

AGREEMENT
First Responder Training

THIS AGREEMENT, dated for reference the ____ day of _____ 202__,

BETWEEN:

CITY OF NANAIMO, a British Columbia local government having an address at 580
Fitzwilliam Street, Nanaimo, B.C. V9R 6E2

(the “**City**”)

AND: **LOCAL GOVERNMENT XYZ**, on behalf of its **FIRE DEPARTMENT**

Address

(the “**Local Government Fire Department**”)

WHEREAS:

- A. In July 1989 a curriculum and other materials (the “**First Responder Training Materials**”) were created by the Province of British Columbia (“**Province**”) to be used for the purposes of teaching and training qualified individuals who wish to be licensed as First Responders;
- B. The First Responder Training Materials were subsequently modified and supplemented by the Vancouver Island Emergency Response Academy (“**VIERA**”) to produce curriculum and materials (the “**Instructor/Evaluators Training Materials**”) for the purposes of teaching and training qualified individuals who wish to become Instructor/Evaluators;
- C. The Instructor/Evaluators Training Materials were approved by the Province for use in delivering the Instructor/Evaluators Training.
- D. By an agreement dated July 19, 2011, the City entered into a license agreement with the Province (the “**License Agreement**”) by which the Province licensed to the City the right to use, reproduce and distribute the First Responder Training Materials and the Instructor/Evaluators Training Materials for the purposes of teaching the Instructor/Evaluators Course to employees of local governments in British Columbia to enable such employees to teach the First Responder Course to other employees of the local government;
- E. The Local Government Fire Department wishes to have certain employees of its organization who have successfully completed the VIERA Instructor/Evaluators Course deliver the Initial Licensing First Responder Training to other employees of its organization to permit such other employees to become initially licensed as First Responders through the Emergency Medical Assistants Licensing Board (“**EMALB**”). Alternatively or in addition, the Local Government Fire Department wishes to have certain employees of its organization who are department Instructor/Evaluators deliver maintenance training

using the First Responder Training Materials to other employees of its organization to support such other employees to renew their license as a First Responder through EMALB;

- F. Council of the City has decided to use the expertise of contractors and members of its Nanaimo Fire Rescue Department, together with the Instructor/Evaluators Course Materials, to provide the Instructor/Evaluators Course to employees of other Local Governments; and
- G. The City has agreed to grant the Local Government Fire Department a license allowing the Local Government Fire Department's Employees who are VIERA qualified Instructor/Evaluators to use the Initial Licensing First Responder Course Materials to deliver the Initial Licensing First Responder Course to other employees of the Local Government Fire Department, all on the terms and conditions of this Agreement. In addition, the City has agreed to grant the Local Government Fire Department a license allowing the Local Government Fire Department's Employees who are department Instructor/Evaluators to use the First Responder Course Materials to deliver the maintenance training to other employees of the Local Government Fire Department, all on the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the Fees and other payments and promises of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the City and the Local Government Fire Department covenant and agree as follows:

Definitions

1. In this Agreement:
 - (a) **"Commencement Date"** means April 1st, 2021;
 - (b) **"User Fee"** has the meaning given in Section 6;
 - (c) **"EMALB"** has the meaning given in Recital E;
 - (d) **"Expiry Date"** means March 31st, 2022;
 - (e) **"First Responder Training Materials"** has the meaning given in Recital A;
 - (f) **"First Responder Training"** means training provided by Instructor/Evaluators to train First Responders;
 - (g) **"First Responder Program"** means the Local Government Fire Department's program of having Employees trained and licensed as First Responders in compliance with the requirements of VIERA and EMALB;
 - (h) **"First Responder"** means an Emergency Medical Assistant First Responder, as that term is defined in Emergency Medical Assistants Regulation under the *Emergency Health Services Act*;
 - (i) **"Instructor/Evaluators Training Materials"** has the meaning given in Recital B;

- (j) **“Instructor/Evaluators Course”** means, collectively, the training offered by the City to initially train, or subsequently recertify, an Instructor/Evaluator, as detailed in Schedule “A”
- (k) **“Instructor/Evaluators”** means those Employees of the Local Government Fire Department who have successfully completed the Instructor/Evaluators Course, and recertification thereof as required, and who are certified to provide the First Responder Training and evaluate the First Responder Program;
- (l) **“License Agreement”** has the meaning given in Recital D;
- (m) **“Materials Costs”** has the meaning given in Section 8;
- (n) **“Employees”** means the employees, on-calls or volunteers of the Local Government Fire Department who undertake First Responder Training, and **“Employee”** means any one of these employees, on-calls or volunteers;
- (o) **“Term”** has the meaning given in Section 3; and
- (p) **“VIERA”** has the meaning given in Recital B.

