MODIFICATION OF LICENSE

THIS AGREEMENT dated for reference ________________, 2020 (the “Effective Date”).

BETWEEN:

REGIONAL DISTRICT OF NANAIMO
6300 Hammond Bay Road
Nanaimo, BC, V9T 6N2

(the "Regional District")

AND:

CITY OF NANAIMO
455 Wallace Street
Nanaimo, BC, V9R 5J6

(the "Licensee")

BACKGROUND:

A. The parties entered into an agreement on October 2, 2013 for the Licensee to use portions of land owned by the Regional District as trails, a copy of which is attached as Appendix 1 (the "License").

B. The parties wish to modify the License to increase the License Area and update the legal description of the Land.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which each party acknowledges, the parties agree to modify the License as follows:

1. Recital A in the License is deleted and replaced with the following:

   "A. The Regional District is the owner of land legally described as:

   PID: 029-550-238
   Legal Description: Lot A, District Lot 41, Wellington District, Plan EPP49694

   (the "Land");"

2. Schedule “A” to the License is deleted and replaced with the Schedule “A” attached to this Agreement.
3. The following words at the end of section 1.1 are deleted:

"(the "Trail") that connects with the trail network in Neck Point Park"

and replaced with the following:

"and bus stop (the "Trail"), as shown on Schedule "A"."

4. The following words are added to the end of section 6.1:

"without the prior written consent of the Regional District."

5. The remainder of the License will continue in full force and effect, mutatis mutandis.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the Effective Date.

REGIONAL DISTRICT OF NANAIMO,
by its authorized signatory(ies):

______________________________
Name: 
Title: 

______________________________
Name: 
Title: 

CITY OF NANAIMO,
by its authorized signatory(ies):

______________________________
Name: Leonard Kog
Title: Mayor

______________________________
Name: Karen Robertson
Title: Deputy City Clerk
APPENDIX 1

LICENSE OF USE

THIS AGREEMENT made the day of 2013.

BETWEEN:

REGIONAL DISTRICT OF NANAIMO

6300 Hammond Bay Road
Nanaimo, B.C. V9T 6N2

(the "Regional District")

OF THE FIRST PART

AND:

CITY OF NANAIMO

455 Wallace Street
Nanaimo, B.C. V9R 5J6

(the "Licensee")

OF THE SECOND PART

WHEREAS:

A. The Regional District is the owner of land legally described as: PID

023-428-503
Lot 1, District Lot 41, Wellington Land District, Plan VIP63399

(the "Land");

B. The Licensee wishes to be granted this License of Use to use those portions of the Land which comprise the trail or trails as shown in bold on the map attached hereto as Schedule "A" (the "License Area") and the Regional District has agreed.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the license fee to be paid by the Licensee to the Regional District and in consideration of the premises and covenants and agreements contained in this agreement (the "Agreement"), the Regional District and the Licensee covenant and agree with each other as follows:
1.0 RIGHT TO OCCUPY

1.1 The Regional District, subject to the performance and observance by the Licensee of the terms, conditions, covenants and agreements contained in this Agreement and to earlier termination as provided in this Agreement, grants to the Licensee a non-exclusive right by way of license for the Licensee, its agents, employees, and invitees, including the general public, to use the License Area for the purpose of a public walking trail (the “Trail”) that connects with the trail network in Neck Point Park.

1.2 The Regional District further grants to the Licensee a right by way of license for the Licensee, its agents, employees, contractors and subcontractors to go upon, return, pass over and use the License Area for the purposes of maintaining, repairing, clearing and inspecting the Trail.

1.3 This Agreement does not grant any interest in the License Area to the Licensee.

2.0 RESERVATION OF RIGHTS

2.1 The Regional District hereby reserves to itself from the grant and the covenants made by it to the Licensee under section 1.0 above the right for the Regional District, its agents, employees, contractors and subcontractors to have full and complete access to the License Area at all times to carry out any operations associated with the Regional District's use of the License Area or the Land.

3.0 LICENSE FEE

3.1 In consideration of the right to use granted under this Agreement the Licensee must pay to the Regional District the sum of Ten Dollars ($10.00), the receipt of which is hereby acknowledged.

4.0 TERM

4.1 The Term of the License granted under this Agreement is ten years, from and including December 1, 2013, to and including November 30, 2023, unless earlier terminated under this Agreement.

