

## MEMORANDUM

2013- 154

To: Mayor & Council

From: Deputy Treasurer

Date: June 5, 2013

Re: RESIDENTIAL ORGANICS COLLECTION SERVICES CONTRACT TENDER  
AWARD RECOMMENDATION

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### RESIDENTIAL ORGANICS COLLECTION SERVICES CONTRACT TENDER; SW-05-2013

An invitation to tender was issued in May for Residential Organics Collection Services. The term of the contract is for five years, commencing January 1, 2014, with an extension of three one-year terms, at the sole discretion of the District.

The contract includes:

- (a) Curbside collection of residential organics once every two weeks from 6,139 Units on a set schedule, as applicable;
- (b) Transporting the organics to a designated facility;
- (c) Purchasing of 5,500 wheeled totes, kitchen containers and rolls/boxes of compostable bags (100 bags per roll/box);
- (d) Distributing the wheeled totes, kitchen containers and compostable bags;
- (e) Accurately reporting all data in accordance with the terms to be provided under the contract; and
- (f) Participating in public education and awareness campaigns

The prices shown are final, include all applicable taxes and are net of G.S.T. rebate.

Company	Annual Amount
Emterra Environmental	\$ 267,141.00
BFI Canada Inc	\$ 401,018.38

The Emterra amount works out to be approximately \$45 per single family household. The annual amount may change each year with an annual index adjustment.

Please note, after the five year term of the Contract expires, the organic containers (wheeled totes and kitchen containers) become the property of the District free of debts, encumbrances or any charges, and there are no further payments to the Contractor. If we extend the contract a further year, the annual contract amount will be (plus annual index adjustment if applicable):

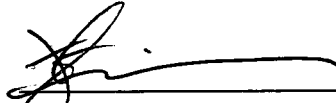
Company	Amount
Emterra Environmental	\$ 190,526.00
BFI Canada Inc	\$ 316,703.38

## OPTIONS

As Council previously discussed options regarding residential organics collection services and determined that tendering this service was the best option, the only other option is to reject the low bid and accept the high bid. This option is not recommended.

## RECOMMENDATION

That Council award the Residential Organics Collection Services Contract Tender to Emterra Environmental based on low bid.



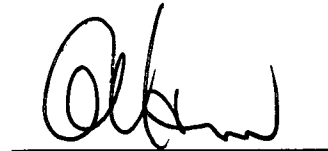
Fernando Pimentel  
Deputy Treasurer

The required funds are included in the financial plan. I concur with the recommendation of the Deputy Treasurer.



Patricia Walker  
Municipal Treasurer

I concur with the recommendation of the Deputy Treasurer.



Gary Nason  
Chief Administrative Officer

2013-162

MEMORANDUM

TO: Mayor and Council

FROM: Director of Building and Planning

DATE: May 31, 2013

RE: Uplands Fences and Hedges

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**BACKGROUND:**

In June 2012 Council requested staff prepare a report with respect to incorporating fence regulations into the Uplands Regulation Bylaw. The current requirement for fencing and hedging is regulated by the Fences and Screens Bylaw No. 3536 which regulates the entire municipality.

**DISCUSSION:**

Research into the Uplands subdivision designed by John Olmsted originally recommended a set of 24 restrictions. One restriction was for fence construction (no side-of- property hedges or fences within sixty feet of a road allowance). Setbacks, hedge and fence placement were all-important tools for maintaining the park like quality of the subdivision.

The "Oak Bay Special Powers Act, 1935" allows Council to by Bylaw make regulations, to apply only to the "Uplands" for several purposes. Two of these regulations could be:

- Prohibiting or regulating the height and design of fences.
- Regulating the height of hedges.

In January 1936 Council adopted the first "Uplands Regulation Bylaw No. 775" comprising twenty-one clauses of do's and don'ts'. Clause 17 regulated hedges and fences as follows:

*"No hedge or fence nor combination of hedge and fence exceeding four (4) feet in height shall be erected, constructed, grown or maintained on a lot within thirty-five (35) feet of any street; no hedge or fence nor combination of hedge and fence exceeding eight (8) feet in height shall be erected, constructed, grown or maintained on that part of any lot which is more that thirty five (35) feet from any street: Provided that a fence of open wirework exceeding eight (8) feet in height may be erected and maintained around any tennis court: Provided further that the restrictions in this clause shall not apply to any fence erected along the northerly boundary of Lot 3 according to plan numbered 4249 deposited at the land Registry Office at the City of Victoria.*

In 1945 Bylaw No. 1348 amended the Uplands Regulation Bylaw 1935 by adding into the clause a discretionary option for Council.

*"Provided that a discretion is reserved to the said Council to relax the operation of this regulation in the case of any lot, on written application for such relaxation by the owner of such lot."*

The Uplands Regulation Bylaw, 1977 being Bylaw No. 3223 continued with the same regulation for fences and hedges as previously stated, restricting the height to four feet for fences and hedges in the front thirty five feet of the properties.

The current Uplands Regulation Bylaw, 1987, being Bylaw No. 3545, repealed the Uplands Regulation Bylaw, 1977 which eliminated regulations for fences and hedges from the Uplands Regulation Bylaw. The Fences and Screens Bylaw No 3536 adopted in 1986 now regulates the entire municipality. The permitted height of a fence in the front yard is six feet, four and one half feet of solid fence with one and a half feet of trellis (open spaces between laths).

If Council wishes to amend the Uplands Regulation Bylaw, 1987 then it must hold a public hearing and provide notice in accordance with the "*Oak Bay Special Powers Act*."

