

**LICENCE OF OCCUPATION AND USE**

THIS AGREEMENT DATED FOR REFERENCE THE \_\_\_\_ DAY OF \_\_\_\_\_, 2019.

BETWEEN:

**CITY OF NANAIMO**

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

(hereinafter called the "**City**")

OF THE FIRST PART

AND:

**REGIONAL DISTRICT OF NANAIMO**

6300 Hammond Bay road  
Nanaimo, BC V9T 6N2

(hereinafter called "**RDN**")

OF THE SECOND PART

**SEASPAN FERRIES CORPORATION**

7700 Hopcott Road  
Delta, BC V4G 1B6

(hereinafter called "**Seaspan**")

OF THE THIRD PART

**WHEREAS :**

- A. The City is the registered owner of certain lands commonly known as 1 Port Drive and legally described as:

PID 029-036-500

Lot A, Section 1, and Part of the Bed of the Public Harbour of Nanaimo, Nanaimo District, Plan EPP27507

(the "**Lands**");

- B. Seaspan is the registered owner of a Statutory Right of Way over the Lands with registration number EM109875 (the “**SRW**”);
- C. The RDN wishes to be granted this Licence to use and occupy that portion of the Lands and SRW shown outlined in black on the sketch plan attached hereto as Schedule "A" and comprised of a transit exchange constructed in accordance with the specifications attached hereto as Schedule “B” (the “**Transit Exchange**”) and a temporary service trailer (the “**RDN Trailer**”) (collectively referred to as the “**Licence Area**”) and the City and Seaspan have agreed;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the fee paid by the RDN to the City and Seaspan and in consideration of the premises and covenants and agreements contained in this Agreement, the City and Seaspan and the RDN covenant and agree with each other as follows:

### **1.0 RIGHT TO OCCUPY**

- 1.1 The City and Seaspan (hereinafter collectively referred to as the “**Licensors**”), subject to the performance and observance by the RDN of the terms, conditions, covenants and agreements contained in this Agreement, and to earlier termination as provided in this Agreement, grants to the RDN a right by way of licence for the RDN, its elected officials, officers, employees, contractors, servants, agents, invitees and licensees to use the Licence Area for the purposes of installing, constructing, maintaining and using the Transit Exchange and RDN Trailer;
- 1.2 In addition to the rights granted at 1.1, the Licensors permit the RDN to grant to the general public a licence to occupy and use the Transit Exchange;
- 1.3 The Licensors grant to the RDN a right to cross the Lands for purpose of ingress and egress to the Licence Area.

### **2.0 RESERVATION OF RIGHTS**

- 2.1 The Licensors reserve to themselves from the grant and the covenants made by it to the RDN under clause 1 above, the right for the Licensors, their elected officials, officers, employees, contractors, servants, agents, invitees and licensees to have full and complete access to the Licence Area to carry out any operations associated with the Licensors use of the Licence Area.

### **3.0 LICENSE FEE**

- 3.1 In consideration of the right to use, the RDN shall pay to the Licensors a monthly licence fee calculated at the rate of \$1.00 per month. The receipt and sufficiency of which is hereby acknowledged.

#### **4.0. TERM**

4.1 The term of the License granted under this Agreement shall commence on the 7<sup>th</sup> day of April, 2019, and end on the 30<sup>th</sup> day of September, 2019, unless earlier terminated under this Agreement (the “**Term**”).

#### **5.0 TAXES AND UTILITIES**

5.1 The RDN shall pay all taxes, rates, duties and assessments whatsoever, whether federal, provincial, municipal or otherwise charged upon the RDN or the Licensors as a result of the RDN’s occupation of or use of the Licence Area.

5.2 The RDN shall pay as they become due all water, electrical, sewer, garbage and other rates in respect of the Licence Area that are the result of the RDN’s occupation of or use of the Licence Area.

#### **6.0 CONSTRUCTION**

6.1 The RDN shall not construct or place any buildings or structures or make any improvements on the Licence Area, unless it has:

- (a) obtained the Licensor's approval in writing to site plans, working drawings, plans, specifications and elevations; and
- (b) obtained any necessary building permits authorizing the construction of the buildings and structures set out in the permits and the plans and specifications attached to it; and
- (c) obtained all required inspections and the work shall be carried out at the cost of the RDN; and
- (d) delivered final as-built drawings to the Licensors.

6.2 The RDN shall, at its cost, maintain any buildings, structures or improvements constructed or placed on the Licence Area during the Term.

