

"SUBDIVISION CONTROL BYLAW 1989 NO. 3260"

Consolidated Version

2022-SEP-21

Includes Amendments: 3744, 3745, 3747, 3800, 3850, 3920, 4770, 4821, 4924, 4945, 5114,
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3260.03, 3260.04, 3260.05, 3260.06, 3260.07

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CITY OF NANAIMO

BYLAW 3260

A BYLAW TO REGULATE THE SUBDIVISION OF LAND AND REQUIRE THE PROVISION OF
WORKS AND SERVICES AS A CONDITION OF THE APPROVAL OF A SUBDIVISION

WHEREAS the Municipal Council may, by bylaw under Sections 989, 990 and 991 of the *Municipal Act* regulate the subdivision of land and require the provision of works and services as a condition of the approval of a subdivision;

NOW THEREFORE the Municipal Council of the City of Nanaimo in open meeting assembled, enacts as follows:

PART I - INTRODUCTION

Title

1. This Bylaw may be cited for all purposes as "CITY OF NANAIMO SUBDIVISION CONTROL BYLAW 1989 NO. 3260".

Schedules

2. Schedules 'A', 'B', 'C', 'D', 'E', and 'F', are made a part of this Bylaw.

Repeal

3. "CITY OF NANAIMO SUBDIVISION OF LAND REGULATION BYLAW 1905" and amendments thereto are hereby repealed.

Interpretation/Definitions

4. In this Bylaw, unless the context otherwise requires:

"Access" is a means of approach to a parcel; typically considered a driveway.

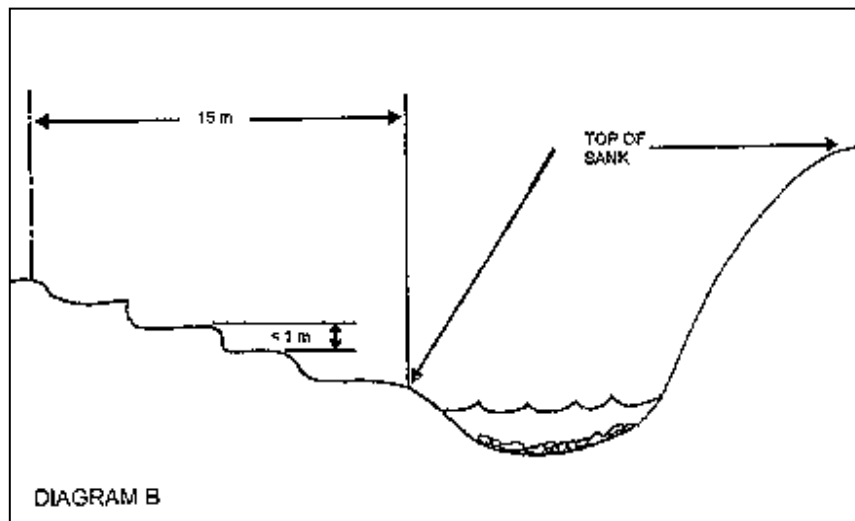
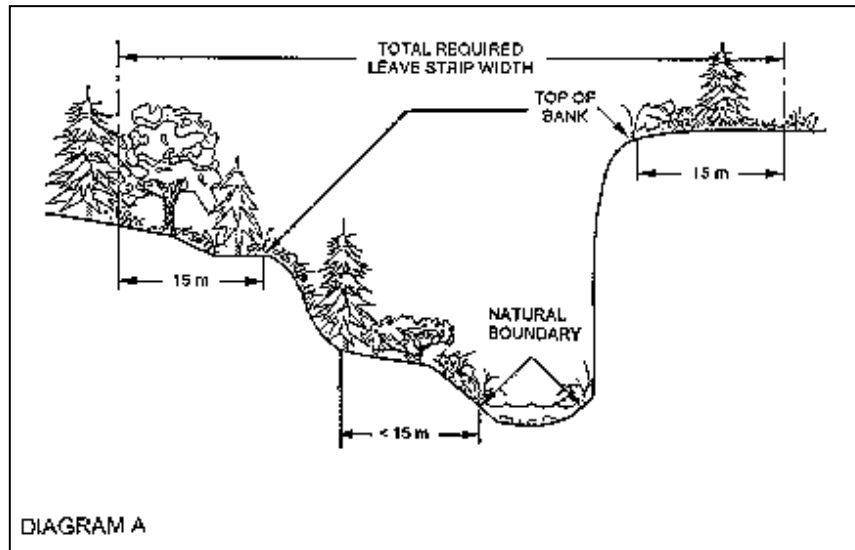
"Access Strip" means that part of a panhandle lot that provides access to a highway.

"Agreement" (Bylaw 3800)	means a Construction Agreement, a Maintenance Agreement or a Works and Services Agreement; and is a legally binding agreement between the owner of the land being subdivided and the Municipality, in the form attached hereto as Schedules 'D', 'E' and 'F', which details the Works and Services required to be completed or which have been completed, in connection with the subdivision.
"Applicant" (Bylaw 3800)	means a person applying for the approval of a subdivision whether as the owner of the property being subdivided or as agent authorized in writing by the owner.
"Approval" (Bylaw 3800)	means approval by the Approving Officer of the subdivision plan, pursuant to Section 88 of the <i>Land Title Act</i> .
"Approving Officer" (Bylaw 3800)	means the appropriate person appointed under Section 77 of the <i>Land Title Act</i> .
"Boulevard"	means that portion of a highway between the curb lines or the lateral boundary lines of a roadway and the adjoining parcel or between curbs on median strips or islands, but does not include any curbs, sidewalks, ditches or driveways.
"Clerk"	means the Clerk of the Municipality appointed under the <i>Municipal Act</i> .
"Common Access"	means an access used by two or more adjoining parcels.
"Community Sewer System"	means a sewage collection and disposal system that is owned and operated by the Municipality or Regional District.
"Community Water System"	means a system of waterworks approved, owned and operated by the Municipality, Greater Nanaimo Water District, Regional District, Improvement District or a water utility as defined in the <i>Water Utility Act</i> .
"Cul-de-sac"	means a street, the end of which is permanently closed, either by subdivision design (i.e. street and lot configuration) or by a natural feature (e.g. rock bluff).
"Developer"	means the Applicant or his contractor or his authorized agent appointed in writing.
"Frontage" (Bylaw 3800)	means that length of a lot boundary which immediately adjoins a highway (other than a lane or a walkway).
"Highway" (Bylaw 3800)	means a public street, path, walkway, trail, lane, bridge, road, thoroughfare and any other way.
"Lane" (Bylaw 3800)	means a highway with a width of more than three metres but not greater than eight metres which is intended to provide "secondary" access to parcels of land, but a lane is not a partial highway.

"Leave Strip" (Bylaw 5262)	means that area of land on each side of a watercourse or adjacent to the sea between the centre of the watercourse and a line parallel to and perpendicularly distant: (a) 15 metres inland from the wetland boundary of ponds, lakes, and wetlands identified in 'Schedule G' of Zoning Bylaw 1993 No. 4000; (b) 15 metres inland from the natural boundary of the sea; (c) 7.5 metres inland from the inboard toe of a standard dyke or structure used for flood protection or seepage control; (d) 30 metres inland from the top of bank of the mainstem of the Millstone River and that portion of the Nanaimo River within the City boundaries; or (e) 15 metres or 7.5 metres inland from the top of bank of all other creeks, rivers and streams as identified in 'Schedule G' of Zoning Bylaw 1993 No. 4000. as the case may be.
"Maintenance Period" (Bylaw 3800)	means the length of time that the Works and Services installed in connection with a subdivision are to be maintained free of defects by the developer, at his expense.
"Major Road"	means a highway as shown on the City of Nanaimo Official Community Plan, Major Road Network Plan.
"Medical Health Officer"	means the Medical Health Officer appointed under the <i>Health Act</i> for the City of Nanaimo.
"Municipal Council"	means the Council of the City of Nanaimo.
"Municipal Engineer"	means the Director of Engineering and Public Works of the Municipality appointed as such by the Municipal Council or such other person as may, from time to time, be duly authorized to act in his stead by the Municipal Council.
"Municipality"	means the City of Nanaimo.
"Natural Boundary" (Bylaw 5262)	means the visible <i>high water mark</i> of any lake, river, stream or other body of water, where the presence and action of the water are so common and usual, and so long continued in all ordinary years, as to mark on the soil of the bed of the body of water a character distinct from that of its banks, in vegetation as well as in the nature of the soil itself.
"Owner"	means in respect of a parcel, the registered owner of an estate in fee simple or the registered holder of the last registered agreement for sale.