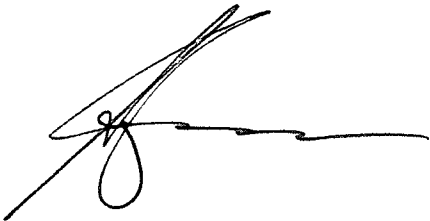
**OPTIONS:**

1. Continue regulating fences in the Uplands, similar to the remainder of the District of Oak Bay using the Fences and Screens Bylaw No. 3536.
2. If Council wishes to further regulate fences and hedges for the Uplands we could draft an amendment to the Uplands Regulation Bylaw incorporating the regulation restricting the height of fences in the front thirty five (35) feet of a road allowance.
3. If Council wishes to go further back and regulate fences and hedges as recommended in the original restrictions from John Olmsted, regulations could be drafted so that no side-of-property hedges or fences would be permitted in the front sixty (60) feet of a road allowance.

**RECOMMENDATION(S):**

1. If Council wish to further regulate fences and hedges for the Uplands it would be appropriate to direct staff to draft an amendment to the Uplands Regulation Bylaw incorporating the regulation restricting the height of fences in the front thirty five (35) feet of a road allowance.

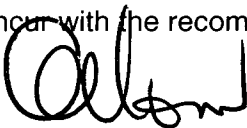
Respectfully Submitted,



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Roy Thomassen  
Director of Building and Planning

I concur with the recommendation of the Director of Building and Planning.



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Gary Nason  
Chief Administrative Officer

2013-163

**MEMORANDUM**

**TO:** Mayor and Council  
**FROM:** Municipal Treasurer  
**DATE:** June 6, 2013  
**RE:** Climate Action Revenue Incentive Program Report for 2012

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**BACKGROUND:**

At the 2008 UBCM Convention the *Climate Action Revenue Incentive Program* (CARIP) was announced. This program was to offset the carbon tax paid by local governments who have committed to the goal of becoming carbon neutral in their corporate operations by 2012 under the *BC Climate Action Charter*. In 2011 the program was amended to allow local governments to "make progress towards carbon neutrality".

To be eligible for the conditional grant, local governments had to sign on to the *BC Climate Action Charter*, thereby committing to take actions and develop strategies to achieve the following three goals:

- being carbon neutral or make progress towards carbon neutrality in their corporate operations by 2012;
- measure and report on their community greenhouse gas emissions profile;
- create complete, compact, energy efficient rural and urban communities

and to report publicly on their plan and progress toward meeting their climate action goals, using a prescribed template.

**DISCUSSION:**

The conditional grant is equal to 100 percent of the carbon tax paid as a direct expenditure. Last year we received a grant of \$26,588 and in April of this year we received \$29,290.

At its May 13, 2013 meeting Council elected to adopt the "making progress towards carbon neutrality" option. The attached CARIP Report for 2012 is attached, along with a slightly more detailed report showing the quantities of carbon emissions produced by the municipality.

Once the report has been received by Council, it will be put on the municipal website, thereby meeting the requirement to report publicly on our plan and progress toward meeting our climate action goals.

**OPTIONS:**

Council should receive the report if it wishes to be in compliance with the *BC Climate Action Charter*.

**FINANCIAL IMPACT:**

By complying with the requirements of the *BC Climate Action Charter*, Oak Bay will receive a grant in 2014 which will be equal to the carbon tax paid during 2013.

**RECOMMENDATION(S):**

That Council receives the Climate Action Revenue Incentive Program Report for 2012.



Patricia Walker

I concur with the recommendation of the Municipal Treasurer



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Gary Nason  
Chief Administrative Officer

## THE DISTRICT OF OAK BAY

### Summary of Energy Consumption

	2007	2008	2009	2010	2011	2012
<b>Vehicles</b> (Gasoline & Diesel)						
Public Works, Parks, Misc.	433.1	375.5	400.3	470.8	468.0	399.3
Fire	35.1	33	27.7	26.3	27.5	26.9
<b>Total Gasoline &amp; Diesel</b>	<b>468.2</b>	<b>408.5</b>	<b>428</b>	<b>497.1</b>	<b>495.4</b>	<b>426.2</b>
<b>Buildings</b> (Natural Gas & Oil)						
Rec. Centre & Tennis Bubbles	618.1	635.7	614	586.9	585.3	474.2
Henderson Centre (Oil)	123.4	125.3	98.8	40.3	0.0	0
All Others	103.6	108.5	100.7	121.7	167.1	142.9
<b>Total Natural Gas &amp; Oil</b>	<b>845.1</b>	<b>869.5</b>	<b>813.5</b>	<b>748.8</b>	<b>752.4</b>	<b>617.1</b>
<b>Electricity</b>						
Rec. Centre & Tennis Bubbles	69.9	62.9	65.6	73.7	70.4	64.3
Street Lighting	21	21.1	21.1	23.9	23.9	23.9
All Others	27.3	26.2	25.7	25.6	26.4	25
<b>Total Electricity</b>	<b>118.2</b>	<b>110.2</b>	<b>112.4</b>	<b>123.2</b>	<b>120.7</b>	<b>113.2</b>
<b>TOTAL CORPORATE</b>	<b>1,431.5</b>	<b>1,388.2</b>	<b>1,353.9</b>	<b>1,369.1</b>	<b>1,368.5</b>	<b>1,156.5</b>

2013-164

## MEMORANDUM

**To:** Municipal Council

**From:** Gary C. Nason, Interim Chief Administrative Officer

**Date:** June 10/13

**Re.** Proposed Amendments to the District's Building and Plumbing and Anti-Noise Bylaws to Address Issues with Respect to Long Term Construction Projects

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### BACKGROUND:

At the Regular Council Meeting held on June 13<sup>th</sup>/11, Council requested that Staff report back on possible options to address issues associated with long term construction projects. A report was subsequently presented at the August 15<sup>th</sup>/11 Regular Council Meeting exploring four possible options involving potential amendments to the District's Building Permit fees, an amendment to the District's Anti-Noise Bylaw, authority to enter and complete work at the owner's expense, and the registration on land title of Section 57 Notices. At that meeting Council further requested Staff to provide a report identifying the nature of the construction projects that any proposed amendments to the Building and Plumbing Bylaw and associated Permit fees would apply to, and the timelines for implementation of these fees. Ultimately flowing out of this meeting was a motion that Staff be instructed to prepare, for consideration of introduction at a future meeting, the necessary amendments to these two Bylaws as recommended in the two previous Staff Memoranda.

