

**CORPORATION OF THE CITY OF COURTENAY  
COUNCIL MEETING AGENDA**

**Date:** December 21, 2020  
**Time:** 4:00 p.m.  
**Location:** City Hall Council Chambers

**AMENDED AGENDA**

We respectfully acknowledge that the land on which we gather is the *unceded traditional territory of the K'ómoks First Nation*

Due to the Coronavirus COVID-19 emergency, the City of Courtenay with the authority of Ministerial Order No. M192 Local Government Meetings & Bylaw Process (COVID-19) Order No. 3 implemented changes to its open Council meetings.

*In the interest of public health and safety, and in accordance with section 3(1) of Ministerial Order No. 3 M192, in-person attendance by members of the public at Council meetings will not be permitted until further notice. Council meetings are presided over by the Mayor or Acting Mayor with electronic participation by Council and staff via live web streaming.*

**K'OMOKS FIRST NATION ACKNOWLEDGEMENT**

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7.4. Councillor McCollum

7.5. Councillor Morin

7.6. Councillor Theos

7.7. Mayor Wells

**8. RESOLUTIONS OF COUNCIL**

8.1. In Camera Meeting

That a Special In-Camera meeting closed to the public will be held December 21<sup>st</sup>, 2020 at the conclusion of the Regular Council Meeting pursuant to the following sub-sections of the *Community Charter*:

- 90 (1) (c) labour relations or other employee relations;
- 90 (1) (i) the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- 90 (1) (k) negotiations and related discussions respecting the proposed provision of a municipal service that are at their preliminary stages and that, in the view of the council, could reasonably be expected to harm the interests of the municipality if they were held in public.

8.2. Reschedule January 04, 2021 Regular Council Meeting

Suggested Resolution:

*"That Council cancel the January 4<sup>th</sup>, 2021 Regular Council meeting and reschedule to January 11<sup>th</sup>, 2021 to accommodate the Christmas and New Year holiday schedule."*

**9. UNFINISHED BUSINESS**

**10. NOTICE OF MOTION**

**11. NEW BUSINESS**

**12. BYLAWS**

12.1. For Final Adoption

12.1.1. City of Courtenay Fees and Charges Amendment Bylaw No. 3023, 2020

155

(A bylaw to amend City of Courtenay Fees and Charges Bylaw No. 1673, 1992, to amend the sewer utility user rates for 2021)

13. ADJOURNMENT



**Minutes of a Regular Council Meeting**

**Meeting #:** S8/2020  
**Date:** December 09, 2020  
**Time:** 4:00 pm  
**Location:** City Hall, Courtenay, BC, via video/audio conference

**Attending:**

**Mayor:** B. Wells, via video/audio conference  
**Councillors:** W. Cole-Hamilton, via video/audio conference  
D. Frisch, via video/audio conference  
D. Hillian, via video/audio conference  
M. McCollum, via video/audio conference  
W. Morin, via video/audio conference  
M. Theos, via video/audio conference

**Staff:** T. Kushner, Interim CAO, via video/audio conference  
W. Sorichta, Corporate Officer, via video/audio conference  
I. Buck, Director of Development Services, via video/audio conference  
C. Davidson, Director of Engineering Services, via video/audio conference  
J. Nelson, Director of Financial Services, via video/audio conference  
K. Shaw, Director of Public Works Services, via video/audio conference  
M. Fitzgerald, Manager of Development Planning, via video/audio conference  
R. Wyka, Manager of Finance, via video/audio conference  
E. Gavelin, Network Technician, via video/audio conference  
R. Matthews, Executive Assistant/Deputy Corporate Officer, via video/audio conference

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**1. ADOPTION OF MINUTES**

**1.1 Adopt November 16<sup>th</sup>, 2020 Special Council meeting minutes (0570-03)**

**Moved By** Frisch

**Seconded By** Cole-Hamilton

That the November 16<sup>th</sup>, 2020 Special Council meeting minutes be adopted as amended.

**Carried**

**1.2 Adopt November 16<sup>th</sup>, 2020 Regular Council meeting minutes (0570-03)**

**Moved By** Frisch

**Seconded By** Cole-Hamilton

That the November 16<sup>th</sup>, 2020 Regular Council meeting minutes be adopted.

**Carried**

**1.3 Adopt November 24<sup>th</sup>, 2020 Special Council meeting minutes (0570-03)**

**Moved By** Frisch

**Seconded By** Cole-Hamilton

That the November 24<sup>th</sup>, 2020 Special Council meeting minutes be adopted.

**Carried**

**1.4 Adopt November 30<sup>th</sup>, 2020 Committee of the Whole meeting minutes (0570-03)**

**Moved By** Frisch

**Seconded By** Cole-Hamilton

That the November 30<sup>th</sup>, 2020 Committee of the Whole meeting minutes be adopted.

**Carried**

**1.5 Adopt December 1<sup>st</sup>, 2020 Special Council meeting minutes (0570-03)**

**Moved By** Frisch

**Seconded By** Cole-Hamilton

That the December 1<sup>st</sup>, 2020 Special Council meeting minutes be adopted.

**Carried**

**2. INTRODUCTION OF LATE ITEMS**

**3. DELEGATIONS**

**4. STAFF REPORTS/PRESENTATIONS**

**4.1 CAO and Legislative Services**

**4.1.1 5<sup>th</sup> Street Bridge Rehabilitation - Alternative Approval Process (AAP) Results (1760-02)**

**Moved By** Hillian  
**Seconded By** Theos

That based on the December 7<sup>th</sup>, 2020 staff report "5<sup>th</sup> Street Bridge Rehabilitation - Alternative Approval Process (AAP) Results" Council approve OPTION 1 and proceed with final reading and adoption of "5<sup>th</sup> Street Bridge Rehabilitation Loan Authorization Bylaw No. 2978, 2020".

**Carried**

**4.2 Development Services**

**4.2.1 Release of Covenant Restricting Secondary Suite - 2977 Cascara Crescent (3010-01)**

**Moved By** Frisch  
**Seconded By** Morin

That the December 7<sup>th</sup>, 2020 staff report "Release of Covenant Restricting Secondary Suite - 2977 Cascara Crescent", be received for information.

**Carried**

**Moved By** Frisch  
**Seconded By** McCollum

That based on the December 7<sup>th</sup>, 2020 staff report "Release of Covenant Restricting Secondary Suite - 2977 Cascara Crescent", Council approve OPTION 1 and direct staff to release covenant CA2451158 from Lot 10, District Lot 236, Comox District, Plan EPP17584 (2977 Cascara Crescent).

**Carried with Councillor Theos opposed**

**4.2.2 Structural Change to Liquor Licence Application (Gladstone Brewing Company) - 244 - 4<sup>th</sup> Street (4530-20)**

**Moved By** Frisch

**Seconded By** McCollum

That based on the December 7<sup>th</sup>, 2020 staff report, "Structural Change to Liquor Licence Application (Gladstone Brewing Company) - 244 - 4<sup>th</sup> Street", Council approve OPTION 1 as follows:

1) The Council of the City of Courtenay recommends the Liquor and Cannabis Regulation Branch (LCRB) approve the application for Gladstone Brewing Company's structural change to a liquor licence.

2) Council's comments on the prescribed considerations are as follows:

(a) If the amendment application is approved, it would not result in an increase of noise in the area;

(b) If the application is approved, it would not negatively impact the community based on the submissions received from the public;

(c) In order to gather the views of residents, the City of Courtenay posted a notice on the City's website outlining the application. Additionally, the RCMP was contacted for comment and indicated having no concerns: and,

(d) In order to ensure the safety of occupants of the expanded areas this approval is conditional on the applicant removing all canopies and roof structures that have been constructed without permits and that occupancy permits are granted prior to any use of the licensed areas.

**Carried**

**4.3 Financial Services**

**4.3.1 Uncollectible Property Taxes**

**Moved By** Hillian

**Seconded By** McCollum

1. That Council approve OPTION 1 and adopt the write-off of uncollectable property taxes in the amount of \$408.81 for the year 2018, as outlined in Appendix I of this report;

2. That Council direct the Financial Services Department to apply to the Minister under Section 781 of the *Local Government Act* to manage and dispose of such assets;
3. That once the Ministerial approval is received, all outstanding amounts from other taxing authorities be deducted from their 2018 tax requisition and each of these taxing authorities be advised; and,
4. That the Mayor and Corporate Officer be authorized to execute all documents related to this matter.

**Carried**

#### **4.4 Engineering Services**

##### **4.4.1 6<sup>th</sup> Street Multi-Use Active Transportation Bridge Update and Presentation (5335-20)**

**Moved By** Cole-Hamilton

**Seconded By** Frisch

That the 6<sup>th</sup> Street Bridge Multi-Use Active Transportation Bridge Detailed Options Analysis presentation provided by Shaun Valdovinos, V+M Structural Design, be received for information.

**Carried**

**Moved By** Morin

**Seconded By** McCollum

That based on the December 7<sup>th</sup>, 2020 staff report "6<sup>th</sup> Street Multi-Use Active Transportation Bridge Update" Council approve OPTION 1, and direct:

1. Staff to include a line item in 2021 of the 2021-2025 Financial Plan to support design works with potential construction in 2022 subject to successful grant funding and borrowing in place;
2. Staff to proceed with detailed design of a 4 metre wide Symmetrical Cable Stayed Bridge, as per the project schedule presented;
3. Staff to commence public engagement to inform the public of the project;
4. Staff to further review potential grant opportunities in 2021, with the goal of supporting construction in late 2022; and,

5. That staff consult with the Comox Valley Arts Council, Comox Valley Art Gallery and K'ómoks First Nation on bridge design elements; in particular regarding the inclusion of public art and potential partnership opportunities for grant funding.

**Carried**

#### **4.5 Public Works Services**

##### **4.5.1 Public Washrooms in Downtown Courtenay (6280-20)**

**Moved By** Frisch

**Seconded By** McCollum

That based on the December 7<sup>th</sup>, 2020 staff report "Public Washrooms in Downtown Courtenay", that Council adopt OPTION 1 and direct staff to proceed with direct engagement with the Downtown Courtenay Business Improvement Association (DCBIA) to determine a preferable location for the installation of a public washroom within the downtown core based on the locations described herein as:

1. City Parking Lot at 441 Duncan Avenue;
2. England Avenue adjacent to 407 - 5<sup>th</sup> Street;
3. Fitzgerald Avenue adjacent to 505 - 5<sup>th</sup> Street;
4. Near the Provincial Court House (420 Cumberland Road) at England Avenue and Cumberland Road; and,

That Council direct Staff to include a Portland Loo style public washroom facility in the Draft 2021 Financial Plan for Council consideration.

**Carried**

#### **5. EXTERNAL REPORTS AND CORRESPONDENCE FOR INFORMATION**

#### **6. INTERNAL REPORTS AND CORRESPONDENCE FOR INFORMATION**

#### **7. REPORTS/UPDATES FROM COUNCIL MEMBERS INCLUDING REPORTS FROM COMMITTEES**

##### **7.1 Councillor Cole-Hamilton**

Councillor Cole-Hamilton participated in the following events:

- Presentation to Climate Caucus - All Caucus Call re: Help Cities Lead
- Help Cities Lead Steering Committee meeting (3 Total)
- Help Cities Lead Government Relations Committee meeting

- Climate Caucus Government Relations Committee meeting (2 Total)
- Climate Caucus Communications Committee meeting
- Climate Caucus Coordinating Team meeting (7 Total)
- Climate Caucus Elected Representatives meeting
- Climate Caucus Councillor's Webinars: CAO-Council Relationships: Tensions and Synergies Between the Roles and How to Make the Most of Them
- Climate Caucus Councillor's Webinars: Municipal Parking Systems
- Property Assessed Clean Energy (PACE) BC Steering Committee meeting
- Property Assessed Clean Energy (PACE) BC Webinar Planning Committee meeting
- Overdose Working Group Community Action Team meeting (3 Total)
- Downtown Courtenay Business Improvement Association (DCBIA) Board meeting
- Facilitator at the Vancouver Island and Coastal Communities Climate Leadership Plan (VICC-CLP) Steering Committee - Community Resilience Summit
- City of Courtenay Official Community Plan (OCP) Review Neighbourhood Walk-shops (2 Total)
- City of Courtenay Official Community Plan (OCP) Review Virtual Walk-shop
- Meeting with residents of Mission Road and Lerwick Road area
- Comox Valley Art Gallery's "Walk With Me / Uncovering the Human Dimensions of the Overdose Crisis" - Walking Tour
- Comox Valley Sewerage System (CVSS) Liquid Waste Management Plan (LWMP) Joint Technical and Public Advisory Committee (TACPAC) meeting
- Comox Valley Drug Strategy Committee meeting
- Comox Valley Elected Officials COVID-19 teleconference briefing with Dr. Charmaine Enns, Medical Health Officer
- Lunch and Learn session with Staff and Council regarding proposed design options for bike lanes along 17<sup>th</sup> Street
- CVRD Board meeting (2 Total)
- CVRD Committee of the Whole meeting
- Comox Valley Sewage Commission meeting (2 Total)
- Comox Valley Sports Centre Commission meeting
- Comox Strathcona Waste Management Board meeting
- Comox Strathcona Solid Waste Advanced Technology Select Committee meeting
- Comox Strathcona Regional Hospital District meeting

## 7.2 Councillor Hillian

Councillor Hillian participated in the following events:

- K'ómoks First Nation (KFN) Community to Community Forum and KFN Cultural Heritage Policy presentation by Jesse Morin
- Meeting with Elected Officials and Mental Health Services staff re: Comox Valley mental health services
- K'ómoks First Nation (KFN) Main Treaty Table meeting
- Comox Valley Coalition to End Homelessness (CVCEH) meeting
- Meeting with Mission Road area residents re: development proposal
- Climate Leadership Summit Workshop
- Lunch and Learn session with Staff and Council regarding proposed design options for bike lanes along 17<sup>th</sup> Street
- Comox Strathcona Regional Hospital District meeting
- Comox Valley Sports Centre Commission meeting
- CVRD Committee of the Whole meeting
- Comox Valley Community Justice Centre Board of Directors meeting
- Online Session with Comox Valley Project Watershed Society re: Kus-kus-sum Restoration Plans
- CVRD Inaugural Board meeting
- Millard/Piercy Watershed Stewards Annual General Meeting (AGM)
- Comox Valley Community Justice Centre Annual General Meeting (AGM)
- K'ómoks First Nation (KFN) Community to Community Forum and KFN Cultural Heritage Policy presentation by Jesse Morin

## 7.3 Councillor McCollum

Councillor McCollum participated in the following events:

- Vancouver Island Regional Library (VIRL) Board meeting
- Online Session with Comox Valley Project Watershed Society re: Kus-kus-sum Restoration Plans
- CVRD Board meeting (2 Total)
- Millard/Piercy Watershed Stewards Annual General Meeting (AGM)
- Lake Trail Community Education Society Annual General Meeting (AGM)
- Integrated Regional Transportation Select Committee meeting
- K'ómoks First Nation (KFN) Community to Community Forum and KFN Cultural Heritage Policy presentation by Jesse Morin
- Reverse Telethon Fundraiser for Kus-kus-sum
- Climate Caucus Councillor's Webinars: Municipal Parking Systems
- Comox Strathcona Waste Management Board meeting



- Property Assessed Clean Energy (PACE) BC Webinar

#### **7.4 Councillor Morin**

Councillor Morin participated in the following events for the period of November 17<sup>th</sup> to December 7<sup>th</sup>:

- Comox Valley Sewage Commission meeting
- CVRD Committee of the Whole meeting
- Comox Valley Sports Centre Commission meeting
- Virtual Symposium on Water Stewardship in a Changing Climate: Part 1 - BC's Climate Reality, Inter-Regional Collaboration & Actionable Visions - The Partnership for Water Sustainability in BC
- Phone meeting with concerned resident re: services for vulnerable citizens
- CVRD Inaugural Board meeting
- Online Session with Comox Valley Project Watershed Society re: Kus-kus-sum Restoration Plans
- Comox Valley Food Policy Council meeting
- Lake Trail Community Education Society Annual General Meeting (AGM)
- Millard/Piercy Watershed Stewards Annual General Meeting (AGM)
- Phone meeting with resident re: feedback about Mission Road development
- Virtual Symposium on Watershed Stewardship in a Changing Climate: Part 2 - Natural Assets as Ecological Systems and Services - The Partnership for Water Sustainability in BC
- K'ómoks First Nation (KFN) Community to Community Forum and KFN Cultural Heritage Policy presentation by Jesse Morin
- Reverse Telethon Fundraiser for Kus-kus-sum
- Comox Strathcona Waste Management Board meeting

#### **7.5 Mayor Wells**

Mayor Wells mentioned a request he brought forward to the federal government asking to waive the taxable benefit for gift cards issued to staff by non-profits, employers and local governments who have cancelled or postponed staff holiday parties in an effort to stop the spread of COVID-19.

MP Gord Johns, brought the request forward to the House of Commons asking to support a resolution that would exclude gift card purchases up to \$150 from employment income for the 2020 holiday season; the motion was defeated.

**8. RESOLUTIONS OF COUNCIL**

**8.1 Schedule of Acting Mayors - December 7<sup>th</sup>, 2020 to November 6<sup>th</sup>, 2022**

**Moved By** Hillian

**Seconded By** Frisch

That Council adopt the following monthly schedule of Acting Mayors for the period of December 07, 2020 to November 06, 2022 pursuant to *Council Procedure Bylaw No. 2730, 2013*:

- January and July                      Councillor Wendy Morin
- February and August                Councillor Melanie McCollum
- March and September                Councillor Doug Hillian
- April and October                    Councillor Will Cole-Hamilton
- May and November                  Councillor Manno Theos
- June and December                 Councillor Manno Theos

**Carried**

**8.2 Rise and Report - Land Acquisition - TELUS Properties 1060, 1080, and 1090 Piercy Avenue (0910-20)**

**Moved By** Frisch

**Seconded By** Morin

That per the November 9<sup>th</sup>, 2020 Closed (In Camera) meeting - Council Rises and Reports as follows:

That, based on the November 9<sup>th</sup>, 2020 confidential staff report "TELUS Property Acquisition - 1060, 1080 and 1090 Piercy Avenue" Council approve the purchase of the properties located at 1060, 1080 and 1090 Piercy Avenue on lands having a legal description of PID: 005-007-143 Parcel A (DD 391476I) of Lot 1, Section 69, Comox District, Plan 1365; PID: 009-007-121 Lot 8, Block 20, Section 69, Comox District, Plan 480B; and, PID: 009-007-148 Lot 9, Block 20, Section 69, Comox District, Plan 480B for the purchase price of \$475,000 plus applicable taxes as noted in the Purchase and Sale agreement under section 3.3 Adjustments;

That Council approve the source of funds for the property purchase by amending the 2020 budget as follows:

1. Reallocating \$265,500 from the approved 2020 Capital budget for the construction of a Carpenters shop in the Public Works yard
2. With the balance of the purchase amount to come from the Statutory Land Reserve

That staff be directed to prepare an amendment to the 2020-2024 Financial Plan to reflect the property purchase funding;

That the Mayor and Corporate Officer be authorized to execute all documentation relating to the property purchase; and,

That the City rise and report at a future open meeting as deemed appropriate by staff.

**Carried**

**9. UNFINISHED BUSINESS**

**10. NOTICE OF MOTION**

**11. NEW BUSINESS**

**12. BYLAWS**

**12.1 For First, Second and Third Reading**

**12.1.1 City of Courtenay Fees and Charges Amendment Bylaw No. 3023, 2020 (Amend 2021 Sewer Utility Rates)**

**Moved By** Cole-Hamilton

**Seconded By** Frisch

That "City of Courtenay Fees and Charges Amendment Bylaw No. 3023, 2020" pass first, second and third reading.

**Carried**

**12.2 For Final Adoption**

**12.2.1 5<sup>th</sup> Street Bridge Rehabilitation Loan Authorization Bylaw No. 2978, 2020**

**Moved By** Frisch

**Seconded By** Hillian

That "5<sup>th</sup> Street Bridge Rehabilitation Loan Authorization Bylaw No. 2978, 2020" be finally adopted.

**Carried**

**13. ADJOURNMENT**

**Moved By** Theos  
**Seconded By** Morin

That the meeting now adjourn at 6:23 p.m.

**Carried**

**CERTIFIED CORRECT**

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**Corporate Officer**

**Adopted this 21<sup>st</sup> day of December, 2020**

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**Mayor**

**Minutes of a Special Council Meeting**

**Meeting #:** S9/2020  
**Date:** December 10, 2020  
**Time:** 8:50 am  
**Location:** City Hall, Courtenay, BC, via live web streaming

**Attending:**  
**Mayor:** B. Wells  
**Councillors:** W. Cole-Hamilton  
D. Hillian  
D. Frisch  
M. McCollum  
W. Morin  
M. Theos

**Staff:** W. Sorichta, Corporate Officer

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**1.00 RESOLUTIONS OF COUNCIL**

**.01**

IN-CAMERA  
MEETING

Moved by McCollum and seconded by Morin that notice is hereby given that a Special In-Camera meeting closed to the public will be held December 10<sup>th</sup>, 2020 at the conclusion of the Special Council Meeting pursuant to the following sub-sections of the *Community Charter*:

- 90 (1) (c) labour relations or other employee relations.

**Carried**

**2.00 ADJOURNMENT**

**.01**

ADJOURNMENT

Moved by Hillian and seconded by Cole-Hamilton that the meeting now adjourn at 8:53 a.m.

**Carried**

**CERTIFIED CORRECT**

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**Corporate Officer**

**Adopted this 21<sup>st</sup> day of December, 2020**

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**Mayor**



THE CORPORATION OF THE CITY OF COURTENAY

## STAFF REPORT

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**To:** Council  
**From:** Chief Administrative Officer  
**Subject:** Lease Agreement Amendments for Courtenay Airpark

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**File No.:** 2380-30 Lot 1  
**Date:** December 21<sup>st</sup>, 2020

### PURPOSE:

The purpose of this report is for Council to consider a new lease term/agreement with the Courtenay Airpark Association including proposed amendments to renewal approval requirements, environmental protection/monitoring, insurance coverage, emergency response planning, and various tenant requested amendments.

### CAO RECOMMENDATIONS:

That based on the December 21, 2020 staff report "Lease Agreement Amendments for Courtenay Airpark", Council approve OPTION 1 and authorise the attached lease agreement between the Courtenay Airpark Association and the City of Courtenay for the property having a legal description of:

- PID: 000-892-149, Lot 1, Section 66, Comox District, Plan 14942 except any portion of the bed of the Courtenay River;
- PID: 000-892-068, Lot A, Section 66 and 67, Comox District, Plan 14521 except any portion of the bed of the Courtenay River;
- PID: 004-154-664, Lot 1, Section 68, Comox District, Plan 15512;
- Licence of Occupation, Crown License No. V933091 (Floatplane Ramp)
- Lease Area A Plan EPP99020 (Floatplane Dock); and,

That staff provide public notice to satisfy the statutory advertising requirements for the provision of assistance and disposition of City lands as per Section 24 of the *Community Charter*; and,

That the Mayor and Corporate Officer be authorized to execute all documentation relating to the extended terms and renewal of the Lease Agreement.

Respectfully submitted by:

Trevor Kushner, BA, DLGM, CLGA, PCAMP  
Interim Chief Administrative Officer

**BACKGROUND:**

On May 25, 2020 Council adopted the following resolution:

*“That based on the May 25<sup>th</sup>, 2020 staff report “Lease Agreement for Courtenay Airpark”, Council approve OPTION 2 and refer this item back to staff for further consideration.”*

On August 17, 2020 staff presented a subsequent report to Council proposing lease amendments. After consideration of the report and staff recommendations, Council adopted the following resolution:

*“That Council postpone a decision on the main motion (OPTION 1) of the August 17<sup>th</sup>, 2020 staff report “Lease Agreement Amendment for Courtenay Airpark” until a future Council meeting as determined by staff:, and*

*That this item be referred back to staff to allow for a report that provides additional information about the environmental and insurance issues raised during discussion at the August 17<sup>th</sup>, 2020 regular Council meeting.”*

As referenced in the August 17<sup>th</sup>, 2020 resolution, Council raised a variety of concerns in regard to environmental regulation, monitoring and oversight. Additionally, Council inquired about the insurance limits and requested staff review insurance requirements to ensure appropriate coverage.

**DISCUSSION:**

Staff are proposing a variety of amendments to the Airpark lease agreement (Appendix A) for Council’s consideration. Proposed additions, deletions, and amendments address renewal approval processes, environmental protection and monitoring, emergency response planning, insurance coverage requirements, and tenant requested amendments as follows:

***Renewal Approval***

At the May 25<sup>th</sup>, 2020 Council meeting staff were directed to provide a clause within the lease agreement requiring Council approval of any renewal term. This request has been addressed through the following amendment:

<b>AGREEMENT SECTION REFERENCE</b>	<b>ADD</b>	<b>LEASE TERMS</b>
Section 3: Renewal	ADD	<i>“any renewal granted under this section shall only be granted if approved by the municipal council of the City.”</i>

***Environmental Protection***

Upon consideration of the August 17<sup>th</sup>, 2020 report, Council shared concerns regarding environmental regulations, monitoring standards, and oversight, ultimately directing staff to bring forward further lease amendments to ensure the ongoing environmental protection of City land and surrounding habitats.



***Proposed Environmental Monitoring and Investigation Schedule***

Although there is some information contained in a 2005 environmental audit that took place during the airpark fuel tank replacement process, environmental investigations sufficient to determine a contamination benchmark have not been undertaken. Under the terms of the previous lease agreement, regular environmental investigations were not required, however could be requested by the City “where any reasonable evidence exists that the Tenant’s current or prior use of occupation of the Premises may be introducing or increasing the existence of any Hazardous Substance on the Premises”. In the absence of an event, the City has not exercised this authority.

In ongoing interactions with the Airpark Association, it is clear that the Association takes environmental protection very seriously and the City does not suspect that there is any specific activity of concern taking place. However, assuming without evidence that there is no contamination resulting from the activities of the Airpark Association may ultimately pose an unacceptable risk to the environment and possibly the City as landowner. To mitigate risk resulting from environmental contamination, it is recommended that a baseline environmental investigation be required at the beginning of the new lease term, followed by regularly schedule recurrent investigations to take place one year prior to consideration of any lease renewal term. The purpose of the baseline investigation is to determine if there are any contaminants surrounding the fuel tanks, and the purpose of recurrent investigations it to identify changes (if any) in contamination levels.

To determine the recommended investigation processes for establishing a contamination baseline and ongoing monitoring, staff engaged Lewkowich Engineering Ltd. Lewkowich Engineering provided their expert recommendations on testing requirements which have been incorporated into the lease agreement (see Appendix B). By engaging Lewkowich Engineering Ltd. it was not the City’s intention to require the Airpark to utilized Lewkowich Engineering Ltd. to conduct the investigations – the Airpark Association may select any firm they choose to conduct the investigations as long as the firm has the expertise and ability required to undertake the baseline and recurrent investigations as per the lease terms.

In the event that contamination attributable to the activities of the Airpark are identified, the Airpark would then undertake remediation activities. Prior to each renewal term, Council will have the opportunity to review the recurrent investigation results and related remediation report (if applicable) as part of the lease renewal consideration processes. This cycle will continue until the end of the 20 year term, unless the agreement is terminated in accordance with the subject terms.

Baseline and recurrent environmental investigation objectives, criteria, and schedule are captured by the amendments outlined below:

AGREEMENT SECTION REFERENCE	ADD/ REPLACE/ AMEND	LEASE TERMS
Section 21 (a): Environmental Responsibilities	ADD	<i>“Baseline Investigation” means an Investigation that meets the minimum requirements set out in <b>Schedule E</b>;</i>

		<p><i>“Baseline Monitoring Works” means four permanent groundwater monitoring wells around the tank next perimeter finished with steel road boxes and at least four soil vapour monitoring probes in areas adjacent to the tank next, together with all appurtenances;</i></p> <p><i>“Existing Monitoring Works” means the two monitoring wells adjacent to the tank next together with all appurtenances on the Premises at the commencement of the Term;</i></p> <p><i>“Monitoring Works” means the Existing Monitoring Works, the Baseline Monitoring Works and all additional monitoring stations, wells and implements, together with all appurtenances, required to conduct the Investigations to the satisfaction of the City;</i></p>
Section 21 (a) : Environmental Responsibilities	REPLACE	<i>“Investigations” means investigations, searches, testing, drilling and sampling to the satisfaction of the City, and without limiting the generality of the foregoing, includes Baseline Investigations and Recurrent Investigations;</i>
Section 21 (a) : Environmental Responsibilities	ADD	<i>“Recurrent Investigation” means an Investigation which meets the minimum requirements set out in <b>Schedule F.</b></i>
Section 21(f) : Environmental Responsibilities	ADD	<p><i>The Tenant will install:</i></p> <ul style="list-style-type: none"> <li><i>i) The Baseline Monitoring Works on or before December 31<sup>st</sup> in the first year of the Term; and</i></li> <li><i>ii) All other Monitoring Works reasonably required by the City by the date or dates specified by the City.</i></li> </ul>
Section 21(g) : Environmental Responsibilities	ADD	<p><i>The Tenant will conduct such Investigations of the Premises, the cost of which Investigations will be borne by the Tenant, as follows:</i></p> <ul style="list-style-type: none"> <li><i>i) a Baseline Investigation on or before December 31<sup>st</sup> in the first year of the Term;</i></li> <li><i>ii) a Routine Investigation on or before December 31<sup>st</sup> in the fourth year of the Term or any renewal Term;</i></li> </ul>

Section 21(g) : Environmental Responsibilities	<u>AMEND</u> /ADD	<i>iv) if the Tenant does not complete the Investigations to the satisfaction of the City, the City may enter on the property of the Tenant and take any actions necessary to complete the Investigations and install and repair the Monitoring Works, the cost of which actions will be borne by the Tenant.</i>
Section 21(k) : Environmental Responsibilities	ADD	<i>k) The City may retain an environmental consultant to assist it with the review of each of the Investigations at the cost of the Tenant.</i>

**Environmental Investigations: Cost Implications to the Airpark Association**

The estimated costs for a Baseline Investigation (excluding GST) is \$20,385.28, and the estimated cost of Recurrent Investigation is \$2,419.65<sup>1</sup> (minimum) to \$6,077.72 (maximum) (see Appendix A). Of note, in the event that increased contamination levels are identified, additional testing and related remediation costs are not included in these estimates. Expanded, evidence driven investigation requirements excluded, the total minimum estimated financial impact on the Airpark Association over the twenty (20) year lease term is \$30,063.48 (minimum) plus \$1503.17 GST, for an estimated total of \$33,671.10. Although it may at first blush appear to be a significant cost, when membership financial impacts are spread over time, the costs of the proposed ongoing environmental monitoring is marginal, see examples below:

Example Description	Membership # (approximate)	Lease Term Environmental Monitoring Costs	Per-Member Cost
Per member cost total over 20 year lease term	110	\$33,671.10	\$306.10 (20 year total cost)
Annualized per member cost over 20 year lease term	110	\$33,671.10	\$15.31 (annual cost over 20 years)
Monthly per member cost over 20 year lease term	110	\$33,671.10	\$1.28 (monthly cost over 20 years)

**Insurance Coverage**

Historically, the Airpark has been required to maintain comprehensive/commercial general liability insurance in the amount of not less than five million dollars (\$5,000,000) inclusive per occurrence. Additionally, the Airpark has been required to maintain liability insurance to cover any liability that might arise out of the sale of aviation gasoline and any other products by the tenant of no less than five million dollars (\$5,000,000) per occurrence for bodily injury and damage. The City requested a revaluation of these insurance levels, and it

<sup>1</sup> Cost assuming existing wells are sampled with no change in conditions/contamination present.

was recommended that the insurance coverage be increased to no less than ten million dollars (\$10,000,000) for both comprehensive/commercial general liability and liability insurance specific to the sale of gasoline. Lastly, the environmental endorsement attached to the Airpark’s liability insurance is intended for small sudden and accidental pollution resulting from aircraft fuel discharge.

