



**LICENCE OF USE AND OCCUPATION  
Over a Portion of Township Land**

**THIS AGREEMENT** made the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

**BETWEEN:**

**The Township of Esquimalt**

1229 Esquimalt Road  
Esquimalt, B.C.  
V9A 3P1

(the "**Township**")

**AND:**

***The Registered Owner(s) of Property***

*that abuts Township Land, as further described and shown in Schedule "A"*

(the "**Owner**")

**RECITALS:**

- A. The Owner is the owner of the lands (the "**Property**") that is adjacent to Township Land, which abuts the Gorge Waterway (the "**Township Land**"), as shown on Schedule "A". The Township requires the Township Land for municipal purposes, including but not limited to eventual trail development and/or access to the Gorge Waterway for other recreational purposes;<sup>1</sup>
- B. The Owner, or previous owner of the Property, constructed a dock (the "**Dock**"), a portion of which is on, or abuts, Township Land;
- C. The Owner seeks permission from the Township to allow the Dock to remain and be made lawful, and the parties acknowledge that such regularizing will likely require negotiating satisfactory agreements, rezoning and/or other development approvals, which will require consent of Township Council, which consent cannot be provided in advance;
- D. Use of the Dock by the Owner involves encroachment by the Owner on the Township Land, either by the placement of the Dock itself, or by the Owners crossing Township Land, or both;
- E. The Township has authority to permit encroachments under or upon, and/or to grant a Licence of Use and Occupation in respect of, the Township Land, or a portion thereof;
- F. While the Township and Owner explore options to regularize the Dock, but without prejudice to the Township's right to seek removal of the Dock, the Owner wants to continue to use the Dock, and for that purpose requires a non-exclusive License of Use and Occupation so that the Owner can cross over or through the Township Land to access the Dock ("**Licence**" or this "**Agreement**");

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<sup>1</sup> Township Land may be held in fee simple or dedicated as highway or parkland. Please consult with Township Staff as to your Property's specific situation.

- G. The Owner wishes to use and occupy the portion of the Township Land adjacent to the Property, in particular a corridor no wider than three (3) metres of most direct path from Property to the Dock, the size and location of which may also be further boldly outlined and appropriately labeled on the sketch plan attached as Schedule "A" (the "**Licence Area**"), for the purposes of providing access to the Dock from the Property and for existing improvements, if any, specifically sited and identified by the Owner on Schedule "A";
- H. The Township has agreed to grant to the Owner certain rights of occupation relating to the Licence Area on the terms and conditions set out in this Agreement; and
- I. The Township wishes to reduce its liability to any actions, causes of actions, claims and demands, including liability for contributory negligence, nuisance and exposure to claims from any persons, including claims under the provincial *Occupiers Liability Act*, *Trespass Act*, *Water Sustainability Act*, *Environmental Assessment Act*, *Wildlife Act*, *Riparian Areas Protection Act* and *Riparian Areas Regulation* and federal *Environmental Assessment Act*, *Fisheries Act*, *Species at Risk Act* and *Navigation Protection Act*, as amended from time to time and any other similar and applicable legislation and regulations that may be enacted or amended from time to time, if the Township allows use of the Township Land in accordance with the terms of this Agreement and does not seek removal of the Dock.

**NOW THEREFORE** in consideration of the Township's forbearance in not enforcing the removal of the Dock, in whole or in part, until the earlier of the date that the parties regularize permission for the Dock or the date that Council of the Township requires removal of the Dock, the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by each of the parties), the parties covenant and agree as follows:

## **1.0 LICENCE TERM**

Subject to the terms and conditions of this Agreement, the Township hereby grants to the Owner a non-exclusive license of use and occupation (the "**Licence**", as further defined above) of the Licence Area for a maximum term of three (3) years, commencing on the date that this Agreement is executed and terminating December 31, 2022 (the "**Term**"), unless earlier terminated in accordance with the terms of this Agreement.

