

WATER SUPPLY AGREEMENT

THIS Agreement is made as of the 2nd day of May, 2007.

BETWEEN:

CAPITAL REGIONAL DISTRICT
PO Box 1000, Victoria, B.C. V8W 2S6

("CRD ")

OF THE FIRST PART

AND:

THE CORPORATION OF THE CITY OF LANGFORD
877 Goldstream Avenue, Victoria, B.C. V9B 2X8

("LANGFORD")

OF THE SECOND PART

WHEREAS

- A. Under *Water Supply Local Service Area Establishment Bylaw No. 1, 1997*, the CRD established and operates a water supply service in the service area established by that bylaw, including Langford;
- B. Langford wishes to enter into an agreement with CRD to supply water to Langford for Langford to supply to the Westhills Development, which will provide its own internal water distribution system to distribute the water to customers within that development;
- C. Under section 23 of the *Community Charter*, SBC 2003 c. 26, a municipal council has the authority to enter into agreements with other other public authorities respecting activities and services within the power of a Party to the agreement, including agreements respecting the undertaking, provision and operation of activities and services;
- D. Under section 176 of the *Local Government Act*, a regional board may make agreements respecting the regional district's services, including agreements respecting the undertaking, provision and operation of those services;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual promises exchanged herein, and for other good and valuable consideration, CRD and Langford, the Parties to this Agreement, agree as follows:

1.0 DEFINITIONS

1.1 In this Agreement, the definitions in *Water Distribution Local Service, Conditions, Fees and Charges Bylaw No. 1, 2006* apply where applicable except as follows:

- (a) **Agreement** means this Agreement for the CRD to supply water to Langford for the delivery to customers in the Westhills Development in the City of Langford.
- (b) **Developer** means the developer or owner of the Westhills Development.
- (c) **Customer** means a consumer of water in the Westhills Development.
- (d) **Establishment Bylaw** means *Water Supply Local Service Area Establishment Bylaw No. 1, 1997*.
- (e) **Fees** mean the fees payable under section 4.1 of this Agreement.
- (f) **Fee and Charge Bylaw** means *Water Supply Local Service Area Fee and Charge Bylaw No. 1, 1997*.
- (g) **Service Area** means the service area established by the Establishment Bylaw.
- (h) **Water** means water supplied under this Agreement.
- (g) **Westhills Development** means the area designated as such in Schedule "A" attached to this bylaw.

2.0 TERM

2.1 This Agreement will come into full force and effect on the first day of May 2007 and will remain in full force and effect until terminated by mutual consent of the Parties or default by either Party.

3.0 WATER SUPPLY

3.1 CRD will provide Langford with Water for Langford to supply to customers in the Westhills Development in accordance with the terms and conditions of this Agreement.

3.2 Langford may establish a service and enact regulatory bylaws for the purposes of carrying out its obligations under this Agreement.

4.0 FEES

- 4.1 CRD will charge Langford the fees and charges for Water and other services supplied under this Agreement that CRD imposes in the Service Area from time to time during the term of this Agreement under the authority of the Fee and Charge Bylaw or any subsequent similar CRD bylaw applicable to the Service Area during the term of this Agreement.
- 4.2 CRD will charge Langford for the Water as measured by meters installed at the points of delivery of the Water to the Westhills Development in Langford.
- 4.3 Langford will be responsible for collecting any fees and charges it imposes upon Customers in the Westhills Development.
- 4.4 Langford will pay the CRD for all Water delivered to customers in the Westhills Development within 30 days of receipt of monthly invoices from CRD for the Water whether or not Langford has collected its fees and charges from the Customers by the date the invoices are due under this section.

5.0 RESALE OF WATER PROHIBITED

- 5.1 Langford will not resell nor permit Water supplied to Langford under this agreement to be resold outside the Westhills Development, except as permitted by this Agreement.
- 5.2 If Langford enters into an agreement with the Developer or Customers in the Westhills Development with respect to Water, the Agreement must contain an obligation on the part of the Developer or Customers that is consistent in meaning with section 5.1 of this Agreement or else Langford must enact a bylaw both generally and applicable to Westhills Development containing that prohibition and appropriate penalties.

6.0 DISPUTE RESOLUTION

- 6.1 Any dispute or disagreement between the parties, except as to water rates or charges, shall be settled by arbitration before a single arbitrator, experienced in water supply matters, in accordance with the *Commercial Arbitration Act* of British Columbia.