"Ornamental Street Light"	means a metal freestanding pole with attached luminaries.
"Panhandle lot"	means any parcel which is serviced and gains highway frontage through the use of a narrow strip of land (access strip) which is an integral part of the parcel.
"Parcel"	means a lot, block or other area in which land is held or into which land is subdivided.
"Potable Water"	means water which is approved for drinking purposes by the Medical Health Officer.
"Professional Engineer"	means a person who is registered or duly licensed as such under the provisions of the <i>Engineering Profession Act</i> .
"Proven Supply"	means that a minimum of 2000 litres per day of potable water has been proven to be available to the satisfaction of the Municipal Engineer.
"Public Utility"	means the lawful distribution or distributor of electricity, gas, water, telephonic or television signals under the <i>Utilities Commission Act</i> , the <i>Municipal Act</i> , <i>Water Utility Act</i> or a Statute of Canada.
"Right-of-Way"	<p>includes land or an interest in land acquired for the purpose of:</p> <ol style="list-style-type: none">(1) public rights of passage with or without vehicles; or(2) constructing, maintaining, or operating any railway; or(3) erecting and maintaining any pole-line; or(4) laying, placing and maintaining drains, ditches, water courses, pipes, transmission lines, or wires for the conveyance, transmission, or transportation of water, gas, electrical power, communication, or for the disposal of sewage; <p>or any right-of-way of a like nature or for any purpose necessary for the operation and maintenance of the undertaking.</p>
"Roadway"	means the travelled portion of the highway that is improved, designed or ordinarily used for vehicular traffic.
"Rural Local Road" (Bylaw 3800)	means a highway serving rural parcels of land and not being an arterial highway. Rural highway applies to all roads in the Municipality constructed with open ditch storm drainage system. Generally required where abutting parcels are 0.8 ha in size or larger.
"Security"	shall mean and include a cash deposit made to the City, a certified cheque made payable to the City or an irrevocable letter of credit approved by the Director of Finance.
"Standards"	means City of Nanaimo Engineering Standards and Specifications being Schedule 'A' to this Bylaw.

- "Street" means highway.
- "Subdivision" (Bylaw 3800) means the division of land into two (2) or more parcels, whether by plan, apt descriptive words or otherwise.
- "Subdivider" means any owner of any parcel being subdivided.
- "Top of Bank" (Bylaw 5262) means the points closest to the natural boundary of a watercourse where a break in the slope of the land occurs such that the grade beyond the break is flatter than 3:1 for the required leave strip distance (See Diagram A).



- "Trunk Sewer" means any sanitary sewer of a 300mm diameter or greater.
- "Trunk Storm Sewer" means any storm sewer of a 600mm diameter or greater.

"Trunk Water Main"	means any water supply main of a 300mm diameter or greater.
"Urban Local Street"	means a highway serving a residential neighbourhood and not intended to carry traffic from one neighbourhood to another.
"Walkway"	means a highway intended for the use of pedestrian traffic only.
"Watercourse" (Bylaw 4945)	means any natural drainage course or source of water whether usually containing water or not, and includes any lake, river, creek, spring, wetland, the sea, or source of ground water and includes portions that may be contained within a conduit or culvert.
"Wetland" (Bylaw 4945)	means land that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal conditions does support vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, estuaries and similar areas.
"Wetland Boundary" (Bylaw 5262)	means the high water mark or water level in wetlands, ponds, and lakes that is reached during annual winter flood events, as indicated by the presence of soil subject to regular inundation and/or vegetation that is typically adapted for life in submerged, semi-submerged or saturated soil conditions.
"Works and Services"	means the highways, drainage, water and sewer systems, the sidewalks, boulevards, street lighting and underground wiring or any other works to be provided for in a subdivision of land under this Bylaw.
"Zone"	means a zone established by the "CITY OF NANAIMO ZONING BYLAW 1993 NO. 4000" and amendments thereto. (Bylaw 4924)

PART II - ADMINISTRATION

Administration

5. The regulation of this Bylaw shall apply to the whole of the area within the boundaries of the City of Nanaimo.

Inspection

6. The Approving Officer and his/her duly authorized representative IS HEREBY AUTHORIZED to enter, at all reasonable times, upon any properties subject to this Bylaw to ascertain whether this Bylaw is being obeyed.

Direct Enforcement

7. Whenever a property owner is directed by this Bylaw to carry out a matter or thing, on default by that person, the matter or thing shall be done at the expense of the person in default, and the Municipality may recover the expense, with interest at the rate of six percent a year, with costs, in the same manner as municipal taxes. Any direction given to the Applicant shall be deemed to have been given to the owner.

Severability

8. If any portion of this Bylaw is held to be invalid by a court of competent jurisdiction, the validity of the remaining portions of this Bylaw shall not be affected.

PART III - COMPLIANCE

Prohibition

9. (1) No person shall subdivide any parcel of land except in conformity with this Bylaw.

Violation

10. Any person who violates any of the provisions of this Bylaw or who suffers or permits any act or thing to be done in contravention of this Bylaw, or who neglects to do or refrains from doing any act or thing which is required by any of the provisions of this Bylaw, shall be deemed to have violated the provisions of this Bylaw. Every day that the violation continues, it shall be considered a new violation.

Penalty

11. Any person who violates any of the provisions of this Bylaw shall, upon summary conviction thereof, be liable to a penalty of not more than TWO THOUSAND DOLLARS (\$2,000.00) for each violation.

Contravention of Other Enactments

12. (1) Except where a setback in respect of a highway or where the dedication of roads, lanes, walkways or public use lands is concerned, no subdivision shall be created which would cause any existing building or structure or sewage disposal system or source of potable water to contravene any building, zoning or other regulation in force.

PART IV - PRELIMINARY REVIEW

General (Bylaw 3800)

13. (1) Where the Approving Officer deems it necessary, the owner shall provide the following:
 - (a) An overall plan showing the ultimate method of subdivision, if the Approving Officer has reason to anticipate further subdivision.
 - (b) Engineering studies, reports, designs or surveys as may be necessary to satisfy the Approving Officer that flooding, settlement or other unusual soil or drainage conditions can be accommodated without detriment to the proposed subdivision, to adjacent property or to adjacent public or private works or facilities.
 - (c) A contour plan verified by a B.C. Land Surveyor and/or a Professional Engineer (as applicable) showing the:
 - I. Contours of the land to be subdivided and land immediately adjacent.
 - II. The location of the natural boundary of all watercourses.
 - III. The top of bank in respect of all creeks, streams and rivers.
 - IV. The leave strip boundary calculated in accordance with this bylaw.
 - V. The elevation and location of all structures, steep banks and base of trees or wooded areas.
 - VI. Areas of unstable soil and/or high water table. (Bylaw 4945)
 - VII. The wetland boundary of all ponds, lakes and wetlands. (Bylaw 5262)
- (2) Statutory rights-of-way in favour of the City shall be granted in such locations and such widths as may be necessary to accommodate utilities and drainage systems in the subdivision.
- (3) Nothing contained within this Bylaw or the zoning Bylaw shall be deemed to bind the Approving Officer to approve a subdivision complying with the prescribed minimum requirements as to area and shape of parcels if, in his/her opinion, such minimum standards would not be adequate to accommodate the facilities, structures and open spaces required by the proposed use to protect the established amenities of adjoining or adjacent lands.

(4) Where the requirements are met with respect to the provision of water and method of sewage disposal, minimum parcel size requirements shall not apply to a subdivision where:

- (a) two or more parcels will be combined into a single parcel;
- (b) the effect of the subdivision would not increase the number of parcels, but would adjust the boundary between existing parcels, provided that the boundary change did not result in the reduction of either parcel by ten percent or more of its original size; or
- (c) an accretion is added to a parcel.

(5) The owner shall identify on the land to be subdivided the top of bank and the boundary of the leave strip farthest from the watercourse by flagging, marking tape or stakes to the satisfaction of the Approving Officer. (Bylaw 4945)

PART V - WORKS AND SERVICES AND CONSTRUCTION STANDARDS

General

16. Prior to any tree removal, land clearing, site preparation, road construction or any other disturbance of the land, the owner will erect a bright orange or other highly visible temporary fence along the boundary of the leave strip farthest from the watercourse. This fence shall have the minimum height of 1.2 metres (3.94 feet) supported by poles a maximum distance from one another of 2.5 metres (8.20 feet). This fence shall remain in place throughout the clearing, site preparation, construction on or disturbance of the land. (Bylaw 4945)

17. (1) All works and services required under this Bylaw shall be designed by a Professional Engineer registered in the Province of British Columbia.

(2) No works and services shall be shown on the plan, dedicated, laid out nor constructed unless the dimensions, location, alignment and gradient meet the requirements for highways prescribed in Schedule 'A' hereto.

