

**LICENSE OF USE AGREEMENT**

This Agreement is made as of \_\_\_\_\_, 202 .

**BETWEEN:**

**REGIONAL DISTRICT OF NANAIMO**

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

("the Regional District")

**AND:**

**CITY OF NANAIMO**

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

("the Licensee")

**RECITALS:**

**A.** The Regional District is the owner of the real property, including any buildings and structures situated thereon, described as:

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

("the Land")

**B.** The Licensee wishes to be granted this License of Use to use those portions of the Land which comprise the 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 fee payable by the Licensee to the Regional District hereunder 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. Right to Occupy.**

- (a) 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 and bus stop (the "**Trail**"), as shown on Schedule "A".
- (b) 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.

{00871429; 1 }

(c) This Agreement does not grant any interest in property in the License Area to the Licensee.

2. **Reservation of Rights.** The Regional District hereby reserves to itself from the grant and the covenants made by it to the Licensee under section 1 herein 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. **License Fee.** 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. **Term.** The Term of the License granted under this Agreement is ten (10) years, from and including December 1, 2023, to and including November 30, 2033, unless earlier terminated under this Agreement.

5. **Termination.** If the Licensee is in default on the payment of the License Fee, or the payment of any other sum payable under this Agreement, or is in breach of this Agreement, and if the default continues for thirty (30) days after the giving of notice in writing by the Regional District to the Licensee, then the Regional District may terminate this Agreement and re-enter the License Area and the rights of the Licensee with respect to the License Area lapse and are absolutely forfeited. All of the Licensee's obligations under this Agreement that are outstanding on the date that this Agreement is terminated will survive the termination of this Agreement.

6. **Forfeiture.** The Regional District, by waiving or neglecting to enforce the right to forfeiture of this Agreement or the right of re-entry 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.

7. **Taxes.** 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. or similar tax on the License Fee.

8. **Construction.** The Licensee must not construct or place any buildings, structures or improvements on the License Area without the prior written consent of the Regional District.

9. **Risk.** The Licensee accepts the License Area on an as-is basis and agrees that it will use the License Area at its own risk, and that the Regional District will not be liable in respect of any loss of life, personal injury, damage to property or loss of property suffered by the Licensee, its servants, agents, or invitees arising out of this Agreement or its or their use and occupation of the License Area. The Licensee agrees that any costs and expenses incurred by the Licensee in relation to this Agreement are entirely at its own risk. For certainty, the Licensee waives any claim or action that it has or may have against the Regional District in relation to any costs, expenses, damages, injury, property loss, or suits arising out of or related to this Agreement.

10. **Indemnities.** The Licensee hereby indemnifies and saves harmless the Regional District, its elected officials, appointed officers, directors, employees and agents from and against any and all losses, claims, lawsuits, causes of action, damages, costs, expenses, judgements, liabilities or fees whatsoever, including all costs of defending or denying the same, and all costs of investigation, monitoring, remedial response, removal or restoration, and including all solicitor's fees and disbursements in connection therewith which

at any time may be paid or incurred by or claimed against the Regional District, its elected officials, appointed officers, directors, employees, agents and invitees arising, directly or indirectly, out of:

- (a) the use of the License Area, including access to and from the License Area, by the Licensee under this Agreement;
- (b) a breach by the Licensee of any of the covenants contained in this Agreement;
- (c) any wrongful act or neglect of the Licensee on or about the License Area;
- (d) any damage to property related to the Licensee's use and occupancy of the License Area;
- (e) the death of or injury to any person arising out of or in any way connected with, directly or indirectly, the Licensee's use and occupancy of the License Area; and
- (f) the Licensee's failure to comply with legal requirements in accordance with section 19 herein.

The Licensee's obligations to indemnify in this section 10 shall survive the expiry or earlier termination of this Agreement, but only in respect of events occurring before the expiry or earlier termination of this Agreement.

**11. Insurance.**

- (a) The Licensee must take out and maintain during the Term of this Agreement a policy of comprehensive general liability insurance protecting the Regional District and the Licensee (without any rights of cross-claim or subrogation against the Regional District) against claims by any person, including any member of the public using the License Area, for bodily injury, death or property loss or damage, and third party liability or public liability claims arising from any accident or occurrence on the License Area or other loss arising out of the use of the License Area by the Licensee in an 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 (30) 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 (\$5,000.00).

**12. Builders Liens.** 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. The Licensee's obligation to indemnify in this section 12 shall survive the expiry or earlier termination of this Agreement, but only in respect of liens for work performed before the expiry or earlier termination of this Agreement.

**13. Notices.**

- (a) Each notice sent pursuant to this Agreement (a "Notice") shall be in writing and shall be sent to the relevant party at the relevant address or email address set out below. Each such Notice may be sent by registered mail, by commercial courier or by email.
- (b) The Contact Information for the parties is:

<b>Regional District of Nanaimo</b>	<b>City of Nanaimo</b>
6300 Hammond Bay Road Nanaimo, B.C. V9T 6N2	455 Wallace Street Nanaimo, B.C. V9R 5J6
Attention: Chief Operator	Attention: Real Estate
Email: rcu@rdn.bc.ca	Email: realestate@nanaimo.ca

- (c) Each Notice sent by email must show the email address of the sender, the name or email address of the recipient, the date and time of transmission, and must be fully accessible by the recipient, and unless receipt is acknowledged, must be followed within twenty-four (24) hours by a true paper copy of such Notice, including all addressing and transmission details, delivered by registered mail or commercial courier.
- (d) Subject to subsections (e) and (f) below, each Notice shall be deemed to have been given or made at the following times:
  - (i) if sent by commercial courier, on the date the Notice is delivered to the relevant address;
  - (ii) if sent by registered mail, seven (7) days following the date of such mailing by the sender;  
and
  - (iii) if sent by email, on the date the Notice is sent by the sender.
- (e) If a Notice is delivered, or sent by email, 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) If normal mail service or email 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.

