

THIS AGREEMENT is made the ____ day of _____, 2018.

BETWEEN:

REGIONAL DISTRICT OF NANAIMO

6300 Hammond Bay Road
Nanaimo, BC V9T 6N2

(the "**Regional District**")

OF THE FIRST PART

AND:

NANAIMO SEARCH AND RESCUE SOCIETY

(Incorporation No. S- 0028362)
195b Fourth St.
Nanaimo, BC V9R 1T1

(the "**Society**")

OF THE SECOND PART

WHEREAS

- A. The Regional District, by Bylaw No. 1552, known as the Southern Community Search & Rescue Contribution Service, to provide a contribution to organizations carrying out search and rescue activities ("**Search and Rescue**") within the City of Nanaimo, District of Lantzville and the Electoral Areas A, B, and C (collectively, the "**Service Area**");
- B. The Regional District Board has approved an annual grant of \$24,000 for the lease of a facility from the City of Nanaimo, to the Society (the "**Lease Contribution**");
- C. The Regional District Board has approved an annual grant for operating purposes to the Society (the "**Operational Contribution**");
- D. The Society is incorporated under the laws of BC and the objects of the Society are to provide Search and Rescue.
- E. The Regional District has agreed to contribute funding to the Society and the Society has agreed to use the Lease Contribution and the Operational Contribution (collectively the "**Contributions**") in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, this agreement witnesses that in consideration of the premises, the terms and conditions hereinafter contained, and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by the parties), the Regional District and the Society covenant and agree as follows:

1.0 OPERATING REQUIREMENTS

- 1.1 As a condition of receiving the Lease Contribution under this Agreement, the Society agrees to use the Lease Contribution solely for the purpose of payments towards the Lease.
- 1.2 As a condition of receiving the Operating Contribution under this Agreement, the Society agrees to use the Operational Contribution for the sole purpose of Eligible Expenditures as defined in Schedule "A" to provide Search and Rescue within the Service Area in accordance with the terms and conditions set out in this Agreement.
- 1.2 The Society shall not use the Operating Contribution or any part of the Contribution for any purpose other than eligible expenditures for Search and Rescue.
- 1.3 In providing Search and Rescue, the Society shall at its own cost:
 - a) comply with all enactments that apply to the provision of Search and Rescue, including all applicable bylaws of the Regional District, as amended or replaced from time to time and the requirements of the *Workers Compensation Act* and the Occupational Health and Safety Regulation under that Act;
 - b) obtain all licenses, permits and consents under any federal, provincial or municipal enactment or bylaw in order to provide the service in the manner set out in the proposal; and

2.0 TERM

- 2.1 The Term of this Agreement commences on February 1, 2019 and ends on December 31, 2023 unless otherwise earlier terminated under this Agreement.
- 2.2 This Agreement may be renewed for further terms at the discretion of the Board.

3.0 PAYMENT OF CONTRIBUTION

- 3.1 Provided that the Society complies with all covenants to be performed under this Agreement, the Regional District shall pay to the Society as the Operational Contribution Five Thousand, Nine Hundred and Seventy Five (\$5,975.00) dollars per year on August 31st of each year of the Term.
- 3.2 Provided that the Society complies with all covenants to be performed under this Agreement, the Regional District shall pay to the Society as the Lease Contribution Twenty Four Thousand (\$24,000.00) dollars per year on August 31st of each year of the Term. The Lease Contribution paid to the Society in 2019 will be Twenty Two Thousand (\$22,000.00), the remaining Two Thousand (\$2,000.00) will be paid to the City of Nanaimo in January 2019 to fulfil the remaining term of the lease agreement signed between the Regional District and the City of Nanaimo.

4.0 FINANCIAL MATTERS

- 4.1 On or before September 30th in each year of the Term, and as soon as practicable following the termination or expiry of the Agreement, the Society shall provide to the Director of Finance of the Regional District with a set of review engagement financial statements for revenue and

expenditures and financial position for the Society in relation to its Search and Rescue activities for the preceding fiscal period, March 1st to February 28th or shorter period, as applicable (the “**Financial Statements**”).

