operation and maintenance of the daycare described in Schedule L [Development] for the Term.
- G.3 The construction, operation and maintenance of the publicly accessible landscaped open spaces described in Schedule L [Development] for the Term.
- G.4 Subject to Schedule K [Burrard Bridge and City Roads/Utilities Agreement], the Nation will construct prior to completion of Phase 2, public realm improvements and new publicly-accessible sports and recreational amenities and programming ("**Park Amenities**") under and adjacent to the Burrard Bridge on and off-Reserve as follows:
 - (a) with respect to the Park Amenities within the Reserve, these are to be determined in collaboration with the City and Park Board on a basis appropriate to the construction schedule for Phase 1 and 2 and if possible (subject to such construction schedule) approval by the Park Board;
 - (b) with respect to the Park Amenities off the Reserve, these are to be determined by the Park Board through a future park master planning process in consultation with the City and the Nation with the timing of same to be determined by the Park Board noting that these Park Amenities are intended to be finalized, constructed, and implemented as soon as possible after completion of Phase 2; and
 - (c) with respect to all Park Amenities, they must generally be in keeping with the quantity and quality of public realm and amenities for new urban parks with anticipated high intensity of use, and therefore high levels of service, of the type recently approved by the Park Board (for example the new park to be developed at Oakridge Centre and the park being constructed (as at the Effective Date) at Smithe and Richards).
- G.5 In addition to the On-Reserve Public Amenities and Contributions, the Nation will also provide (or cause to be provided) the following direct public contributions or commitments to practices aligned with City priorities:
 - (a) all building envelopes for all buildings within the Development to be designed and constructed to meet or exceed BC Energy Step - Code Level 3 along with a range of other energy and water-based sustainability measures;
 - (b) deliver one building (~45,000 sf) in Phase 2 as a hybrid mass timber structure;
 - (c) funding to support the capital infrastructure needs for the delivery of Fire Services to the Development in the amount \$1,600,000 such amount to be payable upon the first resident or business occupying any part of Phase 1;

- (d) extensive public art to be installed throughout the Development at a level and spending at least the same amount of money as is generally consistent with the City's public art policy for rezoned developments; and
- (e) detailed feasibility study of a potential streetcar to connect to Seḥákw (the terms of reference for such study to be approved by the City, acting reasonably, prior to the start of Phase 1, and such study to be completed and delivered to the City before the first resident or business occupies any part of Phase 1).

G.6 The Nation will construct and operate a new 10-12MW low-carbon district energy plant ("**Neighbourhood Energy Utility**") underneath the Reserve to heat and cool the interior spaces of the Development as well as provide domestic hot water heating to the Development. Leveraging a connection to a local high-capacity forcemain sewer owned by the GVS&DD (as defined in Schedule D [Sewer Services]), the system will utilize sewer heat recovery technology and high-efficiency electric boilers to generate heating and cooling with net zero carbon emissions. The Nation will be deemed to have satisfactorily performed its obligations under this Section G.6 if the entity which the Nation has contracted with to undertake these obligations completes, in accordance with the requirements of this Section G.6 and prior to the first resident or business occupying Phase 1, the design, construction, and commissioning of same and a Certificate of Public Convenience and Necessity from the BC Utilities Commission has been issued.

SCHEDULE H - POTENTIAL PUBLIC AMENITIES

The Potential Public Amenities are as follows, and are subject to further discussion between the City, the Nation, and the Park Board and subject to other approvals, land partnerships, collaboration, agreements, funding and contributions from and with other parties, as further set out in Section 9.1 [Parties to Work Co-operatively] of the Main Agreement:

- H.1** The Nation will take reasonable steps to catalyze the implementation of Vancouver's downtown streetcar plan. Specifically, the Nation is advocating for construction of a streetcar line, connecting the Señákw/Burrard Bridge area to the Canada Line or to Science World. The Nation is proposing to grant (on a long-term easement basis, or similar) to the City/TransLink the portion of the Lands south of West 1st Ave (~800m²) for a new streetcar stop location, subject to reasonable restrictions (i.e. rights could extinguish after 5+ years if no progress is made on station implementation by that time). The Nation is lobbying all levels of government, including TransLink, to advance this infrastructure and is pursuing federal and provincial green infrastructure funding.
- H.2** The Nation will take reasonable steps to catalyze a new False Creek water taxi stop at the seawall in front of the Development (adjacent to the Cultural Harmony Grove) or via an upgraded Burrard Civic Marina. A future additional passenger ferry connection may be possible directly to the Squamish Nation's Mosquito Creek Marina in North Vancouver. The Nation is pursuing this and is advocating for federal green infrastructure funding. Any proposed changes to the Cultural Harmony Grove, the Burrard Marina or associated water lots is still to be determined with the Park Board and other affected parties through a future park master planning process, to be administered by the Park Board.
- H.3** The Nation will take reasonable steps to catalyze the renovation and upgrading of the Cultural Harmony Grove park area. The Design and functional programming for those renovations and upgrades is to be determined after consultations with the Park Board. The Design, functional programming and construction timeline for these renovations and upgrades is to be determined through consultations with the Park Board and other affected parties as part of a broader park master planning process, to be administered by the Park Board. The Nation is advocating for this and will seek to secure federal and provincial funding, where possible.
- H.4** The Nation will advocate for and seek to secure federal and provincial funding for additional amenities within Vanier Park, to be determined through a future park master planning process, administered by the Park Board.

SCHEDULE I – CITY STAFF COSTS REIMBURSEMENT AGREEMENT

I.1 Background

- (a) The City's human and financial resources are severely constrained and the City does not have the resources to devote to as large and complex an endeavour as the Development without the funding of reimbursement by the Nation towards City staffing costs in accordance with this Schedule I.
- (b) In furtherance of the Equity Principle, the City and the Nation have agreed that the below defined Reimbursable Costs which have been incurred up to the Effective Date and will continue to be incurred following the Effective Date will be reimbursed to the City by the Nation since they:
 - (i) represent, generally speaking, the types of costs typically incurred by the City when reviewing and approving developments off-Reserve which are subject to the City's permits, licences and development bylaws and are therefore typically recovered through the payment of the related permit and licence fees or cost recovery applicable to those off-Reserve developments;
 - (ii) allow the City to devote resources to assessing, understanding, and planning for the Development;
 - (iii) have supported the process of drafting and settling this Agreement; and
 - (iv) will support the process of implementing this Agreement following its execution, including without limitation and by way of example only the process of settling and signing the TI Implementation Agreement(s),(collectively, the "**City Support Work**").
- (c) This Schedule I sets out the Parties' legal agreement on the scope of activities and types of costs that the City has incurred and expects to incur in carrying out the City Support Work, which activities and costs are hereinafter defined as "**Reimbursable Costs**" (a non-exhaustive but representative description of which are set out in Appendix I.1 hereto), and the Nation's agreement to pay for same. For further certainty, Reimbursable Costs includes anything described in this Schedule I as being recoverable by the City from the Nation in relation to the City Support Work and excludes:
 - (i) anything described in this Schedule I as being not recoverable by the City from the Nation; and
 - (ii) any costs otherwise recovered by the City from the Nation pursuant to any other provision of this Agreement, including, without limitation, Schedule F [Triggered Infrastructure].

I.2 Objectives

- (a) The main objectives of the City Support Work are to:

- (i) enable Nation consulting staff and City Personnel to gather and analyze information on infrastructure and amenity needs and impacts of the Development, including determining available capacity (if any) of existing City infrastructure and amenities, determining additional infrastructure and amenities required, and determining what will be built on the Lands and how best to integrate same with the City's infrastructure, amenities and systems;
- (ii) enable Nation consulting staff to continue to provide key City Personnel with sufficient knowledge of the Development to allow City Personnel to continue to adequately understand, assess and assist to optimize arrangements for providing Municipal Services to the Development in the most cost-effective manner possible for both Parties;
- (iii) enable City Personnel and its consultants to recommend approaches to the Nation and provide pricing and suggested delivery models;
- (iv) enable City Personnel to fully understand the Nation's objectives and requirements so as to be able to analyze same in relation to the objectives and requirements of the City and the broader Vancouver community and continue to develop proposed approaches to reconciling any discrepancies between the Nation's objectives and requirements and those of the City and the broader Vancouver community;
- (v) apply the results of paragraphs (i) to (iv) above to a principled series of discussions, negotiations where necessary, and development of implementation plans for the TI Implementation Agreement(s), amenities and other activities requiring implementation of this Agreement;
- (vi) enable City Personnel to support the design and construction of the Development through the planning and coordination of City and Nation work on and adjacent to the Reserve and review of the Nation's plans, designs and other documentation as provided for elsewhere in this Agreement; and
- (vii) enable City Personnel to support the implementation of this Agreement, including without limitation, the TI Implementation Agreement(s), the application and issuance of the permits contemplated by the Utility Services Schedules and the documents in Appendix K.2 [Recommended Deliverable Prior to Construction Start].

I.3 Cost Reimbursement Arrangements for City Support Work

- (a) The Nation now agrees to reimburse the City for the Reimbursable Costs incurred by the City in providing the City Support Work.
- (b) The Reimbursable Costs set out in Appendix I.1 are now agreed to be the Reimbursable Costs incurred by the City up to December 31, 2021. Within 30 days following the Effective Date, the City agrees to provide an invoice (including a breakdown of the number and cost of full time equivalent City staff or consultants assigned to each category of Reimbursable Costs) of the Reimbursable Costs incurred between December 31, 2021 and the Effective Date and the Nation agrees to pay such amounts within 30 days of receipt of such invoice.

- (c) With respect to Reimbursable Costs incurred by the City after the Effective Date, the Nation now agrees to pay quarterly and within 30 days of any proper invoice for same, the Reimbursable Costs incurred by the City in that prior period.
- (d) Where the Nation approves in writing other types of activities or costs as Reimbursable Costs (for example pursuant to Section I.4 below) they will be deemed to be included as Reimbursable Costs.
- (e) Any legal costs incurred by the City for the purpose of advancing or maintaining any cause of action or legal position or argument against the Nation, including legal research, are agreed by the City to be costs which the City is able to and will incur without requiring reimbursement from the Nation and so will not be claimed by the City as Reimbursable Costs unless the Parties otherwise agree in writing or pursuant to the process set out in Section I.4.
- (f) For further certainty, Reimbursable Costs do not include and will not duplicate any costs otherwise recoverable from the Nation pursuant to the Main Agreement and any Schedule thereto other than this Schedule I, including without limitation, Schedule F [Triggered Infrastructure].
- (g) Despite any other term of this Schedule I, the Nation will pay the City for its Reimbursable Costs in advance whenever requested by the City which request will only be made with respect to Reimbursable Costs expected to be incurred by the City retaining or contracting with third party consultants, professional engineers, or contractors in accordance with Section I.4 [Scoping and Procuring the City Support Work]. This Section I.3(g) is intended to ensure that the provision of the City Support Work through the use of the City's Consultants (as defined in Section I.4 [Scoping and Procuring the City Support Work] below) does not require the City to utilize reserve funds or otherwise expend funds which are allocated for other purposes within its current operating and capital budgets.
- (h) The City agrees to provide reasonably detailed invoices setting out the Reimbursable Costs incurred and describing the City Support Work performed in relation to same. Upon issuance of each invoice, where the Nation has made any payment in advance and such payment has not yet been applied to a Reimbursable Cost, the City will then apply the advance payment against such invoice.
- (i) Upon the City's receipt of payment of any invoice in respect of the City Support Work, the City will send Nation a copy of such receipt and payment record, including any unexpended balance on any particular advance payment.

I.4 Scoping and Procuring the City Support Work

- (a) The City expects to perform most of the City Support Work utilizing internal staff.
- (b) Where the City identifies a need to utilize external consultants or contractors, the City will be responsible for the following tasks:
 - (i) notifying the Nation of the need for any external consultants and/or contractors and providing an estimated budget for same and obtaining the Nation's approval of such external consultants and/or contractors and the estimated budget for same prior to proceeding with the steps outlined below in this Section I.4(b);

- (ii) drafting the scope of work for any external consultants and any contractors;
- (iii) preparing the document package necessary to announce, describe and solicit bids from external consultants or contractors to undertake City Support Work (the **“Requests for Proposal”**), unless the City decides that a sole source is warranted and permissible under its Procurement Policy;
- (iv) issuing and administering the Requests for Proposal procurement process;
- (v) coordinating and administering the Requests for Proposal review and evaluation process;
- (vi) awarding, negotiating, and entering into contracts (**“City Contracts”**) with the successful proponents or sole sourced external consultants and/or contractors selected in accordance with the processes outlined in this Section I.4 (collectively, the **“City’s Consultants”**);
- (vii) administering and enforcing the City Contracts, including monitoring and directing the City’s Consultants, reviewing invoices, paying invoices and addressing any deficiencies, defaults or delays of the City’s Consultants; and
- (viii) managing change orders if required.

For clarity, the above tasks will be considered as part of the City Support Work.

- (c) The City’s Supply Chain Management Department will finalize the City Contracts with the City’s Consultants. The Nation will be provided with copies of all procurement and contractual documents arising from the City Support Work upon request but will not have the right to request amendments or have the right of approval of same.
- (d) The Requests for Proposal documents and City Contracts will articulate a maximum fees and disbursements limit to ensure that the City’s Consultants are not entitled to invoice the City in excess of the maximum budget approved by the Nation for that portion of the City Support Work.

I.5 Execution of City Support Work

- (a) To facilitate and accommodate the City Support Work, the Nation now agrees to the following:
 - (i) to provide all reasonable access for the City and its agents (including the City’s Consultants), to the Nation’s consultants and consultant’s information and records concerning the Development;
 - (ii) to notify the City at the earliest opportunity if any changes to the Development are made or other issues arise which the Nation could reasonably foresee as having a material impact on the City Support Work;
 - (iii) to direct its consultants to participate in City Support Work carried out in accordance with this Schedule I and to allocate a reasonable amount of time towards providing data, attending meetings and responding to queries in

connection with the same. The Nation is solely liable for all of its consultants' fees incurred in the course of complying with such obligations;

- (iv) to cause its consultants to provide all data, information, reports, plans, modelling files, modelling logs, model outputs from each modelling run, and other information requested by the City to the City within 10 calendar days of any request for same;
- (v) to direct its consultants to review reports, information, data, recommendations and other information produced by the City's staff and consultants in a timely manner; and
- (vi) to provide an expeditious review of provided budgets for external consultants or contractors.

I.6 Estimated City Support Work Schedule

- (a) The schedule for the City Support Work will be determined by the City's schedule for the work mandated by the City under the Vancouver Charter as well as the schedule for procurement of and contracting with the City's professionals, vendors, and suppliers where applicable.
- (b) The City will make good faith efforts to expedite the City Support Work to the best of its ability but the Nation acknowledges that, where City staff have other duties and responsibilities under the Vancouver Charter to serve the public interest and those interests require those staff to attend to same (e.g. earthquake, pandemic, water main breaks, sewer main breaks, fire, explosion, etc.) the completion of the City Support Work may be delayed.
- (c) In furtherance of the Equity Principle, the City will make good faith efforts to give the City Support Work the same degree of priority and resources as it gives other developments similar to the Development being processed by the City off-Reserve.
- (d) For further certainty, the City will not be responsible for any impacts on the Development or its completion schedule arising from delays in reaching agreements on City Support Work contemplated under this Schedule I.

I.7 Administration and Management

- (a) Without limiting any of the Nation's obligations under this Schedule I, any and all costs incurred by the City in excess of advance payment or other budget estimate which are not directly caused by the City's negligent acts or omissions or a breach by the City of this Schedule I and which are incurred in good faith by the City to carry out the City Support Work, will be reimbursed in full by Nation. Whenever the City is aware of any cost or expense which has been or may be incurred in excess of any advance payment or any estimated budget the City will provide the Nation with prompt notice of same.
- (b) In the event of any breach by any City's Consultant of any City Contract, the City may take all commercially reasonable steps and actions to require the curing of such breach and to enforce the City's rights and remedies under the City Contract. However, further to Section I.7(a), the City does not provide any warranty as to the accuracy, correctness or completeness of the deliverables provided by the City staff, City Consultants nor the

quality, merchantability, or fitness for purpose of the Municipal Services supplied by the City under this Schedule I nor the City Contracts for the City Support Work. For further certainty, the Nation's reimbursement obligations under this Section I.7 include any and all costs incurred by the City in enforcing its rights and remedies under any of the City Contracts and their replacements, acting reasonably. Where the City's obligations require it to expend internal staff time on such enforcement including internal legal counsel, this will be done at no cost to the Nation. Where, acting reasonably, this requires the City to expend money on external counsel or other qualified professionals the Nation will reimburse the City for all such costs provided such external counsel or other qualified professionals are retained in accordance with the process set out in Section I.4 [Scoping and Procuring the City Support Work].

APPENDIX I.1 - Staffing

Staffing	Description	Costs
Engineering		
Transportation	Conceptual geometric design of off-site roads and improvements, Review of Seřák site design for compatibility with COV standards, Support and review of transportation study scopes and outcomes, Conceptual design of off-site signals and safety related improvements, costs related to off-site surveys of existing street conditions.	\$ 234,000.00
Streets	Review of building grades for compatibility with surrounding lands, asset management review of Burrard bridge impacts including community activation under the bridge, bridge attachments, and the transit hub, review of bridge monitoring plans and coordination of the same with the Partnership, and review of electrical and street lighting needs.	\$ 42,000.00
Integrated Strategy and Utilities Planning	Neighborhood Energy Utility review of proposed district energy connection scheme, sanitary service coordination with Metro Vancouver, storm servicing concept review, review of hydrogeological materials and coordination of same with sewers, green infrastructure coordination review, and design input into off-site transportation infrastructure.	\$ 76,000.00
Engineering Strategy and Standards	Geotechnical considerations primarily related to Burrard bridge consideration.	\$ 12,000.00
Zero Waste and Resource Recovery	Review waste collection issues related to this Agreement.	\$ 1,000.00
Water & Sewers	Off-site requirements review and off-site modeling and review. Excludes review of 50%+ designs by others.	\$ 16,000.00
Public Space & Street Use	Utilities management in public roads, review of existing constraints and needs, review of public benefit strategy opportunities, and input into off-site designs for transportation related to street furniture and horticulture.	\$ 9,000.00
Projects and Development Services	City process management for technical component of work. Land survey involvement related to legal agreements and land rights questions.	\$ 127,000.00

Staffing	Description	Costs
PDS staff (Planning, Sustainability, Housing, Heritage)	<ul style="list-style-type: none"> Analysis of development potential off-site to determine amenity and infrastructure capacity/impacts for service planning. Determining off-site potential to support discussions about latecomers (or similar) approaches. Design integration of Señákw with neighbouring sites. Corporate support for this Agreement by providing information on major projects for context. Preparatory work for planning required to adjust for the Señákw development as well as other potential developments in the area (only partial costs to Señákw). Assistance with interdepartmental trade-off conversations based on trade- offs which regularly occur on large sites. 	\$ 55,000.00
Parks	Review of design drawings and process related to proposed new road, review interface between development and Vanier Park and Cultural Harmony Grove, Vanier Park lease review, parks and recreation needs assessment, service agreement document review and required analysis.	\$ 75,000.00
Finance	Financial modeling and analysis re this Agreement.	\$ 37,000.00
Total Staffing		\$ 684,000.00
Contingency	Contingencies are used in all cost recovery processes and applied to office space and staff costs only.	\$ 42,400.00
Topographic Survey	Survey of existing conditions around site to facilitate design work.	\$ 23,000.00
Total Overheads (Leases and tenant improvements, IT, Corporate support)		\$ 142,000.00
Total		\$891, 400.00

SCHEDULE J – SEÑÁKW-SPECIFIC DESIGN STANDARDS

- J.1 The Nation agrees to design, construct, and operate the Development to those (but only those) City-Wide Standards required by the City in order to allow Police Services, Fire Services, Utility Services, any other Municipal Services, and City by-law and Nation SSA By-law enforcement (where included in Municipal Services) to be provided safely and efficiently to the Development (the “**Señákw-Specific Standards**”).
- J.2 The Parties agree that the identification and cataloguing and incorporation of the Señákw-Specific Standards will require extensive City staff or external consulting resources (including the retaining of building code consultants and other certified professionals for example). Accordingly, the Nation now confirms and agrees that the costs of this process will be covered in accordance with Schedule I [City Staff Costs Reimbursement Agreement].
- J.3 The Nation will work cooperatively with the City to ensure compliance with the Señákw-Specific Standards as follows:
- (a) All designs will be submitted to the City for review and comment but will not be subject to City approval;
 - (b) Where the Nation wishes to retain a professionally licensed consultant (such as a professional engineer or other certified professional) and is agreeable to having that consultant jointly retained by the City and the Nation so that such consultant’s duty of care extends to both the Nation and the City and the City and the Nation agree to jointly contract with the consultant to provide a design and review service satisfactory to the City and at the Nation’s cost, the City agrees not to utilize the services of its own consultant and to limit the cost of review to time spent by the City’s internal staff reviewing the certifications of the jointly retained consultant;
 - (c) Where the Nation wishes to deviate from a City-Wide Standard it is free to do so, but must first deliver to the City a written notice explaining how the Nation proposes to deviate and what alternatives to the deviation are being proposed, if any, or if it will simply be a deviation and non-compliant with the Señákw-Specific Standards;
 - (d) If the Nation delivers a notice of deviation pursuant to paragraph (c) above, the City will then advise the Nation in writing as to how (subject always to paragraph (e) below) such deviation will affect the delivery of the Municipal Services and, to the extent that the deviation prevents or restricts such delivery, the City will be released from its obligations to provide that aspect of the Municipal Services and the Nation will not be entitled to any credit or rebate or discount on the amounts payable with respect to that aspect of the Municipal Services;
 - (e) The City will not be responsible or liable for correctly predicting anything and everything that might occur as a result of a deviation from the Señákw-Specific Standards and the Nation will release the City from all liability in connection with all Losses incurred which would not or could not have been incurred but for the deviation; and

- (f) Where the City's modification to the Municipal Services in order to address a deviation from the Señákw-Specific Standards is material and affects the value of the Equity Principle, the Parties will amend this Agreement to reflect how the Equity Principle can be maintained failing which the Parties will proceed to resolve the matter pursuant to Article 16.0 [Dispute Resolution] of the Main Agreement.