AGREEMENT SECTION REFERENCE	AMEND	LEASE TERMS
Section 26: Insurance	AMEND	<p>a) <i>The Tenant shall obtain, at its own expense, and keep in force a policy of comprehensive/commercial general liability insurance providing coverage for death, bodily injury, property loss, property damage and other potential loss and damage arising out of the Tenant’s use and occupation of the Premises in an amount of not less than <u>TEN MILLION DOLLARS (\$10,000,000)</u> inclusive per occurrence.</i></p> <p>b) <i>In addition to the insurance under Subsection (a), the Tenant shall at its own expense, throughout the Term of this Agreement, secure and maintain in force during the Term of this Agreement or any renewal thereof product liability insurance to cover any liability that might arise out of the sale of aviation gasoline and any other products by the Tenant, with an inclusive limit of not less than <u>TEN MILLION DOLLARS (\$10,000,000)</u> per occurrence for bodily injury and property damage.</i></p>

Providing further insurance coverage, the City maintains a separate environmental liability policy (\$5,000,000) that applies to all City-owned land/buildings that specifically covers items such as fuel tanks.

**Emergency Response Planning**

In the event of an emergency at the Airpark (e.g. structural fire, wildfire, natural disaster, fuel spills etc.) an Emergency Response Plan (ERP) is essential to initiating and coordinating response activities to protect the health and safety of individuals, assets, and the environment. In discussions with legal counsel and other municipalities, ERPs have become a standard requirement for airparks and is now required for insurance purposes. Based on this information, and in recognition of the role an ERP plays in protecting the health and safety of the user group, and the surrounding physical environment, the City requested the Airpark Association develop an Emergency Response Plan that clearly identifies those agencies and positions that would be involved in emergency response activities. The Airpark Association similarly recognizing the need for an ERP quickly got to work on developing their plan.

The City has received a draft Airpark ERP and is currently reviewing and validating the information, and considers the ERP to be substantially complete. The Airpark ERP identifies staging areas, command posts, vehicle/pedestrian access points, on-site services (e.g. first aid, fuel shut off, electrical services etc.) and assigns/recognizes the roles and responsibilities to the appropriate response group (e.g. airpark, fire,

ambulance, public works, CVRD etc.) . Lastly the Airpark ERP identifies key contacts and includes a directory for quick reference in the event of an emergency.

AGREEMENT SECTION REFERENCE	ADD	LEASE TERMS
Section 26: Insurance	ADD	<i>i) The Tenant shall prepare, implement and maintain an emergency response plan throughout the Term that is consistent with all applicable standards and enactments and that is approved in writing by the City.</i>

**Tenant Requested Amendments**

Staff have been actively communicating with Airpark Association representatives regarding the details of the lease agreement. Arising from those discussion, there is consensus to amend the lease as follows:

SECTION REFERENCE	ADD/ REMOVE	LEASE TERMS
Section 7: Payment of Taxes	ADD	<i>the Tenant shall have the right to appeal the assessed value of the property and premises through B.C. Assessment Authority.</i>
Section 14: Zoning	ADD	<i>Without fettering the discretion of the City, the City will work with the Tenant to zone the property appropriately for the existing uses.</i>
Section 22: Interceptors	REMOVE	<i>If requested by the City, the Tenant at the cost of the Tenant shall provide grease, oil, and sand interceptors. All interceptors shall be of a type and capacity approved by the City and shall be readily accessible for cleaning and inspection. The Tenant, at the expense of the</i>

**FINANCIAL IMPLICATIONS:**

Financial implications include external legal costs for lease review and amendments. Additional fees were also incurred, as the City worked with an environmental investigative firm to identify baseline and recurrent investigation objectives and appear as a subject matter expert at the December 21<sup>st</sup> Council meeting. In total it is estimated that approximately \$4500 has been spent on the revision activities of the lease agreement. External legal and environmental investigation firm fees are covered under the Corporate Services operating budget.

**ADMINISTRATIVE IMPLICATIONS:**

Staff has spent a total of 100 hours: investigating/consulting with professionals on environmental monitoring options, liaising with external legal counsel on lease amendment terms, investigating and determining insurance requirements, liaising with the Airpark Association on lease terms/conditions/amendments, reviewing the Airpark Emergency Response Plan, and drafting Council reports.

**ASSET MANAGEMENT IMPLICATIONS:**

The City maintains ownership over the Airpark land, and therefore has an interest in the condition of the land overtime. To ensure environmental liabilities (if any) related to the use and occupation of the Airpark environmental monitoring is required to determine baseline and new (if any) contamination levels. Understanding the source of contamination will clearly determine the party responsible for remediation activities and associated costs.

**STRATEGIC PRIORITIES REFERENCE:**

**We focus on organizational and governance excellence**

- Responsibly provide services at levels which the people we serve are willing to pay
- Communicate appropriately with our community in all decisions we make
- ▲ Value our community safety and support our protective services

**Proactively plan and invest in our natural and built environment**

- Focus on asset management for sustainable service delivery
- ▲ Support social, economic, and environmental sustainability solutions

**We actively pursue vibrant economic development**

- ▲ Work with the business and development sectors to mutually improve efficiencies
- ▲ Continue to explore innovative and effective economic development opportunities

**We continually invest in our key relationships**

- Consider effective ways to engage with and partner for the health and safety of the community

- **AREA OF CONTROL:** The policy, works and programming matters that fall within Council's jurisdictional authority to act
- ▲ **AREA OF INFLUENCE:** Matters that fall within shared or agreed jurisdiction between Council and another government or party
- **AREA OF CONCERN:** Matters of interest that are outside Council's jurisdictional authority to act

**OFFICIAL COMMUNITY PLAN REFERENCE:**

The Official Community Plan acknowledged the important role the Courtenay Airpark serves to the City with support for limited expansion of airport oriented commercial uses.

**REGIONAL GROWTH STRATEGY REFERENCE:**

No specific reference.

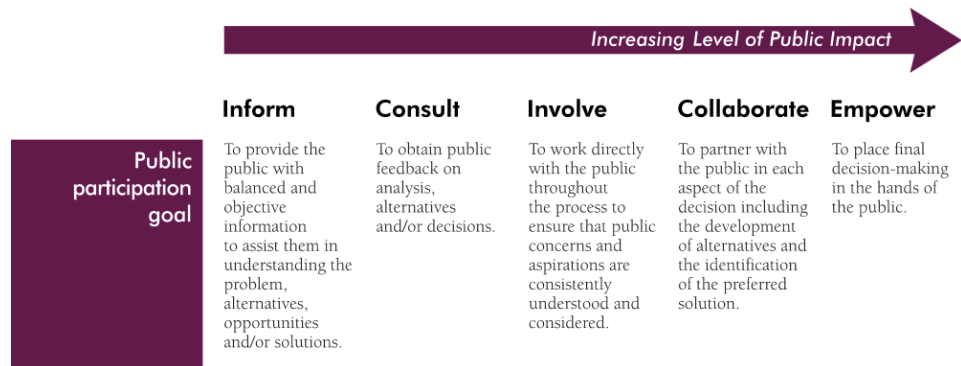
**CITIZEN/PUBLIC ENGAGEMENT:**

Section 26 [notice of proposed property disposition] of the *Community Charter* requires that notice be given prior to property disposition. Notice of property disposition must be given in accordance with section 24 [publication of intention to provide certain kinds of assistance] and 94 [public notice].

To satisfy the legislated requirements as set out in sections 24, 26 and 94 of the *Community Charter* the notice must:

- Give notice of Council’s intention to provide assistance to a person or organization
- Identify the intended recipient of the assistance
- Describe the nature, terms and extent of the proposed assistance (disposition)
- Describe the land or improvements
- Be posted in the public notice posting places
- Be published in a newspaper that is distributed at least weekly in the area affected by the subject matter of the notice

Staff would inform the public based on the IAP2 Spectrum of Public Participation:



© International Association for Public Participation [www.iap2.org](http://www.iap2.org)

**OPTIONS:**

**OPTION 1:** That based on the December 21, 2020 staff report “Lease Agreement Amendments for Courtenay Airpark”, Council approve **OPTION 1** and authorise the attached lease agreement between the Courtenay Airpark Association and the City of Courtenay for the property having a legal description of:

- PID: 000-892-149, Lot 1, Section 66, Comox District, Plan 14942 except any portion of the bed of the Courtenay River;
- PID: 000-892-068, Lot A, Section 66 and 67, Comox District, Plan 14521 except any portion of the bed of the Courtenay River;
- PID: 004-154-664, Lot 1, Section 68, Comox District, Plan 15512;
- Licence of Occupation, Crown License No. V933091 (Floatplane Ramp)
- Lease Area A Plan EPP99020 (Floatplane Dock); and,

That staff provide public notice to satisfy the statutory advertising requirements for the provision of assistance and disposition of City lands as per Section 24 of the *Community Charter*; and,

That the Mayor and Corporate Officer be authorized to execute all documentation relating to the extended terms and renewal of the Lease Agreement. (recommended)

OPTION 2: That Council refer this item back to staff for further consideration.

OPTION 3: That Council deny the lease request and provide notice to terminate under the current terms and conditions.

Prepared by:



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Kate O'Connell, BA, MPP  
Director of Corporate Support Service

Concurrence by:



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Trevor Kushner, BA, DLGM, CLGA  
Interim Chief Administrative Officer

Attachments: Appendix A: Lease Agreement  
Appendix B: Investigations and Cost Estimates



**APPENDIX A:  
LEASE AGREEMENT**

**TERMS OF INSTRUMENT – PART 2**

THIS AGREEMENT dated for reference January 1<sup>st</sup>, ~~2020~~2021

BETWEEN:

**THE CORPORATION OF THE CITY OF COURTENAY**, a municipal corporation incorporated pursuant to the *Community Charter* and having its offices at 830 Cliffe Avenue, Courtenay, B.C., V9N 2J7

(the "**City**")

AND:

**COURTENAY AIRPARK ASSOCIATION (Inc. No. S-17439)** a corporation incorporated under the laws of British Columbia and having its registered office at Unit A – 110 20<sup>th</sup> Street, Courtenay B.C. V9N 8B1

(the "**Tenant**")

WHEREAS:

- A. The City is the registered owner of lands and premises in the City of Courtenay more particularly described as follows:

PID: 000-892-149, Lot 1 of Section 66, Comox District, Plan 14942 except any portion of the bed of the Courtenay River

PID: 000-892-068, Lot A, Section 66 and 67, Comox District, Plan 14521 except any portion of the bed of the Courtenay River

PID: 004-154-665, Lot 1 Section 68, Comox District, Plan 15512

Licence of Occupation, Crown License No. V933091

Lease Area A Plan EPP99020

(hereinafter collectively called the "**Airpark**");

- B. The City has agreed to lease a portion of the Airpark including float plane ramp and float plane dock to the Tenant, and the Tenant has agreed to accept that lease, all on the terms and conditions herein set forth;
- C. In accordance with Section 26 of the *Community Charter*, the City has published notice in a newspaper of its intention to lease a portion of the Airpark to the Tenant.

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NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the mutual covenants and agreements herein set forth, the City and Tenant covenant and agree as follows:

**1. PREMISES AND LICENCE OF OCCUPATION**

- (a) The City hereby demises and leases to the Tenant that part of the Airpark identified as;
  - ~~1~~(i) ~~Lease Area A, Section 68, Comox District Plan EPP99020, having an area of .56 ha as shown in the plan attached as Schedule A hereto; and~~
  - (ii) Lease Area B, Sections 66,67 and 68, Comox District, Plan VIP80002, having an area of 7.29 ha ~~and attached as Schedule A hereto.~~ ~~2~~Lease Area A, Section 68, Comox District Plan EPP99020, having an area of .56 ha ~~and~~, as shown in the plan attached as Schedule ~~C~~B hereto.
- (b) The City hereby grants to the Tenant a licence of occupation over those lands ~~identified shown in~~ in Schedule ~~B-C~~ (the “**Licence Area**”) subject to the following:
  - (i) the Tenant’s rights and obligations are subject to the City’s rights and obligations under a licence of occupation granted by the Province of British Columbia for the Licence Area (the “**Crown Licence**”), ~~an extract of which is attached to this Agreement as Schedule B;~~
  - (ii) the Tenant shall abide by all terms and conditions of the Crown Licence to maintain the Crown Licence in good standing;
  - (iii) all of the obligations of the Tenant under this Agreement in respect of the Premises shall also apply to the Licence Area; and
  - (iv) subject to the Tenant performing its obligations under this Agreement, the City shall use reasonable efforts to maintain the Crown License in good standing; and

**2. TERM**

- (a) The Term of this Agreement shall be for a period of FIVE (5) YEARS commencing on January 1, ~~2020-2021~~ and terminating on December 31, ~~2024-2025~~ (the “**Term**”).
- (b) The Tenant shall, at the expiry or sooner determination of this Agreement or any renewal thereof peaceably surrender and yield unto the City the Premises together with all fixtures or erections which at any time during the Term of this Agreement or renewal thereof may be made thereon in good and substantial repair and condition and deliver to the City all keys to the Premises that the Tenant has in its possession.

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### 3. RENEWAL

The Tenant, if not in default hereunder, may renew this Agreement for three additional terms of FIVE (5) YEARS each on the same terms and conditions contained herein, save and except for this covenant for renewal and except that the Rent to be paid during such renewal period shall be fixed and determined by the City at the time of the renewal at any greater or other rate than herein reserved (based on the applicable policies of the City in effect), subject to the following:

- (a) The Tenant shall exercise this renewal by giving written notice to the City in the manner provided herein not less than SIX (6) MONTHS prior to the expiry of the term; and
- (b) Any renewal granted under this section shall only be granted if approved by the municipal council of the City.

### 4. RENT

- (a) The Tenant shall pay to the City rent in the amount of ONE DOLLAR (\$1.00) per year, to be paid in advance on the first day of each year of the Term (the “**Base Rent**”).
- (b) In addition to the Base Rent payable under Subsection (a), the Tenant shall pay 50% of the parking fees levied by the Tenant for the parking of aircraft on the Premises in each year (“**Aircraft Parking Fees**”). The Tenant shall charge an amount of annual Aircraft Parking Fees for the first year of the Term of \$530. In each year following this amount shall be increased by the Consumer Price Index for British Columbia.
- (c) In addition to the Base Rent payable under Subsection (a), the Tenant shall pay to Landlord, from time to time upon demand, all other sums payable to the City pursuant to this Agreement (the “**Additional Rent**”).
- (d) The Tenant shall pay the City its share of the Aircraft Parking Fees by December 31<sup>st</sup> in each year of the Term in respect of Parking Fees collected during that year.
- (e) The Tenant shall set the Aircraft Parking Fees prior to January 1<sup>st</sup> of each year and shall only charge such Aircraft Parking Fees that are approved in writing by the City.
- ~~(f) The Tenant shall charge an amount of annual Aircraft Parking Fees for the first year of the Term of \$530. In each year following this amount shall be increased by the Consumer Price Index for British Columbia.~~
- ~~(g)~~ (f) The Tenant shall provide such documentation and financial records as the City may reasonably require each year during the Term to confirm the amount of Aircraft Parking Fees payable to the City under this Agreement.
- ~~(h)~~ (g) The lease in this Agreement is a net lease to the City, and the Base Rent and Additional Rent provided to be paid to the City under this Agreement will be net to the City and will yield to the City the entire such rental during the Term without abatement for any cause whatsoever. Except as specifically provided in this Agreement, all costs, expenses, and obligations of every kind and nature whatsoever relating to the Premises, whether or not

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referred to in this Agreement and whether or not of a kind now existing or within the contemplation of the parties, will be paid by the Tenant.

**5. PURPOSE AND USE OF PREMISES**

- (a) The Tenant will use the Premises for aviation purposes only and will operate a public aerodrome for use as such by the public, but no other uses or activities are permitted.
- (b) The rules and regulations attached as Schedule D with such reasonable variations, modifications, and additions as shall from time to time be made by the City, shall be observed and performed by the Tenant, its agents, employees, sub-tenants, licensees and invitees. All such rules and regulations shall be deemed to form a part of this Agreement.
- (c) Except as specifically provided herein, the Tenant shall not use or permit any part of the Premises to be used for or with respect to or in connection with the operation of any business, commercial or revenue generating enterprise without the prior written consent of the City. Notwithstanding this restriction, the Tenant is permitted to use, or authorize others to use, the premises to provide educational services related to pilot training or aviation safety, even if a fee is charged.
- (d) The Tenant shall comply with its constitution, bylaws and constating documents at all times and shall notify the City whenever a change in the Tenant's constitution or bylaws occurs.

**6. QUIET POSSESSION**

The City hereby ~~convenants~~-covenants with the Tenant that the Tenant, upon paying the Rent hereby reserved and performing the covenants hereinbefore contained, may peaceably possess and enjoy the Premises for the term hereby granted without any interruption or disturbance from the City or any person lawfully claiming by, from or under the City.

**7. PAYMENT OF TAXES**

The Tenant shall promptly pay when due municipal, regional district, school, hospital district and other property taxes and all other taxes, charges, levies, assessments, and other fees which may be imposed or that may arise in respect of the Premises or the Tenant's use of the Premises. The Tenant shall pay to the City all taxes, charges, levies and other fees, including Goods and Services Tax or any replacement tax, which may be payable in respect of this Agreement. The Tenant shall have the right to appeal the assessed value of the property and premises through B.C. Assessment Authority.

**8. COMPLIANCE WITH REGULATIONS**

The Tenant shall, in all respects, at all times during the Term abide by and comply with all applicable statutes, laws, regulations and orders of any authority having jurisdiction and, without limiting the generality of the foregoing, all federal, provincial, or municipal laws or statutes or

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bylaws relating to environmental matters and relating to the Airpark and its operation, including all the rules, regulations, policies, guidelines, criteria or the like made under or pursuant to any such laws.

**9. ASSIGNMENT AND SUBLEASES**

- (a) The Tenant shall not make any assignment of this Agreement, nor any transfer or sublease of the whole or any part of the Premises demised or leased hereunder, without obtaining the prior consent in writing of the City to such assignment, transfer or sublease. In requesting the City's consent to an assignment, sublease or licence, the Tenant must provide the City with all information requested by the City. The Tenant must, if required by the City, enter into sub-leases, assignment agreements or licences on terms required by the City, including requirements for insurance and indemnities.
- (b) The Tenant may sublet portions of the Premises for the purpose of the parking of aircraft provided that any form of sublease shall be approved by the City in writing, shall provide for the observance of terms, conditions, rules and regulations of this Agreement and shall provide for termination in writing for failure to observe same.

**10. RIGHTS OF ACCESS**

- (a) The City, its servants or agents shall have full and free access for inspection purposes during normal business hours and in the presence of the Tenant or a representative of the Tenant to any and every part of the Premises; it being expressly understood and agreed, however, that in cases of emergency, the City, its officers, servants or agents, shall at all times and for all purposes have full and free access to the Premises.
- (b) The City shall have the right to enter upon the Premises to install, maintain and repair buildings, pipes, wires, airducts, utilities or any other installations required by the City for the City's use of the Airpark and neighbouring lands.
- (c) Subject only to the provisions of this Agreement, the Tenant shall have the right of ingress and egress over the Airpark roadways crossing City Property subject to rules and regulations as may be established by the City respecting such use.
- (d) The Tenant shall not permit any vehicles belonging to the Tenant or to any sub-tenant, licensee, invitee, agent or employee to cause obstruction to any roads, driveways or common areas of the Premises, the Airpark or in the neighbourhood surrounding the Airpark, or prevent the ingress and egress to all other persons using the Airpark.

**11. "AS IS" CONDITION**

The Tenant accepts the Premises "as is" and acknowledges that it has had the opportunity to undertake such inspections, tests and surveys of the Premises as it considers necessary and that the City has made no representations or warranties respecting the Premises, and that by entering into this Agreement, it is satisfied that the Premises is suitable for its purposes.

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## 12. OWNERSHIP OF BUILDINGS

- (a) The City and the Tenant agree that the title to and ownership of all structures or improvements constructed, erected or installed to be constructed, erected or installed on the Premises by the Tenant, together with all replacements, alterations, additions, changes, substitutions, improvements and repairs thereto (the “**Buildings**”), shall at all times during the Term be vested in the Tenant, notwithstanding any rule of law to the contrary.
- (b) At the expiration or early termination of the Term, the Tenant shall have the opportunity to remove the Buildings and any part of the Buildings not removed by the Tenant shall become the absolute property of the City free of all encumbrances, without payment of any compensation to the Tenant. If the Tenant removes any Buildings under this Agreement, the Tenant shall do so at its own cost, dispose of any refuse or debris arising from the removal and restore the Lands at its own cost.

## 13. CONSTRUCTION

- (a) If the Tenant is not then in default under this Agreement and with the prior written consent of the City, the Tenant may construct, renovate or replace the Buildings. In giving its consent, the City may impose any conditions, including, without limitation, location requirements, parking and access requirements, construction requirements, design requirements, use restrictions, financial restrictions, and security obligations.
- (b) The Tenant acknowledges that prior to any construction on the Premises, including construction, renovation or replacement of the Buildings, the Tenant must obtain a building permit and a development permit and comply with all other bylaw requirements imposed by the City on construction within its boundaries.
- (c) The Tenant shall promptly pay all charges incurred by the Tenant for any work, materials or services that may be done, supplied or performed in respect of the Premises and shall forthwith discharge any liens in respect of same at any time filed against the Airpark.
- (d) The Tenant will not permit any liens, judgments or other charges to be registered against the Airpark. If any lien, judgment or other charge is registered, the Tenant will obtain its discharge within THIRTY (30) DAYS of the said registration.

## 14. ZONING

The Tenant acknowledges that the Tenant must not use the Premises or permit a use of the Premises in breach of the City of Courtenay zoning bylaw. The Without fettering the discretion of the City, the City will work with the Tenant to zone the property appropriately for the existing uses.

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**15. SAFETY**

The Tenant shall take all possible precautions to ensure the safety of persons using the Premises and Building.

**16. SIGNS AND NOTICES**

The Tenant shall not display any signs or notices on the Premises without the prior written approval of the City with the exception of operationally required or safety related signs and notices. The Tenant shall inform the City about the installation of operationally required or safety related signs and notices.

**17. ADDITIONAL RIGHTS OF THE CITY**

The City reserves the right to grant leases or licences, rights of way or privileges to others on, over, under, through or across the Premises provided however that the granting of such rights of way or privileges will not damage or disrupt permanently the physical facilities of the Tenant, will not impose any cost upon the Tenant, and will not weaken, diminish or impair the rights and obligations of the parties under this Agreement.

**18. UTILITIES**

- (a) If applicable, the Tenant shall, at the cost and expense of the Tenant, be responsible for the installation and maintenance of the connecting system to the water, sanitary sewerage and storm sewerage systems at the Airpark, at the nearest point of connection. The Tenant shall not commence any such work without the prior written approval of the City. Prior to such approval being given, the Tenant will send copies of the plans and specifications for the connecting of such services to the City. Work will be performed under the supervision of a designated employee of the City.
- (b) The Tenant shall construct improvements on the Premises in such manner that the surface drainage water on the Premises will be discharged into the drainage system at the Airpark. Plans for the construction of storm drainage services shall be subject to the approval in writing of the City prior to installation of such services, for compatibility with the field drainage channels serving the Premises, all at the cost and expense of the Tenant.
- (c) The Tenant shall, at the cost and expense of the Tenant, provide complete and proper arrangements for the adequate sanitary handling and disposal away from the Premises and Airpark of all trash, garbage and other refuse on or in connection with the Tenant's operations under this Agreement, all to the satisfaction of the City. Piling crates, cartons, barrels or other similar items shall not be permitted in a public area on the Airpark, or on the Premises.
- (d) The Tenant shall pay all charges for water supply, sewage disposal, garbage removal, gas, heating fuel, telephone service, cablevision, electricity, power or other utility or

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communication service rendered in respect of the Premises.

**19. NUISANCE**

The Tenant shall not at any time during the Term of this Agreement or any renewal thereof, use, exercise or carry on or permit or suffer to be used, exercised or carried on, in or upon the Premises or any part thereof any noxious, noisome or offensive act, trade, business, occupation or calling, and no act, matter or thing whatsoever shall at any time during the said term be done in or upon the Premises or any part thereof which shall or may be or grow to the annoyance, nuisance, damage or disturbance of the occupiers or owners of the land or adjoining land and properties, provided that the reasonable use of the Premises for the maintenance, storage, landing and taking off of aircraft shall not be considered a nuisance.

**20. WASTE**

The Tenant will not commit, suffer, or permit any wilful or voluntary waste, spoil or destruction of the Premises.

**21. ENVIRONMENTAL RESPONSIBILITIES**

(a) For the purpose of this Part:

“Baseline Investigation” means an Investigation that meets the minimum requirements set out in Schedule E;

“Baseline Monitoring Works” means four permanent groundwater monitoring wells around the tank nest perimeter finished with steel road boxes and at least four soil vapour monitoring probes in areas adjacent to the tank nest, together with all appurtenances;

**"Environmental Law"** means all federal, provincial, municipal or local laws, statutes or ordinances relating to environmental matters, including all rules, regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws;

“Existing Monitoring Works” means the two monitoring wells adjacent to the tank nest together with all appurtenances on the Premises at the commencement of the Term;

**"Hazardous Substance"** means a contaminant, pollutant, dangerous goods, waste, toxic substance, special waste or hazardous substance as defined in or pursuant to any Environmental Law;

~~“Investigation” has the meaning described in Subsection (f) of this Section 21;~~  
“Investigations” means investigations, searches, testing, drilling and sampling to the satisfaction of the City and, without limiting the generality of the foregoing, includes Baseline Investigations and Recurrent Investigations;

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“Monitoring Works” means the Existing Monitoring Works, the Baseline Monitoring Works and all additional monitoring stations, wells and implements, together with all appurtenances, required to conduct the Investigations to the satisfaction of the City;

“Notice” means any citation, directive, order, claim, litigation, investigation, proceedings, judgment, letter or other communication, written or oral, actual or threatened, from any person, including any governmental agency;

“Permit” means any authorization, permit licence, approval or administrative consent issued pursuant to Environmental Law;

~~“Phase 1 Recurrent Investigation” means an Investigation that shall include the following components:~~which meets the minimum requirements set out in Schedule F.

~~(i) \*~~

- (b) The Tenant will conduct its business and operation on the Premises in compliance with all Environmental Laws and all Permits.
- (c) The Tenant will forthwith notify the City of the occurrence of any of the following and will provide the City with copies of all relevant documentation in connection therewith:
  - (i) a release of a Hazardous Substance on the Premises or the Airpark, except as is authorized under Environmental Law;
  - (ii) the receipt by the Tenant of a Notice from any governmental agency of non-compliance pursuant to any Environmental Law, including a Notice of non-compliance respecting a Permit;
  - (iii) the receipt by the Tenant of a Notice of a claim by a third party relating to environmental concerns; or
  - (iv) the receipt by the Tenant of information which indicates that Hazardous Substances are present in or on the Premises.
- (d) The Tenant will not permit the storage, treatment or disposal of Hazardous Substances on the Premises except in accordance with all Environmental Laws.
- (e) The Tenant shall not cause or suffer or permit any oil or grease or any harmful, objectionable, dangerous, poisonous, or explosive matter or substance to be discharged on to the Premises or any building on the Premises and will take all reasonable measures for insuring that any effluent discharge will not be corrosive, poisonous or otherwise harmful, or cause obstruction, deposit or pollution on the Premises, or driveways, ditches, water courses, culverts, drains or sewers.

(f) The Tenant will install:

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- (i) the Baseline Monitoring Works on or before December 31<sup>st</sup> in the first year of the Term; and
- (ii) all other Monitoring Works reasonably required by the City by the date or dates specified by the City.
- ~~(g)~~ The Tenant will conduct such ~~investigations, searches, testing, drilling and sampling~~ ~~("Investigation")~~ Investigations of the Premises, the cost of which Investigations will be borne by the Tenant, as follows:

  - (i) ~~a Phase 1~~ a Baseline Investigation on or before December 31<sup>st</sup> in the first year of the Term;
  - (ii) ~~a Phase 1~~ Recurrent Investigation on or before December 31<sup>st</sup> in the fourth year of the Term or any renewal Term;
  - (iii) as may at any time be required by the City where any reasonable evidence exists that the Tenant's current or prior use or occupation of the Premises may be introducing or increasing the existence of any Hazardous Substance on the Premises; and
  - (iv) if the Tenant does not complete the Investigations to the satisfaction of the City, the City may enter on the property of the Tenant and take any actions necessary to complete the Investigations and install and repair the Monitoring Works, the cost of which actions will be borne by the Tenant.
- ~~(g)~~ (h) If Hazardous Substances are present on or in the Premises or the Airpark as a result of the Tenant's use or occupation of the Premises, the Tenant will take all necessary action, at the cost of the Tenant to remediate the Premises or the Airpark to a level acceptable to the City and to governmental authorities.
- ~~(h)~~ (i) Prior to the termination of the lease, the Tenant will conduct all Investigations required by the City where any reasonable evidence exists that the Tenant's use or occupation of the Premises has introduced or increased the existence of any Hazardous Substance on or in the Land.
- ~~(i)~~ (j) The Tenant will promptly provide the results of all Investigations to the City. Where any Hazardous Substance is found on or in the Premises or the Airpark as a result of the Tenant's use or occupation of the Premises, the Tenant will take all necessary action, at the cost of the Tenant, to remediate the Premises or the Airpark to a level acceptable to the City and to governmental authorities.
- (k) The City may retain an environmental consultant to assist it with the review of each of the Investigations at the cost of the Tenant.

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~~(l)~~(l) The Tenant will provide to the City satisfactory documentary evidence that all Permits are valid and in good standing as requested by the City from time to time.

~~(k)~~(m) The Tenant and the Indemnifier will, jointly and severally, indemnify and save harmless the City, its officers, directors, employees, agents and shareholders from and against any and all losses, claims, costs, expenses, damages and liabilities, including all costs of defending or denying the same, and all costs of investigation, monitoring, remedial response, removal, restoration or permit acquisition and including all solicitor's fees and disbursements in connection therewith which at any time may be paid or incurred by or claimed against the City, its officers, directors, employees, agents and shareholders arising, directly or indirectly, out of:

- (i) a breach by the Tenant of any of the covenants contained in this Agreement;
- (ii) where the Tenant's use or occupancy of the Premises results in the presence, release or increase of any Hazardous Substance on the Premises or the Airpark (or on any other land by way of migration, seepage or otherwise);
- (iii) any reasonable action taken by the City with respect of the existence of or remediation for any such Hazardous Substance on the Premises or the Airpark (or on any other land by way of migration, seepage or otherwise); or
- (iv) any reasonable action taken by the City in compliance with any Notice of any governmental authority with respect to the existence of any such Hazardous Substance on the Premises or the Airpark (or on any other land by way of migration, seepage or otherwise).

~~(n)~~(n) The indemnities contained in this Agreement will survive the expiration or earlier termination of the Term.

## 22. INTERCEPTORS

~~If requested by the City, the Tenant at the cost of the Tenant shall provide grease, oil, and sand interceptors. All interceptors shall be of a type and capacity approved by the City and shall be readily accessible for cleaning and inspection. The Tenant, at the expense of the Tenant, shall maintain the interceptors in continuous, efficient operation at all times.~~

[This section has been deleted.](#)

## 23. SECURITY AND FIRE SYSTEMS PROTECTION

The City shall not be responsible for providing fire systems protection to nor security of the Premises, the Buildings and any improvements.

## 24. FIRE PREVENTION

The Tenant shall, at the expense of the Tenant, take all precautions to prevent fire from occurring

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in or about the Premises, and shall observe and comply with all laws and regulations in force respecting fires at the said Airpark, and with all instructions given from time to time by the City with respect to fire risk mitigation and extinguishing of fires.

## 25. ADVERTISING

The Tenant shall not construct, erect, place or install on the outside of the Buildings or on the Premises any poster, advertising sign or display, electrical or otherwise, without first obtaining the consent, in writing, of the City.