- 4.2 The Financial Statements must contain sufficient detail to identify revenues, and types of capital and operating expenditures.

5.0 COVENANTS OF THE SOCIETY

- 5.1 The Society covenants agree that it will, during the term of this Agreement:

- a) maintain its corporate existence, carry on and conduct its affairs in a proper and businesslike manner and keep or cause to be kept properly, books of account in accordance with generally accepted accounting principles applied consistently;
- b) maintain, at all times, separate and accurate books, records and accounts including all receipts and invoices supporting any expenditures in accordance with generally accepted accounting principles applied consistently;
- c) perform all its obligations under this Agreement at its own cost;
- d) ensure that the Contribution is spent solely on eligible expenses of Search and Rescue;
- e) permit the Regional District and its auditors within the Term of the agreement and at a time, date and place mutually acceptable, and at the Regional Districts’ own expense and exclusive of any and all documents directly related to operational tasking to have access to and inspect the Society’s books of accounts, documents, cheques, vouchers and other records that relate to the provision of Search and Rescue.
- f) provide an annual aggregate summary of tasks that the Society has undertaken in relation to Search and Rescue, which summary shall include for each task: Task Number, the span of time involved on a task and the number of Nanaimo Search and Rescue members involved on a task, and to make copies thereof and,
- g) if the audit or summary of tasks reveals that the Society has spent any money from the one or both of the Contributions in a manner that is contrary to this Agreement, the Society shall reimburse the Regional District up to \$2,000 for the cost of the audit or review of the summary of tasks within thirty (30) days of receiving notice from the Regional District;
- h) At a mutually agreed date and time and with a minimum of thirty (30) days’ notice to the Society, permit the Regional District to have access to and inspect all facilities, equipment, goods and chattels that are used in connection with the provision of Search and Rescue;
- i) abide by its constitution, bylaws and other requirements of the *Society Act* and hold annual meetings and file annual reports and other documents to be filed with the Registrar of Companies; and
- j) maintain proper records relating to the provision of Search and Rescue, in accordance with this Agreement;

6.0 INSURANCE

- 6.1 In addition to the liability coverage provided to The Society's volunteers by Emergency Management BC Policy 5.08 (Revised: 2016 Aug 04), the Society shall, throughout the Term of this Agreement, obtain and maintain a policy or policies of Directors and Officers liability insurance, with a deductible and in a form acceptable to the Regional District, and in the amount of not less than FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence, protecting the Society and the Regional District against:
- a) liability arising from an act, error, omission or breach of duty on the part of the Society, and its officers and directors in the management and direction of The Society.
- 6.2 The Society shall, throughout the Term of this Agreement, obtain and maintain in force for all motor vehicles used in the provision of Search and Rescue, whether owned or leased by the Society or the Regional District, automotive liability insurance in accordance with the Insurance (Motor Vehicle) Act of British Columbia, and in the amount of not less than Three Million DOLLARS (\$3,000,000.00) per accident.
- 6.3 The Society shall provide the Regional District for each year of the Term with a certificate signed by an authorized signatory of each insurer confirming that the coverage required under Section 6.0 has been provided, and upon request shall provide a copy of the said policy or policies.
- 6.4 The Society shall be responsible for the cost of providing all insurance required under this Agreement.

7.0 INDEMNITY

- 7.1 The Society shall indemnify and save harmless the Regional District, its employees, agents, officers, directors, and authorized representatives, and each of them, from and against all losses, claims, damages, actions, causes of action, costs, and expenses, of any kind that the Regional District may sustain, incur, suffer or be put to at any time, arising from acts, errors or omissions including negligent acts or breaches of law, contract or trust, committed by the Society or its employees, members, agents, officers or directors in relation to their use of the Contributions. This indemnity shall survive the duration of this Agreement.