SCHEDULE K - BURRARD BRIDGE AND CITY ROADS/UTILITIES AGREEMENT

- K.1 The Parties have differing positions on the ownership and legal access rights with respect to the Burrard Street Bridge, as well as certain roadways and utilities which cross the Reserve (collectively, the **"Bridge/Street/Utilities Assets"**, as further defined in Section 1.1(c) below).
- K.2 The Parties are entering into this Schedule K as part of a government to government relationship and so each Party reserves all of its existing legal rights (actual or alleged) to the Bridge/Street/Utilities Assets (for each Party, their **"Legal Rights/Claims"**).
- K.3 In the event that the Services Agreement is ever fully terminated or cancelled, the Parties' Legal Rights/Claims will not be modified or prejudiced by:
- (a) this Schedule K;
 - (b) the fact of entering into it; or
 - (c) the fact of complying with this Schedule K during the Term of the Services Agreement.
- K.4 The Parties now therefore agree that:
- (a) this Schedule K is completely without prejudice to their Legal Rights/Claims to the Bridge/Street/Utilities Assets; and
 - (b) all such Legal Rights/Claims are inoperable and suspended during the Term of the Services Agreement.
- K.5 In the place of the Legal Rights/Claims, the Parties now agree that, for the Term of the Services Agreement, their legal rights and obligations as between each other with respect to the Bridge/Street/Utilities Assets will be as follows and that unless and until the Services Agreement is fully cancelled or terminated, their respective legal rights and obligations with respect to the Bridge/Street/Utilities Assets will be determined by and governed by this Schedule K as though no such Legal Rights/Claims exist.
- K.6 Interpretation.
- (a) This Schedule K including the following terms and conditions are intended to be the entire agreement with respect to the Bridge/Street/Utilities Assets and to the extent of any inconsistency between this Schedule K and the rest of the Services Agreement and other schedules, this Schedule K will govern.
 - (b) Accordingly, the Services Agreement only applies to this Schedule K to the extent that its terms are expressly incorporated into and expressly applied to this Schedule K. By way of example only, and without limitation, a defined term incorporated by reference into this Schedule K will have, in this Schedule K, the meaning ascribed to it in the Services Agreement and by way of a second example, where the Term of the Services Agreement is cancelled or expires, then this Schedule K also is cancelled or expires. However, for certainty, none of the

insurance, liability, indemnity or other provisions of the Services Agreement apply to the subject matter of this Schedule K since those provisions apply to the delivery of and payment for Municipal Services and this Schedule K applies to the Parties' legal rights and obligations respecting the Bridge/Street/Utilities Assets.

- (c) While this Schedule K is an integral part of the Services Agreement, and the duration of this Schedule K is dependent on the duration of the Services Agreement, the Services Agreement is intended to record the Parties' rights and obligations with respect to delivery and payment for Municipal Services whereas this Schedule is intended to record the Parties' rights and obligations with respect to the Bridge/Street/Utilities Assets and so is drafted as though it were a separate agreement in spite of its legal status as a schedule to the Services Agreement.

ARTICLE 1 DEFINITIONS

- 1.1 In this Schedule K, capitalized terms defined in the Services Agreement have the meanings given to them there and additionally, unless stated otherwise, the following terms will have the respective meaning specified below:

- (a) **"Bridge"** means the Burrard Street Bridge situate on, under and over the Lands and includes by way of example only and without limitation, the Footings/Underground Components, the footings, pillars, deck, platform, telecommunications systems, electrical systems, energy systems, sewer systems, water systems, drainage systems, railings, fencing, lighting, signage, traffic control devices, retaining walls, and all other improvements constructed or installed by or on behalf of the City as part of or ancillary to such bridge, including for further certainty any and all telecommunications systems, electrical systems, or energy systems permitted to be attached to or operated within the Bridge/Street/Utilities Access Areas by the City from time to time or at any time;
- (b) **"Bridge/Street/Utilities Access Areas"** means those parts of the Reserve consisting of:
 - (i) the areas underneath the Bridge;
 - (ii) the 3 metre wide area running parallel and immediately adjacent to the outermost edge (sometimes referred to as the "dripline") of each side of the Bridge;
 - (iii) all other areas occupied by the Bridge/Street/Utilities Assets; and
 - (iv) a 1.5 metre area adjacent to each side of the Bridge/Street/Utilities Assets (other than the Bridge),

all as shown on the plan attached as Appendix K.1 [Bridge/Street/Utilities Access Areas];

- (c) **"Bridge/Street/Utilities Assets"** means the Bridge, Streets and Utilities located within the Bridge/Street/Utilities Access Areas as shown on Appendix K.1 [Bridge/Street/Utilities Access Areas] as well as any underground utilities which

are inadvertently not shown on Appendix K.1 [Bridge/Street/Utilities Access Areas] but which were installed by the City or by any third party provider of telecommunications systems, electrical systems, or energy systems with the City's licence or consent and are needed by the City to provide municipal services or Municipal Services or are needed by any third party providers of telecommunications systems, electrical systems, or energy systems to provide their telecommunications, electrical or energy services;

- (d) **"Business Day"** means any day that is not a Saturday, Sunday, or "holiday" as that term is defined in the *Interpretation Act* (British Columbia);
- (e) **"City Access"** means the access to or use of the Bridge/Street/Utilities Access Areas and adjacent areas where permitted pursuant to this Schedule K;
- (f) **"City Engineer"** means the City's City Engineer (or designate), who will be the principal daily working contact for the City regarding access, timing, working limits and safety issues under this Schedule K, as may be appointed by the City from time to time as set out from time to time in the Municipal Services Coordination Guide;
- (g) **"City Facilities"** means all public transportation systems (pedestrian and motorized and non-motorized vehicle, whether motor vehicle, bicycle, wheelchair or other), all sewer, water, solid waste, drainage, telecommunications and energy systems, security systems, lighting systems, and all other improvements, structures and facilities now or in future constructed, erected or placed on, under, over, or adjacent to the Reserve or within the Underground Support Areas, by or on behalf of the City for the purposes of or related in any way to its City Transportation Operations, and for certainty includes the Bridge/Street/Utilities Assets;
- (h) **"City Personnel"** means the Personnel for whom the City is at law responsible;
- (i) **"City Safety Requirements"** means the City's standard safety requirements for working in and around City Facilities, as set out in City by-laws or as published from time to time by the City, and as such may be supplemented, replaced or updated from time to time;
- (j) **"City Transportation Operations"** means all operations and business now and in future carried on by the City on lands adjacent to the Bridge/Street/Utilities Access Areas and on and over the Bridge/Street/Utilities Access Areas (including under the Bridge/Street/Utilities Access Areas where City Access to the Footings is required) in respect to City Facilities (including without limitation the Bridge/Street/Utilities Assets and Fibre Optic Operations);
- (k) **"Claims"** does not mean "Legal Rights/Claims" as that term is used in Recital K.2 above but instead means all claims, liabilities, demands, suits, proceedings, judgments, decrees and awards of any and every nature whatsoever including, but not limited to, those:
 - (i) arising out of or relating to harms, injuries, damages, death or destruction of or to person, property (including a Party's works or facilities), or

- business, or arising out of or relating to any violation of (or failure to comply with) any applicable law;
- (ii) arising out of all theories of relief recognized at law or in equity (including, but not limited to, theories of relief that impose liability without proof of fault or negligence);
 - (iii) arising out of or related to or based on all losses, damages (including, without limitation, business losses, punitive and exemplary damages and awards of legal counsel's fees), environmental costs and damages (including investigation and remediation expenses, removal costs, and natural resource damages), expenses (including reasonable legal counsel's fees), costs, penalties, forfeitures and fines; and
 - (iv) awards made under any law respecting industrial accidents and occupational diseases or similar legislation, actions and proceedings;
- (l) **"Consent"** has the meaning set out in Section 1.2;
 - (m) **"Deck"** means the surfaces of the Bridge and Streets intended for vehicular, pedestrian and cycling traffic;
 - (n) **"Defaulter"** has the meaning set out in Section 17.1 [Default];
 - (o) **"Electrical Interference"** means Interference by electric currents that Interferes with, endangers, impedes or disturbs the construction, development or use of Fibre Optic Operations, except that where (i) the source of the electrical interference is not caused by the Nation nor Nation Personnel or (ii) such source does not emanate from the Reserve, then such electrical interference is conclusively deemed not to be "Interference" or "Electrical Interference" for the purposes of this Schedule K and will not be governed by this Schedule K (provided that, for certainty, the City retains all rights and remedies it may have outside of this Schedule K respecting same);
 - (p) **"Emergency Situation"** means with respect to the Reserve, any situation where there is a real or reasonably apprehended serious threat or danger to the public, the Nation Personnel, City Personnel, or Bridge/Street/Utilities Assets, or that causes an immediate and serious threat or danger to City Transportation Operations;
 - (q) **"Encumbrance"** has the meaning set out in Section 10.1(f);
 - (r) **"Environmental Contamination"** means any Pollutant or combination of Pollutant, which is now or later prohibited, controlled or regulated under Environmental Laws, and which exceeds the legal limits permitted under Environmental Laws;
 - (s) **"Environmental Laws"** means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, criteria, permits, codes of practice and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Reserve in force with respect,

in any way, to the environment, environmental assessment, health or occupational health and safety, including with respect, in any way, to the protection of people, plants, animals, natural ecosystems and the natural environment (including in the context of the development of land, workplace safety and otherwise) or transportation of dangerous goods, including the principles of common law and equity, and including all applicable guidelines and standards with respect to the above as adopted by any of those governmental authorities from time to time;

- (t) **“Fibre Optic Operations”** means the installation, construction, operation, maintenance, repair, renewal, replacement and removal of a fibre optics or other comparable communication system by the City or a third party or Parties having permission from the City, including, without limitation, all cables, strands, conduits, electronic equipment, structures housing or sheltering electronic equipment, batteries and other hardware and facilities for the provision of electricity or other utilities used in connection with such system and all other equipment and facilities required for any of the above;
- (u) **“Flagperson”** means any Nation Personnel stationed on the Reserve to control the Major City Work with respect to potential interaction with Seḥákw Operations;
- (v) **“Footings/Underground Components”** means all sub-surface components of the Bridge/Street/Utilities Assets, but for further certainty includes (subject to Section 6.2(b)) any and all replacements, reconstructions, modifications, and all other current and future elements of such Footings/Underground Components as are expressly permitted by this Schedule K;
- (w) **“Interfere”** means:
 - (i) with respect to Seḥákw Facilities or Seḥákw Operations, any one or more of the following:
 - (A) interfere with, endanger, impede or disturb the construction, development or use of any Seḥákw Facilities or Seḥákw Operations;
 - (B) otherwise interfere with, impede or disturb pedestrian and vehicular access to any of the Seḥákw Facilities or Seḥákw Operations, or fail to accommodate such access, where such access is permitted by this Schedule K;
 - (C) endanger or disturb any utilities or facilities constructed or installed in, on or under the Reserve, including any right-of-way, easement or agreement whether registered or unregistered granted by the Nation to a third party following the Effective Date, provided such grant has been made in compliance with this Schedule K;
 - (D) interfering with or impeding the exercise of the rights granted by any such right-of-way, easement or agreement referred to in subparagraph 1.1(w)(i)(C) above (provided same has been granted in compliance with this Schedule K) or doing any work or operating otherwise than in accordance with same;

- (ii) with respect to the Bridge/Street/Utilities Assets, City Access or the Major City Work, any one or more of the following:
 - (A) interfere with, endanger, impede, or disturb the City Transportation Operations or City Facilities where such operations and facilities are permitted by this Schedule K;
 - (B) otherwise interfere with, endanger, impede or disturb the construction, development or use of the Bridge/Street/Utilities Assets where such construction, development or use is permitted by this Schedule K;
 - (C) otherwise interfere with, impede or disturb pedestrian, cyclist, and vehicular access to the Bridge and Streets, or fail to accommodate such access, where such access is permitted by this Schedule K;
 - (D) otherwise interfere with, impede or disturb City Access to perform Major City Work where same has been (or is required by this Schedule K to have been) approved by the Nation pursuant to this Schedule K;
- (iii) provided always that Interfere is deemed to exclude anything done or not done by the City, City Personnel, the Nation or the Nation Personnel:
 - (A) during an Emergency Situation; or
 - (B) in accordance with Article 7.0 [Balancing City's and Nation's Use of the Reserve],

and "**Interference**" has a corresponding meaning;

- (x) "**Insured**" has the meaning set out in Section 16.1 [Insurance];
- (y) "**Legal Rights**" has the meaning set out in Recital K.2;
- (z) "**Main Agreement**" has the meaning set out in the Services Agreement;
- (aa) "**Major City Work**" means the activities reasonably necessary for the City to carry out the non-routine or major capital repair or replacement work components of its City Transportation Operations on the Bridge/Street/Utilities Assets, including by way of example only, and without limitation, the non-routine repair, and reconstruction or replacement of the Bridge/Street/Utilities Assets which are considered reasonably necessary, in the City's sole discretion, from time to time, but expressly excludes routine items such as those referenced in Section 4.2(d);
- (bb) "**Nation Personnel**" means the Personnel for whom the Nation is at law responsible;
- (cc) "**Nation Representative**" means the Nation's representative (or designate) as set out from time to time in the Municipal Services Coordination Guide, who will be the principal daily working contact for the City regarding access, timing, working limits

and safety issues under this Schedule K, as may be appointed by the Nation from time to time;

- (dd) **“Nation Safety Requirements”** means the Nation’s Minimum Safety Requirements, as such may be incorporated into the Municipal Services Coordination Guide and otherwise supplemented, replaced or updated from time to time;
- (ee) **“Notice”** has the meaning set out in Section 7.2(c) for the purposes of Section 7.2 [Requirements to Access], but otherwise has its ordinary meaning when used elsewhere in this Schedule K;
- (ff) **“Other”** has the meaning set out in Section 16.1 [Insurance] for the purposes of that Section, but otherwise has its ordinary meaning when used elsewhere in this Schedule K;
- (gg) **“Other Facilities”** has the meaning set out in Section 6.4 [The Nation Permitted to Grant Other Interests];
- (hh) **“Other Parties”** has the meaning set out in Section 6.3 [The Nation not to Grant Certain Interests];
- (ii) **“Party”** has the meaning set out in Section 7.3 [Liability for Emergency Situations] for the purposes of that Section, but otherwise has the meaning set out in the Main Agreement when used elsewhere in this Schedule K;
- (jj) **“Personnel”** means officials, employees, contractors, subcontractors, agents, licensees, invitees, and permittees (but excludes members of the public except where expressly stated in this Schedule K);
- (kk) **“Pollutant”** means any substance which is capable of causing pollution or contamination to air, land, water and ground water and includes, without limitation, explosives, radioactive materials, contaminants, deleterious substances, underground or above-ground tanks, lead, asbestos, asbestos-containing materials, hazardous, corrosive or toxic substances, hazardous waste, special waste, waste (as defined in the *Environmental Management Act* (British Columbia)), polychlorinated biphenyls (**“PCBs”**), PCB-containing equipment or materials, pesticides, defoliants, fungi, including mould and spores arising from fungi, or any other solid, liquid, gas, vapour, odour, heat, sound, vibration, radiation, or combination of any of them;
- (ll) **“Proposed Work”** has the meaning set out in Section 11.1(h);
- (mm) **“Reconstruction Notice”** has the meaning set out in Section 7.2(d);
- (nn) **“Reply”** has the meaning set out in Section 7.2(c)(i) for the purposes of Section 7.2 [Requirements to Access] but otherwise has its ordinary meaning when used elsewhere in this Schedule K;
- (oo) **“Señákw Facilities”** means all improvements, structures and facilities now or later constructed, erected or placed on the Reserve (but only those parts of the Reserve

outside of the Bridge/Street/Utilities Areas), by or on behalf of the Nation for the purposes of or related in any way to its Seḥákw Operations, and for certainty includes Nation Infrastructure;

- (pp) **“Seḥákw Operations”** means all operations and business now and in future carried on by the Nation upon, about or under the Reserve, but does not include the Nation’s operations or activities within the Bridge/Street/Utilities Access Areas;
- (qq) **“Seḥákw Safety Rules”** means the laws, regulations, directives, rules, and other legally binding requirements imposed by the Nation from time to time respecting the protection of the life and safety of residents and users of the Lands, all as amended and replaced from time to time but excludes the Nation Safety Requirements;
- (rr) **“Services Agreement”** means the Main Agreement, plus all of the Schedules to the Main Agreement with the exception of this Schedule K;
- (ss) **“Streets”** means the streets included in the description of Bridge/Street/Utilities and which are situate on, under and over the Lands and includes by way of example only and without limitation, the Footings/Underground Components, the surfaces and sub-surface components, the telecommunications systems, electrical systems, energy systems, sewer systems, water systems, drainage systems, railings, fencing, lighting, signage, traffic control devices, retaining walls, and all other improvements constructed or installed by or on behalf of the City as part of or ancillary to such streets, including for further certainty any and all third party telecommunications systems, electrical systems, or energy systems permitted to be attached to or operated within the Bridge/Street/Utilities Access Areas by the City from time to time or at any time;
- (tt) **“Underground Support Areas”** means those parts of the Reserve, which bear the weight of and provide the necessary bearing and seismic support for the Footings/Underground Components; and
- (uu) **“Utilities”** means the utilities included in the description of Bridge/Street/Utilities and which are situate on, under and over the Lands and includes by way of example only and without limitation, the conduits, pipes, valves, chambers, poles, and other components of such utilities, whether such utilities are telecommunications systems, electrical systems, energy systems, sewer systems, water systems, drainage systems, and all other improvements constructed or installed by or on behalf of the City as part of or ancillary to such utilities, including for further certainty any and all third party telecommunications systems, electrical systems, or energy systems permitted to be attached to or operated within the Bridge/Street/Utilities Access Areas by the City from time to time or at any time;

1.2 Wherever in this Schedule K the Nation gives its consent (**“Consent”**) to specific works or activities of the City with respect to the Bridge/Street/Utilities Assets, such Consent shall be interpreted to mean that, irrevocably during the Term, the Nation:

- (a) gives its consent, approval, and support to such works and activities; and
- (b) does not object to and will not Interfere with such works and activities.

ARTICLE 2 UNDERGROUND SUPPORT AREAS

2.1 Consent to Access

The Nation Consents to City's continuing use of the Underground Support Areas (within the limits of the Underground Support Areas) for the purposes described in Section 2.2 [Access Purposes] and on the terms and conditions contained in this Schedule K.

2.2 Access Purposes

The Nation Consents to the City and City's Personnel installing, constructing, placing, maintaining, reducing, renewing, replacing, altering, demolishing, removing, abandoning, and/or using the Footings/Underground Components in, on, over or under the Underground Support Areas, in order to:

- (a) support the Footings/Underground Components; and
- (b) cover and keep covered the Footings/Underground Components with soil or other fill or structural material,

subject to the terms of this Schedule K.

ARTICLE 3 BRIDGE/STREET/UTILITIES ASSETS

3.1 Consent

The Nation Consents to the City's and City's Personnel's continuing use of the Deck Area (within the limits of the Bridge/Street/Utilities Access Areas) for the purposes described in Section 3.2 [Access Purposes].

3.2 Access purposes

During the Term, the Nation Consents to the City and City's Personnel installing, constructing, placing, maintaining, reducing, renewing, replacing, altering, demolishing, removing, and/or using the Bridge/Street/Utilities Assets in, on or over the Bridge/Street/Utilities Access Areas, subject to the terms of this Schedule K.

ARTICLE 4 PUBLIC ACCESS RIGHT OF WAY

4.1 Consent

Despite any term of this Schedule K to the contrary, the Nation Consents to the City and City Personnel (including members of the public if and for so long and on such conditions as the City may allow) entering, going, being on, returning, passing, and repassing on and over the Bridge/Street/Utilities Assets at any time and at all times for the purposes described in Section 4.2 [Access Purposes], including access:

- (a) on foot;

- (b) on bicycle, skateboard, or similar device provided same is permitted by City by-law;
- (c) in wheelchairs or similar devices which afford mobility to injured or disabled pedestrians;
- (d) using baby carriages, children's strollers, or similar devices which afford mobility to young pedestrians and their parents/guardians; and
- (e) in motorized or non-motorized vehicles and machines and with or without materials, equipment, supplies and tools.

4.2 Access Purposes

The purpose of Section 4.1 [Consent] is to provide:

- (a) access to, from, and across the Bridge;
- (b) access to, from, and across the Streets;
- (c) use of the Bridge and Streets for rest and relaxation;
- (d) routine maintenance of the Bridge/Street/Utilities Assets such as inspection, testing, cleaning, lawn cutting, light bulb replacements, and any other routine or minor repairs not requiring Major City Work; and
- (e) the right to undertake any Major City Work that takes place wholly on or accessed from the Bridge or Streets without a requirement to access the lands below the Bridge or from outside of the Streets even if such lands are within the Bridge/Street/Utilities Access Areas.

ARTICLE 5 MAJOR WORKS

5.1 Consent

During the Term, the Nation Consents to the City and City Personnel (excluding members of the public) entering, going, being on, returning, passing, and repassing on and over (within the limits of the Bridge/Street/Utilities Access Areas) for the purposes described in Section 5.2 [Access Purposes] subject to the terms and conditions of this Schedule K:

- (a) on foot, and with or without materials, equipment, supplies and tools; or
- (b) in motorized or non-motorized vehicles and machines and with or without materials, equipment, supplies and tools.

5.2 Access Purposes

During the Term, the Nation Consents to the City and City Personnel:

- (a) entering the Bridge/Street/Utilities Access Areas, crossing over them, exiting them, and using them for the Major City Work;

- (b) bringing City Personnel, vehicles, machinery, equipment, tools, and supplies on to the Bridge/Street/Utilities Access Areas, and use them for the Major City Work;
- (c) carrying out Major City Work within the Bridge/Street/Utilities Access Areas; and
- (d) doing anything else on, over, or under the Bridge/Street/Utilities Access Areas and such adjacent areas as are reasonably required by the City and City Personnel to carry out the Major City Work that the City considers necessary or desirable in connection with the Major City Work as may be deemed necessary or expedient by the City or City Personnel,

subject to the terms of this Schedule K and for no other purposes without the written consent of the Nation which may be arbitrarily withheld.

