

# ATTACHMENT A

## CO-MANAGEMENT AGREEMENT

LD002216

THIS AGREEMENT made the \_\_\_\_ day of \_\_\_\_\_ 2019

BETWEEN:

**CITY OF NANAIMO**  
455 Wallace Street  
Nanaimo, British Columbia  
V9R 5J6

(the "City")

OF THE FIRST PART

AND:

**NANAIMO SEARCH AND RESCUE**  
195 B Fourth Street,  
Nanaimo, BC  
V9R 1T1

(the "Operator")

OF THE SECOND PART

### WHEREAS:

- A. The City is the registered owner in fee simple of those Lands located at 191 and 195 Fourth Street, Nanaimo, British Columbia, legally described as PID: 005-257-077 Lot A, Section 1, Nanaimo District, Plan 10331 and PID: 008-754-683 That part of Section 28, Range 9, Section 1, Nanaimo District, Plan 630, shown outlined in red on plan 563R (the "Lands");
- B. On the Lands is a former fire hall (the "Facility"). The Facility was built and has been maintained by the community. The Facility and Lands are under the ownership of the City.
- C. The Nanaimo Search and Rescue (the "Operator") and the City wish to enter into an agreement whereby the Operator undertakes responsibility for the operation and maintenance of the Facility and Lands as outlined in the agreement for its own use and for the use of the general public in exchange for the entitlement of the Operator to charge fees to third parties for the use of the Facility and to retain such fees for the account of the Operator.

**NOW THEREFORE** in consideration of the premises, covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which each party hereby acknowledges, the parties hereby covenant and agree as follows:

## **1.0 RIGHT TO OCCUPY**

- 1.1 The City grants to the Operator a right by way of Licence of Use for the Operator, its agents, and invitees to operate the Facility as an operations facility for the Operator and for no other purpose unless approved by the City in advance.
- 1.2 The City grants to the Operator a licence to enter and be upon the Lands during the Term for those purposes necessary for the operation, maintenance and access to the Facility.
- 1.3 The City grants the Operator the exclusive right to utilize parking within the Lands in the designated areas shown in Schedule A.

## **2.0 RESERVATION OF RIGHTS**

- 2.1 The City hereby reserves to itself from the grant and the covenants made by it to the Operator under paragraph 1 above, the right for the City, its agents, personnel, contractors and subcontractors to have full and complete access to the Facility to carry out any operations associated with the City's use of the Facility.

## **3.0 TERM**

- 3.1 This Agreement shall be for a term of twenty-five (25) years commencing on the 1<sup>st</sup> day of October 2019, and ending on the 30<sup>th</sup> day of September 2044 unless terminated sooner pursuant to the terms of this Agreement (the "Term").
- 3.2 The agreement shall be reviewed and amended (if necessary) by the City and the Operator at the end of the first year. The review will take place by October 1, 2020.
- 3.3 Provided that the Operator is not in default under this Agreement, the Operator may, by delivering notice in writing to the City ninety (90) days before the 25<sup>th</sup> anniversary of the commencement date, request a right of first renewal for a further term to be reviewed by the City.

## **4.0 RENT**

In consideration of the right to use, the Operator shall pay to the City in equal monthly installments of two thousand dollars (\$2,000) per month for a total annual rent of twenty four thousand dollars (\$24,000).

## **5.0 THE OPERATOR COVENANTS, REPRESENTS AND WARRANTIES**

- 5.1 (a) The Operator has the power and capacity to enter into this Agreement and to comply with every term and condition of this Agreement;
- (b) Has satisfied itself of every apparent condition affecting the operation and maintenance of the Facility;
- (c) Accepts the risks assigned within this Agreement identified as being borne by the Operator; and

- (d) The Operator represents and warrants to the City that it has and will have the equipment, personnel and expertise to provide the maintenance and to fulfill its obligations set forth herein.