8.0 TERMINATION

- 8.1 Either party may terminate this Agreement at any time by giving not less ninety (90) calendar days written notice of termination to the other party, and the Agreement shall terminate at midnight on the last day of the third calendar month following the month during which notice is given provided however that, in any event, unless renewed by the Regional District the Agreement shall terminate not later than the 31st day of December, 2023. Within thirty (30) calendar days of termination, the Society agrees to reimburse the Regional District the prorated share of the grant based on the first day of the month immediately following the month in which the contract was terminated.

9.0 EARLY TERMINATION

- 9.1 Notwithstanding any other provision of this Agreement, the Regional District may terminate this Agreement upon giving written notice of its intention to so terminate:

- a) 30 days' notice should the Society fail to file its Annual Report or otherwise no longer be in good standing with the Registrar of Companies under the *Society Act*
- b) 30 days' notice should the Society default in any term or condition of this Agreement or fail to perform any covenant required to be performed by the Society under this Agreement or such default continues for more than 30 days' notice to correct the default;
- c) Immediately upon notice should the Society make an assignment in bankruptcy or be declared bankrupt.
- d) Notwithstanding any other provision in this agreement, the Society retains its right to terminate this agreement for any reason whatsoever by providing ninety (90) calendar days' written notice to the Regional District.

Immediately upon termination under this section 9.1, the Society agrees to reimburse the Regional District the prorated share of the grant based on the first day of the month immediately following the month in which the contract was terminated.

10.0 CONFIDENTIALITY AND FREEDOM OF INFORMATION

10.1 Each party to this agreement covenants and agrees as follows:

10.2 The Society and the Regional District covenant and agree that they will not, at any time either during the term of this Agreement or thereafter, disclose to or discuss with a third party any personal information (as defined in the legislation applicable to the party), or information regarding the internal affairs, data, financial, business, trade secrets or other confidences of the other party ("Confidential Information") except:

- a) as required by law or court order;
- b) or as necessary to instruct third party professional consultants for the purpose of the legitimate business affairs of the party relating to this Agreement,
- c) unless it has obtained express authorization from the party to which the Confidential Information relates.

10.3 With respect to personal information to which the Freedom of Information and Protection of Privacy Act or the Personal Information Protection Act (the "Privacy Enactments") apply, each party shall collect, store, protect, use and disclose such information in accordance with the requirements of the applicable Privacy Enactment, and in a manner that ensures that there is no violation of any obligations of the other party under a Privacy Enactment.

10.4 Each party shall cooperate with the other in relation to requests for release of records to which a Privacy Enactment applies, and the parties acknowledge and agree that the Regional District is required to disclose certain records in accordance with applicable legislation, including information that must or may be disclosed in accordance with the Freedom of Information and Protection of Privacy Act.

10.5 Nothing herein shall relieve the Society or the Regional District of their respective obligation to determine their obligations under and responsibility for compliance with applicable Privacy

Enactments. In the case of conflict between a Privacy Enactment and the terms and conditions of this Agreement (including any schedules) the provisions of the Privacy Enactments prevail.

11.0 ENFORCEABILITY AND SEVERABILITY

- 11.1 If any provision of this Agreement is determined to be invalid, void, illegal or unenforceable, in whole or in part, such invalidity, voidance, illegality or unenforceability shall attach only to such provision or part of such provision and then such provision or part will be deleted from this Agreement, and all other provisions or the remaining part of such provision, as the case may be, will continue to have full force and effect.
- 11.2 The parties will in good faith negotiate a mutually acceptable and enforceable substitute for the unenforceable provision, which substitute will be as consistent as possible with the original intent of the parties.

12.0 GENERAL PROVISIONS

12.1 Notice

- a) All notices required or permitted to be given under 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, or by electronic mail:

To the Regional District:
 Attention: Director of Finance
 6300 Hammond Bay Road
 Nanaimo, BC, V9T 6N2
 Fax: 250-390-6572
 Email: corpsrv@rdn.bc.ca

To the Society:
 Attention: _____
 3237 Alberni Highway
 Qualicum Beach, BC, V9K 1Y6
 Fax: _____
 Email: _____

- b) 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).
- i. if sent by registered mail, seven (7) days following the date of such mailing by sender;
 - ii. if sent by electronic mail, on the date the E-Mail Notice is sent electronically by e-mail by the sender.