## 26. INSURANCE

- (a) The Tenant shall obtain, at its own expense, and keep in force a policy of comprehensive/commercial general liability insurance providing coverage for death, bodily injury, property loss, property damage and other potential loss and damage arising out of the Tenant's use and occupation of the Premises in an amount of not less than ~~FIVE—TEN~~ MILLION (~~\$5,000,000.00~~10,000,000.00) DOLLARS inclusive per occurrence.
- (b) In addition to the insurance under Subsection (a), the Tenant shall at its own expense, throughout the Term of this Agreement, secure and maintain in force during the Term of this Agreement or any renewal thereof product liability insurance to cover any liability that might arise out of the sale of aviation gasoline and any other products by the Tenant, with an inclusive limit of not less than ~~FIVE—TEN~~ MILLION DOLLARS (~~\$5,000,000.00~~10,000,000.00) per occurrence for bodily injury and property damage.
- (c) On the first day of the Term and at other times upon demand by the City, the Tenant shall deliver to the City certified copies of the policies of insurance required to be maintained by the Tenant under this Agreement.
- (d) The City may, from time to time, notify the Tenant to change the amount of insurance required by this Agreement and the Tenant will, within FORTY-FIVE (45) DAYS of receiving such a notice, cause the amounts to be changed and deliver to the City a letter from its insurer certifying the change in the amount of insurance.
- (e) The Tenant shall ensure that all policies of insurance pursuant to this Agreement:
  - (i) are underwritten by a responsible insurance company or companies licensed to do business in the Province of British Columbia and that meet with the reasonable approval of the City;
  - (ii) are written in the name of the Tenant and the City with loss payable to them as their respective interests may appear;
  - (iii) list the City as an additional insured;
  - (iv) contain a cross liability clause and a waiver of subrogation clause in favour of the City;

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- (v) are primary and do not require the sharing of any loss by any insurer that insures the City;
  - (vi) contain a clause to the effect that any release from liability entered into by the City prior to any loss shall not affect the right of the Tenant or the City to recover; and
  - (vii) endorsed to provide the City with THIRTY (30) DAYS advance notice in writing of cancellation or material change.
- (f) The Tenant agrees that if it does not provide or maintain in force such insurance, the City may take out the necessary insurance and pay the premium therefore for periods of one year at a time, and the Tenant shall pay to the City as Additional Rent the amount of such premium immediately upon demand.
- (g) In the event that both the City and the Tenant have claims to be indemnified under any insurance, the indemnity shall be applied first to the settlement of claims of the City and the balance, if any, to the settlement of the claim of the Tenant.
- (h) The Tenant shall not do or permit to be done any act or things which may render void or voidable or conflict with the requirements of any policy or policies of insurance, including any regulations of fire insurance underwriter applicable to such policy or policies, whereby the Airpark or the Buildings or the contents of the premises of any tenant are insured or which may cause any increase in premium to be paid in respect of any such policy.
- (i) The Tenant shall prepare, implement and maintain an emergency response plan throughout the Term that is consistent with all applicable standards and enactments and that is approved in writing by the City.

**27. RELEASE AND INDEMNITY**

- (a) The City shall not be responsible in any way for any injury to any person or for any loss or damage to any property belonging to the Tenant or to other occupants of the Premises or to their respective sub-tenants, invitees, licensees, agents, employees, or other persons from time to time attending at the Premises, including without limiting the foregoing, any loss of or damage caused by theft or breakage or failure to maintain and keep the Premises, the Buildings, or the land in good repair and free from refuse, obnoxious odours, vermin or other foreign matter, defective wiring, plumbing, gas, sprinkler, steam, running or clogging of the above pipes or fixtures, or otherwise, acts, or negligence of guests, invitees, or employees or the Tenant or any other occupants of the premises, or the acts or negligence of any owners or occupiers of adjacent or continuous property or their guests, invitees, or employees, act of God, acts or negligence of any person not in the employment of the City, or for any other loss whatsoever with respect to the Premises, the Airpark, or any business carried thereon.
- (b) The Tenant hereby releases the City and its elected officials, officers, employees,

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contractors, agents, successors and assigns from and against any and all liabilities, damages, costs, claims, suits, or actions, which the Tenant may have, now or in the future, in relation to this Agreement, the Premises or the Tenant's use or occupancy of the Premises.

- (c) Save and except for the negligence of the City, and its elected officials, offices, employees, contractors, agents, successors and assigns, the Tenant and the Indemnifier, jointly and severally, will and hereby do indemnify and save harmless the City from any and all liabilities, damages, costs, claims, suits, or actions, (including without limitation, the full amount of all legal fees, costs, charges and expenses whatsoever) directly or indirectly arising from:
- (i) any breach, violation, or non-performance of any covenant, condition or agreement in this Agreement set forth and contained on the part of the Tenant to be fulfilled, kept, observed and performed;
  - (ii) any act, omission, or negligence of the Tenant, its members, officers, directors, employees, agents, contractors, subcontractors, subtenants, licensees, invitees or others for whom it is responsible;
  - (iii) any gas, oil or other such spill or leak caused from the use of the Premises which may cause contamination to the environment or otherwise contravene the Waste Management Act;
  - (iv) any damage to property occasioned by the Tenant's use and occupation of the Premises and Building or any injury to person or persons, including death, resulting at any time from the Tenant's use and occupation of the Premises and Building; or
  - (v) the granting of this Agreement,

and this indemnity shall survive the expiry or sooner determination of this Agreement.

## **28. TEMPORARY SUSPENSION OF SERVICE**

Without limiting or restricting the generality of this Agreement, the Tenant shall not have nor make any claim or demand, nor bring any action or suit or petition against the City or any of its officers, servants or agents for any damage which the Tenant may sustain by reason of any temporary suspension, interruption or discontinuance, in whole or in part, from whatever cause arising in services supplied by the City hereunder.

## **29. REPAIRS AND MAINTENANCE**

- (a) Throughout the Term at its own expense, the Tenant shall repair and maintain the Premises and the Buildings and keep the Premises and the Buildings in a state of good repair as a prudent owner would do. The City will not be obliged to repair, maintain, replace or alter the Premises, the Buildings, or any other Building or structure or any part

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thereof on the Premises during the Term or to supply any services or utilities thereto save and except for such services and utilities as the City may be required to provide strictly in its capacity as a municipality and not in its capacity as a landlord. The Tenant hereby assumes the full and sole responsibility for the condition, operation, maintenance, repair, replacement and management of the Premises and Building during the Term.

- (b) The Tenant shall upon written notice from the City, make any repairs that are, in the opinion of the City, necessary to the Premises within SIXTY (60) DAYS of receipt of such notice.
- (c) The Tenant shall clear all ice and snow, cut grass, landscape, repair and replace as necessary all sidewalks, driveways, parking areas and other public areas on the Premises in a well maintained, clean, tidy and safe state as befits land used for an airport hangar adjacent to an airport and as a prudent owner would do.
- (d) The Tenant shall not allow any ashes, refuse, garbage or other loose or objectionable material to accumulate on the Premises and shall maintain receptacles for garbage disposal and for the disposal of oil and other waste products.
- (e) The Tenant shall not, without the prior written consent of the City, make any alterations to the landscaping and topography of the Premises.
- (f) The Tenant shall reimburse the City for expenses incurred by the City in repairing any damage caused to the Premises, the improvements thereon or any part thereof as a result of the negligence or wilful act of the Tenant, its invitees, licensees, agents or other persons from time to time in or about the Premises or the Airpark.

**30. LANDLORD’S RIGHT TO PERFORM**

If the Tenant shall fail to perform or cause to be performed each and every one of the covenants and obligations of the Tenant contained in this Agreement, on the part of the Tenant to be observed and performed, the City shall have the right (but shall not be obliged) to perform or cause the same to be performed and to do or cause to be done such things as may be necessary or incidental thereto (including without limiting the foregoing, the right to make repairs, installations, erection and expend monies) and all payments, expenses, charges, fees, (including all legal fees on solicitor and client basis) and disbursements incurred or paid by or on behalf of the City in respect thereof shall be paid by the Tenant to the City forthwith.

**31. DEFAULT**

- (a) If the Tenant defaults in the payment of any money payable under this Agreement or fails to observe, comply with or perform any of its covenants, agreements or obligations under this Agreement, the City may deliver to the Tenant a notice of default (in the manner required herein for giving notices) stipulating that the default must be rectified or cured within FIFTEEN (15) DAYS of the notice if the default is non-payment of Rent or Additional Rent and within THIRTY (30) DAYS of the notice for other defaults, but less

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or no notice is required to be given by the City in emergency or urgent circumstances, as determined by the City in its sole discretion, acting reasonably, or where the Tenant has failed to keep the Premises insured.

- (b) If the default (other than payment of money payable by the Tenant under this Agreement and other than failure to keep the Premises insured) reasonably requires more time to rectify or cure than THIRTY (30) DAYS, the Tenant will be deemed to have complied with the rectification or curing of it if the Tenant commences rectifying or curing the default within THIRTY (30) DAYS after notice from the City and diligently completes the same.

### **32. CITY'S RIGHTS ON DEFAULT**

Notwithstanding any other provisions of this Agreement, if the Rent or any part thereof shall be in arrears or unpaid for THIRTY (30) DAYS after the specified date of payment, whether or not the same shall have been in any manner demanded, or in the case of default, breach or non-observance is made or suffered by the Tenant at any time, in or in respect of any of the covenants, which on the part of the Tenant ought to be observed or performed, then it shall be lawful for the City, its servants or agents to do any, all, or a combination of the following:

- (a) re-enter and thereafter to have, possess and enjoy the Premises and all improvements thereon; nevertheless, the City may, at his option, except as hereinafter set forth, compel the Tenant to remove from the Premises any improvements and any goods, chattels, materials, effects or things from the Premises all at risk of cost and expense of the Tenant;
- (b) terminate this Agreement; or
- (c) exercise or obtain such other rights as may be permitted by this Agreement or at law.

### **33. CREDITORS**

If the Term of this Agreement or any renewal hereby granted shall at any time be seized or taken in execution or in attachment by any creditor of the Tenant or if the Tenant shall make any assignment for the benefit of creditors, or become bankrupt or insolvent, or if the Tenant takes the benefit of any Act or regulation that may be in force for bankrupt or insolvent debtors, then in any such case the Term of this Agreement or any renewal thereafter, shall at the option of the City, immediately become forfeited and void, and all Rent then due shall immediately become due and payable, and in such case it shall be lawful for the City for any time thereafter to enter into and upon the Premises, or any part thereof, and repossess the Premises or any portion thereof for its sole use, and anything herein contained to the contrary notwithstanding.

### **34. HOLDING OVER**

If at the expiration of the Term the Tenant shall hold over with the consent of the City, the tenancy of the Tenant shall thereafter, in the absence of written agreement to the contrary, be

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from year to year, at the same rental as set out in this Agreement and shall be subject to all other terms and conditions of this Agreement.

**35. DISTRESS**

If and whenever the Tenant is in default of the payment of any money, including rent, whether expressly reserved by this Agreement or deemed as Rent, the City may without notice or any form of legal process whatsoever, enter the Premises and seize, remove and sell the Tenant's goods, chattels and equipment and seize, remove, and sell any goods, chattels and equipment at any place to which the Tenant or any other person may have removed them in the same manner as if they had remained and been distrained in the Premises, notwithstanding any rule of law or equity to the contrary, and the Tenant hereby waives and renounces the benefit of any present or future statute or law limiting or eliminating the City's right of distress.

**36. WAIVER OR NON-ACTION**

Waiver by the City of any breach of any term, covenant or condition of this Agreement by the Tenant must not be deemed to be a waiver of any subsequent default by the Tenant. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Agreement by the Tenant must not be deemed to be a waiver of such term, covenant or condition.

**37. NO ABATEMENT**

The Tenant is not entitled to any abatement or reduction or deduction from the Rent or Additional Rent.

**38. REMEDIES CUMULATIVE**

No reference to or exercise of any specific right or remedy by the City prejudices or precludes the City from any other remedy, whether allowed at law or in equity or expressly provided for in this Agreement. No such remedy is exclusive or dependent upon any other such remedy, but the City may from time to time exercise any one or more of such remedies independently or in combination. Without limiting the generality of the foregoing, the City is entitled to commence and maintain an action against the Tenant to collect any rent not paid when due, without exercising the option to terminate this Agreement.

**39. NO JOINT VENTURE**

Nothing contained 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 the Tenant any power or authority to bind the City in any way.

**40. TERMINATION ON CHANGE OF USE OR DAMAGE TO PREMISES**

- (a) If for any reason, other than regular maintenance or repair of the Premises, the Airpark ceases to be used for the take-off and landing of aircraft, the City or Tenant may

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terminate this Agreement by giving SIXTY (60) DAYS written notice of its intention to terminate this Agreement, and after the expiration of such period of notification, this Agreement shall be determined and ended without further notice or delay.

- (b) The parties hereto agree that if the Premises are damaged in any manner so as to render them unfit for the purposes of the Tenant, the City shall not be required to repair such damage or to make the Premises reasonably fit for the purposes of the Tenant, and the Tenant may at its option, exercised within SIXTY (60) DAYS of the occurrence of such damage, elect to repair the damage or to terminate this Agreement and the election shall be by notice in writing to the City. If the Tenant elects to terminate this Agreement, then the Tenant shall immediately deliver possession of the Premises to the City.

**41. ENUREMENT**

This Agreement and everything herein contained shall enure to the benefit of and be binding upon the successors, assigns and other legal representatives, as the case may be of each of the parties hereto, and every reference herein to every party hereto shall include the successors, assigns and other legal representatives of such party.

**42. INTERPRETATION**

Any note appearing as a heading in this Agreement has been inserted for convenience and reference only, and of itself cannot define, limit or expand the scope of meaning of the present Lease or any of its provisions. Where there is a male, female or corporate party, the provisions hereof shall be read with all grammatical changes to gender and number required by the context. All covenants and obligations shall be deemed joint and several. The invalidity of any section for any reason whatsoever shall not invalidate any other section of this Agreement. Every reference to each party is deemed to include the heirs, executors, administrators, successors, directors, employees, members, servants, agents, officers, and invitees of such party where the context so permits or requires.

**43. NO EFFECT ON LAWS OR POWERS**

Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions pursuant to the *Community Charter* (British Columbia) or its rights and powers under any enactment to the extent the same are applicable to the Airpark or the Premises, all of which may be fully and effectively exercised in relation to the Airpark or the Premises as if this Agreement had not been fully executed and delivered.

**44. NOTICES**

- (a) Whenever in this Agreement it is required or permitted that notice or demand be given or served by either party of this Agreement to or on the other, such notice or demand will be in writing and will be validly given or sufficiently communicated if forwarded by express mail to the addresses set out at the beginning of this Agreement.

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- (b) Such addresses may be changed from time to time by either party giving notice as above provided.
- (c) Notice shall be deemed to have been effectively communicated or given on the day received or on the FIFTH (5<sup>th</sup>) DAY after it was mailed or sent, whichever is the earlier.

**45. AUTHORITY**

The Tenant represents and warrants to the City that it has full authority to enter into this Agreement and to carry out the actions contemplated herein, that all resolutions and other preconditions to validity have been validly adopted, and that those signing this Agreement on its behalf are authorized to bind the Lessee by their signatures.

**46. ENTIRE AGREEMENT**

The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements whether verbal or written between the parties with respect to the subject matter hereof. This Agreement may not be modified or amended except by an instrument in writing signed by the parties.

**47. COVENANTS AND CONDITIONS**

All of the provisions of this Agreement shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants and conditions were used in each separate section.

**48. REGISTRATION**

The Tenant shall be responsible for any costs of registering this Agreement in the Land Title Office, including the costs or any plan necessary for the registration of the lease and any modification of this Agreement.

**49. TIME OF THE ESSENCE**

Time shall be of the essence of this Agreement.

**50. TENANT'S REPRESENTATIONS AND WARRANTIES**

The Tenant represents and warrants that the Tenant:

- (a) is a not-for-profit society validly incorporated and in good standing under the laws of British Columbia and does not conduct its activities with a view to obtaining, and does not distribute, profit or financial gain for its members;

- (b) has the power and capacity to enter into and carry out the obligations under this Agreement; and
- (c) has completed all necessary resolutions and other preconditions to the validity of this Agreement.

**51. FINANCIAL REPORTS**

The Tenant will provide its yearly financial reports to the City within 8 weeks of the Tenant's financial year-end.

**52. LAWS OF BRITISH COLUMBIA**

This Agreement shall be construed by the laws of the Province of British Columbia.

**53. SEVERANCE**

If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid will not affect the validity of the remainder of the lease.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C which is attached hereto and forms part of this Agreement.

~~The Corporate Seal of~~ THE CORPORATION OF THE CITY \_\_\_\_\_ )  
 OF COURTENAY ~~was hereunto, by its authorized signatories:~~ \_\_\_\_\_ )

~~affixed in the presence of:~~

\_\_\_\_\_)  
 \_\_\_\_\_) c/s  
 Mayor \_\_\_\_\_)  
 \_\_\_\_\_)  
 Director of Legislative & Corporate Services \_\_\_\_\_)

~~The Corporate Seal of~~ COURTENAY AIRPARK ASSOCIATION ~~was hereunto affixed in the~~  
~~presence,~~ \_\_\_\_\_ )

~~by its authorized signatories:~~ \_\_\_\_\_ )

of: \_\_\_\_\_)  
 \_\_\_\_\_)  
 \_\_\_\_\_)  
 \_\_\_\_\_) e/s  
 Name \_\_\_\_\_)  
 \_\_\_\_\_)

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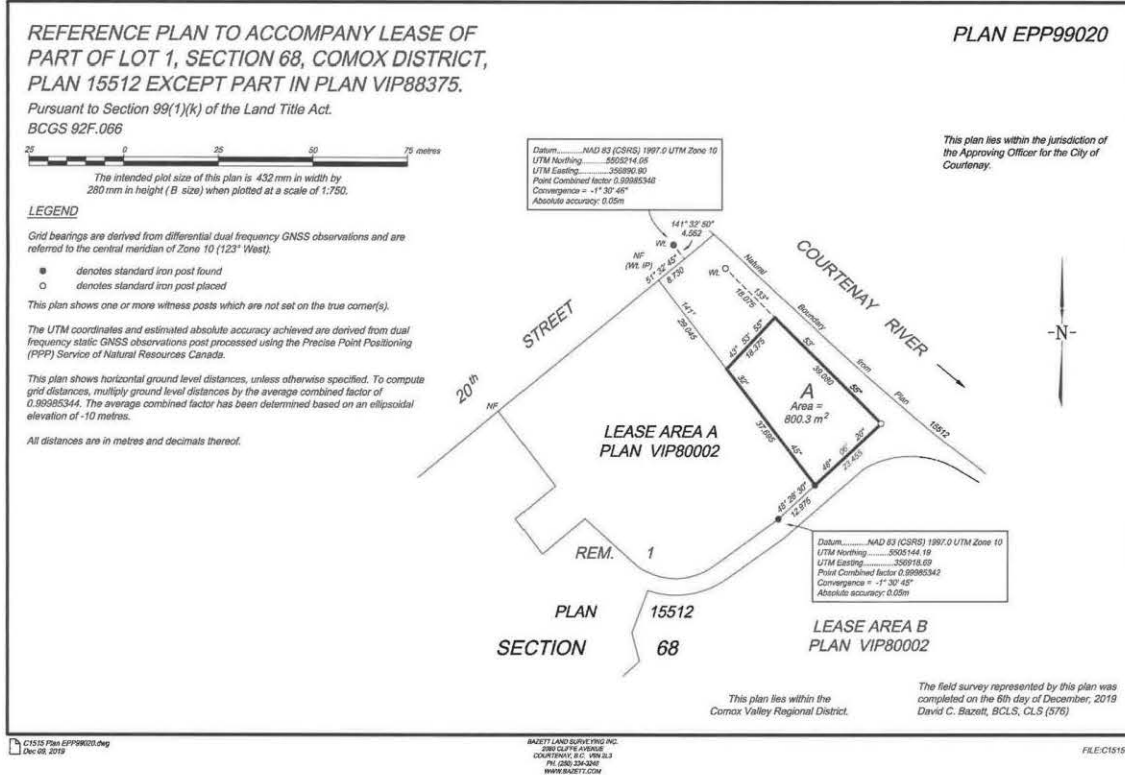
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\_\_\_\_\_)  
Name )

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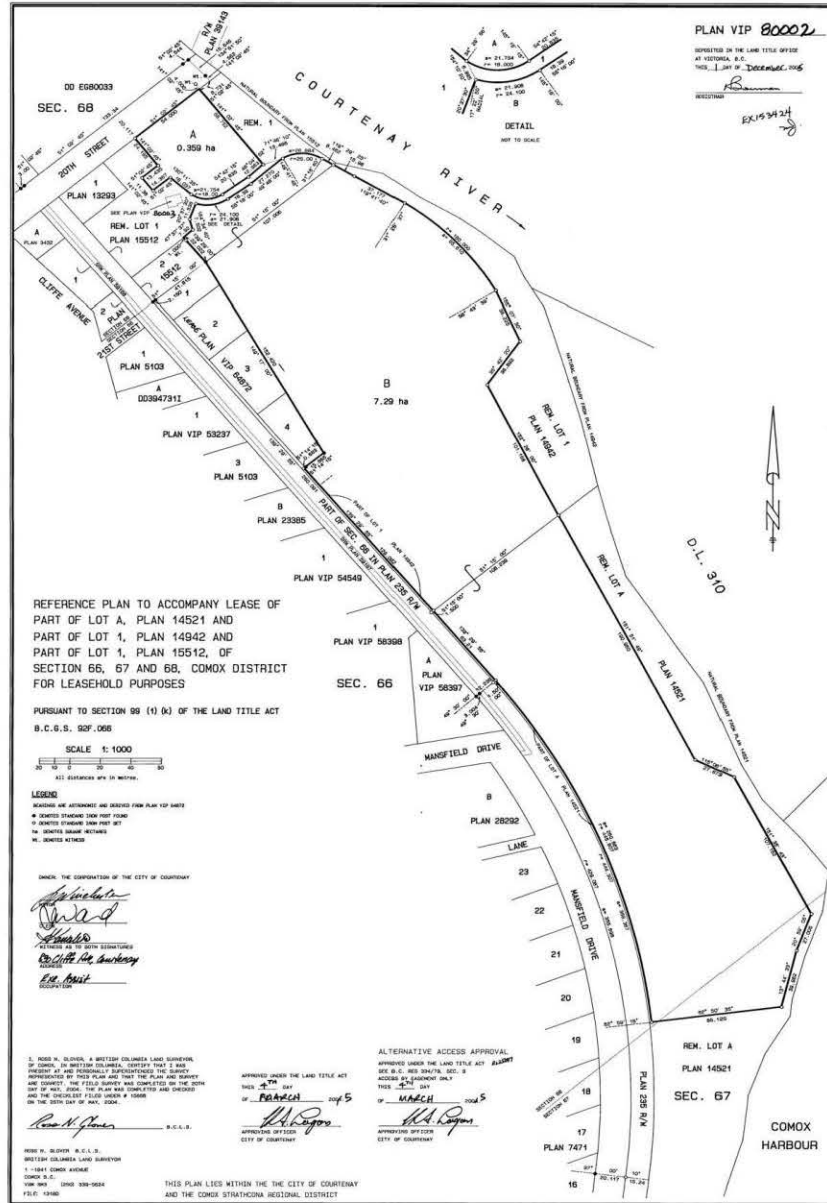


**SCHEDULE A**  
**PLAN EPP99020**



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**SCHEDULE B**  
**REGISTERED COPY OF PLAN VIP 80002**



STATUS: Final

Plan #: VIP80002 App #: N/A CH #: \_\_\_\_\_

RC/O: 2005-12-01 ROST: 2018-03-08 10:14:17

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**SCHEDULE BC**  
**LICENCE AREA (CROWN LICENSE)**

Licence File No.: 1414807  
Disposition No.: 933091

LEGAL DESCRIPTION SCHEDULE

LEGAL DESCRIPTION: That parcel or tract of Crown land together with unsurveyed Crown Foreshore or land being part of the bed of Courtenay River, all within Comox District, as shown on sketch below, containing 0.56 hectares, more or less.



Standard Licence

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**SCHEDULE ~~CD~~**  
**RULES AND REGULATIONS**

1. The Tenant shall ensure that there is a proper run-up pad for aircraft and the run-up of aircraft does not cause a dust problem.
2. The Tenant shall take all reasonable steps to minimize the effect of dust blowing onto the marina.
3. The Tenant shall not block access to the City's buildings in the Airpark.
4. The Tenant shall ensure that all aircraft are parked in a safe manner.
5. The Tenant shall ensure that no equipment is parked on the Airpark except for aircraft and auxiliary equipment.
6. The Tenant shall ensure that all volatile liquids are stored in a safe manner.

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**SCHEDULE E**  
**BASELINE INVESTIGATION**

A Baseline Investigation will include all of the following components:

1. Auditing of existing leak detection and product inventory systems to determine effectiveness; separate reporting of conclusions and recommendations.
2. Inspection and sampling of the Existing Monitoring Works. Groundwater and/or soil vapour samples will be obtained and analysed for Light and Heavy Extractable Petroleum Hydrocarbons (L/HEPH), Polycyclic Aromatic Hydrocarbons (PAH), Volatile Organic Compounds (VOC), including Benzene, Toluene, Ethyl Benzene & Xylene (BTEX), Volatile Petroleum Hydrocarbons (VPH), Methyl tert-Butyl Ether (MTBE), and Styrene, and/or VOC for vapour samples.
3. Borehole exploration in at least five additional locations around the perimeter of the tank nest, not more than 8 meters distant from the perimeter, to refusal depth or to encountering groundwater. At least three boreholes must be down-gradient of the tank nest.
4. Soil sampling at approximate 1-meter intervals in all boreholes. Samples must be analysed for L/HEPH, PAH, VOC including BTEX, VPH, MTBE, and Styrene.
5. Groundwater samples must be analysed for L/HEPH, PAH, VOC including BTEX, VPH, MTBE, and Styrene.
6. Vapour samples must be analysed for VOC including BTEX.
7. Field sampling and Laboratory QA procedures must meet industry standard practices.
8. A report describing the investigation methodology, QA procedures, analytical results with comparison to the applicable BC Contaminated Sites Regulations standards, and conclusions and recommendations must be provided to the City.

{0062251700678614; 5-6 }

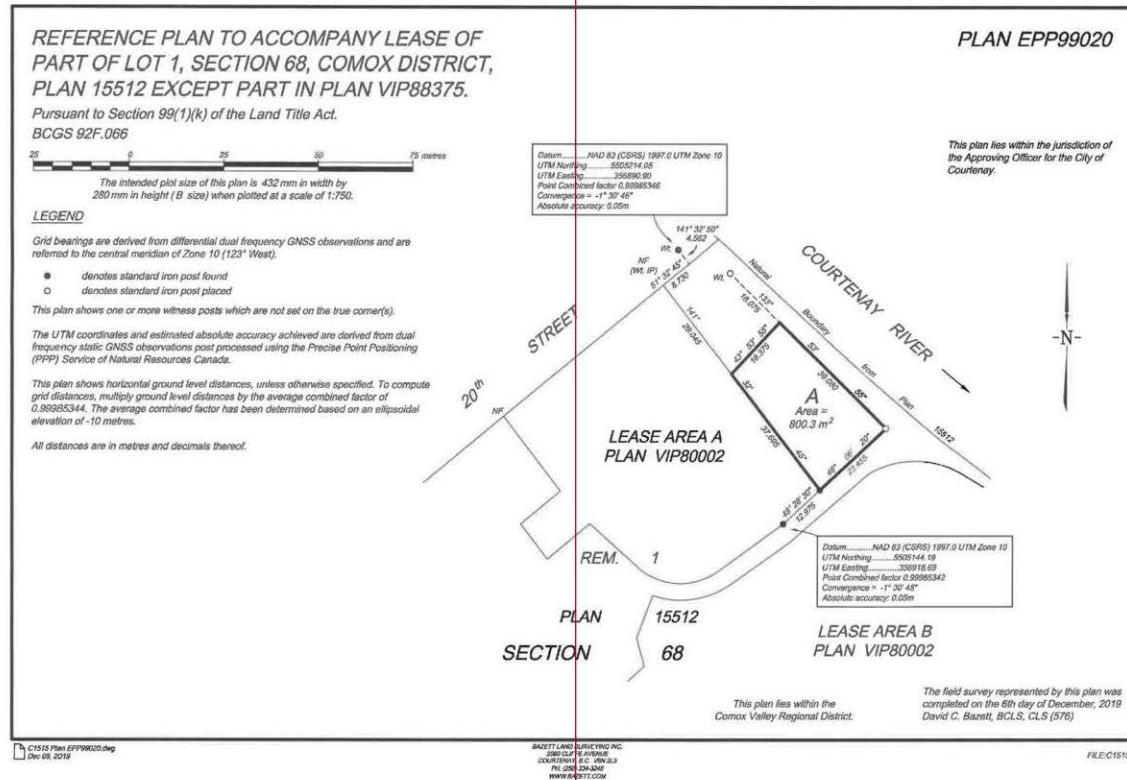
**SCHEDULE F**  
**RECURRENT INVESTIGATION**

A Recurrent Investigation will include all of the following components:

1. Sampling of the four groundwater monitoring wells around the tank nest perimeter. Groundwater samples must be analysed for L/HEPH, PAH, VOC including BTEX, VPH, MTBE, and Styrene.
2. Further investigation if indicated by groundwater data.
3. Field sampling and Laboratory QA procedures must meet industry standard practices.
4. A report describing the investigation methodology, QA procedures, analytical results with comparison to the applicable BC Contaminated Sites Regulations standards, and conclusions and recommendations for further investigation if indicated must be provided to the City.

**PLAN EPP99020**

{0062251700678614; 5-6 }



{0062251700678614; 5.6.}



**APPENDIX B:  
 INVESTIGATIONS AND COST ESTIMATES**

<b>Baseline Investigation</b>	<b>Units</b>	<b>Unit Cost</b>	<b>Ext Tot</b>	
Project planning, subcontractor coordination, sampling plan, health & safety	4	\$100.00	\$400.00	
Drilling subcontractor (includes all well installation supplies)	1.5	\$1,980.00	\$2,970.00	
Utility locator	1	\$825.00	\$825.00	
Onsite Activities (Environmental Scientist)	24	\$100.00	\$2,400.00	
Data Summary & Report (Environmental Scientist)	8	\$100.00	\$800.00	
Project Management & Review (Senior Env. Scientist/Professional Engineer)	6	\$130.00	\$780.00	
Total Kilometre Charge	800	\$0.61	\$488.00	
<b>Soil Analytical</b>				Note 1
Lab Fee: EPH	11	\$69.30	\$762.30	Note 2
Lab Fee: VOCs (incl. BTEX, VPH, MTBE, styrene)	11	\$210.44	\$2,314.84	Note 3
Lab Fee: LEPH/HEPH (incl. PAH)	11	\$144.38	\$1,588.18	Note 4
<b>Water Analytical</b>				
Lab Fee: VOCs (incl. BTEX, VPH, MTBE, styrene)	5	\$204.67	\$1,023.35	Note 2
Lab Fee: BTEX (incl. VPH & MTBE)	5	\$58.15	\$290.75	Note 3
Lab Fee: LEPH/HEPH (incl. PAH)	5	\$144.38	\$721.90	Note 4
<b>Soil Vapour</b>				
Lab Fee: VOCs	5	\$356.62	\$1,783.10	
Courier Fee	3	\$55.00	\$165.00	
Contingency (20%)	1	20%	\$3,072.86	
<b>PROJECT TOTAL (EXCLUDING GST)</b>			<b>\$20,385.28</b>	
<b>Recurrent Investigation</b>	<b>Units</b>	<b>Unit Cost</b>	<b>Max Cost</b>	<b>Min Cost*</b>
Onsite Activities (Environmental Scientist)	8	\$100.00	\$800.00	\$400.00
Data Summary & Report (Environmental Scientist)	4	\$100.00	\$400.00	\$200.00
Project Management & Review (Senior Env. Scientist/Professional Engineer)	2	\$130.00	\$260.00	\$520.00
Total Kilometre Charge	400	\$0.61	\$244.00	\$122.00
<b>Water Analytical</b>				
Lab Fee: VOCs (incl. BTEX, VPH, MTBE, styrene)	5	\$204.67	\$1,023.35	
Lab Fee: BTEX (incl. VPH & MTBE)	5	\$58.15	\$290.75	\$290.75
Lab Fee: LEPH/HEPH (incl. PAH)	5	\$144.38	\$721.90	\$721.90
<b>Soil Vapour</b>				
Lab Fee: VOCs	5	\$356.62	\$1,783.10	
Courier Fee	3	\$55.00	\$165.00	\$165.00
Contingency (20%)	1	20%	\$389.62	
<b>PROJECT TOTAL (EXCLUDING GST)</b>			<b>\$6,077.72</b>	<b>\$2,419.65</b>
<b>NOTES:</b>				
1 Analysis of 1, 2 and 3 is prescribed under BC Contaminated Sites Regulations for direct comparison to applicable site standards. Exceedances of these standards means that the site is defined as 'contaminated' under the meaning of the Regulations, and may require further investigation and remediation.				
2 Extractable Petroleum Hydrocarbons				
3 Volatile Organic Carbons w/Benzene, Toluene, Ethylbenzene & Xylene, Volatile Petroleum Hydrocarbons & anti-knock fuel additive MTBE				
4 Light & Heavy Extractable Petroleum Hydrocarbons, corrected for Polycyclic Aromatic Hydrocarbons				
5 Costs assuming existing wells are sampled with no change in conditions/contamination present				





THE CORPORATION OF THE CITY OF COURTENAY

## STAFF REPORT

**To:** Council

**File No.:** 2380-30 Lot 3

**From:** Chief Administrative Officer

**Date:** December 21, 2020

**Subject:** Lease Agreement for Lot 2, 100-20<sup>th</sup> Street - Courtenay Airpark

### PURPOSE:

The purpose of this report is for Council to consider entering into a lease agreement of Lot 2 Courtenay Airpark with D. Dubyk.