## **2.0 PURPOSE**

- 2.1 Subject to the terms and conditions contained in this Agreement, the Licence allows:
  - (a) the Owner to enter in, over and upon the Licence Area for the purpose of accessing the Dock from the Property, and
  - (b) for the continued temporary placement of existing improvements, if any, specifically sited and identified on Schedule "A".
- 2.2 The Licence allows use and access to the Licence Area only, and the Owner agrees that the Licence does not:
  - (a) allow any use of the Licence Area other than for the purpose stated in Section 2.1 of this Agreement;
  - (b) provide permission or authority to use the Dock or any improvements; or

- (b) allow use or occupation of the foreshore, Crown Land, or any other land outside of the Licence Area;
- 2.3 The Owner agrees that in order to legally use the Dock, the Owner is required to regularize use of the Dock through compliance with Township bylaws including zoning, compliance with all applicable provincial or federal laws, and any required Township, provincial, or federal agreements, consents, permits or approvals.

### **3.0 LICENCE FEE**

The Licence Fee is Three Hundred Dollars (\$300.00), and other good and valuable consideration identified in this Licence. The Licence Fee is subject to change on renewal reflecting fair market value of the occupation of the Licence Area.

### **4.0 RESERVATION OF RIGHTS**

- 4.1 The Owner covenants and agrees that this Agreement shall not in any way restrict the right of the Township, or require the Township at any time, to:
  - (a) alter any part of the Licence Area, the Township Land, any adjacent land, or any highway, road, curb, gutter, sidewalk or boulevard abutting or adjoining the Licence Area or the Township Land, notwithstanding that the effect of such alteration may be to render the Licence Area useless or of less value for the purposes of the Owner, or the Property;
  - (b) inspect, construct or maintain any form of structure, service or utility on, over or under any portion of the Township Land, including the Licence Area and, for such purpose, the Township may require removal of the Dock;
  - (c) permit other encroachments or use of the Licence Area; and
  - (d) provide uninterrupted access by the public to and within the Licence Area on foot, on bicycles, on scooters for disabled persons, in wheelchairs or infant strollers, for the purpose of passing and re-passing over the Licence Area and the Township Land.
- 4.2 In the event of the Township effecting any such alteration or construction on the Township Land, or other abutting or adjoining area, or requiring removal of the Dock, or permitting other encroachments or uses of the Licence Area and the Township Land, the Owner will release and forever discharge, and hereby releases and forever discharges, the Township from all manner of claims of any nature whatsoever, which may arise by reason of such alterations or requirements, or other encroachments or uses of the Licence Area and the Township Land.
- 4.3 The Owner further agrees that this Agreement does not in any way prejudice, affect or restrict the Township's ability to enforce any of the Township's bylaws.
- 4.4 The Owner further agrees that the Township retains the right to use the Township Land and the Licence Area as a portion of a publically accessible trail system, or for any other legally permissible purpose.

## 5.0 CONSTRUCTION AND MAINTENANCE

5.1 The Owner shall allow, cause or permit the use of the Licence Area in a safe and proper manner and in compliance with all applicable legal requirements.

5.2 The Owner:

- (a) will not carry out any work of construction, filling or raising of the land, replacement or improvement in the Licence Area without the prior written consent of the Township's Municipal Engineer, which consent may be arbitrarily withheld;
- (b) will not allow, cause or permit the release, discharge, spill or disposal of any Hazardous Material (as hereinafter defined) on or to escape from the Licence Area ("**Hazardous Material**" means any contaminant, pollutant or deleterious substance or any other substance or material that when released into the natural environment is likely to cause at some immediate or future time, material harm or degradation to the natural environment or material risk to human health and, without restricting the generality of the foregoing, includes hazardous waste, special waste, toxic substances or dangerous goods as defined under the *BC Environmental Management Act*, or the *Canadian Environmental Protection Act* (Canada) and any regulations thereunder (as amended or replaced from time to time) and any other applicable federal, provincial or municipal laws for the protection of the natural environment or human health);
- (c) will not erect any structures on or within the Licence Area or use any surface treatment, without having first received written approval from the Township's Municipal Engineer; and
- (d) will observe, abide by and comply with all laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Licence Area or the Dock, or the use or occupation thereof by the Owner.

