

ATTACHMENT B
LICENCE OF USE - ROOM 6 BEBAN PARK SOCIAL CENTRE

LICENCE OF USE
ROOM 6 - BEBAN PARK SOCIAL CENTRE

THIS AGREEMENT made the _____ day of _____ 2024

BETWEEN:

CITY OF NANAIMO
455 Wallace Street
Nanaimo, BC V9R 5J6

(the "**City**")

OF THE FIRST PART

AND:

THE CENTRAL VANCOUVER ISLAND JAPANESE CANADIAN SOCIETY
P.O. Box 41052, RPO Woodgrove
Nanaimo, BC V9T 6M7

(the "**Licensee**")

OF THE SECOND PART

WHEREAS

- A. The City is the owner of in fee simple of lands commonly known as Beban Park situated at 2300 Bowen Road, Nanaimo, BC, legally described as Lot 1, Sections 19, 20 and 28, Range 7, Mountain District, Plan 27441 (the "**Land**");
- B. The City is the owner of a building situated on the Land commonly known as the Beban Park Social Centre which contains space known as Room 6, having an approximate area of 64 m² (the "**Licence Area**", Schedule A);
- C. The Licensee intends to complete renovations of the Licence Area (the "**Renovations**") in order to facilitate cultural activities and gatherings for the purpose of providing better exposure, understanding and appreciation of Japanese culture and heritage to others in the community and City is granting permission to complete the Renovations; and
- D. The Licensee wishes to license the Licence Area, and the City has agreed;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the costs of the Renovations, expected to be approximately TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000) and to be paid for

by the Licensee to the City, and in consideration of the premises and covenants and agreements contained in this agreement (the "**Agreement**"), the City and the Licensee covenant and agree with each other as follows:

1.0 CONDITIONS PRECEDENT

- 1.1 The obligation of the Licensee to proceed with this Agreement is subject to, on or before December 31, 2024, the Licensee receiving a grant from the Japanese Canadian Legacy Society in the amount of up to TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000).
- 1.2 The obligation of the City to proceed with this Agreement is subject to, on or before December 31, 2024, the Licensee providing funds of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000) to the City to utilize in funding the Renovations in which the City will project manage.
- 1.3 Should the condition precedent set out in section 1.1 not be satisfied or waived in writing by the Licensee, on or before the date specified in section 1.1, or should the condition precedent set out in sections 1.2 not be satisfied or waived in writing by the City on or before the applicable date set out in section 1.2, this Agreement shall be null and void.

2.0 USE & RIGHT TO OCCUPY

- 2.1 The City, subject to the performance and observance by the Licensee of the terms, conditions, covenants and agreements contained in this Agreement, and to earlier termination as provided in this Agreement, grants to the Licensee the non-exclusive right by way of licence, for the Licensee, its agents, employees, and invitees to use the Licence Area for up to twenty (20) hours per week for the purpose of operating/managing a cultural space and storage area on the Land as designated, and for no other purpose.
- 2.2 The Licensee must not engage in any activity that disturbs, annoys, or causes a nuisance to, occupiers of neighbouring properties or users of space on the Lands. Failure by the Licensee to correct infractions of this nature, after being provided reasonable notice to do so, will be considered a default of the Licensee's obligations under this Licence of Use.
- 2.3 This Agreement does not grant any interest in the land comprising the Licence Area to the Licensee.

3.0 RESERVATION OF RIGHTS

- 3.1 The City hereby reserves to itself, from the grant and the covenants made by it to the Licensee under section 2 above, the right for the City, its agents, employees, contractors and subcontractors to have full and complete access to the Land, including the Licence Area, to carry out any operations associated with the City's use of the Land.

4.0 TERM

- 4.1. The Term of the Licence granted under this Agreement is five (5) years, beginning the 1st day of January 2025 to the 31th day of December 2029, subject to earlier termination pursuant to the terms of this Agreement.
- 4.2. Provided the Licensee is not in default of its obligations under this Licence of Use, the Licensee may make up to three (3) written requests for renewal of this Agreement. The initial term, together with any terms of renewal, are referred to throughout this Agreement as the “**Term**”. Any request for renewal must be made no sooner than twelve (12) months and no later than three (3) months prior to the end of the Term. Upon receipt of a written request, the City shall renew this Agreement for an additional term of five (5) years, upon the same terms and conditions except for this right of renewal.

