



THIS AGREEMENT is made under section 62 of the *Transportation Act* and is dated for reference December 2, 2019.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, as  
represented by the minister responsible for the *Transportation Act*

(the "Province")

AND

**REGIONAL DISTRICT OF NANAIMO**

(the "Licensee")

**WHEREAS:**

- A. The Land is a provincial public highway (as defined in the *Transportation Act*) and, in accordance with section 58 of the *Transportation Act*, the BCTFA holds all of the Province's right and title in and to the soil and freehold of the Land.
- B. The Province may, pursuant to subsections 58(3) and 62(1) of the *Transportation Act* authorize any person to use or occupy a provincial public highway.
- C. The parties entered into a Memorandum of Understanding which is dated for reference August 1, 2019, pursuant to which this Agreement is issued to the Licensee, a copy of which is attached as Schedule "C" to this Agreement.
- C. The Licensee wishes to use and occupy the Land for a recreational trail (the "Trail") and the Province has agreed to permit it to do so in accordance with the terms and conditions of this Agreement.

For valuable consideration, the parties agree as follows:

## ARTICLE 1 - DEFINITIONS

1.1 In this Agreement,

**"Agreement"** means this licence of occupation;

**"BCTFA"** means BC Transportation Financing Authority, a corporation continued under the  
*Transportation Act*;

**"Commencement Date"** means January 1, 2020;

**"Contaminants"** means any chemicals, materials or substances regulated under Environmental Laws or which cause all or any part of the Land or any user or occupant of the Land to be in violation of any Environmental Laws;

**"Environmental Claims"** means any and all enforcement, clean-up, removal, remedial, or other governmental or regulatory actions pursuant to any Environmental Laws;

**"Environmental Laws"** means any local, provincial or federal laws, rules, ordinances, regulations, orders or other edicts having the force of law relating to the environment or environmental conditions on, under or about the Land including, without limitation, soil, groundwater, and indoor and ambient air conditions;

**"Fee"** means the fee set out in Article 3;

**"Improvements"** includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land,

by the Licensee, or forming part of the Trail or facilitating the use of the Land for the Trail, including geotechnical stability, and riparian and stormwater management works;

**"Land"** means the road shown in bold on the attached Schedule "A" to this Agreement;

**"Permitted Use"** means construction and operation of a regional public trail, including use by the public thereof, but excluding the use of motorized vehicles except for the purposes of construction and maintenance;

**"Realty Taxes"** means all taxes, rates, levies, duties, charges and assessments lawfully levied or charged, at any time, by any competent governmental authority which relate to the Land, the Improvements or both of them;

**"Term"** means the period of time set out in section 2.2; and

**"Trail Management Plan"** means the management plan prepared by the Licensee pursuant to section 4.1 (d) and accepted by the Province, and includes all amendments to and replacements of that plan, a copy of which is the attached Schedule "B" to this Agreement;

## ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, the Province grants the Licensee a licence of occupation over the Land for the Permitted Use and for no other purpose unless agreed to in writing by the Province and the Licensee acknowledges that this Agreement does not grant it the exclusive use and occupancy of the Land.
- 2.2 The term of this Agreement commences on the Commencement Date and terminates on December 31, 2039, or such earlier date provided for in this Agreement.
- 2.3 This agreement may be renewed and the Term extended by agreement between parties. At the time of any such renewal, the parties will review the terms of this Agreement and may agree to amend its provisions.
- 2.4 If, after termination of this Agreement, the Province permits the Licensee to remain in possession of the Land, the Licensee will be a monthly licensee subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

## ARTICLE 3 - FEE

- 3.1 The Licensee will pay to the BCTFA **\$250.00** plus GST (equalling **\$262.50**) payable in advance on the Commencement Date together with the tax imposed under Part IX of the *Excise Tax Act* (Canada) which is

payable on that amount.