### CAO RECOMMENDATIONS:

That based on the December 21<sup>st</sup>, 2020 staff report "Lease Agreement for Lot 2, 100-20<sup>th</sup> Street - Courtenay Airpark", subsequent to the publication of notice, Council adopt OPTION 1 and authorize the attached lease between Duane John Dubyk and the City of Courtenay for the property having a legal description of PID: 000-892-149, Lot 1, Section 66, Comox Land District Plan 14942 except any portion of the bed of the Courtenay River and further identified as Lot 2 on Plan VIP64872; and

That the Mayor and Corporate Officer be authorized to execute all documentation relating to the lease.

Respectfully submitted,

Trevor Kushner, BA, DLGM, CLGA, PCAMP  
Interim Chief Administrative Officer

### BACKGROUND:

Duane John Dubyk is the current owner of the hangar located on Lot 2, Courtenay Airpark. Mr. Dubyk stores an aircraft and periodically performs mechanical repairs on it. No further business or sub-lease is being undertaken at this time.

### DISCUSSION:

Mr. Dubyk has committed to leasing Lot 2 for a minimum of five years with a renewal clause of three additional five year terms subject to City approvals. The initial lease term will be for a period of five years commencing on January 1, 2021 and terminating on December 31, 2025.

In May 2019 a Fair Market Rental Appraisal was conducted by Jackson & Associates for the Courtenay Airpark Lands located at 100 – 20<sup>th</sup> Street. Based on their research and analysis report, the fair market rental for Lot 2 should be a minimum of \$0.20 per sqft. The current market rental estimates are based on existing zoning and land use controls and the use restriction contained within the lease document.





The annual rent to be paid by Mr. Dubyk will increase by 4.5% each year of the lease, continuing the annual rate percent increase applied to the previous Lot 2 lease agreement.

Lot 2 Annual Lease Rent		
2021	\$3,881.28	4.5%
2022	\$4,055.93	4.5%
2023	\$4,238.45	4.5%
2024	\$4,429.18	4.5%
2025	\$4,628.49	4.5%

**FINANCIAL IMPLICATIONS:**

There are no additional financial resources required.

**ADMINISTRATIVE IMPLICATIONS:**

Approximately 40 hours of staff time annually will be dedicated to the review of the lease, meet with the tenant to review issues of concern, administrative compliance with the lease, and an inspection schedule of the Premises for compliance with the lease.

**ASSET MANAGEMENT IMPLICATIONS:**

There are no asset management implications as the lease will not change any service levels within the Courtenay Airpark. The use conforms to existing airpark activities.

**STRATEGIC PRIORITIES REFERENCE:**

**We focus on organizational and governance excellence**

- Responsibly provide services at levels which the people we serve are willing to pay

**We actively pursue vibrant economic development**

- ▲ Work with the business and development sectors to mutually improve efficiencies
- ▲ Continue to explore innovative and effective economic development opportunities

**We continually invest in our key relationships**

- Consider effective ways to engage with and partner for the health and safety of the community

- **AREA OF CONTROL:** The policy, works and programming matters that fall within Council's jurisdictional authority to act
- ▲ **AREA OF INFLUENCE:** Matters that fall within shared or agreed jurisdiction between Council and another government or party
- **AREA OF CONCERN:** Matters of interest that are outside Council's jurisdictional authority to act

**OFFICIAL COMMUNITY PLAN REFERENCE:**

The Official Community Plan states: “Council acknowledges the Courtenay Airpark serves an important role to the City and Council will support limited expansion of airport oriented commercial uses including aircraft flight training services.”

**REGIONAL GROWTH STRATEGY REFERENCE:**

No specific reference.

**CITIZEN/PUBLIC ENGAGEMENT:**

Section 26 of the *Community Charter* for municipalities requires that notice be given prior to the disposition. The notice must also be published in a newspaper that is published at least weekly in the area affected by the subject matter of the notice.

**OPTIONS:**

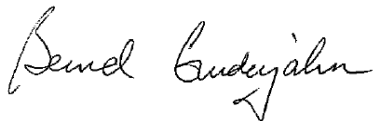
OPTION 1: That based on the December 21<sup>st</sup>, 2020 staff report “Lease Agreement for Lot 2 100-20<sup>th</sup> Street – Courtenay Airpark”, subsequent to the publication of notice, Council approve OPTION 1 and authorize the lease between the City of Courtenay and Airspeed High Ultralights for the property having a legal description of PID: 000-892-149, Lot 1, Plan 14942, Section 66, Comox Land District Plan 14942 except any portion of the bed of the Courtenay River and further identified as Lot 2 on Plan VIP64872; and

That the Mayor and Corporate Office be authorized to execute all documentation relating to the lease. (Recommended)

OPTION 2: That Council deny the lease request.

OPTION 3: That Council refer this item back to staff for further consideration.

Prepared by:



Bernd Guderjahn, SCMP  
Manager of Purchasing

Reviewed by:



Kate O'Connell,  
Director of Corporate Support Services

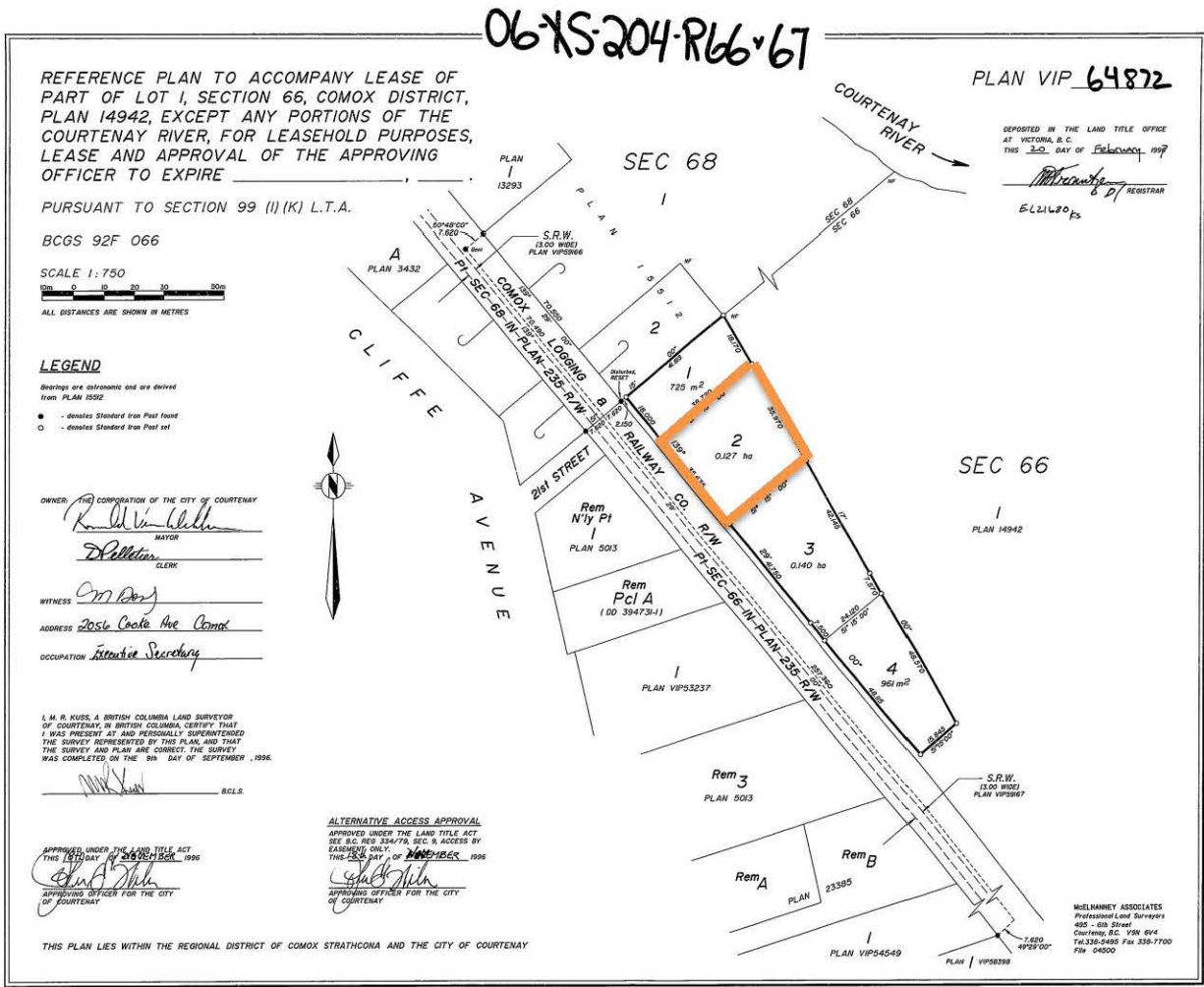
Concurrence by:



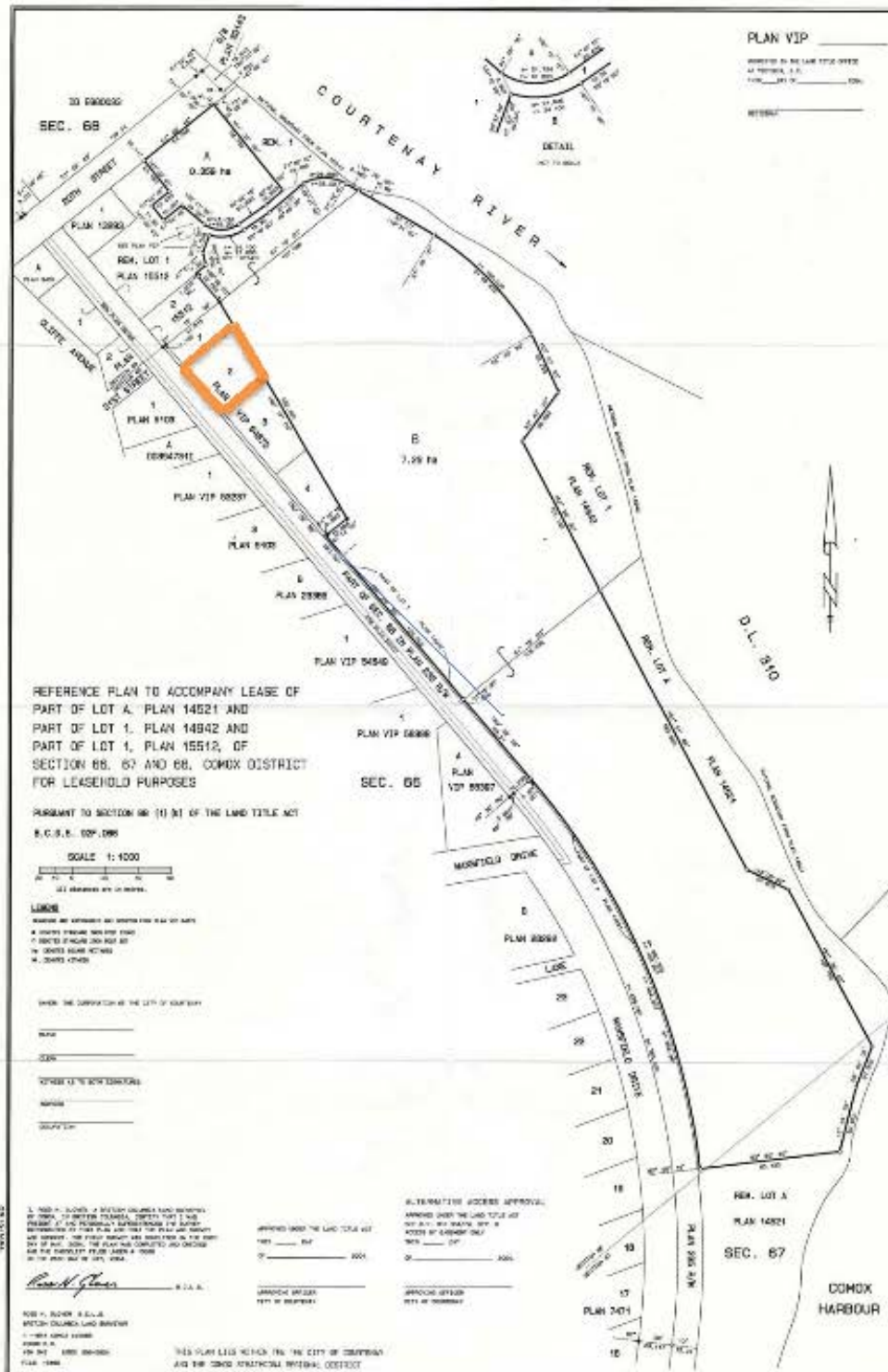
Trevor Kushner, BA, DLGM, CLGA, PCAMP  
Interim Chief Administrative Officer

*Attachments: A – Reference Plan VIP64872  
B – Reference Plan Courtenay Airpark  
C – Lot 2 Hangar Photo  
D - Lease Document*

### SCHEDULE A REFERENCE PLAN VIP64872



### SCHEDULE B REFERENCE PLAN COURTENAY AIRPARK



**SCHEDULE C**  
**LOT 2 HANGAR**



**SCHEDULE D  
LEASE DOCUMENT**

**TERMS OF INSTRUMENT – PART 2**

THIS AGREEMENT, dated for reference January 1, 2021

BETWEEN:

**THE CORPORATION OF THE CITY OF COURTENAY**, a municipal corporation incorporated pursuant to the *Community Charter* and having its offices at 830 Cliffe Avenue, Courtenay, B.C., V9N 2J7

(the "**City**")

AND:

**DUANE JOHN DUBYK**, an individual having a mailing address of Apt. 31, 119 – 20<sup>th</sup> Street, Courtenay B.C. V9N 8B1

(the "**Tenant**")

WHEREAS:

- A. The City is the registered owner of lands and premises in the City of Courtenay more particularly described as follows:  
  
PID: 000-892-149, Lot 1 of Section 66, Comox District, Plan 14942 except any portion of the bed of the Courtenay River  
  
(hereinafter collectively called the "**Lands**");
- B. The Lands comprise part of the Courtenay Airpark;
- C. The Tenant wishes to place, maintain and operate an aircraft hangar on the Lands for the purpose of storing personal aircraft;
- D. The City has agreed to lease a portion of the Lands to the Tenant for the purposes of storing personal aircraft, and the Tenant has agreed to accept the lease, all on the terms and conditions herein set forth; and
- E. In accordance with Section 26 of the *Community Charter*, the City has published notice in a newspaper of its intention to lease a portion of the Lands to the Tenant.



NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the mutual covenants and agreements herein set forth, the City and Tenant covenant and agree as follows:

**1. PREMISES**

The City hereby demises and leases to the Tenant that part of the Lands identified as Lot 2, 1,270 square metres (13,670 square feet) on the reference plan prepared by McElhanney Associates, B.C.L.S. on the 20<sup>th</sup> day of February, 1997 and registered as Plan VIP64872 attached as Schedule A hereto (the “**Premises**”).

**2. TERM**

- (a) The Term of this Agreement shall be for a period of FIVE (5) YEARS commencing on January 1, 2021 and terminating on December 31<sup>st</sup>, 2025, subject to any right or renewal or earlier termination (the “**Term**”).
- (b) The Tenant shall, at the expiry or sooner determination of this Agreement or any renewal thereof peaceably surrender and yield unto the City the Premises together with all fixtures or erections which at any time during the Term of this Agreement or renewal thereof may be made thereon in good and substantial repair and condition and deliver to the City all keys to the Premises that the Tenant has in its possession.

**3. RENEWAL**

The Tenant, if not in default hereunder, may renew this Agreement for THREE additional term(s) of FIVE (5) YEARS each on the same terms and conditions contained herein, save and except for this covenant for renewal and except that the Base Rent to be paid during such renewal period shall be fixed and determined by the City at the time of the renewal at any greater or other rate than herein reserved (based on the applicable policies of the City in effect), subject to the following:

- (a) The Tenant shall exercise this renewal by giving written notice to the City in the manner provided herein not less than SIX (6) MONTHS prior to the expiry of the term; and
- (b) Any renewal granted under this section shall only be granted if approved by the municipal council of the City.

**4. HOLDING OVER**

If at the expiration of the Term the Tenant shall hold over with the consent of the City, the tenancy of the Tenant shall thereafter, in the absence of written agreement to the contrary, be from year to year, with the Base Rent for the year being increased by FOUR AND A HALF (4.5) PERCENT from the annual Base Rent paid the preceding year and shall be subject to all other terms and conditions of this Agreement.



**5. RENT**

- (a) The Tenant shall pay to the City annual rent for each year of the Term in advance on the first business day of each year in the Term. The amount of annual rent plus Goods and Services Tax for each year of the Term is as set out in the table below:

2021	\$3,881.28
2022	\$4,055.93
2023	\$4,238.45
2024	\$4,429.18
2025	\$4,628.49

(the “**Base Rent**”)

- (b) In addition to the Base Rent payable under Subsection (a), the Tenant shall pay to City, from time to time upon demand, all other sums payable to the City pursuant to this Agreement (the “**Additional Rent**”).
- (c) The lease in this Agreement is a net lease to the City, and the Base Rent and Additional Rent provided to be paid to the City under this Agreement (collectively, the “**Rent**”) will be net to the City and will yield to the City the entire such rental during the Term without abatement for any cause whatsoever. Except as specifically provided in this Agreement, all costs, expenses, and obligations of every kind and nature whatsoever relating to the Premises, whether or not referred to in this Agreement and whether or not of a kind now existing or within the contemplation of the parties, will be paid by the Tenant. Those costs, expenses and obligations must be proven by the City to the Tenant with written receipts.

**6. PURPOSE AND USE OF PREMISES**

- (a) The Tenant will use the Premises and the Buildings for personal aircraft storage only and no other uses or activities are permitted.
- (b) The rules and regulations with such reasonable variations, modifications, and additions as shall from time to time be made by the City, shall be observed and performed by the Tenant, its agents, employees, sub-tenants, licensees and invitees. All such rules and regulations shall be deemed to form a part of this Agreement.
- (c) The Tenant shall comply with its constitution, bylaws and constating documents at all times and shall notify the City whenever a change in the Tenant’s constitution or bylaws occurs. Notwithstanding this restriction, the Tenant is permitted to use, or authorize others to use, the premises to provide educational services related to pilot training or aviation safety, even if a fee is charged.

**7. QUIET POSSESSION**

The City hereby covenants with the Tenant that the Tenant, upon paying the Rent hereby reserved and performing the covenants hereinbefore contained, may peaceably possess and enjoy the Premises

for the term hereby granted without any interruption or disturbance from the City or any person lawfully claiming by, from or under the City.

## **8. PAYMENT OF TAXES**

The Tenant shall promptly pay when due municipal, regional district, school, hospital district and other property taxes and all other taxes, charges, levies, assessments, and other fees which may be imposed or that may arise in respect of the Premises or the Tenant's use of the Premises. The Tenant shall pay to the City all taxes, charges, levies and other fees, including Goods and Services Tax or any replacement tax, which may be payable in respect of this Agreement.

## **9. COMPLIANCE WITH REGULATIONS**

The Tenant shall, in all respects, at all times during the Term abide by and comply with all applicable statutes, laws, regulations and orders of any authority having jurisdiction and, without limiting the generality of the foregoing, all federal, provincial, or municipal laws or statutes or bylaws relating to environmental matters and relating to the Lands and its operation, including all the rules, regulations, policies, guidelines, criteria or the like made under or pursuant to any such laws.

## **10. ASSIGNMENT AND SUBLEASES**

The Tenant shall not make any assignment of this Agreement, nor any transfer or sublease of the whole or any part of the Premises demised or leased hereunder, without obtaining the prior consent in writing of the City to such assignment, transfer or sublease. In requesting the City's consent to an assignment, sublease or licence, the Tenant must provide the City with all information requested by the City. The Tenant must, if required by the City, enter into sub-leases, assignment agreements or licences on terms required by the City, including requirements for insurance and indemnities.

## **11. RIGHTS OF ACCESS**

- (a) The City, its servants or agents shall have full and free access for inspection purposes during normal business hours and in the presence of the Tenant or a representative of the Tenant to any and every part of the Premises; it being expressly understood and agreed, however, that in cases of emergency, the City, its officers, servants or agents, shall at all times and for all purposes have full and free access to the Premises.
- (b) The City shall have the right to enter upon the Premises to install, maintain and repair buildings, pipes, wires, airducts, utilities or any other installations required by the City for the City's use of the Lands.
- (c) Subject only to the provisions of this Agreement, the Tenant shall have the right of ingress and egress over the Lands roadways subject to rules and regulations as may be established by the City respecting such use.
- (d) The Tenant shall not permit any vehicles belonging to the Tenant or to any sub-tenant, licensee, invitee, agent or employee to cause obstruction to any roads, driveways or common areas of the Premises, the Lands or in the neighbourhood surrounding the Lands, or prevent

the ingress and egress to all other persons using the Lands.

## **12. "AS IS" CONDITION**

The Tenant accepts the Premises “as is” and acknowledges that it has had the opportunity to undertake such inspections, tests and surveys of the Premises as it considers necessary and that the City has made no representations or warranties respecting the Premises, and that by entering into this Agreement, it is satisfied that the Premises is suitable for its purposes.

## **13. OWNERSHIP OF BUILDINGS**

- (a) The City and the Tenant agree that the title to and ownership of all structures or improvements constructed, erected or installed to be constructed, erected or installed on the Premises by the Tenant, together with all replacements, alterations, additions, changes, substitutions, improvements and repairs thereto (the “**Buildings**”), shall at all times during the Term be vested in the Tenant, notwithstanding any rule of law to the contrary.
- (b) At the expiration or early termination of the Term, the City may require the Tenant to remove all or part of the Buildings and any part of the Buildings not removed by the Tenant shall become the absolute property of the City free of all encumbrances, without payment of any compensation to the Tenant.
- (c) Notwithstanding Subsection (b), at the end of the Term, if the Tenant refuses or fails to remove the Buildings after a request by the City, the City may at its sole discretion elect to remove all or part of the Buildings and the Tenant shall reimburse the City for the cost of removing all or part of the Buildings from the Premises.

## **14. CONSTRUCTION**

- (a) If the Tenant is not then in default under this Agreement and with the prior written consent of the City, the Tenant may construct, renovate or replace the Buildings. In giving its consent, the City may impose any conditions, including, without limitation, location requirements, parking and access requirements, construction requirements, design requirements, use restrictions, financial restrictions, and security obligations.
- (b) The Tenant acknowledges that prior to any construction on the Premises, including construction, renovation or replacement of the Buildings, the Tenant must obtain a building permit and a development permit and comply with all other bylaw requirements imposed by the City on construction within its boundaries.
- (c) The Tenant shall promptly pay all charges incurred by the Tenant for any work, materials or services that may be done, supplied or performed in respect of the Premises and shall forthwith discharge any liens in respect of same at any time filed against the Lands.
- (d) The Tenant will not permit any liens, judgments or other charges to be registered against the Lands. If any lien, judgment or other charge is registered, the Tenant will obtain its discharge within THIRTY (30) DAYS of the said registration.

## **15. ZONING**

The Tenant acknowledges that the Tenant must not use the Premises or permit a use of the Premises in breach of the City's zoning bylaw.

## **16. SAFETY**

The Tenant shall take all possible precautions to ensure the safety of persons using the Premises and Building.

## **17. SIGNS AND NOTICES**

The Tenant shall not display any signs or notices on the Premises without the prior written approval of the City with the exception of operationally required or safety related signs and notices. The Tenant shall inform the City about the installation of operationally required or safety related signs and notices.

## **18. ADDITIONAL RIGHTS OF THE CITY**

The City reserves the right to grant leases or licences, rights of way or privileges to others on, over, under, through or across the Premises provided however that the granting of such rights of way or privileges will not damage or disrupt permanently the physical facilities of the Tenant, will not impose any cost upon the Tenant, and will not weaken, diminish or impair the rights and obligations of the parties under this Agreement.

## **19. UTILITIES**

- (a) If applicable, the Tenant shall, at the cost and expense of the Tenant, be responsible for the installation and maintenance of the connecting system to the water, sanitary sewerage and storm sewerage systems for the Lands, at the nearest point of connection. The Tenant shall not commence any such work without the prior written approval of the City. Prior to such approval being given, the Tenant will send copies of the plans and specifications for the connecting of such services to the City. Work will be performed under the supervision of a designated officer of the City.
- (b) The Tenant shall construct improvements on the Premises in such manner that the surface drainage water on the Premises will be discharged into the drainage system at the Lands. Plans for the construction of storm drainage services shall be subject to the approval in writing of the City prior to installation of such services, for compatibility with the field drainage channels serving the Premises, all at the cost and expense of the Tenant.
- (c) The Tenant shall, at the cost and expense of the Tenant, provide complete and proper arrangements for the adequate sanitary handling and disposal away from the Premises and Lands of all trash, garbage and other refuse on or in connection with the Tenant's operations under this Agreement, all to the satisfaction of the City. Piling crates, cartons, barrels or other similar items shall not be permitted in a public area on the Lands, or on the Premises.

- (d) The Tenant shall pay all charges for water supply, sewage disposal, garbage removal, gas, heating fuel, telephone service, cablevision, electricity, power or other utility or communication service rendered in respect of the Premises.

## 20. NUISANCE

The Tenant shall not at any time during the Term of this Agreement or any renewal thereof, use, exercise or carry on or permit or suffer to be used, exercised or carried on, in or upon the Premises or any part thereof any noxious, noisome or offensive act, trade, business, occupation or calling, and no act, matter or thing whatsoever shall at any time during the said term be done in or upon the Premises or any part thereof which shall or may be or grow to the annoyance, nuisance, damage or disturbance of the occupiers or owners of the land or adjoining land and properties, provided that the reasonable use of the Premises for the maintenance, storage, landing and taking off of aircraft shall not be considered a nuisance.

## 21. WASTE

The Tenant will not commit, suffer, or permit any wilful or voluntary waste, spoil or destruction of the Premises.

## 22. ENVIRONMENTAL RESPONSIBILITIES

- (a) For the purpose of this Part:

**"Environmental Law"** means all federal, provincial, municipal or local laws, statutes or ordinances relating to environmental matters, including all rules, regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws;

**"Hazardous Substance"** means a contaminant, pollutant, dangerous good, waste, toxic substance, special waste or hazardous substance as defined in or pursuant to any Environmental Law;

**"Notice"** means any citation, directive, order, claim, litigation, investigation, proceedings, judgment, letter or other communication, written or oral, actual or threatened, from any person, including any governmental agency;

**"Permit"** means any authorization, permit licence, approval or administrative consent issued pursuant to Environmental Law.

- (b) The Tenant will conduct its business and operation on the Premises in compliance with all Environmental Laws and all Permits.
- (c) The Tenant will forthwith notify the City of the occurrence of any of the following and will provide the City with copies of all relevant documentation in connection therewith:
  - (i) a release of a Hazardous Substance on the Premises or the Lands, except as is

- authorized under Environmental Law;
- (ii) the receipt by the Tenant of a Notice from any governmental agency of non-compliance pursuant to any Environmental Law, including a Notice of non-compliance respecting a Permit;
  - (iii) the receipt by the Tenant of a Notice of a claim by a third party relating to environmental concerns; or
  - (iv) the receipt by the Tenant of information which indicates that Hazardous Substances are present in or on the Premises.
- (d) The Tenant will not permit the storage, treatment or disposal of Hazardous Substances on the Premises except in accordance with all Environmental Laws.
  - (e) The Tenant shall not cause or suffer or permit any oil or grease or any harmful, objectionable, dangerous, poisonous, or explosive matter or substance to be discharged on to the Premises or any building on the Premises and will take all reasonable measures for insuring that any effluent discharge will not be corrosive, poisonous or otherwise harmful, or cause obstruction, deposit or pollution on the Premises, or driveways, ditches, water courses, culverts, drains or sewers.
  - (f) The Tenant will conduct such investigations, searches, testing, drilling and sampling (“**Investigations**”) as may at any time be required by the City where any reasonable evidence exists that the Tenant’s current or prior use or occupation of the Premises may be introducing or increasing the existence of any Hazardous Substance on the Premises. If the Tenant does not complete the Investigations to the satisfaction of the City, the City may enter on the property of the Tenant and take any actions necessary to complete the Investigations, the cost of which actions will be borne by the Tenant.
  - (g) If Hazardous Substances are present on or in the Premises or the Lands as a result of the Tenant's use or occupation of the Premises, the Tenant will take all necessary action, at the cost of the Tenant to remediate the Premises or the Lands to a level acceptable to the City and to governmental authorities.
  - (h) Prior to the termination of the lease, the Tenant will conduct all Investigations required by the City where any reasonable evidence exists that the Tenant's use or occupation of the Premises has introduced or increased the existence of any Hazardous Substance on or in the Lands. The Tenant will provide the result of the Investigations to the City. Where any Hazardous Substance is found on or in the Premises or the Lands as a result of the Tenant's use or occupation of the Premises, the Tenant will take all necessary action, at the cost of the Tenant, to remediate the Premises or the Lands to a level acceptable to the City and to governmental authorities.
  - (i) The Tenant will provide to the City satisfactory documentary evidence that all Permits are valid and in good standing as requested by the City from time to time.

- (j) The Tenant will indemnify and save harmless the City, its officers, directors, employees, agents and shareholders from and against any and all losses, claims, costs, expenses, damages and liabilities, including all costs of defending or denying the same, and all costs of investigation, monitoring, remedial response, removal, restoration or permit acquisition and including all solicitor's fees and disbursements in connection therewith which at any time may be paid or incurred by or claimed against the City, its officers, directors, employees, agents and shareholders arising, directly or indirectly, out of:
- (i) a breach by the Tenant of any of the covenants contained in this Agreement;
  - (ii) where the Tenant's use or occupancy of the Premises results in the presence, release or increase of any Hazardous Substance on the Premises or the Lands (or on any other land by way of migration, seepage or otherwise);
  - (iii) any reasonable action taken by the City with respect of the existence of or remediation for any such Hazardous Substance on the Premises or the Lands (or on any other land by way of migration, seepage or otherwise); or
  - (iv) any reasonable action taken by the City in compliance with any Notice of any governmental authority with respect to the existence of any such Hazardous Substance on the Premises or the Lands (or on any other land by way of migration, seepage or otherwise).
- (k) The indemnities contained in this Agreement will survive the expiration or earlier termination of the Term.

### **23. POLICE AND FIRE PROTECTION**

The City shall not be responsible for providing fire protection to nor policing of the Premises, the Buildings and any improvements.