(3) Upon completion of all required works and services, the owner shall submit "As Constructed" drawings and "Certification of the Works Installed", both completed by a Professional Engineer in accordance with the requirements of the Standards, to the Approving Officer. All aspects of the work shall be carried out in accordance with good engineering practice and shall meet the requirements of the Standards contained in Schedule 'A' of this Bylaw.

(4) Where a highway, sidewalk, boulevard, underground wiring, water distribution, sanitary sewer and/or storm sewer system is provided as part of a subdivision, the works and services shall be located such that each system:

- (a) Provides individual service to all lots created by the subdivision;
- (b) Extends the full width of all lot frontages; and
- (c) Provides for further extension and connection of the system to lands and systems beyond the subdivision.

(5) The works and services required by this Bylaw shall be provided, located and constructed at the expense of the owner of the land proposed to be subdivided.

17.A. Highways

Highways to be constructed in connection with a subdivision shall have dimensions, alignment and gradient and be located in accordance with the applicable standards prescribed in Schedule 'A' hereto.

Works and Services Required Within a Subdivision

18. (1) Highways

All new highways, including widening strips of existing highways, shall be cleared to their full width and shall be graded, surfaced, drained and otherwise provided, located and constructed, and shall have the dimensions, alignment and gradient in accordance with the applicable standards prescribed in Schedule 'A' hereto.

(2) Sidewalks (Bylaw 3747)

Where any parcel of land zoned Residential, Residential Multiple, Commercial or Public Institution is proposed to be subdivided to create parcels less than 0.8 hectares, sidewalks shall be provided, located and constructed in accordance with the applicable standards prescribed in Schedule 'A' hereto, as follows:

- (a) on both sides of urban arterial streets;
- (b) on both sides of urban collector streets;
- (c) on both sides of urban local streets, except:
 - (i) cul-de-sacs of less than 100m in length which will not permit further pedestrian destination (e.g. via a walkway between parcels exiting from cul-de-sac); or
 - (ii) when deemed unnecessary by the Approving Officer.

(3) Boulevards and Boulevard Crossings

Where any parcel is proposed to be subdivided and new highways are created, boulevards shall be provided, located and constructed in accordance with the applicable standards prescribed in Schedule 'A' hereto.

(4) Underground Wiring

Where the owner of any parcel which is proposed to be subdivided, chooses to install underground wiring within the subdivision, the underground wiring shall be provided, located and constructed in accordance with B.C. Hydro and Power Authority and B.C. Telephone Company specifications and in accordance with the applicable standards prescribed in Schedule 'A' hereto.

(5) Street Lighting

Where any parcel is proposed to be subdivided into parcels less than 0.8 ha and roads dedicated, the road shall be provided with ornamental street lighting and shall be provided, located and constructed in accordance with the applicable standards prescribed in Schedule 'A' hereto.

(6) Water Distribution System and Fire Hydrant System

Where any parcel is proposed to be subdivided with parcels less than 2 ha in area, a water distribution system and a fire hydrant system shall be provided, located and constructed in accordance with the applicable standards prescribed in Schedule 'A' hereto, and shall be connected to the existing water distribution system of the Municipality in accordance with the applicable standards prescribed in Schedule 'A' hereto.

(7) Sanitary Sewer System

Where any parcel is proposed to be subdivided into parcels less than 2 ha in area, the subdivision shall be provided with a sewage collection system, which shall be provided, located and constructed in accordance with the standards prescribed in Schedule 'A' hereto, and shall be connected to the existing sanitary sewer system of the Municipality in accordance with the standards prescribed in Schedule 'A' hereto.

Notwithstanding the above, where a parcel is zoned Rural Residential 1 (A-1) and is proposed to be subdivided into parcels less than 2 ha in area, an alternate method of sewage disposal shall be provided, pursuant to the Sewage Disposal Regulations under the *Health Act*.

(8) Storm Drainage System

Where any parcel is proposed to be subdivided into parcels less than 0.8 ha in area, the subdivision shall be provided with a piped storm drainage system, which shall be provided, located and constructed in accordance with the applicable standards prescribed in Schedule 'A' hereto, and shall be connected to the existing storm sewer system of the Municipality or to an adequate discharge point in accordance with the standards prescribed in Schedule 'A' hereto.

Notwithstanding the above, where any parcel is proposed to be subdivided into parcels 0.8 ha in area or greater, a ditch and culvert system for drainage shall be provided, located and constructed in accordance with the applicable standards prescribed in Schedule 'A' hereto, provided that the depth of any ditch shall not exceed 1.2 m. Where a ditch exceeds 1.2 m in depth, a piped system of storm drainage will be provided, located and constructed in accordance with the standards prescribed in Schedule 'A' hereto.

(9) Gas Utilities

Where the owner of any parcel which is proposed to be subdivided chooses to install gas utility piping within the subdivision, all related works shall be installed in accordance with the applicable government regulations and shall be provided, located and constructed in accordance with the applicable standards prescribed in Schedule 'A' hereto.

(10) Integrated Survey Monuments

The owner of any lands which are proposed to be subdivided and which will require the dedication of highways, shall provide control monuments in the subdivision in the locations and in accordance with the standards prescribed in Schedule 'A' hereto.

Where a subdivision survey is carried out within an area declared an integrated survey area, all existing and new monuments pertinent to the survey of the subdivision shall be tied by survey to the nearest coordinate control monuments according to the procedures and regulations made by the Surveyor General.

All monuments installed as part of a subdivision shall be tied by survey to the subdivision survey.

(11) Access for Parcels (Driveways)

(a) Each parcel, created by subdivision must have vehicular access. Where there is a difference in elevation of more than 1.2 m, between the centre line of the existing or proposed road fronting the parcel and a point 10 m into the parcel, an access (driveway) shall be provided, located and constructed to sub-grade to a suitable building site.

(b) Where a common access serving three (3) or more parcels is permitted by the Approving Officer, the common access shall be provided, located and constructed in accordance with the standards prescribed in Schedule 'A' hereto.

Works and Services Required - Off-Site of Subdivisions

19. On existing highways adjacent to the land being subdivided, up to the centre line of the highway, the owner shall provide works and services in accordance with the following requirements:

(1) Highways

Existing highways shall be constructed as follows:

(a) Where a subdivision is creating parcels less than 0.8 ha in size and where finished road grades have been established on the existing highway fronting the subdivision, the street shall be constructed to the full standard for that classification of highway up to the centre line of the existing highway, including curb and gutter on one side. Unless otherwise provided for in this section, the total width of the travelled asphalt surface shall not be less than 7.5 m.

(b) Where a subdivision is creating parcels 0.8 ha in size or greater fronting an existing highway, the highway shall be constructed to provide minimum asphalt width of 7.5 m. Concrete curb and gutter shall be required unless suitable drainage for the road, proposed parcels and tributary area can be provided by ditches.

(c) Where finished grades have not been established, the standard for highway construction required in Section 19(1)(a) above may be reduced by the Approving Officer.

(2) Sidewalks (Concrete) (Bylaw 3800) (Bylaw 4924)

Where a parcel of land is being subdivided, except land zoned Rural Residential, concrete sidewalks shall be constructed where the following criteria apply:

(a) Finished sidewalk grades can be established.

(b) The sidewalk shoulder will form part of an orderly pedestrian traffic route. Logical extension of the sidewalk will be possible by connecting, in the future, with a sidewalk across the frontage of adjacent lots or by a crosswalk to an orderly pedestrian traffic route on the opposite side of the highway.

(3) Sidewalks (Asphalt) (Bylaw 3800)

Asphalt walking shoulders shall be constructed where the following criteria apply:

- (a) Finished concrete sidewalk grades cannot be established.
- (b) An asphalt walking shoulder will form part of an orderly pedestrian route. Logical extension of the asphalt walking shoulder will be possible by connecting, in the future, with a sidewalk or asphalt walking shoulder across the frontage of adjacent parcels or by connecting by a crosswalk to an orderly pedestrian traffic route on the opposite side of the highway.
- (c) Where required, an asphalt walking shoulder shall be not less than 1.5 m in width. Sub-base, base and asphalt materials, and structure shall be in accordance with the requirements for an urban street.

(4) Boulevards

Boulevards shall be constructed within existing highway rights-of-way immediately adjacent to all parcels being created.

(5) Underground Wiring

Where underground hydro and telephone wiring exist in a highway fronting a subdivision, individual underground services shall be provided to the front property line of each parcel created by the subdivision.

Where no hydro power service exists, hydro power service shall be constructed along the frontage of the subdivision to provide individual service to each parcel created by the subdivision.