5.3 Should the Owner fail to satisfy any of the requirements of Section 5.2, the Township may, upon twenty-four (24) hours notice to the Owner, do any work necessary to fulfill the requirement as determined in the sole discretion of the Township's Municipal Engineer.

5.4 The Owner will make good at its own expense all damage or disturbance which may be caused to the surface of the Township Land and Licence Area, in the exercise of its rights hereunder.

5.5 Should the Owner:

- (a) fail to keep the Licence Area in a safe condition to the satisfaction of the Township's Municipal Engineer; or
- (b) fail to otherwise abide by any condition of this Agreement,

then the Township's Municipal Engineer, upon thirty (30) days written notification of such failure and provided that the Owner has not resolved the failure within that period of time, may do any work necessary to fulfill any condition of this Agreement, as the case may require, in the sole discretion of the Township's Municipal Engineer.

- 5.6 The Owner shall promptly pay the costs of work performed by the Township under Sections 5.3 and 5.5 to the Township, and the Owner covenants and agrees that if in default of payment, the amount of such cost together with interest at the prime lending rate of the Canadian Imperial Bank of Commerce plus 2% may be recovered in any court of competent jurisdiction.
- 5.7 In making the repairs, performing maintenance, or in constructing a trail system, the Township may bring and leave upon the Township Land and the Licence Area, the necessary materials, tools and equipment and the Township shall not be liable to the Owner for any inconvenience, annoyance or other injuries suffered by the Owner by reason of the Township effecting repairs, maintenance, or trail construction or doing any work under Section 4.0, 5.3 or 5.5 of this Agreement.

## **6.0 RELEASE AND INDEMNIFICATION**

- 6.1 The Owner hereby covenants and agrees to release, indemnify, save harmless, and forever discharges the Township, its officers, employees, agents, contractors and subcontractors from, and agrees to assume all responsibility for, any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) and disbursements and all liability including to third parties whatsoever arising, in law or equity, whether known or unknown, suspected or unsuspected, which:

- (a) the Province or Her Majesty the Queen in Right of Canada ("**Canada**") can or may have against the Township arising out of or connected with any determination by the Province or Canada, a court, or proceeding before a court on board alleging that the Township is liable or liable by way of any or all of the following:

- i. negligence, contributory negligence, nuisance or other common law torts, as developed from time to time,
- ii. contraventions of the provincial *Occupiers Liability Act*, *Trespass Act*, *Water Sustainability Act*, *Environmental Assessment Act*, *Wildlife Act*, *Riparian Areas Protection Act* and *Riparian Areas Regulation* and federal *Environmental Assessment Act*, *Fisheries Act*, *Species at Risk Act* and *Navigation Protection Act*, as amended from time to time and any other similar and applicable legislation and regulations that may be enacted or amended from time to time,

in relation to the construction, installation, continued existence or use of the Dock or the Licence Area, or any portion thereof;

- (b) any person, including the Owner, his tenants, agents, permittees, invitees and the Owner's tenant's agents, permittees and invitees and possibly trespassers and subsequent purchasers and tenants of the Property, may have against the Township for any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the construction, installation, continued existence and use of the Dock or the Licence Area, or any portion thereof, including use of the Licence Area pursuant to this Agreement, and any contraventions of the *Occupiers Liability Act* and *Trespass Act*, as amended from time to time, and any other similar and applicable legislation and regulations that may be enacted or amended from time to time;

- (c) relates to any determination by a court, or proceeding before a court alleging, that the Township is liable or liable by way of negligence, contributory negligence or nuisance or under the *Occupiers Liability Act*, as amended from time to time, for any injury of any person on the Dock, on the Licence Area, or on Crown Land, which injury arises from or is related to or may be found to have been contributed to from the construction, installation, continued existence and use of the Dock or the Licence Area, including use of the Licence Area pursuant to this Agreement, or any portion thereof; or
- (d) relates to any determination by a court, or proceeding before a court alleging, that the Township acted outside its statutory purposes and cannot claim to be immune from the application of enactments relating to health, safety and protection of people and property arising from the Township's failure, neglect or omission to remove the Dock, or any portion thereof;

and without limiting the generality of the foregoing, the Owner agrees to release, indemnify and save harmless the Township from all injuries, including death, to any person including members of the general public sustained while present on the Licence Area or on the Dock, or any part thereof, arising out of or connected with the construction, installation, continued existence and use of the Dock or the Licence Area, or any portion thereof, including use of the Licence Area pursuant to this Agreement.