ARTICLE 6 GENERAL TERMS OF ACCESS

6.1 No City Obligation

Nothing in Article 2 [Underground Support Areas] through Article 5 [Major Works] implies that the City has any obligation to the Nation or to anyone else to do the things described in Article 2 [Underground Support Areas] through Article 5 [Major Works], except as otherwise expressly provided for elsewhere in this Schedule K.

6.2 Alterations to Footings/Underground Components

During the Term, the Nation Consents to the City and City Personnel making any and all replacements, reconstructions, and modifications of the Footings/Underground Components within the Underground Support Areas as are from time to time and at any time considered necessary or advisable by the City Engineer, in the City Engineer's sole discretion:

- (a) without the consent of the Nation if such replacements, reconstructions, or modifications, are substantially similar to the Footings/Underground Components existing as of the Effective Date; or
- (b) with the consent of the Nation if such replacements, reconstructions, or modifications, are not substantially similar to the Footings/Underground Components existing as of the Effective Date, such consent not to be unreasonably withheld or delayed.

6.3 The Nation not to Grant Certain Interests

Without limiting the generality of Article 2 [Underground Support Areas] through Article 5 [Major Works], and despite any other term of this Schedule K, the Nation will not access or make use of the Bridge/Street/Utilities Areas nor grant to any person, firm or corporation ("**Other Parties**") or consent to the granting of:

- (a) an easement or statutory right of way over the Bridge/Street/Utilities Access Areas;
or

(b) any other interest in land or licence over the Bridge/Street/Utilities Access Areas, which would or could reasonably be expected to permanently or materially Interfere with the Footings/Underground Components, Bridge/Street/Utilities Assets, City Access or Major City Work, without the prior written consent of the City, such consent not to be unreasonably withheld.

6.4 The Nation Permitted to Grant Other Interests

Subject to Section 6.3, [The Nation not to Grant Certain Interests] the Nation may grant licences, tenures or other interests to Other Parties, or consent to their being granted to Other Parties that would allow for the temporary or permanent right to construct, install, inspect, maintain, improve, replace and re-locate utilities and facilities, including, but not limited to, power lines, telephone lines, drains, sewers, pipes, fibre optic cables, ducts, and subsurface structures (the “**Other Facilities**”).

ARTICLE 7 BALANCING CITY’S AND NATION’S USES OF THE RESERVE

7.1 Priority of Seḥákw Operations

Subject to Section 7.2 [Requirements to Access], in respect of an Emergency Situation and the Nation’s obligations not to object to or Interfere with the things described in Article 2 [Underground Support Areas] through Article 5 [Major Works], the City acknowledges and agrees that use of the Reserve for the Seḥákw Facilities and the safe, continuous, uninterrupted and unhindered Seḥákw Operations are paramount and will take priority (but only with respect to those parts of the Reserve outside of the Bridge/Street/Utilities Access Areas) at all times over the City Access and the Major City Work except to accommodate, as provided in this Schedule K, City Access for Major City Work, and except in an Emergency Situation. The City agrees that City Access shall be non-exclusive for such purposes.

7.2 Requirements to Access

The City and its Personnel will only be permitted City Access on compliance with the following:

- (a) in an Emergency Situation where immediate access to the Bridge/Street/Utilities Access Areas or adjacent areas is required for the City to respond, City Personnel are entitled to pass and repass, on foot or with or without vehicles and equipment, in, upon, and adjacent to the Bridge/Street/Utilities Access Areas, subject only to a requirement that if reasonably possible, prior to or concurrently with commencing City Access, the City will notify the Nation as provided in Section 7.4 [Notice of Emergency Situation] of the fact and location of the Emergency Situation and that access to the areas adjacent to the Bridge/Street/Utilities Access Areas in that location is or will be in progress and where the City is not able to provide notification prior to or concurrently with City Access, notification to the Nation will be provided as soon as is possible;

- (b) the City and the Nation will cooperate and coordinate compliance with any security protocols, if any, as amended or replaced from time to time in the Municipal Services Coordination Guide;
- (c) subject to Section 7.2(d), prior to conducting Major City Work other than an Emergency Situation (and other than the work described in Article 4 [Public Access Right of Way]), the City will provide at least 10 Business Days' written notice ("**Notice**") to the Nation in advance of each upcoming sequence of Major City Work, describing the reason for Major City Work, the time(s) for which City Access is required, the location(s) within the Bridge/Street/Utilities Access Areas to be accessed, any applicable City Safety Requirements, and:
 - (i) if the Nation can accommodate the City Access described in the Notice without adjusting normal Sehákw Operations (which will be the case where City Access is not required to any area outside of the Bridge/Street/Utilities Areas), the Nation will approve the City Access by written reply ("**Reply**") and (if requested by the Nation) of the required meeting place and time where the Nation Representative will be available to provide and supervise the requested City Access which Reply the Nation will use reasonable efforts to deliver within 10 Business Days of the Nation's receipt of the Notice; and
 - (ii) if the City Access described in the Notice cannot be accommodated without, as determined by the Nation in its sole discretion, unreasonable disruption to normal Sehákw Operations, the Nation will by Reply advise the City of its determination within 10 Business Days of the Nation's receipt of the Notice. As soon as reasonably practicable after delivering such Reply, the Nation will meet with the City and, acting reasonably and in good faith, the City and the Nation will determine an alternate date and time when the requested City Access can be provided, which alternate date and time shall be within 6 calendar months of the requested time given in the Notice. The Nation will then deliver a Reply notifying the City of its approval of the City Access on the alternate date and time and (if requested by the Nation) of the required meeting place and time where the Nation Representative will be available to provide and supervise the requested City Access;
- (d) notwithstanding Section 7.2(c), if the City requires City Access for purposes of the reconstruction, replacement, or rehabilitation of the Bridge/Street/Utilities Assets other than in an Emergency Situation, the City will provide a written notice (a "**Reconstruction Notice**") to the Nation at least two months in advance of the date when the City intends to commence Major City Work in connection with such reconstruction, replacement, or rehabilitation, describing the nature of the reconstruction, replacement, or rehabilitation, a proposed schedule for the time(s) when City Access is required for such Major City Work, the location(s) within the Bridge/Street/Utilities Access Areas to be accessed and any supplemental City Safety Requirements in connection with such reconstruction, replacement, or rehabilitation. As soon as reasonably practicable after delivery of such Reconstruction Notice, the Nation will meet with the City and, acting reasonably and in good faith, the City and the Nation will determine an agreed upon time or times when City Access will be made available for Major City Work in connection with such reconstruction, replacement, or rehabilitation. Upon agreeing to such

schedule, the Nation will notify the City of the applicable the Nation Safety Requirements, if any, for the agreed City Access;

- (e) the Nation will work with the City pursuant to Section 7.2(f) below and Section 7.2(b), Section 7.2(c), and Section 7.2(d) above, to co-ordinate City Access and the Major City Work in such a manner that, despite any other term of this Schedule K, minimizes impact on Señákw Operations and minimizes the City's costs of carrying out the Major City Work, including minimization of the City's responsibility for the Nation's expenses under Section 7.2(j);
- (f) in addition to the process outlined in Section 7.2(a) through 7.2(e) above, the City and the Nation will cooperate with each other and so will meet and consult with the Nation Representative and each other from time to time and at any time upon the reasonable request of the other regarding the details, schedules and methodologies of the City Access and the Major City Work so as to establish minimum safe working limits, location boundaries, timing, flag-protection requirements, safety procedures, contact requirements and other access and use related procedures and practices, and the Parties will keep each other advised as to their mutual progress in carrying out or accommodating, as applicable, the Major City Work as directed by the Nation Representative;
- (g) where the Major City Work involves the use of any area outside of the Bridge/Street/Utilities Access Areas, and the City Engineer has not already provided same, the Nation Representative in their sole discretion may require a Flagperson or Flagpersons be present to provide flag protection against pedestrians, vehicular traffic, cyclists or other Señákw Operations or Señákw Facilities, and the cost of the Flagperson and applicable overheads and expenses shall be at the cost and expense of the City determined in accordance with Section 7.2(j) below;
- (h) any failure of the City to follow the Señákw Safety Rules, the Nation Safety Requirements, and other applicable laws and regulations and all directions and mandates of the Nation, will be grounds for immediate suspension of that aspect of the City Access or Major City Work which fails to comply and in such event the City will immediately suspend that aspect until the failure or breach has been rectified;
- (i) the City shall, in addition to complying with the other provisions of this Schedule K, comply with the Nation's Safety Rules, and Nation Safety Requirements, if any, as amended or replaced from time to time with written notice to the City (and which will be included in or attached to the Municipal Services Coordination Guide);
- (j) any work of supporting Señákw Operations or of protecting Señákw Facilities made necessary by the City Access or the Major City Work, including flagging, inspection and monitoring work, will be performed by the Nation and the City shall pay to the Nation the cost of that work on the basis of the Nation's actual costs of staff, consultants and resources (internal and external), materials used, materials ordered, and any amounts payable pursuant to any contracts entered into on reasonable commercial terms with arms' length independent contractors or suppliers required with respect to the subject matter of this Schedule K, and internal overheads, with all such rates to be determined by the Nation, acting

reasonably and having regard to industry standards, within thirty (30) days of receipt of a detailed statement setting out such costs, provided however that cost recovery under this Section 7.2(j) will not include any consequential or business losses; and

- (k) any costs incurred by the Nation in providing the requested access will be limited to those described in Section 7.2(j) and will be paid to the Nation by the City within thirty (30) days of receipt of a detailed statement setting out such costs.

7.3 Liability for Emergency Situations

During an Emergency Situation, neither party (“**Party**”) will be liable for any Claims incurred by the other which, but for the Emergency Situation, would not have been incurred, except where but then only to the extent that the Emergency Situation has been caused or contributed to by the acts or omissions of the Party or Party’s Personnel.

7.4 Notice of Emergency Situation

In the event that either Party becomes aware of an Emergency Situation in or around the Bridge/Street/Utilities Access Areas, such Party will notify the other at the emergency contacts for same set out in the Municipal Services Coordination Guide.

ARTICLE 8 TERM

8.1 Term

This Schedule K will be in effect as and from the Effective Date as defined in the Services Agreement and will stay in effect for as long as the Services Agreement is in effect.

ARTICLE 9 FEES AND TAXES

9.1 City to Receive Credit/Grant/Waiver

The City will receive a credit, grant or waiver for any and all taxes, fees, levies, charges, or other amounts which are or may be levied by the Nation against the Bridge/Street/Utilities Assets or the City Infrastructure from time to time.

9.2 Net Agreement

Subject always to the terms of this Schedule K which set out the Nation’s obligations and liabilities, including by way of example only and without limitation, Article 6 [General Terms of Access], Article 7 [Balancing City’s and Nation’s Uses of the Reserve], Article 9 [Fees and Taxes], Article 11 [Nation’s General Obligations], Article 14 [Environment], Article 15 [Liability and Indemnification], and Article 16 [Insurance] and subject always to the City’s rights to damages and compensation for any breach of the City’s rights under this Schedule K by the Nation, the City acknowledges and agrees that it is intended that this Schedule K will be a completely carefree net agreement for the Nation and that the Nation will not be responsible for any City related costs, charges, expenses and outlays of any

nature whatsoever, in respect of the Bridge/Street/Utilities Assets, City Access and Major City Work.

ARTICLE 10 CITY'S GENERAL OBLIGATIONS

10.1 City Covenants

The City covenants that it will:

- (a) maintain the Bridge/Street/Utilities Assets so as to keep the Footings/Underground Components and all other components in a safe condition and in good repair at all times;
- (b) comply with the safety requirements of the Nation Representative in respect of the City Access and carrying out the Major City Work and not hold the Nation responsible for any delays or charges to the Major City Work as a result;
- (c) carry out the Major City Work so as not to Interfere with Seḥákw Operations, Other Parties, Other Facilities, drainage and/or slope stability of the Reserve (including the Bridge/Street/Utilities Access Areas);
- (d) during City Access and Major City Work, keep, repair and maintain at its cost and expense the area of the City Access in good order and condition so as not to Interfere with Seḥákw Operations and to do all repairs in all respects in a good and workmanlike manner and to maintain and leave same in a clean and tidy condition and free from any waste or debris;
- (e) not do, cause, suffer or permit in the exercise of its rights under this Schedule K, any act, omission or neglect which may in any manner, directly or indirectly, cause injury or damage or Interference with or to the Seḥákw Facilities, or which may be or become a nuisance to any of the other users of the Reserve;
- (f) not suffer or permit any charge or encumbrance, including any claim of builder's lien (any such charge or encumbrance, an "**Encumbrance**") to be filed or registered against the title to the Reserve (including the Bridge/Street/Utilities Access Areas) by reason of any City Access or Major City Work and if such an Encumbrance is at any time filed against the Reserve, the City will cause the same to be discharged within 20 Business Days after the date the City first has knowledge of such filing provided that if the City fails to discharge such Encumbrance within such period, then, in addition to any other right or remedy of the Nation, the Nation may, but is not obligated to, discharge such Encumbrance either by paying the amount claimed to be due, or by deposit in court or by bonding, and in any such event the City will promptly pay the Nation such amount as additional fees provided that the City will not be required to pay or discharge any such Encumbrance if it gives notice in writing to the Nation of its intent and does in good faith proceed to contest the same by appropriate proceedings;
- (g) notify the Nation promptly upon becoming aware of any damage, nuisance, malfunction or obstruction occasioned in, on, to or affecting the Reserve (including the Bridge/Street/Utilities Access Areas);

- (h) to the extent engaged by City Access and the Major City Work:
 - (i) to observe and fully comply with:
 - (A) the Nation Safety Requirements; and
 - (B) any and all written orders from time to time made by any lawful authority concerning the City's use of, or operations on or in the vicinity of the Reserve (including the Bridge/Street/Utilities Access Areas);
 - (ii) not to permit any material to be placed on the Reserve (including the Bridge/Street/Utilities Access Areas) in violation of any laws, bylaws, rules, regulations and orders of every lawful authority in force during the term of this Schedule K (provided always that (but only with respect to the Bridge/Street/Utilities Areas) in the event of any inconsistency between laws of general application (both on and off Reserve) and any laws enacted by the Nation, the former will be deemed to supersede and govern over the latter); and
 - (iii) to ensure observance and full compliance with any and all laws, bylaws, rules, regulations and orders of every lawful authority in force during the term of this Schedule K by the City and City Personnel (provided always that (but only with respect to the Bridge/Street/Utilities Areas) in the event of any inconsistency between laws of general application (both on and off Reserve) and any laws enacted by the Nation, the former will be deemed to supersede and govern over the latter);
- (i) obtain all approvals, consents, permits and licenses from any authority having jurisdiction, excluding the Nation, and required to make the use of the Bridge/Street/Utilities Access Areas as contemplated by this Schedule K;
- (j) promptly and at its own expense, observe and comply with all laws, bylaws, ordinances, regulations of every lawful authority in force which are applicable to the use of the Bridge/Street/Utilities Access Areas by the City, and all requirements, recommendations, orders and notices in pursuance of same, whether obligations arising under them are imposed on the City or the Nation or otherwise (provided always that (but only with respect to the Bridge/Street/Utilities Areas) in the event of any inconsistency between laws of general application (both on and off Reserve) and any laws enacted by the Nation, the former will be deemed to supersede and govern over the latter);
- (k) not keep or store or permit to be kept or stored in or upon the Bridge/Street/Utilities Access Areas any Pollutants, except during an Emergency Situation and except where reasonably required for Major City Work (but then only on a daily basis and only if they are removed from the Bridge/Street/Utilities Access Area at the end of each work day and not stored overnight or unattended on the Bridge/Street/Utilities Access Areas);
- (l) at its cost and expense, and in a manner that does not Interfere with Seňák Operations, perform any snow removal or clearing (but only where required for City

Access or Major City Work or where performed as part of the City's general snow clearing activities and no snow clearing for the Nation's benefit is implied by this covenant);

- (m) during the course of Major City Work, immediately give written notice to the Nation of any event on or affecting the Reserve (including the Bridge/Street/Utilities Access Areas or any adjacent area being used by the City pursuant to this Schedule K) as a result of the activities of the City or City Personnel, that constitutes an offence under or which is reportable under or results in a breach of any Environmental Laws, or results in a release of a Pollutant on the Reserve, or is an Archaeological Discovery (in which case it shall be dealt with in accordance with Article 15.0 [Archaeological Protocols/Discoveries] of the Services Agreement;
- (n) upon the completion any of the Major City Work:
 - (i) remove all material placed or stored on the Bridge/Street/Utilities Access Areas by the City or City Personnel; and
 - (ii) fill, compact, repair and restore the sub-surface and surface of the Bridge/Street/Utilities Access Areas to the same condition as at the commencement of the Major City Work in so far as reasonably practicable, to the satisfaction of the Nation acting reasonably;
- (o) not carry out any overnight or unattended storage of fuel tanks on the Bridge/Street/Utilities Access Areas; and
- (p) ensure that, in respect to City Access or Major City Work, no members of the public are permitted by the City or City Personnel to enter the Bridge/Street/Utilities Access Areas (save and except the Deck Area) without the express prior written consent of the Nation.

- 10.2 The phrase, "(provided always that (but only with respect to the Bridge/Street/Utilities Areas) in the event of any inconsistency between laws of general application (both on and off Reserve) and any laws enacted by the Nation, the former will be deemed to supersede and govern over the latter)", means that despite any other term of this Schedule K, the Nation will either elect not to enforce the applicable inconsistent aspect of Nation law, or, if it deems the enforcement of such inconsistency in laws to be necessary, the Nation will fully indemnify the City for all Claims resulting directly or indirectly by the City against the Nation as a result of having to comply with such inconsistent aspect of Nation laws.

ARTICLE 11 NATION'S GENERAL OBLIGATIONS

11.1 Nation Covenants

The Nation covenants that it will:

- (a) not construct any above-ground temporary or permanent buildings, structures or improvements within 3 metres of the Bridge/Street/Utilities Assets or that would prevent access to the Bridge/Street/Utilities Access Areas;
- (b) not attach or affix anything to the Bridge/Street/Utilities Assets without first entering into a mutually acceptable amendment to this Schedule K which clearly allocates financial, legal, and operational responsibility for same;
- (c) not Interfere with the bearing capacity or seismic stability of the Footings/Underground Components;
- (d) not Interfere with the Footings/Underground Components including avoiding the drawdown of the water table near Footings/Underground Components through dewatering or other pumping of groundwater;
- (e) where the City Engineer determines that the Nation is able to install any below-ground Proposed Work within 3 metres of the Footings/Underground Components without contravening Section 11.1 (c) and (d) above, the Nation will ensure that such Proposed Work, upon completion, will not Interfere with the Consents given under this Schedule K with respect to the City's above-ground access to and use of the Bridge/Street/Utilities Access Areas, including by way of example only and without limitation, avoiding Interference caused by the Proposed Work having less weight-bearing capacity than the soils around the Footings/Underground Components as at the Effective Date such that the City's heavy machinery can no longer safely or effectively pass over such below-ground Proposed Work;
- (f) not Interfere with City Access or Major City Work being carried out in accordance with this Schedule K;
- (g) except for matters required to be carried out by the City as part of its obligations under this Schedule K or as part of the Municipal Services under the Services Agreement, keep, repair and maintain at its cost and expense the Bridge/Street/Utilities Access Areas (excluding the Footings/Underground Components, but expressly including all areas under and around the underside of the Bridge Deck) in good order, condition and repair to at least the standard the Nation applies to the balance of the Reserve outside of the Bridge/Street/Utilities Access Areas; and
- (h) promptly upon deciding to undertake any work ("**Proposed Work**") of any kind in, around or beneath the Bridge/Street/Utilities Access Areas, the Nation will provide the City with reasonable particulars of what is planned and then work cooperatively with the City to ensure that the City Engineer is kept apprised of the Nation's plans and that all conceptual designs, detailed designs, construction drawings and specifications of the Proposed Work are provided to and commented on by the City Engineer and that where the City Engineer determines that external professional bridge engineering or geo-technical or other advice is reasonably required to assess the possible impact of the Proposed Works on the Bridge/Street/Utilities Assets, the Nation will reimburse the City for all costs reasonably incurred by the City in reviewing, retaining external professional advice, and otherwise assessing and determining whether or not and if so how to mitigate and assist the Nation to be permitted to undertake the Proposed Works. In this

regard, the Nation will not undertake any Proposed Works which would or could Interfere with the Bridge/Street/Utilities Assets unless and until the City Engineer has been reimbursed all of the costs of assisting the Nation with the above noted process of reviewing, commenting on and determining whether or not and if so how best to carry out the final design and construction of the Proposed Works, and based on such process has provided the City Engineer's consent to same, such consent not to be unreasonably withheld, delayed or conditioned. By way of example only and without limitation of what City-Wide Standard might apply to the above process in any given circumstance, the documents outlined in Appendix K.2 [Recommended Deliverables Prior to Construction Start] provide a sample list of the types of documents that would potentially be required as part of the above process where the Proposed Works would or could adversely impact the Bridge.

ARTICLE 12 CONDITION OF LANDS

12.1 Condition of Lands

Subject to the other terms and conditions of this Schedule K, the Bridge/Street/Utilities Assets are accepted and used by both Parties on an "as is, where is" basis, without representations or warranties from the other Party regarding:

- (a) the condition, environmental or otherwise, of the Bridge/Street/Utilities Access Areas;
- (b) the condition, environmental or otherwise, of the Bridge/Street/Utilities Assets; or
- (c) the uses of the Bridge/Street/Utilities Access Areas permitted under applicable laws,

and each Party is solely responsible for satisfying itself as to the suitability of the Bridge/Street/Utilities Access Areas and/or the Bridge/Street/Utilities Assets for their respective purposes.