Course Licence

2. The City hereby grants to the Local Government Fire Department license to use, reproduce and distribute the First Responder Training Materials (with the exception of reproducing and distributing the VIERA First Responder Manual) and permit the Instructor/Evaluators to provide the First Responder Training to employees of the Local Government Fire Department during the Term, all on the terms and conditions provided in this Agreement.

Term of Agreement

3. Subject to Section 5, the term of this Agreement commences on the Commencement Date and terminates on the Expiry Date (the **“Term”**), or such earlier or later date provided for in this Agreement. Upon the expiry or earlier termination of this Agreement, the Agreement will be at an end and of no further force or effect, save and except as expressly set out herein.

Renewal of Term

4. Subject to Section 5, the Term may be renewed by written agreement of the parties, for consecutive one-year terms, on such terms as the parties agree to in writing, on the same terms and conditions as herein provided, save and except that the City may, at its sole discretion, increase the User Fees for the renewal term by an amount not exceeding 5% of the full annual fee payable by the Local Government Fire Department in the immediately preceding year of the current Term, or renewal term, as the case may be.

Effect of Licence Agreement

5. Notwithstanding Section 3 and Section 4, this Agreement will terminate not later than one day prior to the expiration of the Licence Agreement.

Fees and Costs

6. The Local Government Fire Department shall pay the City, an annual user fee ("**User Fee**") for each year of the Term for each First Responder up to and not more than \$450, in accordance with the fee set out in Schedule "A"
7. The Local Government Fire Department shall, upon the parties entering into this Agreement, submit payment of the User Fee payable for the Term. Further, the Local Government Fire Department shall pay the User Fee payable for any renewal term, upon the parties entering into the written agreement for such renewal, as the case may be.
8. The Local Government Fire Department shall purchase VIERA First Responder Manuals, each at the cost of \$95.00 (plus GST), (the "**Materials Costs**"), which cost may be revised by the City, from time to time, at the City's sole discretion, provided however, that the price shall not be increased by more than 10% from one calendar year to the next during the Term.

Records

9. The Local Government Fire Department shall provide to the EMALB, and a copy to VIERA, not later than two (2) days after the completion of a First Responder Initial Licensing Course, a list of the results for every Employee, in a form referenced "Form HLTH 3737" or otherwise prescribed by the EMALB.
10. Upon receiving the above 9a, the City shall provide to the Local Government Fire Department certificates of completion for each person who successfully completed the Initial Licensing Program and who is listed on the Form HLTH 3737
11. The Local Government Fire Department, on or before each anniversary of the Commencement Date, shall provide to the City, a record of all Employees with their EMA licence number. This record will be maintained by the City.
12. Each Employee that has successfully completed the VIERA Initial License Training, and for whom the required records and fees have been submitted, will be entitled to apply for license from EMALB for First Responder.

Obligations of the Local Government Fire Department

13. The Local Government Fire Department hereby covenants to the City that it will:
 - (a) only permit Instructors/Evaluators shall be permitted to deliver the First Responder Training to other employees of the Local Government Fire Department;

- (b) only Instructors/Evaluators that are lawful employees of the Local Government Fire Department to deliver the First Responder Training; and
- (c) only permit Instructors/Evaluators that are validly certified by VIERA to deliver the Initial Licensing First Responder Training.

Termination of Agreement

14. This Agreement shall be terminated as follows:
- (a) by the City, effective upon giving written notice of termination delivered to the Local Government Fire Department, if payment of the User Fee owing by the Local Government Fire Department to the City are in arrears and remains unpaid for a period of thirty (30) days after the same is due;
 - (b) by the City, effective upon giving written notice of termination, if there is a material breach of the terms of this Agreement by the Local Government Fire Department or the Instructor/Evaluators (other than non-payment as provided above), which material breach is not remedied to the City's satisfaction, acting reasonably, within 7 days of the Local Government Fire Department receiving written notice from the City to remedy such material breach;
 - (c) by either party, upon at least sixty (60) days written notice given by the terminating party of its decision to terminate this Agreement;
 - (d) by mutual written agreement of the parties;
 - (e) subject to Section 4, upon expiration of the Term, without further notice; or
 - (f) upon the expiration of the Licence Agreement.
15. Any User Fee owing by the Local Government Fire Department shall be payable within thirty (30) days of the date of termination. All User Fee paid prior to the termination of the Agreement shall be non-refundable.

