



Water Service To Richmond Island Bylaw No. 8861

The Council of the City of Richmond enacts as follows:

1. Council hereby consents to the provision of water service by the City of Vancouver to lands commonly known as Richmond Island and legally described as PID: 025-409-018, Parcel A Section 17 and 18 Block 5 North Range 6 West NWD Plan LMP53748 ("Richmond Island").
2. The Chief Administrative Officer and General Manager, Engineering and Public Works are authorized to execute and deliver a service agreement for the provision of water service by the City of Vancouver to Richmond Island, substantially in the form set out in Schedule A of this Bylaw.
3. This Bylaw is cited as **"Water Service to Richmond Island Bylaw No. 8861"**.

FIRST READING

FEB 27 2012

SECOND READING

FEB 27 2012

THIRD READING

FEB 27 2012

ADOPTED



MAYOR

CORPORATE OFFICER

SERVICE AGREEMENT

WATER SERVICE TO RICHMOND ISLAND

THIS AGREEMENT is made as of the ____ day of _____, 2012 (the "Effective Date"),

BETWEEN:

CITY OF VANCOUVER, a municipal corporation, having
an office at 453 West 12th Avenue, Vancouver,
British Columbia, V5Y 1V4

("Vancouver")

AND:

THE CITY OF RICHMOND, a municipal corporation,
having an office at 6911 No. 3 Road, Richmond,
British Columbia, V6Y 2C1

("Richmond")

AND:

VANCOUVER FRASER PORT AUTHORITY, a port
authority established pursuant to the *Canada Marine*
Act and agent of Her Majesty the Queen in Right of
Canada, doing business as Port Metro Vancouver, having
an office at 100 The Pointe, 999 Canada Place,
Vancouver, British Columbia, V6C 3T4

("PMV")

AND:

NORTH FRASER TERMINALS INC., a wholly-owned
subsidiary of the Vancouver Fraser Port Authority,
having an office at 100 The Pointe, 999 Canada Place,
Vancouver, British Columbia, V6C 3T4

("NFTI")

AND:

MILLTOWN MARINA & BOATYARD LTD. (BC0919079),
having an office at #500-1681 Chestnut Street,
Vancouver, British Columbia, V6J 4M6

(the "Developer")

(The above listed parties are hereinafter sometimes referred to individually as "Party"
and collectively as the "Parties").

BACKGROUND:

- A. PMV intends to grant the Developer a permit that permits the Developer to construct, and NFTI intends to grant the Developer a lease to operate, a marina on lands commonly referred to as Richmond Island, having a legal description of: PID: 025-409-018, Parcel A, Section 17 and 18, Block 5 North Range 6 West, New Westminster District Plan LMP53748 (the "Lands").
- B. The Lands are owned by NFTI and are located within the municipal boundaries of the City of Richmond but are accessible by land only from Vancouver by means of Bentley Street, Vancouver and a private road constructed pursuant to Easement No. BW274184 (the "Easement") registered over lands located at 9150 Bentley Street and legally described as PID: 007-044-640, Block 1 Except: Part on Plan BCP9773 District Lots 318, 3869 and 3871 Plan 19037 ("Block 1").
- C. The Developer requires water service to the Lands for use by the Marina. The Developer and NFTI have requested that Vancouver provide such service to the Lands and Richmond has agreed to permit Vancouver to provide this service within Richmond's boundaries.
- D. Pursuant to section 192.1 of the *Vancouver Charter*, Vancouver may provide water service to the Lands by way of an agreement with Richmond that, pursuant to the *Vancouver Charter*, must be ratified by a by-law adopted by council for both Vancouver and Richmond.
- E. Richmond and Vancouver have each obtained authorization from their respective City Councils to enter into this agreement, which authorization has been ratified by City of Vancouver Bylaw No. _____ and City of Richmond Bylaw No. _____ and this agreement sets out the rights and obligations of each Party with respect to water service to the Lands.