(6) Street Lighting

An ornamental street light system shall be provided when the lots being created are less than 0.8 ha in size and where any of the following criteria apply:

- (a) When an ornamental streetlight system:
 - (i) will form part of an orderly extension of an existing system in an existing highway fronting the subdivision;
 - (ii) will form part of an orderly extension of an ornamental street light system in new highways dedicated and constructed as part of the subdivision; or
 - (iii) can be extended in an orderly fashion along the existing highways with future development of adjacent land.
- (b) hydro service in the existing highway is an underground system.

(7) Storm Drainage

A piped storm sewer system shall be constructed when parcels being created by the subdivision are less than 0.8 ha in size, and the following criteria apply:

- (a) There is an existing piped storm sewer system to which connection can be made; or
- (b) There are drainage problems which cannot be resolved by the construction of ditches or works, other than piping.

A drainage system consisting of culverts and open ditches shall be constructed when the parcels being created are 0.8 ha in size or greater, and the following criteria apply:

- (a) There is an existing ditch or pipe system to which flow can be directed; and
- (b) There are drainage problems on the new parcels that require redirection of drainage to the street.

(8) The water distribution system shall be extended where the following criteria apply:

- (a) The parcels being created require water service and fire hydrants under the requirements of this Bylaw; and
- (b) The existing water distribution system is designed to be extended in the existing highway fronting the subdivision.

If the existing water distribution system was designed to be extended along that side of the existing highway which abuts the property being subdivided then the water system shall be extended the full width of the property being subdivided.

If the existing water distribution system was designed to be extended along the opposite side of the highway from the land being subdivided, or the water distribution system will not serve lands beyond the property being subdivided, the system shall be extended to provide a service connection to the last parcel being created.

(9) The sanitary sewer system shall be extended where the following criteria apply:

- (a) The parcels being created require sanitary sewer service under the requirements of this Bylaw; and
- (b) The sanitary sewer system is designed to be extended in the existing highway fronting the subdivision.

If the existing sanitary sewer system was designed to be extended along that side of the highway which abuts the property being subdivided, then the sewer system shall be extended the full width of the property being subdivided.

If the existing sanitary sewer system was designed to be extended along the opposite side of the highway from the land being subdivided, or if the sewer system will not serve lands beyond the property being subdivided, then the sewer system shall be extended sufficiently to provide a sewer connection to the last parcel being created.

(10) Notwithstanding Section 19(1) to (9) above, the works and services required shall not include specific works and services that are included in the calculations used to determine the amount of a Development Cost Charge, where the owner is required to pay such Development Cost Charge, unless the owner, at the request of the Approving Officer, agrees to provide such works and services. (Bylaw 3850)

(11) Exemptions to Off-Site Works and Services

(a) The requirements in Part 5, Section 19(1) - (10) shall not apply to a parcel of land which is zoned General Industrial Zone (1-3) or Heavy Industrial Zone (1-4). (Bylaw 4924)

Community System Connections Required

20. Where the Municipality, the Greater Nanaimo Water District or the Regional District of Nanaimo operates a community water or sewer system or a drainage collection or disposal system, the water distribution, fire hydrant, sewage collection and drainage collection systems, where provided in the subdivision, shall be connected by trunk mains to the system of the Municipality, Greater Nanaimo Water District or the Regional District of Nanaimo to the satisfaction of the authority having jurisdiction.

Rights-Of-Way (Bylaw 3800)

21. (1) All works and services and drainage systems not located in highways which will become the responsibility of the Municipality for maintenance and repair, shall require statutory rights-of-way registered against the title of the affected parcel in favour of the Municipality in the form of the Right-of-Way document attached hereto as Schedule 'B'.

(2) Statutory right-of-way plans shall be prepared by a British Columbia Land Surveyor. The plans and accompanying documents shall be registered in the Land Title Office in Victoria, B.C.

(3) The subdivider shall be responsible for ensuring that all required rights-of-way and working easements off-site are obtained prior to the City of Nanaimo issuing approval to proceed with construction.

(4) All required statutory rights-of-way for works shall be shown on the design drawings. Minimum widths for rights-of-way and working easements for works through private property shall be as detailed in Schedule 'A' hereto.

(5) Documents for private easements must be provided by the subdivider. These documents must be submitted with a letter of intent to register them with the subdivision plan. The letter of intent shall be in a form satisfactory to the Approving Officer.

Bonding

22. Security to be deposited under Section 991(a) of the *Municipal Act* shall be a cash deposit, a certified cheque or an Irrevocable Letter of Credit in the form attached hereto as Schedule 'C'. The security shall be in an amount satisfactory to the Approving Officer and shall include the cost of construction and installation of the works, plus engineering, supervision, legal survey and other costs. (Bylaw 3744)

Where a security is deposited in accordance with Section 991 of the *Municipal Act*, a non-refundable administration fee in the amount of two percent of the amount of the security to a maximum of \$2,000. shall be made payable to the City at the time the security is provided. The administration fee is payable by cash or certified cheque, separate from the Security. (Bylaw 3920)

The subdivider shall be responsible for maintaining and correcting the works against any defects arising from installation, materials, workmanship or engineering design which may appear within a period of not less than one year from the date of Substantial Completion.

Defects discovered during the maintenance period shall be replaced and/or rectified to the satisfaction of the Municipal Engineer. The same guarantee for the same period of time shall apply to such replacement materials or rectified work and the maintenance period for the rectified defect shall begin on the date the Municipal Engineer accepts such rectified defects.

If it is discovered by use, tests or inspection of the works prior to the end of the maintenance period, that a deficiency or defect exists in the materials, workmanship and/or design in respect of the works, the subdivider shall arrange to rectify the fault. In the event that this work, in the opinion of the Municipal Engineer, must be done immediately to prevent serious damage, injury or loss of life, the Municipality will perform or cause to be performed the necessary work and will notify the subdivider accordingly.

Work required during the maintenance period shall, except as otherwise provided herein for emergencies, be carried out by the subdivider or his representative within ten (10) days of the Municipal Engineer's written instruction to perform the work. In the event that this work is not done by the subdivider within the ten day period or such period as may be approved by the Municipal Engineer, the City of Nanaimo will take whatever action is necessary to have the work done.

All costs resulting from the necessity to do work under the maintenance period shall be borne by the subdivider.

Securities shall be held by the City of Nanaimo for the maintenance period. Where a security is deposited in accordance with Section 991 of the *Municipal Act* a non-refundable administration fee in the amount of two percent of the amount of the security shall be charged and shall be payable to the City at the time the security is deposited. The administration fee is payable by cash or certified cheque, separate from the security. (Bylaw 3744)

Connection of Works and Services

23. Where an owner of land proposed to be subdivided provides, locates and constructs the works and services required by this Bylaw to serve the proposed subdivision, the owners shall not connect such works or services to any of the sewage, drainage, electrical or water works of the Municipality and the Municipality shall not accept the works constructed and installed by the owner or any part thereof, until

- (a) The Municipal Engineer has issued Substantial Completion for the works and services;
- (b) The owner has deposited with the Municipal Engineer "As-Built" drawings and certification of such works and services prepared by a Professional Engineer in accordance with Schedule 'A' hereto;
- (c) The owner has registered in the Land Title Office all statutory rights-of-way required where such works are located other than in highways; and
- (d) The owner has entered into a Maintenance Agreement with the Municipality.

Ownership

24. All works and services constructed under this Bylaw shall, upon their acceptance by the Municipality, become the property of the Municipality, free and clear of all encumbrances.

PART 6 - APPROVAL (Bylaw 3800)

General

25. All works and services constructed and installed shall be at the expense of the owner of the land being subdivided or developed and shall be installed to the standards prescribed in this Bylaw.

Prior to consideration by the Approving Officer of approval of a subdivision plan prepared by a B.C. Land Surveyor, the following shall be provided by the applicant:

- (a) A completed "Application for Approval" form together with the subdivision plan and seven (7) paper prints.
- (b) Certification that all taxes have been paid for all properties affected by the subdivision.
- (c) Approval fees, as required.
- (d) Right-of-Way agreements and easement plans where applicable.
- (e) Restrictive Covenants, where applicable.
- (f) Security to guarantee performance of all outstanding construction work and/or maintenance of constructed works, where applicable. Where security is required under Section 991 of the *Municipal Act*, the owner shall also provide a signed agreement in the appropriate format as set out in Schedules hereto.

SCHEDULE 'A'

ENGINEERING STANDARDS AND SPECIFICATIONS

NOTE: Due to the size (bulk) of Schedule "A", the Engineering Standards and Specifications are bound under separate cover and can be obtained from the Engineering Department or on the City's website:

<https://www.nanaimo.ca/docs/default-document-library/v14-moess.pdf>

SCHEDULE 'B'

LAND TITLE ACT
FORM 17 (Section 151, 152(1), 220 APPLICATION)

NOTE: Before submitting this application, applicants should check and satisfy themselves as to the tax position, including taxes of the Crown Provincial, a Municipality and Improvement District and Irrigation Districts.