7.0 NOTICES

- 7.1 Unless otherwise specified herein, any notice required to be given under this Agreement by any Party will be deemed to have been sufficiently given if mailed by prepaid registered mail, or sent by facsimile transmission, or delivered to the address of the other Party set forth on the first page of this Agreement or at such other address as the other Party may from time to time direct in writing.

- 7.2 Any notice referred to in this section 8.0 will be deemed to have been received, if mailed or faxed, 72 hours after the time of mailing or faxing and, if delivered, upon the date of delivery. If normal mail service or facsimile service is interrupted by strike, slow down, force majeure or other cause, then a notice sent by the impaired means of communication will not be deemed to be received until actually received, and the Party sending the notice must utilize any other such services which have not been so interrupted or must deliver such notice in order to ensure prompt receipt thereof.

8.0 INDEMNITIES AND RELEASE OF COSTS

- 8.1 Langford agrees that it will release, indemnify and save harmless CRD from and against any claims, suits, actions, causes of action, costs, damages or expenses of any kind that result from:
- (a) the negligence of Langford, its officers, officials, employees, servants, contractors or agents in the performance of its obligations under this Agreement; or
 - (b) a breach of this Agreement by Langford.
- 8.2 CRD agrees that it will indemnify and save harmless Langford from and against any claims, suits, actions, causes of action, costs, damages or expenses of any kind that result from:
- (c) the negligence of CRD, its officers, officials, employees, servants or agents in the performance of its obligations under this agreement; or
 - (d) a breach of this Agreement by CRD.
- 8.3 If one Party receives notice of a claim by a third Party for damage of any kind, caused by that Party, its officers, officials, employees, servants, contractors or agents arising out of, or in connection with, the implementation of this Agreement, the receiving Party will notify the other Party as soon as practicable.
- 8.4 Despite anything contained in this Agreement, CRD will not be liable to Langford or Langford's customers in the Westhills Development for interruptions in water service unless those assumed by the CRD under the Fees and Charges Bylaw.
- 8.5 Langford assumes all liability for costs and expenses of any kind accruing to the CRD and its Juan de Fuca Water Distribution Commission that result from any default by Langford in its obligations under this Agreement or in its operation of the integrated utilities, including water utilities, in the Westhills Development.
- 8.6 The provisions of section 9.0 will survive the termination of this Agreement for any reason whatsoever.

9.0 DEFAULT AND EARLY TERMINATION

- 9.1 If either Party is in breach of this Agreement, and the breach is not corrected within 30 days after written notice of the breach provided to that Party, the Party not in breach may terminate this Agreement forthwith.

10. GENERAL PROVISIONS

10.1 Time

Time shall be of the essence of this Agreement.

10.2 Binding Effect

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

10.3 Waiver

The waiver by a Party of any failure on the part of the other Party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

10.4 Headings

Section and paragraph headings are inserted for identification purposes only and do not form part of this Agreement.

10.5 Language

Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.

10.6 Cumulative Remedies

No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

10.7 Law Applicable

This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

10.8 Relationship of Parties

No provision of this Agreement shall be construed to create a partnership or joint venture relationship, an employer-employee relationship, a landlord-tenant or a principal-agent relationship.

10.9 Amendment

This Agreement may not be modified or amended except by the written Agreement of the Parties.

10.10 Integration

This Agreement contains the entire Agreement and understanding of the Parties with respect to the matters contemplated by this Agreement and supersedes all prior and contemporaneous Agreements between them with respect to such matters.

10.11 Survival

All representations and warranties set forth in this Agreement and all provisions of this Agreement, the full performance of which is not required prior to a termination of this Agreement, shall survive any such termination and be fully enforceable thereafter.

10.12 Notice of Violations

Each Party shall promptly notify the other Party of any matter that is likely to continue to give rise to a violation of its obligations under this Agreement.



IN WITNESS WHEREOF the Parties hereto have set their hands and seals as of the day and year first above written.

Executed by **THE CAPITAL REGIONAL DISTRICT** this 2nd day of May, 2007:



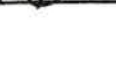

Chair

Corporate Secretary

Executed by **THE CORPORATION OF THE DISTRICT OF LANGFORD** this ____ day of _____, 2007:


Mayor **DENISE BLACKWELL**

Clerk Administrator **ROBERT BUCHAN**
CLERK-ADMINISTRATOR

AGREEMENT AUTHORIZATION

	Initial	Date
Content		<u>May 23/07</u>
Legal Form		<u>May 1/07</u>
Authority		<u>May 1/07</u>