## **6.0 REPAIR AND MAINTENANCE RESPONSIBILITIES**

6.1 See attached Schedule B for table of Repair & Maintenance responsibilities. The following is in addition to Schedule B:

- (a) The City shall not be responsible for any maintenance or repair of any kind with respect to the premises where such maintenance or repair is occasioned by the negligent or willful act of the Operator or those for who the Operator is in law responsible, in which case such maintenance or repair must be carried out by the Operator at its own expense;
- (b) In making the repairs or doing the maintenance the City may bring and leave upon the Leased Area the necessary materials, tools, and equipment and the City shall not be liable to the Operator for any inconvenience, annoyance, loss of business or other injuries suffered by the Operator by reason of the City effecting the repairs or maintenance; and,
- (c) Operator is responsible for nominal repairs and minor building maintenance to the interior premises and washrooms to a maximum annual value of ten thousand (\$10,000) per year.

## **7.0 LONG TERM IMPROVEMENTS AND PROJECT PLANNING**

7.1 The City and Operator will work together, which may require mutually agreed cost sharing, for the following responsibility:

- (a) Preparation of a "Facility Plan" that outlines the Facility upgrades. This document is required to outline the priorities for investment and the associated costs and will enable the City and the Operator to develop a work plan for the facility. The completion of the "Facility Plan" will be prepared no later than two (2) years from the commencement date of this Agreement.

## **8.0 REVIEW OF FINANCIAL STATEMENTS**

8.1 The Operator upon request by the City will provide the City with an annual account of the Operator's costs and revenues by April 1<sup>st</sup> of each year. The Operator will provide audited accounts if required by the City.

## **9.0 SCHEDULING OF FACILITY USE**

9.1 The intended use of the Facility is for Nanaimo Search and Rescue operations only. Any other type use of the Facility requires prior written consent of the City.

9.2 The Operator will be responsible for coordinating the booking of the Facility and will collect all revenues associated with the Facility.

9.3 The Operator will manage all bookings and use of the Facility. The Operator shall charge and collect fees from the user groups in line with the fees set out in the City's Fees and Charges Bylaw.

## **10.0 TERMINATION**

10.1 If at any time the Operator fails to observe and perform every covenant, agreement, provision, stipulation and condition in this Agreement:

- (a) the City General Manager of Parks, Recreation and Culture or his designate, the City's Representative, may give written notice to the Operator specifying the default and expectations of a cure of default. If within thirty (30) days of receipt of the written notice the Operator fails to cure the default in a manner satisfactory to the City, the City may terminate this Agreement by written notice of termination to the Operator as of the date of delivery of such notice of termination, without prejudice to any other right or remedy the City may have;
- (b) and if the default would reasonably require more than thirty (30) days to cure and the Operator gives reasonable assurances to the City that such default will be rectified or removed within a reasonable period of time that is satisfactory to the City, and performs the cure of the default in accordance with the agreed period of time, or failing this, an extension of time satisfactory to the City, the City shall not give written notice of termination to the Operator. If the default is not cured within a period of time acceptable to the City, the City may terminate this Agreement by written notice of termination to the Operator as of the date of delivery of such notice of termination, without prejudice to any other right or remedy the City may have; and
- (c) in the opinion of the City, the Operator does not adequately correct the default, the City shall have the right, in its sole discretion, acting reasonably, to enter into an agreement to correct the default with persons or contractor and if the cost thereof is greater than that which would have been paid to the Operator if it had supplied the services in accordance with this Agreement, the City shall invoice the Operator the difference in cost and the Operator shall pay the City in full within 30 days of the date of delivery of such invoice.

10.2 The Operator or the City may terminate this Agreement immediately upon one (1) year advance written notice to the other party.

## **11.0 RIGHTS ON TERMINATION**

11.1 Except as set forth herein, any termination of this Agreement shall terminate all continuing rights and obligations under this Agreement. This paragraph shall not limit the entitlement of a party to damages or other remedies in respect of a breach or wrongful repudiation of this Agreement occurring at or before the time of termination of this Agreement. All obligations of the parties which by their nature require all or part of their performance or fulfillment after the expiry or termination of this Agreement shall survive the expiry or termination of this Agreement.

## **12.0 UTILITIES**

12.1 See attached Schedule B for table of Utilities responsibilities.

## **13.0 TAXES**

13.1 The Operator will be responsible for all municipal taxes or other government charges associated with the use of the property. The Operator may apply through City of Nanaimo Council for a Permissive Tax Exemption.