NATURE OF CHARGE: Right-of-Way PID NUMBER: HEREWITH FEES: \$35.00

Richard Stuckenberg
City of Nanaimo
455 Wallace Street
Nanaimo BC V9R 5J6 754-4251

Signature of Applicant

THIS INDENTURE made the day of , A.D. 19 .

BETWEEN:

(hereinafter called the "Grantor")

OF THE FIRST PART

AND: Greater Nanaimo Water District
P.O. Box 748
Nanaimo BC V9R 5M2

(hereinafter called the "Grantee")

OF THE SECOND PART

WHEREAS the Grantor is the registered owner or is entitled to become the registered owner of an estate in fee simple of ALL AND SINGULAR those certain parcels or tracts of land and premises situate, lying and being in the City of Nanaimo, in the Province of British Columbia and being more particularly know and described as:

(hereinafter called the "Lands of the Grantor")

AND WHEREAS this Right-of-Way is necessary for the operation and maintenance of the Works;

AND WHEREAS to facilitate the installation of a system of water works, including all pipes, valves, fittings and facilities in connection therewith (herein called the "Works"), the Grantor has agreed to permit the construction by the Grantee of the Works on a portion of the Lands of the Grantor and to Grant for that purpose the Right-of-Way hereafter described.

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the sum of One Dollar (\$1.00) of lawful money of Canada, now paid by the Grantee to the Grantor (the receipt and sufficiency of which is hereby acknowledged by the Grantor), and in consideration of the covenants and conditions hereinafter contained to be observed and performed by the Grantee and for other valuable consideration:

1.1 THE GRANTOR DOTI HEREBY:

1.1 Grant, convey, confirm and transfer, in perpetuity, unto the Grantee the full, free and uninterrupted right, licence, liberty, privilege, permission and right-of-way to lay down, install, construct, entrench, operate, maintain, inspect, alter, remove, replace, bury, cleanse, string, and otherwise establish one or more systems of Works upon, over, under and across the Lands of the Grantor.

(hereinafter called the "Perpetual Right-of-Way")

The Grantee covenants and agrees that as soon as reasonably practical after the construction and installation of the Works upon the Lands of the Grantor the Grantee will cause to be delivered to the applicable Land Title Office for deposit under the Land Title Act a plan of right-of-way defining that part of the Lands of the Grantor required by the Grantee for the accommodation of the Works, and immediately after deposit of the said plan of right-of-way the Grantee will cause to be registered in the Land Title Office a release from the rights herein granted over all of the Lands of the Grantor not within the right-of-way shown on the plan and the part of the Lands of the Grantor then shown outlined and marked on the right-of-way plan shall become from the date of such release the "Perpetual Right-of-Way".

1.2 Covenant and agree to and with the Grantee that for the purposes aforesaid and upon, over, under and across the Perpetual Right-of-Way, the Grantee shall for itself and its servants, agents, workmen, contractors and all other licensees of the Grantee together with machinery, vehicles, equipment, and materials be entitled at all times to enter, use, pass and repass, labour, construct, erect, install, dig, carry away soil or other obstruction now or hereafter in existence, as may be necessary, useful, or convenient in connection with the operations of the Grantee in relation to the Works.

1.3 Grant, convey, confirm and transfer unto the Grantee for itself, and its servants, agents, workmen, contractors and all other licensees of the Grantee together with machinery, vehicles, equipment and materials, the right at all times to enter upon and to pass an repass over such of the Lands of the Grantor as may reasonably be required for the purpose of ingress to and egress from the Perpetual Right-of-way.

1.4 Transfer, assign and convey to the Grantee all right, title and interest in and to any Works that the Grantee, or the Grantor have prior to this Agreement established or constructed or maintained or operated within the Perpetual Right-of-Way or in relation to any similar Works previously constructed by any party whatsoever within the Perpetual Right-of-Way.

- 2.0 THE GRANTOR HEREBY COVENANTS TO AND AGREES WITH THE GRANTEE, as follows:
- 2.1 That the Grantor will not, nor permit any other person to erect, place, install or maintain any buildings, structure, mobile home, concrete driveway or patio, pipe, wire or other conduit on, over or under any portion of the Perpetual Right-of-Way so that it in any way interferes with or damages or prevents access to, or is likely to cause harm to Works authorized hereby to be installed in or upon the Perpetual Right-of-Way.
- 2.2 That the Grantor will not do nor knowingly permit to be done any act or thing which will interfere with or injure the said Works and in particular will not carry out any blasting on or adjacent to the Perpetual Right-of-Way without the consent in writing of the Grantee, provided that such consent shall not be unreasonably withheld.
- 2.3 That the Grantor will not substantially add to or diminish the soil cover over any of the Works installed in the Perpetual Right-of-Way and in particular, without limiting the generality of the foregoing, will not construct open drains or ditches along or across any of the Works installed in the Perpetual Right-of-Way without the consent of the Grantee which will not be unreasonably withheld.
- 2.4 That the Grantor will from time to time and at all times upon every reasonable request and at the cost of the Grantee do and execute or cause to be made, done, or executed all such further and other lawful acts, deeds, things, devices, conveyances and assurances, in law whatsoever for the better assuring unto the Grantee of the rights hereby granted.
- 3.0 THE GRANTEE HEREBY COVENANTS TO AND AGREES WITH THE GRANTOR, as follows:
- 3.1 That the Grantee will not bury any debris or rubbish of any kind in the excavations or backfill, and will remove shoring and like temporary structures as backfilling proceeds.
- 3.2 That the Grantee will thoroughly clean all lands to which it has access hereunder of all rubbish and construction debris created or placed thereon by the Grantee and will leave such lands in a neat and clean condition.
- 3.3 That the Grantee will, as soon as weather and soil conditions permit, and so often as it may exercise its rights of entry hereunder to any of the Lands of the Grantor, replace the surface soil as nearly as may be reasonably possible to the same condition as it was prior to such entry, in order to restore the natural drainage to such lands, PROVIDED HOWEVER that nothing herein contained shall require the Grantee to restore any trees or other surface growth but the Grantee shall leave such lands in a condition which will not inhibit natural regeneration of such growth.
- 3.4 That the Grantee will, as far as reasonably possible, carry out all work in a proper and workmanlike manner so as to do as little injury to the Lands of the Grantor as possible.
- 3.5 That the Grantee will make good at its own expense all damage or disturbance which may be caused to the surface soil of the Lands of the Grantor in the exercise of its rights hereunder.
- 3.6 The Grantee will, as far as reasonably possible, restore any fences, lawns, flower beds, at its cost as nearly as may be reasonably possible to the same condition that they were in prior to any entry by the Grantee upon the Lands of the Grantor.

- 4.0 THE PARTIES HERETO EACH HEREBY COVENANT TO AND AGREE WITH THE OTHER, as follows:
- 4.1 The said Works referred to above, together with all pipes, valves, conduits, wires, casings, fittings, lines, meters, appliances, facilities, attachments or devices used in connection therewith shall constitute the Works.
- 4.2 Notwithstanding any rule of law or equity to the contrary, the Works brought on to, set, constructed, laid, erected in, upon or under the Perpetual Right-of -way by the Grantee shall at all times remain the property of the Grantee notwithstanding that the same may be annexed or affixed to the freehold and shall at any time and from time to time be removable in whole or in part by the Grantee.
- 4.3 In the event that the Grantee abandons the Works or any part thereof the Grantee may, if it so elects, leave the whole or any part thereof in place.
- 4.4 That no part of the title in fee simple to the soil shall pass to or be vested in the Grantee under or by virtue of these presents and the Grantor may fully use and enjoy all of the Lands of the Grantor subject only to the rights and restrictions herein contained.
- 4.5 That the covenants herein contained shall be covenants running with the land and that none of the covenants herein contained shall be personal or binding upon the Grantor, save and except during the Grantor's seizing or ownership of any interest in the Lands of the Grantor, and with respect only to that portion of the Lands of the Grantor of which the Grantor shall be seized or in which he shall have an interest, but that the Lands of the Grantor, nevertheless, be and remain at all times charged therewith.
- 4.6 If at the date hereof the Grantor is not the sole registered owner of the Lands of the Grantor, this Agreement shall nevertheless bind the Grantor to the full extent of his interest therein, and if he shall acquire a greater or the entire interest in fee simple, this Agreement shall likewise extend to such after-acquired interests.
- 4.7 Where the expression "Grantor" includes more than one person, all covenants herein on the part of the Grantor shall be constructed as being several as well as joint.
- 4.8 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors and assigns as the case may be and wherever the singular or masculine is used, it shall be construed as if the plural or the feminine or neuter, as the case may be, had been used, where the parties or the context hereto so require and the rest of the sentence shall be construed as if the grammatical and terminological changes thereby rendered necessary had been made.