## 6.2 The Owner further covenants and agrees that:

- (a) in the event that anyone, including the Province or Canada, makes any claim, including third party or counter claims or claims for contribution, against the Township arising or resulting from the use of the Licence Area, including use of the Licence Area pursuant to this Agreement, or the construction, installation, continued existence and use of the Dock, or any portion thereof and the Township not removing the Dock, or any portion thereof, the Township may bring or show this release and indemnity agreement to any interested individual's and the court's attention;
- (b) in the event that anyone makes any claim, including third party or counter claims or claims for contribution and for damages, costs and interest, legal fees and disbursements against the Township arising or resulting from the use of the Licence Area, including use of the Licence Area pursuant to this Agreement, or the construction, installation, continued existence and use of the Dock, or any portion thereof, or the Township not removing the Dock, or any portion thereof, the Owner shall at the first reasonable opportunity, advise the court or tribunal adjudicating such claim that the Owner, their heirs, executors and assigns waive any right to recover from the Township any portion of the loss claimed which the court may attribute or apportion to the fault of the Township in not removing the Dock, or any portion thereof, or in allowing use of the Licence Area; and
- (c) in the event that anyone makes any claim, including third party or counter claims or claims for contribution and for damages, costs and interest, legal fees and disbursements against the Township arising or resulting from the use of the Licence Area or the Township's failure to remove the Dock, or any portion thereof, the Owner shall:
  - i. at the request of the Township, appoint legal counsel of the Township's choice, and at the Owner's expense and shall instruct such legal counsel

to represent the Township in any third party claim or counterclaim, including in proceedings for declaratory relief, at the sole cost and expense of the Owner; or

- ii. at the request of the Township, promptly indemnify upon receipt of any and all invoices from the Township or all costs, including legal fees (on a solicitor-client basis) and disbursements, incurred by the Township, in connection with any third party claims or counterclaim, including proceedings for declaratory relief.

## **7.0 REMOVAL OF DOCK**

7.1 This Agreement, does not in any way affect the Township's legal authority or ability to remove the Dock upon thirty (30) days notice to the Owner, acting reasonably.

7.2 If the Owner has not regularized the Dock on the Township Land and Crown Land, including obtaining consent from the Province and, if applicable, authorization from Canada for the construction, installation, continued existence and use of the Dock:

- (a) by December 31, 2022; and
- (b) if Council of the Township seeks the Owner's removal of the Dock after providing thirty (30) days notice to the Owner to effect such removal and the Owner does not remove the Dock within thirty (30) days of delivery of the notice, the Township may:
  - i. remove the Dock at the expense of the Owner, and
  - ii. in the event of the Owner's default of paying the costs incurred by the Township in removal of the Dock, the Township may add the costs to the Owner's property taxes and such taxes shall be deemed to be taxes in arrears.

## **8.0 INSURANCE**

8.1 The Owner covenants and agrees to effect and keep in force at their own expense and at all times throughout the Term and during such other times as the Owner uses the Licence Area or the Dock, a homeowner's insurance policy or other insurance policy which expressly covers the use of the Licence Area and the Dock, or any portion thereof, by the Owner, his tenants, agents, permittees, invitees and the Owner's tenant's agents, permittees, invitees and possibly trespassers and subsequent purchasers and tenants of the Property, including Comprehensive Personal Liability insurance in the amount of not less than TWO MILLION DOLLARS (\$2,000,000) per occurrence insuring against liability for personal injury, bodily injury (including death) and property damage, including coverage for all accidents or occurrences on the Dock, Licence Area, Township Land, and Crown Land and liability assumed under Section 6 of this Agreement.