## **14.0 INDEMNITY BY OPERATOR ARISING FROM PROPERTY USE**

14.1 The Operator covenants and agrees to indemnify and save harmless the City, its elected and appointed officials, personells and agents from and against all costs and expenses caused to or incurred by the City and from all claims, demands, liens, losses, damages, actions, suits and other proceedings whatsoever and by whomsoever made, brought or prosecuted caused by or arising out of the operation, use and maintenance of the Facility and the equipment and/or other property utilized in the performance of the terms of this Agreement whether such property is under the care, custody or control of or owned or leased by the Operator; save and except where any such matter is the cause of an act by the City or anyone for whom the City is in law responsible.

## **15.0 INSURANCE**

15.1 The Operator covenants and agrees:

- (a) that it will take out and maintain a policy of general public liability insurance against claims for bodily injury, death or property loss and damage arising out of or in connection with the use and occupancy of the Facility by the Operator in an amount of not less than three million (\$3,000,000.00) dollars per single occurrence or such greater amount as the City may from time to time designate, naming the City as an insured party thereto and shall provide the City with a certified copy of such policy or policies;
- (b) that:
  - (i) this policy of insurance shall name the City as an insured party to it and shall be in a form satisfactory to the City;
  - (ii) it will take out "all risks" insurance, for replacement cost, on all of the Licencee's personal property and fixtures that are in the nature of trade fixtures; and
  - (iii) it shall provide the City with a copy of the policy.
- (c) that all policies of insurance shall contain a waiver of subrogation paragraph in favor of the City and shall also contain a paragraph requiring the insurer not to cancel or change the insurance without first giving the City 30 days prior written notice;
- (d) that if it does not provide or maintain in force the insurance required by this Agreement, the City may take out the necessary insurance and pay the

premium for periods of one year at a time, and the Operator shall pay to the City rent the amount of the premium immediately on demand;

- (e) that if both the City and the Operator have claims to be indemnified under any insurance required by this Agreement; the indemnity shall be applied first to the settlement of the claim of the City and the balance, if any, to the settlement of the claim of the Operator; and
- (f) not include a deductible greater than five thousand (\$5,000.00) dollars per occurrence (except for the "all risks" insurance with respect to the Lease Area, which shall include no deductible).

## 16.0 NOTES AND OTHER GENERAL PROVISIONS

- (a) Any notice which may be or is required under this Agreement shall be in writing and delivered or sent by post or e-mail. E-mail and postal address as follows:
  - (i) To the City  
City of Nanaimo  
455 Wallace Street  
Nanaimo, BC V9R 5J6  
richard.harding@nanaimo.ca  
Attention: Richard Harding, General Manager, Parks, Recreation & Culture
  - (ii) To the Operator  
Nanaimo Search and Rescue  
195 B Fourth Street,  
Nanaimo, BC  
V9R 1T1
- (b) Any notice that is delivered is to be considered to have been given on the first day after it is dispatched for delivery. Any notice, which is sent by fax transmission, is to be considered to have been given on the first business day after it is sent. If a party changes its address or facsimile number, or both, it shall promptly give notice of its new address, telephone number or facsimile number, or all, to the other party as provided in this section.

## 17.0 INTERPRETATIONS

### 17.1 *Interpretation Not Affected by Headings*

Grammatical variations of any terms defined herein have similar meanings. Words importing the singular number shall include the plural and vice versa. Words importing the masculine gender shall include the feminine and neuter genders. The division of this Agreement into separate articles, sections, subsections and paragraphs, and the insertion of headings and marginal notes and references are for convenience only and shall not affect the construction or interpretation of this Agreement.

### 17.2 *Governing Law*

This Agreement shall be governed by and construed in accordance with the law of British

Columbia and Canada applicable therein and shall be treated in all respects as a British Columbia contract.

### 17.3 *Waiver*

- (a) Any failure of the City at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the City at any time to avail itself of such remedies as it may have for any breach of such terms or conditions; and
- (b) No action or want of action on the part of the City at any time to exercise any rights or remedies conferred upon it under the Agreement shall be deemed to be a waiver on the part of the City of any of its said rights or remedies.