### DISCUSSION:

In essence, the Council of the day was generally supportive of considering higher fees for renewed building permits, and more restrictive hours of work, as an incentive to have owners get the work done within the two year time frame for their original building permit. The proposed amendments which were supported in principle back in 2011 are summarized below, and in consultation with the Municipal Solicitor, the necessary bylaw amendments have been prepared for consideration of introduction at a future Council Meeting.

#### 1. Proposed Amendments to Building and Plumbing Bylaw, 2005

Currently, every building permit for other than a complex building is issued with the condition that the permit shall expire if the work authorized by the permit



has not been completed within twelve (12) months from the date of issuance. A permit may be extended by not more than an additional twelve months for a fee of \$50.00. After the extension of the permit has elapsed (two years from the date of original issuance), the permit expires. In order to complete the work, a new permit must be applied for and obtained, for which the new permit fee is based on the value of the work remaining. That new permit has a one year expiry similar to the first permit issued.

The proposed amendment would contemplate the creation of a six month “renewal permit” category which would apply in those instances when the work has not been completed within the original two year period. This new renewal permit fee would be based on the value of the work remaining, and the bylaw would contain a stipulated timeframe after the expiry of the renewal permit within which the renewal permit may be applied for, with no provisions for extension of the renewal permit. The renewal permit provisions would apply to One Family Residential Use in the Zoning Bylaw.

Several other minor housekeeping amendments to the Building and Plumbing Bylaw are also proposed. The proposed changes to the relevant sections of the Bylaw are shown as track changes in Appendix “A” to this Memorandum.

## 2. Proposed Amendments to Anti-Noise Bylaw, 1977

Currently the Anti-Noise Bylaw provides for an exemption to the creation of noise under a building permit for the erection, demolition, construction, alternation or repair of any building or other structure, between the hours of 7:00am and 7:00pm on each day except Sunday. The proposed amendment would add a more restricted exemption to the creation of noise under a “renewal permit” between the lesser timeframe of **9:00am and 5:00pm** on each day except Sunday. The proposed amendments to the relevant sections of the Bylaw are shown as track changes in Appendix “B” to this Memorandum.

Finally, the Council of the day back in 2011 requested to be advised whether any bylaw changes would be required to allow the District to place a Section 57 Notice on title to those properties where projects are not completed prior to expiry of permits. The Municipal Solicitors have advised that in their opinion amendments to the District’s Building and Plumbing Bylaw are not required in order to make use of Section 57 of the Community Charter in those instances, as this authority springs directly from the legislation.

**OPTIONS:**

The most plausible options at this juncture would appear to be:

1. Receive this Staff Memorandum for information and take no further action with respect to this matter; or
2. Instruct Staff to finalize the appropriate Amendment Bylaws (2) to both the Building and Plumbing and Anti-Noise Bylaws, for consideration of the necessary readings at an upcoming Regular Council Meeting.

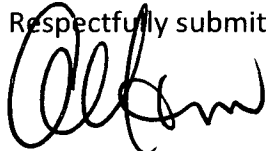
**FINANCIAL IMPACT:**

At this juncture it would be difficult to anticipate the impact on building permit revenues. The “renewal permit” amendment could promote or deter completion of construction projects. On the one hand, owners would not like to have additional fees imposed after two years and this could be the incentive to complete a construction project prior to expiry. On the other hand, this option could deter completion further as the cost may take away from the funding available to complete a project.

**RECOMMENDATION:**

If Council is supportive in principle of the proposed amendments as set out in this Memorandum, instruct Staff to finalize the appropriate Amendment Bylaws (2) to both the Building and Plumbing Bylaw and to the Anti-Noise Bylaw, for consideration of the necessary readings at an upcoming Regular Council Meeting.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. Nason', written over the typed name.

Gary C. Nason,  
Interim Chief Administrative Officer

### THE CORPORATION OF THE DISTRICT OF OAK BAY

#### BYLAW NO. 4247

(\*\*amended by Bylaw No. 4304, 4345 and 4493)

A Bylaw relating to building, building demolition and moving, plumbing and blasting,  
within the District of Oak Bay

The Municipal Council of The Corporation of the District of Oak Bay, in open meeting  
assembled, enacts as follows:

#### Interpretation

1 In this Bylaw:

The following words and terms have the meanings set out in the Building Code:

assembly occupancy, building, building area, building height,  
business and personal services occupancy, care occupancy ~~or~~  
~~detention—occupancy~~, constructor, coordinating registered  
professional, designer, detention occupancy, field review, floor  
area, high-hazard industrial occupancy, industrial occupancy, low-  
hazard industrial occupancy, major occupancy, medium-hazard  
industrial occupancy, mercantile occupancy, occupancy, ~~owner~~,  
registered professional, residential occupancy.

“Building Code” means the British Columbia Building Code 1998 as adopted by  
the Minister pursuant to Section 692(1) of the *Local Government Act*, RSBC  
1996, c. 323, as amended or re-enacted from time to time.

“building official” includes the Director of Building and Planning for the Municipality and a Building Inspector employed by or contracted to the Municipality.

“complex building” means a building

- (1) whose major occupancy is assembly, care occupancy or detention occupancy, or high-hazard industrial; or
- (2) exceeding 600 m<sup>2</sup> in building area or 3 storeys in building height and whose major occupancy is residential, business and personal services, mercantile, or medium-hazard or low-hazard industrial.

“deconstruction” means the taking apart and removal of a building or structure from the parcel on which it is located whereby not less than 50% by volume of the framing members of the building or structure are removed substantially intact and in salvageable form so as to be capable of re-use as framing members.

(\*\*Bylaw 4345, Feb. 12/07)

“Director of Building and Planning” means the Director of Building and Planning for the Municipality, or his designate.

“Director of Engineering Services” means the Director of Engineering Services for the Municipality, or his designate.