Update of Materials

16. If the Local Government Fire Department considers that a change or modification to the First Responder Training Materials is required, then such change or modification may be brought to the attention of the City so the City may (but is not obligated to) consider the suggested change or modifications for making revisions to the First Responder Training Materials.
17. The Local Government Fire Department shall not make any change or modification to the Initial Licensing First Responder Training Materials without the prior written approval of the City of Nanaimo, the Emergency Medical Assistants Licensing Board and the British Columbia Emergency Health Services.

18. During the Term, and any renewal term, the City will inform the Local Government Fire Department of any relevant information or changes regarding the First Responder Training Materials.

Ownership of Materials

19. The Local Government Fire Department hereby acknowledges and agrees that all intellectual property rights and copyright in and to the First Responder Training Materials remain at all times, with the City.

Reproduction of First Responder Training Materials

20. The Local Government Fire Department is prohibited from reproducing the First Responder Training Materials in any form whatsoever, including without limiting, photocopy, digital and electronic copying, except for the sole and limited purpose of permitting the Instructor/Evaluators to deliver the First Responder Training to Employees of the Local Government Fire Department.

Cessation of Teaching and Evaluation

21. Upon termination of this Agreement, the Local Government Fire Department must cease allowing the Instructor/Evaluators to:
 - (a) use the First Responder Training Materials for teaching the First Responder Training;
 - (b) teach the First Responder Training to Employees or others; and
 - (c) evaluate the performance of the First Responder Program.

Ongoing Evaluation

22. The City, by its authorized representatives, may, on reasonable notice to the Local Government Fire Department, conduct a performance evaluation of the Instructor/Evaluators' delivery of the Initial Licensing First Responder Training Materials and/or evaluation of the First Responder Program to ensure the Local Government Fire Department's compliance with all terms of this Agreement.

Disclaimer and Release of Liability

23. The Local Government Fire Department hereby acknowledges and agrees that the City provides the Instructor/Evaluator Course and the First Responder Training Materials without any warranties or representations, express or implied, and that the City expressly disclaims any warranties, including but not limited to those regarding the use, application, operation, functionality, and fitness of the Instructor/Evaluator Course and the First Responder Training Materials for a particular purpose.

24. In no event will the City be liable to the Local Government Fire Department, to the Employee, to the Instructor/Evaluators or to any other employee of the Local Government Fire Department or third party for any damages or losses of any kind in connection with the delivery or use of the First Responder Training or the First Responder Training Materials or this Agreement, including without limitation, direct, special, indirect, consequential, punitive or exemplary damages, and damages for lost profits or lost savings.

Indemnity

25. The Local Government Fire Department hereby agrees to release, indemnify and save harmless the City and its elected and appointed officials, officers, servants, employees, consultants, agents, contractors, invitees, instructors and evaluators (collectively, the “**City Representatives**”) from and against all liabilities, losses, damages, actions, suits, claims, causes of action, including actions of third parties, demands, costs, expenses, fines and liabilities of any nature whatsoever suffered or incurred, directly or indirectly, by the City out of or in connection with:
- (a) any breach or non-performance of the obligations of the Local Government Fire Department under this Agreement;
 - (b) any loss or damage to property or personal injury or bodily injury, including death, of any person as a consequence of any First Responder services provided by the Local Government Fire Department;
 - (c) any wrongful act or negligence of the Local Government Fire Department or those for whom it is responsible in law arising out of or in connection with:
 - (i) the First Responder Training Materials;
 - (ii) the Evaluator/Instructors use of information obtained from the First Responder Training or contained in the First Responder Training Materials; or
 - (iii) a breach or non-performance of this Agreement by the Local Government Fire Department;

This clause will survive the termination or expiration of this Agreement.

Insurance

26. The Local Government Fire Department must obtain and keep in force throughout the Term a policy of comprehensive general liability insurance providing coverage for all potential losses under this Agreement (including death, bodily injury, property loss, property damage, consequential and economic losses), in an amount of not less than Three Million (\$3,000,000.00) Dollars per occurrence, or such greater amount as the City may require from time to time, which policy names the City as an additional insured, a

term of which policy must be that it cannot be cancelled or altered without prior notice to the City, which policy waives all rights of subrogation, a copy of which policy (or certificate of insurance) must be delivered to the City at the time of execution of this Agreement and at other times required by the City.