#### ARTICLE 4 - COVENANTS

##### 4.1 The Licensee must

- (a) pay, when due,
  - (i) the Fee to the Province at the address set out in Article 10,
  - (ii) the Realty Taxes, and
  - (iii) all charges for electricity, gas, water and other utilities supplied to the Land;
- (b) deliver to the Province, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by it under this Agreement;
- (c) observe, abide by and comply with
  - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Land and the Improvements, or their use and occupation, and
  - (ii) the provisions of this Agreement;
- (d) prepare a Trail Management Plan in consultation with the Province, and revise and update it as required in consultation with the Province. The Licensee will complete the first Trail Management Plan before the first anniversary of the Commencement Date;
- (e) keep the Land and the Improvements in a safe, clean and sanitary condition, including regular inspection of the Trail and Improvements, litter removal, brush removal, signage, monitoring of trail conditions, trail safety and communications satisfactory to the Province, and at its written request, make the Land and the Improvements safe, clean and sanitary;
- (f) enforce local government by-laws as they relate to subsection 2.1, and as required by the Licensee to ensure the safety of the general public and Improvements;
- (g) deliver to the Province copies of all significant inspection reports received by the Licensee within 60 days of being finalized, with respect to the Trail, Land or Improvements;
- (h) the Province and Licensee may, upon mutual agreement, conduct a joint inspection on the Trail, Land, and Improvements, with no set recurring interval during the Term;
- (i) not commit any wilful or voluntary waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance or annoyance to an owner or occupier of land in the vicinity of the Land;
- (j) use and occupy the Land only in accordance with and for the purposes set out in section 2.1;
- (k) not construct, place or affix any Improvement on or to the Land except as necessary for the purposes set out in section 2.1;
- (l) be responsible at its cost for the construction or improvement of any Improvements;

- (m) consult the Province regarding the construction or improvement of any major infrastructure projects relating to the Trail;
- (n) notify the Province when encroachments from adjacent land uses or activities are identified. The Licensee will take appropriate actions towards resolving encroachments and will address any ongoing encroachment problems in the Trail Management Plan;
- (o) pay all accounts and expenses as they become due for labour or services performed on, or materials supplied to, the Land except for money that the Licensee is required to hold back under the Builders Lien Act;
- (p) cut or remove timber on or from the Land
  - (i) only to address an unsafe condition or for the purposes set out in section 2.1, and
  - (ii) in accordance with an agreement issued to it under the *Forest Act* to permit the harvest of Crown timber on the Land unless the minister responsible for the *Forest Act* permits the harvest of timber on the Land without the issuance of an agreement under the *Forest Act*;
- (q) permit the Province, or its authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements;
- (r) The Licensee will, at its sole cost and expense:
  - (i) comply with all Environmental Laws;
  - (ii) not deposit or release or permit the deposit or release of any Contaminants on, under, about or from the Land or Improvements;
  - (iii) not store or permit to be stored on or in the Land or Improvements anything that is of a dangerous, hazardous, inflammable or explosive nature or anything that would have the effect of increasing insurance costs or leading to the cancellation of any insurance with respect to the Land or Improvements;
  - (iv) after the commencement of the Term, and immediately on being made aware, notify the Province in writing, of the existence of any Environmental Claim or any Contaminants on the Land or Improvements, or any discharges, emissions, migration, or spill of Contaminants on, under, about or from the Land or Improvements;
  - (v) promptly provide the Province with copies of all notices relating to the Land or Improvements, issued pursuant to any Environmental Laws and evidence the Licensee is responding to such notices in a responsible manner if they concern matters which are the responsibility or obligation of the Licensee hereunder;
  - (vi) remove any and all Contaminants from the Land or Improvements deposited or released by the Licensee or any person entering the Land or Improvements pursuant to the Licensee's rights hereunder, and immediately repair all damage to the Land or Improvements caused by such removal;
- (s) indemnify and save the BCTFA and Her Majesty the Queen in Right of the Province and their respective servants, employees and agents (including the BCTFA and its officers, directors, employees, servants and agents) harmless against all claims, demands, actions, causes of action, losses, damages, fines, penalties, costs, expenses and liabilities, including fees of solicitors and other professional advisors, arising out of or in connection with