NOW THEREFORE, in consideration of the mutual covenants and promises made by the Parties and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. INTERPRETATION AND DEFINITIONS

1.1. Except as otherwise defined herein, the following terms will have the following meanings in this Agreement:

- (a) "Approved Plans and Specifications" means the design and working plans and specifications for the Water Works, including those attached hereto as Schedule A, as prepared by the Developer at its cost and as approved by the City Engineer prior to commencement of the Water Works, together with any revisions proposed by the Developer and approved by the City Engineer;
- (b) "Backflow Prevention Device" means a device to be installed by the Developer as part of the Water Works which is intended to prevent contamination of Vancouver's water system, as further specified in the City of Vancouver *Water Works By-Law No. 4848*;
- (c) "City Engineer" means the chief administrator from time to time of the City of Vancouver's Engineering Services Department and his successors in function and their respective nominees or delegates;
- (d) "Discontinue Water Service" means to terminate the arrangement set out in this Agreement for the supply of Water to the Lands and to shut off the Service Pipe, disconnect it, or remove it in whole or in part;
- (e) "Easement Area" means, for the purposes of this Agreement, the private road and appurtenant works and utilities leading from Bentley Street, Vancouver, to the Lands

over which the Easement grants access to NFTI and its servants, agents, tenants, sub-tenants, employees, contractors, customers, visitors and invitees and within which portions of the Water Works will be built;

- (f) **"Event of Force Majeure"** means acts of God or public enemy, wars (declared or undeclared), revolution, riots, insurrections, civil commotions, fires, floods, slides, epidemics, quarantine restrictions, strikes or lockouts, including illegal work stoppages or slowdowns, or stop work orders issued by a court or public authority, including Richmond or Vancouver (provided that such orders were not issued as a result of an act or omission of the Developer, or anyone employed or retained by the Developer), 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 Developer'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);
- (g) **"Losses"** means all damages, losses, costs, actions, causes of action, claims, demands, builders liens, liabilities, expenses (including, without limitation, legal fees, disbursements and expenses), indirect or consequential damages (including loss of profits and loss of use and damages arising out of delays);
- (h) **"Lot D"** means those lands adjacent to both the Lands and Block 1 owned by NFTI and currently leased to Fraser River Pile & Dredge (GP) Inc. legally described as PID: 003-335-232, Lot D District Lots 3869 and 3871, Group 1 NWD reference Plan 63530;
- (i) **"Marina"** means the proposed Milltown Marina to be constructed on the Lands pursuant to a lease entered into between the Developer and NFTI;
- (j) **"Personnel"** means any and all of the elected and appointed officials, directors, officers, employees, servants, agents, nominees, delegates, permittees, licensees, contractors, subcontractors, invitees, customers and volunteers of a Party;
- (k) **"Private Service Pipe"** means the pipe and appurtenant fittings to be constructed by the Developer in the Easement Area, Lot D and the Lands that are intended to provide Water Service to and within the Lands for use by the Marina and will be connected to the Service Pipe;
- (l) **"Service Connection"** means a connection of the Private Service Pipe to the Service Pipe by a flexible rubber joint connector to prevent any force being transferred to the Service Pipe;
- (m) **"Service Pipe"** means the Vancouver-owned pipe and appurtenant fittings, either on a Vancouver street or within an easement, intended to carry water from Vancouver's water main to the farthest downstream Vancouver-installed fitting, with Vancouver ownership extending to the downstream face of the Vancouver fitting, such face to be located, unless otherwise approved by the City Engineer pursuant to the Water Works By-law, no less than 0.3 metre and no more 1.0 metre from the property line on Vancouver property, or the boundary of an easement within such easement;

- (n) "Unit" means 2,831.6 litres of Water or such other amount as may be defined in the City of Vancouver *Water Works By-Law No. 4848*, as may be amended from time to time.
- (o) "Water" means treated drinking water originating from the Greater Vancouver Water District;
- (p) "Water By-Laws" means the City of Vancouver *Water Works By-Law No. 4848* and the *Water Shortage Response By-law No. 8912*, as may be amended, replaced or superseded from time to time;
- (q) "Water Service" means the supply of water by Vancouver to the Lands for normal residential, commercial or industrial purposes and for fire protection purposes, but not including other uses which Vancouver deems to be special or extraordinary; and
- (r) "Water Works" means the Private Service Pipe and appurtenant fittings, including, without limitation, the Backflow Prevention Device, to be constructed by the Developer in Bentley Street (as applicable), the Easement Area, Lot D and the Lands that are intended to provide water service to and within the Lands as further described in Schedule A.

