

MOUNT BENSON TRAIL IMPROVEMENT PARTNERSHIP AGREEMENT

THIS AGREEMENT made the _____ day of _____, 2020

BETWEEN:

Regional District of Nanaimo
6300 Hammond Bay Road
Nanaimo, BC
V9T 6N2
(the "**Regional District**")

OF THE FIRST PART

AND:

Federation of Mountain Clubs of British Columbia
Attn: Barry Janyk
3454 Bridgeway Street
Vancouver, BC
V5T 4E7
(the "**FMCBC**")

OF THE SECOND PART

WHEREAS:

- A. The Regional District is the authorized manager of the Benson View Regional Trail, portions of which traverse over a Provincial Crown woodlot, an undeveloped provincial highway road allowance and lands owned by the City of Nanaimo;
- B. The Regional District is the owner of Mount Benson Regional Park, which park includes a series of trails, including trails connecting to the Benson View Regional Trail (the "**Mount Benson Regional Park Trail System**");
- C. The Benson View Regional Trail provides the only public access route to Mount Benson Regional Park and replaces the former Witchcraft Lake Regional Trail. Public access is only permitted by foot;

- D. The Regional District holds an agreement with Mosaic Forest Management to allow road use access by the Regional District to Mount Benson Regional Park for park maintenance only (no public access) by traversing across Island Timberlands' private property;
- E. The Trail (as defined below) requires repairs and preventative maintenance to improve the Trail and to keep it in a safe and proper manner;
- F. The Federation of Mountain Clubs of British Columbia ("**FMCBC**") is a society registered in the Province of British Columbia pursuant to the *Societies Act*, SBC 2015 chapter 18, whose membership includes Individual Members, Associate Members and Member Clubs, as defined in the FMCBC Bylaws;
- G. FMCBC's purposes include: to encourage public appreciation and use of the recreational resources in the mountains of British Columbia; to promote the development and maintenance of a system of mountain access roads, trails and huts;
- H. The Island Mountain Ramblers (the "**Club**") is an unincorporated body having membership in the FMCBC as a Member Club as defined by FMCBC;
- I. The Club wishes to participate in the restoration of and improvements to the Trail as a Member Club of FMCBC and FMCBC agrees;
- J. FMCBC wishes to enter into this this Trail Improvement Partnership Agreement (the "**Agreement**") on behalf of the Club and the Regional District agrees;
- K. The parties completed a pilot improvement project on a portion of the Trail (under the former *Witchcraft Lake Regional Trail Improvement Partnership Agreement*), and now wish to expand the Partnership Agreement to include the entire Trail, under the terms and conditions of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises, and the mutual covenants and agreements herein contained, the parties hereto agree with each other as follows:

1 TERM

- 1.1 The Agreement will be for a term of five (5) years, commencing on the date first written above and ending on the 31st day of May, 2025 (the "**Term**").
- 1.2 The Agreement may be extended by the written agreement of both parties on the terms and conditions contained herein.

2 IMPROVEMENT AREA

- 2.1 The parties have designated the Benson View Regional Trail and the Mount Benson Regional Park Trail System (together the "**Trail**") as marked on the map attached hereto as Schedule A (the "**Map**") as the improvement area (the "**Improvement Area**").

3 RESPONSIBILITIES

- 3.1 FMCBC will submit an updated plan (the "**Plan**") to the Regional District for review and acceptance prior to continuing trail improvement work within the Improvement Area. Upon acceptance of the Plan by the Regional District, the Plan will be appended to and form part of the Agreement as **Schedule B**.

- 3.2 The Plan will set out the works approved to be done under this Agreement (the "**Work**"), including as follows:

3.2.1 Trail tread improvements:

- Draining/hardening of mud holes and boggy areas;
- Repairing washout areas;
- Repairing slump areas;
- Grubbing rocks, roots, stumps;
- Repairing turnpike sections;
- Repairing trail surfaces, including removal of loose rocks;
- Installing or repairing cribbing; and
- Replenishing trail surface materials using materials similar to the existing or minimal maintenance alternatives.

3.2.2 Trail Alignment:

- Minor re-alignment to avoid obstacles or to improve trail sustainability.

- 3.3 The Plan will set out the following items in sufficient detail for the Regional District to review and approve: the expected resources that will be required in both labour and materials; the approach to be taken in making improvements to the Trail; the health and safety standards that must be followed for all Work; detailed sketches or plans for specific work areas within the Improvement Area.

- 3.4 FMCBC will provide a schedule for the Work and will provide an itemized list of materials needed for the Work to the Regional District not less than three (3) weeks before the materials will be needed at the site.

