

## Attachment 1: Transit Radio Tower Occupancy Agreement

This Agreement dated this \_\_\_\_ day of \_\_\_\_\_, 2018

### BETWEEN:

#### THE CORPORATION OF THE CITY OF NANAIMO

455 Wallace Street  
Nanaimo, BC V9R 5J6  
(the "**City**")

### AND:

#### REGIONAL DISTRICT OF NANAIMO

6300 Hammond Bay Road  
Nanaimo, BC V9T 6N2  
(the "**Occupier**")

### WHEREAS:

A. The Owner is the owner of lands more particularly described as:

PID: 003-706-419

LOT 1, DISTRICT LOT 55, WELLINGTON DISTRICT, PLAN 20015

having a civic address of 4877 Lost Lake Road, Nanaimo, BC (the "**Property**");

B. The Occupier desires to install certain radio equipment on the premises of the City at the Property.

C. The City is prepared to provide electrical energy for the purpose of operating the said radio equipment.

**NOW THIS AGREEMENT WITNESSES** that in consideration of the premises, the terms and conditions hereinafter contained, the sufficiency and receipt of which is hereby acknowledged, the parties covenant and agree each with the other as follows:

1. The City shall allow the Occupier to: install radio and auxiliary equipment on the tower and in existing building(s) at the Property as described in Schedule 'A' annexed hereto, and as illustrated in Schedule 'B' annexed hereto.
2. The term of this Occupancy shall be for a period of five (5) years commencing on the 1<sup>st</sup> day of APRIL 2018, and terminating on the 31<sup>st</sup> day of MARCH 2023. It is agreed that this Occupancy may be terminated by either party giving one to the other ninety (90) days written notice of such termination and the termination shall be effective at the expiration of the ninety (90) day period. This termination provision does not in any way offset the City's rights to otherwise terminate the Agreement under the items and conditions herein set forth.
3. The Occupier hereby agrees to pay to the City monthly in advance a fee of one hundred (\$100.00) dollars.
4. The Occupier shall assume all cost of installation of the equipment described in paragraph B.

5. The City agrees to provide the necessary electrical power to operate the equipment described in Paragraph B, but does not guarantee to do so and the City shall not be liable for any loss and/or damage whatsoever which the occupier shall or may suffer due to, on account of, by reason of, or incidental to any failure to provide such electrical power, or delay in restoring such electrical power for any cause whatsoever.
6. The Occupier agrees to eliminate any interference caused by the installation and operation of the radio equipment and that no expense will accrue to the City by reason of such installation and operation of the radio equipment.
7. Without limiting the generality of the foregoing, the Occupier shall, at his own expense, use all possible means and/or precautions to mitigate and if possible, to prevent physical, inductive or electrolytic interference between its installations and those of the City and/or any other person now or hereafter or from time to time contracted upon the premises. In the event that such ways, means and/or precautions are insufficient, in the opinion of the City to eliminate or sufficiently reduce the interference of the Occupier's installations, the Occupier shall, at his own risk and expense, and within thirty days of a notice in writing to do so, sent by the City to the Occupier, remove from the premises all such installations or parts thereof which, in the opinion of the City cause such interference.
8. The Occupier accepts complete responsibility for maintenance and repair of the Occupier's radio equipment. The City will grant the Occupier access to the site on a 24 hour per day basis to authorized personnel of the Occupier for the purpose of installation, inspection and repair of the Occupier's radio equipment.
9. The said radio equipment shall at all times while upon the premises of the City be and remain the property of the Occupier and the City shall not become liable to the Occupier for loss and/or damage to such radio equipment unless such loss/or damage is due to the negligence of an employee of the City of any person working under the direction or request of an employee of the City.
10. The Occupier shall, at his own risk and expense, obtain and keep in force all necessary licenses and permits of any competent authority having jurisdiction respecting the installation of the radio equipment as herein contemplating, and shall comply in all respects with all rules, regulations and/or statutes now or hereafter enforced and affecting the installation of such radio equipment including but not limited to all Federal, Provincial and Municipal Enactments. The Occupier shall operate said radio equipment in accordance with '*The Radio Act*', and the regulations pursuant thereto.
11. The Occupier shall indemnify and save harmless the City against all claims and demands which may be brought against or made upon the City and against all loss, liability, judgments, costs, damages or expenses which the City may suffer arising from or incidental to the Occupier's installation and/or operation of the said equipment, PROVIDED HOWEVER, that the Occupier shall not be liable under this clause if the damage arose as a result of the negligence of an employee of the City or any person working under the direction or request of an employee of the City.
12. The Occupier shall indemnify and save harmless the City from any liability for the death of or injury to any person that arises from or is incidental to the Occupier's installation and/or operation of the said equipment, PROVIDED HOWEVER, that the Occupier shall not be liable under this clause if the injury or death arose as a result of the negligence of an employee of the City or any person working under the direction or request of an employee of the City.