2. CONSTRUCTION AND MAINTENANCE OF WATER WORKS

2.1. The Developer will, at its sole cost:

- (a) construct the Water Works in accordance with the Approved Plans and Specifications and the Water Bylaws and any and all applicable laws, bylaws, approvals and permits applicable to the Water Works by any governmental bodies having jurisdiction including, without limitation, Vancouver, Richmond and PMV, and pay all requisite fees for such application and issuance;
- (b) construct the Water Works diligently, in a good and workmanlike manner strictly in accordance with any approved plans and specifications and the requirements of this Agreement and accepted industry standard construction practice;
- (c) ensure that all materials used in the Water Works are of good quality and free from defect and suitable for the uses to which they will be put; and
- (d) promptly correct any defects or variations in construction as reported to the Developer by its contractor, subcontractors, Vancouver, Richmond, PMV, any other governmental authority having jurisdiction or a member of the public.

2.2. The Developer will, at its sole cost continuously, maintain, reconstruct or repair the Water Works to the satisfaction of the City Engineer, and in particular, without limiting the foregoing, will:

- (a) keep the Water Works in good repair at all times so that the Private Service Pipe is free from leakage and any leaks that occur are promptly repaired and so that at all times the Backflow Prevention Device is operating properly;
- (b) protect the Water Works from frost and other damage;
- (c) replace the Water Works which cannot be kept in good repair with items and materials of equal kind, value and utility;

- (d) not do nor suffer anything which adversely affects provision of Water Service, except as permitted or required by this Agreement; and
- (e) not alter the Water Works except to repair or replace the Water Works as permitted or required by this Agreement.

2.3. The Developer will be the "prime contractor" (as defined in the *Workers Compensation Act*) for WorkSafeBC purposes in respect of the construction, repair and maintenance of the Water Works performed by or on behalf of the Developer and accept all responsibilities of the prime contractor as outlined in the *Workers Compensation Act* (Part 3) and the *WorkSafeBC Occupational Health & Safety Regulation*, excepting that the Developer may engage a contractor to perform the construction, repair and maintenance of the Water Works and cause such contractor to agree to act as the prime contractor. The Developer will at all times carry WorkSafeBC coverage and will pay all WorkSafeBC assessments and fees.

3. INSPECTION OF WATER WORKS

3.1. The Developer acknowledges and agrees that the construction, repair and maintenance of the Water Works will be subject to inspection by the City Engineer to ensure that the construction, repair and maintenance of the Water Works have been constructed in accordance with the Approved Plans and Specifications and to the satisfaction of the City Engineer. Within 10 days of completion of the construction, repair and maintenance of the Water Works, the Developer will provide Vancouver with written notice of substantial completion of the construction, repair and maintenance of the Water Works and arrange an inspection of the construction, repair and maintenance of the Water Works to be conducted by the City Engineer. Following receipt of such notice, the City Engineer will inspect the construction, repair and maintenance of the Water Works, and if during such inspection, a defect or deficiency with respect to the Approved Plans and Specifications is observed, the City Engineer will direct the Developer to remedy the defect or deficiency within a specified time period and the Developer will thereafter work diligently to complete all defects and deficiencies by the specified dates.

3.2. Notwithstanding that the City Engineer may:

- (a) require the Developer to make changes to the Approved Plans and Specifications; or
- (b) inspect all or part of the construction, repair and maintenance of the Water Works, or supervise aspects of the construction, repair and maintenance of the Water Works,

all design, installation, construction, maintenance and repair responsibility and supervisory responsibility will remain exclusively with the Developer and no such responsibility will rest with the City Engineer or Vancouver, Richmond or PMV; and neither the City Engineer, nor Vancouver, Richmond or PMV will be liable to the Developer or its Personnel for the safety, adequacy or soundness of the construction, repair and maintenance of the Water Works by reason of any inspections made, changes required or approvals given with respect to the construction, repair and maintenance of the Water Works. Any approval given by and any inspection carried out by the City Engineer pursuant to this Agreement or concerning the construction, repair and maintenance of the Water Works will be for the purposes only of ensuring compliance with this Agreement from the point of view of Vancouver as contracting party, and no inspection or approval given by the City Engineer will relieve the Developer 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 Vancouver of any duty or liability owed to Vancouver of any indemnity given by the Developer to Vancouver.