- (i) the Licensee's breach, violation or nonperformance of a provision of this Agreement,
- (ii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of its entry upon, use or occupation of the Land, and
- (iii) without limiting paragraph (ii), any environmental liability on or off the Land related to its entry upon, use or occupation of the Land, including, without limitation, any contamination or any liability related to any toxic, hazardous, dangerous or potentially dangerous substances migrating from the Land,

and the amount of all such losses, damages, fines, penalties, costs, expenses and liabilities will be payable to the Province immediately upon demand. This indemnity will survive the expiry or earlier termination of this Agreement;

- (t) release the Province and its servants, employees and agents (including the BCTFA and its officers, directors, employees, servants and agents) from and against all claims, demands, actions, causes of action, losses, damages, fines, penalties, costs, expenses and liabilities arising out of or in connection with any environmental liability on or off the Land related to its entry upon, use or occupation of the Land, including, without limitation, any contamination or any liability related to any toxic, hazardous, dangerous or potentially dangerous substances migrating from the Land. This release will survive the expiry or earlier termination of this Agreement; and
- (u) on the termination of this Agreement,
  - (i) peaceably quit and deliver to the Province possession of the Land and, subject to paragraphs (ii) and (iii), the Improvements in a safe, clean and sanitary condition (including, without limitation, free of any environmental contamination related to its entry upon, use or occupation of the Land),
  - (ii) within 60 days, remove from the Land any Improvement the Licensee wants to remove, if the Improvement was placed on or made to the Land by or for it, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building or part of the Land,
  - (iii) remove from the Land any Improvement that was placed on or made to the Land by or for the Licensee, and that the Province, in writing, directs or permits it to remove; and
  - (iv) restore the surface of the Land as nearly as may reasonably be possible to the same condition as it was on the Commencement Date, to the Province's satisfaction, but if the Licensee is not directed or permitted to remove an Improvement under paragraph (ii) or (iii), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and all of its right, interest and estate in the Land will be absolutely forfeited to the Province, and to the extent necessary, this covenant will survive the termination of this Agreement.

4.2 The Licensee will not permit any person to do anything it is restricted from doing under this Article.

## **ARTICLE 5 - LIMITATIONS**

5.1 The Licensee agrees with the Province that

- (a) this Agreement does not grant it the exclusive use and occupancy of the land;

- (b) it has inspected the Land and Improvements and fully accepts the Land and Improvements in the condition and state they are in on the Commencement Date;
- (c) it has conducted an investigation of the condition, environmental or otherwise, of the Land;
- (d) the Land is being licensed to it on an “as is, where is” basis;
- (e) the Province is under no obligation to provide access or services to the Land or to maintain or improve existing access roads;
- (f) the Province may, without the Licensee’s consent, make other dispositions of interests over the Land, and the Licensee acknowledges and agrees with the following;
  - (i) the Licensee's rights and this Agreement are subject to the rights and interest of all persons who are not a party hereto with interest in all or any part of the Land on or after the Commencement Date, provided that if the actions of such persons pursuant to such interests have a material and adverse impact on the Licensee's use of the Land, and the consent of the Province is required under the relevant interest to permit such actions, then the Province will consult with the Licensee before consenting to such actions;
  - (ii) in connection with such dispositions of interests, the Province may itself, or require the Licensee to, temporarily close the whole or any part of the Land, acting reasonably. The Province will give the Licensee no less than 30 days’ notice of its intent to grant such interest and provide the Licensee an opportunity to consult with the Province as to the method of installation of such facilities, the timing of such installation, and the period of closure of all or any portion of the Land required for such installation;
  - (iii) the Licensee will make no claim for compensation, in damages or otherwise, in respect of a disposition made by the Province under this section;
  - (iv) all of the Licensee's costs and expenses, direct or indirect, that arise out of any interference with its rights under this Agreement as a result of a disposition made by the Province under this section will be borne solely by the Licensee; and
  - (v) the Licensee releases and discharges the Province from all claims arising directly or indirectly out of any interference with the Licensee’s rights under this Agreement as a result of a disposition made by the Province under this section;
- (g) the Licensee will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (h) any interest the Licensee may have in the Improvements ceases to exist and becomes the Province's property upon termination of this Agreement, except where an Improvement may be removed under this Agreement in which case any interest the Licensee may have in that Improvement ceases to exist and becomes the Province's property if the Improvement is not removed from the Land within the time period set out in paragraph 4.1 or the time period provided for in the direction or permission given under paragraph 4.1; and
- (i) if, after the termination of this Agreement, the Province permits the Licensee to remain in possession of the Land and the Province accepts money from it in respect of such possession, a tenancy from year to year will not be created by implication of law and the Licensee will be deemed to be a monthly tenant only subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary;