“fixture”, in respect of a plumbing system, means a device, including a floor drain, for discharging clear water waste or sewage, or for conveying water for domestic, fire suppression, irrigation, commercial or industrial use.

“health and safety aspects of the work” means design and construction regulated by Part 3, Part 4, Part 7 and Sections 9.4, 9.7, 9.8, 9.9, 9.10, 9.12, 9.13, 9.14, 9.15, 9.17, 9.18, 9.19, 9.20, 9.21, 9.22, 9.23, 9.24, 9.31, 9.32 and 9.34 of Part 9 of the Building Code.

*(\*\*Bylaw 4493, adopted Jan. 11/10)*

“Municipality” means The Corporation of the District of Oak Bay.

“on-site services” means all pipes, conduits, fixtures and appurtenances located below ground which carry water, sewage or storm water within the boundaries of a parcel but outside a building, to or from municipal service connections.

“owner” means any person registered as the owner in fee simple of a property, or an agent authorized by the owner in writing to represent the owner.

“renewal permit” means a permit that expires 6 months from the date of its issuance for the completion of work contemplated by a previous permit and issued pursuant to section 13(6) of this Bylaw.

“standard building” means a building which is 3 or fewer storeys in building height, having a building area not exceeding 600 m<sup>2</sup>, and whose major occupancy is residential, business and personal services, mercantile, or medium-hazard or low-hazard industrial.

“structure” means a construction or portion thereof, of any kind, whether affixed to, supported by or sunk into land or water, but excludes landscaping, fences, paved surfaces and retaining walls less than 1.2 metres in height.

*(\*\*Bylaw 4493, adopted Jan. 11/10)*

“value” means the fair market value of the work proposed to be undertaken, including materials whether donated or purchased, labour whether contracted, volunteered or provided by the owner, design, consulting services, construction management services, construction insurance and contractor’s profit and overhead.

#### Purpose of Bylaw

- 12 (1) In addition to applicable fees and charges required under other bylaws of the Municipality, a permit fee, prescribed and calculated in accordance with Schedules "A" and "B" to this Bylaw, shall be paid in full prior to the issuance of any permit under this Bylaw.
- (2) The fees calculated in accordance with the said Schedules shall be doubled where work regulated by this Bylaw has been commenced prior to the issuance of a permit for such work.
- (3) Where a permit issued under this Bylaw is surrendered and cancelled before any construction begins, the owner may obtain a refund of 80% of the permit fees calculated and paid in accordance with Schedules "A" and "B" to this Bylaw.
- (4) Twenty Percent (20%) of the permit fee calculated in accordance with Schedule "A" shall be paid at the time of application as a non-refundable application review fee.
- (5) If a permit is issued, the non-refundable application review fee described in subsection (4) shall at the time of issuance be credited against the total fee calculated in accordance with Schedule "A".
- (6) The assessment of the value of the proposed work carried out in order to calculate the amount of the non-refundable application review fee described in subsection (4) constitutes a preliminary assessment and does not preclude a building official, having completed his review of the application, from reassessing that value for the purpose of determining the balance of the permit fee required to be paid prior to the issuance of the permit.
- (7) Where, due to non-compliance with this Bylaw, more than 2 inspections are necessary where one inspection would normally be required, for each inspection after the second inspection, a re-inspection fee of \$50.00 shall be paid prior to additional inspections being performed.
- (8) When a building permit is issued in reliance upon the certification represented by letters of assurance provided pursuant to Section 9(10) of this Bylaw, the permit fee shall be reduced by 10% of the amount payable pursuant to Schedules "A" and "B" to this Bylaw.

*(\*\*Bylaw 4493, adopted Jan. 11/10)*

#### Building Permits

- 13 (1) When:
- (a) a completed application including all required supporting documentation has been submitted;

- (b) the proposed work set out in the application substantially conforms with the Building Code, this Bylaw and all other applicable enactments;
- (c) the owner or his or her representative has paid all applicable fees in accordance with Section 12 of this Bylaw;
- (d) the owner or his or her representative has paid all charges and met all requirements imposed by any other enactment or bylaw;
- (e) no contravention of any enactment, covenant, agreement, or regulation in favour of or enacted by the Municipality would be created by or could be reasonably foreseen by the issuance of the permit,

a building official shall issue the permit for which the application is made.

- (2) When the application is in respect of a building that includes, or will include, a residential occupancy, the building permit must not be issued unless the owner provides evidence pursuant to the *Homeowner Protection Act* that the proposed building:
  - (a) is covered by home warranty insurance; and
  - (b) the constructor is a licensed residential builder.
- (3) Subsection (2) does not apply if the owner is not required to be licensed and to obtain home warranty insurance in accordance with the *Homeowner Protection Act*.
- (4) Every permit is issued upon the condition that the permit shall expire and the rights of the owner under the permit shall terminate if:
  - (a) the work authorized by the permit has not commenced within 6 months from the date of issuance of the permit;
  - (b) the work authorized by the permit has ceased for a period of 6 consecutive months; or
  - (c) the work authorized by the permit ~~is~~ has not been completed, or any inspections and occupancy permits related to the permit and required pursuant to this Bylaw are not obtained:
    - (i) within twenty-four (24) months from the date of issuance of the permit where such work is in respect of the construction of a ~~new~~ complex building;

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(ii) and within twelve (12) months from the date of issuance of a permit that is not in respect of the construction of a complex building and that is not a renewal permit, for other work;

(iii) prior to the date of expiry of a permit extension issued pursuant to section 13(5); or

(iv) prior to the date of expiry of a renewal permit.

and

~~(d) an extension has not been granted pursuant to Subsection (5).~~  
~~(\*\*Bylaw 4304, adopted Mar.13/06)~~

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(5) Despite section 13(4)(c)(i) and (ii), a building official may extend a permit by not more than 12 months where:

(a) written application for extension has been made prior to the expiration of the permit, provided it is not a renewal permit;

(b) the permit extension fee set out in Schedule "A" has been paid;

(c) the permit has not previously been extended;

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(d) failure to comply with the time limits set out in Subsection (4) is attributable to adverse weather, strikes, material or labour shortages, or other hardship reasonably beyond the control of the owner; and

(e) for work which has not been commenced, and subject to protection by law, the enactments governing the use, construction, reconstruction, alteration, relocation, removal, demolition or occupancy of the building or structure have not been amended since the issuance of the permit in a way that would have precluded the issuance of a permit had such amendments been in effect at the time of the original application.