4. OWNERSHIP OF WATER WORKS

- 4.1. During the term of this Agreement and at all times thereafter unless otherwise agreed to between the Parties or as provided for herein, the construction, repair and maintenance of the Water Works will be and will remain the absolute property of the Developer.
- 4.2. If at any time, the Developer is no longer the occupier or tenant of the Lands and such responsibilities for maintenance and repair of the Water Works have not been assigned to and assumed by another entity, NFTI will assume ownership of the Water Works and will assume responsibility for maintaining, repairing and replacing (if necessary) the Water Works at its sole cost.
- 4.3. NFTI hereby acknowledges and agrees that should it assume ownership of the Water Works pursuant to Section 4.2 it will also assume the obligations of the Developer set out in this Agreement and will be bound by the terms and conditions of this Agreement or, with the consent of Vancouver and Richmond, will enter into a new agreement with Vancouver and Richmond on substantially the same terms and conditions as set out herein.

5. WATER SERVICES TO BE PROVIDED BY VANCOUVER

- 5.1. Following or concurrent with completion of the Water Works, Vancouver will work with the Developer to complete, to the satisfaction of the City Engineer, the Service Connections required to allow Vancouver to provide Water Service to the Marina.
- 5.2. Vancouver will install a meter and appurtenances for meter reading at a location to be agreed upon by the Parties to measure the Units of Water being supplied to the Lands on or near the point of the Service Connection. Prior to commencement of construction of the Water Works, the Developer will pay the fees associated with the installation of the meter as specified in Schedule "G" of the City of Vancouver *Water Works By-Law No. 4848*.
- 5.3. Following the construction of the Water Works, the installation of the water meter and the completion of the Service Connections, Vancouver will provide Water Service to the Lands in the same manner and with the same degree of care as it provides Water Service to lands located within the City of Vancouver in accordance with the Water By-Laws.
- 5.4. Each of the Developer, NFTI and Richmond hereby acknowledge and agree that notwithstanding the inapplicability of the Water Bylaws to the Lands, the Water Bylaws will apply to the Water Service provided by Vancouver hereunder as though the Lands were located within the City of Vancouver and any responsibilities and obligations that are to be borne by the "customer" (as defined in the City of Vancouver *Water Works By-Law No. 4848*) pursuant to the Water Bylaws will be deemed to apply to the Developer (or the Developer's successor in accordance with section 4.2), including, without limitation, the responsibilities enumerated in Part III of the City of Vancouver *Water Works By-Law No. 4848*, and Vancouver will have the right to exercise any powers conferred on it in the Water Bylaws in providing Water Service to the Lands.
- 5.5. Vancouver will continue to provide the Water Service to the Lands until the termination of this Agreement pursuant to Article 8.
- 5.6. The Parties hereby acknowledge and agree that if Vancouver terminates this Agreement at any time pursuant to Article 8, Richmond is not obligated to provide water service to the Lands.

6. PAYMENT FOR SERVICES

- 6.1. Vancouver will meter the Water being used by the Marina and the Developer will pay Vancouver directly for the Water Service in accordance with Schedule B - Payment.
- 6.2. The metered rates for the services will be consistent with the rates per Unit charged for metered services within the City of Vancouver pursuant to Schedule D of the City of Vancouver *Water Works By-Law No. 4848* as may be amended from time to time.
- 6.3. If payments to be made by the Developer for the Water Services are in arrears, such amounts shall bear interest at the rate of three percent (3%) per annum above the "prime rate" (hereinafter defined), per annum calculated monthly not in advance, from the date due until paid irrespective of whether or not Vancouver has demanded payment. In this lease, "prime rate" means the floating annual percentage rate of interest established from time to time by the Bank of Montreal, 595 Burrard Street, Vancouver, British Columbia as the base rate that will be used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Bank of Montreal as its prime rate; provided that if a court declares or holds the prime rate to be void or unenforceable for any reason including uncertainty, then the rate of interest payable on amounts in arrears hereunder shall be fourteen percent (14%) per annum calculated monthly not in advance from the date due until paid.
- 6.4. Vancouver will not request from Richmond any payment, reimbursement or compensation of any kind for the provision of the Water Service to the Lands or for any cost or expense incurred by Vancouver in connection with this Agreement.