- (g) Each party shall provide Notice to the other party of any change of physical or email address of such party within a reasonable time of such change.

**14. Repairs and Maintenance.**

- (a) 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.
- (b) If the Licensee fails to maintain the License Area in accordance with this Agreement, the Regional District may:
  - (i) 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 payable within thirty (30) days from the Licensee's receipt of an invoice from the Regional District therefor; and
  - (ii) 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.

**15. Environmental Matters.**

- (a) For the purposes of section 15(b) below:
  - (i) "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
  - (ii) "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.
- (b) The Licensee covenants and agrees as follows:
  - (i) not to use or permit to be used all or 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;
  - (ii) 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;

- (iii) 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;
- (iv) 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;
- (v) 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;
- (vi) on the expiry or earlier termination of this Agreement, 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 Agreement to the contrary and notwithstanding the degree of their affixation to the License Area; and
- (vii) to indemnify the Regional District, its elected officials, appointed officers, directors, employees, agents, successors and assigns from any and all liabilities, actions, suits, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties, judgements and expenses whatsoever, including all costs of defending or denying the same, and all costs of investigation, monitoring, remedial response, removal or restoration, and including all solicitor's fees and disbarments in connection therewith, and including all consultants' fees and expenses and the cost of remediation of the License Area and any adjacent property, which at any time may be paid or incurred by or claimed against the Regional District, its elected officials, appointed officers, directors, employees, agents and invitees arising, directly or indirectly, out of:
  - 1. any breach of or non-compliance with the provisions of this section 15(b) by the Licensee; or
  - 2. any release or alleged release of any Contaminants at or from the License Area or the Land related to or resulting from the use and occupation of the License Area by the Licensee, or any act or omission of the Licensee or any person for whom it is in law responsible.

- (c) The obligations of the Licensee under section 15(b) above shall survive the expiry or earlier termination of this Agreement, but only in respect of events occurring before the expiry or earlier termination of this Agreement.

**16. Remedial Action.**

- (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, directors, employees and agents from and waives any claim, right, remedy, action, cause of action, suit, loss, damage, cost, 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 14 herein except insofar as such claim, right, remedy, action, cause of action, suit, loss, damage, cost, expense, fee or liability arises from the gross negligence of the Regional District, its elected officials and appointed officers, directors, employees, agents or contractors. For certainty, the Licensee's obligation to release the Regional District under this section shall survive the termination or earlier expiry of this Agreement.

**17. Tree Cuttings, Excavations and Hazardous Substances.**

- (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 or cause or permit to be 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.

**18. Clean Up.** 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.

**19. Government Regulation.** The Licensee must 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.

**20. No Compensation.** 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 this Agreement.

**21. Miscellaneous.**

- (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) This Agreement 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.
- (d) Nothing contained or implied in this Agreement shall fetter in any way the discretion of the Regional District carrying out any statutory functions as a local government or the discretion of its board. Further, nothing contained or implied in this Agreement shall derogate from the obligation of the Licensee under any other agreement with the Regional District or, if the Regional District so elects, prejudice or affect the Regional District's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Community Charter* and the *Local Government Act*, as amended or replaced from time to time, or act to fetter or otherwise affect the Regional District's discretion, and the rights, powers, duties and obligations of the Regional District under all public and private statutes, bylaws, orders and regulations, which may be, if the Regional District so elects, as fully and effectively exercised in relation to the License Area as if this Agreement has not been executed and delivered by the Licensee and the Regional District.

## **22. Interpretation.**

- (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 words 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.

**23. Schedules.** Schedules and other documents attached or referred to in this Agreement, including the following Schedules, are an integral part of this Agreement:



Schedule "A" – License Area

24. **Recitals and Authority.** The Parties agree that, as of the Commencement Date, the recitals set forth on page one of this Agreement are true and correct and are to be considered representations and warranties. The Regional District and/or its agent represents and warrants that it has full authority to enter into and sign this Agreement and bind the Regional District accordingly.

**Signatures on next page**

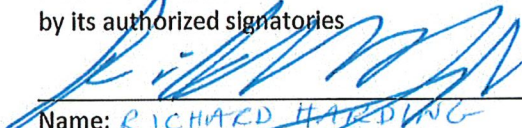
IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date and year first above written.

REGIONAL DISTRICT OF NANAIMO )  
by its authorized signatories )

\_\_\_\_\_) )  
Name: )  
Title: )

\_\_\_\_\_) )  
Name: )  
Title: )

CITY OF NANAIMO )  
by its authorized signatories )

  
\_\_\_\_\_) )  
Name: RICHARD HARDING )  
Title: GENERAL MANAGER, PRC. )

\_\_\_\_\_) )  
Name: )  
Title: )

SCHEDULE "A"