### 17.4 *Minimum Rate of Pay*

The Operator agrees that at those times when the Operator is delivering programs to the public on behalf of the City, it is understood that the minimum rate of pay for work performed under this Agreement or under sub-contract shall be as classified in the current agreement between the City of Nanaimo and the Canadian Union of Public Personells, Local 401.

### 17.5 *Assignment*

The Operator may not assign this Agreement or any part thereof without the prior written consent of the City which consent may be arbitrarily withheld at the sole discretion of the City. This Agreement shall enure to the benefit of and be binding upon the parties hereto and in the case of the City, its successors and permitted assigns.

### 17.6 *Amendments*

This Agreement may not be modified or amended except with the written consent of the parties hereto.

### 17.7 *Further Assurances*

The parties hereto agree that they will, from time to time, at the reasonable request of either of them, execute and deliver such agreements, contracts, assignments and instruments and take such further action as may be required to accomplish the purposes of this Agreement.

### 17.8 *Survival of Covenants*

The covenants of the Operator shall survive the termination of this Agreement and shall continue in full force and effect for the benefit of the City.

### 17.9 *Entire Agreement*

This Agreement constitutes the entire Agreement between the parties and there are no representations or warranties, express or implied, statutory or otherwise and no agreements collateral hereto other than as expressly set forth or referred to herein.

17.10 *Time of the Essence*

Time shall be of the essence of this Agreement.

17.11 *Agents*

It is understood and agreed that the Operator and all agents, servants and workmen of the Operator are not and shall not be deemed to be agents or personells of the City.

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

**CITY OF NANAIMO**

by its authorized signatories: )


\_\_\_\_\_)  
General Manager, Parks, Recreation & Culture )

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

**NANAIMO SEARCH AND RESCUE**

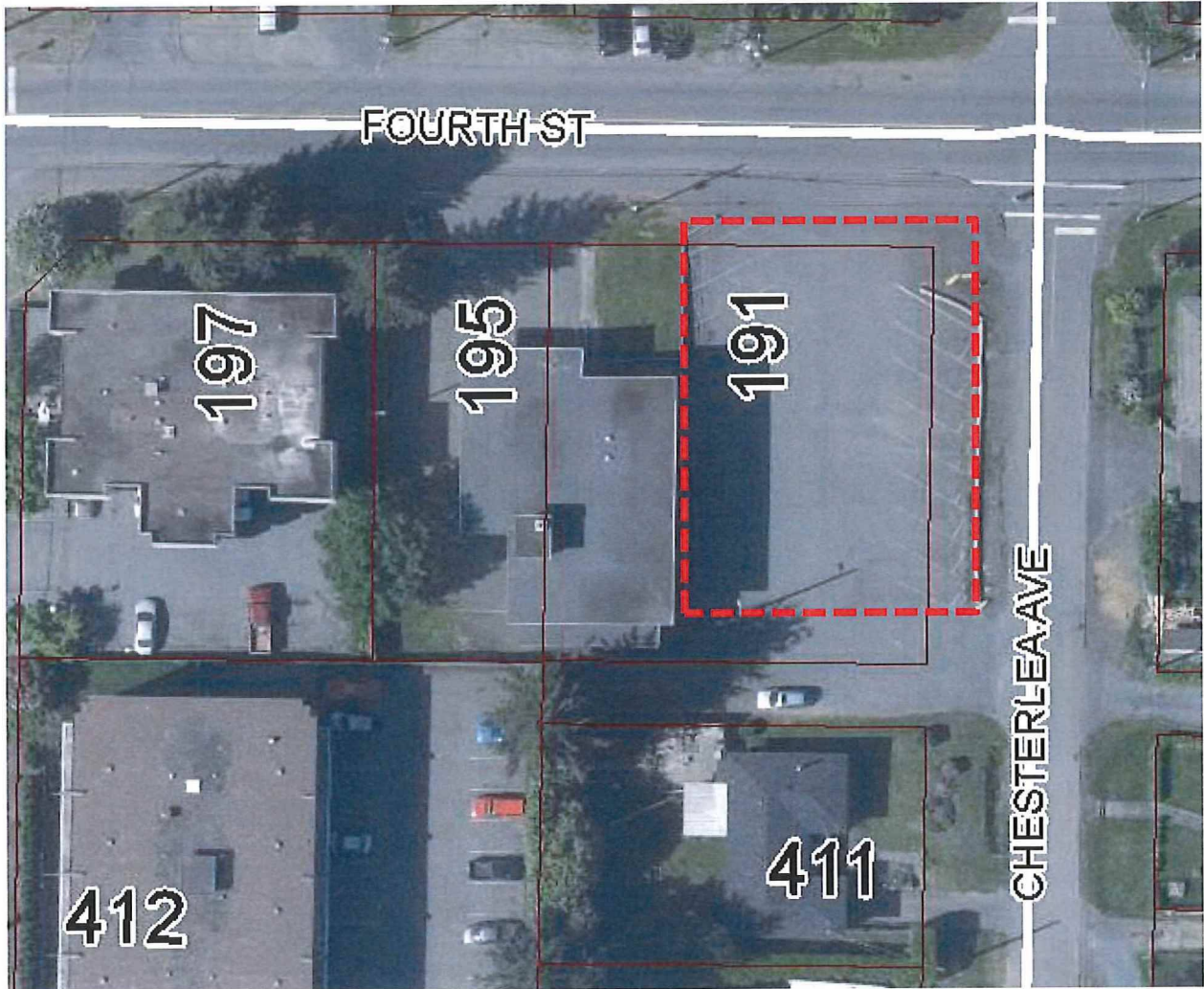
by its authorized signatories: )