### **24. FIRE PREVENTION**

The Tenant shall, at the expense of the Tenant, take all precautions to prevent fire from occurring in or about the Premises, and shall observe and comply with all laws and regulations in force respecting fires at the said Lands, and with all instructions given from time to time by the City with respect to fires and extinguishing of fires.

### **25. ADVERTISING**

The Tenant shall not construct, erect, place or install on the outside of the Buildings or on the Premises any poster, advertising sign or display, electrical or otherwise, without first obtaining the consent, in writing, of the City.

### **26. INSURANCE**

- (a) The Tenant shall obtain, at its own expense, and keep in force a policy of comprehensive/commercial general liability insurance providing coverage for death, bodily



- injury, property loss, property damage and other potential loss and damage arising out of the Tenant's use and occupation of the Premises in an amount of not less than FIVE MILLION (\$5,000,000.00) DOLLARS inclusive per occurrence.
- (b) Without limiting the Tenant's obligations and liabilities under this Agreement, the Tenant is responsible for insuring the Premises and all structures located on the Premises and the contents of them, to full replacement cost against risk of fire and other risks against which a prudent owner would insure.
  - (c) On the first day of the Term and at other times upon demand by the City, the Tenant shall deliver to the City certified copies of the policies of insurance required to be maintained by the Tenant under this Agreement.
  - (d) The City may, from time to time, notify the Tenant to change the amount of insurance required by this Agreement and the Tenant will, within FORTY-FIVE (45) DAYS of receiving such a notice, cause the amounts to be changed and deliver to the City a letter from its insurer certifying the change in the amount of insurance.
  - (e) The Tenant shall ensure that all policies of insurance pursuant to this Agreement:
    - (i) are underwritten by a responsible insurance company or companies licensed to do business in the Province of British Columbia and that meet with the reasonable approval of the City;
    - (ii) are written in the name of the Tenant and the City with loss payable to them as their respective interests may appear;
    - (iii) list the City as an additional insured;
    - (iv) contain a cross liability clause and a waiver of subrogation clause in favour of the City;
    - (v) are primary and do not require the sharing of any loss by any insurer that insures the City;
    - (vi) contain a clause to the effect that any release from liability entered into by the City prior to any loss shall not affect the right of the Tenant or the City to recover; and
    - (vii) endorsed to provide the City with THIRTY (30) DAYS advance notice in writing of cancellation or material change.
  - (f) The Tenant agrees that if it does not provide or maintain in force such insurance, the City may take out the necessary insurance and pay the premium therefore for periods of one year at a time, and the Tenant shall pay to the City as Additional Rent the amount of such premium immediately upon demand.
  - (g) In the event that both the City and the Tenant have claims to be indemnified under any insurance, the indemnity shall be applied first to the settlement of claims of the City and the

balance, if any, to the settlement of the claim of the Tenant.

- (h) The Tenant shall not do or permit to be done any act or things which may render void or voidable or conflict with the requirements of any policy or policies of insurance, including any regulations of fire insurance underwriter applicable to such policy or policies, whereby the Lands or the Buildings or the contents of the premises of any tenant are insured or which may cause any increase in premium to be paid in respect of any such policy.

## **27. RELEASE AND INDEMNITY**

- (a) The City shall not be responsible in any way for any injury to any person or for any loss or damage to any property belonging to the Tenant or to other occupants of the Premises or to their respective sub-tenants, invitees, licensees, agents, employees, or other persons from time to time attending at the Premises, including without limiting the foregoing, any loss of or damage caused by theft or breakage or failure to maintain and keep the Premises, the Buildings, or the land in good repair and free from refuse, obnoxious odours, vermin or other foreign matter, defective wiring, plumbing, gas, sprinkler, steam, running or clogging of the above pipes or fixtures, or otherwise, acts, or negligence of guests, invitees, or employees or the Tenant or any other occupants of the premises, or the acts or negligence of any owners or occupiers of adjacent or continuous property or their guests, invitees, or employees, act of God, acts or negligence of any person not in the employment of the City, or for any other loss whatsoever with respect to the Premises, the Lands, or any business carried thereon.
- (b) The Tenant hereby releases the City and its elected officials, officers, employees, contractors, agents, successors and assigns from and against any and all liabilities, damages, costs, claims, suits, or actions, which the Tenant may have, now or in the future, in relation to this Agreement, the Premises or the Tenant's use or occupancy of the Premises.
- (c) Save and except for the negligence of the City, and its elected officials, offices, employees, contractors, agents, successors and assigns, the Tenant and the Indemnifier, jointly and severally, will and hereby do indemnify and save harmless the City from any and all liabilities, damages, costs, claims, suits, or actions, (including without limitation, the full amount of all legal fees, costs, charges and expenses whatsoever) directly or indirectly arising from:
  - (i) any breach, violation, or non-performance of any covenant, condition or agreement in this Agreement set forth and contained on the part of the Tenant to be fulfilled, kept, observed and performed;
  - (ii) any act, omission, or negligence of the Tenant, its members, officers, directors, employees, agents, contractors, subcontractors, subtenants, licensees, invitees or others for whom it is responsible;
  - (iii) any gas, oil or other such spill or leak caused from the use of the Premises which may cause contamination to the environment or otherwise contravene the Waste Management Act;
  - (iv) any damage to property occasioned by the Tenant's use and occupation of the Premises

and Building or any injury to person or persons, including death, resulting at any time from the Tenant's use and occupation of the Premises and Building; or

- (v) the granting of this Agreement, and this indemnity shall survive the expiry or sooner determination of this Agreement.

## **28. TEMPORARY SUSPENSION OF SERVICE**

Without limiting or restricting the generality of this Agreement, the Tenant shall not have nor make any claim or demand, nor bring any action or suit or petition against the City or any of his officers, servants or agents for any damage which the Tenant may sustain by reason of any temporary suspension, interruption or discontinuance, in whole or in part, from whatever cause arising in services supplied by the City hereunder.

## **29. REPAIRS AND MAINTENANCE**

- (a) Throughout the Term at its own expense, the Tenant shall repair and maintain the Premises and the Buildings and keep the Premises and the Buildings in a state of good repair as a prudent owner would do. The City will not be obliged to repair, maintain, replace or alter the Premises, the Buildings, or any other Building or structure or any part thereof on the Premises during the Term or to supply any services or utilities thereto save and except for such services and utilities as the City may be required to provide strictly in its capacity as a municipality and not in its capacity as a landlord. The Tenant hereby assumes the full and sole responsibility for the condition, operation, maintenance, repair, replacement and management of the Premises and Building during the Term.
- (b) The Tenant shall upon written notice from the City, make any repairs that are, in the opinion of the City, necessary to the Premises within SIXTY (60) DAYS of receipt of such notice.
- (c) The Tenant shall clear all ice and snow, cut grass, landscape, repair and replace as necessary all sidewalks, driveways, parking areas and other public areas on or adjacent to the Premises in a well maintained, clean, tidy and safe state as befits land used for an airport hangar adjacent to an airport and as a prudent owner would do.
- (d) The Tenant shall not allow any ashes, refuse, garbage or other loose or objectionable material to accumulate on the Premises and shall maintain receptacles for garbage disposal and for the disposal of oil and other waste products.
- (e) The Tenant shall not, without the prior written consent of the City, make any alterations to the landscaping and topography of the Premises.
- (f) The Tenant shall reimburse the City for expenses incurred by the City in repairing any damage caused to the Premises, the improvements thereon or any part thereof as a result of the negligence or wilful act of the Tenant, its invitees, licensees, agents or other persons from time to time in or about the Premises or the Lands.

### **30. CITY'S RIGHT TO PERFORM**

If the Tenant shall fail to perform or cause to be performed each and every one of the covenants and obligations of the Tenant contained in this Agreement, on the part of the Tenant to be observed and performed, the City shall have the right (but shall not be obliged) to perform or cause the same to be performed and to do or cause to be done such things as may be necessary or incidental thereto (including without limiting the foregoing, the right to make repairs, installations, erection and expend monies) and all payments, expenses, charges, fees, (including all legal fees on solicitor and client basis) and disbursements incurred or paid by or on behalf of the City in respect thereof shall be paid by the Tenant to the City forthwith.

### **31. DEFAULT**

- (a) If the Tenant defaults in the payment of any money payable under this Agreement or fails to observe, comply with or perform any of its covenants, agreements or obligations under this Agreement, the City may deliver to the Tenant a notice of default (in the manner required herein for giving notices) stipulating that the default must be rectified or cured within FIFTEEN (15) DAYS of the notice if the default is non-payment of Rent or Additional Rent and within THIRTY (30) DAYS of the notice for other defaults, but less or no notice is required to be given by the City in emergency or urgent circumstances, as determined by the City in its sole discretion, acting reasonably, or where the Tenant has failed to keep the Premises insured.
- (b) If the default (other than payment of money payable by the Tenant under this Agreement and other than failure to keep the Premises insured) reasonably requires more time to rectify or cure than THIRTY (30) DAYS, the Tenant will be deemed to have complied with the rectification or curing of it if the Tenant commences rectifying or curing the default within THIRTY (30) DAYS after notice from the City and diligently completes the same.

### **32. CITY'S RIGHTS ON DEFAULT**

Notwithstanding any other provisions of this Agreement, if the Rent or any part thereof shall be in arrears or unpaid for THIRTY (30) DAYS after the specified date of payment, whether or not the same shall have been in any manner demanded, or in the case default, breach or non-observance is made or suffered by the Tenant at any time, in or in respect of any of the covenants, which on the part of the Tenant ought to be observed or performed, then it shall be lawful for the City, its servants or agents to do any, all, or a combination of the following:

- (a) re-enter and thereafter to have, possess and enjoy the Premises and all improvements thereon; nevertheless, the City may, at his option, except as hereinafter set forth, compel the Tenant to remove from the Premises any improvements and any goods, chattels, materials, effects or things from the Premises all at risk of cost and expense of the Tenant;
- (b) terminate this Agreement; or
- (c) exercise or obtain such other rights as may be permitted by this Agreement or at law.

### **33. CREDITORS**

If the Term of this Agreement or any renewal hereby granted shall at any time be seized or taken in execution or in attachment by any creditor of the Tenant or if the Tenant shall make any assignment for the benefit of creditors, or become bankrupt or insolvent, or if the Tenant takes the benefit of any Act or regulation that may be in force for bankrupt or insolvent debtors, then in any such case the Term of this Agreement or any renewal thereafter, shall at the option of the City, immediately become forfeited and void, and all Rent then due shall immediately become due and payable, and in such case it shall be lawful for the City for any time thereafter to enter into and upon the Premises, or any part thereof, and repossess the Premises or any portion thereof for its sole use, and anything herein contained to the contrary notwithstanding.

### **34. DISTRESS**

If and whenever the Tenant is in default of the payment of any money, including rent, whether expressly reserved by this Agreement or deemed as Rent, the City may without notice or any form of legal process whatsoever, enter the Premises and seize, remove and sell the Tenant's goods, chattels and equipment and seize, remove, and sell any goods, chattels and equipment at any place to which the Tenant or any other person may have removed them in the same manner as if they had remained and been distrained in the Premises, notwithstanding any rule of law or equity to the contrary, and the Tenant hereby waives and renounces the benefit of any present or future statute or law limiting or eliminating the City's right of distress.

### **35. WAIVER OR NON-ACTION**

Waiver by the City of any breach of any term, covenant or condition of this Agreement by the Tenant must not be deemed to be a waiver of any subsequent default by the Tenant. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Agreement by the Tenant must not be deemed to be a waiver of such term, covenant or condition.

### **36. NO ABATEMENT**

The Tenant is not entitled to any abatement or reduction or deduction from the Rent.

### **37. REMEDIES CUMULATIVE**

No reference to or exercise of any specific right or remedy by the City prejudices or precludes the City from any other remedy, whether allowed at law or in equity or expressly provided for in this Agreement. No such remedy is exclusive or dependent upon any other such remedy, but the City may from time to time exercise any one or more of such remedies independently or in combination. Without limiting the generality of the foregoing, the City is entitled to commence and maintain an action against the Tenant to collect any rent not paid when due, without exercising the option to terminate this Agreement.

### **38. NO JOINT VENTURE**

Nothing contained 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 the Tenant any power or authority to bind the City in any way.

### **39. TERMINATION ON CHANGE OF USE OR DAMAGE TO PREMISES**

- (a) If for any reason the Lands ceases to be used for the take-off and landing of aircraft, the City or Tenant may terminate this Agreement by giving SIXTY (60) DAYS written notice of its intention to terminate this Agreement, and after the expiration of such period of notification, this Agreement shall be determined and ended without further notice or delay.
- (b) The parties hereto agree that if the Premises are damaged in any manner so as to render them unfit for the purposes of the Tenant, the City shall not be required to repair such damage or to make the Premises reasonably fit for the purposes of the Tenant, and the Tenant may at its option, exercised within SIXTY (60) DAYS of the occurrence of such damage, elect to repair the damage or to terminate this Agreement and the election shall be by notice in writing to the City. If the Tenant elects to terminate this Agreement, then the Tenant shall immediately deliver possession of the Premises to the City.

### **40. ENUREMENT**

This Agreement and everything herein contained shall enure to the benefit of and be binding upon the successors, assigns and other legal representatives, as the case may be of each of the parties hereto, and every reference herein to every party hereto shall include the successors, assigns and other legal representatives of such party.

### **41. INTERPRETATION**

Any note appearing as a heading in this Agreement has been inserted for convenience and reference only, and of itself cannot define, limit or expand the scope of meaning of the present Lease or any of its provisions. Where there is a male, female or corporate party, the provisions hereof shall be read with all grammatical changes to gender and number required by the context. All covenants and obligations shall be deemed joint and several. The invalidity of any section for any reason whatsoever shall not invalidate any other section of this Agreement. Every reference to each party is deemed to include the heirs, executors, administrators, successors, directors, employees, members, servants, agents, officers, and invitees of such party where the context so permits or requires.

### **42. NO EFFECT ON LAWS OR POWERS**

Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions pursuant to the *Community Charter* (British Columbia) or its rights and powers under any enactment to the extent the same are applicable to the Airpark or the Premises, all of which may be fully and effectively exercised in relation to the Airpark or the Premises as if this Agreement had not been fully executed and delivered.

**43. NOTICES**

- (a) Whenever in this Agreement it is required or permitted that notice or demand be given or served by either party of this Agreement to or on the other, such notice or demand will be in writing and will be validly given or sufficiently communicated if forwarded by express mail to the addresses set out at the beginning of this Agreement.
- (b) Such addresses may be changed from time to time by either party giving notice as above provided.
- (c) Notice shall be deemed to have been effectively communicated or given on the day received or on the FIFTH (5<sup>th</sup>) DAY after it was mailed or sent, whichever is the earlier.

**44. AUTHORITY**

The Tenant represents and warrants to the City that it has full authority to enter into this Agreement and to carry out the actions contemplated herein, that all resolutions and other preconditions to validity have been validly adopted, and that those signing this Agreement on its behalf are authorized to bind the Lessee by their signatures.

**45. ENTIRE AGREEMENT**

The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements whether verbal or written between the parties with respect to the subject matter hereof. This Agreement may not be modified or amended except by an instrument in writing signed by the parties.

**46. COVENANTS AND CONDITIONS**

All of the provisions of this Agreement shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants and conditions were used in each separate section.

**47. REGISTRATION**

The Tenant shall be responsible for any costs of registering this Agreement in the Land Title Office, including the costs or any plan necessary for the registration of the lease and any modification of this Agreement.

**48. TIME OF THE ESSENCE**

Time shall be of the essence of this Agreement.

**49. TENANT'S REPRESENTATIONS AND WARRANTIES**

The Tenant represents and warrants that the Tenant:



- (a) has the power and capacity to enter into and carry out the obligations under this Agreement; and
- (b) has completed all necessary resolutions and other preconditions to the validity of this Agreement.

**50. FINANCIAL REPORTS**

The Tenant will provide its yearly financial reports to the City within 8 weeks of the Tenant's financial year-end.

**51. LAWS OF BRITISH COLUMBIA**

This Agreement shall be construed by the laws of the Province of British Columbia.

**52. SEVERANCE**

If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid will not affect the validity of the remainder of the lease.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C which is attached hereto and forms part of this Agreement.

**THE CORPORATION OF THE CITY OF COURTENAY** has executed this Agreement by its authorized signatories this \_\_\_\_ day of \_\_\_\_\_, 20\_\_:

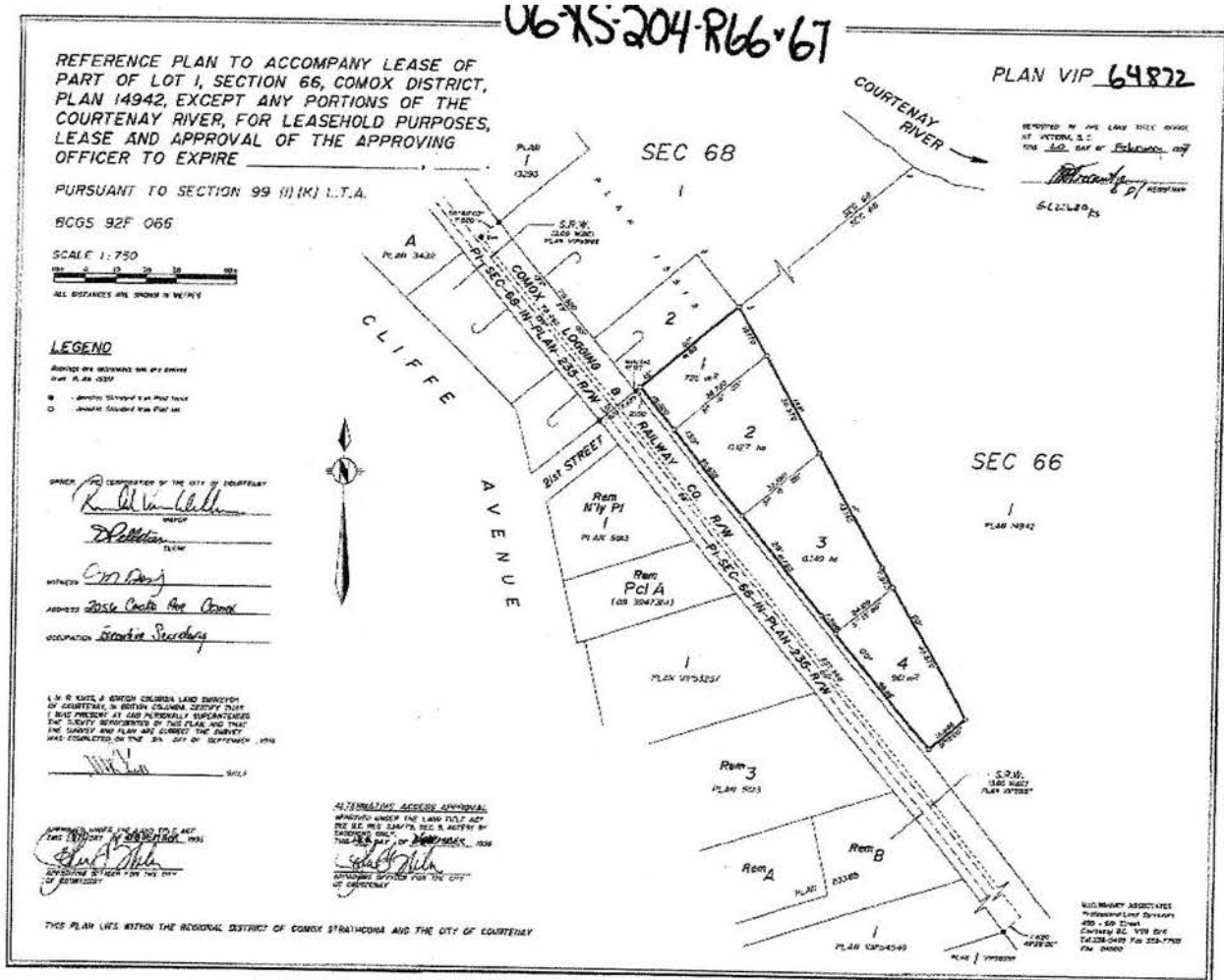
\_\_\_\_\_  
Mayor: Bob Wells

\_\_\_\_\_  
Corporate Officer: Wendy Sorichta

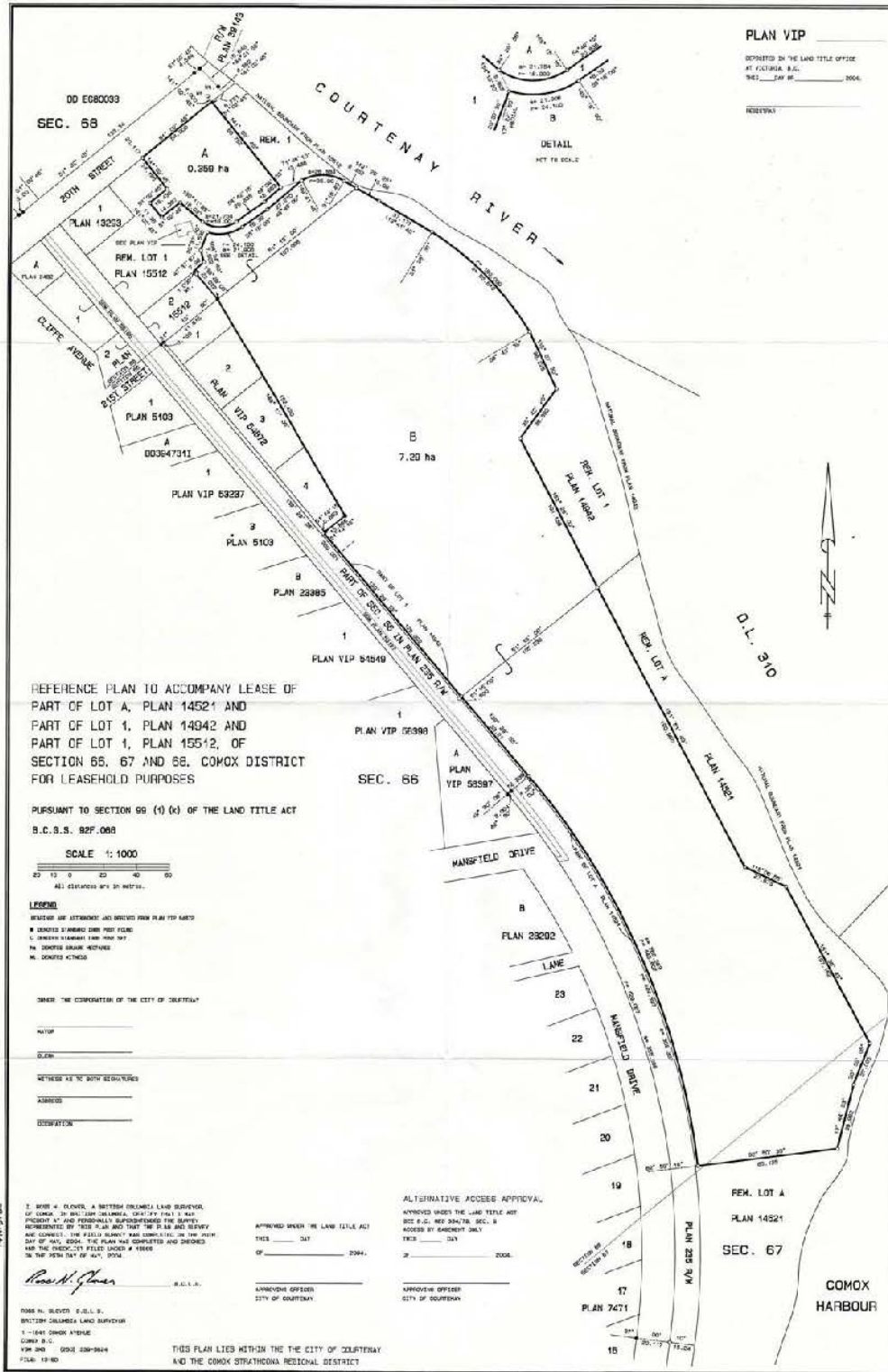
**DUANE JOHN DUBYK** has executed this Agreement by its authorized signatories this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_:

\_\_\_\_\_  
Name: Duane Dubyk

### SCHEDULE 'A' THE PREMISES – PLAN VIP64872



## SCHEDULE 'B' THE LANDS - PLAN 14942



**SCHEDULE 'C'**  
**RULES AND REGULATIONS**

1. The Tenant shall ensure that there is a proper run-up pad for aircraft and the run-up of aircraft does not cause a dust problem.
2. The Tenant shall take all reasonable steps to minimize the effect of dust blowing onto the Airpark.
3. The Tenant shall not block access to the City's buildings on the Lands.
4. The Tenant shall ensure that all aircraft are parked in a safe manner.
5. The Tenant shall ensure that no equipment is parked on the Lands except for aircraft and auxiliary equipment.
6. The Tenant shall ensure that all hazardous materials and liquids are stored in a safe manner compliant with regulations of agencies having jurisdiction.

## **SCHEDULE 'D'**

### **GENERAL CONDITIONS FOR MOTOR VEHICLE PARKING ON PREMISES**

1. All persons who park motor vehicles on the Premises must abide by all conditions of the City of Courtenay (e.g. No commercial use, aircraft storage only, area must be kept clean of garbage, etc.).
2. Long term parking of motor vehicles not permitted on the Premises.
3. All persons who park motor vehicles on the Premises need permission of the City of Courtenay to make alterations or improvements to the parking space.
4. All motor vehicles parked on Premises must have comprehensive/commercial general liability insurance for the benefit of the City of Courtenay providing coverage for death, bodily injury, property loss, property damage and other potential loss and damage arising out of the use and occupation of the Premises or the Lands.
5. All motor vehicles parked on Premises shall not idle, and engines must be turned off or not be refuelled inside hangars.

**SCHEDULE 'E'**

**SCHEDULE OF "NON-RENT" FEES PAYMENT RESPONSIBILITY**

**LOT 4**

<b>DESCRIPTION</b>	<b>CITY</b>	<b>TENANT</b>
ELECTRICITY		100%
PROPERTY TAX		100%
WATER		100%
GARBAGE REMOVAL		100%
SECURITY		100%
FIRE PREVENTION		100%
SHRUB, GRASS, TREE MAINTENANCE		100%
BUILDING MAINTENANCE		100%
COMMERCIAL GENERAL LIABILITY INSURANCE		100%
PROPERTY INSURANCE		100%



THE CORPORATION OF THE CITY OF COURTENAY

## STAFF REPORT

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**To:** Council

**File No.:** 2380-30 Lot 3

**From:** Chief Administrative Officer

**Date:** December 21<sup>st</sup>, 2020

**Subject:** Lease Agreement for Lot 3, 100-20<sup>th</sup> Street – Courtenay Airpark

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### PURPOSE:

The purpose of this report is for Council to consider entering into a lease agreement of Lot 3 Courtenay Airpark with North Bend Ventures Ltd.

### CAO RECOMMENDATIONS:

That based on the December 21<sup>st</sup>, 2020 staff report “Lease Agreement for Lot 3, 100-20<sup>th</sup> Street – Courtenay Airpark”, subsequent to the publication of notice, Council adopt OPTION 1 and authorize the attached lease between North Bend Ventures Ltd. and the City of Courtenay for the property having a legal description of PID: 000-892-149, Lot 1, Section 66, Comox Land District Plan 14942 except any portion of the bed of the Courtenay River and further identified as Lot 3 on Plan VIP64872; and,

That the Mayor and Corporate Officer be authorized to execute all documentation relating to the lease.

Respectfully submitted,

Trevor Kushner, BA, DLGM, CLGA, PCAMP  
Interim Chief Administrative Officer

**BACKGROUND:** North Bend Ventures Ltd. is the current owner of the hangar located on Lot 3, Courtenay Airpark. North Bend Ventures utilizes the hangar for personal aircraft and equipment storage. No further business or sub-lease is being undertaken at this time.

### DISCUSSION:

North Bend Ventures Ltd. has committed to leasing Lot 3 for a minimum of five years with a renewal clause of three additional five year terms subject to City approvals. The initial lease term will be for a period of five years commencing on January 1, 2021 and terminating on December 31, 2025.

In May 2019 a Fair Market Rental Appraisal was conducted by Jackson & Associates for the Courtenay Airpark Lands located at 100 – 20<sup>th</sup> Street. Based on their research and analysis report, the fair market rental for Lot 3 should be a minimum of \$0.20 per sqft. The current market rental estimates are based on existing zoning and land use controls and the use restriction contained within the lease document.



The annual rent to be paid by North Bend Ventures Ltd. will increase by 4.5% each year of the lease, continuing the annual rate percent increase applied to the previous Lot 3 lease agreement.

Lot 3 Annual Lease Rent		
2021	\$4,251.72	4.5%
2022	\$4,443.05	4.5%
2023	\$4,642.98	4.5%
2024	\$4,851.92	4.5%
2025	\$5,070.25	4.5%

**FINANCIAL IMPLICATIONS:**

There are no additional financial resources required.

**ADMINISTRATIVE IMPLICATIONS:**

Approximately 40 hours of staff time annually will be dedicated to the review of the lease meet with the tenant to review issues of concern, administrative compliance with the lease, and an inspection schedule of the Premises for compliance with the lease.

**ASSET MANAGEMENT IMPLICATIONS:**

There are no asset management implications as the lease will not change any service levels within the Courtenay Airpark. The use conforms to existing airpark activities.

**STRATEGIC PRIORITIES REFERENCE:**

**We focus on organizational and governance excellence**

- Responsibly provide services at levels which the people we serve are willing to pay

**We actively pursue vibrant economic development**

- ▲ Work with the business and development sectors to mutually improve efficiencies
- ▲ Continue to explore innovative and effective economic development opportunities

**We continually invest in our key relationships**

- Consider effective ways to engage with and partner for the health and safety of the community

- **AREA OF CONTROL:** The policy, works and programming matters that fall within Council's jurisdictional authority to act
- ▲ **AREA OF INFLUENCE:** Matters that fall within shared or agreed jurisdiction between Council and another government or party
- **AREA OF CONCERN:** Matters of interest that are outside Council's jurisdictional authority to act

**OFFICIAL COMMUNITY PLAN REFERENCE:**

The Official Community Plan states “Council acknowledges the Courtenay Airpark serves an important role to the City and Council will support limited expansion of airport oriented commercial uses including aircraft flight training services.”

**REGIONAL GROWTH STRATEGY REFERENCE:**

No specific reference.

**CITIZEN/PUBLIC ENGAGEMENT:**

Section 26 of the *Community Charter* for municipalities requires that notice be given prior to the disposition. The notice must also be published in a newspaper that is published at least weekly in the area affected by the subject matter of the notice.

**OPTIONS:**

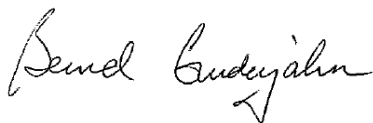
OPTION 1: That based on the December 21<sup>st</sup>, 2020 staff report “Lease Agreement for Lot 3 100-20<sup>th</sup> Street – Courtenay Airpark”, subsequent to the publication of notice, Council approve OPTION 1 and authorize the lease between the City of Courtenay and North Bend Ventures Ltd. for the property having a legal description of PID: 000-892-149, Lot 1, Plan 14942, Section 66, Comox Land District Plan 14942 except any portion of the bed of the Courtenay River and further identified as Lot 3 on Plan VIP64872; and

That the Mayor and Corporate Office be authorized to execute all documentation relating to the lease. (Recommended)

OPTION 2: That Council deny the lease request.

OPTION 3: That Council refer this item back to staff for further consideration.