- 3.5 The Regional District agrees to purchase requested materials for use on the Work, up to a value to be determined by the RDN on an annual basis. Further, the RDN will, to the extent possible, assist with delivering the materials as close to the Improvement Area as possible by vehicle.
- 3.6 FMCBC will supply and provide all tools and equipment needed to undertake the Work.
- 3.7 FMCBC will be solely responsible for supervising and ensuring that all Work is carried out in a good and workman-like manner and will ensure that the Improvement Area is kept in a safe and useable state at all times.
- 3.8 There are no financial obligations between the parties, other than that expressed in Section 3.5, under this Agreement.
- 3.9 FMCBC will not permit any volunteer to participate in the Work prior to the volunteer reading and signing a copy of the waiver attached hereto as Schedule C and will provide the originally signed waivers to the Regional District by December 15th of each year.
- 3.10 FMCBC will satisfy itself of the competency of individuals undertaking the Work, including without limitation, prior to being permitted to operate a chainsaw, FMCBC will obtain proof that the individual is certified under the BC Forest Safety Council's Basic Chainsaw Operator Training course or an equivalent qualification.

4 RECORD KEEPING

- 4.1 FMCBC will maintain a record of volunteer participants, as detailed in Section 4.2 below and will provide the completed records to the Regional District by no later than December 15th of each year.
- 4.2 FMCBC will keep accurate records of all individuals participating in the Work, including: name, address, date of birth, qualifications (e.g. training, certification, or training requirements), FMCBC membership, and the specific dates that each individual participated in the performance of the Work under this Agreement.
- 4.3 FMCBC will collect and use the personal information in 4.2 in strict accordance with the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, chapter 165.

5 POSTING NOTICE OF THE WORK

- 5.1 FMCBC will post signage on the trailhead kiosks, at least one week prior to the commencement of the Work. This notice shall provide detailed information

regarding the Work to be undertaken, the timeline for the Work to be completed and the potential risks associated with use of the Trail while the Work is occurring.

- 5.2 All signage posted by FMCBC will provide contact information that users of the trail may use to obtain further information about the Work.
- 5.3 If at any time FMCBC requires the Trail to be closed to facilitate the Work, FMCBC must provide written notice to the Regional District at least two weeks prior to the commencement of the Work and must post signage at the trailhead kiosks notifying any potential users of the closure at least one week prior to the commencement of the Work.
- 5.4 FMCBC agrees that the Regional District may direct individuals interested in participating in the Work to the FMCBC or the Club.

6 INSURANCE

- 6.1 FMCBC will carry a policy of comprehensive general liability insurance against claims for bodily injury, death or property damage to any person or persons arising out of the Work carried out on the Trail, in the amount of not less than three million dollars (\$3,000,000.00) per single occurrence or such greater amount as the Regional District may from time to time designate, having a deductible of not more than five thousand (\$5,000) dollars, naming the Regional District as an additional insured party.
- 6.2 The FMCBC agrees to provide to the Regional District certified copies of the insurance policies referred to in section 6.1 upon execution of this Licence.
- 6.3 All policies of insurance must contain a clause requiring the insurer not to cancel or change the insurance without first giving the Regional District thirty (30) days prior written notice.
- 6.4 The Federation of Mountain Clubs of BC policy specifically provides coverage for all members of the FMBC and the Club during any Club-led activity that is posted as an Island Mountain Ramblers event. Persons who are not members of FMCBC or the Club are not covered by the FMCBC's insurance policy.

7 INDEMNIFICATION

- 7.1 FMCBC agrees to release and discharge, the Regional District, its elected officials, appointed officers, employees and agents from and against all liability, including without limitation, claims, damages, costs, expenses or fees (including fees of lawyers on a solicitor and own client basis), losses, personal injury, including severe bodily injury or death, which the FMCBC, the Club, its

members or volunteers, may suffer or allege arising out of or resulting from the Work or any activities of the FMCBC, its members, agents, contractors, or invitees or the Club or its members on the Trail or within the Improvement Area.

- 7.2 FMCBC will indemnify and save harmless the Regional District, its elected officials, appointed officers, employees and agents from and against all lawsuits, damages, losses, personal injury, including severe bodily injury or death, costs, expenses, liability and fees (including fees of solicitors on a solicitor and own client basis) (the "**Claims**") which the FMCBC or anyone else may incur, suffer or allege by reason of the use of the Trail by the FMCBC or by any person for which the FMCBC is at law responsible, except to the extent the Claims are contributed to or caused by the negligence, willful misconduct or wrongful act or omission of the Regional District.

