

CITY OF LANGFORD
PHASED DEVELOPMENT AGREEMENT BYLAW NO. 2058

A Bylaw To Enter Into A Phased Development Agreement

WHEREAS under Section 516 of the Local Government Act a municipality may enter into a phased development agreement with the owner of land;

AND WHEREAS Council has considered the bylaw in conjunction with the Official Community Plan;

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

1. If any section, subsection, sentence, clause or phrase of this Bylaw is for any reason held to be invalid by a court of competent jurisdiction, the invalid portion shall be severed and the holding of invalidity shall not affect the validity of the remainder of the Bylaw.
2. The City enters into, and the Mayor and Corporate Officer are authorized to execute, that certain form of phased development agreement attached to and forming part of this bylaw as Appendix "A".
3. This Bylaw may be cited for all purposes as, "City of Langford Phased Development Agreement Bylaw No. 2058, 2022".

READ A FIRST this 15th day of August, 2022.

PURSUANT TO THE LOCAL GOVERNMENT ACT, NOTICE WAS ADVERTISED ON and , 2022.

PUBLIC HEARING was held on this day of , 2022.

READ A SECOND TIME this day of , 2022.

READ A THIRD TIME this day of , 2022.

ADOPTED THIS day of , 2022.

PRESIDING COUNCIL MEMBER

CORPORATE OFFICER

Appendix A

PHASED DEVELOPMENT AGREEMENT

THIS AGREEMENT dated for reference as of the Effective Date.

BETWEEN:

ROYAL ROADS UNIVERSITY

(“RRU”)

AND:

CITY OF LANGFORD

(the “City”)

WHEREAS:

A. RRU is the owner in fee simple of the lands legally described as:

PID: 030-498-805

Lot A Section 72 Esquimalt District Plan EPP81038

PID: 031-625-363

Lot 1 Section 72 Esquimalt District Plan EPP117679

(collectively, the “Lands”);

B. RRU intends to construct the Project (as defined herein) on the Lands over time in Phases (as defined herein);

C. It is anticipated that the Phases (as defined herein) will comprise a gross floor area of approximately 315,000 square feet and the Phases will proceed generally in accordance with the site plan attached as Schedule A hereto, subject to available funding and as may subsequently be negotiated between the City and RRU;

D. The City and RRU entered into a cooperation and development agreement dated June 25, 2021 (the “**Cooperation and Development Agreement**”) in which the parties agreed among other things, that they would negotiate, and if approved by the parties in accordance with their respective governance procedures and the *Local Government Act* (British Columbia), that they would enter into a phased development agreement (a “**Phased Development Agreement**”) pursuant to section 516 of the *Local Government Act* to provide, among other things, that any amendments or repeals of specified zoning bylaw provisions and/or specified subdivision servicing bylaw provisions of the City will not apply to the Lands for the term of the Phased Development Agreement unless RRU otherwise agrees in writing; and

E. In accordance with section 516 of the *Local Government Act*, Council for the City of Langford adopted Bylaw No. 2058 authorizing the City to enter into this Agreement.

NOW THEREFORE in consideration of \$1.00 now paid by RRU to the City, the covenants and agreements of the parties herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