Prepared by:



Bernd Guderjahn, SCMP  
Manager of Purchasing

Reviewed by:



Kate O'Connell,  
Director of Corporate Support Services

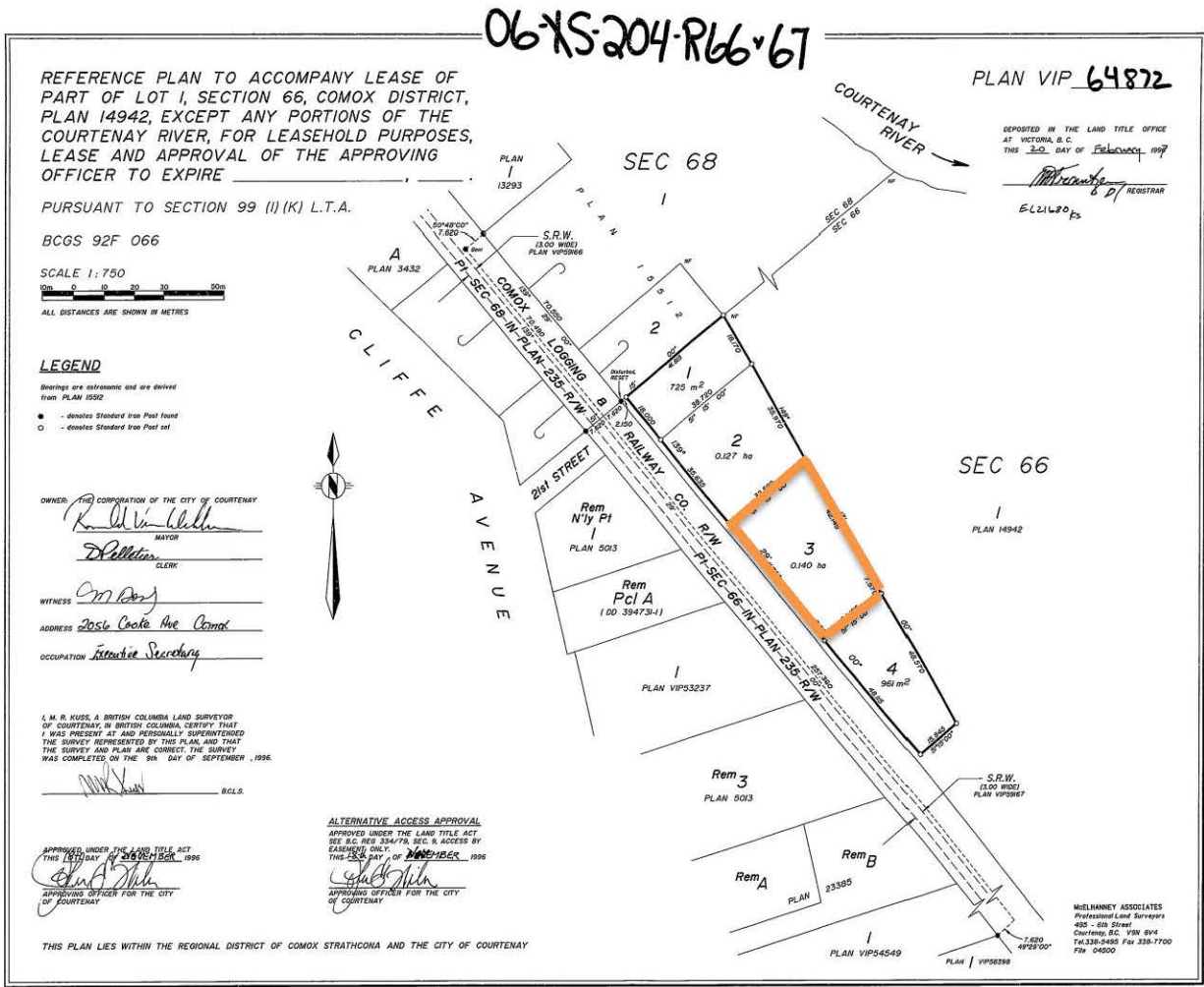
Concurrence by:



Trevor Kushner, BA, DLGM, CLGA, PCAMP  
Interim Chief Administrative Officer

*Attachments: A – Reference Plan VIP64872  
B – Reference Plan Courtenay Airpark  
C – Lot 2 Hangar Photo  
D - Lease Document*

**SCHEDULE A**  
**REFERENCE PLAN VIP64872**





**SCHEDULE C**  
**LOT 3 HANGAR**



**SCHEDULE D  
LEASE DOCUMENT**

**TERMS OF INSTRUMENT – PART 2**

THIS AGREEMENT, dated for reference January 1, 2021

BETWEEN:

**THE CORPORATION OF THE CITY OF COURTENAY**, a municipal corporation incorporated pursuant to the *Community Charter* and having its offices at 830 Cliffe Avenue, Courtenay, B.C., V9N 2J7

(the "**City**")

AND:

**NORTH BEND VENTURES LTD. (Inc. No. 248164)**, a corporation incorporated under the laws of British Columbia and having its registered office at 1085 Comox Road, Courtenay, BC V9N 3P7

(the "**Tenant**")

WHEREAS:

- A. The City is the registered owner of lands and premises in the City of Courtenay more particularly described as follows:  
  
PID: 000-892-149, Lot 1 of Section 66, Comox District, Plan 14942 except any portion of the bed of the Courtenay River  
  
(hereinafter collectively called the "**Lands**");
- B. The Lands comprise part of the Courtenay Airpark;
- C. The Tenant wishes to place, maintain and operate an aircraft hangar on the Lands for the purpose of storing personal aircraft;
- D. The City has agreed to lease a portion of the Lands to the Tenant for the purposes of storing personal aircraft, and the Tenant has agreed to accept the lease, all on the terms and conditions herein set forth; and
- E. In accordance with Section 26 of the *Community Charter*, the City has published notice in a newspaper of its intention to lease a portion of the Lands to the Tenant.



NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the mutual covenants and agreements herein set forth, the City and Tenant covenant and agree as follows:

**1. PREMISES**

The City hereby demises and leases to the Tenant that part of the Lands identified as Lot 3, 1,400 square metres (15,064 square feet) on the reference plan prepared by McElhanney Associates, B.C.L.S. on the 20<sup>th</sup> day of February, 1997 and registered as Plan VIP64872 attached as Schedule A hereto (the “**Premises**”).

**2. TERM**

- (a) The Term of this Agreement shall be for a period of FIVE (5) YEARS commencing on January 1, 2021 and terminating on December 31<sup>st</sup>, 2025, subject to any right or renewal or earlier termination (the “**Term**”).
- (b) The Tenant shall, at the expiry or sooner determination of this Agreement or any renewal thereof peaceably surrender and yield unto the City the Premises together with all fixtures or erections which at any time during the Term of this Agreement or renewal thereof may be made thereon in good and substantial repair and condition and deliver to the City all keys to the Premises that the Tenant has in its possession.

**3. RENEWAL**

The Tenant, if not in default hereunder, may renew this Agreement for THREE additional term(s) of FIVE (5) YEARS each on the same terms and conditions contained herein, save and except for this covenant for renewal and except that the Base Rent to be paid during such renewal period shall be fixed and determined by the City at the time of the renewal at any greater or other rate than herein reserved (based on the applicable policies of the City in effect), subject to the following:

- (a) The Tenant shall exercise this renewal by giving written notice to the City in the manner provided herein not less than SIX (6) MONTHS prior to the expiry of the term; and
- (b) Any renewal granted under this section shall only be granted if approved by the municipal council of the City.

**4. HOLDING OVER**

If at the expiration of the Term the Tenant shall hold over with the consent of the City, the tenancy of the Tenant shall thereafter, in the absence of written agreement to the contrary, be from year to year, with the Base Rent for the year being increased by FOUR AND A HALF (4.5) PERCENT from the annual Base Rent paid the preceding year and shall be subject to all other terms and conditions of this Agreement.

**5. RENT**

- (a) The Tenant shall pay to the City annual rent for each year of the Term in advance on the first business day of each year in the Term. The amount of annual rent plus Goods and Services Tax for each year of the Term is as set out in the table below:

2021	\$4,251.72
2022	\$4,443.05
2023	\$4,642.98
2024	\$4,851.92
2025	\$5,070.25

(the “**Base Rent**”)

- (b) In addition to the Base Rent payable under Subsection (a), the Tenant shall pay to City, from time to time upon demand, all other sums payable to the City pursuant to this Agreement (the “**Additional Rent**”).
- (c) The lease in this Agreement is a net lease to the City, and the Base Rent and Additional Rent provided to be paid to the City under this Agreement (collectively, the “**Rent**”) will be net to the City and will yield to the City the entire such rental during the Term without abatement for any cause whatsoever. Except as specifically provided in this Agreement, all costs, expenses, and obligations of every kind and nature whatsoever relating to the Premises, whether or not referred to in this Agreement and whether or not of a kind now existing or within the contemplation of the parties, will be paid by the Tenant. Those costs, expenses and obligations must be proven by the City to the Tenant with written receipts.

**6. PURPOSE AND USE OF PREMISES**

- (a) The Tenant will use the Premises and the Buildings for personal aircraft storage only and no other uses or activities are permitted.
- (b) The rules and regulations with such reasonable variations, modifications, and additions as shall from time to time be made by the City, shall be observed and performed by the Tenant, its agents, employees, sub-tenants, licensees and invitees. All such rules and regulations shall be deemed to form a part of this Agreement.
- (c) The Tenant shall comply with its constitution, bylaws and constating documents at all times and shall notify the City whenever a change in the Tenant’s constitution or bylaws occurs. Notwithstanding this restriction, the Tenant is permitted to use, or authorize others to use, the premises to provide educational services related to pilot training or aviation safety, even if a fee is charged.

**7. QUIET POSSESSION**

The City hereby covenants with the Tenant that the Tenant, upon paying the Rent hereby reserved and performing the covenants hereinbefore contained, may peaceably possess and enjoy the Premises

for the term hereby granted without any interruption or disturbance from the City or any person lawfully claiming by, from or under the City.

## **8. PAYMENT OF TAXES**

The Tenant shall promptly pay when due municipal, regional district, school, hospital district and other property taxes and all other taxes, charges, levies, assessments, and other fees which may be imposed or that may arise in respect of the Premises or the Tenant's use of the Premises. The Tenant shall pay to the City all taxes, charges, levies and other fees, including Goods and Services Tax or any replacement tax, which may be payable in respect of this Agreement.

## **9. COMPLIANCE WITH REGULATIONS**

The Tenant shall, in all respects, at all times during the Term abide by and comply with all applicable statutes, laws, regulations and orders of any authority having jurisdiction and, without limiting the generality of the foregoing, all federal, provincial, or municipal laws or statutes or bylaws relating to environmental matters and relating to the Lands and its operation, including all the rules, regulations, policies, guidelines, criteria or the like made under or pursuant to any such laws.

## **10. ASSIGNMENT AND SUBLEASES**

The Tenant shall not make any assignment of this Agreement, nor any transfer or sublease of the whole or any part of the Premises demised or leased hereunder, without obtaining the prior consent in writing of the City to such assignment, transfer or sublease. In requesting the City's consent to an assignment, sublease or licence, the Tenant must provide the City with all information requested by the City. The Tenant must, if required by the City, enter into sub-leases, assignment agreements or licences on terms required by the City, including requirements for insurance and indemnities.

## **11. RIGHTS OF ACCESS**

- (a) The City, its servants or agents shall have full and free access for inspection purposes during normal business hours and in the presence of the Tenant or a representative of the Tenant to any and every part of the Premises; it being expressly understood and agreed, however, that in cases of emergency, the City, its officers, servants or agents, shall at all times and for all purposes have full and free access to the Premises.
- (b) The City shall have the right to enter upon the Premises to install, maintain and repair buildings, pipes, wires, airducts, utilities or any other installations required by the City for the City's use of the Lands.
- (c) Subject only to the provisions of this Agreement, the Tenant shall have the right of ingress and egress over the Lands roadways subject to rules and regulations as may be established by the City respecting such use.
- (d) The Tenant shall not permit any vehicles belonging to the Tenant or to any sub-tenant, licensee, invitee, agent or employee to cause obstruction to any roads, driveways or common areas of the Premises, the Lands or in the neighbourhood surrounding the Lands, or prevent

the ingress and egress to all other persons using the Lands.

## **12. "AS IS" CONDITION**

The Tenant accepts the Premises “as is” and acknowledges that it has had the opportunity to undertake such inspections, tests and surveys of the Premises as it considers necessary and that the City has made no representations or warranties respecting the Premises, and that by entering into this Agreement, it is satisfied that the Premises is suitable for its purposes.

## **13. OWNERSHIP OF BUILDINGS**

- (a) The City and the Tenant agree that the title to and ownership of all structures or improvements constructed, erected or installed to be constructed, erected or installed on the Premises by the Tenant, together with all replacements, alterations, additions, changes, substitutions, improvements and repairs thereto (the “**Buildings**”), shall at all times during the Term be vested in the Tenant, notwithstanding any rule of law to the contrary.
- (b) At the expiration or early termination of the Term, the City may require the Tenant to remove all or part of the Buildings and any part of the Buildings not removed by the Tenant shall become the absolute property of the City free of all encumbrances, without payment of any compensation to the Tenant.
- (c) Notwithstanding Subsection (b), at the end of the Term, if the Tenant refuses or fails to remove the Buildings after a request by the City, the City may at its sole discretion elect to remove all or part of the Buildings and the Tenant shall reimburse the City for the cost of removing all or part of the Buildings from the Premises.

## **14. CONSTRUCTION**

- (a) If the Tenant is not then in default under this Agreement and with the prior written consent of the City, the Tenant may construct, renovate or replace the Buildings. In giving its consent, the City may impose any conditions, including, without limitation, location requirements, parking and access requirements, construction requirements, design requirements, use restrictions, financial restrictions, and security obligations.
- (b) The Tenant acknowledges that prior to any construction on the Premises, including construction, renovation or replacement of the Buildings, the Tenant must obtain a building permit and a development permit and comply with all other bylaw requirements imposed by the City on construction within its boundaries.
- (c) The Tenant shall promptly pay all charges incurred by the Tenant for any work, materials or services that may be done, supplied or performed in respect of the Premises and shall forthwith discharge any liens in respect of same at any time filed against the Lands.
- (d) The Tenant will not permit any liens, judgments or other charges to be registered against the Lands. If any lien, judgment or other charge is registered, the Tenant will obtain its discharge within THIRTY (30) DAYS of the said registration.

## **15. ZONING**

The Tenant acknowledges that the Tenant must not use the Premises or permit a use of the Premises in breach of the City's zoning bylaw.

## **16. SAFETY**

The Tenant shall take all possible precautions to ensure the safety of persons using the Premises and Building.

## **17. SIGNS AND NOTICES**

The Tenant shall not display any signs or notices on the Premises without the prior written approval of the City with the exception of operationally required or safety related signs and notices. The Tenant shall inform the City about the installation of operationally required or safety related signs and notices.

## **18. ADDITIONAL RIGHTS OF THE CITY**

The City reserves the right to grant leases or licences, rights of way or privileges to others on, over, under, through or across the Premises provided however that the granting of such rights of way or privileges will not damage or disrupt permanently the physical facilities of the Tenant, will not impose any cost upon the Tenant, and will not weaken, diminish or impair the rights and obligations of the parties under this Agreement.

## **19. UTILITIES**

- (a) If applicable, the Tenant shall, at the cost and expense of the Tenant, be responsible for the installation and maintenance of the connecting system to the water, sanitary sewerage and storm sewerage systems for the Lands, at the nearest point of connection. The Tenant shall not commence any such work without the prior written approval of the City. Prior to such approval being given, the Tenant will send copies of the plans and specifications for the connecting of such services to the City. Work will be performed under the supervision of a designated officer of the City.
- (b) The Tenant shall construct improvements on the Premises in such manner that the surface drainage water on the Premises will be discharged into the drainage system at the Lands. Plans for the construction of storm drainage services shall be subject to the approval in writing of the City prior to installation of such services, for compatibility with the field drainage channels serving the Premises, all at the cost and expense of the Tenant.
- (c) The Tenant shall, at the cost and expense of the Tenant, provide complete and proper arrangements for the adequate sanitary handling and disposal away from the Premises and Lands of all trash, garbage and other refuse on or in connection with the Tenant's operations under this Agreement, all to the satisfaction of the City. Piling crates, cartons, barrels or other similar items shall not be permitted in a public area on the Lands, or on the Premises.

- (d) The Tenant shall pay all charges for water supply, sewage disposal, garbage removal, gas, heating fuel, telephone service, cablevision, electricity, power or other utility or communication service rendered in respect of the Premises.

## 20. NUISANCE

The Tenant shall not at any time during the Term of this Agreement or any renewal thereof, use, exercise or carry on or permit or suffer to be used, exercised or carried on, in or upon the Premises or any part thereof any noxious, noisome or offensive act, trade, business, occupation or calling, and no act, matter or thing whatsoever shall at any time during the said term be done in or upon the Premises or any part thereof which shall or may be or grow to the annoyance, nuisance, damage or disturbance of the occupiers or owners of the land or adjoining land and properties, provided that the reasonable use of the Premises for the maintenance, storage, landing and taking off of aircraft shall not be considered a nuisance.

## 21. WASTE

The Tenant will not commit, suffer, or permit any wilful or voluntary waste, spoil or destruction of the Premises.

## 22. ENVIRONMENTAL RESPONSIBILITIES

- (a) For the purpose of this Part:

**"Environmental Law"** means all federal, provincial, municipal or local laws, statutes or ordinances relating to environmental matters, including all rules, regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws;

**"Hazardous Substance"** means a contaminant, pollutant, dangerous good, waste, toxic substance, special waste or hazardous substance as defined in or pursuant to any Environmental Law;

**"Notice"** means any citation, directive, order, claim, litigation, investigation, proceedings, judgment, letter or other communication, written or oral, actual or threatened, from any person, including any governmental agency;

**"Permit"** means any authorization, permit licence, approval or administrative consent issued pursuant to Environmental Law.

- (b) The Tenant will conduct its business and operation on the Premises in compliance with all Environmental Laws and all Permits.
- (c) The Tenant will forthwith notify the City of the occurrence of any of the following and will provide the City with copies of all relevant documentation in connection therewith:
  - (i) a release of a Hazardous Substance on the Premises or the Lands, except as is authorized under Environmental Law;

- (ii) the receipt by the Tenant of a Notice from any governmental agency of non-compliance pursuant to any Environmental Law, including a Notice of non-compliance respecting a Permit;
  - (iii) the receipt by the Tenant of a Notice of a claim by a third party relating to environmental concerns; or
  - (iv) the receipt by the Tenant of information which indicates that Hazardous Substances are present in or on the Premises.
- (d) The Tenant will not permit the storage, treatment or disposal of Hazardous Substances on the Premises except in accordance with all Environmental Laws.
- (e) The Tenant shall not cause or suffer or permit any oil or grease or any harmful, objectionable, dangerous, poisonous, or explosive matter or substance to be discharged on to the Premises or any building on the Premises and will take all reasonable measures for insuring that any effluent discharge will not be corrosive, poisonous or otherwise harmful, or cause obstruction, deposit or pollution on the Premises, or driveways, ditches, water courses, culverts, drains or sewers.
- (f) The Tenant will conduct such investigations, searches, testing, drilling and sampling (“**Investigations**”) as may at any time be required by the City where any reasonable evidence exists that the Tenant’s current or prior use or occupation of the Premises may be introducing or increasing the existence of any Hazardous Substance on the Premises. If the Tenant does not complete the Investigations to the satisfaction of the City, the City may enter on the property of the Tenant and take any actions necessary to complete the Investigations, the cost of which actions will be borne by the Tenant.
- (g) If Hazardous Substances are present on or in the Premises or the Lands as a result of the Tenant's use or occupation of the Premises, the Tenant will take all necessary action, at the cost of the Tenant to remediate the Premises or the Lands to a level acceptable to the City and to governmental authorities.
- (h) Prior to the termination of the lease, the Tenant will conduct all Investigations required by the City where any reasonable evidence exists that the Tenant's use or occupation of the Premises has introduced or increased the existence of any Hazardous Substance on or in the Lands. The Tenant will provide the result of the Investigations to the City. Where any Hazardous Substance is found on or in the Premises or the Lands as a result of the Tenant's use or occupation of the Premises, the Tenant will take all necessary action, at the cost of the Tenant, to remediate the Premises or the Lands to a level acceptable to the City and to governmental authorities.
- (i) The Tenant will provide to the City satisfactory documentary evidence that all Permits are valid and in good standing as requested by the City from time to time.
- (j) The Tenant will indemnify and save harmless the City, its officers, directors, employees, agents and shareholders from and against any and all losses, claims, costs, expenses, damages



and liabilities, including all costs of defending or denying the same, and all costs of investigation, monitoring, remedial response, removal, restoration or permit acquisition and including all solicitor's fees and disbursements in connection therewith which at any time may be paid or incurred by or claimed against the City, its officers, directors, employees, agents and shareholders arising, directly or indirectly, out of:

- (i) a breach by the Tenant of any of the covenants contained in this Agreement;
  - (ii) where the Tenant's use or occupancy of the Premises results in the presence, release or increase of any Hazardous Substance on the Premises or the Lands (or on any other land by way of migration, seepage or otherwise);
  - (iii) any reasonable action taken by the City with respect of the existence of or remediation for any such Hazardous Substance on the Premises or the Lands (or on any other land by way of migration, seepage or otherwise); or
  - (iv) any reasonable action taken by the City in compliance with any Notice of any governmental authority with respect to the existence of any such Hazardous Substance on the Premises or the Lands (or on any other land by way of migration, seepage or otherwise).
- (k) The indemnities contained in this Agreement will survive the expiration or earlier termination of the Term.

**23. POLICE AND FIRE PROTECTION**

The City shall not be responsible for providing fire protection to nor policing of the Premises, the Buildings and any improvements.

**24. FIRE PREVENTION**

The Tenant shall, at the expense of the Tenant, take all precautions to prevent fire from occurring in or about the Premises, and shall observe and comply with all laws and regulations in force respecting fires at the said Lands, and with all instructions given from time to time by the City with respect to fires and extinguishing of fires.

**25. ADVERTISING**

The Tenant shall not construct, erect, place or install on the outside of the Buildings or on the Premises any poster, advertising sign or display, electrical or otherwise, without first obtaining the consent, in writing, of the City.

**26. INSURANCE**

- (a) The Tenant shall obtain, at its own expense, and keep in force a policy of comprehensive/commercial general liability insurance providing coverage for death, bodily injury, property loss, property damage and other potential loss and damage arising out of the Tenant's use and occupation of the Premises in an amount of not less than FIVE MILLION

- (\$5,000,000.00) DOLLARS inclusive per occurrence.
- (b) Without limiting the Tenant's obligations and liabilities under this Agreement, the Tenant is responsible for insuring the Premises and all structures located on the Premises and the contents of them, to full replacement cost against risk of fire and other risks against which a prudent owner would insure.
  - (c) On the first day of the Term and at other times upon demand by the City, the Tenant shall deliver to the City certified copies of the policies of insurance required to be maintained by the Tenant under this Agreement.
  - (d) The City may, from time to time, notify the Tenant to change the amount of insurance required by this Agreement and the Tenant will, within FORTY-FIVE (45) DAYS of receiving such a notice, cause the amounts to be changed and deliver to the City a letter from its insurer certifying the change in the amount of insurance.
  - (e) The Tenant shall ensure that all policies of insurance pursuant to this Agreement:
    - (i) are underwritten by a responsible insurance company or companies licensed to do business in the Province of British Columbia and that meet with the reasonable approval of the City;
    - (ii) are written in the name of the Tenant and the City with loss payable to them as their respective interests may appear;
    - (iii) list the City as an additional insured;
    - (iv) contain a cross liability clause and a waiver of subrogation clause in favour of the City;
    - (v) are primary and do not require the sharing of any loss by any insurer that insures the City;
    - (vi) contain a clause to the effect that any release from liability entered into by the City prior to any loss shall not affect the right of the Tenant or the City to recover; and
    - (vii) endorsed to provide the City with THIRTY (30) DAYS advance notice in writing of cancellation or material change.
  - (f) The Tenant agrees that if it does not provide or maintain in force such insurance, the City may take out the necessary insurance and pay the premium therefore for periods of one year at a time, and the Tenant shall pay to the City as Additional Rent the amount of such premium immediately upon demand.
  - (g) In the event that both the City and the Tenant have claims to be indemnified under any insurance, the indemnity shall be applied first to the settlement of claims of the City and the balance, if any, to the settlement of the claim of the Tenant.

- (h) The Tenant shall not do or permit to be done any act or things which may render void or voidable or conflict with the requirements of any policy or policies of insurance, including any regulations of fire insurance underwriter applicable to such policy or policies, whereby the Lands or the Buildings or the contents of the premises of any tenant are insured or which may cause any increase in premium to be paid in respect of any such policy.

## **27. RELEASE AND INDEMNITY**

- (a) The City shall not be responsible in any way for any injury to any person or for any loss or damage to any property belonging to the Tenant or to other occupants of the Premises or to their respective sub-tenants, invitees, licensees, agents, employees, or other persons from time to time attending at the Premises, including without limiting the foregoing, any loss of or damage caused by theft or breakage or failure to maintain and keep the Premises, the Buildings, or the land in good repair and free from refuse, obnoxious odours, vermin or other foreign matter, defective wiring, plumbing, gas, sprinkler, steam, running or clogging of the above pipes or fixtures, or otherwise, acts, or negligence of guests, invitees, or employees or the Tenant or any other occupants of the premises, or the acts or negligence of any owners or occupiers of adjacent or continuous property or their guests, invitees, or employees, act of God, acts or negligence of any person not in the employment of the City, or for any other loss whatsoever with respect to the Premises, the Lands, or any business carried thereon.
- (b) The Tenant hereby releases the City and its elected officials, officers, employees, contractors, agents, successors and assigns from and against any and all liabilities, damages, costs, claims, suits, or actions, which the Tenant may have, now or in the future, in relation to this Agreement, the Premises or the Tenant's use or occupancy of the Premises.
- (c) Save and except for the negligence of the City, and its elected officials, offices, employees, contractors, agents, successors and assigns, the Tenant and the Indemnifier, jointly and severally, will and hereby do indemnify and save harmless the City from any and all liabilities, damages, costs, claims, suits, or actions, (including without limitation, the full amount of all legal fees, costs, charges and expenses whatsoever) directly or indirectly arising from:
  - (i) any breach, violation, or non-performance of any covenant, condition or agreement in this Agreement set forth and contained on the part of the Tenant to be fulfilled, kept, observed and performed;
  - (ii) any act, omission, or negligence of the Tenant, its members, officers, directors, employees, agents, contractors, subcontractors, subtenants, licensees, invitees or others for whom it is responsible;
  - (iii) any gas, oil or other such spill or leak caused from the use of the Premises which may cause contamination to the environment or otherwise contravene the Waste Management Act;
  - (iv) any damage to property occasioned by the Tenant's use and occupation of the Premises and Building or any injury to person or persons, including death, resulting at any time from the Tenant's use and occupation of the Premises and Building; or

(v) the granting of this Agreement,

and this indemnity shall survive the expiry or sooner determination of this Agreement.

## **28. TEMPORARY SUSPENSION OF SERVICE**

Without limiting or restricting the generality of this Agreement, the Tenant shall not have nor make any claim or demand, nor bring any action or suit or petition against the City or any of his officers, servants or agents for any damage which the Tenant may sustain by reason of any temporary suspension, interruption or discontinuance, in whole or in part, from whatever cause arising in services supplied by the City hereunder.

## **29. REPAIRS AND MAINTENANCE**

- (a) Throughout the Term at its own expense, the Tenant shall repair and maintain the Premises and the Buildings and keep the Premises and the Buildings in a state of good repair as a prudent owner would do. The City will not be obliged to repair, maintain, replace or alter the Premises, the Buildings, or any other Building or structure or any part thereof on the Premises during the Term or to supply any services or utilities thereto save and except for such services and utilities as the City may be required to provide strictly in its capacity as a municipality and not in its capacity as a landlord. The Tenant hereby assumes the full and sole responsibility for the condition, operation, maintenance, repair, replacement and management of the Premises and Building during the Term.
- (b) The Tenant shall upon written notice from the City, make any repairs that are, in the opinion of the City, necessary to the Premises within SIXTY (60) DAYS of receipt of such notice.
- (c) The Tenant shall clear all ice and snow, cut grass, landscape, repair and replace as necessary all sidewalks, driveways, parking areas and other public areas on or adjacent to the Premises in a well maintained, clean, tidy and safe state as befits land used for an airport hangar adjacent to an airport and as a prudent owner would do.
- (d) The Tenant shall not allow any ashes, refuse, garbage or other loose or objectionable material to accumulate on the Premises and shall maintain receptacles for garbage disposal and for the disposal of oil and other waste products.
- (e) The Tenant shall not, without the prior written consent of the City, make any alterations to the landscaping and topography of the Premises.
- (f) The Tenant shall reimburse the City for expenses incurred by the City in repairing any damage caused to the Premises, the improvements thereon or any part thereof as a result of the negligence or wilful act of the Tenant, its invitees, licensees, agents or other persons from time to time in or about the Premises or the Lands.

### **30. CITY'S RIGHT TO PERFORM**

If the Tenant shall fail to perform or cause to be performed each and every one of the covenants and obligations of the Tenant contained in this Agreement, on the part of the Tenant to be observed and performed, the City shall have the right (but shall not be obliged) to perform or cause the same to be performed and to do or cause to be done such things as may be necessary or incidental thereto (including without limiting the foregoing, the right to make repairs, installations, erection and expend monies) and all payments, expenses, charges, fees, (including all legal fees on solicitor and client basis) and disbursements incurred or paid by or on behalf of the City in respect thereof shall be paid by the Tenant to the City forthwith.

### **31. DEFAULT**

- (a) If the Tenant defaults in the payment of any money payable under this Agreement or fails to observe, comply with or perform any of its covenants, agreements or obligations under this Agreement, the City may deliver to the Tenant a notice of default (in the manner required herein for giving notices) stipulating that the default must be rectified or cured within FIFTEEN (15) DAYS of the notice if the default is non-payment of Rent or Additional Rent and within THIRTY (30) DAYS of the notice for other defaults, but less or no notice is required to be given by the City in emergency or urgent circumstances, as determined by the City in its sole discretion, acting reasonably, or where the Tenant has failed to keep the Premises insured.
- (b) If the default (other than payment of money payable by the Tenant under this Agreement and other than failure to keep the Premises insured) reasonably requires more time to rectify or cure than THIRTY (30) DAYS, the Tenant will be deemed to have complied with the rectification or curing of it if the Tenant commences rectifying or curing the default within THIRTY (30) DAYS after notice from the City and diligently completes the same.

### **32. CITY'S RIGHTS ON DEFAULT**

Notwithstanding any other provisions of this Agreement, if the Rent or any part thereof shall be in arrears or unpaid for THIRTY (30) DAYS after the specified date of payment, whether or not the same shall have been in any manner demanded, or in the case default, breach or non-observance is made or suffered by the Tenant at any time, in or in respect of any of the covenants, which on the part of the Tenant ought to be observed or performed, then it shall be lawful for the City, its servants or agents to do any, all, or a combination of the following:

- (a) re-enter and thereafter to have, possess and enjoy the Premises and all improvements thereon; nevertheless, the City may, at his option, except as hereinafter set forth, compel the Tenant to remove from the Premises any improvements and any goods, chattels, materials, effects or things from the Premises all at risk of cost and expense of the Tenant;
- (b) terminate this Agreement; or
- (c) exercise or obtain such other rights as may be permitted by this Agreement or at law.

### **33. CREDITORS**

If the Term of this Agreement or any renewal hereby granted shall at any time be seized or taken in execution or in attachment by any creditor of the Tenant or if the Tenant shall make any assignment for the benefit of creditors, or become bankrupt or insolvent, or if the Tenant takes the benefit of any Act or regulation that may be in force for bankrupt or insolvent debtors, then in any such case the Term of this Agreement or any renewal thereafter, shall at the option of the City, immediately become forfeited and void, and all Rent then due shall immediately become due and payable, and in such case it shall be lawful for the City for any time thereafter to enter into and upon the Premises, or any part thereof, and repossess the Premises or any portion thereof for its sole use, and anything herein contained to the contrary notwithstanding.

### **34. DISTRESS**

If and whenever the Tenant is in default of the payment of any money, including rent, whether expressly reserved by this Agreement or deemed as Rent, the City may without notice or any form of legal process whatsoever, enter the Premises and seize, remove and sell the Tenant's goods, chattels and equipment and seize, remove, and sell any goods, chattels and equipment at any place to which the Tenant or any other person may have removed them in the same manner as if they had remained and been distrained in the Premises, notwithstanding any rule of law or equity to the contrary, and the Tenant hereby waives and renounces the benefit of any present or future statute or law limiting or eliminating the City's right of distress.