- (j) the Licensee will make no claim for compensation, in damages or otherwise, if the Land becomes unsuitable for the purposes set out in this Agreement.

## ARTICLE 6 - INSURANCE

6.1 The Licensee must, without limiting its obligations or liabilities under this Agreement, at its expense, maintain during the Term

- (a) Commercial General Liability Insurance including non-owned automobile and contractual liability insurance with inclusive limits of not less than \$5,000,000.00 for bodily injury, death or property damage arising from any one accident or occurrence which insurance policy will indemnify the named insureds under the policy for all sums which the insured may become liable to pay or pays for bodily injury, death or property damage or for loss of use, arising out of or resulting from the work or operations of the parties under this Agreement which must be endorsed as follows:

"It is understood and agreed that Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure (the "Province"), together with the employees, agents (including the BC Transportation Financing Authority and its officers, directors, employees, servants and agents), and servants of the Province (the "Additional Named Insureds"), are each added as an Additional Named Insured, in respect of liability arising from the work or operations of the insured and each Additional Named Insured, in connection with contracts entered into between the insured and the Additional Named Insured.

The Insurance as is afforded by this policy will apply in the same manner and to the same extent as though a separate policy had been issued to each insured. Any breach of a condition of the policy by any insured will not affect the protection given by this policy to any other insured. The inclusion herein of more than one insured will not operate to increase the limit of liability under this policy.";

- (b) if vessels are owned, leased or rented or used in the performance of this Agreement by the Licensee and are not covered under the general liability policy, it will provide Protection and Indemnity insurance with limits of not less than \$5,000,000 for such vessels and will include four-fourths collision liability insurance,
- (c) if any licensed vehicles are owned, leased, rented or used by the Licensee in the performance of this Agreement, Automobile Liability Coverage with inclusive limits of not less than \$5,000,000.00 providing third party liability and accident benefits insurance for all such vehicles, and
- (d) if aircraft (including helicopters) are owned, rented, leased or used by the Licensee in the performance of this Agreement, third party liability coverage with inclusive limits of not less than \$5,000,000.00;

which, in the case of the policies of insurance described in subsections (a), (b), (c) and (d), must include endorsements or provisions that they may not be cancelled, reduced, altered or materially changed without the insurer or insurers giving not less than 30 days' prior written notice to the Province by registered mail, which endorsements must be in terms comparable to those normally obtainable from insurers in the Province of British Columbia or Canada issuing comparable policies.

- 6.2 All insurance required to be maintained by the Licensee under this Agreement must be placed with insurers licensed to transact business in British Columbia or Canada and, the Licensee must, under the insurance required to be maintained by it under this Agreement,
- (a) pay all deductibles;
  - (b) not exclude hazardous operations such as excavation, pile driving, shoring, blasting, under-pinning or demolition work or any other operation or work from insurance coverage;
  - (c) deliver to the Province, on the Commencement Date, on the renewal of the insurance and at other times required by the Province,
    - (i) for all policies except Automobile Liability Insurance, a completed and executed certificate of insurance in a form acceptable to the Province (as of the Commencement Date, such form is entitled "Certificate of Insurance" and is numbered H-111), and
    - (ii) evidence of Automobile Liability Insurance in the form of a duly executed Insurance Corporation of British Columbia APV47 or APV250 form or a copy of the vehicle registration/insurance certificate;
  - (d) on the Province's request, deliver to the Province evidence that the insurance remains in force and effect by way of the originals or certified copies of all current insurance policies and endorsements.
- 6.3 The Licensee acknowledges and agrees that, in the event of any third party loss or damage or any physical loss or damage to the Land (and its associated apparatus, improvements or fixtures), the settlement or payment by the insurer of the subsequent claim will be made without the right of subrogation against the Province or the BCTFA or those for whom the Province and the BCTFA are legally obligated to indemnify against such claims.