7. RELEASE AND INDEMNITY

- 7.1. The Developer now releases Richmond, PMV, NFTI and Vancouver and their respective Personnel from all Losses including those caused by personal injury, death, property damage, loss and economic loss arising out of, suffered or experienced by the Developer or its Personnel in connection with the performance by Vancouver of its obligations under this Agreement and now waives all rights and causes of action against Richmond and Vancouver and their respective Personnel for all Losses or damage to property and for all bodily injury (including bodily injury resulting in death) which may be caused by Vancouver or its Personnel in respect of the performance of Vancouver's obligations under this Agreement.
- 7.2. The Developer now indemnifies and saves harmless Richmond, PMV, NFTI and Vancouver and their respective Personnel (each an "**Indemnified Party**") from any and all Losses an Indemnified Party may sustain, incur or be put to at any time either before or after the expiration or termination of this Agreement in respect of bodily injury (including bodily injury resulting in death), or damage to property occurring within the Easement Area, Block 1, Lot D or the Lands that may arise out of errors, omissions or negligent acts of the Developer or its Personnel.
- 7.3. The Developer further agrees to indemnify and save harmless each Indemnified Party from any and all Losses which may arise or accrue to the Developer or any person, firm or corporation against an Indemnified Party or which an Indemnified Party 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 construction, installation, existence, maintenance, repair or replacement of the Water Works or an Indemnified Party or the Developer's use or occupation of the Lands, Lot D, Block 1 or the Easement Area;
 - (b) this Agreement;

- (c) Richmond consenting to Vancouver providing Water Service to the Lands;
- (d) any personal injury, property damage, trespass or death occurring in or upon the Lands, Block 1, Lot D or the Easement Area in whole or in part from the construction, installation, existence, maintenance, repair or replacement or use of the Water Works; and
- (e) the release by Vancouver of any or all of Vancouver's rights under this Agreement or the loss of any rights purported to be granted hereby,

whether or not such Losses are the result of or relate in any way to any negligent acts or omissions on the part of an Indemnified Party.

- 7.4. Nothing in this Agreement, including, without limitation, the foregoing indemnity, will affect or prejudice Vancouver, PMV, NFTI or Richmond from exercising any other rights that may be available to it at law or in equity.
- 7.5. The release and indemnity set out above will survive the expiry or sooner termination of this Agreement.
- 7.6. Despite any other term of this Agreement, Vancouver will not under any circumstances be obligated to provide Water Service 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 Vancouver's customers within the boundaries of Vancouver. All defenses available to Vancouver under the *Vancouver Charter* with respect to the provision or interruption of services will be made available to Vancouver.

8. TERM AND TERMINATION

- 8.1. This Agreement commences on the Effective Date and, subject to the terms hereof, will continue in full force and effect until all Parties cancel this Agreement by mutual agreement.
- 8.2. Vancouver may cancel this Agreement without penalty if the Developer defaults on its obligations hereunder provided that it gives the other Parties thirty (30) days' notice of the Developer's default and allows the Developer (or any other Party) thirty (30) further days after the expiry of such notice to cure the default or demonstrate that it is working diligently to cure such default. If the Developer or any other Party fails to cure the default within the allotted time period, Vancouver may, at its discretion, terminate this Agreement and Discontinue Water Service to the Lands.
- 8.3. The Parties hereby acknowledge and agree that if Vancouver terminates this Agreement at any time pursuant to this Article 8, Richmond is not obligated to provide water service to the Lands.