### **35. WAIVER OR NON-ACTION**

Waiver by the City of any breach of any term, covenant or condition of this Agreement by the Tenant must not be deemed to be a waiver of any subsequent default by the Tenant. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Agreement by the Tenant must not be deemed to be a waiver of such term, covenant or condition.

### **36. NO ABATEMENT**

The Tenant is not entitled to any abatement or reduction or deduction from the Rent.

### **37. REMEDIES CUMULATIVE**

No reference to or exercise of any specific right or remedy by the City prejudices or precludes the City from any other remedy, whether allowed at law or in equity or expressly provided for in this Agreement. No such remedy is exclusive or dependent upon any other such remedy, but the City may from time to time exercise any one or more of such remedies independently or in combination. Without limiting the generality of the foregoing, the City is entitled to commence and maintain an action against the Tenant to collect any rent not paid when due, without exercising the option to terminate this Agreement.

### **38. NO JOINT VENTURE**

Nothing contained 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 the Tenant any power or authority to bind the City in any way.

### **39. TERMINATION ON CHANGE OF USE OR DAMAGE TO PREMISES**

- (a) If for any reason the Lands ceases to be used for the take-off and landing of aircraft, the City or Tenant may terminate this Agreement by giving SIXTY (60) DAYS written notice of its intention to terminate this Agreement, and after the expiration of such period of notification, this Agreement shall be determined and ended without further notice or delay.
- (b) The parties hereto agree that if the Premises are damaged in any manner so as to render them unfit for the purposes of the Tenant, the City shall not be required to repair such damage or to make the Premises reasonably fit for the purposes of the Tenant, and the Tenant may at its option, exercised within SIXTY (60) DAYS of the occurrence of such damage, elect to repair the damage or to terminate this Agreement and the election shall be by notice in writing to the City. If the Tenant elects to terminate this Agreement, then the Tenant shall immediately deliver possession of the Premises to the City.

### **40. ENUREMENT**

This Agreement and everything herein contained shall enure to the benefit of and be binding upon the successors, assigns and other legal representatives, as the case may be of each of the parties hereto, and every reference herein to every party hereto shall include the successors, assigns and other legal representatives of such party.

### **41. INTERPRETATION**

Any note appearing as a heading in this Agreement has been inserted for convenience and reference only, and of itself cannot define, limit or expand the scope of meaning of the present Lease or any of its provisions. Where there is a male, female or corporate party, the provisions hereof shall be read with all grammatical changes to gender and number required by the context. All covenants and obligations shall be deemed joint and several. The invalidity of any section for any reason whatsoever shall not invalidate any other section of this Agreement. Every reference to each party is deemed to include the heirs, executors, administrators, successors, directors, employees, members, servants, agents, officers, and invitees of such party where the context so permits or requires.

### **42. NO EFFECT ON LAWS OR POWERS**

Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions pursuant to the *Community Charter* (British Columbia) or its rights and powers under any enactment to the extent the same are applicable to the Airpark or the Premises, all of which may be fully and effectively exercised in relation to the Airpark or the Premises as if this Agreement had not been fully executed and delivered.



**43. NOTICES**

- (a) Whenever in this Agreement it is required or permitted that notice or demand be given or served by either party of this Agreement to or on the other, such notice or demand will be in writing and will be validly given or sufficiently communicated if forwarded by express mail to the addresses set out at the beginning of this Agreement.
- (b) Such addresses may be changed from time to time by either party giving notice as above provided.
- (c) Notice shall be deemed to have been effectively communicated or given on the day received or on the FIFTH (5<sup>th</sup>) DAY after it was mailed or sent, whichever is the earlier.

**44. AUTHORITY**

The Tenant represents and warrants to the City that it has full authority to enter into this Agreement and to carry out the actions contemplated herein, that all resolutions and other preconditions to validity have been validly adopted, and that those signing this Agreement on its behalf are authorized to bind the Lessee by their signatures.

**45. ENTIRE AGREEMENT**

The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements whether verbal or written between the parties with respect to the subject matter hereof. This Agreement may not be modified or amended except by an instrument in writing signed by the parties.

**46. COVENANTS AND CONDITIONS**

All of the provisions of this Agreement shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants and conditions were used in each separate section.

**47. REGISTRATION**

The Tenant shall be responsible for any costs of registering this Agreement in the Land Title Office, including the costs or any plan necessary for the registration of the lease and any modification of this Agreement.

**48. TIME OF THE ESSENCE**

Time shall be of the essence of this Agreement.

**49. TENANT'S REPRESENTATIONS AND WARRANTIES**

The Tenant represents and warrants that the Tenant:

- (a) has the power and capacity to enter into and carry out the obligations under this Agreement; and
- (b) has completed all necessary resolutions and other preconditions to the validity of this Agreement.

**50. LAWS OF BRITISH COLUMBIA**

This Agreement shall be construed by the laws of the Province of British Columbia.

**51. SEVERANCE**

If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid will not affect the validity of the remainder of the lease.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C which is attached hereto and forms part of this Agreement.

**THE CORPORATION OF THE CITY OF COURTENAY** has executed this Agreement by its authorized signatories this \_\_\_\_ day of \_\_\_\_\_, 20\_\_:

\_\_\_\_\_  
Mayor: Bob Wells

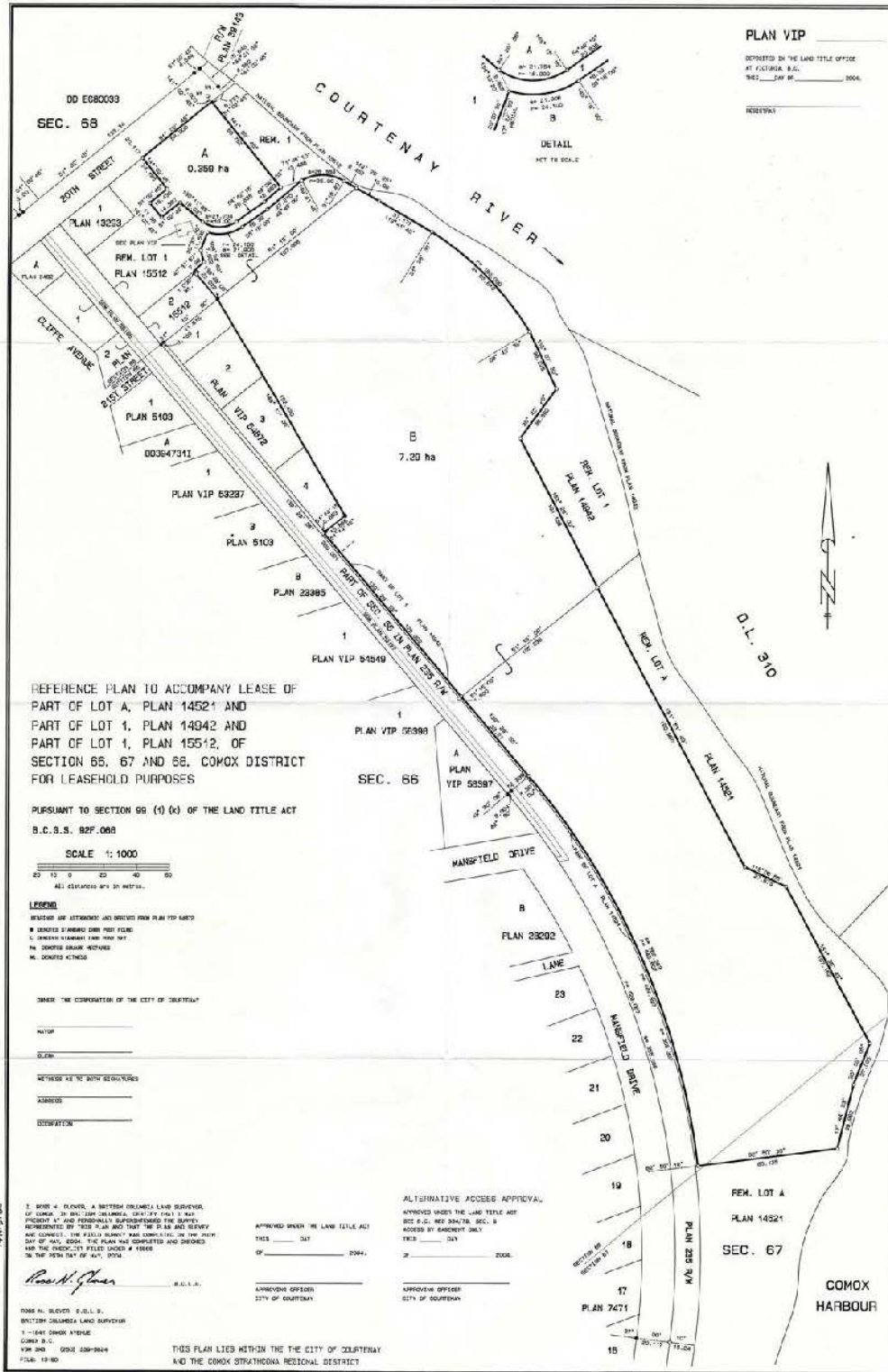
\_\_\_\_\_  
Corporate Officer: Wendy Sorichta

**NORTH BEND VENTURES LTD.** has executed this Agreement by its authorized signatories this \_\_\_\_ day of \_\_\_\_\_, 20\_\_:

\_\_\_\_\_  
Name: Mike Hamilton



## SCHEDULE 'B' THE LANDS - PLAN 14942



**SCHEDULE 'C'**  
**RULES AND REGULATIONS**

1. The Tenant shall ensure that there is a proper run-up pad for aircraft and the run-up of aircraft does not cause a dust problem.
2. The Tenant shall take all reasonable steps to minimize the effect of dust blowing onto the Airpark.
3. The Tenant shall not block access to the City's buildings on the Lands.
4. The Tenant shall ensure that all aircraft are parked in a safe manner.
5. The Tenant shall ensure that no equipment is parked on the Lands except for aircraft and auxiliary equipment.
6. The Tenant shall ensure that all hazardous materials and liquids are stored in a safe manner compliant with regulations of agencies having jurisdiction.

## **SCHEDULE 'D'**

### **GENERAL CONDITIONS FOR MOTOR VEHICLE PARKING ON PREMISES**

1. All persons who park motor vehicles on the Premises must abide by all conditions of the City of Courtenay (e.g. No commercial use, aircraft storage only, area must be kept clean of garbage, etc.).
2. Long term parking of motor vehicles not permitted on the Premises.
3. All persons who park motor vehicles on the Premises need permission of the City of Courtenay to make alterations or improvements to the parking space.
4. All motor vehicles parked on Premises must have comprehensive/commercial general liability insurance for the benefit of the City of Courtenay providing coverage for death, bodily injury, property loss, property damage and other potential loss and damage arising out of the use and occupation of the Premises or the Lands.
5. All motor vehicles parked on Premises shall not idle, and engines must be turned off or not be refuelled inside hangars.

**SCHEDULE 'E'**

**SCHEDULE OF "NON-RENT" FEES PAYMENT RESPONSIBILITY**

**LOT 4**

<b>DESCRIPTION</b>	<b>CITY</b>	<b>TENANT</b>
ELECTRICITY		100%
PROPERTY TAX		100%
WATER		100%
GARBAGE REMOVAL		100%
SECURITY		100%
FIRE PREVENTION		100%
SHRUB, GRASS, TREE MAINTENANCE		100%
BUILDING MAINTENANCE		100%
COMMERCIAL GENERAL LIABILITY INSURANCE		100%
PROPERTY INSURANCE		100%







THE CORPORATION OF THE CITY OF COURTENAY

## STAFF REPORT

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**To:** Council

**File No.:** 2380-30 Lot 4

**From:** Chief Administrative Officer

**Date:** December 21<sup>st</sup>, 2020

**Subject:** Lease Agreement for Lot 4, 100-20<sup>th</sup> Street – Courtenay Airpark

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### PURPOSE:

The purpose of this report is for Council to consider entering into a lease agreement of Lot 4 Courtenay Airpark with Airspeed High Ultralights.

### CAO RECOMMENDATIONS:

That based on the December 21<sup>st</sup>, 2020 staff report “Lease Agreement for Lot 4, 100-20<sup>th</sup> Street - Courtenay Airpark”, subsequent to the publication of notice, Council adopt OPTION 1 and authorize the attached lease between Airspeed High Ultralights and the City of Courtenay for the property having a legal description of PID: 000-892-149, Lot 1, Section 66, Comox Land District Plan 14942 except any portion of the bed of the Courtenay River and further identified as Lot 4 on Plan VIP64872; and

That the Mayor and Corporate Officer be authorized to execute all documentation relating to the lease.

Respectfully submitted,

Trevor Kushner, BA, DLGM, CLGA, PCAMP  
Interim Chief Administrative Officer

### BACKGROUND:

Airspeed High Ultralights is the current owner of the office building located on Lot 4, Courtenay Airpark. Airspeed High Ultralights operates an ultralight aircraft flight training business including ground school governed by Transport Canada regulations. The business currently employs one instructor and utilizes one ultralight aircraft for training purposes.

Airspeed High Ultralights currently sub-leases a portion of the lot and office building to Sealand Aviation Ltd. for storage of a single aircraft and use of office space. Sealand Aviation Ltd. conducts flight training, aircraft rental and sightseeing services. The sub-lease is subject to all provisions of the master lease. The sub-lease was approved by Council on July 16, 2018.

**DISCUSSION:**

Airspeed High Ultralights has committed to leasing Lot 4 for a minimum of five years with a renewal clause of three additional five year terms subject to City approvals. The initial lease term will be for a period of five years commencing on January 1, 2021 and terminating on December 31, 2025.

The annual rent to be paid by Airspeed High Ultralights will increase by 4.5% each year of the lease, continuing the annual rate percent increase applied to the previous Lot 4 lease agreement.

Lot 4 Annual Lease Rent		
2021	\$2,936.94	4.5%
2022	\$3,069.10	4.5%
2023	\$3,207.21	4.5%
2024	\$3,351.53	4.5%
2025	\$3,502.35	4.5%

In May 2019 a Fair Market Rental Appraisal was conducted by Jackson & Associates for the Courtenay Airpark Lands located at 100 – 20<sup>th</sup> Street. Based on their research and analysis report, the fair market rental for Lot 4 should be a minimum of \$0.20 per sqft. The current market rental estimates are based on existing zoning and land use controls and the use restriction contained within the lease document.

**FINANCIAL IMPLICATIONS:**

There are no additional financial resources required.

**ADMINISTRATIVE IMPLICATIONS:**

Approximately 35 hours of staff time annually will be dedicated to the review of the lease wit, meet with the tenant to review issues of concern, administrative compliance with the lease, and an inspection schedule of the Premises for compliance with the lease.

**ASSET MANAGEMENT IMPLICATIONS:**

There are no asset management implications as the lease will not change any service levels within the Courtenay Airpark. The use conforms to existing airpark activities.

**STRATEGIC PRIORITIES REFERENCE:**

**We focus on organizational and governance excellence**

- Responsibly provide services at levels which the people we serve are willing to pay

**We actively pursue vibrant economic development**

- ▲ Work with the business and development sectors to mutually improve efficiencies
- ▲ Continue to explore innovative and effective economic development opportunities

### We continually invest in our key relationships

- ■ Consider effective ways to engage with and partner for the health and safety of the community

- **AREA OF CONTROL:** The policy, works and programming matters that fall within Council's jurisdictional authority to act
- ▲ **AREA OF INFLUENCE:** Matters that fall within shared or agreed jurisdiction between Council and another government or party
- **AREA OF CONCERN:** Matters of interest that are outside Council's jurisdictional authority to act

### OFFICIAL COMMUNITY PLAN REFERENCE:

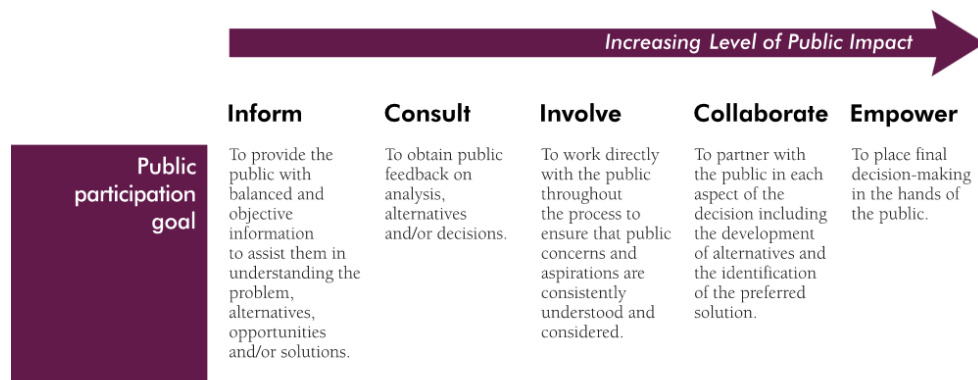
The Official Community Plan states Council acknowledges the Courtenay Airpark serves an important role to the City and Council will support limited expansion of airport oriented commercial uses including aircraft flight training services.

### REGIONAL GROWTH STRATEGY REFERENCE:

No specific reference.

### CITIZEN/PUBLIC ENGAGEMENT:

Section 26 of the *Community Charter* for municipalities requires that notice be given prior to the disposition. The notice must also be published in a newspaper that is published at least weekly in the area affected by the subject matter of the notice.



### OPTIONS:

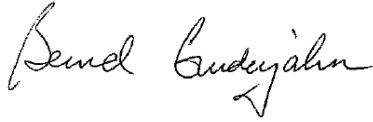
**OPTION 1:** That based on the December 21<sup>st</sup>, 2020 staff report “Lease Agreement for Lot 4 100-20<sup>th</sup> Street – Courtenay Airpark”, subsequent to the publication of notice, Council approve **OPTION 1** and authorize the lease between the City of Courtenay and Airspeed High Ultralights for the property having a legal description of PID: 000-892-149, Lot 1, Plan 14942, Section 66, Comox Land District Plan 14942 except any portion of the bed of the Courtenay River and further identified as Lot 4 on Plan VIP64872; and

That the Mayor and Corporate Office be authorized to execute all documentation relating to the lease. (Recommended)

OPTION 2: That Council deny the lease request.

OPTION 3: That Council refer this item back to staff for further consideration.

Prepared by:



Bernd Guderjahn, SCMP  
Manager of Purchasing

Reviewed by:



Kate O'Connell,  
Director of Corporate Support Services

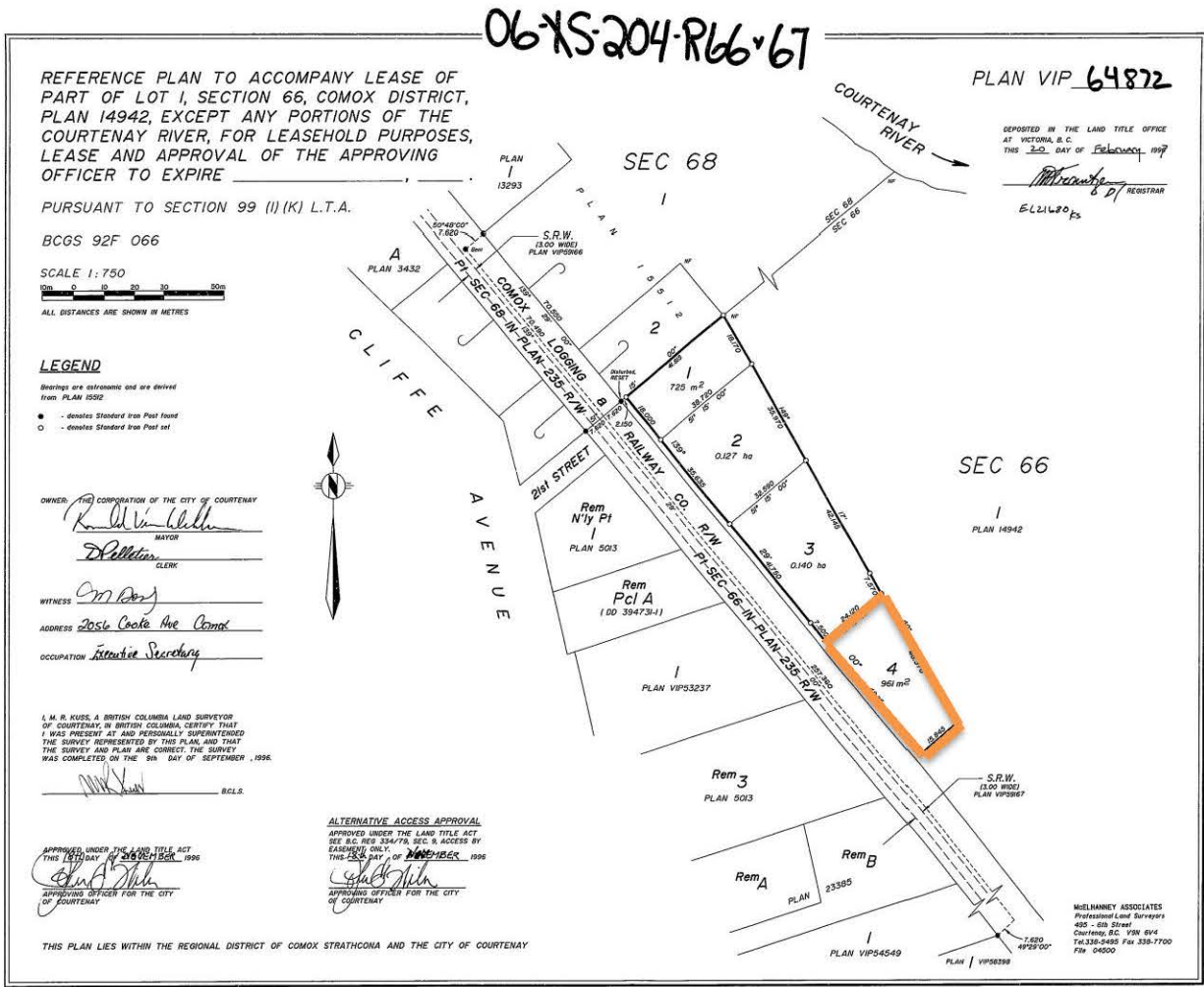
Concurrence by:



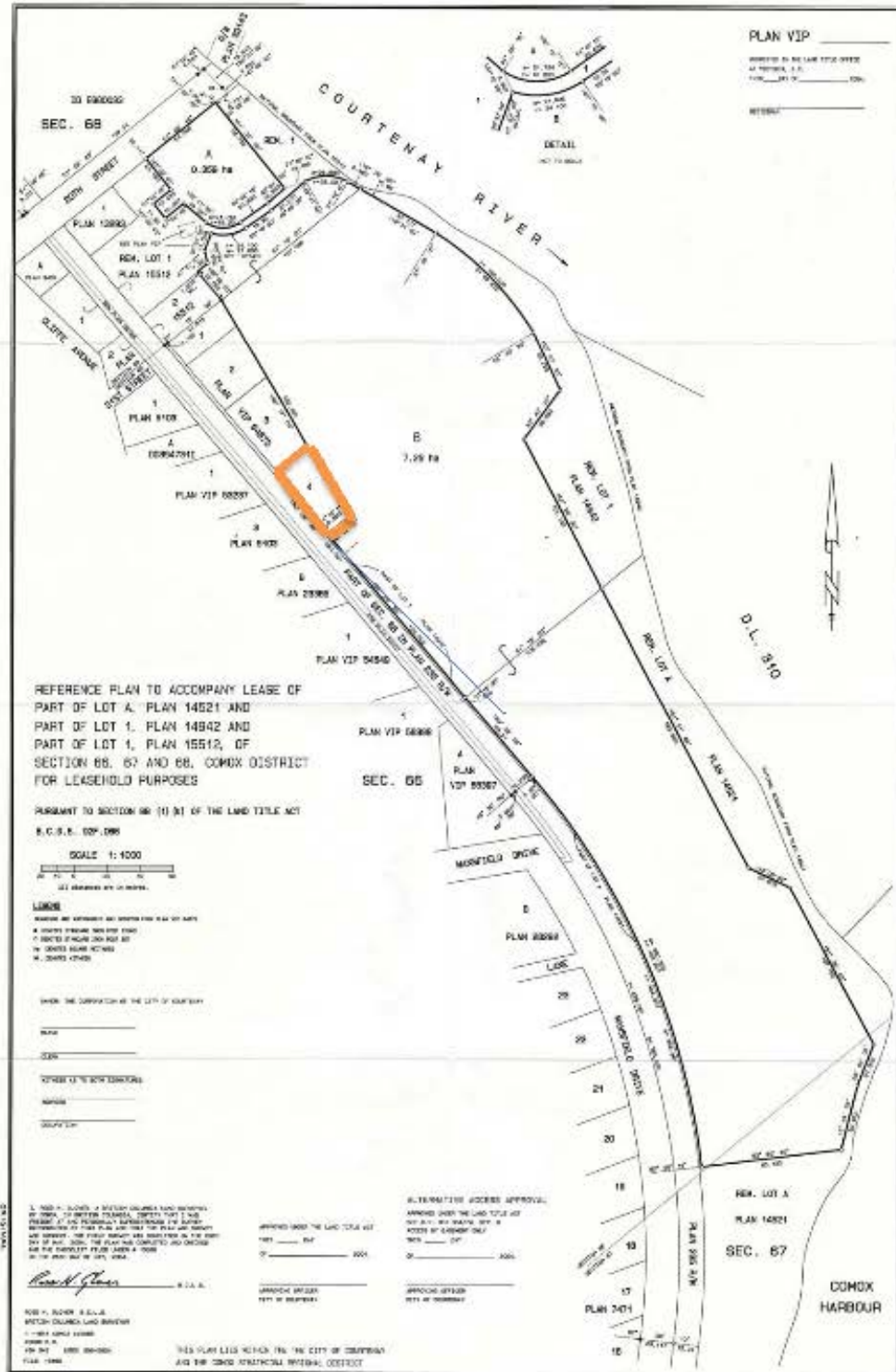
Trevor Kushner, BA, DLGM, CLGA, PCAMP  
Interim Chief Administrative Officer

*Attachments: A – Reference Plan VIP64872  
B – Reference Plan Courtenay Airpark  
C – Lot 4 Office Building & Lot North End Photos  
D - Lease Document*

**SCHEDULE A**  
**REFERENCE PLAN VIP64872**



**SCHEDULE B**  
**REFERENCE PLAN COURTENAY AIRPARK**





**SCHEDULE C**  
**LOT 4 OFFICE BUILDING & LOT NORTH END**



**SCHEDULE D  
LEASE DOCUMENT**

**TERMS OF INSTRUMENT – PART 2**

THIS AGREEMENT, dated for reference January 1, 2021

BETWEEN:

**THE CORPORATION OF THE CITY OF COURTENAY**, a municipal corporation incorporated pursuant to the *Community Charter* and having its offices at 830 Cliffe Avenue, Courtenay, B.C., V9N 2J7

(the "**City**")

AND:

**AIRSPPEED HIGH ULTRALIGHTS** having a mailing address of 2024 Cedar Crescent, Courtenay, B.C., V9N 3B6

(the "**Tenant**")

AND:

**ANDREAS WALTER RUTTKIEWICZ**  
2024 Cedar Crescent, Courtenay, B.C., V9N 3B6

(the "**Indemnifier**")

WHEREAS:

A. The City is the registered owner of lands and premises in the City of Courtenay more particularly described as follows:

PID: 000-892-149, LOT 1 SECTION 66 COMOX DISTRICT PLAN 14942 except any portion of the bed of the Courtenay River,

(hereinafter collectively called the "**Lands**");

B. The Lands comprise part of the Courtenay Lands;

C. The Indemnifier is the principal shareholder of the Tenant, and has become a party to this Agreement for the purpose of jointly and severally covenanting with the Tenant to indemnify the City in the manner provided in this Agreement;

D. The Tenant wishes to place, maintain and operate an office, and park aircraft on the Lands

for the purpose of carrying out an Ultralight Flight School, the (**Aviation Services**);

- E. The City has agreed to lease a portion of the Lands to the Tenant for the purposes of providing the Aviation Services, and the Tenant has agreed to accept the lease, all on the terms and conditions herein set forth; and
- F. In accordance with Section 26 of the *Community Charter*, the City has published notice in a newspaper of its intention to lease a portion of the Lands to the Tenant.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the mutual covenants and agreements herein set forth, the City and Tenant covenant and agree as follows:

### 1. PREMISES

The City hereby demises and leases to the Tenant that part of the Lands identified as “Lot 4” on the reference plan prepared by McElhanney Associates, B.C.L.S. on the 20<sup>th</sup> day of February, 1997, having an area of approximately 961 square meters more or less and registered as Plan VIP64872, a copy of which is attached as Schedule A hereto (hereinafter referred to as the “**Premises**”).

### 2. TERM

- (a) The Term of this Agreement shall be for a period of FIVE (5) YEARS commencing on January 1<sup>st</sup>, 2021 and terminating on December 31<sup>st</sup>, 2025, subject to any right or renewal or earlier termination (the “**Term**”).
- (b) The Tenant shall, at the expiry or sooner determination of this Agreement or any renewal thereof peaceably surrender and yield unto the City the Premises together with all fixtures which at any time during the Term of this Agreement or renewal thereof may be made thereon in good and substantial repair and condition and deliver to the City all keys to the Premises that the Tenant has in its possession.

### 3. RENEWAL

The Tenant, if not in default hereunder, may renew this Agreement for THREE additional term(s) of FIVE (5) YEARS each on the same terms and conditions contained herein, save and except for this covenant for renewal and except that the Base Rent to be paid during such renewal period shall be fixed and determined by the City at the time of the renewal at any greater or other rate than herein reserved (based on the applicable policies of the City in effect), subject to the following:

- (a) The Tenant shall exercise this renewal by giving written notice to the City in the manner provided herein not less than SIX (6) MONTHS prior to the expiry of the term; and
- (b) Any renewal granted under this section shall only be granted if approved by the municipal council of the City.

#### 4. HOLDING OVER

If at the expiration of the Term the Tenant shall hold over with the consent of the City, the tenancy of the Tenant shall thereafter, in the absence of written agreement to the contrary, be from year to year, with the Base Rent for the year being increased by FOUR AND A HALF (4.5) PERCENT from the annual Base Rent paid the preceding year and shall be subject to all other terms and conditions of this Agreement.

#### 5. RENT

- (a) The Tenant shall pay to the City annual rent plus Goods and Services Tax for each year of the Term in advance on or before the first business day of each year in the Term. The amount of annual rent (the “**Base Rent**”) for each year of the Term is as set out in the table below.

2021	\$2,936.94
2022	\$3,069.10
2023	\$3,207.21
2024	\$3,351.53
2025	\$3,502.35

- (b) In addition to the Base Rent payable under Subsection (a), the Tenant shall pay to City, from time to time upon demand, all other sums payable to the City pursuant to this Agreement (the “**Additional Rent**”).
- (c) The lease in this Agreement is a net lease to the City, and the Base Rent and Additional Rent provided to be paid to the City under this Agreement (collectively, the “**Rent**”) will be net to the City and will yield to the City the entire such rental during the Term without abatement for any cause whatsoever. Except as specifically provided in this Agreement, all costs, expenses, and obligations of every kind and nature whatsoever relating to the Premises, whether or not referred to in this Agreement and whether or not of a kind now existing or within the contemplation of the parties, will be paid by the Tenant. Those costs, expenses and obligations must be proven by the City to the Tenant with written receipts.

#### 6. PURPOSE AND USE OF PREMISES

- (a) The Tenant will use the Premises for aviation purposes only and no other uses or activities are permitted.
- (b) The rules and regulations with such reasonable variations, modifications, and additions as shall from time to time be made by the City, shall be observed and performed by the Tenant, its agents, employees, sub-tenants, licensees and invitees. All such rules and regulations shall be deemed to form a part of this Agreement.
- (c) Except as specifically provided herein, the Tenant shall not use or permit any part of the Premises to be used for or with respect to or in connection with the operation of any business, commercial or revenue generating enterprise without the prior written consent of the City.

Notwithstanding this restriction, the Tenant is permitted to use, or authorize others to use, the premises to provide educational services related to pilot training or aviation safety, even if a fee is charged.