12.2 Reserve is Subject to Señákw Facilities

The Parties acknowledge and agree that the Reserve is subject to Señákw Facilities and other third party utilities and the same may be within the Bridge/Street/Utilities Access Areas, including, but not limited to, power, telephone, gas, sanitary sewer, fibre optic cables and ducts on or buried within the Bridge/Street/Utilities Access Areas. Each Party must make itself fully aware of the exact location of any and all cables, fibre optic cables and ducts on the Bridge/Street/Utilities Access Areas by contacting the other Party pursuant to the operating procedure set out in Schedule P [Municipal Services Coordination Guide] as well as and any other authority having jurisdiction and have the location(s) identified and must take all reasonable steps and precautions to protect against damage to same by the means dictated by the applicable owner of them. Neither Party will have responsibilities or liabilities with regard to locating any of the above on behalf of the other and each Party assumes all liabilities and responsibilities with respect to locating same prior to any activity which would or could adversely affect same.

ARTICLE 13 MAJOR CITY WORK

13.1 Nation May Inspect

For certainty the City acknowledges and agrees that the Nation or its representative may inspect the Major City Work at any time without notice.

13.2 Nation May Order Work to Halt

If any aspect of the Major City Work or the City Access is causing danger to the public, the Nation's employees, Señákw Facilities or Señákw Operations or is otherwise resulting in the Nation having safety concerns or Interference with Señákw Facilities or Señákw Operations, the Nation may order that aspect of the City Access and the Major City Work to be halted or the conditions under which it is using the Bridge/Street/Utilities Access Areas or conducting the Major City Work be altered until such danger of Interference is eliminated.

13.3 City to Obtain Nation Consent to Storage

Except as permitted by an approved Notice pursuant to Section 7.2 [Requirements to Access], no facilities, material or equipment will be stored on the Bridge/Street/Utilities Access Areas by the City without the City obtaining prior written permission from the Nation.

ARTICLE 14 ENVIRONMENT

14.1 Remediation

Each Party will be responsible for the remediation to applicable standards of any Environmental Contamination caused as a result of anything done or not done by them or those for whom they are responsible at law on or adjacent to the Bridge/Street/Utilities Access Areas on or after the Effective Date.

14.2 Notice of Environmental Contamination

Each Party will promptly notify the other of any Environmental Contamination on the Bridge/Street/Utilities Access Areas or adjacent property that could cause contamination or subject the other Party to fines, penalties, orders, investigations or proceedings under Environmental Laws.

14.3 Compliance with Laws

The City will comply and cause City Personnel to comply with all Environmental Laws which are applicable with respect to the exercise of any activity or work undertaken by the City or City Personnel pursuant to this Schedule K.

14.4 **Survival**

The responsibility of each Party with respect to its environmental obligations under this Schedule K will survive the termination of this Schedule K and continue to be enforceable by the other Party.

ARTICLE 15 LIABILITY AND INDEMNIFICATION

15.1 **City to Indemnify**

The City agrees to indemnify, release, defend and save harmless the Nation and the Nation Personnel from and against any and all Claims suffered or incurred by the Nation or the Nation Personnel, including Claims by the City or City Personnel, which are based upon, arise out of or are connected with any of the following:

- (a) bodily injury, including death, of any person or persons who are injured (including injuries leading to death) in the course of or as a result of Major City Work or the City Access;
- (b) damage to or destruction of any facilities or property, including the Sehákw Facilities, pipes, wires or other facilities for utilities including without limitation, sanitary sewers, storm sewers, steam, oil, electricity, telecommunication or natural gas lines or systems or elevated roads or rail lines, and including any third party's property, in the course of or as a result of Major City Work or the City Access;
- (c) breach of any representation, warranty, covenant, term, duty or obligation of the City or City Personnel set out in, arising under or relating to this Schedule K;
- (d) fines, penalties, expenses, business losses, claims or damages (including those arising from any Pollutant in connection with the Bridge/Street/Utilities Access Areas or any property adjacent thereto) suffered or incurred by the Nation, in the course of or as a result of Major City Work or the City Access;
- (e) claims under worker's compensation legislation arising from the City or City Personnel being on the Bridge/Street/Utilities Access Areas; or
- (f) any failure of the City or City Personnel to comply with any statute, by-law, order or regulation applicable to the Major City Work (subject always to Section 10.2) or to the exercise of the rights and licenses granted under this Schedule K or any of them or which would be applicable to the Major City Work or to the exercise of such rights and licenses if such work was carried out by the Nation notwithstanding that the City might not be obligated to comply with any such statute, by-law, order or regulation,

provided that such indemnity and release shall not apply: (i) to the extent caused by the breach of any representation, warranty, covenant, term, duty or obligation of the Nation or the Nation Personnel set out in, arising under or relating to this Schedule K; (ii) to the extent caused by the negligence, gross negligence or willful default of the Nation or the Nation Personnel; nor (iii) to the extent caused or contributed to by the acts or omissions of any members of the public in, on or around the Bridge/Street/Utilities Access Areas (but

excluding members of the public permitted onto the Bridge/Street/Utilities Access Areas by the City or City Personnel whether in compliance with or in breach of Section 4.1 [Consent]).

15.2 Nation to Indemnify

The Nation agrees to indemnify, release, defend and save harmless City and City Personnel from and against any and all Claims suffered or incurred by City or City Personnel, including Claims by the Nation or Nation Personnel, which are based upon, arise out of or are connected with any of the following:

- (a) bodily injury, including death, of any person or persons who are injured (including injuries leading to death) in the course of or as a result of Sehákw Operations on or around the Bridge/Street/Utilities Access Areas;
- (b) damage to or destruction of any City Facilities on the Bridge/Street/Utilities Access Areas, and including any third party's property, in the course of or as a result of Sehákw Operations as well as any other Nation and Nation Personnel activities or operations within the Bridge/Street/Utilities Access Areas;
- (c) breach of any representation, warranty, covenant, term, duty or obligation of the Nation or the Nation Personnel set out in, arising under or relating to this Schedule K;
- (d) fines, penalties, expenses, business losses, claims or damages (including those arising from any Pollutant in connection with the Bridge/Street/Utilities Access Areas or any property adjacent thereto) suffered or incurred by the City, in the course of or as a result of Sehákw Operations as well as any other Nation and Nation Personnel activities or operations within the Bridge/Street/Utilities Access Areas;
- (e) claims under worker's compensation legislation arising from employees of the Nation or the Nation Personnel; or
- (f) any failure of the Nation or the Nation Personnel to comply with any statute, by-law, order or regulation applicable to Sehákw Operations as well as any other Nation and Nation Personnel activities or operations within the Bridge/Street/Utilities Access Areas;

provided that such indemnity and release shall not apply: (i) to the extent caused by the breach of any representation, warranty, covenant, term, duty or obligation of the City or City Personnel set out in, arising under or relating to this Schedule K; (ii) to the extent caused by the act, omission, negligence, gross negligence or willful default of the City or City Personnel; nor (iii) to the extent caused or contributed to by the acts or omissions of any unauthorized members of the public utilizing the Reserve or otherwise in, on or around the Reserve but only where such utilization was not the result of a breach of covenant under this Schedule K by the Nation or the Nation Personnel.

15.3 Judgment Debtor to Pay Costs

If either Party shall bring any proceeding in respect of, arising from or in relation to the recovery of any amount due under the provisions of this Schedule K or the failure to observe and perform any obligation on its part under this Schedule K, and such Party shall obtain judgment, the judgment debtor shall, promptly upon demand, pay all expenses incurred therefor, including all reasonable solicitor's fees and expenses.

15.4 Survival

Section 15.1 [City to Indemnify] through 15.3 [Judgment Debtor to Pay Costs] will survive the termination of this Schedule K.

ARTICLE 16 INSURANCE

16.1 Insurance

During the term of this Schedule K each Party (the “**Insured**”) will, at its cost and expense, take out and keep in full force and effect for the benefit of the other Party (the “**Other**”):

- (a) commercial general liability insurance having an inclusive limit of not less than \$10,000,000.00 in respect of bodily injury, including injury resulting in death, and property damage; and the policy will specifically, by its wording or by endorsement:
 - (i) extend to cover all liabilities assumed by the Insured under this Schedule K;
 - (ii) name the Other as an additional insured;
 - (iii) contain a “cross liability” or “severability of interest” clause which will have the effect of insuring each person, firm or corporation named in the policy as an insured in the same manner and to the same extent as if a separate policy had been issued to each;
 - (iv) extend to provide contingent employers liability coverage;
 - (v) extend to provide property damage coverage where explosion, collapse or underground property damage hazards exist;
 - (vi) provide non-owned auto liability coverage;
 - (vii) provide that 30 calendar days' prior written notice will be given to Other by the insured's insurer in the event the policy is materially altered or cancelled; and
 - (viii) will not exclude operations on or in the vicinity of the Bridge/Street/Utilities Access Areas;
- (b) all risks and physical loss or damage insurance covering the materials used by the Insured on or adjacent to the Bridge/Street/Utilities Access Areas, with limits equal to the full replacement cost of same;

- (c) all risk contractor's equipment insurance covering the equipment used by any contractor of the Insured for the performance of the Insured's work including equipment breakdown insurance on temporary boilers and pressure vessels (if applicable);
- (d) automobile public liability and property damage insurance in an amount not less than \$2,000,000.00 all-inclusive covering ownership, use and operation of any motor vehicles licensed for use on public highways and which are owned, leased or controlled by the Insured and used in regards to this Schedule K; and
- (e) any additional insurance, which the Insured is required by law to provide or which the Insured considers necessary.

16.2 Form of Insurance

The insurance policies taken out by the Insured under this Article 16 will be issued by an insurer acceptable to the Other and in a form satisfactory to the Other, acting reasonably and the Insured will furnish Other with copies of such policies or a certificate of insurance evidencing such coverage(s). The Insured will provide the Other with evidence of the replacement or renewals of each of such coverage(s) from time to time prior to the lapse of same.

16.3 Liability not Restricted by Insurance

The Insured covenants that the amount of insurance coverage(s) required by it under the provisions of this Schedule K will not be construed and will in no manner limit or restrict the liability of the Insured.

16.4 Lapse and Rights to Place Insurance

The Insured agrees that if any of the insurance policies taken out by it under this Article 16 is allowed to lapse during the currency of this Schedule K, Other may, at its option, immediately upon notice being given to the Insured by Other place such insurance and the Insured will then be liable to reimburse Other for all costs of doing so.

16.5 No Obligation to Examine

Other will have no obligation to examine certificate(s) or to advise the Insured in the event its insurance is not in compliance herewith. Acceptance of such certificate(s) which are not compliant with the stipulated coverages will in no way whatsoever imply that the Other has waived its insurance requirements.

16.6 Insurance is Primary

Insured agrees that the insurances it maintains are primary (with respect to its liability and property) and not excess of any other insurance that may be available including without limitation the Other's insurance.

16.7 **Notice**

Insured will provide the Other with written notice and all reasonable particulars and documents related to any damages, losses, incidents, claims and potential claims concerning this Schedule K as soon as practicable after the damage, loss, incident or claim has been discovered. Insured is responsible for any deductible and excluded loss under the insurance. The deductible in any insurance policy will not exceed such maximum amount that a reasonably prudent business person would consider reasonable.

16.8 **Review and Renewal of Insurance**

The Other and/or the Insured may, on or before December 31 of the last year of each 5 year period of this Schedule K, review and determine the type and limit of each type of insurance referred to in Section 16.1 [Insurance] to ensure that such insurance is, and continues to be, in the opinion of each Insured, adequate (acting as a prudent businessperson would, in the then-existing circumstances, consider adequate) for each 5 year period next ensuing.

16.9 **Each Party May Self-Insure**

Notwithstanding anything to the contrary in this Article 16, the Insured agrees with the Other that it may, in its sole discretion, elect to self-insure its obligations under this Article 16 as if such third party coverage were obtained and in place.

ARTICLE 17 DEFAULT

17.1 **Default**

Upon either Party providing the other (the “**Defaulter**”) with notice of any breach, non-observance, or non-performance of any obligation hereunder on the part of the Defaulter to be kept, observed, or performed, the Defaulter will immediately, begin the cure of any such breach, non-observance or non-performance and remedy any situation, circumstances or condition resulting from it, and will continue diligently in the remediation of such issue until completed. Such notice will not be a precondition to a non-defaulting Party exercising any other remedy now or later provided or available to it in the event of any such breach, non-observance, or non-performance.

17.2 **Non-Defaulting Party May Perform**

If the Defaulter fails to perform any of the covenants or obligations of the Defaulter under this Schedule K (including a material breach that Interferes), the non-defaulting Party, in addition to its rights under this Schedule K, may from time to time at its discretion perform or cause to be performed any of the covenants or obligations, as it may consider requisite or necessary, provided however that where the default is by the Nation in the granting of City Access, the City will not be entitled to access the Bridge/Street/Utilities Access Areas, but will be entitled to all available punitive, special, injunctive, and other relief and remedies as are provided for by law and all of the City’s Claims arising from the Nation’s wrongful barring or delaying of City Access will be fully recoverable by the City from the Nation. The Defaulter will pay to the other Party the cost of all expenses incurred and expenditures reasonably made by or on behalf of that other Party under this Section 17.2

promptly upon presentation to the Defaulter of an invoice for same. The non-defaulting Party will have no liability to the Defaulter for loss or damages resulting from such action by the non-defaulting Party, save and except where such loss or damage is caused by the malicious, willful or grossly negligent act or the omission of the non-defaulting Party or someone for whom they are responsible at law.

17.3 Nation May Withhold Consent

If:

- (a) there is any breach, non-observance or non-performance by the City of any obligation on its part hereunder to be kept, performed or observed and the City does not commence the curing of such breach, non-observance or non-performance within thirty (30) days of the Nation giving the City written notice of it under Section 17.1 [Default] and thereafter diligently and continuously prosecute the curing of such breach until fully and completely cured; or
- (b) the City has permitted the Bridge/Street/Utilities Access Areas to be used by any person or persons, or for any purpose, other than as provided for in this Schedule K without the written consent of the Nation,

then, and in any such event but only to the extent that such access is not required to cure same and only with respect to the aspect of such access that relates to same, the Nation is entitled to withhold its consent to City Access to the Bridge/Street/Utilities Access Areas under this Schedule K immediately by notice in writing to the City, and except as expressly otherwise provided, such suspension may remain in effect until the City has remedied same to the Nation's satisfaction, acting reasonably.

17.4 Liability

Despite any other term of this Schedule K:

- (a) subject to Sections 17.4(b) and 17.4(c), neither the City nor the Nation, nor any of their respective Personnel, will be liable to the other for any Claims by that other Party (as opposed to any third party) which are in the nature of indirect, incidental, special, consequential or punitive damages (including, but not limited to, lost profits, lost revenue or failure to realize expected savings) sustained or incurred by either of them in connection with or arising out of this Schedule K, regardless of the action, including breach of contract (including fundamental breach), tort (including negligence), strict liability or otherwise, and whether or not such damages are foreseeable and whether or not the other Party is advised of the possibility of such Claims arising;
- (b) in respect of either Party, the limitations on the liability for Claims described in Section 17.4(a) do not apply to the extent that such Claims are:
 - (i) the result of that Party's breach of this Article 17; or
 - (ii) third party Claims pursuant to Article 15 [Liability and Indemnification]; and

- (c) nothing in this Schedule K alters or limits in any way the ability of the City or the Nation to bring a Claim against the other Party in connection with an act, omission or circumstance occurring outside of the Bridge/Street/Utilities Access Areas or the Underground Support Areas or outside the scope of this Schedule K.

ARTICLE 18 GENERAL PROVISIONS

18.1 Waiver

The failure of either Party to insist upon strict performance of any obligation on the part of the other to be kept, observed, or performed, or to exercise any right or option under this Schedule K, will not be construed or operate as a waiver or relinquishment for the future of its right so to do and no waiver will be inferred from or implied by anything done or omitted by either Party.

18.2 No Implied Easement

The City acknowledges and agrees to and with the Nation that there are not and will not be any implied easements for access to the Bridge/Street/Utilities Access Areas over those portions of the Reserve outside of the Bridge/Street/Utilities Access Areas and the Nation acknowledges this Section 18.2 does not operate to limit in any way all of the access for which Consent is expressly provided for elsewhere in this Schedule K.

18.3 Continuing Effect

This Schedule K will enure to the benefit of and bind each of the City and its successors and assigns and the Nation and the Nation's successors and assigns.

18.4 Time

Time is of the essence of this Schedule K.

18.5 Headings

The captions, article numbers and paragraph numbers appearing in this Schedule K are inserted for convenience only and do not affect the interpretation of it.

18.6 Form

Wherever the singular is used in this Schedule K it will be construed to mean the plural, and vice versa, where the circumstances require.

18.7 Invalidity

If any of the provisions in this Schedule K are for any reason held to be invalid, illegal or unenforceable in any respect, it is to be considered severed from this Schedule K, and the remaining provisions of this Schedule K will remain in full force and be binding upon the Parties.

18.8 Amendment

This Schedule K may not be modified or amended except in writing signed by the Parties.

18.9 Governing Law and Dispute Resolution

This Schedule K will be governed by the laws of British Columbia. Except as provided below, the courts of British Columbia will have exclusive jurisdiction over any disputes arising under this Schedule K and the Parties now irrevocably attorn to the jurisdiction of such courts. Where there is any dispute, the Parties agree to resolve same by informal mediation which if not successful within 20 Business Days of one Party requesting same (for whatever reason) such dispute may be resolved (on mutual agreement of both Parties) by arbitration pursuant to the *Arbitration Act* (British Columbia) before a single arbitrator, held in Vancouver. However, despite the above, nothing in this Section 18.9 prevents or limits the ability of either Party to refer any disagreement or dispute to a court or tribunal of competent jurisdiction. Despite the above, the Parties agree that nothing in this Schedule K will be construed by the City as an attornment by the Nation to any provincial or municipal laws or regulations to which it is not bound by virtue of the doctrine of interjurisdictional immunity and nothing in this Schedule K affects the City's regulatory powers, rights, duties, and privileges under the Vancouver Charter.

18.10 Entire Agreement

This is the entire agreement between the Parties with respect to the matters referred to in this Schedule K, and there are no representations, warranties, covenants, agreements, conditions, terms, collateral agreements by either of the Parties to the other, or between the Parties, in respect of its subject matter other than those expressed in this Schedule K.

18.11 Notices

Any notice, demand or request which may be, or is required, to be given under this Schedule K will be sufficiently given or made if delivered in the manner provided for in the Services Agreement and Municipal Services Coordination Guide.

APPENDIX K.2 - RECOMMENDED DELIVERABLES PRIOR TO CONSTRUCTION START

Deliverable Category	Description	Trigger (Always in Accordance with Section 11.1(g) but below are non-exhaustive examples of same)
1.1. Seismic Performance Assessment Report for affected bridge regions	<p>A signed and sealed report prepared by a bridge engineer summarizing the seismic performance of the bridge affected regions based on most recent (2019 as at the Effective Date) Canadian Highway Bridge Code and outlining associated risks for all the development (community activation and underground parking as well as nearby towers) based on its current seismic performance.</p> <p>Report to also indicate:</p> <ul style="list-style-type: none"> - Whether the proposed development (both temporary and permanent works) will have (or potential to have) negative impacts to the current seismic performance of the bridge, from both a structural and geotechnical perspective. - That the raised grade will not change the overall seismic performance of the bridge structure. 	Any excavation within proximity of Bridge/Street/Utilities Access Areas. Community activation under the bridge and attachment to the bridge of any kind. Existing grade below the bridge is raised, resulting in the concrete piers being submerged in soil.
1.2. Design Brief	<p>A signed and sealed design brief that speaks to all elements of the development in close proximity to the bridge, such as community activation, debris netting, Transit Hub, shoring and excavation works, parkade and tunnel structures, and others.</p> <p>The design brief shall provide an outline of the design codes, design and performance criteria, parameters and loading data, design philosophies, design team information, full structural description for all applicable elements, validation of input parameters and assumptions, description of computer models used for analysis and design, and a clear description of the seismic design methodology for all applicable elements.</p>	Proximity to bridge and scale of project.
1.3. Bridge Monitoring Plan	<ul style="list-style-type: none"> • See Appendix K.3 for “Bridge Monitoring Plan Requirements” • Bridge Monitoring Strategy Report • Geotechnical Report • Structural Analysis Report • Shoring & Excavation Drawings • Survey Plans • Monitoring Locations & Controls • Baseline Survey Measurements • Monitoring thresholds • Communication plan for exceedance of monitoring thresholds • Owner Consent Letter 	Parkade structure and excavation in close proximity to the bridge (ground disturbing activity within 50m or 1:1.5 slope from bottom of excavation to the nearest structural component of the bridge).