5.0 TAXES

5.1 The Licensee must pay all taxes, rates, duties and assessments whatsoever, whether federal, provincial, municipal or otherwise charged
upon the Licensee or the Regional District as a result of the Licensee's occupation of or use of the License Area. Without in any way restricting the generality of the foregoing, the Licensee must pay to the Regional District G.S.T. on the license fee or like similar tax.

6.0 CONSTRUCTION

6.1 The Licensee must not construct or place any buildings, structures or improvements on the License Area.

7.0 INSURANCE

7.1 (a) The Licensee must take out and maintain during the term of the License a policy of comprehensive general liability insurance against claims for bodily injury, death or property damage arising out of the use of the License Area by the Licensee in the amount of not less than five million dollars ($5,000,000.00) per single occurrence or such greater amount as the Regional District may from time to time designate, naming the Regional District as an additional insured party thereto and must provide the Regional District with a certified copy of such policy or policies.

(b) 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 days prior written notice.

(c) If the Licensee does not provide or maintain in force the insurance required by this Agreement, the Regional District may take out the necessary insurance and pay the premium for periods of one year at a time and the Licensee must pay to the Regional District as additional License fees the amount of the premium immediately on demand.

(d) If both the Regional District and the Licensee have claims to be indemnified under any insurance required by this Agreement, the indemnity must be applied first to the settlement of the claim of the Regional District and the balance, if any, to the settlement of the claim of the Licensee.

(e) The deductible on the policy of insurance must be not more than five thousand dollars.
8.0 INDEMNIFICATION

8.1 The Licensee releases and must indemnify and save harmless the Regional District, its elected officials, appointed officers, employees and agents from and against all lawsuits, damages, costs, expenses, liability or fees (including fees of solicitors on a solicitor and own client basis) which the Licensee or any of them or anyone else may incur, suffer or allege by reason of the use of the License Area or the Land by the Licensee or by any person or the carrying on upon the License Area or the Land or of any activity in relation to the Licensee's use of the License Area.

9.0 BUILDERS LIENS

9.1 The Licensee must indemnify the Regional District from and against any builder's liens and must upon the request of the Regional District immediately cause any registered lien to be discharged from title to the Land.

10.0 NOTICES

10.1 Notices

   (a) Each notice sent pursuant to this Agreement ("Notice") shall be in writing and shall be sent to the relevant Party at the relevant address, facsimile number or e-mail address set out below. Each such Notice may be sent by registered mail, by commercial courier, by facsimile transmission, or by electronic mail.

   (b) The Contact Information for the parties is:

<table>
<thead>
<tr>
<th>REGIONAL DISTRICT OF NANAIMO</th>
<th>CITY OF NANAIMO</th>
</tr>
</thead>
<tbody>
<tr>
<td>6300 Hammond Bay Road</td>
<td>455 Wallace Street</td>
</tr>
<tr>
<td>Nanaimo, B.C.</td>
<td>Nanaimo, B.C.</td>
</tr>
<tr>
<td>V9T 6N2</td>
<td>V9R 5J6</td>
</tr>
<tr>
<td>Attention:</td>
<td>Attention:</td>
</tr>
<tr>
<td>Email:</td>
<td>Email:</td>
</tr>
</tbody>
</table>

   (c) Each Notice sent by electronic mail ("E-Mail Notice") must show the e-mail address of the sender, the name or e-mail address of the recipient, and the date and time of transmission, must be fully accessible by the recipient, and unless receipt is acknowledged, must be followed within twenty-four (24) hours by a true copy of such Notice, including all addressing and transmission details, delivered (including by commercial courier) or sent by facsimile transmission.
(d) Subject to section 10.1(e) through (g) each Notice shall be deemed to have been given or made at the following times:

(i) if delivered to the address (including by commercial courier), on the day the Notice is delivered;

(ii) if sent by registered mail, seven (7) days following the date of such mailing by sender;

(iii) if sent by facsimile transmission, on the date the Notice is sent by facsimile transmission; or

(iv) if sent by electronic mail, on the date the E-Mail Notice is sent electronically by e-mail by the sender.

(e) If a Notice is delivered, sent by facsimile transmission or sent by electronic mail after 4:00 p.m., or if the date of deemed receipt of a Notice falls upon a day that is not a Business Day, then the Notice shall be deemed to have been given or made on the next Business Day following.