PART 1
DEFINITIONS AND INTERPRETATIONS

- 1.1 For the purpose of this Agreement, the following words or phrases will have the following meanings:
- (a) **“Agreement”** means this phased development agreement, including all schedules attached hereto;
 - (b) **“Business Day”** means any day which is not a Saturday, Sunday or statutory holiday in the Province of British Columbia;
 - (c) **“Cooperation and Development Agreement”** has the meaning assigned thereto in Recital B;
 - (d) **“Council”** means the duly elected council of the City from time to time;
 - (e) **“Effective Date”** means _____, 2022;
 - (f) **“Innovation Hub”** means that part of Phase 1 which is anticipated to have a gross floor area of approximately 1,800 square feet and which will serve as a place for industry to connect with entrepreneurs, learners and investors alike, and which will feature state-of-the-art connectivity, maker space, hot desks, meeting rooms and informal lounges and at which RRU and other post-secondary institutions will contribute their expertise and resources to serve a wide segment of the local population and at which early-stage support plans may be developed to help entrepreneurs bring their innovative ideas to market;
 - (g) **“Lands”** has the meaning assigned thereto in Recital A;
 - (h) **“Permitted Assignee”** means any university, college or institute that is funded by the Government of British Columbia and any other person to whom RRU may assign this Agreement, if approved by the City;
 - (i) **“Phase”** means a phase in the development and construction of the Project, and includes Phase 1 and any Subsequent Phase of the development and construction of the Project;
 - (j) **“Phase 1”** means the first Phase of the Project, including a building of approximately 103,527 square feet in gross floor area which will include the Innovation Hub;
 - (k) **“Project”** means the construction of buildings and improvements that will provide educational services and related activities, including a West Shore post-secondary campus that leverages the existing infrastructure of RRU and other post-secondary institutions, and the Innovation Hub;
 - (l) **“PSA”** has the meaning assigned thereto in Section 2.2;
 - (m) **“Section 219 Covenant”** means the covenant under section 219 of the *Land Title Act* registered on title to the Lands under charge number CA6773040 granted in favour of the City;

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- (n) **“Specified Zoning Bylaw Provisions”** means section 6.44B of the Langford Zoning Bylaw, 1999 which permits Community Town Centre Pedestrian 9 (C9) Zone;
- (o) **“Subsequent Phase”** means any Phase that is not Phase 1.
- 1.2 The headings of the Parts, paragraphs and sections herein contained are not intended to limit, extend or be considered in the interpretation of the meaning of this Agreement or any particular Part, paragraph or section hereof and have been inserted for convenience of reference only.
- 1.3 The words “herein”, “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Part, paragraph or section of this Agreement, unless otherwise specified. All references to Parts, paragraphs or sections in this Agreement refer to the relevant Part, paragraph or section of this Agreement or a Schedule to this Agreement (if so specified).
- 1.4 Time is of the essence of this Agreement and remains of the essence in respect of any extension of time given.
- 1.5 Words importing the singular include the plural and vice versa. Words importing a particular gender include all genders.
- 1.6 The words “include”, “includes” and “including” are to be construed as meaning “include, without limitation”, “includes without limitation” and “including, without limitation” respectively.
- 1.7 The words “will” and “shall” are synonymous with each other and are used interchangeably to designate a mandatory requirement or obligation, as applicable.
- 1.8 Each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is held to be invalid or unenforceable or illegal to any extent, such provision will be severed and such invalidity, unenforceability or illegality will not prejudice any other provision of this Agreement. If any provision of this Agreement is held to be invalid, unenforceable or illegal, the parties will endeavour promptly and in good faith to negotiate new provisions to eliminate the invalidity, unenforceability or illegality and to restore this Agreement as nearly as possible to its original intent and effect.
- 1.9 Notwithstanding any term or condition of this Agreement which contemplates future approvals of Council, but subject to Section 2.1, this Agreement does not:
- (a) affect or limit the discretion, rights, duties or powers of the City or the approving officer of the City under the common law or any statute, bylaw or other enactment nor does this Agreement create or give rise to any implied obligations concerning such discretionary rights, duties or powers;
 - (b) affect or limit the common law or any statute, bylaw or other enactment applying to the Lands; or
 - (c) relieve a party to this Agreement from complying with any applicable common law requirement or statute, bylaw or other enactment,

and, for greater certainty, if any term or condition of this Agreement is held as doing any of the foregoing, Section 1.8 will apply to such term or condition.