5.0 LICENCE FEE

- 5.1. In consideration of the right to use, granted under this Agreement, the Licensee must pay to the City the sum of ONE DOLLAR (\$1.00) plus applicable GST for the Term, payable upon execution of this Agreement, and payable upon acceptance of any renewal term pursuant to section 4 above.
- 5.2. The Licensee must pay the City an additional licence preparation fee of TWO HUNDRED FIFTY DOLLARS (\$250) plus applicable taxes upon execution of this original Agreement.

6.0 TAXES

- 6.1. The Licensee must pay all taxes, rates, duties and assessments whatsoever, whether federal, provincial, municipal or otherwise charged upon the Licensee or the City as a result of the Licensee’s occupation of or use of the Licence Area. Without in any way restricting the generality of the foregoing, the Licensee must pay to the City (as applicable) taxes on the licence fee.

7.0 SCHEDULING AND REVENUE

- 7.1. The City will be responsible for coordinating and managing all bookings and use of the Licence Area, making reasonable efforts to provide priority to the Licensee.
- 7.2. The City will retain all revenues associated with use of the Licence Area.

8.0 CONSTRUCTION

- 8.1. The Licensee must not construct or place any buildings or structures or make any improvements on the Licence Area without the prior written approval of the City.

9.0 INSURANCE

- 9.1.
 - (a) The Licensee must take out and maintain during the Term a policy of comprehensive general liability insurance against claims for bodily injury, death or property damage arising out of the

use of the premises by the Licensee in the amount of not less than TWO MILLION DOLLARS (\$2,000,000) per single occurrence or such greater amount as the City may from time to time designate, naming the City as an additional insured party thereto and must provide the City with a certified copy of such policy or policies.

- (b) All policies of insurance must contain a clause requiring the insurer not to cancel or change the insurance without first giving the City thirty days prior written notice.
- (c) If the Licensee 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 Licensee must pay to the City as additional licence fees the amount of the premium immediately on demand.
- (d) If both the City and the Licensee have claims to be indemnified under any insurance required by this Agreement, the indemnity must 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 Licensee.
- (e) The deductible on the policy of insurance must not be more than FIVE THOUSAND DOLLARS (\$5,000).
- (f) The City will not be held responsible for any damage or loss regarding the Licensee's chattels. It is recommended that the Licensee maintain insurance for potential damage or loss of the Licensee's property due to theft, water ingress, water escape, fire, etc.

10.0 INDEMNIFICATION

- 10.1. The Licensee releases and must indemnify and save harmless the City, its elected officials, appointed officers, employees and agents from and against all lawsuits, damages, costs, expenses, liability or fees (including fees of solicitors on a solicitor and own client basis) which the Licensee or any of them or anyone else may incur, suffer or allege by reason of the use of the Licence Area by the Licensee or by any person or the carrying on upon the Licence Area of any activity in relation to the Licensee's use of the Licence Area.

11.0 NOTICES

- 11.1. Each notice sent pursuant to this Agreement ("Notice") shall be in writing and shall be sent to the relevant party at the relevant address or e-mail address set out below. Each such Notice may be sent only by registered Canada Post mail or by e-mail.
- 11.2. The contact information for the parties are:

City of Nanaimo	The Central Vancouver Island Japanese Canadian Society
455 Wallace Street Nanaimo, BC V9R 5J6 <u>Attention: General Manager, Parks Recreation & Culture</u> Email: realestate@nanaimo.ca	 <u>Attention:</u> Email:

- 11.3. Each Notice sent by e-mail 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 within three business days, must be immediately followed by a true copy of such Notice, including all addressing and transmission details by registered Canada Post mail.
- 11.4. Subject to section 11.5, each Notice shall be deemed to have been given or made at the following times:
- i. if sent by registered mail, seven (7) days following the date of such mailing by sender; or
 - ii. if sent by e-mail, on the date the e-mail is sent by the sender.
- 11.5. If registered mail service or e-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.
- 11.6. Each party shall provide Notice to the other party of any change of address, or e-mail address, within a reasonable time of such change.

12.0 TERMINATION

- 12.1. If the Licensee is in default on the payment of licence fees, or the payment of any other sum payable under this Agreement, or is otherwise in breach of this Agreement, and if the default continues for a period greater than fourteen (14) days after the giving of notice in writing by the City to the Licensee, then the City may immediately terminate this Agreement and reenter the Licence Area and the rights of the Licensee with respect to the Licence Area shall thereupon lapse and be absolutely forfeited.
- 12.2. Either party may, upon thirty (30) days written notice to the other party, terminate this Agreement.

13.0 FORFEITURE

- 13.1. The City, by waiving or neglecting to enforce the right to forfeiture of this Agreement or the right of reentry upon breach of this Agreement, does not waive the City's rights upon any subsequent breach of the same or any other provision of this Agreement.