- c) If a Notice is 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 date of transmission or delivery.
- d) If normal mail service 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.
- e) Each party shall provide Notice to the other party of any change of address or e-mail address of such party within a reasonable time of such change.

12.2 Authority

The Society represents and warrants to the Regional District that it has the authority to enter into this Agreement and carry out its transactions and all necessary resolutions and procedural formalities have been completed and the persons executing this Agreement on its behalf are duly authorized to do so.

12.3 Relationship

The legal relationship between the Society and the Regional District arising pursuant to this Agreement is that of a recipient and funder. Nothing in this Agreement shall be interpreted so as to render the Regional District the employer or partner of the Society, or anyone working for the Society. The Society is not, and must not claim to be, the agent of the Regional District for any purpose.

The Regional District shall not purport to own, direct, administer, deliver or direct the operations of the Society's Search and Rescue operations, training or administration. The Regional District shall not attempt, directly or indirectly, direct or attempt to direct, interfere or attempt to interfere with the Search and Rescue operations, training, or administration of the Society.

12.4 Assignment

This Agreement shall not be assignable by the Society.

12.5 Enurement

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees.

12.6 Time

Time is to be of the essence of this Agreement.

12.7 Further Assurances

The parties hereto shall execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this Agreement.

12.8 Entire Agreement

This Agreement is the entire agreement among the parties as at the date hereof and neither the Regional District nor the Society has given or made representations, warranties, guarantees, promises, covenants or agreements to the other except those expressed in writing in this Agreement, and no amendment of this Agreement is valid or binding unless in writing and executed by the parties.

12.9 Waiver

The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar. Any waiver shall be in writing and shall be delivered in accordance with Section 12 Notice.

12.10 Cumulative Remedies

No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

12.11 Amendment

No amendment, waiver, termination or variation of the terms, conditions, warranties, covenants, agreements and undertakings set out herein will be of any force or effect unless they are in writing and duly executed by all parties to this Agreement and delivered in accordance with Section 12 Notice.

12.12 Law Applicable

This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

12.13 No Partnership or Agency

No provision of this Agreement shall be construed to create a partnering agreement, a partnership or joint venture relationship, an employer-employee relationship, or a principal-agent relationship.

12.14 Non-Derogation

Nothing contained or implied in this Agreement shall prejudice or affect the rights and powers of the Regional District in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised as if this Agreement had not been executed and delivered by the parties, and the interpretation of this Agreement shall be subject to and consistent with statutory restrictions imposed on the Regional District under the Local Government Act and Community Charter.

12.15 Counterpart

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.

13.0 INTERPRETATION

13.1 In this Agreement:

- a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise.
- b) articles and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- d) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- e) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- f) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- g) reference to time or date is to the local time or date in Victoria, British Columbia;
- h) all provisions are to be interpreted as always speaking;
- i) reference to a “day”, “month”, “quarter” or “year” is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided;
- j) where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”;
- k) word importing the masculine gender includes the feminine or neuter, and a word importing the singular includes the plural and vice versa; and
- l) a reference to approval, authorization, consent, designation, waiver or notice means written approval, authorization, consent, designation, waiver or notice.

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:)
)
)
_____)
Chair:)
)
)
)
_____)
Corporate Administrator

NANAIMO SEARCH AND RESCUE SOCIETY)
by its authorized signatories:)
)
)
_____)
Name:)
)
)
_____)
Name:)
)

SCHEDULE A

This Schedule forms part of the Agreement between the Regional District and the Society.

1. ELIGIBLE EXPENDITURES

1.1 Eligible expenditures shall mean:

- a) Costs of rehabilitation, maintenance and repair of the vehicles and equipment;
- b) costs of wages and benefits of employees;
- c) costs of rent and utilities for office space;
- d) cost of fuel;
- e) insurance costs;
- f) other operating costs of the Society as reasonably required to provide Search and Rescue described in section 1.1