8 ASSIGNMENT

- 8.1 FMCBC may not assign this Agreement without the advance written consent of the Regional District, such consent to be at the sole discretion of the Regional District.

9 TERMINATION

- 9.1 Either party may terminate this Agreement by providing sixty (60) days' notice in writing to the other party (the "Notice Period"). During the Notice Period, FMCBC will complete any Work in progress and will clean the Improvement Area, including the removal of all tools, equipment and unused materials.
- 9.2 The Notice Period may be extended by the parties to permit FMCBC to complete the tasks set out in 9.1.
- 9.3 Any unused materials provided to FMCBC by the Regional District shall be returned to the Regional District at the end of the Notice Period.
- 9.4 Unless a new agreement is entered into as contemplated by Section 10.1 below, upon expiry of the Term, FMCBC will complete any Work in progress and will clean the Improvement Area, including the removal of all tools, equipment and unused materials.

10 RENEWAL

- 10.1 On the completion of the Term, this Agreement may be extended upon mutual written agreement by both parties for subsequent five (5) year terms.

11 NOTICES

- 11.1 Each notice sent pursuant to this Agreement ("**Notice**") will be in writing and sent to the relevant party at the address or email address set out below or to such other party as may be designated in writing:

<p>To the Regional District:</p> <p>Regional District of Nanaimo Attention: Manager of Parks Services 6300 Hammond Bay Road Nanaimo, BC V9T 6N2 Email: parks@rdn.bc.ca</p>	<p>To the FMCBC:</p> <p>Federation of Mountain Clubs Attention: Barry Janyk 3454 Bridgeway Street Vancouver, BC V5T 4E7 Email: barry.janyk@mountainclubs.org</p>
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12 MISCELLANEOUS

- 12.1 Waiver of any default by a party is not a waiver of any subsequent default.
- 13.2 That when the singular or neuter are used in this Agreement they include the plural or the feminine or the masculine or the body politic or corporate where the context or the parties require.
- 13.3 The headings to the clauses in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.
- 13.4 This Agreement must enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators and permitted assignees.
- 13.5 This Agreement must be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 13.6 All provisions of this Agreement are to be construed as covenants and agreements as though the word importing covenants and agreements were used in each separate paragraph.
- 13.7 This is the entire agreement between the parties.

13 COUNTERPARTS

13.1 This Agreement may be executed in counterpart with the same effect as if both parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

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

REGIONAL DISTRICT OF NANAIMO)
by its authorized signatories)
)
_____)
Name:)
)
_____)
Name:)

FEDERATION OF MOUNTAIN CLUBS OF)
BRITISH COLUMBIA)
by its authorized signatories)
)
_____)
Name:)
)
_____)
Name:)

SCHEDULE "B"
TRAIL IMPROVEMENT AREA WORK PLAN

**SCHEDULE "C"
RELEASE OF LIABILITY, WAIVER AND ASSUMPTION OF ALL RISKS**

RELEASE OF LIABILITY, WAIVER AND ASSUMPTION OF ALL RISKS

Mount Benson Trail Improvement Project

PLEASE READ CAREFULLY

TO: Regional District of Nanaimo

I wish to participate in the Mount Benson Trail Improvement Project and acknowledge that in order to do so, I must agree to be bound by this Release of Liability, Waiver and Assumption of Risk. I understand and acknowledge the risks and hazards of trail improvement and accept full responsibility and agree to participate in the Mount Benson Trail Improvement Project at my own risk.

I **HEREBY** waive any and all claims that I may now and in the future have against, and release from all liability and agree not to sue the Regional District of Nanaimo and their respective agents, officers, employees, volunteers or representatives (the "Released Parties") for any loss, damage, personal or bodily injury, or death sustained or suffered by me as a result of my participation in the Mount Benson Trail Improvement Project due to any cause whatsoever, including without limitation, negligence, fault or breach of statutory duty by the Regional District of Nanaimo, including duties arising from *Occupiers Liability*.

In no event will the Regional District of Nanaimo be liable for any loss, damage, personal or bodily injury or death nor for any loss of or damage (including indirect or consequential damages) that I suffer whether attributable to or arising out of my participation in the Mount Benson Trail Improvement Project or by reason of any matter or thing done or permitted.

I confirm that I am the age of majority and that I have read and understand this agreement prior to signing it and agree that this agreement will be binding upon me (as participant or guardian), my heirs, executors and administrators.

Signed this ___ day of _____, 20__ at _____, British Columbia.

Participant's Signature

Participant's Printed Name

Witness's Signature

Witness's Printed Name