9. INSURANCE

9.1. During the term of this Agreement, the Developer, at its cost, will ensure that the following insurance coverages are placed with a company licensed to do business in British Columbia and in a form acceptable to Vancouver. In the case of the insurance required in 9.1(e), the Developer will ensure that all professionals involved in the design of the Water Works maintain such coverage. The following insurance coverage will remain in force for the duration of this Agreement, unless otherwise stipulated, and will provide for sixty (60) days notice to Vancouver of cancellation, lapse or material change. Each policy will contain a waiver in favour of Vancouver 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 Developer and Vancouver and protecting all other participants, including Richmond, PMV, subcontractors and their respective agents and employees, in all activities pertaining to the Developer's Works, with limits of not less than TEN MILLION DOLLARS (\$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 construction of the Water Works until Vancouver has connected the Water Works pursuant to Section 5, and thereafter, in the case of completed operations coverage, for a further period of not less than two (2) years and will contain the following extensions of coverage:

- (i) Broadform 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
- (ix) Operation of attached machinery;
- (b) Automobile Liability Insurance on all licensed vehicles used directly or indirectly in the construction of the Developer's 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 Five Million Dollars (\$5,000,000.00) inclusive per accident;
- (c) Contractor's Equipment Insurance covering all equipment owned or rented by the Developer 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 Vancouver; and
- (d) All-Risks Course of Construction Insurance, including the perils of flood and earthquake, covering the Developer's Works and all property of every description to be used in the construction or installation of the Developer's Works. This insurance will be primary,

include Vancouver as named insured, and contain a waiver of subrogation against Vancouver; and

- (e) A Professional (Errors and Omissions) Liability insurance policy with limits of not less than Five Million (\$5,000,000) Dollars per occurrence with an aggregate of not less than Five Million (\$5,000,000) Dollars and a deductible of not more than Fifty Thousand (\$50,000) Dollars; protecting against all claims for loss or damage arising out of any wrongful act or error or omission of the Consultant or any other design professional, in the performance of the professional services provided in connection with the Developer's Works. For the purposes of this Section, "Consultant" includes any professional engaged by the Developer to provide any of the design of the Developer's Works.

9.2. General Insurance Requirements

Prior to commencement of construction of the Developer's Works, the Developer will lodge or arrange for the lodging with Vancouver evidence of the insurance coverage required in Section 9.1. The Developer will forward similar evidence of renewals, extensions or replacement of any such insurance to Vancouver. Receipt by Vancouver of certificates of insurance or copies of insurance policies will in no way constitute confirmation by Vancouver that the insurance complies with the terms of this Agreement. Responsibility for ensuring that the insurance coverages required by this Article 9 are in place rests solely with the Developer. If the Developer fails to perform its obligations pursuant to this Article 9, Vancouver may effect such insurance on behalf of the Developer and all Vancouver's costs in so doing will be paid by the Developer forthwith upon written request from Vancouver therefor. The Developer expressly agrees to indemnify and save harmless Vancouver and its Personnel from and against any claim, cost or expense incurred by Vancouver and its Personnel if the Developer fails to obtain or maintain the required insurance coverages or does comply with any of the other requirements of this Article 9.

10. DEFAULT

- 10.1. If the Developer is in breach of or fails to carry out its obligations under the terms of this agreement or the Water Bylaws, within five days of receipt of written notice of non-compliance from Vancouver, except in the event of an emergency or apprehended emergency as determined by Vancouver in which case no notice shall be required, Vancouver may, but will be under no obligation to, remedy the default; and the Developer will, forthwith following receipt of any written request from Vancouver, pay to Vancouver the amount of any costs from time to time incurred by Vancouver in so doing, plus a reasonable sum (not greater than 20% of such costs) as a surcharge for overhead. If the Developer fails to pay to Vancouver such costs plus overhead within 30 days following delivery of such written request from Vancouver, such amounts will be construed in arrears and will bear interest at the rate of three percent per annum above the "Prime Rate" (hereinafter defined), calculated monthly not in advance, from the date due until paid. In this clause, "Prime Rate" means the floating annual percentage rate of interest as established from time to time by the Bank of Montreal, 595 Burrard Street, Vancouver, British Columbia, as the base rate that will be used to determine the rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Bank of Montreal as the prime rate; provided that if a court declares or holds the Prime Rate to be void or unenforceable for any reason including uncertainty, then the rate of interest payable on amounts in arrears hereunder will be eighteen percent per annum calculated monthly not in advance, from the date due until paid. This covenant shall survive the expiry or termination of this Agreement.