~~(\*\*Bylaw 4304, adopted Mar.13/06)~~

(6) In order to complete the work authorized by a permit which has expired, a new permit must be applied for and obtained, for which the new permit fee shall be based on the value of the work remaining.

~~(\*\*Bylaw 4304, adopted Mar.13/06)~~

Where a permit expires pursuant to section 13(4) and the work authorized

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by the permit is not completed or any inspections and occupancy permits related to the permit and required pursuant to this Bylaw are not obtained, the owner shall, prior to continuing the work contemplated by the permit:

(a) in the case of work on property not zoned for One Family Residential Use in the Zoning Bylaw, 1986, apply for and obtain a new permit pursuant to the terms set out at Subsection 13(1); or

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(b) in the case of work on property zoned for One Family Residential Use in the Zoning Bylaw, 1986, apply for and obtain a renewal permit, which may be issued by a building official pursuant to the terms set out at Subsection 13(1), provided the application is made within \_\_\_ months of the expiry of the previous permit.

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- (7) A building official may issue an excavation permit prior to the issuance of a building permit.
- (8) Where a site has been excavated under a permit issued pursuant to Subsection (7) and a building permit is not subsequently issued, or a subsisting building permit has expired, then the owner shall fill in the excavation to restore the original gradient of the site within 30 days of being served notice by the Municipality to do so, in default whereof, and without limiting any other remedy or recourse open to the Municipality, the Municipality may take over and complete the same, with all costs incurred by the Municipality in that regard (including without limitation all wages and benefits, equipment rentals both internal and external, contract costs, consulting costs, supplies, materials, disposal charges and engineering costs) to be paid by the owner within 30 days of invoice, with any such amount remaining unpaid on December 31 immediately following the expiration of such 30 day period to be added to and form part of the taxes payable on the land subject to the permit as taxes in arrears.

*(\*\*Bylaw 4304, adopted Mar.13/06)*

- (9) A building official may issue a building permit for a portion of a building or structure before the design, plans and specifications for the entire building or structure have been accepted, provided sufficient information has been provided to the Municipality to demonstrate to the building official that the portion authorized to be constructed substantially complies with this and other applicable bylaws and the permit fee applicable to that portion of the building or structure has been paid. The issuance of the permit notwithstanding, the requirements of this Bylaw apply to the remainder of the building or structure as if the permit for the portion of the building or structure had not been issued.

#### Disclaimer of Warranty or Representation



THE CORPORATION OF THE DISTRICT OF OAK BAY

BYLAW NO. 3210

(\*\*amended by Bylaws No. 3332, 3937 and 4198)

A Bylaw for the abatement and control of objectionable noises

CONSOLIDATED FOR CONVENIENCE ONLY

The Municipal Council of The Corporation of the District of Oak Bay, in open meeting assembled, enacts as follows:

- 1 This Bylaw may be cited as the "**ANTI-NOISE BYLAW, 1977**".
- 2 In this Bylaw, unless the context otherwise requires, the following terms and expressions shall have the meanings hereinafter assigned to them, that is to say:
  - (a) "CORPORATION" shall mean The Corporation of the District of Oak Bay;
  - (b) "LEAF BLOWER" means a portable electric or engine-driven device, including both a backpack device and a hand-held device, used for blowing or sucking up leaves, grass or debris, but excluding a device mounted on or towed by a motor vehicle;
  - (c) "MUNICIPAL CREWS" means employees of The Corporation or persons under contract to The Corporation;  
(\*\*Bylaw 4198, adopted Oct.14, 2003)
  - (d) "PERSON" includes a corporation, partnership or individual.
- 3
  - (1) No person shall make or cause to be made any noise or sound within the geographical limits of The Corporation of the District of Oak Bay which is liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public.
  - (2) No owner, tenant or occupier of real property within the geographical limits of The Corporation of the District of Oak Bay shall allow that property to be used so that a noise or sound which originates from that property disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public.  
(\*\*Bylaw 3332, adopted Aug.5/80)  
(\*\*Bylaw 3937, adopted May 12/97)
- 4 Without limiting the generality of the foregoing, the following conduct is specifically prohibited within the geographical limits of The Corporation of the District of Oak Bay:
  - (1) shouting, using a megaphone, or making other noise in or at or on

~~streets~~highways, parks, wharves, docks, piers, boatlandings or other public place in such a manner liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public;

- (2) the playing of any radio, phonograph, television, receiving set, musical instrument or sound amplification device whether in or upon private premises or in any public place in such a manner or with such volume liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public;
- (3) the keeping or harbouring of any animal or caged bird which by making frequent noise is liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public;
- (4) the operation of any automobile, truck, motorcycle, bus or other vehicle which by reason of disrepair, lack of a sufficient muffler, or any other cause, creates noise or sound liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public.

*(\*\*Bylaw 3332, adopted Aug.5/80)*

- (5) (a) on Saturday, Sunday or a holiday, the operation of a leaf blower at a time outside the hours of 9:00 a.m. to 5:00 p.m.;
- (b) from Monday through Friday, excluding holidays, the operation of a leaf blower at a time outside the hours of 8:00 a.m. to 8:00 p.m.