Deliverable Category	Description	Trigger (Always in Accordance with Section 11.1(g) but below are non-exhaustive examples of same)
1.4. Maintenance & Inspection Plan	<p>Detailed inspection & maintenance plan including:</p> <ul style="list-style-type: none"> • Corrosion Protection System: outlining how frequently the passive corrosion protection system will be inspected, repaired, and replaced (if applicable). Contact information for the passive corrosion protection system maintenance contractor shall also be included and updated annually. • Portion of the bridge affected by the proposed community activation. The maintenance plan shall address how the elements of the development would be maintained/cleaned/inspected/ repair procedures and how they would be removed in order to facilitate the maintenance/inspection/repairs of the bridge (if needed). • Outlining how frequently the netting will be inspected, steps for repairing the netting, steps for removing the netting to facilitate any inspections/repairs to the bridge and reinstating of the netting. The plan shall include detailed plan for all activities for each individual element and include contact names (emergency and maintenance). The plan shall be updated annually and resubmitted to the City for records. • Outlining how frequently the Transit Hub structure will be inspected by a structural engineer (an inspection program is recommended with detailed structural inspections occurring every 4 years and a routine inspection conducted annually). Contact information for the Transit Hub structure consultant & maintenance contractor shall also be included and updated annually. • Detailed inspection and repair details (if repair is required) of the vertical deck interface surface shown in Figure 1 in Appendix F.4 (on both ends of the Transit Hub). • Outlining how frequently the Transit Hub structure will be inspected by a structural engineer (an inspection program is recommended with detailed structural inspections occurring every 4 years and a routine inspection conducted annually) and specifics of the ongoing/routine maintenance of the structure, such as cleaning, graffiti removal, etc. Contact information for the Transit Hub structure consultant & maintenance contractor shall also be included and updated annually. • Earthquake response plan that details the initial actions to be undertaken and roles, responsibilities and coordinated approach to response activities 	<p>Passive Corrosion Protection System installation</p> <p>Community activation under the bridge that may impede on access to the bridge and attachment to the bridge of any kind.</p> <p>Transit Hub structure</p>

Deliverable Category	Description	Trigger (Always in Accordance with Section 11.1(g) but below are non-exhaustive examples of same)
2. Community activation under bridge		
2.1. Structures		
2.1.1. Structures Drawings	City has recommended that due to limitations on connection points to the bridge (due to recent fiber wrapping of bridge girders), that any structures that form part of the community activation area shall be supported by a separate structure. The drawings shall include all relevant structural, electrical, civil, mechanical information.	Community activation under the bridge with proposed screen walls, hanging art, cable trays, drainage, etc.
2.1.2. Structural Assessment Report - Existing Concrete Structure within the extents of Development & Community Activation area	A signed and sealed report for a structural assessment of the existing concrete elements in the affected area of the bridge in close proximity to proposed community activation.	If the existing bridge structure is proposed to be covered with vegetation or other independent structures that may block access to structure.
2.2. Passive Corrosion Protection System		
2.2.1. Feasibility Report	Providing recommendation on corrosion mitigation techniques that should be implemented for the structure as a result of planting/vegetation growth proposed to be in close proximity to the bridge.	<ul style="list-style-type: none"> • If planting and/or vegetation is proposed to be in close proximity to the bridge. • If grade below bridge is raised or lowered and existing piers become submerged in soil or exposed.
2.2.2. Report	Signed and sealed report indicating the selected passive corrosion protection system, why the system was chosen, its specifications and all relevant information.	Passive Corrosion Protection System installation
2.2.3. Drawings	Signed and sealed passive corrosion protection system drawings clearly indicating points of attachment to the bridge.	Passive Corrosion Protection System installation
2.3. Debris Netting		
2.3.1. Feasibility Report	Feasibility report for debris netting installation below the bridge at community activation area. The report shall outline best location for connections to ensure the structural integrity of the bridge is not compromised. Report shall	Community activation under the bridge

Deliverable Category	Description	Trigger (Always in Accordance with Section 11.1(g) but below are non-exhaustive examples of same)
	also speak to maintenance requirements.	
2.3.2. Report	Signed and sealed report indicating that the proposed debris netting system installation will not negatively impact the structural integrity of the bridge.	Community activation under the bridge
2.3.3. Drawings	Signed and sealed debris netting drawings clearly indicating points of attachment to the bridge.	Community activation under the bridge
3. Transit Hub/bus stops/vertical access improvements		
3.1. Feasibility Report	<p>Signed and sealed study to review the potential for Transit Hub clearly outlining how this may be achieved (design and construction) and what kind of structural upgrades to the bridge (if any) would be needed to facilitate this. Report shall include:</p> <ul style="list-style-type: none"> • Preliminary drawings and a proposal on expansion joint between the bridge and the Transit Hub structure. Seismic performance of the two structures must be considered. <p>A minimum of 300mm expansion joint is required between the bridge and any proposed structure.</p> <p>Report shall describe how access challenges to the vertical deck interface surface (shown in Figure 1 in Appendix F.4) will be addressed. Report shall include preliminary drawings and a proposal on how the existing railing will be demolished and existing deck patched, as well as about the interface between existing railing and new railing. New railing to meet or exceed performance of the existing means prevention railing in this area.</p> <p>Additional analysis of structures proposed at and above the bridge deck surface level, including bus shelter structures and the indicated public art archway structure:</p> <ul style="list-style-type: none"> • How access challenges to the interface surface (shown in Figure 2 in Appendix F.4) will be addressed. • Drainage plan, to ensure there is no added rain demand on the bridge deck. • A rain/snow/wind study that confirms the Transit Hub structure will not create any “ice bomb” fall, similar to the recorded incidents at Port Mann Bridge. • A bird management plan (to prevent birds nesting and guano on the Transit Hub structure). 	New Transit Hub structure in proximity to the existing South Approach

Deliverable Category	Description	Trigger (Always in Accordance with Section 11.1(g) but below are non-exhaustive examples of same)
	<ul style="list-style-type: none"> • A debris mitigation plan (to prevent any fallen debris potential). • Report shall confirm that the proposed structure will not be climbable • Report shall confirm that structures will not create any 'blind spots' for bridge users or any other safety concerns, including public transit. (Noting that the transportation related performance of the transit hub overall is being assessed as part of a separate Transit and Access Study which is not included in this list) 	
3.2. Report	Signed and sealed report indicating that a detailed assessment has been completed and confirmed that the Transit Hub will not negatively impact the structural integrity of the bridge or its seismic performance.	Transit Hub
3.3. Drawings	Signed and sealed Transit Hub drawings (and other relevant information, such as geotechnical studies, investigations, etc). City would like to review 50% and 100% signed and sealed drawings.	Transit Hub
5. Temporary & Permanent Below and At-Grade works		
5.1. Geotechnical Investigation and Design Report	<p>Signed and sealed geotechnical report including, but not limited, to the following:</p> <ul style="list-style-type: none"> • Summary of the Site Investigation • Site Plan and Typical Cross Sections (including depth to bedrock) • Borehole Logs • Instrumentation Plan and Data • Geotechnical engineering analysis as it relates to the bridge including calculations, guidelines, and recommendations for all planned temporary and permanent works, including: <ul style="list-style-type: none"> o Site Grading 	Parkade structure and excavation in close proximity to the bridge (ground disturbing activity within 50m or 1:1.5 slope from bottom of excavation from bridge).

Deliverable Category	Description	Trigger (Always in Accordance with Section 11.1(g) but below are non-exhaustive examples of same)
	<ul style="list-style-type: none"> o Foundation Design and Drainage o Seismic Design o Permanent and temporary excavation and shoring recommendations o Estimates of settlement and any other potential ground stability concerns due to the proposed construction activities. o Groundwater assessment, including seasonally high groundwater levels. o Settlement and vibrational thresholds for ground disturbance activities near bridge structure and existing utilities o Necessary Inspections and Reviews During Construction o A list of design assumptions and factors of safety for the proposed designs o Any other geotechnical analysis, calculations, and recommendations for development and future design and construction (i.e. design infiltration rates, earthworks related to site servicing, efficiencies, etc.) • Identify geotechnical risks that might be associated with different construction methods and potential construction difficulties as well as mitigation strategies <p>Submissions should include all assumptions, analysis, and modeling required to support final recommendations or estimates of impact. The Consultant may separate this deliverable into two - one for temporary works and one for permanent works (such as the tunnel) if deemed necessary.</p>	
5.2. Feasibility Report – Structures & Excavation in Close Proximity to Bridge	<ul style="list-style-type: none"> • Signed and sealed report summarizing the findings/recommendations of all applicable reports, investigations, and assessments (such as above documentation) shall be prepared in the early phases of the design. • Report shall provide a summary of the findings/recommendations as well as a summary of how these recommendations will be satisfied, as it relates to the project's close proximity to the bridge. • Report to include data from on-site investigation confirming the location/depth of the existing bridge foundations in proximity to proposed structures/excavation. • A minimum of 3.0m clear distance must be maintained between the line of proposed structures/excavation and edge of existing bridge foundations, all around. • The at-grade elements of the proposed structure, such as roof of the parkade directly below the bridge and within 3 meters of the bridge's dripline, shall be designed for a minimum of 12kPa plaza live loading in order to accommodate 	Parkade structure and excavation in close proximity to the bridge (ground disturbing activity within 50m or 1:1.5 slope from bottom of excavation from bridge).

Deliverable Category	Description	Trigger (Always in Accordance with Section 11.1(g) but below are non-exhaustive examples of same)
	heavy vehicle use that may be required for maintenance and/or future rehabilitation/upgrades to the bridge.	
5.3. Drawings - Temporary Works 5.4. Drawings - Permanent Works	<p>Once architectural drawings are available, the Consultant shall provide excavation and shoring drawings as well as any additional foundation recommendations and/or drawings necessary for construction of parkades and tunnels within a 1:1 distance of the bridge.</p> <p>The drawings shall provide sufficient detail for construction and clearly state any assumptions and design parameters. The drawings should include, at a minimum, the following details to scale:</p> <ul style="list-style-type: none"> o Location markers (street names, survey monuments, compass rose, etc.) o Distances and depths o Design parameters and assumptions (i.e. factors of safety, soil types design is based on, whether temporary or permanent, etc. o Shoring details and installation sequences o Surface protection (if applicable) o Utilities o Drains o Adjacent structures o Property lines 	Parkade structure and excavation in close proximity to the bridge (ground disturbing activity within 50m or 1:1.5 slope from bottom of excavation from bridge).
5.5. Feasibility Report – Existing Grade below Bridge Raised	Report outlines the durability plan to protect the piers buried in the soil and shall reference the Passive Corrosion Protection System Feasibility Report.	Existing grade below the bridge is raised, resulting in the concrete piers being buried in soil.

Appendix K.3 – Bridge Monitoring Plan Requirements

The purpose of the monitoring plan is to protect public safety, and to protect the long-term health of the structure adjacent to excavation works (“**works**”).

The Monitoring Plan is to:

- be developed and executed by the Nation and accepted by the City.
- be developed and managed by a professional engineer registered in good standing in the Province of BC, specializing in bridges and other heavy civil infrastructure.
- develop ground movement/displacement predictions resulting from the shoring and excavation operations and related works. Predictions are to be developed by a geotechnical engineer with bridge and other heavy civil infrastructure experience.
- establish acceptable bridge movement (displacements and rotations) thresholds and stop work movement thresholds as determined through analysis by a bridge engineer. The engineer is to assess the movement induced stresses, resulting force levels and impacts to the bridge health and/or bridge stability. An engineering memo/report to be submitted summarizing the analysis and the recommended movement thresholds.
- provide baseline measurements prior to the commencement of excavation to comfortably rule out any background noise or false positives. It is suggested that a minimum of 2 weeks of data be collected prior to the commencement of site preparation activities.
- record any movement the bridge/structure experiences during excavation and backfilling operations.
- include a plan showing the locations of the monitoring stations. Each monitoring station shall be individually labelled. Survey control points shall also be labeled. The survey control points and methodology will need to be reviewed and accepted by the City Surveyor.
- include action plans or mitigation measures for each movement threshold limit with clearly defined roles and responsibilities for the designated Parties. A minimum of three threshold limits are required, for example Green – “all is fine”, Amber – “increased monitoring and/or mitigation required” and Red – “stop work”. It is expected that a stop work procedure, a bridge closure plan, a communications plan, and a start work procedure are included as part of the plan.
- provide the City with timely and ongoing reporting throughout the duration of the excavation and backfilling operations. The reporting shall be completed by the professional of record for the monitoring strategy/plan. The reporting frequency shall be as determined by the plan. Reports shall include an executive summary front page that summarizes recorded movements (current and in aggregate), assesses the movements and their impacts to the structure, describes any remedial actions performed, makes recommendations for remedial actions. The body of the report shall include survey data, survey data interpretation, basis and rationale for any mitigation/remedial actions and/or recommendations.

- provide excavation and shoring plan(s) along with design details, and background geotechnical reports.
- include written consent from the Nation that designates and empowers the professional of record to execute the plan.
- review and provide for appropriate levels of insurance.
- be compiled in one document prior to commencing work and amended and resubmitted upon completion of the works to include all monitoring reports, record drawings, and records of remedial actions taken.

Notes:

- submitted engineering documents are to be signed and sealed.
- should mitigation measures be required that result in any repairs or alterations to City infrastructure, that are, in the City Engineer's opinion, material, a TI Implementation Agreement similar in form to Appendix F.3 as well as Letter of Credit security may be required.

END OF SCHEDULE K

SCHEDULE L – DEVELOPMENT

L.1 Drawings Subject to Following Qualifications

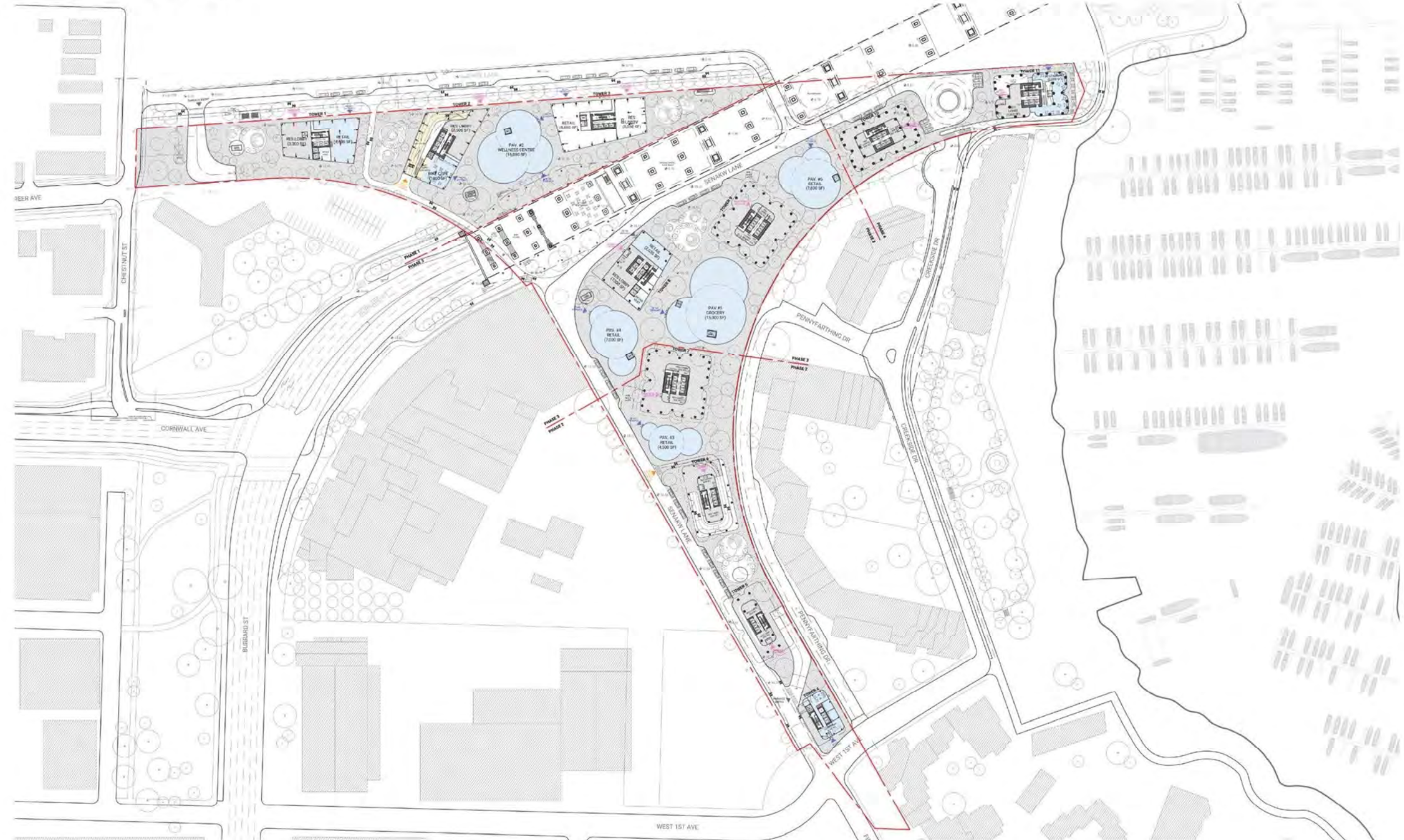
The drawings and text within the attached drawings are subject to the following qualifications:

- (i) All items indicated or inferred to be located outside of the boundaries of the Development are not pre-determined or part of the Development for the purposes of this Agreement and remain contingent on and subject to the outcomes of further work and review by the Parties as well as the Park Board pursuant to the terms of the Main Agreement.
- (ii) In this regard, lines indicating services or infrastructure extending through a property line delineating the Development or the Lands, is merely “proposed” and “subject to approval”.

SCHEDULE L - TOWER PLANS



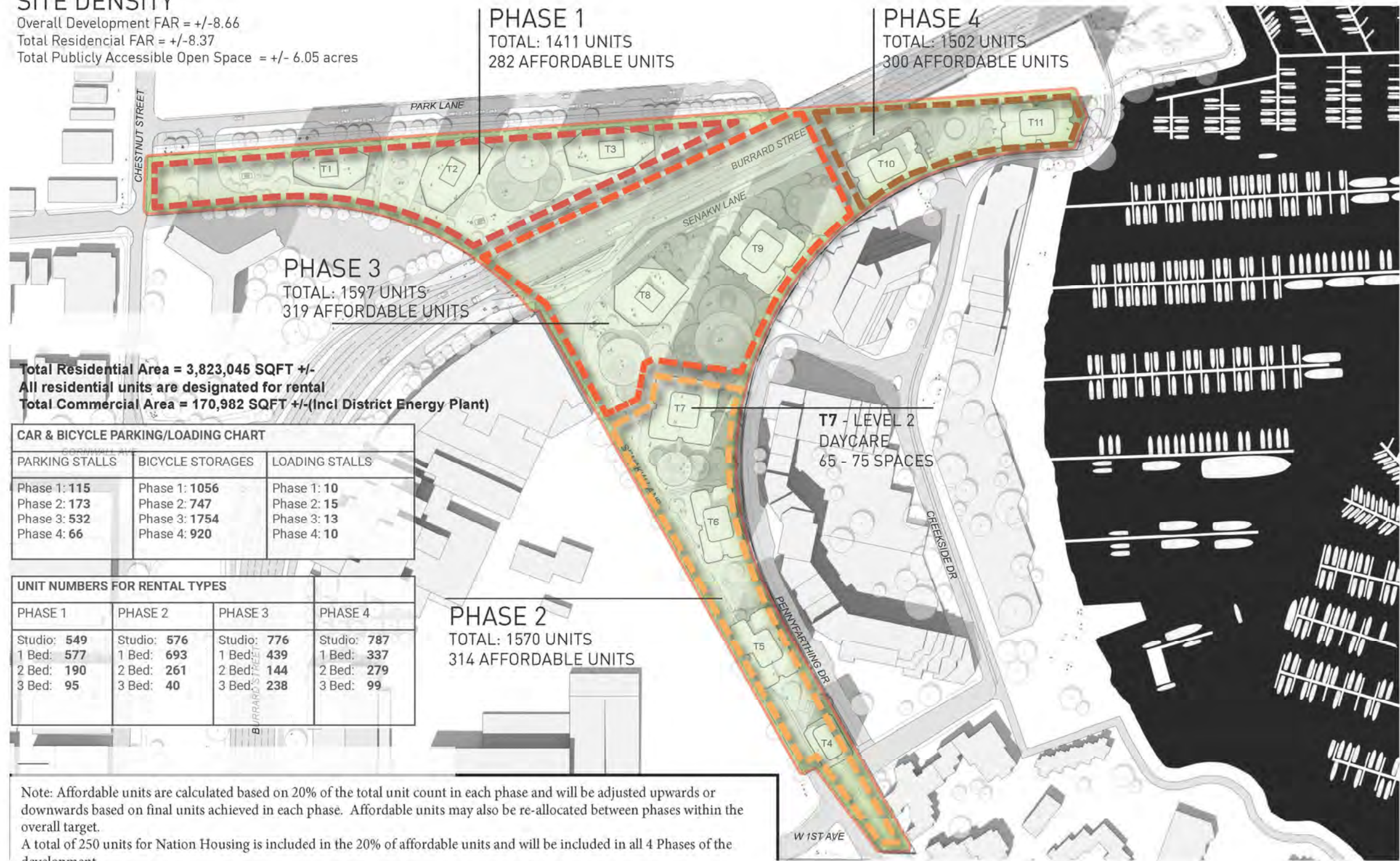
SCHEDULE L - SITE PLAN



SCHEDULE L - DEVELOPMENT PLAN

SITE DENSITY

Overall Development FAR = +/-8.66
Total Residential FAR = +/-8.37
Total Publicly Accessible Open Space = +/- 6.05 acres



Total Residential Area = 3,823,045 SQFT +/-
All residential units are designated for rental
Total Commercial Area = 170,982 SQFT +/- (Incl District Energy Plant)

CAR & BICYCLE PARKING/LOADING CHART		
PARKING STALLS	BICYCLE STORAGES	LOADING STALLS
Phase 1: 115	Phase 1: 1056	Phase 1: 10
Phase 2: 173	Phase 2: 747	Phase 2: 15
Phase 3: 532	Phase 3: 1754	Phase 3: 13
Phase 4: 66	Phase 4: 920	Phase 4: 10