- 1.10 Any reference to a statute or other enactment refers to such statute or enactment as in effect at the time of reference and includes any statute or enactment which amends, consolidates, or replaces the same and extends to any subordinate legislation, regulation or other enactment thereunder.
- 1.11 This Agreement applies to the Lands, including any parcels of land into which the Lands may be subdivided. This Agreement applies to the Lands and to no other land.

**PART 2
BYLAW AMENDMENTS DO NOT APPLY**

- 2.1 For the term of this Agreement as set out in Section 2.3, any amendment or repeal of the Specified Zoning Bylaw Provisions will not apply to the Lands or the Project, except:
- (a) as provided in section 516(6) of the Local Government Act; or
 - (b) to the extent that RRU or a Permitted Assignee of RRU's interest under this Agreement in relation to the Lands agrees in writing that the amendment or repeal will apply to all or part of the Lands.
- 2.2 For certainty, the parties agree that if, pursuant to the Offer to Purchase and Purchase and Sale Agreement between the parties dated for reference October 4, 2021 (the "PSA"), RRU transfers the Subdivided Lot, as that term is defined in the PSA, to the City, Section 2.1 of this Agreement shall not apply to that portion of the Lands comprised of the Subdivided Lot.
- 2.3 The Term of this Agreement is ten years from the Effective Date.

**PART 3
RRU'S COVENANTS**

- 3.1 RRU covenants and agrees with the City to:
- (a) undertake Phase 1 in a timely manner consistent with the standards of a publicly funded university in British Columbia, subject to available funding;
 - (b) as appropriate in conjunction with the development and construction of the Phases and as required by the Section 219 Covenant (subject to any amendments thereto that may be approved by Council and agreed by RRU):
 - (i) construct a 2.0m wide pedestrian connection between Peatt Road and Claude Road;
 - (ii) construct and install a pedestrian plaza;
 - (iii) implement the recommendations of a Traffic Impact Assessment (TIA) in relation to access to and egress from the Project;
 - (iv) complete construction of all improvements comprised in the Project so as to meet the requirements of Bylaw 1000 of the City; and

- (v) provide and implement a storm water management plan for the Project, all to the satisfaction of the City and/or its designated personnel;
- (c) adhere to the Section 219 Covenant (as it may be amended) and the zoning requirements for the Lands (including the Specified Zoning Bylaw Provisions), insofar as they relate to the Project and the development and construction of the Phases therein; and
- (d) undertake Subsequent Phases, subject to the availability of funding therefor (from both a capital and operating funding perspective) and the sufficiency of demand for post-secondary education within the West Shore region of Victoria, all as determined by RRU in its sole and absolute discretion.

PART 4 OTHER AGREEMENTS

- 4.1 This Agreement satisfies the obligations of the parties hereto set out in the Cooperation and Development Agreement to negotiate the terms and conditions of a phased development agreement with respect to the Lands.
- 4.2 To the extent that any provision of this Agreement contradicts or is inconsistent with the Cooperation and Development Agreement, this Agreement supersedes the Cooperation and Development Agreement.
- 4.3 Except as set out in Section 4.2, nothing in this Agreement affects any other agreement between the parties (including the Cooperation and Development Agreement) or any right or obligation of either party hereto.

PART 5 MISCELLANEOUS

- 5.1 The parties disclaim any intention to create a partnership or joint venture or to constitute either of them the agent of the other and nothing contained in this Agreement will be construed to constitute either party a partner, joint venturer, agent, or legal representative of or with the other. Neither party will have, or represent that it has the authority or power to act for or to undertake or create any obligations or responsibilities, express or implied, on behalf of, or in the name of the other.
- 5.2 The parties acknowledge that paragraph 6.44B.05(2) of the Specified Zoning Bylaw Provisions provides that lot coverage of all buildings and structures on the Lands may not be less than 40% (the “**Lot Coverage Threshold**”). Further, the parties acknowledge that the Project will not meet the Lot Coverage Threshold until some or all of the Subsequent Phases are complete. Notwithstanding the foregoing, for any period of time prior to the Project coming into compliance with the Lot Coverage Threshold, the City will not enforce the Lot Coverage Threshold or exercise any rights or remedies against RRU in connection therewith and RRU will be deemed to be in compliance with paragraph 6.44B.05(2) of the Specified Rezoning Bylaw Provisions, provided that the Project ultimately meets the Lot Coverage Threshold on or prior to completion.