*(\*\*Bylaw 4198, adopted Oct.14, 2003)*

5 The provisions of this Bylaw shall not apply to:

- (1) any vehicle, machinery or activity of the Police or Fire Department of The Corporation or of any other public body or any ambulance or any public service or emergency vehicle while engaged in a service of public convenience or necessity;
- (2) the sounding of a horn or other signalling device upon any vehicle or boat, where such sounding is property and necessarily used as a danger or warning signal;
- (3) the use, in a reasonable manner, of any apparatus or mechanism for the amplification of the human voice or of music in a public park or square in connection with any public meeting, public celebration or other public gathering;
- (4) the use of bells or chimes by churches and the use of carillons where such carillons have been lawfully erected;
- (5) any parade, procession, performance, concert, ceremony, gathering or meeting in or on any ~~street~~ highway or public place, when duly authorized or permitted under the provisions of any bylaw, statute or ordinance in force in The Corporation of the District of Oak Bay;
- (6) the excavating of any street, highway, lane or any other land between the hours of

7:00 a.m. and 7:00 p.m. on each day except Sunday, or, in case of urgent necessity, at any time if such work is essential to the health, safety or protection of the public or the safety or protection of private property;

- (7) the erection, demolition, construction, reconstruction, alterationing or repairing of any building or other structure; ~~within the Municipality or the excavating of any street, highway, lane or any other land between the hours of 7:00 a.m. and 7:00 p.m. on each day except Sunday, or, in case of urgent necessity, at any other time during the week if such work is essential to the health, safety or protection of the public;~~

(i) between the hours of 7:00 a.m. and 7:00 p.m. on each day except Sunday if such work is authorized by a permit which is not a renewal permit, as defined the Building and Plumbing Bylaw, 2005;

(ii) between the hours of 9:00 a.m. and 5:00 p.m. on each day except Sunday if such work is authorized pursuant to a renewal permit, as defined in the Building and Plumbing Bylaw, 2005; or

(iii) at any time in case of urgent necessity, if such work is essential to the health, safety or protection of the public or the safety or protection of private property.

- (87) any sound or noise resulting from the use in a reasonable manner of the premises of any Community Care Facility duly licensed under the *Community Care Facilities Licensing Act*, or of similar institutions.

- 6 Between the hours of 6:00 a.m. and 8:00 p.m. on any day, Section 4(5) shall not apply to the operation of a leaf blower by municipal crews acting in the course of their employment or engagement by The Corporation, nor to the operation of a leaf blower on the lands shown in bold outline on Schedule "A" attached to this Bylaw.

(\*\*Bylaw 4198, adopted Oct.14, 2003)

- 7 Any person who violates any provision of this Bylaw is guilty of an offence and liable upon summary conviction to a fine of not more than One Thousand Dollars (\$1,000.00). For the purpose of this clause an offence shall be deemed committed upon each day during or on which a violation occurs or continues.

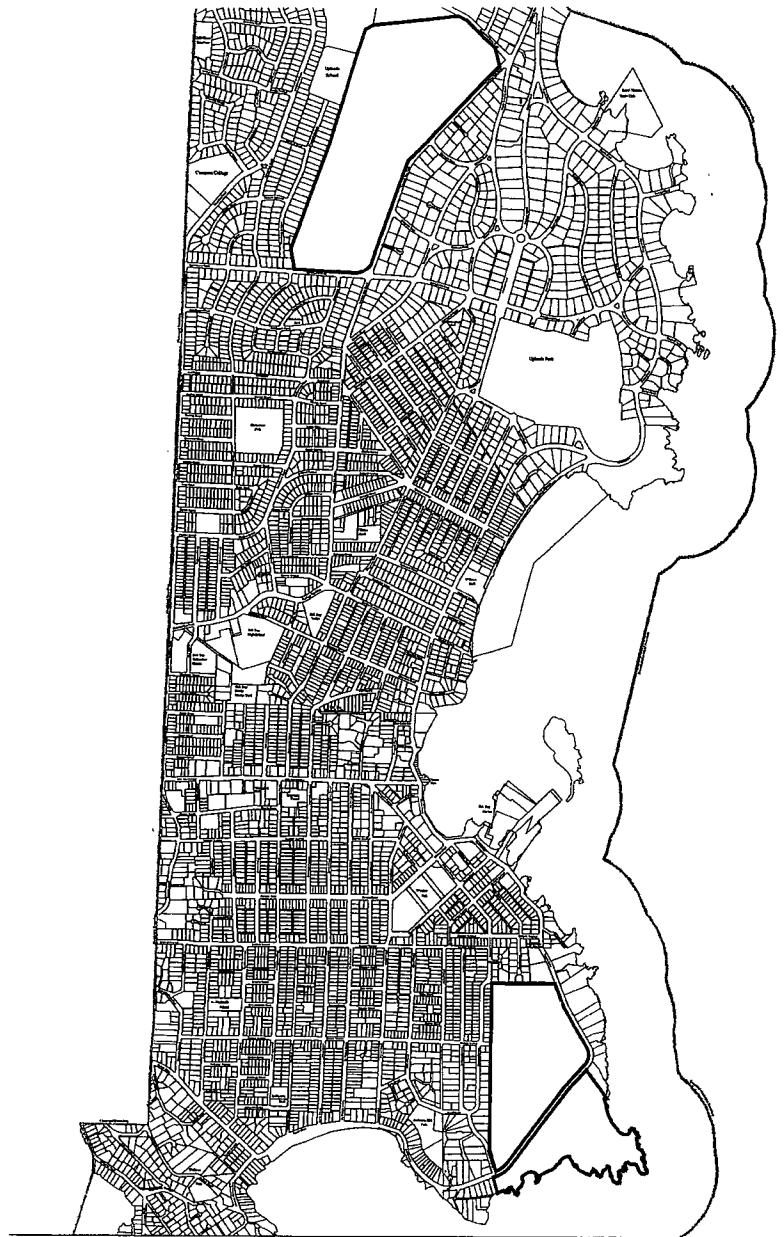
- 8 The "*Anti-Noise Bylaw, 1964*" being Bylaw No. 2491 of the Corporation is hereby repealed.