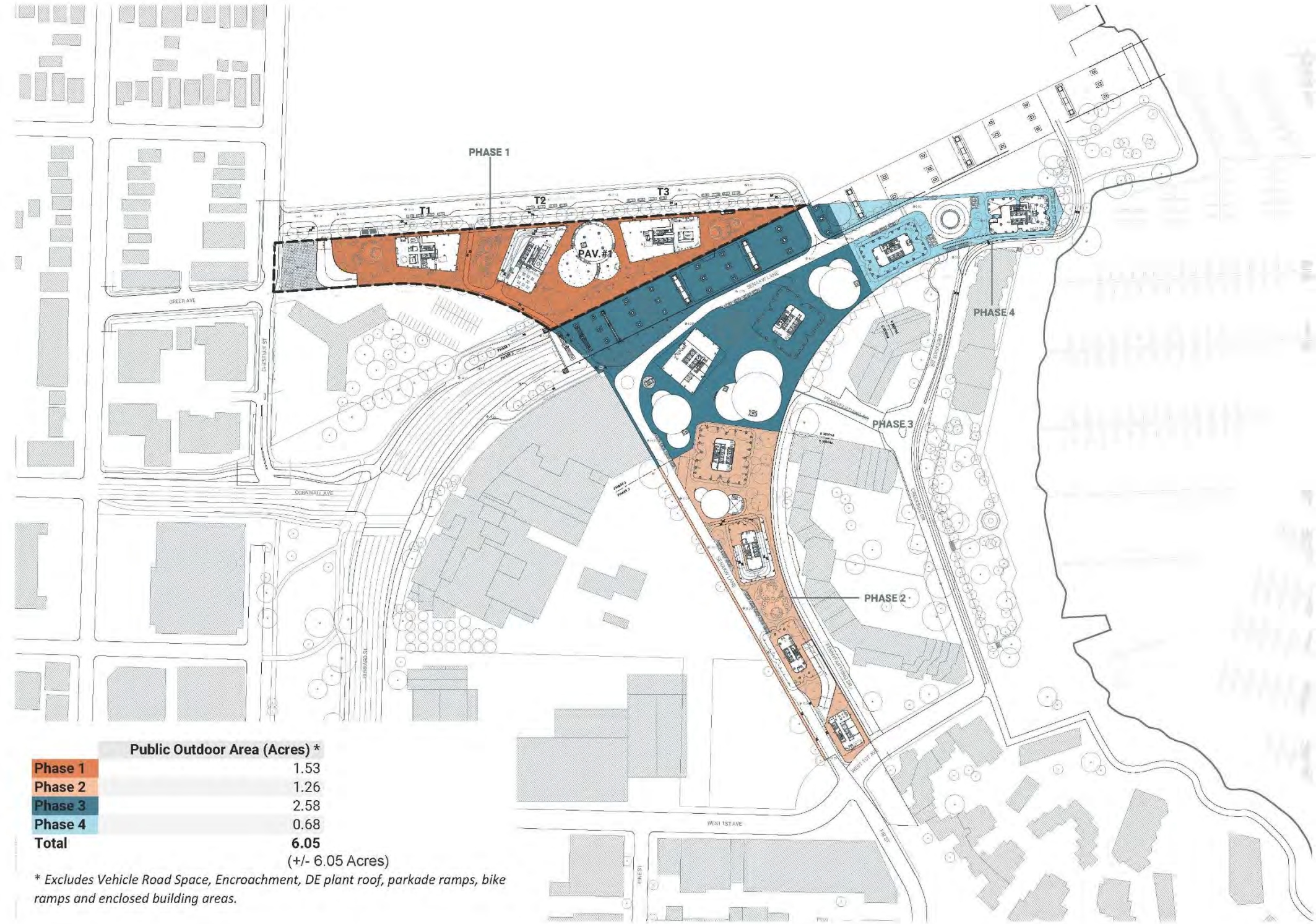
UNIT NUMBERS FOR RENTAL TYPES			
PHASE 1	PHASE 2	PHASE 3	PHASE 4
Studio: 549	Studio: 576	Studio: 776	Studio: 787
1 Bed: 577	1 Bed: 693	1 Bed: 439	1 Bed: 337
2 Bed: 190	2 Bed: 261	2 Bed: 144	2 Bed: 279
3 Bed: 95	3 Bed: 40	3 Bed: 238	3 Bed: 99

PHASE 2
TOTAL: 1570 UNITS
314 AFFORDABLE UNITS

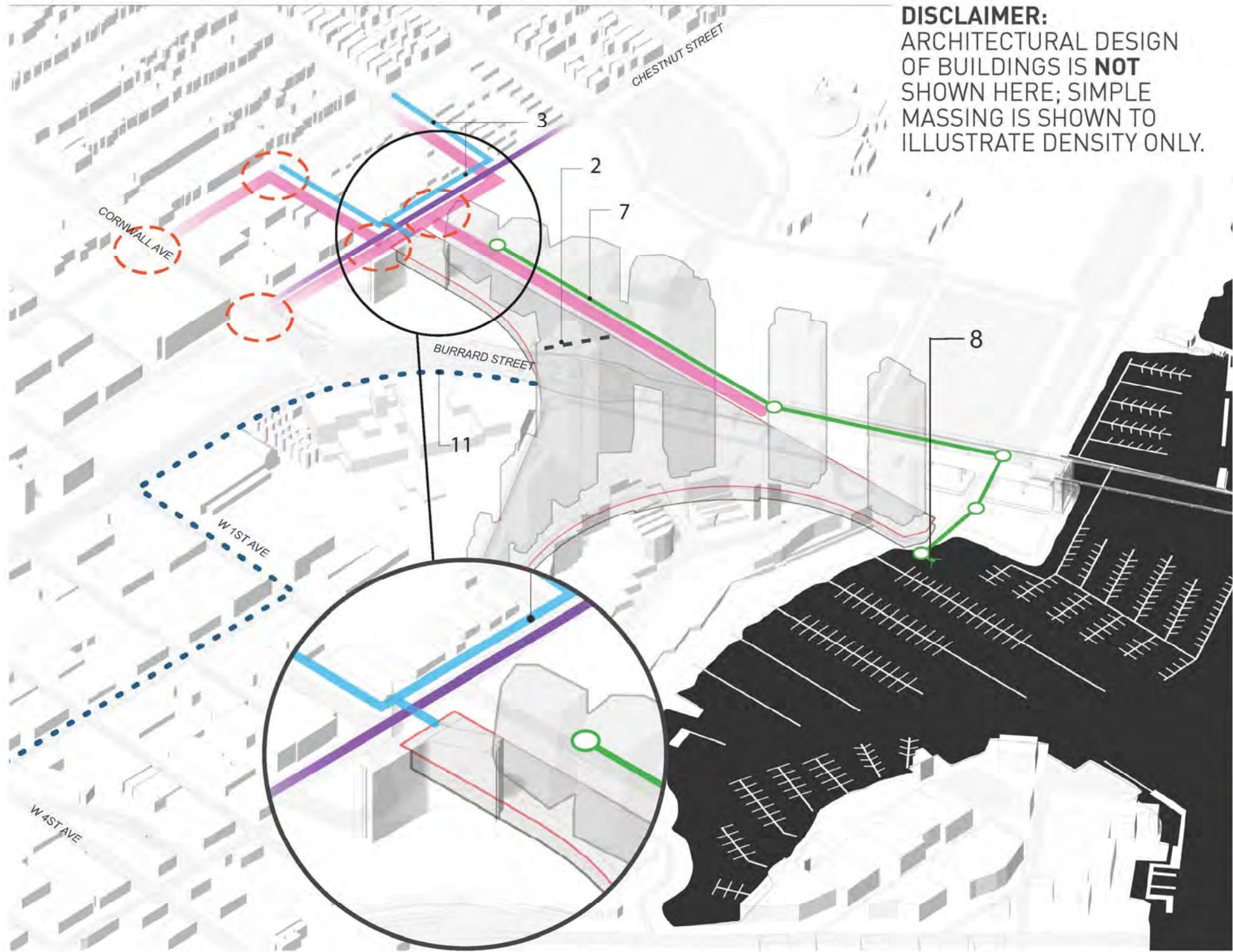
T7 - LEVEL 2
DAYCARE
65 - 75 SPACES

Note: Affordable units are calculated based on 20% of the total unit count in each phase and will be adjusted upwards or downwards based on final units achieved in each phase. Affordable units may also be re-allocated between phases within the overall target.
A total of 250 units for Nation Housing is included in the 20% of affordable units and will be included in all 4 Phases of the development.
All affordable units in the project will have to meet the following conditions:
1. Rents below or at 100% of Average Market Rents, City of Vancouver CY (CMHC Housing Market Information Portal); and
2. Rents no higher than 30% of Median Total Income, All families Vancouver (Statistics Canada)

SCHEDULE L- OPEN SPACE PLAN



SCHEDULE L - PHASE 1 OFF-SITE INFRASTRUCTURE



WORK DESCRIPTIONS

- 2. West End interceptor No.2 to be capped
- 3. Chestnut Street water works upgrades
- 7. Vanier Park Lane storm sewer
- 8. False Creek storm sewer outflow
- 11. Future potential City Sewer connecting to Metro Vancouver system at Pine Street & 4th Ave subject to technical review.

ESTIMATED SCHEDULE

[Subject to refinement through detailed scheduling and negotiations with the City of Vancouver]

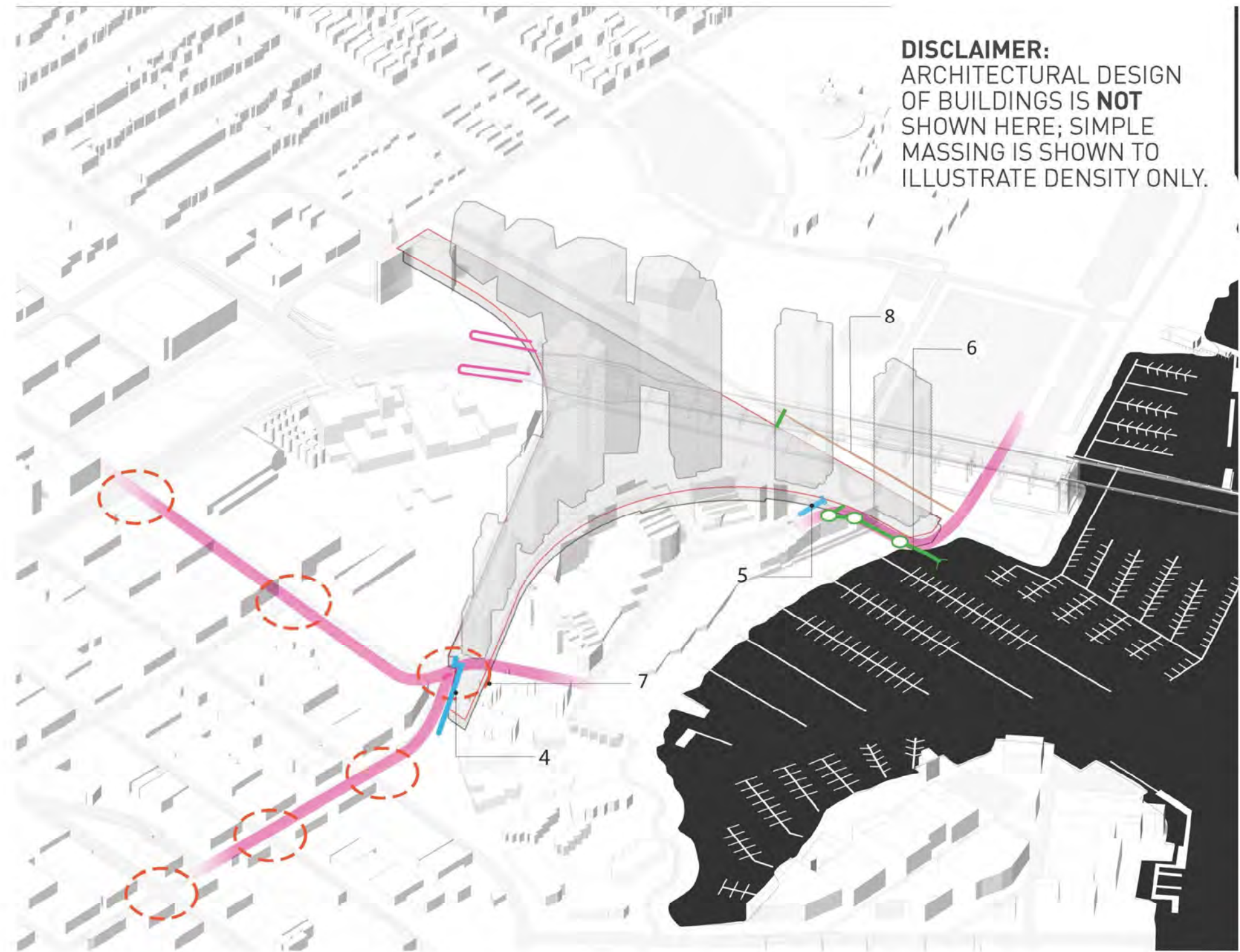
PHASE 1 WORKS: EARLY 2022 - LATE 2025

Notes: dates are subject to shift

DISCLAIMER: THE
INFRASTRUCTURE
WORKS DEPICTED ON
THIS SCHEDULE ARE
FOR ILLUSTRATIVE
PURPOSES ONLY, ARE
SUBORDINATE TO, AND
SHOULD BE REVIEWED
IN CONJUNCTION WITH
SCHEDULE F
(TRIGGERED
INFRASTRUCTURE
AGREEMENT)

LEGEND	
	SANITARY - EXISTING JERVIS FORCEMAIN NO.2
	SANITARY - WEST END INTERCEPTOR NO.2 (CAPPED & REMOVED)
	STORM SERVICING UPGRADES
	WATER WORKS UPGRADES
	ROAD / BIKE LANE / SIDEWALK IMPROVEMENT
	INTERSECTION / SIGNALIZATION UPGRADES

SCHEDULE L - PHASES 2-4 OFF-SITE INFRASTRUCTURE



WORK DESCRIPTIONS

- 4. 1st Ave/Fir water works upgrades
- 5. Creekside Drive water connection
- 6. False Creek storm sewer outflow upgrade
- 7. Outdoor Public Space
- 8. Potential bike and pedestrian connection from Vanier Park Road to Seawall

ESTIMATED SCHEDULE (Subject to refinement through detailed scheduling and negotiations with the City of Vancouver)

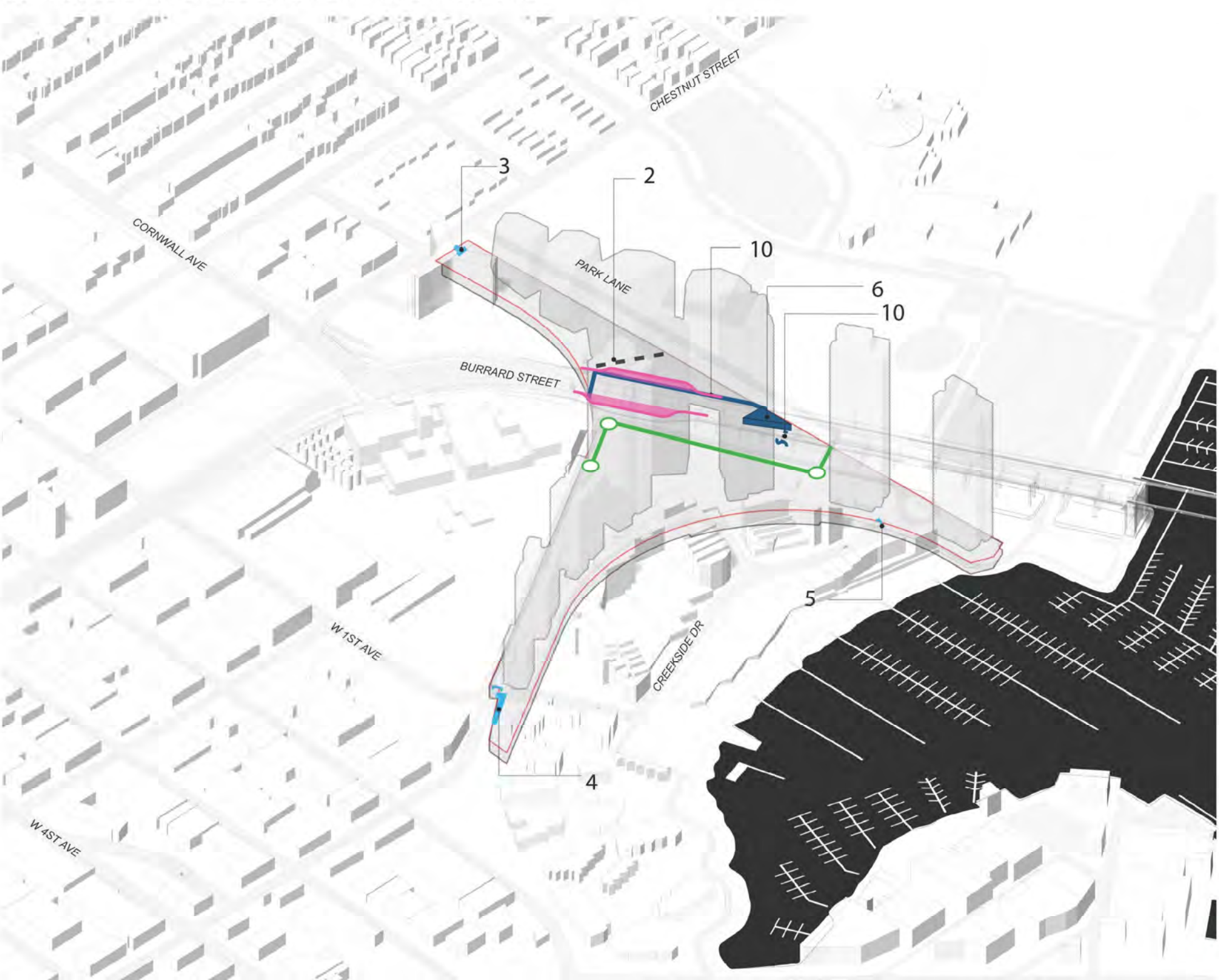
PHASE 2 - 4 WORKS: 2023 - 2028
Note: dates are subject to shift

DISCLAIMER: THE INFRASTRUCTURE WORKS DEPICTED ON THIS SCHEDULE ARE FOR ILLUSTRATIVE PURPOSES ONLY, ARE SUBORDINATE TO, AND SHOULD BE REVIEWED IN CONJUNCTION WITH SCHEDULE F (TRIGGERED INFRASTRUCTURE AGREEMENT)

LEGEND

- STORM SERVICING UPGRADES
- WATER WORKS UPGRADES
- ROAD / BIKE LANE / SIDEWALK IMPROVEMENT
- INTERSECTION / SIGNALIZATION UPGRADES

SCHEDULE L - OVERALL ON SITE INFRASTRUCTURE



WORK DESCRIPTIONS

- 2. West End interceptor No.2 to be capped
- 3. Chestnut Street water connection
- 4. 1st Ave/Fir water connection
- 5. Creekside Drive water connection
- 6. Pump Station (On-site)
- 10. Sanitary Sewer

ESTIMATED SCHEDULE

[Subject to refinement through detailed scheduling and negotiations with the City of Vancouver]

PHASE 1 WORKS: EARLY 2022 - LATE 2025

PHASE 2 - 4 WORKS: 2023-2028

- PHASE 1: Occupancy 2025-2026
- PHASE 2: Occupancy 2027-2028
- PHASE 3: Occupancy 2029-2030
- PHASE 4: Occupancy 2032-2033

Note: dates are subject to shift

DISCLAIMER: THE INFRASTRUCTURE WORKS DEPICTED ON THIS SCHEDULE ARE FOR ILLUSTRATIVE PURPOSES ONLY, ARE SUBORDINATE TO, AND SHOULD BE REVIEWED IN CONJUNCTION WITH SCHEDULE F (TRIGGERED INFRASTRUCTURE AGREEMENT)

- - - - - SANITARY - WEST END INTERCEPTOR NO.2 (CAPPED & REMOVED)
- SANITARY - SEWER UPGRADES (ON-SITE)
- STORM SERVICING UPGRADES
- WATER WORKS UPGRADES
- ROAD / BIKE LANE / SIDEWALK IMPROVEMENT

SCHEDULE M – PROTOCOL

City of Vancouver British Columbia, Canada

MEMORANDUM OF UNDERSTANDING AND PROTOCOL AGREEMENT

This AGREEMENT dated for reference the 17th day of May, 2010

BETWEEN: THE SQUAMISH NATION

AND: THE CITY OF VANCOUVER

WHEREAS (The Parties)

A. The Squamish Nation and the City of Vancouver (the "City") each have distinct governance authorities and responsibilities towards their residents and members, and acknowledge that the interests of persons living in their communities are best served by working together in the spirit of cooperation.

B. The Parties recognize that establishing a formal government-to-government relationship now will create a level of certainty for the Parties' communities and jurisdictions and begin an important dialogue in anticipation of successful community development.

NOW THEREFORE the Parties enter into this Memorandum of Understanding and Protocol Agreement with the intention and desire to establish a cooperative government-to-government relationship for the purpose of sharing information, improving communications, addressing specific concerns, setting a solid foundation for future planning and raising awareness and understanding of Squamish Nation title, rights and responsibilities and the rights of the City under the Vancouver Charter.

1.0 PURPOSE

1.1 The purpose of this Memorandum of Understanding and Protocol Agreement (herein referred to as the "Protocol") is to enter into a more formal arrangement between the Squamish Nation and the City with respect to establishing and maintaining a long-term cooperative government-to-government relationship through effective communications; and

1.2 To establish a government-to-government Steering Committee comprised of political representatives and/or staff members to foster the development of clause 1.1

2.0 PRINCIPLES OF COOPERATION

The Parties agree that the Squamish Nation and City of Vancouver will:

2.1 Meet regularly to promote and encourage open and constructive dialogue based on mutual trust, honesty, respect and understanding.

2.2 Work cooperatively to ensure that the Parties have a full understanding of each other's governing structures, capacities, traditions, roles, responsibilities and current projects.

2.3 Maintain respect for the views and authority of each of the Parties.

3.0 KEY JOINT INTERESTS

The Parties agree to work together on all areas of mutual interest including the following:

- Governance
- Intergovernmental Relations
- Economic Development
- Cultural and Heritage Protection
- Tourism
- Environmental Protection
- Land Use Planning and Management
- Zoning Processes
- Capacity Building
- Shared/Reciprocal Service Delivery
- Transportation Initiatives
- Sustainable Healthy Communities

4.0 COMMUNICATIONS

4.1 The Parties recognize the success of a government-to-government relationship is predicated upon open and transparent communication.

YEWINTS CHET NEXWS CHENCHENSTWAY IY CHIYAXNITWAY

4.2 It is the intention of the Parties to pursue opportunities for collaborative decision-making and establishing cooperative action plans on common areas of interest.

4.3 The Parties acknowledge and recognize that communication and information sharing for the interests set out in 4.1 may be subject to Federal and Provincial Freedom of Information and Protection of Privacy Legislation.

5.0 STEERING COMMITTEE

5.1 A Steering Committee will be established as the principal structure for implementing this Protocol.

5.2 Each party will name two representatives to the Committee and one alternate

5.3 The Committee will meet quarterly, or as required, with the first meeting to take place within sixty (60) days of the signing of this Protocol.

5.4 The duties and responsibilities of the Steering Committee are:

- To prioritize, develop and recommend specific projects to respective elected Councils.
- To implement the decisions of the elected Councils for the understanding of specific projects and initiatives.
- To establish technical committees and/or working groups to undertake specific projects as required.
- To identify and secure financial and other resources required to undertake specific projects.
- Share information of mutual interest.