14.0 FIXTURES

- 14.1. In the event that the Licensee requests early termination of the Agreement, all buildings, structures or improvements constructed on the Licence Area by the Licensee will, at the termination of the Agreement, become the sole property of the City at no cost to the City.

15.0 REPAIRS AND MAINTENANCE

- 15.1. The Licensee shall give immediate notice to the City of any defect in the Licence Area.
- 15.2. The City shall be responsible for the repair and maintenance of the major components of the Licence Area (see Maintenance and Custodial Responsibilities, Schedule B). In performing repairs or

maintenance, the City may bring and leave upon the Licence Area the necessary materials, tools and equipment, and the City is not liable to the Licensee for any inconvenience, annoyance, loss of business or other injuries suffered by the Licensee by reason of the City effecting the repairs or maintenance.

15.3 The Licensee will be responsible for all maintenance and repair of the improvements made during the Renovations.

15.4 The Licensee must ensure that the Licence Area is clean and litter-free after every use of the Licence Area.

16.0 REMEDIAL ACTION

16.1. If the Licensee fails to do anything required of the Licensee under this Agreement (the "**Licensee Requirement**"), the City may fulfill or complete the Licensee Requirement at the cost of the Licensee and may, if necessary, by its agents, officers, employees or contractors enter onto the Land and Licence Area to fulfill and complete all or part of the Licensee Requirement as the City determines in its sole discretion. The Licensee releases the City, its elected officials, appointed officers, employees and agents from, and waives any claim, right, remedy, action, cause of action, loss, damage, expense, fee or liability to which the Licensee may have, against any or all of them in respect of an act of the City under this section or section 13 except insofar as such claim, right, remedy, action, cause of action, loss, damage, expense, fee or liability arises from the negligence of the City, its elected officials and appointed officers, employees, agents or contractors.

17.0 REGULATIONS

17.1. The Licensee must:

- (a) comply promptly at its 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 City or the Licensee; and
- (b) indemnify the City from all lawsuits, damages, loss, costs or expenses that the City may incur by reason of non-compliance by the Licensee with legal requirements or by reason of any defect in the Licence Area or any injury to any person or damage to any personal property brought on to the Licence Area. The Licensee is responsible for any damage to the Licence Area occurring while the Licensee is exercising its rights under this Agreement.

18.0 NO COMPENSATION

18.1. The Licensee is not entitled to compensation for any loss, including economic loss, or injurious affection or disturbance resulting in any way from the termination of this Agreement or the loss of the Licensee's interest in any building, structure or improvement built or placed on the Licence Area.

19.0 MISCELLANEOUS

19.1. The Licensee warrants and represents that it has authority to enter into this Agreement, has taken all corporate steps necessary to authorize this Agreement and to authorize the execution of this Agreement by the person signing it. The Licence is personal to the Licensee and the Licensee may not assign its interest to any other person without the written consent of the City, which consent may be withheld by the City in its sole discretion.

20.0 INTERPRETATION

- (a) 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.
- (b) 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.
- (c) This Agreement shall endure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators and permitted assignees.
- (d) This Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- (e) All provisions of this Agreement shall be construed as covenants and agreements as though the word importing covenants and agreements were used in each separate paragraph.
- (f) A provision in this Agreement granting the City a right of approval must be interpreted as granting a free and unrestricted right to be exercised by the City in its discretion.
- (g) This is the entire agreement between the parties.