READ a first, second and third time by the Municipal Council on May 25, 1977

RECONSIDERED, ADOPTED AND FINALLY PASSED by the Municipal Council on June 6, 1977

Mayor

Municipal Clerk  
Sealed with the Seal of The Corporation of the  
District of Oak Bay.






Map Produced by:  
Corporation of the District of Oak Bay  
Engineering Department, GIS  
September 4, 2003  
Note: Bylaw - Schedule A, 2003

**Schedule "A" to Bylaw No. 4198**

500 0 500 1,000 Meters



2013-165

## MEMORANDUM

**To:** Municipal Council

**From:** Gary C. Nason, Interim Chief Administrative Officer

**Date:** June 10/13

**Re.** Financial Contribution Agreement – Oak Bay High School Replacement Project – Community Theatre and Arts Facility Component

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### **BACKGROUND:**

In October of 2010 the Greater Victoria School District formally requested a financial contribution of \$1 million towards the proposed new Oak Bay High School Community Theatre and Arts Facility, in two equal contributions of \$500,000 each. In response, the Council of the day on October 25<sup>th</sup>, 2010 adopted a motion to advise the School Board of its support in principle of the funding request, subject to budgetary approval and the Municipality arriving at an appropriate and satisfactory method of funding the contribution.

Since that period of time Council has approved a method to finance the two contributions of \$500,000, and the District's current Five Year Financial Plan incorporates provision for the first payment to be made in 2013 anticipating the commencement of construction of the project, with the final payment to be made in 2015 anticipating completion of the project.

### **DISCUSSION:**

In terms of the current status of this project, the School District has confirmed in writing (correspondence attached as Appendix "A" to this Memorandum) that it anticipates selection of the preferred design-build proponent on June 20<sup>th</sup>/13, with construction to commence in early July. Construction is proposed to be completed by August of 2015.

With the assistance of the Municipal Solicitor, Staff have prepared a proposed Contribution Agreement (Appendix "B" to this Memorandum) between the District of Oak Bay and the School Board which sets out the respective rights and obligations of the parties in regard to the \$1 million contribution. Council's attention in particular is drawn to the following provisions of the Agreement:

- The “Facility” to be constructed, which is the intended beneficiary of the District’s financial contribution, is specifically noted as the Community Theatre and Arts Facility, which is a component of the overall Oak Bay High School Replacement Project (the “Project”);
- The first instalment of \$500,000 is to be paid upon issuance of a building permit for the Facility, with the second instalment of \$500,000 to be paid upon the issuance of an occupancy permit for the Facility;
- The contribution must be used by the School District only for the purposes of construction of the Facility, and for no other purpose. Having said that, if the Facility is subsumed within the permit(s) for the School, then the District will take the position that the requirement is still met, and payment will be available;
- Any portion of the contribution not required for the construction of the Facility, or used for a purpose other than the construction of the Facility, shall be repaid to the District without delay; and
- The Agreement contains the appropriate liability, indemnity and audit clauses as approved by the Municipal Solicitor.

The writer has received confirmation from School District Staff that they are in agreement with the terms of the proposed Contribution Agreement, and once formally approved by Council the Agreement will be taken to the Board for similar approval.

#### **OPTIONS:**

The most plausible options at this juncture would appear to be:

1. Approve the proposed Contribution Agreement and authorize its execution by the appropriate signing officers of the Municipality upon execution by the School District; or
2. Not require the execution of a Contribution Agreement as a condition for disbursement of the previously agreed-to financial contribution of \$1 million. This course of action is not recommended.

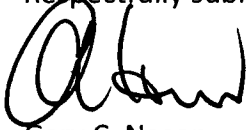
#### **FINANCIAL IMPACT:**

As noted previously in this Memorandum, the \$1 million financial contribution towards this project has been included in the District’s current Five Year Financial Plan which was recently adopted by Council.

**RECOMMENDATION:**

That this Memorandum be received, and Council approve the proposed Contribution Agreement in the form attached as Appendix "B" to this Memorandum, and authorize its execution by the appropriate signing officers of the Municipality.

Respectfully submitted,



Gary C. Nason,  
Interim Chief Administrative Officer

I concur with the recommendation of the Chief Administrative Officer.



Patricia Walker  
Treasurer





# FACILITIES SERVICES

491 CECELIA ROAD, VICTORIA, BRITISH COLUMBIA V8T 4T4  
PHONE (250) 920-3400 FAX (250) 920-3461

May 2, 2013

Mr. Gary Nason  
Interim Chief Administrative Officer  
Corporation of the District of Oak Bay  
2167 Oak Bay Avenue  
Victoria, BC V8R 1G2

Dear Mr. Nason:

Re: Oak Bay High School Replacement Project:

Thank you for your recent telephone call. I look forward to working with you in your new role with the District of Oak Bay. I would imagine that our project is but one of the many that you will be involved with in the coming days and months.

The official project title is "Oak Bay High School Replacement Project". Currently this Design Build project is at the Request for Proposal stage with Technical submissions due May 7<sup>th</sup> 2013, and Financial proposals due June 17<sup>th</sup> 2013.

We anticipate selection of the preferred proponent on June 20<sup>th</sup> 2013 with construction to start in early July.

As you are aware Oak Bay Council has approved a contribution to this project of \$1,000,000. Your predecessor Mr. Mark Brennan had previously agreed that the first payment of \$500,000 would be forwarded to the School District once construction has commenced. As stated above construction will start in early July and we look forward to receiving the initial payment at that time.

The remaining \$500,000 is to be forwarded to the School District once the school construction is completed in August of 2015.

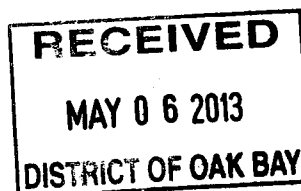
We look forward to working with you and your team in making this long awaited project a reality for both the students and the local community of Oak Bay.

Sincerely,

A handwritten signature in black ink that reads 'Seamus Howley'.

Seamus Howley  
Director of Facilities

cc: Debra Laser – Secretary/Treasurer



## CONTRIBUTION AGREEMENT

THIS AGREEMENT dated for reference the 1st day of June, 2013.