(f) Notice given by facsimile transmission in accordance with the terms of this section 0 will only be deemed to be received by the recipient if the sender's facsimile machine generates written confirmation indicating that the facsimile transmission was sent.

(g) If normal mail service, facsimile or electronic mail is interrupted by strike, slow down, force majeure or other cause beyond the control of the parties, then a Notice sent by the impaired means of communication will not be deemed to be received until actually received, and the party sending the Notice shall utilize any other such services which have not been so interrupted or shall personally deliver such Notice in order to ensure prompt receipt thereof.

(h) Each Party shall provide Notice to the other Party of any change of address, facsimile number, or e-mail address of such Party within a reasonable time of such change.
11.0 TERMINATION

11.1 If the Licensee is in default on the payment of License fees, or the payment of any other sum payable under this Agreement, or is in breach of this Agreement, and if the default continues after the giving of notice in writing by the Regional District to the Licensee, then the Regional District may terminate this Agreement and reenter the License Area and the rights of the Licensee with respect to the License Area lapse and are absolutely forfeited.

12.0 FORFEITURE

12.1 If the Regional District, by waiving or neglecting to enforce the right to forfeiture of this Agreement or the right of reentry upon breach of this Agreement, does not waive the Regional District's rights upon any subsequent breach of the same or any other provision of this Agreement.

13.0 REPAIRS AND MAINTENANCE

13.1 The Licensee must maintain the Trail in a good condition in accordance with the same standards it uses for maintenance of other similar trails and, without limiting the foregoing, the Licensee must ensure that the License Area is clean and litter free at all times.

13.2 (a) If the Licensee fails to maintain the License Area in accordance with this Agreement, the Regional District may, by its agents, employees or contractors enter the License Area and make the required repairs or do the required maintenance and the cost of the repairs or maintenance is a debt due from the Licensee to the Regional District.

(b) In making the repairs or doing the maintenance the Regional District may bring and leave upon the License Area the necessary materials, tools and equipment and the Regional District is not liable to the Licensee for any inconvenience, annoyance, loss of business or other injuries suffered by the Licensee by reason of the Regional District effecting the repairs or maintenance.

14.0 ENVIRONMENTAL MATTERS

14.1 For the purposes of section 14.2 below:

(a) "Contaminants" means any pollutants, contaminants, deleterious substances, underground or above-ground tanks, asbestos materials, hazardous, corrosive, or toxic substances, special waste or waste of any kind, or any other substance which is now or hereafter prohibited, controlled, or regulated under Environmental Laws; and
(b) "Environmental Laws" means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits, and other lawful requirements of any governmental authority having jurisdiction over the License Area now or hereafter in force relating in any way to the environment, environmental assessment, health, occupational health and safety, or transportation of dangerous goods, including the principles of common law and equity.

14.2 The Licensee covenants and agrees as follows:

(a) not to use or permit to be used any part of the License Area or the Land for the sale, storage, manufacture, handling, disposal, use, or any other dealing with any Contaminants, without the prior written consent of the Regional District, which consent may be unreasonably withheld;

(b) to strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the License Area;

(c) to promptly provide to the Regional District a copy of any environmental site assessment, audit, report, or test results relating to the License Area conducted by or for the Licensee at any time;

(d) to maintain all environmental site assessments, audits, reports, and test results relating to the License Area in strict confidence and not to disclose their terms or existence to any third party (including without limitation any governmental authority) except as required by law, to the Licensee's professional advisers and lenders on a need-to-know basis, or with the prior written consent of the Regional District, which consent may be unreasonably withheld;

(e) to promptly notify the Regional District in writing of any release of a Contaminant or any other occurrence or condition at the License Area or any adjacent property which could contaminate the License Area or subject the Regional District or the Licensee to any fines, penalties, orders, investigations, or proceedings under Environmental Laws;
on the expiry or earlier termination of this License, or at any time if requested by the Regional District or required by any governmental authority under Environmental Laws, to remove from the License Area all Contaminants, and to remediate by removal any contamination of the License Area or any adjacent property resulting from Contaminants, in either case brought onto, used at, or released from the License Area or the land by the Licensee or any person for whom it is in law responsible. The Licensee shall perform these obligations promptly at its own cost and in accordance with Environmental Laws. All such Contaminants shall remain the property of the Licensee, notwithstanding any rule of law or other provision of this License to the contrary and notwithstanding the degree of their affixation to the License Area; and

to indemnify the Regional District and its elected officials, appointed officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, remediation costs, recovery claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including all legal and consultants' fees and expenses and the cost of remediation of the License Area and any adjacent property) arising from or in connection with:

(i) any breach of or non-compliance with the provisions of this section 14.2 by the Licensee; or

(ii) any release or alleged release of any Contaminants at or from the License Area or the land related to or as a result of the use and occupation of the License Area or any act or omission of the Licensee or any person for whom it is in law responsible.