IN WITNESS WHEREOF the parties hereto have executed these presents in the manner and on the date hereinafter appearing.

SIGNED, SEALED AND DELIVERED in)
the presence of:)

_____)
Witness Signature)

_____)
Address (including City))

_____)
Occupation (as to all signatures of Grantor))

THE CORPORATE SEAL of the GRANTOR)
was hereunto affixed in the presence of its)
proper officers in the behalf:)

_____)
Authorized Signatory)

_____)
Authorized Signatory)

THE CORPORATE SEAL of the CITY)
OF NANAIMO was hereunto affixed in the)
presence of:)

_____)
Mayor)

_____)
Clerk)

_____)
Owner

_____)
Owner

c/s

c/s

SCHEDULE 'C'

Letter of Credit No. _____

Amount: \$ _____

Expiry Date: _____

TO: The Municipal Corporation of the City of Nanaimo
455 Wallace Street
Nanaimo BC V9R 5J6

WE HEREBY AUTHORIZE YOU TO DRAW ON THE

_____ (Bank or Credit Union)

for the account of _____ (Owner)

available on demand.

PURSUANT TO THE REQUEST OF our customer: _____ (Owner)

we the _____ (Bank or Credit Union)

hereby establish and give you an Irrevocable Letter of Credit in your favour in the above amount which may be drawn on by you at any time and from time to time, upon written demand for payment made upon us by you, which demand we shall honour without enquiring whether you have the right as between yourself and the said customer to make such demand, and without recognizing any claim of our said customer, or objection by it to payment by us.

THE LETTER OF CREDIT we understand related to those Municipal Services and financial obligations set out in an Agreement between the customer and the municipality and referred to as the

_____ (Name of Project)

THE AMOUNT of this Letter of Credit may be reduced from time to time as advised by notice in writing to the undersigned from time to time by the Corporation of the City of Nanaimo.

THIS LETTER OF CREDIT will continue in force for a period of one year, but shall be subject to the condition hereinafter set forth.

IT IS A CONDITION of this Letter of Credit that it shall be deemed to be automatically extended without amendment from year to year from the present or any future expiration date hereof, unless at least 30 days prior to the present or any future expiration date hereof, unless at least 30 days prior to the present or any future expiration date, we notify you in writing by registered mail, that we elect not to consider this Letter of Credit to be renewable for any additional period.

DATED at British Columbia, this _____ day of _____, 19_____.

COUNTERSIGNED BY:

Per:

Bylaw 3260 - Consolidated

SCHEDULE 'D'

CONSTRUCTION AGREEMENT

THIS AGREEMENT made the day of , A.D., 19 .

BETWEEN:

(the "Municipality")

OF THE FIRST PART

AND:

(the "Developer")

OF THE SECOND PART

WHEREAS:

- A. The Developer intends to develop certain lands within the Municipality legally described as:

(the "Land");
- B. The developer intends to construct certain roads and other works and services (the "Works") within the Lands and to subdivide the Land according to a plan of subdivision (the "Plan") a copy of which is annexed to this Agreement as Schedule "A"; and
- C. The Developer has requested approval of the Plan prior to the construction and installation of the Works and is agreeable to entering into this bonding agreement pursuant to section 991 of the *Municipal Act* and to provide the Bond specified by this Agreement.

NOW WITNESSES that in consideration of the Municipality accepting this Bond and Agreement prior to completion of the construction of the Works, the Municipality and the Developer covenant and agree as follows:

Interpretation

1. In this Agreement

"Complete" or "Completion" or any variation of these words when used with respect to the Works means completion to the satisfaction of the Municipal Engineer on the date certified by him in writing.

"Development" includes the construction and completion of all aspects of the Plan, including, but not limited to, the Works.

"Municipal Engineer" means the Manager, Engineering Services Division of the Municipality appointed by the Municipal Council, or any other person from time to time duly authorized to act in his stead by the Municipal Council or the Municipal Engineer.

"Works" means the Works and Services to be performed and constructed by the Developer for the approval of the Plan by Section 991 of the *Municipal Act* and the bylaws of the Municipality and described in Schedule "B" to this Agreement.

Time for Completion

2. The Developer shall complete the Works to the satisfaction of the Municipal Engineer by the ____ day of _____, 19__.

Bond

3. (1) As security for the due and proper performance of all of the covenants and agreements contained in this Agreement and the Works contemplated, the developer has deposited with the Municipality cash or a certified cheque in the amount of _____ as a Bond within the meaning of Section 991 of the Municipal Act (the "Bond").

OR

3. (1) (a) As security for the due and proper performance of all of the covenants and agreements contained in this Agreement and the Works contemplated, the Developer has deposited with the Municipality an irrevocable Letter of Credit in the form attached to this Agreement as Schedule "C" in the amount of _____ (the "Bond") to be valid for a period of twelve (12) months from the date of this Agreement.
 - (b) The Municipality may make demand on the Letter of Credit at any time after this date.
 - (c) The Developer is entitled to renew this Agreement if the Letter of Credit has been demanded.
 - (d) The amount of the Bond may be reduced at any time with the approval of the Municipality in writing evidenced by the signature of its Approving Officer.
- (2) The Developer agrees that if the Works are not completed by the date stated in Section 2, the Municipality may complete the Works, at the cost of the Developer, and for that purpose may draw down upon the Bond the full amount of the Bond.
- (3) If there are insufficient monies contained in the Bond the Developer shall pay the balance of the insufficiency forthwith upon invoice for it sent by the Municipality.

- (4) The Municipality may complete the Works either by itself or by contractors employed by it.
- (5) If the Developer completes the Works or if the completion of the Works costs less than the amount of the Bond, then the Bond or a proportional part of it shall be returned by the Municipality to the Developer.
- (6) The cost of the Works shall include the actual cost of construction of them plus engineering, supervision, legal survey and other costs. (Bylaw 3920)
- (7) An administration fee in the amount of 2 percent of the amount of the Bond, to a maximum of \$2,000. shall be made payable to the City at the time the Bond is provided. (Bylaw 3920)

Rights-of-Way

4. Upon completion of the Works, the Developer shall transfer and register in the Land Title Office the easements and rights-of-way prescribed by Schedule "B" to the persons or corporations requiring them.

Standards of Works

5. (1) The Works shall be constructed to the standards required by the Subdivision Control Bylaw of the Municipality and to the satisfaction of the Municipal Engineer.
- (2) If the Works prove to be in any way defective or do not operate, then the Developer shall, at the expense of the Developer, modify and reconstruct the Works so that they are fully operative and function to the satisfaction of the Municipal Engineer. Upon completion of the Works to the satisfaction of the Municipal Engineer, a Certificate of Substantial Completion signed by the Municipal Engineer shall be issued.

Comply with Regulations

6. (1) The Developer shall comply with the provisions of all Municipal Bylaws throughout the construction of the Works.
- (2) In the event that any material or debris should be left upon any road after the construction of the Works, the Developer covenants and agrees that the Municipality may forthwith remove the material or debris at the expense of the Developer, and the cost of the removal shall be determined by the Municipal Engineer.
- (3) In the event that any invoice of the Municipality, for the removal of material or debris, remains unpaid after thirty (30) days of its receipt by the Developer, the Municipality may deduct the amount of the invoice from the Bond required by Section 3.

Developer's Engineer

7. (1) At all times during the construction of the Works, the Developer shall keep and employ a professional engineer, registered in the Province of British Columbia, with the authority to act on behalf of the Developer.
- (2) Any explanations, orders, instructions, directions and requests given by the Municipality to the Developer's professional engineer shall be deemed to have been given to the Developer.

Changes in Standards

8. The developer covenants and agrees to comply with any changes in subdivision requirements or standards established by bylaw prior to the substantial commencement upon the Land of the Works contemplated by this Agreement and further agrees that the changes shall affect the Plan and Works.

Maintenance of Works

9. (1) The Developer covenants and agrees to:
 - (a) maintain the Works in he Works appearing within a period of one (1) year from Completion;
 - (b) remedy any defects in the Works appearing within a period of one (1) year from the date of Completion and pay for any damage to other work or property resulting from the Development, save and except for defects caused by reasonable wear and tear, negligence of the Municipality, its servants or agents, acts of God, or vandalism proven to have been committed after the date of Completion;
 - (c) leave with the Municipality for a period of one (1) year from the date of Substantial Completion the sum of _____ DOLLARS (\$_____) AS security.
- (2) If the Developer fails to maintain the Works, remedy any defect or pay for any damage resulting from the Works, the Municipality may deduct from the Bond the cost of completing all Works, remedying any defect or paying for any damage.