Confidentiality

27. The Local Government Fire Department hereby acknowledges and agrees that all documents submitted to the City are subject to disclosure under the British Columbia *Freedom of Information and Protection of Privacy Act*. Any information the Local Government Fire Department considers confidential must be marked as so and will be subject to appropriate consideration as defined within the Act.

No Assignment

28. The Local Government Fire Department may not assign, either directly or indirectly, this Agreement or any right acquired by it under this Agreement.

Schedules

29. The Schedule(s) attached to this Agreement form an integral part of this Agreement as if set out in their entirety within the body of this Agreement.

Headings

30. The headings in this Agreement are inserted for reference and convenience only and must not be used to construe or interpret the provisions hereof.

Waiver

31. Waiver of any default by the Local Government Fire Department shall not be deemed to be a waiver of any subsequent default by the Local Government Fire Department. All waivers must be in writing.

No Other Agreements

32. This Agreement, executed and delivered by or on behalf of the City and the Local Government Fire Department, set forth the entire agreement between the parties concerning its particular subject matter and terminates and supersedes all other representations, warranties, promises, conditions, understandings and agreements, whether oral or written, express or implied, between the parties regarding its particular subject matter.

Modification

33. This Agreement may not be amended or revised except by the express written agreement by both parties to this Agreement.

Governing Law

34. This Agreement will be governed by and construed in accordance with the laws of British Columbia.

Time of Essence

35. Time is of the essence to this Agreement.

No Joint Venture

36. Nothing in this Agreement creates the relationship of principal and agent or of partnership, joint venture or business enterprise or entity between the parties or gives one party any power or authority over the other party.

Notices

37. Any notice which may be given pursuant to this Agreement must be in writing and either delivered by hand or sent by postage prepaid registered mail and addressed to the applicable party at its address set out above, or to such other address as the party may specify by notice in writing to the other in accordance with this section.
38. A notice will be deemed to be given on the day of delivery if delivered by hand or on the third day after the day of mailing if sent by registered mail, whether or not receipt of the mail is acknowledged by the recipient. In the event of any disruption of mail services, all notices must be delivered by hand rather than mailed.
39. All notices to the City must be addressed to the attention of the City's Corporate Officer.

Interpretation

40. Wherever the singular or masculine is used in this Agreement, the same is deemed to include the plural or the feminine or the body politic or corporate as the context requires.

Severance

41. If any section, subsection, sentence, clause or phrase in this Agreement is held to be invalid by the decision of a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of the Agreement.

Enurement

42. This Agreement shall ensure to the benefit of and be binding on the parties hereto and their respective successors, heirs, executors, administrators, and personal representatives.

No Public Law Duty

43. Wherever this Agreement creates a power or obligation of the City to make a decision or to exercise any contractual right or remedy, the City may do so in accordance with the provisions of this Agreement and no public law duty, whether arising from the principles of procedural fairness or the rules of natural justice, shall have any application.

Counterparts

44. This Agreement may be signed by the parties hereto in counterparts and by facsimile or pdf email transmission and each such counterpart, facsimile or pdf email transmission copy shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

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

CITY OF NANAIMO, by its authorized signatory(ies):

LOCAL GOVERNMENT XYZ, on behalf of its **FIRE DEPARTMENT**, by its authorized signatory(ies):

Tim Doyle

Fire Chief

City of Nanaimo

Schedule "A" - Course and Fees

A.1 First Responder Instructor/Evaluators Course

The VIERA First Responder Instructor/Evaluators Course provides certification to successful students as Instructor/Evaluators of the Initial Licensing Training Program for a period of three (3) years. The course comprises a 4-day workshop that explores new, enhanced First Responder concepts and supports the Instructor/Evaluator candidate by ensuring a firm grasp on the content in the new program and providing answers to the frequently asked questions from students;

A.2 The First Responder Instructor/Evaluators Recertification Course

The First Responder Instructor/Evaluators Recertification Course is required every three (3) years by Instructor/Evaluators who deliver the Initial Licensing First Responder Course. The course comprises an 8 hour interactive course designed to review and update First Responder Instructor/Evaluators so they can maintain a high level of requisite knowledge and skills, and maintain a high level of competence in instruction and evaluation.

A.3 User Fee comprises the following:

- i. for the Term:
 - a. \$20 plus GST per Employee up to a total of not more than \$450