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

CITY OF NANAIMO

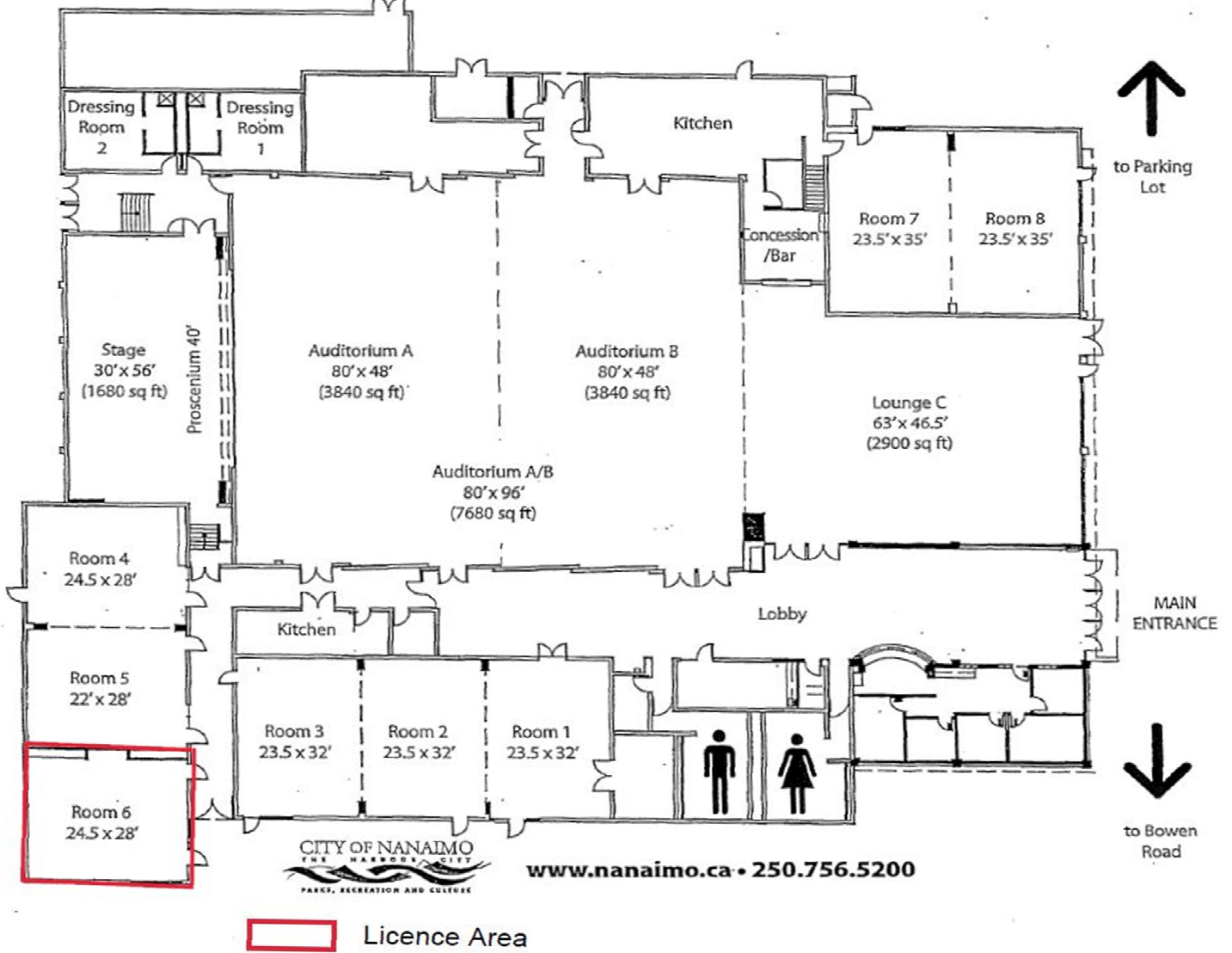
by its authorized signatory(ies)

THE CENTRAL VANCOUVER ISLAND JAPANESE CANADIAN SOCIETY

by its authorized signatory(ies)

Schedule "A"
Licence Area

BEBAN PARK SOCIAL CENTRE
2300 Bowen Road, Nanaimo



Schedule "B"
Maintenance and Custodial Responsibilities

Maintenance Item	Party Responsible		Financial Responsibility	
	City	Licensee	City	Licensee
Building Repair and Maintenance				
Roof repair	X		100%	
Roof drainage systems	X		100%	
Foundations	X		100%	
Supporting structures	X		100%	
Fire alarm & fire sprinkler system - repair & maintenance	X		100%	
Fire alarm/sprinklers/emerg. lighting – testing & inspections	X		100%	
Fire extinguisher provision and testing	X		100%	
Intrusion alarm (repair & maintenance)		X		100%
Intrusion monitoring fees		X		100%
Alarm systems telephone		X		100%
Heating, Ventilation & A/C systems	X		100%	
Plumbing fixtures	X		100%	
Plumbing equipment - main building systems and supply	X		100%	
Electrical fixtures	X		100%	
Electrical equipment - main building systems and supply	X		100%	
Extra locks and keys		X		100%
Exterior and Interior finishes and wood working		X		100%
Vandalism, glass replacement or graffiti repairs	X		100%	
Custodial Services				
Daily/Weekly/Monthly Cleaning		X		100%
Removal of garbage		X		100%
Utilities				
Electrical	X		100%	
Gas	X		100%	
Water	X		100%	
Sewer	X		100%	
Garbage collection	X		100%	
Telephones		X		100%
Cable television		X		100%
Data (Internet)		X		100%