Duties of Developer

10. The Developer covenants and agrees to:
 - (a) submit to the Municipality final as-built drawings, including 2 complete sets of prints, 5 additional copies of the overall design plan (key plan), and 1 set of mylar transparencies of all Works as constructed and as approved by the Municipal Engineer.
 - (b) pay all arrears of taxes outstanding against the Land before the formal approval of the Plan;

- (c) pay all current taxes levied or to be levied on the Land on the basis and in accordance with the assessment and collector's roll entries; and
- (d) pay to the Municipality, in addition to the bonds required by Sections 3 and 9, all inspection fees, administration fees, engineering fees, non-refundable levies and charges, legal costs incurred by the Municipality directly attributable to this Agreement, and the cost of connecting all utilities to service the Development.

Indemnity

11. The Developer covenants and agrees to save harmless and effectually indemnify the Municipality against:
- (a) all actions, proceedings, costs, damages, expenses, claims and demands whatsoever and by whomsoever brought by reason of the Development;
 - (b) all expenses and costs which may be incurred by reason of this Agreement resulting in damage to any property owned in whole or in part by the Municipality or which the Municipality by duty of custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain; and
 - (c) all expenses and costs which may be incurred by reason of liens, non-payment of labour or materials, Workers' Compensation assessments, unemployment insurance, Federal or Provincial Tax, or union dues check off.

Municipality's Duty

12. The Municipality hereby covenants and agrees with the Developer to perform all Works upon the terms and conditions contained in this Agreement.

Certificate of Acceptance

13. The Municipality agrees to provide the Developer with a Certificate of Acceptance of the Works signed by the Municipal Engineer upon satisfactory completion by the Developer of all of the covenants and conditions in this Agreement, including but not limited to, the maintenance of the Works and keeping them in complete repair for a period of one (1) year.

Withhold Building Permit

14. The Developer covenants and agrees that the Municipality may withhold the granting of a Building Permit for any building or part of a building to be constructed upon the Land until the issuance of the Certificate of Substantial Completion referred to in Section 5.

No Representations

- 15. It is understood and agreed that the Municipality has made no representation, covenants, warranties, guarantees, promises or agreements with the Developer other than those in this Agreement and except those required by the Approving Officer.

Municipal Property in Works

- 16. Upon issuance of the Certificate of Acceptance the Works become the property of the Municipality, free and clear of any claim by the Developer or any person claiming through the Developer, and the Developer shall save harmless the Municipality from any claims and agrees that any claims may, at the option of the Municipality, be paid by and from the Bond.

Terminology

- 17. Wherever the singular or the masculine are used in this Agreement, they shall be construed as meaning the plural or the feminine or body corporate or politic where the context or the parties require.

Binding Effect

- 18. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assignees.

Headings

- 19. The headings in this Agreement are inserted for convenience only and shall not be construed as part of this Agreement for the purpose of interpretation.

IN WITNESS the parties have signed and sealed this Agreement on the day it was made.

THE CORPORATE SEAL OF THE)
MUNICIPALITY was affixed in the)
presence of:)
)
_____)
)
_____)
)

THE CORPORATE SEAL OF THE)
DEVELOPER was affixed in the)
presence of:)
)
_____)
)
_____)
)

Bylaw 3260 - Consolidated

SCHEDULE 'E'

WORKS AND SERVICES AGREEMENT

THIS AGREEMENT made the day of , A.D., 19 .

BETWEEN:

(the "Municipality")

OF THE FIRST PART

AND:

(the "Developer")

OF THE SECOND PART

WHEREAS:

- A. The Developer desires to develop certain lands within the Municipality legally described as:

(the "Land");
- B. Pursuant to Section 989(4) of the Municipal Act the Developer intends to provide Works and Services, in accordance with the Standards prescribed in the Subdivision Control Bylaw of the Municipality on the Land and on that portion of a highway immediately adjacent to the Land up to the center line of the high.
- C. The Developer has requested approval of the Subdivision prior to the construction and installation of the Works and is agreeable to entering into this agreement pursuant to Section 991 of the Municipal Act and to provide the Bond specified by this Agreement.

NOW WITNESSES that in consideration of the Municipality accepting this Bond and Agreement prior to completion of the construction of the Works, the Municipality and the Developer covenant and agree as follows:

Interpretation

1. In this Agreement

"Complete" or "Completion" or any variation of these words when used with respect to the Works means completion to the satisfaction of the Municipal Engineer on the date certified by him in writing.

"Development" includes the construction and completion of all aspects of the Plan, including, but not limited to, the Works.

"Works" means the Works and Services to be performed and constructed by the Developer as a condition precedent to the approval of the Plan or the issue of the Building Permit under Section 991 of the Municipal Act and the bylaws of the Municipality and as more particularly described in Schedule "B" to this Agreement.

Time for Completion

2. The Developer shall complete the Works to the satisfaction of the Municipal Engineer by the ____ day of _____, 19__.

Bond

3. (1) As security for the due and proper performance of all of the covenants and agreements contained in this Agreement and the Works contemplated, the developer has deposited with the Municipality cash or a certified cheque in the amount of _____ as a Bond within the meaning of Section 991 of the Municipal Act (the "Bond:).
3. (1) (a) As security for the due and proper performance of all of the covenants and agreements contained in this Agreement and the Works contemplated, the Developer has deposited with the Municipality an irrevocable Letter of Credit in the form attached to this Agreement as Schedule "C" in the amount of _____ (the "Bond") to be valid for a period of twelve (12) months from the date of this Agreement.
 - (b) The Municipality may make demand on the Letter of Credit at any time after this date.
 - (c) The amount of the Bond may be reduced at any time with the signature of its Approving Officer.
- (2) The Developer agrees that if the works are not completed by the date stated in Section 2, the Municipality may complete the Works, at the cost of the Developer, and for that purpose may draw down upon the Bond the full amount of the Bond.
- (3) If there are insufficient monies contained in the Bond the Developer shall pay the balance of the insufficiency forthwith upon invoice for it sent by the Municipality.
- (4) The Municipality may complete the Works either by itself or by contractors employed by it.
- (5) If the Developer completes the Works or if the completion of the Works costs less than the amount of the Bond, then the Bond or a proportional part of it, not required to pay for completion or maintenance, shall be returned by the Municipality to the Developer.
- (6) The cost of the Works shall include the actual cost of construction of them plus engineering, supervision, legal survey and other costs. (Bylaw 3920)
- (7) An administration fee in the amount of 2 percent of the amount of the Bond, to a maximum of \$2,000. shall be made payable to the City at the time the Bond is provided. (Bylaw 3920)

Rights-of-Way

4. Upon completion of the Works, the Developer shall transfer and register in the Land Title Office the easements and rights-of-way prescribed by Schedule "B" to the persons or corporations requiring them.

Standards of Works

5.
 - (1) The Works shall be constructed to the standards required by the Subdivision Control Bylaw of the Municipality and to the satisfaction of the Municipal Engineer.
 - (2) If the Works prove to be in any way defective or do not operate then the Developer shall, at the expense of the Developer, modify and reconstruct the Works so that they are fully operative and function to the satisfaction of the Municipal Engineer.
 - (3) Upon completion of the Works to the satisfaction of the Municipal Engineer a Certificate of Substantial Completion signed by the Municipal Engineer shall be issued.

Comply with Regulations

6.
 - (1) The Developer shall comply with the provisions of all Municipal Bylaws throughout the construction of the Works.
 - (2) In the event that any material or debris should be left upon any road after the construction of the Works, the Developer covenants and agrees that the Municipality may forthwith remove the material or debris at the expense of the Developer, and the cost of the removal shall be determined by the Municipal Engineer.
 - (3) In the event that any invoice of the Municipality, for the removal of material or debris, remains unpaid after thirty (30) days of its receipt by the Developer, the Municipality may deduct the amount of the invoice from the Bond required by Section 3.

Developer's Engineer

7.
 - (1) At all times during the construction of the Works, the Developer shall keep and employ a professional engineer, registered in the Province of British Columbia, with the authority to act on behalf of the Developer.
 - (2) Any explanations, orders, instructions, directions and requests given by the Municipality to the Developer's professional engineer shall be deemed to have been given to the Developer.

Changes in Standards

8. The Developer covenants and agrees to comply with any changes in subdivision requirements or standards established by bylaw prior to the substantial commencement upon the Land of the Works contemplated by this Agreement and further agrees that the changes shall affect the Plan and Works.