6.0 COUNCIL TO COUNCIL FORUM

6.1 The elected Councils will meet at least annually and as required to monitor and evaluate the implementations of this Protocol and the specific initiatives undertaken thereto. Councils will also provide vision, policy and strategic direction to the Steering Committee.

7.0 TERMS OF THE AGREEMENT

7.1 The Parties agree that this Protocol shall take effect by a formal resolution by each respective Council

7.2 The Parties agree that this Protocol is a living document and may be subject to revision from time to time by mutual consent. The revisions must be agreed to in writing, and by formal resolution by each respective Council.

7.3 The Protocol will remain in effect continuously unless terminated by either of the Parties by providing sixty (60) days notice in writing, to be delivered by hand, facsimile or registered mail.

7.4 This Protocol does not affect any aboriginal right, title or interest of the Squamish Nation.

7.5 This Protocol does not prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the Vancouver Charter as amended from time to time.

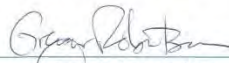
7.6 In furtherance of Sections 7.4 and 7.5, this Protocol is not intended to create any legal rights or obligations.


8.0 ADDRESS FOR SERVICE

SQUAMISH NATION
PO Box 86131
North Vancouver, B.C. V7L 4J5
CITY OF VANCOUVER
453 West 12th Avenue
Vancouver, B.C. V5Y 1V4

IN WITNESS THEREOF The Parties have hereunto affixed their signatures as of the day and year first written above.




Gregor Robertson, Mayor
City of Vancouver


Kákeltn Siyam, Chief Gibby Jacob
Squamish Nation



SCHEDULE N – EXCLUDED SERVICES

Pursuant to Section 4.4 [Exclusions from the Municipal Services] of the Main Agreement, the following are services which are not included in the Municipal Services unless subsequently expressly added by mutual written amendment (for example, pursuant to Schedule C [Adoption and Enforcement of Seḥákw Versions of City By-laws]):

- N.1 services provided by other levels of government where those services are provided separately from local government and provided directly to the residents served by that other level of government such as, by way of example only, those services provided by the Vancouver School Board, Greater Vancouver Regional District, and the South Coast British Columbia Transportation Authority;
- N.2 services required to modify the Nation Infrastructure to meet the Seḥákw-Specific Standards, or to repair or replace any loss, damage or destruction of or to the Nation Infrastructure;
- N.3 services required to modify any City infrastructure or services as required to mitigate or address the failure of the Nation to meet the City-Wide Standards to the extent that the City-Wide Standards integrate or interact with the City's infrastructure or services;
- N.4 the making or providing of service connections within the Reserve;
- N.5 the provision of maintenance or repair services with respect to Nation Infrastructure;
- N.6 the construction or installation of new or expanded Nation infrastructure within the Reserve to accommodate any change, growth, subdivision, or consolidation of property within the Reserve;
- N.7 enforcement of any City by-laws or any Nation by-laws within the Reserve except for those which the Parties have mutually and expressly agreed are to be enforced as further set out in the Utility Services Schedules and Schedule C [Adoption and Enforcement of Seḥákw Versions of City By-laws];
- N.8 the Transferred Services, as defined and further set out in Schedule Q [Nation Assumption of Services] after the effective date of any such transfer in accordance with Schedule Q [Nation Assumption of Services];
- N.9 services expressly or necessarily excluded by, or inconsistent with, the terms and conditions of the Utility Services Schedules;
- N.10 planning & design services, including, without limitation, zoning, development policies, and sustainability policies;
- N.11 all services relating to development and building permits, by-law policy, inspections, and general by-law enforcement (except to the extent that such services are added to Municipal Services pursuant to the process outlined in Schedule C [Adoption and Enforcement of Seḥákw Versions of City By-laws] or otherwise by amendment to this Agreement);
- N.12 on-site services relating to the provision of childcare and cultural events and programming;

- N.13 parks and recreation services relating to park and other landscaping spaces within the Lands, including, without limitation, those public outdoor recreation spaces located below the Burrard Street Bridge and other public outdoor recreation spaces within the Lands;
- N.14 direct provision of services relating to real estate and facilities management, finance (including, without limitation, taxation, debt and capital management), risk and supply chain management, technology and corporate support provided for and on behalf of the Nation or the Nch'kay Development Corporation; and
- N.15 any administrative, management and oversight services provided by the Nch'kay Development Corporation or the Nation's Rights & Title Group.

SCHEDULE O – SAMPLE INVOICE



Draft Invoice

City of Vancouver, Revenue Services Division
P.O. Box 7747, Vancouver, BC V6B 6R1

Date 6/20/2022

Customer Name	Skwxwú7mesh Úxwumíxw (Squamish Nation)		
Attention	FINANCE DEPARTMENT		
Address			
City	VANCOUVER		
Province	BC	Telephone	
Postal Code			
E-mail Address			

Customer Number	
Your Reference	
Our Reference	

		AMOUNT
SENÁKW SERVICES AGREEMENT BILLING		
Tax-Supported Assessment Based Fee		
Water Services		
Sewer Services		
See attached for details		
Contact Person:	Phone Number:	
Interest at the prime rate will be charged on amounts remaining unpaid after 30 days. The City of Vancouver charges a \$35 administrative fee for any dishonored cheque.	Subtotal Payable	\$ -
	PST Amt Payable	\$ -
	*GST Amt Payable	\$ -
	Total Amount Payable	\$ -

H:\Financial Policy & Projects\Squamish Nation\Senakw Draft Invoice (FINAL).JUN 20 2022 w 2022 Budget Numbers (005)

SENÁKW SERVICES AGREEMENT BILLING

SERVICE CATEGORY	Detail	Total Due
TAX-SUPPORTED ASSESSMENT BASED SERVICES		
Class X Assessed Values (from BC Assessment)		
x Class X Reserve Tax Rate Fraction		
= Class X Tax-Supported Municipal Services		
Class Y Assessed Values (from BC Assessment)		
x Class Y Reserve Tax Rate Fraction		
= Class Y Tax-Supported Municipal Services		
Class Z Assessed Values (from BC Assessment)		
x Class Z Reserve Tax Rate Fraction		
= Class Z Tax-Supported Municipal Services		
Total Tax-Supported Assessment Based Fee		\$0
WATER SERVICES		
a) Capacity upgrade costs		
b) Metered Water:		
Meter no.	no of days	current reading
		previous reading
		consumption
Water metered 2022 low season rate		
Water metered 2022 high season rate		
Total Water Services		\$0
SEWER SERVICES		
a) Sewer use rate (metered rates)		
b) Waste discharge permits		
c) Sewer connection rates		
Total Sewer Services		\$0
TOTAL BILLING		\$0

Invoice back up: Senakw Draft Invoice (FINAL) JUN 20 2022 w 2022 Budget Numbers (005)

6/20/2022

SCHEDULE B - Sample Calculation

Step 2: Calculate Category Cost

Step 2.1	Determine Tax Supported Costs by Municipal Service
Step 2.2	Allocate Corporate Support, Debt & Capital Costs to Municipal Services
Step 2.2a	Recalculate Tax Supported Cost by Municipal Service incl. Corporate Support, Debt & Capital Costs
Step 2.3	Apply Credit % (Table B.10, Draft Senakw Agreement)
Step 2.3a	Calculate \$ Value of Credit
Step 2.4	Calculate Category Cost

	Step 2.1	Step 2.2	Step 2.2a	Step 2.3	Step 2.3a	Step 2.4
Tax Supported Municipal Services	Tax Supported Cost (2022)	Corp Support, Debt & Capital Allocation	Tax Supported Cost (incl Corp Support, Debt & Capital)	Credit %	\$ Value of Credit	Category Cost
Vancouver Police Department	298M	105M	403M	- %	0M	403M
Vancouver Fire & Rescue Services	125M	44M	169M	- %	0M	169M
Debt	72M	(72,240,852)	0M	- %	0M	0M
Transfer to Capital and Other entities	73M	(73,000,594)	0M	- %	0M	0M
Parks & Recreation	72M	25M	98M	50.0%	49M	49M
Engineering Public Works	47M	16M	63M	- %	0M	63M
Utilities (Tax Supported Portion of Sewer)	43M	15M	57M	- %	0M	57M
Library	47M	16M	63M	- %	0M	63M
Arts, Culture & Community Services	50M	18M	68M	25.0%	17M	51M
Technology Services	37M	(36,765,750)	0M	- %	0M	0M
Real Estate & Facilities Management	26M	(26,480,099)	0M	- %	0M	0M
Finance, Risk and Supply Chain Management	17M	(17,192,605)	0M	- %	0M	0M
Planning, Urban Design & Sustainability	19M	7M	26M	100.0%	26M	0M
City Manager's Office	13M	(12,879,350)	0M	- %	0M	0M
Human Resources	7M	(7,359,872)	0M	- %	0M	0M
City Clerk's Office	5M	2M	7M	100.0%	7M	0M
Legal	3M	(3,281,302)	0M	- %	0M	0M
Mayor & Council	3M	1M	4M	100.0%	4M	0M
Development, Buildings & Licensing	0M	0M	0M	100.0%	0M	0M
TOTAL	958M	(0)	958M		103M	856M

Total Civic Services 709M Total Tax Impact by Functional Area less Total Overhead

Corporate Support	104M	Items highlighted in yellow
Debt & Capital	145M	Items highlighted in blue
Total Corp Support, Debt & Capital Allocation	249M	

Step 3: Calculate Reserve Tax Rate Fraction

Step 3.1 Determine Percentage Tax Rate

Tax Supported Cost	\$	100%
	958,449	
Category Cost		Percentage Tax Rate
Vancouver Police Department	\$ 403,077	42%
Vancouver Fire Rescue Services	\$ 169,076	18%
Parks & Recreation	\$ 48,874	5%
Engineering Public Works	\$ 63,334	7%
Utilities (Tax Supported Portion of Sewer)	\$ 57,493	6%
Library	\$ 62,900	7%
Arts, Culture & Community Services	\$ 51,150	5%
TOTAL	\$ 855,902	89%

Step 3.2 Apply Percentage Tax Rate to General Purpose Tax Rate to calculate Tax Rate Fraction -

	1 - RESIDENTIAL	2 - UTILITIES	4 - MAJOR INDUSTRIAL	5 - LIGHT INDUSTRIAL	6 - BUSINESS	8 - RECREATIONAL
2022 General Purpose Tax Rate (per \$1000 of value)	\$1.53131	\$27.68552	\$34.05142	\$4.72853	\$4.72853	\$1.52782
Percentage Tax Rate	89%	89%	89%	89%	89%	89%
Reserve Tax Rate Fraction	\$1.36747	\$24.72337	\$30.40817	\$4.22261	\$4.22261	\$1.36440

SCHEDULE P – MUNICIPAL SERVICES COORDINATION GUIDE

1. Purpose of This Guide

The Municipal Services Coordination Guide (the Guide) is a non-binding, general administrative reference document that is intended to enable effective communications regarding operations and maintenance activities between the Nation and the City for the lifetime of the Señákw Services Agreement (the Agreement) and in support of the Agreement. The Guide is intended to clarify and facilitate implementation of the Agreement and should always be interpreted in conjunction with and subject to the Agreement.

2. Living Document

Given the length of the term of the Agreement, it is expected that the content of the Guide will evolve over time and that it will be subject to revision and clarification. Subject always to Section 1.2 [Municipal Services Coordination Guide] and 19.1 [Entire Agreement], any changes to the Guide will be based on mutual agreement by the Nation and the City to reflect the evolving nature of their relationship.

The process for agreeing to changes to the Guide will be determined by the Parties during the term of the Agreement. A record of revisions is included in *Section 9 Revision Log*.

3. Key Contacts

This Section of this Schedule P outlines key operational, administrative, and governance contacts for the City and the Nation. Both Parties agree to notify the other within 24 hours of any change of the key contacts listed in the Guide.

City Contacts. (To be completed)

Department	Role	Scope of responsibility	Name	Email	Phone
City Managers Office	Deputy City Manager	Overall responsibility for the Guide and Implementation of the Agreement	Karen Levitt With a copy to Frances J. Connell, QC, City Solicitor	Karen.levitt@vancouver.ca With a copy to francie.connell@vancouver.ca	Karen Levitt: (604) 873-7251 Francie Connell: (604) 873-7506
Engineering	Construction related matters	Permits			
Engineering	Development Planning and Major Projects	Design co-ordination and Approvals			

Department	Role	Scope of responsibility	Name	Email	Phone
Vancouver Fire and Rescue Services (VFRS)	Life Safety Related Matters	Design and Permitting			
Park Board	Interface issues with Vanier Park/Vanier Park Road	Design and Permitting			
Permits and Licences	Business Licencing and Permits	Licences and Permits			
Development Building and Licencing (DBL)	Enforcement				
Operations and Maintenance					
Dispute Resolution Representative					

Nation Contacts. (To be completed)

Department	Role	Scope of responsibility	Name	Email	Phone
Permits and Licences	Building Permits	Reviewing and Issuing permits through CP Process	Bob Sokol	Bob_Sokol@squamish.net	604-904-7474
Bylaws	Enforcement and Liaison	Liaison with City Bylaw department	Bob Sokol	Bob_Sokol@squamish.net	604-904-7474
Operations and Maintenance	Property Management	All matters related to management of the Reserve including co-ordination of access	Caithlyn Chen/Juniper Groves	Caithlyn_Chen@squamish.net Juniper_Groves@squamish.net	604-980-4553/604-315-4225
Dispute Resolution Representative					
Finance		Invoicing and accounts management	Chantal Francoeur, Westbank Projects Corp.	apdevelopment@westbankcorp.com chantal@westbankcorp.com Denis_murphy@squamish.net	604-685-8986/604-982-8611

4. Access to the Reserve for Maintenance and Repair of City Assets

This Section provides details for access to the Reserve by the City during non-emergencies for maintenance, inspection or modification of City owned assets within the Reserve as well as day to day access requirements for the purposes of by-law enforcement.

In general, with respect to the Bridge/Street/Utilities Access Areas, the Nation supports, and will not object to or interfere with, the City having access as if the Bridge/Street/Utilities Access Areas were a dedicated road right of way for maintenance (e.g. cleaning catch basins, cutting grass), non-physical works (e.g. topographic surveying, traffic counts, visual inspections not requiring heavy equipment), and minor repair work (e.g. individual sidewalk panel replacement, replacing light bulbs and asphalt coring and filling).

When the City requires access for the above types of work, it shall provide all necessary traffic control and public safety measures as it would during the normal course of its operations elsewhere in Vancouver.

For more substantial construction works on City-owned streets and the Bridge/Street/Utilities Access Areas, including Fir Street, 1st Avenue, and Chestnut Street and Vanier Park Road (subject to a grant of access by Canada as further set out in Schedule F [Triggered Infrastructure]), the City will follow the standard public notification process contained within its street and traffic bylaws and will implement all of the standard safety procedures and City traffic control procedures.

In the event that the City wishes to conduct maintenance (excluding major maintenance like painting the Burrard Street Bridge or excavating around footings with equipment), non-physical works or minor repair work on City-owned assets located within the Reserve underneath the Burrard Street Bridge, a minimum of 48 hours' notice provided to the Nations Operations and Maintenance contact will be provided.

To support the above, the City will provide and include within the Guide a typical list of maintenance activities and frequencies in order to support effective communication related to access under the Burrard Street Bridge.

If the Nation notifies the City Operations and Maintenance contact of a maintenance issue regarding a City owned asset located on the Reserve, the city will be considered to have permission to access the Reserve to conduct such maintenance, following the required safety and traffic control measures if necessary.

Subject to any rights of way granted to the City, or any by-laws passed by the Nation, in the event of an emergency related to repairs and maintenance of City assets within the Reserve, the normal notice provision of 48 hours will not apply. In the event of the need to access the Reserve for such emergency maintenance, the City shall notify the Nations Operations and Maintenance contact as soon as possible after the access has occurred, but in no event later than 24 hours after the access was initiated. For further clarification, this section does not apply to access for the Vancouver Police or Fire Department emergency services, which will have unimpeded access at all times to Señákw for the purposes of responding to emergencies.

More substantial changes to the assets within the Access Area will be governed by the procedure outlined in the Agreement.

For greater certainty, the Parties confirm that the City's access to the Bridge/Street/Utilities Access Areas will be governed by Article 5.0 [City Access to Reserve] and Schedule K [Burrard Bridge and City Roads/Utilities Agreement] of the Agreement (collectively the "**Access Arrangements**"). In the event of any conflict between this Schedule P and the Access Arrangements, the Access Arrangements will prevail.

5. Harmonization of Standards and Procedures

From time to time, as provided in Schedule C [Adoption and Enforcement of Seḥákw Versions of City By-laws] of the Agreement, the Nation may enact by-laws, adopt policies, and develop procedures that mirror or are similar to City by-laws, policies and procedures, some of which are described in the Agreement. For simplicity this body of by-laws, policies and procedures is referred to herein as the "**Regulatory Environment**".

Subject to Schedule C [Adoption and Enforcement of Seḥákw Versions of City By-laws] of the Agreement, the Parties will work together to ensure the compatibility of the Nation's Regulatory Environment with the City's, in order to allow for the City's delivery of services and ensure a consistent experience for businesses, residents and visitors on the Reserve with those in Vancouver.

Additionally, the City and the Nation will work co-operatively and in good faith to document by way of updates to the Guide, or amendments to it, the procedures for working together on future changes and updates to the Regulatory Environment, to ensure ongoing compatibility with the City's by-laws, policies and procedures.

As of the Effective Date, the scope of harmonization between the Regulatory Environment and the City's by-laws, policies and procedures is in development but will include the following in future updates to the Guide, where the Parties agree it would be appropriate:

- co-ordination of street names for internal streets within the Reserve to ensure compatibility with emergency response
- regulatory and safety related streetscape elements
- regulatory signage for parking and access
- city courtesy review of internal street designs for safety/comment
- utility signage
- procedures for access related to third party utility needs
- consultation protocol with VFRS for alternative solutions used in buildings
- subject to Schedule C [Adoption and Enforcement of Seḥákw Versions of City By-laws] of the Agreement, protocols with the Nation respecting bylaw/enforcement issues within the Reserve
- subject to Schedule C [Adoption and Enforcement of Seḥákw Versions of City By-laws] of the Agreement, protocols for providing the Nation with information on changes to bylaws which the Nation has informed the City it wishes to enforce on Reserve
- the Nation's Minimum Safety Requirements to be published by the Nation and incorporated into this Municipal Services Coordination Guide, acting reasonably.
- security protocols for City access in respect of Schedule C [Adoption and Enforcement of Seḥákw Versions of City By-laws] of the Agreement, Schedule K [Burrard Bridge and City Roads/Utilities Agreement] of the Agreement, Schedule L [Development] of the Agreement, the Regulatory Environment, or the Access Arrangements.

6. Work Undertaken Under Typical City Practice

A number of processes related to the Development are noted within the Agreement as being consistent with existing City process. This section is intended to document those processes and any agreed variations. Where the Nation has agreed that a permit or application will be obtained from the City, the Nation or its delegate may make application to the City in the same manner as a developer would for a project within Vancouver.

Street Use Permits (e.g. shoring, crane swing, equipment storage including use of Vanier Park Road) – According to standard city procedure and City By-laws.

Traffic Management Plans - According to standard city procedures.

Temporary Street Occupancy Permits – according to standard city procedure and City Bylaws.

Other examples will follow.

7. Consultation Protocol with the Nation/Residents for Changes to the City Streets Adjacent to Seḥákw

The City conducts public notification with local residents from time to time regarding new developments, changes in land use, and transportation and infrastructure projects, among other things. Where these notifications are based on a specific geographic area, and that area includes Seḥákw, the Nation's Operations and Maintenance Representative will be included as part of the notification distribution list, in addition to residents and businesses in Seḥákw.

For clarity, this notification is based on the Nation's position as a landowner/business owner in Seḥákw and would be separate from and in addition to intergovernmental communications with the Nation which may also apply to either the public notification process or the project/process it is conducted for, and any other arrangements or contractual obligations settled between the Parties.

8. Support of Ongoing City Work

In order to support the implementation of the Agreement, the Agreement includes provision for the Nation to reimburse the City for some costs. This section will describe the current level of staff support dedicated to the project and subject to this cost recovery and will be updated from time to time.

Department	Position	Key Tasks	Total FTE

9. Change Log

As procedures and protocols are developed between the Parties, a log will be kept of each agreement in the following form with a live link to any particular forms or city forms that may be relevant.

Procedure/Protocol	Date	Nation Department Responsible	City Department Responsible	Relevant form and location	Procedure/Protocol

SCHEDULE Q – NATION ASSUMPTION OF SERVICES

Q.1 INTERPRETATION

Q.1.1 Special Purposes - Defined Terms

- (a) As set out in Section 2.1 [Special Purpose Defined Terms] of the Main Agreement, the following terms are most applicable to this Schedule Q and so are defined as follows:
 - (i) **“Transfer Agreement”** means any supplemental agreement entered into by the Parties pursuant to this Schedule Q to set out the Parties’ respective rights and obligations with respect to the Transferred Services;
 - (ii) **“Transfer Date”** has the meaning set out in Section Q.4 [Transfer of Responsibility] below; and
 - (iii) **“Transferred Services”** has the meaning set out in Section Q.4 [Transfer of Responsibility] below.

Q.2 TRANSFER OPPORTUNITY IDENTIFICATION TRANSFER AGREEMENT

Upon the request of the Nation, the City will work together cooperatively with the Nation to identify opportunities for Nation’s members to:

- (a) provide certain on-Reserve components of the Municipal Services; and
- (b) engage in employment or job-shadowing opportunities within Vancouver as an employee or volunteer of the City,

in order to provide employment and entrepreneurial opportunities to the Nation’s members.

Q.3 TRANSFER AGREEMENT

Upon reaching any agreement under this Schedule Q which involves one or more members of the Nation assuming the role of providing certain Municipal Services, the Parties will document same in a Transfer Agreement.

Q.4 TRANSFER OF RESPONSIBILITY

On the date specified in a Transfer Agreement (**“Transfer Date”**), the City will cease to be responsible for providing the Municipal Services described in such Transfer Agreement and the Nation will assume full responsibility for such Municipal Services (the **“Transferred Services”**).