13. Upon termination of this Agreement, the Occupier shall forthwith dismantle and remove its radio facilities from the said building(s) and/or tower of the City provided that if the Occupier does not remove the said radio facilities, the City may remove them and the Occupier shall pay the cost of so doing.
14. Neither this Agreement nor any of the rights and privileges herein granted may be assigned by the Occupier without the written consent of the City.
15. If any of the equipment or chattels on the Premises are at any time seized or taken in execution or attachment by any creditor of the Occupier or under bill of sale or conditional sale or chattel mortgage; or
- (i) if a writ of execution issues against the equipment or chattels of the Occupier;
  - (ii) if the Occupier makes any assignment for the benefit of creditors, (iii) if the Occupier becomes insolvent or bankrupt;
  - (iv) being an incorporated company or society if proceedings are begun to wind up the company or society; or
  - (v) if the Premises or any part of them becomes vacant and unoccupied for a period of thirty (30) days or is used by any other person or persons or for any other purpose than permitted in this Agreement without the written consent of the City, the Term shall, at the option of the City, immediately become forfeited, and the City may re-enter and repossess the Premises despite any other provision of this Agreement.
16. Time shall be of the essence of this Agreement;
17. Any notice required to be given under this Agreement shall be deemed to be sufficiently given:
- (i) if delivered, at the time of delivery; and
  - (ii) if mailed from any government post office in the Province of British Columbia by prepaid, registered mail addressed as follows:
 

If to the City:	City of Nanaimo 455 Wallace Street Nanaimo, BC V9R 5J6
If to the Occupier:	Regional District of Nanaimo 6300 Hammond Bay Road Nanaimo, BC V9T 6N2

or at the address a party may from time to time designate, then the notice shall be deemed to have been received seventy-two (72) hours after the time and date of mailing. If, at the time of mailing of the notice the delivery of mail in the Province of British Columbia has been interrupted in whole or in part by reason of a strike, slow-down, lock-out or other labour dispute, then the notice may only be given by actual delivery of it.

- 18. 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.
- 19. 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.
- 20. 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.
- 21. That this Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