## ARTICLE 7 - ASSIGNMENT

- 7.1 The Licensee must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without the Province's prior written consent, which consent the Province may withhold in its sole discretion.
- 7.2 For the purpose of section 7.1, if the Licensee is a corporation, a change in control (as that term is defined in subsection 2(3) of the *Business Corporations Act*) of the Licensee will be deemed to be a transfer of this Agreement.
- 7.3 Section 7.2 does not apply to a corporation if the shares of the corporation which carry votes for the election of the directors of the corporation trade on a stock exchange located in Canada.
- 7.4 Prior to considering a request for consent under section 7.1, the Province may require the Licensee to meet certain conditions, including without limitation, that it provides to the Province a "site profile", "preliminary site investigation" or "detailed site investigation" (as those terms are defined in the *Environmental Management Act*) for the Land and or other similar type of investigation of the Land.

## ARTICLE 8 - SUSPENSION, REALIGNMENT AND CANCELLATION

8.1 At any time the Province believes, in its sole discretion, that the use or occupation of the Land or Improvements by the Licensee or any third party presents a potential or actual hazard to the public, the Land, or the Improvements, then the Province may suspend the rights granted to the Licensee hereunder for any reasonable period of time determined by the Province, without abatement of any costs, expenses or other monies payable by the Licensee hereunder, and require the Licensee to remedy the hazard or perform the remedy itself in which case the Licensee will repay to the Province on demand for all costs and expenses in connection therewith or incidental thereto. Such suspension and remedy may be effective in relation to all, or any portion of, the Land and Improvements, in the sole discretion of the Province.

8.2 If the Licensee

- (a) defaults in the payment of any money payable by it under this Agreement, and its default or failure continues for 10 days after the Province gives written notice of the default or failure to the Licensee, or
- (b) fails to observe, abide by and comply with the provisions of this Agreement, and its default or failure continues for 60 days after the Province gives written notice of the default or failure to the Licensee,

then the Province may, at its option, do any one or more of the following:

- (c) make any repairs or observe and perform the Licensee's obligations it has failed to observe and perform, in which case the Licensee will repay to the Province on demand for all costs and expenses in connection therewith or incidental thereto; or
- (d) suspend the rights granted to the Licensee hereunder for a stated period(s) of time, and terminate this Agreement any time thereafter; or
- (e) terminate this Agreement; and

such suspension or termination may be effective in relation to all, or any portion of, the Land and Improvements, in the sole discretion of the Province. In the case of emergency, the Province may exercise the remedies in 8.2(c) and (d) immediately and without prior notice to the Licensee.

8.3 If the condition complained of in subsection 8.2(a) or (b) (other than the payment of any money payable by the Licensee under this Agreement) reasonably requires more time to cure than 60 days, the Licensee will be deemed to have complied with the remedying of it if the Licensee commences remedying or curing the condition within 60 days and diligently completes the same.

8.4 The Licensee agrees with the Province that

- (a) the Province may, on 180 days' written notice to it, terminate or temporarily suspend this Agreement for all, or any portion, of the Land and Improvements, if the BCTFA or Her Majesty the Queen in Right of the Province of British Columbia requires such portion of the Land or Improvements for transportation purposes;
- (b) it will make no claim for compensation, in damages or otherwise, upon the suspension or termination of this Agreement pursuant to its terms or under subsection 62(5) of the *Transportation Act*.

8.5 On the termination of this Agreement, the Licensee will:

- (a) peaceably quit and deliver to the Province possession of the Land and, subject to paragraph (b), the Improvements in a safe, clean and sanitary condition (including, without limitation, free of any

Contaminants related to the Licensee's entry upon, use or occupation of the Land hereunder); and

- (b) within 180 days, remove from the Land any Improvements the Licensee wants to remove, if the Improvement was placed on or made to the Land by or for the Licensee, is in the nature of a fixture normally removable by lessees and is not part of a building or part of the Land;

and all of the Licensee's right, interest and estate in the Land and Improvements will be absolutely forfeited to the Province, and to the extent necessary, this covenant will survive the termination of this Agreement.