#### **7.0 INSURANCE**

7.1 (a) The RDN will take out and maintain during the Term, a policy of general public liability insurance against claims for bodily injury, death or property damage arising out of the use of the Licence Area by the RDN in the amount of not less than five million dollars per single occurrence with such greater amount as may from time to time designate, naming the Licensors as an insured party thereto and shall provide the Licensors with a certified copy of such policy or policies;

- (b) all policies of insurance shall contain a clause requiring the insurer not to cancel or change the insurance without first giving the Licensors thirty days' prior written notice;
- (c) if the RDN does not provide or maintain or enforce the insurance required by this Agreement, the Licensors may take out the necessary insurance and pay the premium at a time and the RDN shall pay to the Licensors as additional fees the amount of the premium immediately on demand;
- (d) if both the Licensors and the RDN claim to be indemnified under any insurance required by this Agreement, the indemnity shall be applied first to the settlement of the claim of the Licensors and the balance, if any, to the settlement of the claim of the RDN.
- (e) the deductible on the policy shall not be more than five thousand dollars.

## **8.0 INDEMNIFICATION AND RELEASE**

- 8.1 The RDN releases and will indemnify and save harmless the Licensors, its elected officials, officers, employees, contractors, servants, agents, and licensees from and against all lawsuits, damages, costs, expenses, fees or liability which the RDN or any of them or anyone else may incur, suffer or allege by reason of
- (a) the negligence, breach of contract or wrongful act by the RDN or its elected officials, officers, employees, contractors, servants, agents, invitees and licensees;
  - (b) the RDN or its elected officials, officers, employees, contractors, servants, agents, invitees and licensees using any building, structure or improvement built or placed by the RDN on the License Area;
  - (c) the RDN or its elected officials, officers, employees, contractors, servants, agents, invitees and licensees carrying on of any activity in relation to the use of the License Area.

## **9.0 BUILDERS' LIENS**

- 9.1 The RDN will indemnify the Licensors from and against any liens for wages or materials or for damage to persons or property caused during the making of or in connection with any excavation, construction, repairs, alterations, installations and additions which the RDN may make or cause to be made on, in or to the Licence Area.

## 10.0 NOTICES

10.1 It is hereby mutually agreed:

Any notice required to be given under this Agreement shall be deemed to be sufficiently given if mailed from any government post office in the Province of British Columbia by prepaid registered mail or sent by email addressed as follows:

(i) if to the RDN:

Darren Marshall  
6300 Hammond Road  
Nanaimo, BC V9T 6N2  
Email: [dmarsshall@rdn.bc.ca](mailto:dmarsshall@rdn.bc.ca)

(ii) if to the City:

Real Estate Section  
455 Wallace Drive  
Nanaimo, BC V9R 5J6  
Email: [realestate@nanaimo.ca](mailto:realestate@nanaimo.ca)

(iii) if to Seaspan:

Ian McIver  
700 Hopcott Road  
Delta, BC V4G 1B6  
Email: [ian.mciver@seaspan.com](mailto:ian.mciver@seaspan.com)

or at the address a party may from time to time designate, then the notice shall be deemed to have been received forty-eight hours after the time and date of mailing or upon receipt if emailed. If, at the time of mailing 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 or by email.

## 11.0 TERMINATION

11.1 If the RDN is in breach of this Agreement, and if the default continues after the giving of notice by the Licensors to the RDN, then the Licensors may terminate this Agreement and reenter the Licence Area and the rights of the RDN with respect to the Licence Area shall lapse and be absolutely forfeited.

## 12.0 FORFEITURE

- 12.1 The Licensors, 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 Licensor's rights upon any subsequent breach of the same or any other provision of this Agreement.

## 13.0 FIXTURES

- 13.1 That, unless the RDN, upon notice from the Licensors, removes them, the buildings, structures or improvements constructed on the Licence Area by the RDN shall at the termination of the Agreement, become the sole property of the Licensors at no cost to the Licensors.

## 14.0 REPAIRS BY THE LICENSORS

- 14.1 (a) If the RDN fails to repair or maintain the Licence Area or any building, structure or improvement on the Licence Area in accordance with this Agreement, the Licensors may, by its agents, employees or contractors, enter the Licence Area and make the required repairs or do the required maintenance and the cost of the repairs or maintenance shall be a debt due from the RDN to the Licensors.
- (b) In making the repairs or doing the maintenance, the Licensors bring and leave upon the Licence Area the necessary materials, tools and equipment and the Licensors shall not be liable to the RDN for any inconvenience, annoyance, loss of business or other injuries suffered by the RDN by reason of the Licensors effecting the repairs or maintenance.

## 15.0 TREE CUTTINGS, EXCAVATIONS AND HAZARDOUS SUBSTANCES

- 15.1 For the purposes of paragraph 15.2 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 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.