9. (1) The Developer shall:

- (a) maintain the Works in complete repair for a period of one (1) year from Completion;
- (b) remedy any defects in the Works appearing within a period of one (1) year from the date of Completion and pay for any damage to other work or property resulting from the Development, save and except for defects caused by reasonable wear and tear, negligence of the Municipality, its servants or agents, acts of God, or vandalism proven to have been committed after the date of Substantial Completion;
- (c) leave with the Municipality for a period of one (1) year from Completion the sum of _____ DOLLARS (\$_____) from the date of Substantial Completion.

(2) If the Developer fails to maintain the Works, remedy any defect or pay for any damage resulting from the Works, the Municipality may deduct from the Bond the cost of completing all Works, remedying any defect or paying any damage.

Duties of Developer

10. The Developer covenants and agrees to:

- (a) submit to the Municipality final as-built drawings, including 2 complete sets of prints, 5 additional copies of the overall design plan (key plan), and 1 set of mylar transparencies of all Works as constructed and as approved by the Municipal Engineer.
- (b) pay all arrears of taxes outstanding against the Land:
- (c) pay all current taxes levied or to be levied on the Land on the basis and in accordance with the assessment and collector's roll entries; and
- (d) pay to the Municipality, in addition to the Bond required by Sections 3 and 9, all inspection fees, administration fees, engineering fees, non-refundable levies and charges, legal costs incurred by the Municipality directly attributable to this Agreement, and the cost of connecting all utilities to service the Development.

Indemnity

11. The Developer covenants and agrees to save harmless and effectually indemnify the Municipality against:
 - (a) all actions, proceedings, costs, damages, expenses, claims and demands whatsoever and by whomsoever brought by reason of the Development;
 - (b) all expenses and costs which may be incurred by reason of this Agreement resulting in damage to any property owned in whole or in part by the Municipality or which the Municipality by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain; and
 - (c) all expenses and costs which may be incurred by reason of liens non-payment of labour or materials, Workers' Compensation assessments, unemployment insurance, Federal or Provincial Tax, or union dues check off.

Municipality's Duty

12. The Municipality shall permit the Developer to perform all Works upon the terms and conditions contained in this Agreement.

Certificate of Acceptance

13. The Municipality agrees to provide the Developer with a Certificate of Acceptance of the Works signed by the Municipal Engineer upon satisfactory completion by the Developer of all of the covenants and conditions in this Agreement, including but not limited to, the maintenance of the Works and keeping them in complete repair for a period of one (1) year.

Withhold Building Permit

14. The Developer covenants and agrees that the Municipality may withhold the granting of a Building Permit for any building or part of a building to be constructed upon the Land until the issuance of the Certificate of Substantial Completion referred to in Section 5.

No Representations

15. It is understood and agreed that the Municipality has made no representation, covenants, warranties, guarantees, promises or agreements with the Developer other than those in this Agreement and except those required by the Approving Officer.

Municipal Property in Works

16. Upon issuance of the Certificate of Acceptance the Works become the property of the Municipality, free and clear of any claim by the Developer or any person claiming through the Developer, and the Developer shall save harmless the Municipality from any claims and agrees that any claims may, at the option of the Municipality, be paid by and from the Bond.

Terminology

17. Wherever the singular or the masculine are used in this Agreement, they shall be construed as meaning the plural or the feminine or body corporate or politic where the context or the parties require.

Binding Effect

18. This Agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assignees.

Headings

19. The headings in this Agreement are inserted for convenience only and shall not be construed as part of this Agreement for the purpose of interpretation.

IN WITNESS the parties have signed and sealed this Agreement on the day it was made.

THE CORPORATE SEAL OF THE)
MUNICIPALITY was affixed)
in the presence of:)
)
_____)
)
_____)
)

THE CORPORATE SEAL OF THE)
DEVELOPER was affixed in the)
presence of:)
)
_____)
)
_____)
)

The amount and form of this Bond and Agreement is approved by the Approving Officer for the Municipality this ____ day of _____, 19____.

SCHEDULE 'F'
MAINTENANCE AGREEMENT

THIS AGREEMENT made the _____ day of _____, A.D., 19__.

BETWEEN:

CITY OF NANAIMO
455 Wallace Street
NANAIMO, BC

(hereinafter called the "Municipality")

OF THE FIRST PART

AND:

(hereinafter called the "Developer")

OF THE SECOND PART

WHEREAS the Developer desires to develop certain lands within the Municipality, more particularly known and described as:

(hereinafter called the "Land")

AND WHEREAS the Developer has applied to subdivide the Land according to a plan of subdivision, a copy of which is hereunto annexed as Schedule 'A';

AND WHEREAS the Developer was required to construct certain works and services (herein called the "Works"), more particularly described in Schedule 'B' hereto;

AND WHEREAS the Developer has requested approval of the subdivision prior to the expiration of a period of one year from the completion of the construction and installation of the works and is agreeable to entering into this Bonding Agreement and to deposit the Bond herein specified:

NOW THIS AGREEMENT WITNESSETH that in consideration of the premises and in consideration of the agreement by the Municipality to permit the development and in consideration of the approval of the subdivision plan, the Municipality and the developer herein covenant and agree as follows:

1. The development was considered complete by the Municipal Engineer on the _____ day of _____, 19__.

2. As security for the due and proper performance of all of the covenants and agreements in this contract contained, the developer has deposited with the Municipality:

(a) cash or a certified cheque in the amount of \$_____.

OR

(b) an irrevocable Letter of Credit in the amount of \$_____ bearing an even date herewith, a copy of which is attached hereto (hereinafter called the "Bond") to be valid for a period of twelve (12) months from the date hereof, PROVIDED HOWEVER, that the Municipality shall be at liberty to make demand on the said Letter of Credit at any time after the date hereof.

NOTE: Clause (a) or (b) should be deleted if not applicable.

3. The developer covenants and agrees to:

(a) maintain the works built as a condition of approval of the subdivision in complete repair for a period of one (1) year from completion thereof as certified by the Municipal Engineer.

(b) remedy any defects appearing within a period of one (1) year from the date of such completion of such development and pay for any damage to other work or property resulting therefrom save and except for defects caused by reasonable wear and tear negligence of the Municipality, its servants or agents, or acts of God or by vandalism proven to have been committed after the date of completion.

4. The Municipality hereby covenants and agrees with the developer to permit the developer to perform all the said maintenance herein upon the terms and conditions herein contained, however, should the developer fail to maintain the said works, remedy any defect or pay for any damage resulting therefrom, the Municipality may deduct the cost of maintaining all works, remedying any defect in the works or paying the damage from the said bond.

5. The developer shall, at all times in connection with the development, keep and employ a professional engineer, registered as such in the Province of British Columbia, with the authority to act on behalf of the developer. Any explanations, orders, instructions, directions and requests given by the Municipality to such professional engineer shall be held to have been given to the developer.

6. The developer covenants to save harmless and effectually indemnify the Municipality against:

(a) all actions and proceeding costs, damages, expenses, claims and demands whatsoever and by whomsoever brought by reason of the development.

(b) all expenses and costs which may be incurred by reason of this agreement resulting in damage to any property owned in whole or in part by the Municipality by duty or custom is obliged, directly or indirectly, in any way or to any degree, to construct, repair or maintain.

(c) all expenses and costs which may be incurred by reason of liens or non-payment of labour or materials, Workers' Compensation assessments, unemployment insurance, Federal or Provincial Tax.

7. The Municipality covenants and agrees that upon satisfactory completion of the maintenance period, to provide the developer with a Certificate of Acceptance of said works, signed by the Municipal Engineer.

8. The works shall, upon issuance of the Certificate of Acceptance, become the property of the Municipality, free and clear of any claim by the developer or any person claiming through the developer, and the developer shall save harmless the Municipality from any such claims and agrees that such claims may, at the option of the Municipality, be paid by and from the bond.

9. It is understood and agreed that the Municipality has made no representation, covenants, warranties, guarantees, promises or agreements with the developer other than those in this agreement and except those required by the Approving Officer.

10. Wherever the singular or the masculine are used in this indenture, the same shall be construed as meaning the plural or the feminine or body corporate or politic where the context or the parties hereto so require.

11. This agreement shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators and assigns.

IN WITNESS the parties have hereunto set their respective hands and seal the day and year first above written.

THE CORPORATE SEAL OF THE)
CITY OF NANAIMO was affixed)
hereto in the presence of:)

Mayor)

City Clerk)

THE CORPORATE SEAL OF THE)
DEVELOPER was hereunto)
affixed in the presence of its proper)
Officers in behalf:)

Authorized Signatory)

Address)

Occupation)

Authorized Signatory)

Address)

Occupation)

The amount and form of this Bond and Agreement is approved by the Approving Officer for the Municipality this ____ day of _____, 19__.

Approving Officer

(SEAL)

SCHEDULE 'G'

Repealed through Bylaw 3260.07

SCHEDULE 'H'

Repealed through Bylaw 3260.07