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- 5.3 The provisions herein contained constitute the entire agreement between the parties in relation to the Specified Zoning Bylaw Provisions and supersede all previous communications, representations, and agreements, whether oral or written, between the parties with respect to the subject matter hereof, there being no representations, warranties, terms, conditions, undertakings, or collateral agreements (express, implied, or statutory), between the parties other than as expressly set forth in this Agreement in relation to the Specified Zoning Bylaw Provisions.
- 5.4 No supplement or amendment, modification or waiver or termination of this Agreement will be binding unless executed in writing by both parties hereto.
- 5.5 No condoning, excusing or waiver by either party hereto of any default, breach or non-observance by either party hereto at any time or times in respect of any covenant, proviso or condition herein contained will operate as a waiver of that party's rights hereunder in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat or affect in any way the rights of that party in respect of any such continuing or subsequent default, breach or non-observance, and no waiver will be inferred from or implied by anything done or omitted to be done unless such waiver is in writing.
- 5.6 The parties will do all things and execute all documents as may be reasonably necessary to give proper effect to the intention of this Agreement.
- 5.7 Any notice required or permitted to be given under this Agreement will be in writing and may be given by means of electronic communication capable of producing a printed copy, or sending by prepaid registered mail posted in Canada, the notice to the following address or number:

If to RRU:

ROYAL ROADS UNIVERSITY

2005 Sooke Road
Victoria BC V9B 5Y2

Attention: Vice President Finance and Operations

Email: vpfo@royalroads.ca

with a copy to:

Clark Wilson LLP
900-885 West Georgia Street
Vancouver BC V6C 3H8

Attention: Sam Shury

Email: sshury@cwilson.com

If to the City:

CITY OF LANGFORD

2nd Floor, 877 Goldstream Avenue
Langford BC V9B 2X8

Attention: Chief Administrative Officer
Email: dkiedyk@langford.ca

with a copy to:

Young Anderson LLP
1618-808 Nelson Street
Box12147 Nelson Square
Vancouver BC V6Z 2H2

Attention: Joe Scafe
Email: scafe@younganderson.ca

(or to such other address or number as either party may specify by notice in writing to the other party).

- 5.8 Any notice or other communication delivered or sent by means of electronic communication capable of producing a printed copy before 5:00 pm on a Business Day will be deemed conclusively to have been effectively given on the day the notice or communication was delivered or sent to the email address set out above, as the case may be and, if delivered or sent after 5:00 pm on a Business Day, will be deemed conclusively to have been received on the next following Business Day.
- 5.9 Any notice sent by prepaid registered mail will be deemed conclusively to have been effectively given on the third Business Day after posting; but if at the time of posting or between the time of posting and the third Business Day thereafter there is a strike, lockout, or other labour disturbance affecting postal service, then the notice will not be effectively given until actually delivered.
- 5.10 This Agreement may be executed in counterparts and delivered by means of electronic communication capable of producing a printed copy, and when each party hereto has executed and delivered a counterpart of this Agreement to the other party hereto or their solicitors, each such counterpart will be deemed to be one and the same agreement, and notwithstanding the actual date of execution and delivery by the parties, this Agreement will be effective as of the Effective Date.

IN WITNESS WHEREOF the parties have executed this Agreement.

ROYAL ROADS UNIVERSITY

by its authorized signatory(ies):

I/we have authority to bind RRU

CITY OF LANGFORD

by its authorized signatory(ies):

I/we have authority to bind the City

SCHEDULE A

OUTLINE OF PHASING FOR THE PROJECT