11. ASSIGNMENT BY CITY

- 11.1. Vancouver, upon prior written notice to Richmond, PMV and the Developer, 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 Vancouver may designate licensees and permittees for any and all purposes of this Agreement

12. FORCE MAJEURE

- 12.1. If an Event of Force Majeure occurs or is likely to occur, the Party claiming Force Majeure will promptly notify the other Parties of the particulars of the relevant event or circumstance and, if reasonably possible, supply supporting evidence. The claiming Party will use its best 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 Party) and to resume, with the least possible delay, its compliance with duties, covenants and obligations under this Agreement. Neither Vancouver nor the Developer 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.

13. GENERAL

- 13.1. **Vancouver's Other Rights Unaffected.** Nothing contained or implied herein will derogate from the obligations of the Developer under any other agreement with Vancouver or, if Vancouver so elects, prejudice or affect Vancouver's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* as amended from time to time and the rights, powers, duties and obligations of Vancouver under all public and private statutes, by-laws, orders and regulations, which may be, if Vancouver so elects, as fully and effectively exercised in relation to the roads and the Lands as if this Agreement had not been executed and delivered by the Developer and Vancouver.
- 13.2. **Richmond's Other Rights Unaffected.** Nothing contained or implied herein will derogate from the obligations of the Developer under any other agreement with Richmond or, if Richmond so elects, prejudice or affect Richmond's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act* as amended from time to time and the rights, powers, duties and obligations of Richmond under all public and private statutes, by-laws, orders and regulations, which may be, if Richmond so elects, as fully and effectively exercised in relation to the roads and the Lands as if this Agreement had not been executed and delivered by the Developer and Richmond.
- 13.3. **Further Assurances.** Each Party must perform the acts, execute and deliver the writings and give the assurances as may be reasonably necessary to give full effect to this Agreement.
- 13.4. **No Waiver.** No action or failure to act by a Party will constitute a waiver of any right or duty under this Agreement, or constitute an approval or acquiescence in any breach thereunder, except as may be specifically agreed to in writing by such Party.
- 13.5. **Time is of the Essence.** Time is of the essence in this Agreement.
- 13.6. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia. Any reference to a statute is to the statute and its regulations in force on the date of this Agreement and the Parties agree to submit to the jurisdiction of the courts of British Columbia.

- 13.7. **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.
- 13.8. **Interpretation.** Words importing the singular include the plural and vice versa and words importing gender include all genders. The words "include" and "including" are to be construed as meaning "including without limitation". The recitals and headings to sections, schedules and appendices are for convenience and reference only and will not affect the interpretation of this Agreement.
- 13.9. **Schedules.** The Schedules attached to this Agreement form a part of this Agreement and any obligation imposed on a Party in a Schedule will be deemed to be a covenant of a Party in this Agreement. To the extent that there is an inconsistency between the terms and conditions of this Agreement and anything in the Schedules, the terms and conditions of this Agreement will prevail only to the extent of the conflict.
- 13.10. **Enurement.** This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

13.11. **Counterparts.** This Agreement may be executed in one or more counterparts each of which will constitute an original and together will constitute one and the same Agreement. This Agreement may be executed by the parties and transmitted electronically or by facsimile and if so executed and transmitted, this Agreement will be for all purposes as effective as if the parties had delivered an executed original Agreement.

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

CITY OF VANCOUVER

Per: _____
Authorized Signatory

Print Name and Title

CITY OF RICHMOND

Per: _____
Authorized Signatory

Print Name and Title

Per: _____
Authorized Signatory

Print Name and Title

VANCOUVER FRASER PORT AUTHORITY

Per: _____
Authorized Signatory

Print Name and Title

Per: _____
Authorized Signatory

Print Name and Title

NORTH FRASER TERMINALS INC.

Per: _____
Authorized Signatory

Print Name and Title

Per: _____
Authorized Signatory

Print Name and Title

MILLTOWN MARINA +BOATYARD LTD.

Per: _____
Authorized Signatory

Print Name and Title

This Agreement has been ratified by City of Vancouver By-law No. _____ enacted by Vancouver City Council on _____, 2012 and ratified by City of Richmond Water Service to Richmond Island Bylaw No. 8861 adopted on _____, 2012.

SCHEDULE A

APPROVED PLANS AND SPECIFICATIONS FOR WATER WORKS

SCHEDULE B

PAYMENT