BETWEEN:

### CORPORATION OF THE DISTRICT OF OAK BAY

2167 Oak Bay Avenue  
Oak Bay, B.C. V8R 1G2

(the "**District**")

OF THE FIRST PART

AND:

### THE BOARD OF EDUCATION OF SCHOOL TRUSTEES, SCHOOL DISTRICT #61 (GREATER VICTORIA)

491 Cecilia Road  
Victoria, B.C. V8T 4T4

("SD61")

OF THE SECOND PART

### WHEREAS:

- A. SD61 is carrying out the Oak Bay High School Replacement Project (the "**Project**"), a component of which is the construction of a Community Theatre and Arts Facility (the "**Facility**");
- B. Council of the District has resolved to provide a contribution to the construction of the Facility by way of grant in the sum of ONE MILLION DOLLARS (\$1,000,000.00), payable in two equal instalments of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) each (the "**Contribution**");
- C. The parties wish to set out in this agreement (the "**Agreement**") their respective rights and obligations with respect to the Contribution.

**NOW THIS AGREEMENT WITNESSES** that in consideration of the payment of \$1.00 and other good and valuable consideration provided by SD61, the sufficiency and receipt of which are hereby acknowledged, SD61 and the District hereby agree as follows:

#### 1.0 Financial Contribution

- 1.1 Subject to the terms and conditions of this Agreement, the District agrees to pay

SD61 the Contribution in two equal instalments, as follows:

- (a) The sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) upon the issuance of a building permit for the Facility; and
- (b) The sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) upon the issuance of an occupancy permit for the Facility.

- 1.2 The Contribution must be used by SD61 only for purposes of construction of the Facility, and for no other purpose.
- 1.3 Any portion of the Contribution not required for the construction of the Facility, or used for a purpose other than the construction of the Facility, shall be repaid to the District without delay.

## **2.0 District Not Liable**

- 2.1 For certainty, nothing in this Agreement, and no actions taken by the District in implementing this Agreement, including payment of the Contribution, shall:
  - (a) make the District responsible in any way for the construction, management or operation of the Project or Facility or any costs associated therewith;
  - (b) give rise to any liability on the part of the District, whether to SD61 or any other person, for any loss, damage or liability arising from or related to the construction, management or operation of the Project or Facility; or
  - (c) constitute the District an owner of the Project or Facility for any purpose.

## **3.0 Indemnity**

- 3.1 SD61 hereby releases, discharges, indemnifies and saves harmless the District, its elected officials, appointed officers, employees, agents, contractors, successors and assigns, from and against all actions, causes of action, claims, losses, liabilities, damages, costs, expenses, and fees made, sustained, brought, prosecuted, or threatened to be brought or prosecuted in any manner and by any person whatsoever arising out of or in relation to:
  - (a) the construction, operation or management of the Project or the Facility by SD61; or
  - (b) a breach of any provision of this Agreement to be performed or observed by SD61.
- 3.2 The indemnities set out in section 3.1 shall survive the expiry or termination of this Agreement.

#### **4.0 Audit Requirements**

- 4.1 SD61 shall maintain proper financial records and supporting documentation for all expenditures relating to the Contribution, for the purpose of the audit under section 4.2.
- 4.2 The District shall be entitled to examine and audit the financial records and supporting documentation prepared under section 4.1 at any time and from time to time, with reasonable notice to SD61.

#### **5.0 Miscellaneous**

- 5.1 SD61 shall not assign this Agreement.
- 5.2 This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
- 5.3 Waiver of any default by a party shall not be interpreted or deemed to be a waiver of any subsequent default.
- 5.4 Nothing in this Agreement shall be interpreted as imposing a liability of a capital nature on the District.
- 5.5 Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of the District in the exercise of its function under any public and private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised as if this Agreement had not be executed and delivered by the parties and the interpretation of this Agreement shall be subject to and consistent with statutory restrictions imposed on the District under the *Local Government Act* and *Community Charter*.
- 5.6 Nothing in this Agreement shall be interpreted as creating an agency, employment, partnership or joint venture relationship between the District on the one hand and SD61 on the other.
- 5.7 The whole agreement between the parties is set forth in this document and no representations, warranties, covenants or conditions, express or implied, have been made other than those expressed herein.
- 5.8 This Agreement may not be modified or amended except by the written agreement of the parties.
- 5.9 The headings in this Agreement are inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.
- 5.10 This Agreement shall be interpreted in accordance with and governed by the laws applicable in the Province of British Columbia.

- 5.11 Any notice given under this Agreement by any party shall be deemed to have been given if mailed by prepaid registered mail or delivered by hand 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, and any such notice shall be deemed to have been received if mailed, seventy-two (72) hours after the time of mailing and if delivered by hand, upon the date of delivery. If normal mail service is interrupted by strike, labour unrest, force majeure or other cause, then a notice sent by mail shall not be deemed to be received until actually received, and the party sending the notice must deliver such notice by hand to ensure prompt receipt thereof.

**EXECUTED BY THE CORPORATION OF THE DISTRICT OF OAK BAY** at Oak Bay, B.C. this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**CORPORATION OF THE DISTRICT OF)**

**OAK BAY** by its authorized signatories: )

\_\_\_\_\_ )

Mayor, Nils Jensen )

\_\_\_\_\_ )

\_\_\_\_\_ )

Chief Administrative Officer, )

Gary Nason )

\_\_\_\_\_ )

**EXECUTED BY THE BOARD OF EDUCATION OF SCHOOL TRUSTEES, SCHOOL DISTRICT #61 (GREATER VICTORIA)** at Victoria, B.C. this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**BOARD OF EDUCATION OF SCHOOL )**

**TRUSTEES, SCHOOL DISTRICT #61 )**

**(GREATER VICTORIA)** by its )

authorized signatories: )

\_\_\_\_\_ )

Name )

\_\_\_\_\_ )

Name )

\_\_\_\_\_ )

Name )