8.2 The policies of insurance referred to above shall be in such form and with such companies as the Township may reasonably approve and shall contain the following:

- (a) provisions that such policies shall be endorsed to provide the Township with thirty (30) days advance written notice of cancellation or material change;
- (b) provisions adding the Township as an additional insured;

- (c) provisions for cross liability such that the Township and the Owner are each insured as if each had purchased the policy of insurance;
  - (d) provisions that the Township is protected notwithstanding any act, neglect or misrepresentation of the Owner which might otherwise result in the avoidance of a claim under such policies and that such policies shall not be affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the Township;
  - (e) provisions that such policies and the coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by the Township; and
  - (f) waiver of subrogation in favour of the Township, its employees, agents, servants, contractors or subcontractors
- 8.3 The Owner shall provide the Township with evidence of all required insurance prior to the commencement of the Term, and shall provide a certificate of insurance covering the required insurance policies when requested by the Township.
- 8.4 The Owner acknowledges that any requirement by the Township as to the amount of coverage under any policy of insurance will not constitute a representation by the Township that the amount required is adequate and the Owner acknowledges that it is solely responsible for obtaining and maintaining policies of insurance in adequate amounts.
- 8.5 Notwithstanding the previous Section, the Township, acting reasonably, may from time to time notify the Owner that the amount of insurance posted by the Owner pursuant to Section 8.1 must be changed and the Owner shall, within sixty (60) days of receiving such notice, cause the amount of insurance posted pursuant to that Section to be changed to the amount specified in the notice and deliver to the Township written confirmation of the change.
- 8.6 If any of the policies of insurance referred to above, or any part thereof, shall be cancelled or shall be threatened by the insurer to be cancelled, or the coverage thereunder reduced in any way by the insurer by reason of the use and occupation of the Licence Area or use of the Dock or any part thereof by the Owner or by any assignee of the Owner, or by anyone permitted by the Owner to be upon the Licence Area, and if the Owner fails to remedy the condition giving rise to cancellation or reduction of coverage within thirty (30) days after notice thereof by the Township, the Township may remedy the condition giving rise to such cancellation, threatened cancellation or reduction, and the Owner shall forthwith pay the cost thereof to the Township.

## **9.0 REIMBURSEMENT**

In the event that the insurance policy in Section 8 of this Agreement or the insurer does not cover the costs related to any claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) and disbursements under the indemnification requirements of Section 6 of this Agreement, the Township may seek reimbursement from the Owner and may add all or any portion of the costs to the Owner's property taxes and such taxes shall be deemed to be taxes in arrears.

## **10.0 TERMINATION**

- 10.1 This Licence is revocable at the will of the Township, in its sole and unfettered discretion, without compensation or refund and the Township only agrees to provide thirty (30) days advance written notice of such revocation (which notice period may overlap with other notice periods in this Licence). Notwithstanding the foregoing, the Township will act reasonably in exercising its discretion to revoke this Licence.
- 10.2 In addition to any other provisions in this Agreement, this Agreement will automatically terminate upon the sale or other transfer of title to the Property.

## **11.0 FORFEITURE**

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

## **12.0 NO COMPENSATION**

Neither the Owner nor any occupants of the Property shall be entitled to compensation for any loss or injurious affection or disturbance resulting in any way from the termination of this Agreement.

## **13.0 AUTHORIZATION AND ASSIGNMENT**

- 13.1 The Owner warrants and represents that:
- (a) it has authority to enter into this Licence; and
  - (b) in consideration of being granted the use of the Licence Area, the Owner agrees to be bound by the terms and conditions of this Agreement and agrees to inform all invitees and occupants of the Property of the terms and conditions of this Agreement.
- 13.2 This Agreement may not be assigned by the Owner without the written consent of the Township, which may be withheld for any reason.
- 13.3 The Owner covenants and agrees not to sell, transfer, or assign their respective interests in title to the Property, or any portion thereof, without advising the purchaser or transferee of this Agreement, that this Agreement shall automatically terminate upon such sale or transfer, and it is the purchaser's responsibility to either remove the Dock in compliance with all laws or secure a new, similar agreement if use and occupation is to be continued in the Licence Area.