Q.5 ASSUMPTION OF LIABILITY/FINANCIAL ADJUSTMENT

On the Transfer Date:

- (a) the Nation will assume all liability for the delivery of the Transferred Services from the Transfer Date and will indemnify the City pursuant to the Main Agreement for all Losses of any nature in connection with the Transferred Services from and after the Transfer Date, except where such Losses arise from any breach by the City of

the City's obligations prior to the Transfer Date or of any City obligations that are expressly stated to continue following the Transfer Date; and

- (b) the Transfer Agreement will record how the Nation's payments for Municipal Services will be adjusted to reflect the fact that the Nation is providing the Transferred Services.

SCHEDULE R – ADDING/DELETING MUNICIPAL SERVICES AND CANCELLATION

R.1 Background and Explanatory Notes to Cancellation Provisions

- (a) The City respects the Nation's jurisdiction over the Lands and the Nation's desire for autonomy and self-sufficiency, and has agreed that, in the spirit of reconciliation, the Nation will have certain rights, exercisable in accordance with the provisions of this Schedule R, to cancel Municipal Services, in addition to its right to assume Municipal Services pursuant to this Schedule R.
- (b) The Nation acknowledges and understands that the City is a regulatory authority continued pursuant to the Vancouver Charter and governed by its elected Mayor and Council. Accordingly, City Council may determine that there is a public interest need to cancel certain Municipal Services in connection with certain Changes in Circumstances, from time to time, and so the Nation has agreed that, in recognition of the City's regulatory status, the City will have certain rights, exercisable in accordance with the provisions of this Schedule R, to cancel Municipal Services.
- (c) In addition to the factors referred to in paragraphs (a) and (b) above, the Parties acknowledge that this is a long-term Agreement that may be extended in accordance with Section 3.2 of the Agreement, or extended or renewed by the mutual agreement of the Parties, such that this Agreement may continue in effect for many decades following the 120th anniversary of the Effective Date.
- (d) The Parties have, through this Agreement, attempted to anticipate a variety of different events and circumstances, and to develop mechanisms to address them, during the Term, including through the provisions of Article 11.0 [Changes in Scope of Services], Article 16.0 [Dispute Resolution] and Article 17.0 [Remedies for Default/Specific Remedies] (collectively, the "**Standard Dispute/Change Protection Mechanisms**").
- (e) As with any long-term agreement, there is a risk that, due to future events or circumstances not foreseen by the Parties when drafting the agreement, the Parties fail to anticipate or cover off a key issue or item ("**Drafting Risk**") that ends up being:
 - (i) identified by a Party as imposing or creating obligations; or
 - (ii) interpreted by an arbitrator or court in a way which imposes terms and conditions on the unsuccessful party,that they never would have agreed to had they been able to properly anticipate the issue (in the context of the unforeseen future events or circumstances) as at the Effective Date (a "**Materialized Drafting Risk**").
- (f) The Parties have, with the Standard Dispute/Change Protection Mechanisms, endeavoured to minimize Drafting Risk.

- (g) However, in spite of these endeavours, there is always the risk that either or both Parties failed to draft the Agreement in such a way as to comprehensively and precisely address everything which might arise over the Term (which as noted above could extend well beyond the first 120 years).
- (h) Accordingly, if a Materialized Drafting Risk were to occur, the Parties have agreed that it is appropriate to have an extraordinary dispute resolution procedure (as further set out in this Schedule R) supplemental to the Standard Dispute/Change Protection Mechanisms in order to address any Drafting Risk that might arise over the Term.
- (i) This Section R.1 [Background to the Cancellation Provisions] is not intended to be, and will not be, legally binding on either Party, and is intended to provide only a brief summary of the context and intended purpose of the Cancellation Provisions, for ease of reference by the Parties and a Court or Arbitration.

R.2 Certain Rights Suspended for First 20 Years

- (a) Despite Section R.3 [Rights to Cancel], the Nation is not permitted to exercise its right to cancel an entire Service Bundle under Section R.3(c) [Rights to Cancel] before the 20th anniversary of the Effective Date.
- (b) Despite Section R.4 [Extraordinary Dispute Resolution of any Materialized Drafting Risk], neither of the Parties is entitled to exercise its rights under Section R.4 [Extraordinary Dispute Resolution of any Materialized Drafting Risk] before the 20th anniversary of the Effective Date.

R.3 Rights to Cancel

- (a) Subject to Section R.2 [Certain Rights Suspended for First 20 Years] and paragraphs (b), (c) and (d) of this Section R.3, neither Party has the right to cancel a portion (as opposed to the whole) of a Service Bundle except by prior mutual written agreement.
- (b) Despite paragraph (a) and any other term of this Agreement, the whole or a portion of a Service Bundle may be cancelled by the City where, there is a Change in Circumstances of the type described in paragraph (d) of Section 11.1 [Future Changes], provided always that:
 - (i) the City must give the Nation the same type and period of notice as is provided to other affected residents and businesses elsewhere in Vancouver; and
 - (ii) under no circumstances will a Change in Circumstances affecting only a part of a Municipal Service be used by the City to cancel the whole of such Municipal Service.

By way of example only and without limitation, an example of sub-paragraph (i) above is where (1) the Province transfers statutory responsibility for the delivery of a certain Municipal Service to a regional government, or (2) privatizes same and such transferred responsibility represents all of or a portion of the Service Bundle

(with an example of the latter being the transfer in or around 2008 by the Province of responsibility for certain recyclable materials to the private sector and away from local government's solid waste operations).

By way of example only and without limitation, an example of sub-paragraph (ii) is where the City decided in or around 1999 to stop providing solid waste services to businesses and high density residential developments and sold its refuse trucks and other assets to the highest bidder (and so ceased to provide a portion of what would otherwise constitute the Engineering Public Works Service Bundle).

- (c) Subject to Section R.2(a), the Nation will have the right to cancel the whole (but not part) of any Service Bundle, in its sole discretion, for any reason, on giving:

- (i) at least 10 year's notice (if given after the 10th anniversary of the Effective Date);
- (ii) at least 5 years' notice (if given after the 15th anniversary of the Effective Date); and
- (iii) 3 years' notice (if given after the 20th anniversary of the Effective Date),

in writing to the City, and the City will thereafter cease delivering any Service Bundle described in the notice from and after the date specified in the notice, and subject to Section R.5 [Survival of Obligations Following Cancellation], the Nation will have, from and after that date, no further obligation to pay the City for such Service Bundle.

- (d) Despite paragraph (c) but subject always to Section R.7 [Partial Cancellation by Nation], the Nation may, at its sole discretion, for any reason, effect a partial cancellation of a Service Bundle at any time, in respect of a particular Municipal Service, or part of a Municipal Service, provided always that the Nation complies with the process for Partial Cancellation set out in Section R.7 [Partial Cancellation by Nation].

R.4 Extraordinary Dispute Resolution of any Materialized Drafting Risk

- (a) Further to the background text set out in Section R.1 [Background and Explanatory Notes to Cancellation Provisions], a Materialized Drafting Risk has the meaning set out in that Section but for further certainty a Materialized Drafting Risk does not include any:

- (i) event or circumstance; or
- (ii) political, business, or social issue,

not relevant to the proper implementation, legal interpretation, and administration of this Agreement.

- (b) A Party is entitled to exercise its remedies under this Section R.4 whether or not it has first completed the dispute resolution process set out in Article 16.0 [Dispute Resolution] and, if and to the extent applicable, Article 17.0 [Remedies for

Default/Specific Remedies] in a good faith attempt to address a Materialized Drafting Risk.

- (c) Subject to the timing limits set out in Section R.2 [Certain Rights Suspended for 1st 20 Years], either Party (the “**Notifying Party**”) may give notice (“**Materialized Drafting Risk Notice**”) to the other Party (the “**Responding Party**”) that the Notifying Party believes a Materialized Drafting Risk has arisen and wishes to exercise its rights under this Section R.4. The Materialized Drafting Risk Notice must:
 - (i) refer to this Section R.4;
 - (ii) provide reasonable particulars of the Materialized Drafting Risk; and
 - (iii) attach a proposed amendment to the Agreement (the “**Proposed Amendment**”) describing how the Materialized Drafting Risk should, in the Notifying Party’s view, be addressed.
- (d) The Responding Party then has 90 days to advise in writing whether it disputes that a Materialized Drafting Risk has occurred.
- (e) If the Responding Party agrees that a Materialized Drafting Risk has occurred, or does not reply within 90 days of receiving the Materialized Drafting Risk Notice, a Materialized Drafting Risk will be deemed to have occurred as of the end of such 90 day period (“**Deemed Date**”) and the Parties will proceed with the process in paragraphs (h) – (q) of this Section R.4.
- (f) If the Responding Party, by notice in writing to the Notifying Party (“**Dispute Notice**”):
 - (i) disputes, within the time limited for doing so, that a Materialized Drafting Risk has occurred; or
 - (ii) accepts that a Materialized Drafting Risk has arisen but disagrees with the Proposed Amendment,

then the Notifying Party may refer the matter to either Court or Arbitration (as defined in Section R.8 [Court or Arbitration]) (such venue to be selected by the Notifying Party at its sole option). The Notifying Party will have the right to submit any supplemental materials it wishes to submit in reply (“**Reply**”) to any issues or matters raised by the Responding Party in its Dispute Notice provided the Reply is delivered to the Court or Arbitration and Responding Party at least 30 days prior to the hearing of the matter. The Court or Arbitration will decide the issue by applying the following tests (relying solely on the materials included within the Materialized Drafting Risk Notice, the Dispute Notice, and Reply (if any)):

- (i) does the Materialized Drafting Risk Notice substantially comply with the requirements for same set out in paragraph (c) above;

- (ii) has the Notifying Party acted in good faith in issuing the Materialized Drafting Risk Notice;
 - (iii) does the Notifying Party have a reasonable basis for alleging that a Drafting Risk has materialized; and
 - (iv) does the Notifying Party have a reasonable basis for alleging that such Materialized Drafting Risk:
 - (A) has not been adequately addressed pursuant to the Standard Dispute/Change Protection Mechanisms; or
 - (B) likely could not be adequately addressed by the Standard Dispute/Change Protection Mechanisms.
- (g) If the Court or Arbitration determines, on a balance of probabilities, that the above 4 tests have been satisfied by the Notifying party, then (subject to the Responding Party exhausting any available means of appeal) a Materialized Drafting Risk will be deemed to have occurred (as of the later of the date of the Court or Arbitration decision or the date of a final appeal or refusal to appeal if applicable (also, a **“Deemed Date”**) and the process set out in paragraphs (i) – (q) will then apply. If the Court or Arbitration determines that any one of the above tests have not been satisfied, then (subject to the Notifying Party exhausting any available means of appeal), a Materialized Drafting Risk will be deemed not to have occurred.
- (h) Where, pursuant to the above provisions of this Section R.4, a Materialized Drafting Risk is deemed to have occurred, the Responding Party will have 180 days from the Deemed Date to draft and submit to the Notifying Party a proposed amendment to this Agreement (also called a **“Proposed Amendment”**) that it believes would address the Materialized Drafting Risk, in accordance with the Equity Principle and the Notifying Party also has 180 days from the Deemed Date to refine and amend its Proposed Amendment. The Responding Party may submit a Proposed Amendment that proposes no amendments to this Agreement.
- (i) The failure of the Responding Party to submit a Proposed Amendment to the Notifying Party within such 180 day period means the Proposed Amendment of the Notifying Party will come into effect in accordance with its terms as though both Parties had signed and agreed to it, provided always that the Notifying Party may still refer the matter to Court or Arbitration for a determination of the applicable effective date and other administrative matters if the same cannot be agreed upon with the Responding Party.
- (j) If, within such 180 day period, the Notifying Party withdraws its Proposed Amendment, the matter will be deemed to have been resolved without amendment to this Agreement, whether or not the Responding Party has submitted a Proposed Amendment prior to such withdrawal, and the Materialized Drafting Risk will be deemed to have not occurred.
- (k) The Parties will have 60 days after the Responding Party delivers its Proposed Amendment to the Notifying Party, to respond to the other Party's Proposed

Amendment, and to indicate what terms it accepts or rejects, and on what basis, with reference to the Equity Principle.

- (l) The Parties may agree to extend the 60 day period (the 60 day period, as may be extended, is called the “**Negotiation Period**”) in order to facilitate the negotiation of their respective Proposed Amendments, and may amend their respective Proposed Amendment during the Negotiation Period.
- (m) If the Parties have not reached an agreement on how to address the Materialized Drafting Risk by the end of the Negotiation Period, then each Party’s Proposed Amendment will be referred to Court or Arbitration, with the Notifying Party having the sole right to elect between a Court or Arbitration.
- (n) For the purposes of the Court or Arbitration proceedings, each Party’s position will be deemed to be represented by the most recent version of the Proposed Amendment submitted to the other Party within the Negotiation Period.
- (o) The Court or Arbitration, as the case may be, will decide, by applying the Equity Principle, which of the two Proposed Amendments most fairly addresses the Materialized Drafting Risk in accordance with the Equity Principle.
- (p) The Court or Arbitration will have the:
 - (i) authority (if not otherwise addressed in the Proposed Amendment which it selects) to determine the effective date and other matters relating to the implementation of the Proposed Amendment where such matters are requested to be determined by either of the Parties; and
 - (ii) authority, but not the obligation, for matters not within the scope of paragraph R.4(p)(i) above, to suggest modifications it considers appropriate to the Proposed Amendment it selects, which the Parties may accept or reject.
- (q) Subject to the outcome of any applicable appeal, or when any applicable rights of appeal are exhausted (the “**End Date**”), the Parties will execute and deliver the Proposed Amendment selected by the Court or Arbitration within 20 days of the End Date, failing which the Agreement will be deemed to have been amended pursuant to the selected Proposed Amendment.

R.5 Survival of Obligations Following Cancellation

Despite any other term of this Agreement:

- (a) if the Nation cancels any Service Bundle pursuant to Section R.3(c) or any portion of Municipal Services pursuant to Section R.3(d) and Section R.7 [Partial Cancellation by Nation], and:
 - (i) the City has a continuing legal obligation or liability in relation to such cancelled Service Bundle (or portion of a Municipal Service) to any third party resident or business on the Lands; or

- (ii) the Nation exercises its rights to delay the replacement or to not replace the cancelled service, and this results in any Losses to the City,

the Nation will, from and after the date of such cancellation, assume full responsibility for performing such obligations of the City and will indemnify the City from and against all Losses incurred by the City as of and from the date of such cancellation which the City would not have incurred but for (i) the cancellation by the Nation of that Service Bundle or portion of Municipal Services, or (ii) the Nation not replacing in whole or in part the cancelled service; and

- (b) except as set out in paragraph R.5(a), no cancellation by either Party of a Service Bundle or all or a portion of a Municipal Service, will relieve the City or the Nation of any obligations under this Agreement (for example, and without limitation, fines, damages, releases and indemnities) which, by their nature, survive such cancellation, closure or suspension, including without limitation and by way of example only those obligations set out in the Main Agreement and any other relevant Schedules.

R.6 Nation/City May Change Municipal Services

- (a) Nothing will prevent the Nation or the City from mutually agreeing to add to or delete from the Municipal Services.
- (b) The Party wishing to initiate such a change will, subject always to the Cancellation Provisions:
 - (i) give the other Party at least 6 months' prior written notice of such proposed change;
 - (ii) submit a request to the City's Director of Finance and City Engineer for advice on how billing would or should be adjusted and by how much in order to effect the change; and
 - (iii) submit a request to the Nation (to the person or entity designated for such requests in the Municipal Services Coordination Guide) for advice on how billing would or should be adjusted and by how much in order to effect the change.
- (c) No request to add or delete Municipal Services under this Section R.6 will be binding unless and until a written amendment to this Agreement is signed by both Parties.
- (d) The Parties agree to act reasonably and expeditiously to effect an appropriate amendment to the Agreement to reflect any addition or deletion of a Municipal Service.

R.7 Partial Cancellation by Nation

- (a) Subject always to Section R.5 [Survival of Obligations Following Cancellation], the Nation may give a written notice of intent ("**NOI**") to cancel a portion of Municipal

Services and will be entitled to cancel same, but only in accordance with the process and conditions set out in this Section R.7.

- (b) The NOI must comply with the following requirements and provide the following information:
 - (i) date (“**NOI Start Date**”) on which the proposed cancellation will take effect, which NOI Start Date must be:
 - (A) no earlier than the date of completion of Phase 4 of the Development; and
 - (B) subject to 1 above, no less than 2 years from date of delivery of NOI to City;
 - (ii) reasonable particulars of the scope, type, and nature of Municipal Services to be cancelled so as to afford the City with a reasonable understanding of what Municipal Services are not being cancelled and for which the City will remain responsible;
 - (iii) The Nation’s intentions in terms of replacing the cancelled Municipal Services with an alternative type of municipal service, or an equivalent, or to not replace (all or part) of the cancelled Municipal Service with anything; and
 - (iv) a proposed amendment (“**NOI Amendment**”) to this Agreement setting out how the NOI would, in the Nation’s view amend this Agreement upon the NOI Start Date.
- (c) Within 60 days of receipt of the NOI, the City will provide its comments and requests for further information and deliver to the Nation.
- (d) The Nation will then provide, within 60 days of receipt of the City’s comments and requests for further information, responsive replies to the City’s comments and all such further information as is reasonably requested by the City.
- (e) The Parties will then attempt to negotiate in good faith, within the next 120 days, agreement on the NOI Amendment which adjusts all relevant terms and conditions of this Agreement to reflect and respect the Equity Principle.
- (f) If the Parties cannot agree on the NOI Amendment and execute same within such 120 day period, then the Parties will follow the process outlined in Article 16.0 [Dispute Resolution].
- (g) Despite any other term of this Section R.7, except paragraph (h) below:
 - (i) the Nation will not be entitled to cancel Municipal Services pursuant to this Section which are Common Access Services. For the purposes of this Section R.7, “**Common Access Services**” are any Municipal Services which would remain available to and would continue to benefit the residents, businesses, and the Nation even if they were “cancelled” under

this Agreement. For further certainty, this would include by way of example only and without limitation, Library Services, Park Services, Arts, Culture and Community Services, as well as many “head-quarter” functions within Police and Fire which would benefit the Development and its residents and businesses even without this Agreement being in place. In this regard, the Parties now agree that this paragraph (i) is a proper application of the Equity Principle and an integral component of same; and

- (ii) including any NOI Start Date articulated in an NOI, no partial cancellation of a Municipal Service under this Section R.7 will take effect unless and until the Parties have negotiated and signed a mutually agreed upon amendment to this Agreement or the process outlined in Article 16.0 [Dispute Resolution] has been completed and all available appeals from same have been exhausted.
- (h) Despite paragraph (g) above, where the Nation proposes (in conjunction with an NOI) to provide a service (“**New Nation Service**”) and:
 - (i) the New Nation Service is analogous to a Common Access Service;
 - (ii) the New Nation Service will be made available to all residents and businesses (as applicable) of Vancouver on the same basis as residents and businesses of the Development and on a Non-Discriminatory Basis;
 - (iii) the type, quantity, and scale of the New Nation Service is such that it will reduce or mitigate the demand on the applicable Common Access Service and is therefore of material benefit to the residents and businesses (as applicable) of Vancouver; and
 - (iv) the NOI Amendment sets the above out in sufficiently clear and binding legal terms and provides for a reduction in amounts payable by the Nation to the City which are fair and equitable in light of paragraph (iii) above as well as the Equity Principle,

then the City will agree to this component of the NOI Amendment despite the fact that the residents and businesses of the Development will still be able to access the Common Access Services and despite the fact that the City Council may not have the same priorities as the Nation at that point in time with respect to the New Nation Services.

- (i) Following the effective date of such partial cancellation, the City will cease delivering that portion of a Service Bundle or Municipal Service identified pursuant to this Section R.7, and subject to Section R.5 [Survival of Obligations Following Cancellation], the Nation will have, from and after that date, no further obligation to pay the City for such portion of the relevant Municipal Service.

R.8 Court or Arbitration

For the purposes of this Schedule R, any reference to a “**Court or Arbitration**” means:

- (a) a court of competent jurisdiction that has accepted jurisdiction over the matter brought before it (but for certainty, also means that if a matter is referred to such a court but it declines to accept jurisdiction, the Party referring the matter remains entitled to refer the matter to Arbitration); or
- (b) binding arbitration in accordance with the following process (or as similar a process as is then applicable under the applicable laws at the time of the matter being referred to arbitration):
 - (i) the matter will be referred to arbitration pursuant to the *Arbitration Act* (British Columbia) pursuant to the Domestic Arbitration Rules of the VanIAC;
 - (ii) the Parties will accept the arbitration ruling as final and binding;
 - (iii) the Parties will appoint an arbitration panel comprised of three individual arbitrators. If the Parties are unable to agree on one or more of the three arbitrators to sit on such panel, the VanIAC will appoint such number of arbitrators as required to fill the arbitration panel with three arbitrators;
 - (iv) the venue for the arbitration will be within the city limits of Vancouver; and
 - (v) unless otherwise agreed by the Parties or ordered in the arbitration, each Party will pay an equal share of the costs of the arbitration.

R.9 Severance

- (a) The Parties will not contest the enforceability or validity of Section R.4 [Extraordinary Dispute Resolution of any Materialized Drafting Risk], in any proceeding.
- (b) Despite Section 19.8 [Severability] of this Agreement, in the event that a Court or Arbitration independently (since neither Party is permitted to make any submissions in this regard) determines any unenforceability or invalidity of any portion of Section R.4 [Extraordinary Dispute Resolution of any Materialized Drafting Risk], then the Parties will take such steps to bring Section R.4 [Extraordinary Dispute Resolution of any Materialized Drafting Risk] back into full force and effect (an “**R.4 Fix**”) as soon as reasonably possible, with the part found to be uncertain removed or modified, each Party acting reasonably, expeditiously, and in accordance with the Equity Principle. In the event, that the Parties have not agreed on and signed an amendment to this Agreement incorporating an R.4 Fix within 180 days of the Court or Arbitration decision (or appeal of same), the matter will be referred to Article 16.0 [Dispute Resolution] for resolution in accordance with the Equity Principle.

END OF SENÁKW SERVICES AGREEMENT