15.2 The RDN covenants and agrees as follows:

- (a) not to use or permit to be used all or any part of the License Area for the sale, storage, manufacture, handling, disposal, use, or any other dealing with any Contaminants, without the prior written consent of the Licensors, 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 Licensors a copy of any environmental site assessment, audit, report, or test results relating to the License Area conducted by or for the RDN at any time;
- (d) to promptly notify the Licensors 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 Licensors or the RDN to any fines, penalties, orders, investigations, or proceedings under Environmental laws (for clarity, this provision shall only apply where any member of the RDN has actual knowledge of the same);
- (e) on the expiry or earlier termination of this License, or at any time if requested by the Licensors 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 solely where such Contaminant(s) had been brought onto, used at, or released from the License Area by the RDN or any person for whom it is in law responsible.*** The RDN shall perform these obligations promptly at its own cost and in accordance with Environmental Laws. All such Contaminants shall remain the property of the RDN, 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
- (f) to indemnify the Licensors and its elected officials, appointed officers, employees, agents, successors, and assigns from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties, and expenses whatsoever (including all legal and consultant's 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 paragraph 15.2 by the RDN; or

- (ii) any release of any Contaminants at or from the License Area as a result of the use and occupation of the License Area by the RDN or by any member of the RDN.

## **16.0 CLEAN UP**

- 16.1 At the end of the Term, the RDN shall clean up the Licence Area and restore the Licence Area as reasonably as may be possible to the condition of the Licence Area prior to the commencement of the term of this Agreement.

## **17.0 REGULATIONS**

- 17.1 The RDN will:

- (a) comply promptly at his 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 Licensors or the RDN;
- (b) indemnify the Licensors from all lawsuits, damages, loss, costs or expenses the Licensors may incur by reason of non-compliance by the RDN with legal requirements or by reason of any defect in the Licence Area or any injury to any person or to any personal property contained on the Licence Area. The RDN shall be responsible for any damage to the Licence Area occurring while the RDN is exercising its rights under this Agreement or if the RDN acknowledges and agrees that in the event that the Licence Area or any building, structure or improvement on the Licence Area is damaged, then the amount of the cost of repair, restoration shall be a debt due from the RDN to the Licensors.

## **18.0 NO COMPENSATION**

- 18.1 The RDN shall not be entitled to compensation for any loss or injurious affection or disturbance resulting in any way from the termination of the Agreement or the loss of the RDN's interest in any building, structure or improvement built or placed on the Licence Area.

## **19.0 MISCELLANEOUS**

- 18.1 (a) The RDN warrants and represents that the execution of this Agreement by RDN on behalf of a group or organization is a warranty and representation to the Licensors that the RDN has sufficient power, authority and capacity to bind the group or organization with is or her signature.
- (b) In consideration of being granted the use of the Licence Area, the RDN agrees to be bound by the terms and conditions of this Agreement and,



the RDN agrees to inform all responsible persons associated with the group or organization of the terms and conditions of this Agreement.

- (c) This Agreement shall not be interpreted as granting any interest in the Licence Area to the RDN.
- (d) Waiver of any default by a party shall not be interpreted or deemed to be a waiver of any subsequent default.

## **20.0 INTERPRETATION**

- 20.1
- (a) Time is of the essence in this Agreement.
  - (b) 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 where the context or the parties require.
  - (c) 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.
  - (d) The RDN may assign its rights under this Agreement with the prior written consent of the Licensors, not to be unreasonably withheld.
  - (e) That 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.
  - (f) This Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
  - (g) 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.
  - (h) This Agreement constitutes the entire agreement between the parties with respect to the subject matter of the Agreement and contains all of the representations, warranties, covenants and agreements of the respective parties, and may not be amended or modified except by an instrument in writing executed by all parties. This Agreement supersedes all prior agreements, memoranda, and negotiations between the parties.

- (j) This agreement may be executed in counterpart and delivered by facsimile or other electronic transmission, and if so executed and delivered all such counterparts or executed facsimile or other electronic transmitted signed copies shall be read and construed together as if they formed one originally executed document.

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

**CITY OF NANAIMO**

Per: \_\_\_\_\_  
Mayor

Per: \_\_\_\_\_  
Corporate Officer

**REGIONAL DISTRICT OF NANAIMO**

Per: \_\_\_\_\_  
Chair

Per: \_\_\_\_\_  
Corporate Officer

**SEASPAN FERRIES CORPORATION**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

Schedule "A"-Sketch Plan

1 PORT DRIVE - TEMPORARY BUS PAD



### Schedule "B"-Transit Exchange Plan