  
\_\_\_\_\_)  
Name: Carly Trobridge )

  
\_\_\_\_\_)  
Name: Kyle Williams )



SCHEDULE A  
PARKING AREA



**SCHEDULE B**

**REPAIR AND MAINTENANCE RESPONSIBILITIES**

MAINTENANCE ITEM	PARTY RESPONSIBLE		FINANCIAL RESPONSIBILITY	
	City	Licensee	City	Licensee
<b>Grounds Repair and Maintenance</b>				
Parking lot maintenance & snow removal	X		100%	
Perimeter of surrounding grounds	X		100%	
Security and enforcement of designated parking area		X		100%
Extra locks and keys (City to be provided master key)		X		100%
<b>Custodial Services</b>				
Cleaning of all interior surfaces		X		100%
Provision of all custodial supplies		X		100%
Removal of all garbage / recycling		X		100%
Provision of a commercial refuse bin	X		100%	
Minor vandalism or graffiti repairs		X		100%
Vandalism or graffiti repairs (outside of minor – City to pay if value over \$1,000)	X		100%	
<b>Building Repair and Maintenance</b>				
Exterior roof repair & drainage systems	X		100%	
Building Foundations	X		100%	
Supporting Structures	X		100%	
Fire alarm, fire sprinkler system, emergency lighting	X		100%	
Fire extinguisher provision and testing	X		100%	
Intrusion alarm		X		100%
Heating, Ventilation & AC Systems	X		100%	
Water supply & building drainage	X		100%	
Plumbing fixtures (City to pay if value over \$10,000)		X		100%
Electrical services & equip. main building systems and supply	X		100%	
Exterior and interior finishes and woodworking (excluding fixtures and furnishings)	X		100%	
Interior Painting – supply of materials		X		100%
Interior Painting – labour		X		100%

MAINTENANCE ITEM	PARTY RESPONSIBLE		FINANCIAL RESPONSIBILITY	
	City	Licensee	City	Licensee
Property Insurance	X		100%	
Contents Insurance		X		100%
Electrical		X		100%
Natural Gas		X		100%
Potable Water	X		100%	
Irrigation /maintenance water usage	X		100%	
Sewer	X		100%	
Storm	X		100%	
Telephone Service		X		100%
Intrusion alarm callouts & monitoring fees		X		100%
Cable television		X		100%
Data (internet)		X		100%