14.3 The obligations of the Licensee under section 14.2 above shall survive the expiry or earlier termination of this License.

15.0 REMEDIAL ACTION

15.1 (a) If the Licensee fails to do anything required of the Licensee under this Agreement, (the "Licensee Requirement") the Regional District may fulfill or complete the Licensee Requirement at the cost of the Licensee and may, if necessary, by its agents, officers, employees or contractors enter onto the License Area to fulfill and complete all or part of the Licensee Requirement as the Regional District determines in its sole discretion.
(b) The Licensee releases the Regional District, its elected officials, appointed officers, employees and agents from and waives any claim, right, remedy, action, cause of action, loss, damage, expense, fee or liability which the Licensee may have against any or all of them in respect of an act of the Regional District under this section or section 13.0 except insofar as such claim, right, remedy, action, cause of action, loss, damage, expense, fee or liability arises from the negligence of the Regional District, its elected officials and appointed officers, employees, agents or contractors.

16.0 TREE CUTTINGS, EXCAVATIONS AND HAZARDOUS SUBSTANCES

16.1 (a) The Licensee must not carry on or do or allow to be carried on or done on the land any cutting, clearing or removal of trees, bushes or other vegetation or growth, beyond that necessary to maintain clear access to the Trail, or any excavation or disturbance of the surface of the License Area and must not bring on or deposit any soil or fill on the License Area except with the written consent of the Regional District.

(b) The Licensee must not bring on, deposit, store, spray or apply nor cause or permit to brought on, deposited, stored, sprayed or applied on or to the License Area or any trees, bush or vegetation on the License Area any chemical fertilizer, herbicide, or pesticide which is capable of contaminating the Land or any water on the License Area.

17.0 CLEAN UP

17.1 At the end of the Term, the Licensee must clean up the License Area and ensure the surface of the Trail is in good condition.

18.0 REGULATIONS

18.1 The Licensee must:

(a) comply promptly at its own expense with the legal requirements of all authorities, including an association of fire insurance underwriters or agents, and all notices issued under them that are served upon the Regional District or the Licensee; and
(b) indemnify the Regional District from all lawsuits, damages, loss, costs or expenses that the Regional District may incur by reason of non-compliance by the Licensee with legal requirements or by reason of any defect in the License Area or any injury to any person or damage to any personal property brought on to the License Area. The Licensee is responsible for any damage to the License Area occurring while the Licensee is exercising its rights under this Agreement.

19.0 NO COMPENSATION

19.1 The Licensee is not entitled to compensation for any loss, including economic loss, or injurious affection or disturbance resulting in any way from the termination of the License.

20.0 MISCELLANEOUS

20.1 (a) The execution and delivery of this Agreement, and the completion of the transactions contemplated by this Agreement, if any, have been duly and validly authorized by all necessary corporate action of the Licensee, and this Agreement constitutes a legal, valid and binding obligation of the Licensee, enforceable against the Licensee in accordance with its terms.

(b) Waiver of any default by a party is not a waiver of any subsequent default.

(c) The License is personal to the Licensee and the Licensee may not assign its interest to any other person without the written consent of the Regional District, which consent may be withheld by the Regional District in its sole discretion.

21.0 INTERPRETATION

21.1 (a) 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.

(b) 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.

(c) This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators and permitted assignees.
(d) This Agreement must be construed in accordance with and
governed by the laws applicable in the Province of British
Columbia.

(e) 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.

(f) A provision in this Agreement granting the Regional District a right of
approval must be interpreted as granting a free and unrestricted right to
be exercised by the Regional District in its discretion.

(g) This is the entire agreement between the parties.

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

[Signature]

Name: [Signature]

Jacqueline R. Hill
Manager, Administrative Services

CITY OF NANAIMO by its authorized signatories

[Signature]

Name: [Signature]

Tony Stoach, Acting General Manager
Community Safety & Environment

Name: [Signature]

Kristin King, Deputy Corporate Officer