## **ARTICLE 9 - DISPUTE RESOLUTION**

- 9.1 If any dispute arises under this Agreement, the parties will attempt to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.
- 9.2 Subject to section 9.5, if a dispute under this Agreement cannot be resolved under section 9.1, the dispute will be resolved by arbitration conducted by a sole arbitrator appointed pursuant to the *Arbitration Act*.
- 9.3 The cost of the arbitration referred to in section 9.2 will be shared equally by the parties and the arbitration will be governed by the laws of the Province of British Columbia.
- 9.4 The arbitration will be conducted at the office of the Province in Nanaimo, British Columbia, and if the Province has no office in Nanaimo, British Columbia, then at the office of the Province that is closest to Nanaimo, British Columbia.
- 9.5 A dispute under this Agreement in respect of a matter within the Province's sole discretion cannot, unless it agrees, be referred to arbitration as set out in section 9.2.

## **ARTICLE 10 - NOTICE**

- 10.1 Any notice or other document required or permitted to be given by either party to the other must be in writing and will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to the Province:

3<sup>rd</sup> Flr – 2100 Labieux Road  
Nanaimo, BC V9T 6E9  
Attention: Lorna Andreychuk  
Telephone: (250) 734-4806

to the Licensee:

Regional District of Nanaimo  
6300 Hammond Bay Road  
Nanaimo, BC V9T 6N2  
Attention: General Manager, Recreation and Parks Services  
Telephone: (250)

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

- 10.2 In order to expedite the delivery of any notice or other document required or permitted to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to the Province under this Agreement will be effected by hand, courier or prepaid regular mail to the Province's address specified in or otherwise established under section 10.1, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

## ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to the Province under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.
- 11.3 The grant of a sublicense, assignment or transfer of this Agreement does not release the Licensee from its obligation to observe and perform all the provisions of this Agreement on its part to be observed and performed unless the Province specifically releases the Licensee from such obligation in its consent to the sublicense, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond the Licensee's reasonable control, other than normal weather conditions, the Licensee is delayed in performing any of its obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as the Licensee
- (a) gives notice to the Province within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of its obligation; and
  - (b) diligently attempts to remove the delay.
- 11.6 The Licensee agrees with the Province that
- (a) the Province is under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and the Licensee is solely responsible for all costs and expenses associated with its use of the Land and the Improvements for the purposes set out in this Agreement;
  - (b) nothing in this Agreement constitutes the Licensee as an agent, joint venturer or partner of the Province or the BCTFA or gives its any authority or power to bind the Province or the BCTFA in any way; and
  - (c) any information regarding this Agreement or the Licensee may be disclosed or required to be disclosed under the *Freedom of Information and Protection of Privacy Act*, governmental policy

or otherwise.

- 11.7 There are no warranties, representations, collateral agreements or conditions affecting this Agreement except as set out in this Agreement.

## **ARTICLE 12 - INTERPRETATION**

- 12.1 In this Agreement, "person" includes a corporation, firm or association and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 12.2 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 12.3 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 12.4 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 12.5 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 12.6 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 12.7 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 12.8 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 12.9 All provisions of this Agreement in the Province's favour and all of its rights and remedies, either at law or in equity, will survive the termination of this Agreement.
- 12.10 Time is of the essence of this Agreement.

- 12.11 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made then each party will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that a party has sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.

The parties have executed this Agreement as of the date of reference of this Agreement.

**SIGNED** on behalf of **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** by the minister responsible for the *Transportation Act* or the minister's authorized representative

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Minister responsible for the *Transportation Act*  
or the minister's authorized representative

**SIGNED** on behalf of **REGIONAL DISTRICT OF NANAIMO** by its authorized signatories

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Authorized Signatory

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Authorized Signatory

**SCHEDULE A**

Licence shown in bold.

**SCHEDULE B**

Trail Management Plan

**SCHEDULE C**

Memorandum of Understanding