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

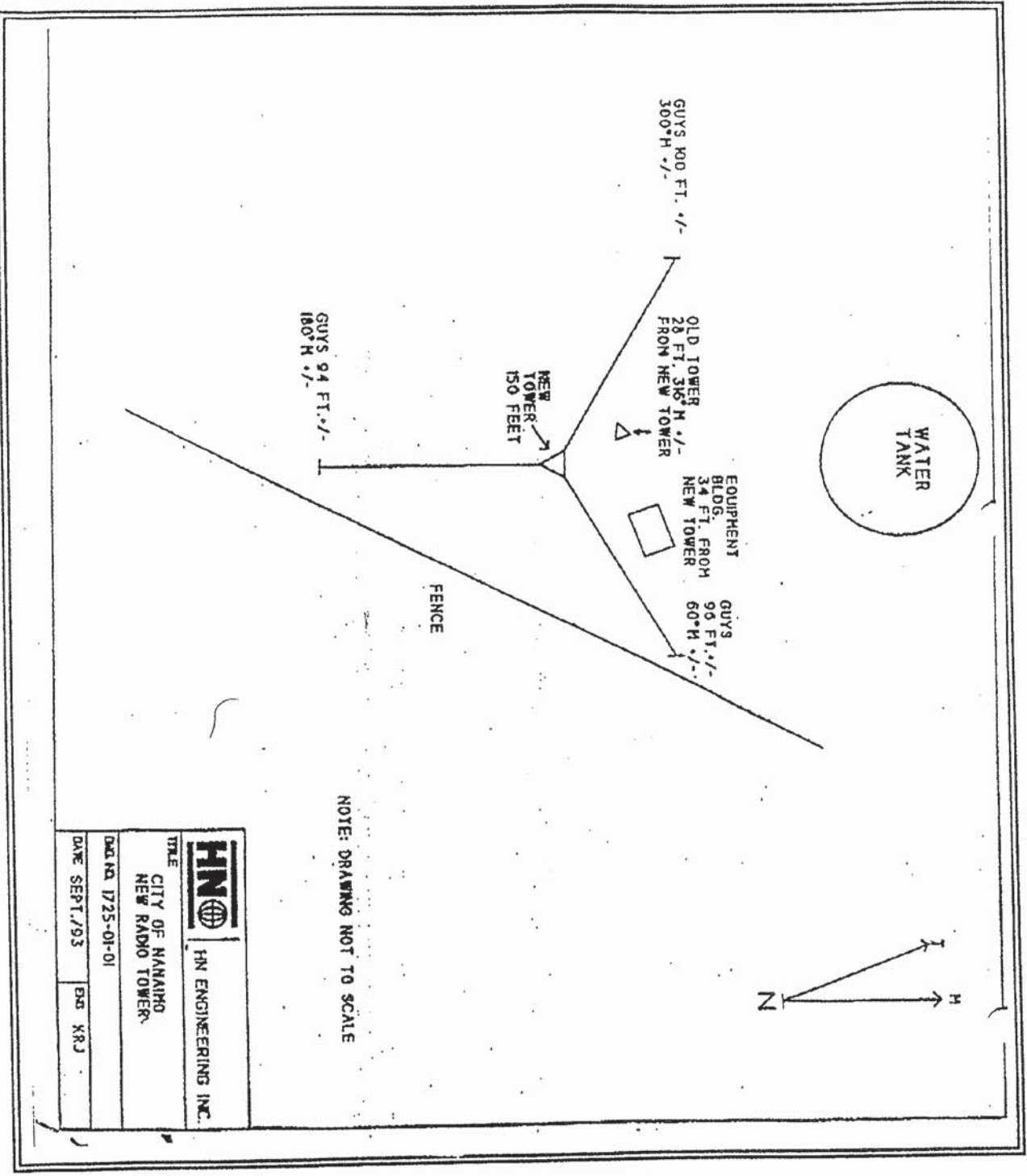
**THE CORPORATION OF THE CITY OF NANAIMO**  
by its authorized signatories:

\_\_\_\_\_  
Mayor,


\_\_\_\_\_  
Corporate Officer

**REGIONAL DISTRICT OF NANAIMO**  
by its authorized signatories:

\_\_\_\_\_  
  
\_\_\_\_\_



NOTE: DRAWING NOT TO SCALE

		HN ENGINEERING INC.
TITLE CITY OF NANAIMO NEW RADIO TOWER		
DATE NO. 1725-01-01		
DATE SEPT./93	DESIGNED BY BJS KRJ	

City of Nanaimo  
 Schedule A

**45.6 M 450G TOWER**

DESIGN SPECIFICATION: CSA S37-M86.  
 WIND:  $q_{30} = 600 Pa$ .  
 ICE: 25 MM RADIAL.

22-141 30 SHEETS  
 22-142 188 SHEETS  
 22-144 200 SHEETS