## **14.0 NOTICES**

Any notice or other communication required or permitted to be given under this Agreement will be sufficiently given if delivered personally or if sent by fax (if applicable) or email with a copy by regular mail:

- (a) to the Township at:

Township of Esquimalt

1229 Esquimalt Road  
Esquimalt, BC V9A 3P1

Attention:	Director of Community Safety Services
Phone Number:	250-414-7123
Fax Number:	250-414-7111
Email:	bylaw@esquimalt.ca

(b) to the Owner at the registered address on title, or the civic address of the Property,

and the date of receipt of any such notice or communication will be deemed to be the date of delivery or transmittal by fax or email if delivered by 3:00 pm local time on a business day in the place of the recipient, and if otherwise delivered or transmitted by fax or email, on the next business day following the date of such delivery or transmittal. A party may at any time give notice in writing to the other party of any change of address by giving notice of it to the other party in accordance with the terms of this Agreement.

## **15.0 INTERPRETATION**

- 15.1 When the singular or neuter is used in this Agreement they include the plural or the feminine or the masculine or the body politic where the context or the parties require.
- 15.2 The headings to the clauses in this Agreement have been inserted as a matter of convenience and are for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.
- 15.3 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, administrators and permitted assignees.
- 15.4 Time is of the essence of this Agreement.
- 15.5 This Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 15.6 All provisions of this Agreement are to be construed as covenants and agreements as though the word importing covenants and agreements were used in each separate paragraph.
- 15.7 This Agreement (including the Schedule) is the entire agreement among the parties licensing the use and occupation of the Licence Area and the Township has made no representations, warranties, guarantees, promises, covenants or agreements (oral or otherwise) to or with the Owner other than those expressed in this Agreement.
- 15.8 The parties hereto acknowledge and agree that this Agreement is a licence and is not a lease. Nothing herein contained shall be deemed or construed by the parties or by any third party as creating the relationship of landlord and tenant between the parties.
- 15.9 The Owner acknowledges that the rights granted in this Agreement are contractual only and do not give the Owner an interest in the Licence Area.
- 15.10 Nothing contained or implied in this Agreement:
  - (a) prejudices or affects the rights, powers or discretion of the Township in the exercise of its functions under any public or private statutes, bylaws, orders and

regulations, all of which may be fully and effectively exercised in relation to the Property, the Township Land, the Dock, and the Licence Area;

- (b) imposes any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement or the breach of any provision in this Agreement; or
  - (c) imposes any public law duty, whether arising from the principles of procedural fairness or the rules of natural justice, on the Township with respect to its exercise of any right or remedy expressly provided in this Agreement or at law or in equity.
- 15.11 Nothing herein contained shall be deemed or construed by the parties or by any third party as creating the relationship of principal and agent nor of partnership nor of joint venture between the parties, it being understood and agreed that no provision contained herein or any act or acts of the parties shall be deemed to create any relationship between the parties other than the relationship of licensor and licensee.
- 15.12 This Agreement may be executed in separate counterparts, each of which shall be deemed to be an original and such counterpart shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF the parties executed this Agreement:

***Owner(s) of Property***, by authorized signatories as per title registration:

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

*Sign above, Print Name here:* \_\_\_\_\_

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

*Sign above, Print Name here:* \_\_\_\_\_

**Date:** \_\_\_\_\_, 2020

**The Corporation of the Township of Esquimalt** by its authorized signatories:

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

*Sign above, Print Name here:* \_\_\_\_\_

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

*Sign above, Print Name here:* \_\_\_\_\_

**Date:** \_\_\_\_\_, 2020

*[This Licence is only valid if accompanied by a Schedule "A" that clearly identifies the Owner's Property, and the Township Land. Schedule "A" may be more than one page.]*