## **7. QUIET POSSESSION**

The City hereby covenants with the Tenant that the Tenant, upon paying the Rent and Additional rent hereby reserved and performing the covenants hereinbefore contained, may peaceably possess and enjoy the Premises for the term hereby granted without any interruption or disturbance from the City or any person lawfully claiming by, from or under the City.

## **8. PAYMENT OF TAXES**

The Tenant shall promptly pay when due municipal, regional district, school, hospital district and other property taxes and all other taxes, charges, levies, assessments, and other fees which may be imposed or that may arise in respect of the Premises or the Tenant's use of the Premises. The Tenant shall pay to the City all taxes, charges, levies and other fees, including Goods and Services Tax or any replacement tax, which may be payable in respect of this Agreement.

## **9. COMPLIANCE WITH REGULATIONS**

The Tenant shall, in all respects, at all times during the Term abide by and comply with all applicable statutes, laws, regulations and orders of any authority having jurisdiction and, without limiting the generality of the foregoing, all federal, provincial, or municipal laws or statutes or bylaws relating to environmental matters and relating to the Lands and its operation, including all the rules, regulations, policies, guidelines, criteria or the like made under or pursuant to any such laws.

## **10. ASSIGNMENT AND SUBLEASES**

The Tenant shall not make any assignment of this Agreement, nor any transfer or sublease of the whole or any part of the Premises demised or leased hereunder, without obtaining the prior consent in writing of the City to such assignment, transfer or sublease. In requesting the City's consent to an assignment, sublease or licence, the Tenant must provide the City with all information requested by the City. The Tenant must, if required by the City, enter into sub-leases, assignment agreements or licences on terms required by the City, including requirements for insurance and indemnities.

## **11. RIGHTS OF ACCESS**

- (a) The City, its servants or agents shall have full and free access for inspection purposes during normal business hours and in the presence of the Tenant or a representative of the Tenant to any and every part of the Premises; it being expressly understood and agreed, however, that in cases of emergency, the City, its officers, servants or agents, shall at all times and for all purposes have full and free access to the Premises.
- (b) The City shall have the right to enter upon the Premises to install, maintain and repair buildings, pipes, wires, airducts, utilities or any other installations required by the City for the City's use of the Lands.



- (c) Subject only to the provisions of this Agreement, the Tenant shall have the right of ingress and egress over the Lands roadways subject to rules and regulations as may be established by the City respecting such use.
- (d) The Tenant shall not permit any vehicles belonging to the Tenant or to any sub-tenant, licensee, invitee, agent or employee to cause obstruction to any roads, driveways or common areas of the Premises, the Lands or in the neighbourhood surrounding the Lands, or prevent the ingress and egress to all other persons using the Lands.

## **12. "AS IS" CONDITION**

The Tenant accepts the Premises “as is” and acknowledges that it has had the opportunity to undertake such inspections, tests and surveys of the Premises as it considers necessary and that the City has made no representations or warranties respecting the Premises, and that by entering into this Agreement, it is satisfied that the Premises is suitable for its purposes.

## **13. OWNERSHIP OF BUILDINGS**

- (a) The City and the Tenant agree that the title to and ownership of all structures or improvements constructed, erected or installed to be constructed, erected or installed on the Premises by the Tenant, together with all replacements, alterations, additions, changes, substitutions, improvements and repairs thereto (the “**Buildings**”), shall at all times during the Term be vested in the Tenant, notwithstanding any rule of law to the contrary.
- (b) At the expiration or early termination of the Term, the City may require the Tenant to remove all or part of the Buildings and any part of the Buildings not removed by the Tenant shall become the absolute property of the City free of all encumbrances, without payment of any compensation to the Tenant.
- (c) Notwithstanding Subsection (b), at the end of the Term, if the Tenant refuses or fails to remove the Buildings after a request by the City, the City may at its sole discretion elect to remove all or part of the Buildings and the Tenant shall reimburse the City for the cost of removing all or a part of the Buildings from the Premises.

## **14. CONSTRUCTION**

- (a) If the Tenant is not then in default under this Agreement and with the prior written consent of the City, the Tenant may construct, renovate or replace the Buildings. In giving its consent, the City may impose any conditions, including, without limitation, location requirements, parking and access requirements, construction requirements, design requirements, use restrictions, financial restrictions, and security obligations.
- (b) The Tenant acknowledges that prior to any construction on the Premises, including construction, renovation or replacement of the Buildings, the Tenant must obtain a building permit and a development permit and comply with all other bylaw requirements imposed by the City on construction within its boundaries.

- (c) The Tenant shall promptly pay all charges incurred by the Tenant for any work, materials or services that may be done, supplied or performed in respect of the Premises and shall forthwith discharge any liens in respect of same at any time filed against the Lands.
- (d) The Tenant will not permit any liens, judgments or other charges to be registered against the Lands. If any lien, judgment or other charge is registered, the Tenant will obtain its discharge within THIRTY (30) DAYS of the said registration.

## **15. ZONING**

The Tenant acknowledges that the Tenant must not use the Premises or permit a use of the Premises in breach of the City of Courtenay zoning bylaw.

## **16. SAFETY**

The Tenant shall take all possible precautions to ensure the safety of persons using the Premises and Building.

## **17. SIGNS AND NOTICES**

The Tenant shall not display any signs or notices on the Premises without the prior written approval of the City with the exception of operationally required or safety related signs and notices. The Tenant shall inform the City about the installation of operationally required or safety related signs and notices.

## **18. ADDITIONAL RIGHTS OF THE CITY**

The City reserves the right to grant leases or licences, rights of way or privileges to others on, over, under, through or across the Premises provided however that the granting of such rights of way or privileges will not damage or disrupt permanently the physical facilities of the Tenant, will not impose any cost upon the Tenant, and will not weaken, diminish or impair the rights and obligations of the parties under this Agreement.

## **19. UTILITIES**

- (a) If applicable, the Tenant shall, at the cost and expense of the Tenant, be responsible for the installation and maintenance of the connecting system to the water, sanitary sewerage and storm sewerage systems at the Lands, at the nearest point of connection. The Tenant shall not commence any such work without the prior written approval of the City. Prior to such approval being given, the Tenant will send copies of the plans and specifications for the connecting of such services to the City. Work will be performed under the supervision of a designated officer of the City.
- (b) The Tenant shall construct improvements on the Premises in such manner that the surface drainage water on the Premises will be discharged into the drainage system at the Lands. Plans for the construction of storm drainage services shall be subject to the approval in writing



of the City prior to installation of such services, for compatibility with the field drainage channels serving the Premises, all at the cost and expense of the Tenant.

- (c) The Tenant shall, at the cost and expense of the Tenant, provide complete and proper arrangements for the adequate sanitary handling and disposal away from the Premises and Lands of all trash, garbage and other refuse on or in connection with the Tenant's operations under this Agreement, all to the satisfaction of the City. Piling crates, cartons, barrels or other similar items shall not be permitted in a public area on the Lands, or on the Premises.
- (d) The Tenant shall pay all charges for water supply, sewage disposal, garbage removal, gas, heating fuel, telephone service, cablevision, electricity, power or other utility or communication service rendered in respect of the Premises.

## 20. NUISANCE

The Tenant shall not at any time during the Term of this Agreement or any renewal thereof, use, exercise or carry on or permit or suffer to be used, exercised or carried on, in or upon the Premises or any part thereof any noxious, noisome or offensive act, trade, business, occupation or calling, and no act, matter or thing whatsoever shall at any time during the said term be done in or upon the Premises or any part thereof which shall or may be or grow to the annoyance, nuisance, damage or disturbance of the occupiers or owners of the land or adjoining land and properties, provided that the reasonable use of the Premises for the maintenance, storage, landing and taking off of aircraft shall not be considered a nuisance.

## 21. WASTE

The Tenant will not commit, suffer, or permit any wilful or voluntary waste, spoil or destruction of the Premises.

## 22. ENVIRONMENTAL RESPONSIBILITIES

- (a) For the purpose of this Part:

**"Environmental Law"** means all federal, provincial, municipal or local laws, statutes or ordinances relating to environmental matters, including all rules, regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws;

**"Hazardous Substance"** means a contaminant, pollutant, dangerous good, waste, toxic substance, special waste or hazardous substance as defined in or pursuant to any Environmental Law;

**"Notice"** means any citation, directive, order, claim, litigation, investigation, proceedings, judgment, letter or other communication, written or oral, actual or threatened, from any person, including any governmental agency;

**"Permit"** means any authorization, permit licence, approval or administrative consent issued pursuant to Environmental Law.

- (b) The Tenant will conduct its business and operation on the Premises in compliance with all Environmental Laws and all Permits.
- (c) The Tenant will forthwith notify the City of the occurrence of any of the following and will provide the City with copies of all relevant documentation in connection therewith:
  - (i) a release of a Hazardous Substance on the Premises or the Lands, except as is authorized under Environmental Law;
  - (ii) the receipt by the Tenant of a Notice from any governmental agency of non-compliance pursuant to any Environmental Law, including a Notice of non-compliance respecting a Permit;
  - (iii) the receipt by the Tenant of a Notice of a claim by a third party relating to environmental concerns; or
  - (iv) the receipt by the Tenant of information which indicates that Hazardous Substances are present in or on the Premises.
- (d) The Tenant will not permit the storage, treatment or disposal of Hazardous Substances on the Premises except in accordance with all Environmental Laws.
- (e) The Tenant shall not cause or suffer or permit any oil or grease or any harmful, objectionable, dangerous, poisonous, or explosive matter or substance to be discharged on to the Premises or any building on the Premises and will take all reasonable measures for insuring that any effluent discharge will not be corrosive, poisonous or otherwise harmful, or cause obstruction, deposit or pollution on the Premises, or driveways, ditches, water courses, culverts, drains or sewers.
- (f) The Tenant will conduct such investigations, searches, testing, drilling and sampling (“**Investigations**”) as may at any time be required by the City where any reasonable evidence exists that the Tenant’s current or prior use or occupation of the Premises may be introducing or increasing the existence of any Hazardous Substance on the Premises. If the Tenant does not complete the Investigations to the satisfaction of the City, the City may enter on the property of the Tenant and take any actions necessary to complete the Investigations, the cost of which actions will be borne by the Tenant.
- (g) If Hazardous Substances are present on or in the Premises or the Lands as a result of the Tenant's use or occupation of the Premises, the Tenant will take all necessary action, at the cost of the Tenant to remediate the Premises or the Lands to a level acceptable to the City and to governmental authorities.
- (h) Prior to the termination of the lease, the Tenant will conduct all Investigations required by the City where any reasonable evidence exists that the Tenant's use or occupation of the Premises has introduced or increased the existence of any Hazardous Substance on or in the Land. The Tenant will provide the result of the Investigations to the City. Where any Hazardous

Substance is found on or in the Premises or the Lands as a result of the Tenant's use or occupation of the Premises, the Tenant will take all necessary action, at the cost of the Tenant, to remediate the Premises or the Lands to a level acceptable to the City and to governmental authorities.

- (i) The Tenant will provide to the City satisfactory documentary evidence that all Permits are valid and in good standing as requested by the City from time to time.
- (j) The Tenant and the Indemnifier will, jointly and severally, indemnify and save harmless the City, its officers, directors, employees, agents and shareholders from and against any and all losses, claims, costs, expenses, damages and liabilities, including all costs of defending or denying the same, and all costs of investigation, monitoring, remedial response, removal, restoration or permit acquisition and including all solicitor's fees and disbursements in connection therewith which at any time may be paid or incurred by or claimed against the City, its officers, directors, employees, agents and shareholders arising, directly or indirectly, out of:
  - (i) a breach by the Tenant of any of the covenants contained in this Agreement;
  - (ii) where the Tenant's use or occupancy of the Premises results in the presence, release or increase of any Hazardous Substance on the Premises or the Lands (or on any other land by way of migration, seepage or otherwise);
  - (iii) any reasonable action taken by the City with respect of the existence of or remediation for any such Hazardous Substance on the Premises or the Lands (or on any other land by way of migration, seepage or otherwise); or
  - (iv) any reasonable action taken by the City in compliance with any Notice of any governmental authority with respect to the existence of any such Hazardous Substance on the Premises or the Lands (or on any other land by way of migration, seepage or otherwise).
- (k) The indemnities contained in this Agreement will survive the expiration or earlier termination of the Term.

### **23. SECURITY AND FIRE SYSTEMS PROTECTION**

The City shall not be responsible for providing fire systems protection to nor security of the Premises, the Buildings and any improvements.

### **24. FIRE PREVENTION**

The Tenant shall, at the expense of the Tenant, take all precautions to prevent fire from occurring in or about the Premises, and shall observe and comply with all laws and regulations in force respecting fires at the said Lands, and with all instructions given from time to time by the City with respect to fires and extinguishing of fires.

## **25. ADVERTISING**

The Tenant shall not construct, erect, place or install on the outside of the Buildings or on the Premises any poster, advertising sign or display, electrical or otherwise, without first obtaining the consent, in writing, of the City.

## **26. INSURANCE**

- (a) The Tenant shall obtain, at its own expense, and keep in force a policy of comprehensive/commercial general liability insurance providing coverage for death, bodily injury, property loss, property damage and other potential loss and damage arising out of the Tenant's use and occupation of the Premises in an amount of not less than FIVE MILLION (\$5,000,000.00) DOLLARS inclusive per occurrence.
- (b) Without limiting the Tenant's obligations and liabilities under this Agreement, the Tenant is responsible for insuring the Premises and all structures located on the Premises and the contents of them, to full replacement cost against risk of fire and other risks against which a prudent owner would insure.
- (c) On the first day of the Term and at other times upon demand by the City, the Tenant shall deliver to the City certified copies of the policies of insurance required to be maintained by the Tenant under this Agreement.
- (d) The City may, from time to time, notify the Tenant to change the amount of insurance required by this Agreement and the Tenant will, within FORTY-FIVE (45) DAYS of receiving such a notice, cause the amounts to be changed and deliver to the City a letter from its insurer certifying the change in the amount of insurance.
- (e) The Tenant shall ensure that all policies of insurance pursuant to this Agreement:
  - (i) are underwritten by a responsible insurance company or companies licensed to do business in the Province of British Columbia and that meet with the reasonable approval of the City;
  - (ii) are written in the name of the Tenant and the City with loss payable to them as their respective interests may appear;
  - (iii) list the City as an additional insured;
  - (iv) contain a cross liability clause and a waiver of subrogation clause in favour of the City;
  - (v) are primary and do not require the sharing of any loss by any insurer that insures the City;
  - (vi) contain a clause to the effect that any release from liability entered into by the City prior to any loss shall not affect the right of the Tenant or the City to recover; and
  - (vii) endorsed to provide the City with THIRTY (30) DAYS advance notice in writing of

cancellation or material change.

- (f) The Tenant agrees that if it does not provide or maintain in force such insurance, the City may take out the necessary insurance and pay the premium therefore for periods of one year at a time, and the Tenant shall pay to the City as Additional Rent the amount of such premium immediately upon demand.
- (g) In the event that both the City and the Tenant have claims to be indemnified under any insurance, the indemnity shall be applied first to the settlement of claims of the City and the balance, if any, to the settlement of the claim of the Tenant.
- (h) The Tenant shall not do or permit to be done any act or things which may render void or voidable or conflict with the requirements of any policy or policies of insurance, including any regulations of fire insurance underwriter applicable to such policy or policies, whereby the Lands or the Buildings or the contents of the premises of any tenant are insured or which may cause any increase in premium to be paid in respect of any such policy.

## **27. RELEASE AND INDEMNITY**

- (a) The City shall not be responsible in any way for any injury to any person or for any loss or damage to any property belonging to the Tenant or to other occupants of the Premises or to their respective sub-tenants, invitees, licensees, agents, employees, or other persons from time to time attending at the Premises, including without limiting the foregoing, any loss of or damage caused by theft or breakage or failure to maintain and keep the Premises, the Buildings, or the land in good repair and free from refuse, obnoxious odours, vermin or other foreign matter, defective wiring, plumbing, gas, sprinkler, steam, running or clogging of the above pipes or fixtures, or otherwise, acts, or negligence of guests, invitees, or employees or the Tenant or any other occupants of the premises, or the acts or negligence of any owners or occupiers of adjacent or continuous property or their guests, invitees, or employees, act of God, acts or negligence of any person not in the employment of the City, or for any other loss whatsoever with respect to the Premises, the Lands, or any business carried thereon.
- (b) The Tenant hereby releases the City and its elected officials, officers, employees, contractors, agents, successors and assigns from and against any and all liabilities, damages, costs, claims, suits, or actions, which the Tenant may have, now or in the future, in relation to this Agreement, the Premises or the Tenant's use or occupancy of the Premises.
- (c) Save and except for the negligence of the City, and its elected officials, offices, employees, contractors, agents, successors and assigns, the Tenant and the Indemnifier, jointly and severally, will and hereby do indemnify and save harmless the City from any and all liabilities, damages, costs, claims, suits, or actions, (including without limitation, the full amount of all legal fees, costs, charges and expenses whatsoever) directly or indirectly arising from:
  - (i) any breach, violation, or non-performance of any covenant, condition or agreement in this Agreement set forth and contained on the part of the Tenant to be fulfilled, kept, observed and performed;

- (ii) any act, omission, or negligence of the Tenant, its members, officers, directors, employees, agents, contractors, subcontractors, subtenants, licensees, invitees or others for whom it is responsible;
- (iii) any gas, oil or other such spill or leak caused from the use of the Premises which may cause contamination to the environment or otherwise contravene the Waste Management Act;
- (iv) any damage to property occasioned by the Tenant's use and occupation of the Premises and Building or any injury to person or persons, including death, resulting at any time from the Tenant's use and occupation of the Premises and Building; or
- (v) the granting of this Agreement, and this indemnity shall survive the expiry or sooner determination of this Agreement.

## **28. TEMPORARY SUSPENSION OF SERVICE**

Without limiting or restricting the generality of this Agreement, the Tenant shall not have nor make any claim or demand, nor bring any action or suit or petition against the City or any of his officers, servants or agents for any damage which the Tenant may sustain by reason of any temporary suspension, interruption or discontinuance, in whole or in part, from whatever cause arising in services supplied by the City hereunder.

## **29. REPAIRS AND MAINTENANCE**

- (a) Throughout the Term at its own expense, the Tenant shall repair and maintain the Premises and the Buildings and keep the Premises and the Buildings in a state of good repair as a prudent owner would do. The City will not be obliged to repair, maintain, replace or alter the Premises, the Buildings, or any other Building or structure or any part thereof on the Premises during the Term or to supply any services or utilities thereto save and except for such services and utilities as the City may be required to provide strictly in its capacity as a municipality and not in its capacity as a landlord. The Tenant hereby assumes the full and sole responsibility for the condition, operation, maintenance, repair, replacement and management of the Premises and Building during the Term.
- (b) The Tenant shall upon written notice from the City, make any repairs that are, in the opinion of the City, necessary to the Premises within SIXTY (60) DAYS of receipt of such notice.
- (c) The Tenant shall clear all ice and snow, cut grass, landscape, repair and replace as necessary all sidewalks, driveways, parking areas and other public areas on or adjacent to the Premises in a well maintained, clean, tidy and safe state as befits land used for an airport hangar adjacent to an airport and as a prudent owner would do.
- (d) The Tenant shall not allow any ashes, refuse, garbage or other loose or objectionable material to accumulate on the Premises and shall maintain receptacles for garbage disposal and for the disposal of oil and other waste products.

- (e) The Tenant shall not, without the prior written consent of the City, make any alterations to the landscaping and topography of the Premises.
- (f) The Tenant shall reimburse the City for expenses incurred by the City in repairing any damage caused to the Premises, the improvements thereon or any part thereof as a result of the negligence or wilful act of the Tenant, its invitees, licensees, agents or other persons from time to time in or about the Premises or the Lands.

### **30. CITY'S RIGHT TO PERFORM**

If the Tenant shall fail to perform or cause to be performed each and every one of the covenants and obligations of the Tenant contained in this Agreement, on the part of the Tenant to be observed and performed, the City shall have the right (but shall not be obliged) to perform or cause the same to be performed and to do or cause to be done such things as may be necessary or incidental thereto (including without limiting the foregoing, the right to make repairs, installations, erection and expend monies) and all payments, expenses, charges, fees, (including all legal fees on solicitor and client basis) and disbursements incurred or paid by or on behalf of the City in respect thereof shall be paid by the Tenant to the City forthwith.

### **31. DEFAULT**

- (a) If the Tenant defaults in the payment of any money payable under this Agreement or fails to observe, comply with or perform any of its covenants, agreements or obligations under this Agreement, the City may deliver to the Tenant a notice of default (in the manner required herein for giving notices) stipulating that the default must be rectified or cured within FIFTEEN (15) DAYS of the notice if the default is non-payment of Rent or Additional Rent and within THIRTY (30) DAYS of the notice for other defaults, but less or no notice is required to be given by the City in emergency or urgent circumstances, as determined by the City in its sole discretion, acting reasonably, or where the Tenant has failed to keep the Premises insured.
- (b) If the default (other than payment of money payable by the Tenant under this Agreement and other than failure to keep the Premises insured) reasonably requires more time to rectify or cure than THIRTY (30) DAYS, the Tenant will be deemed to have complied with the rectification or curing of it if the Tenant commences rectifying or curing the default within THIRTY (30) DAYS after notice from the City and diligently completes the same.

### **32. CITY'S RIGHTS ON DEFAULT**

Notwithstanding any other provisions of this Agreement, if the Rent or any part thereof shall be in arrears or unpaid for THIRTY (30) DAYS after the specified date of payment, whether or not the same shall have been in any manner demanded, or in the case default, breach or non-observance is made or suffered by the Tenant at any time, in or in respect of any of the covenants, which on the part of the Tenant ought to be observed or performed, then it shall be lawful for the City, its servants or agents to do any, all, or a combination of the following:

- (a) re-enter and thereafter to have, possess and enjoy the Premises and all improvements thereon;



nevertheless, the City may, at his option, except as hereinafter set forth, compel the Tenant to remove from the Premises any improvements and any goods, chattels, materials, effects or things from the Premises all at risk of cost and expense of the Tenant;

- (b) terminate this Agreement; or
- (c) exercise or obtain such other rights as may be permitted by this Agreement or at law.

### **33. CREDITORS**

If the Term of this Agreement or any renewal hereby granted shall at any time be seized or taken in execution or in attachment by any creditor of the Tenant or if the Tenant shall make any assignment for the benefit of creditors, or become bankrupt or insolvent, or if the Tenant takes the benefit of any Act or regulation that may be in force for bankrupt or insolvent debtors, then in any such case the Term of this Agreement or any renewal thereafter, shall at the option of the City, immediately become forfeited and void, and all Rent then due shall immediately become due and payable, and in such case it shall be lawful for the City for any time thereafter to enter into and upon the Premises, or any part thereof, and repossess the Premises or any portion thereof for its sole use, and anything herein contained to the contrary notwithstanding.

### **34. DISTRESS**

If and whenever the Tenant is in default of the payment of any money, including rent, whether expressly reserved by this Agreement or deemed as Rent, the City may without notice or any form of legal process whatsoever, enter the Premises and seize, remove and sell the Tenant's goods, chattels and equipment and seize, remove, and sell any goods, chattels and equipment at any place to which the Tenant or any other person may have removed them in the same manner as if they had remained and been distrained in the Premises, notwithstanding any rule of law or equity to the contrary, and the Tenant hereby waives and renounces the benefit of any present or future statute or law limiting or eliminating the City's right of distress.

### **35. WAIVER OR NON-ACTION**

Waiver by the City of any breach of any term, covenant or condition of this Agreement by the Tenant must not be deemed to be a waiver of any subsequent default by the Tenant. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Agreement by the Tenant must not be deemed to be a waiver of such term, covenant or condition.

### **36. NO ABATEMENT**

The Tenant is not entitled to any abatement or reduction or deduction from the Base Rent or Additional Rent.

### **37. REMEDIES CUMULATIVE**

No reference to or exercise of any specific right or remedy by the City prejudices or precludes the City from any other remedy, whether allowed at law or in equity or expressly provided for in this Agreement. No such remedy is exclusive or dependent upon any other such remedy, but the City

may from time to time exercise any one or more of such remedies independently or in combination. Without limiting the generality of the foregoing, the City is entitled to commence and maintain an action against the Tenant to collect any rent not paid when due, without exercising the option to terminate this Agreement.

### **38. NO JOINT VENTURE**

Nothing contained 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 the Tenant any power or authority to bind the City in any way.

### **39. TERMINATION ON CHANGE OF USE OR DAMAGE TO PREMISES**

- (a) If for any reason the Lands ceases to be used for the take-off and landing of aircraft, the City or Tenant may terminate this Agreement by giving SIXTY (60) DAYS written notice of its intention to terminate this Agreement, and after the expiration of such period of notification, this Agreement shall be determined and ended without further notice or delay.
- (b) The parties hereto agree that if the Premises are damaged in any manner so as to render them unfit for the purposes of the Tenant, the City shall not be required to repair such damage or to make the Premises reasonably fit for the purposes of the Tenant, and the Tenant may at its option, exercised within SIXTY (60) DAYS of the occurrence of such damage, elect to repair the damage or to terminate this Agreement and the election shall be by notice in writing to the City. If the Tenant elects to terminate this Agreement, then the Tenant shall immediately deliver possession of the Premises to the City.

### **40. ENUREMENT**

This Agreement and everything herein contained shall enure to the benefit of and be binding upon the successors, assigns and other legal representatives, as the case may be of each of the parties hereto, and every reference herein to every party hereto shall include the successors, assigns and other legal representatives of such party.

### **41. INTERPRETATION**

Any note appearing as a heading in this Agreement has been inserted for convenience and reference only, and of itself cannot define, limit or expand the scope of meaning of the present Lease or any of its provisions. Where there is a male, female or corporate party, the provisions hereof shall be read with all grammatical changes to gender and number required by the context. All covenants and obligations shall be deemed joint and several. The invalidity of any section for any reason whatsoever shall not invalidate any other section of this Agreement. Every reference to each party is deemed to include the heirs, executors, administrators, successors, directors, employees, members, servants, agents, officers, and invitees of such party where the context so permits or requires.

#### **42. NO EFFECT ON LAWS OR POWERS**

Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions pursuant to the *Community Charter* (British Columbia) or its rights and powers under any enactment to the extent the same are applicable to the Lands or the Premises, all of which may be fully and effectively exercised in relation to the Lands or the Premises as if this Agreement had not been fully executed and delivered.

#### **43. NOTICES**

- (a) Whenever in this Agreement it is required or permitted that notice or demand be given or served by either party of this Agreement to or on the other, such notice or demand will be in writing and will be validly given or sufficiently communicated if forwarded by express mail to the addresses set out at the beginning of this Agreement.
- (b) Such addresses may be changed from time to time by either party giving notice as above provided.
- (c) Notice shall be deemed to have been effectively communicated or given on the day received or on the FIFTH (5<sup>th</sup>) DAY after it was mailed or sent, whichever is the earlier.

#### **44. AUTHORITY**

The Tenant represents and warrants to the City that it has full authority to enter into this Agreement and to carry out the actions contemplated herein, that all resolutions and other preconditions to validity have been validly adopted, and that those signing this Agreement on its behalf are authorized to bind the Lessee by their signatures.

#### **45. ENTIRE AGREEMENT**

The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations, warranties, covenants and agreements whether verbal or written between the parties with respect to the subject matter hereof. This Agreement may not be modified or amended except by an instrument in writing signed by the parties.

#### **46. COVENANTS AND CONDITIONS**

All of the provisions of this Agreement shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants and conditions were used in each separate section.

#### **47. REGISTRATION**

The Tenant shall be responsible for any costs of registering this Agreement in the Land Title Office, including the costs or any plan necessary for the registration of the lease and any modification of this Agreement.

**48. TIME OF THE ESSENCE**

Time shall be of the essence of this Agreement.

**49. TENANT'S REPRESENTATIONS AND WARRANTIES**

The Tenant represents and warrants that the Tenant:

- (a) has the power and capacity to enter into and carry out the obligations under this Agreement; and
- (b) has completed all necessary resolutions and other preconditions to the validity of this Agreement.

**50. LAWS OF BRITISH COLUMBIA**

This Agreement shall be construed by the laws of the Province of British Columbia.

**51. SEVERANCE**

If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid will not affect the validity of the remainder of the lease.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C which is attached hereto and forms part of this Agreement.

**THE CORPORATION OF THE CITY OF COURTENAY** has executed this Agreement by its authorized signatories this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_:

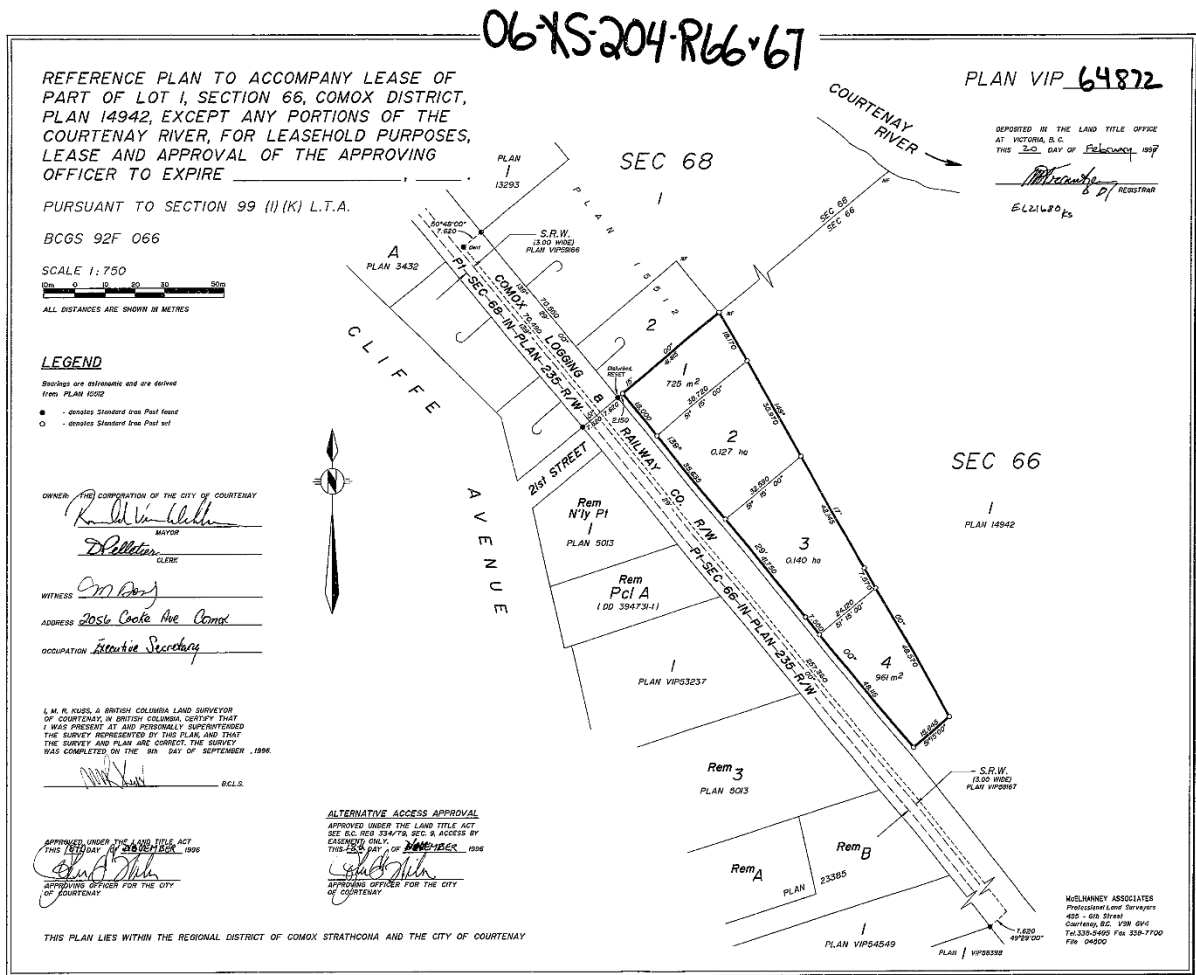
\_\_\_\_\_  
Name: Bob Wells, Mayor

\_\_\_\_\_  
Name: Wendy Sorichta, Corporate Officer

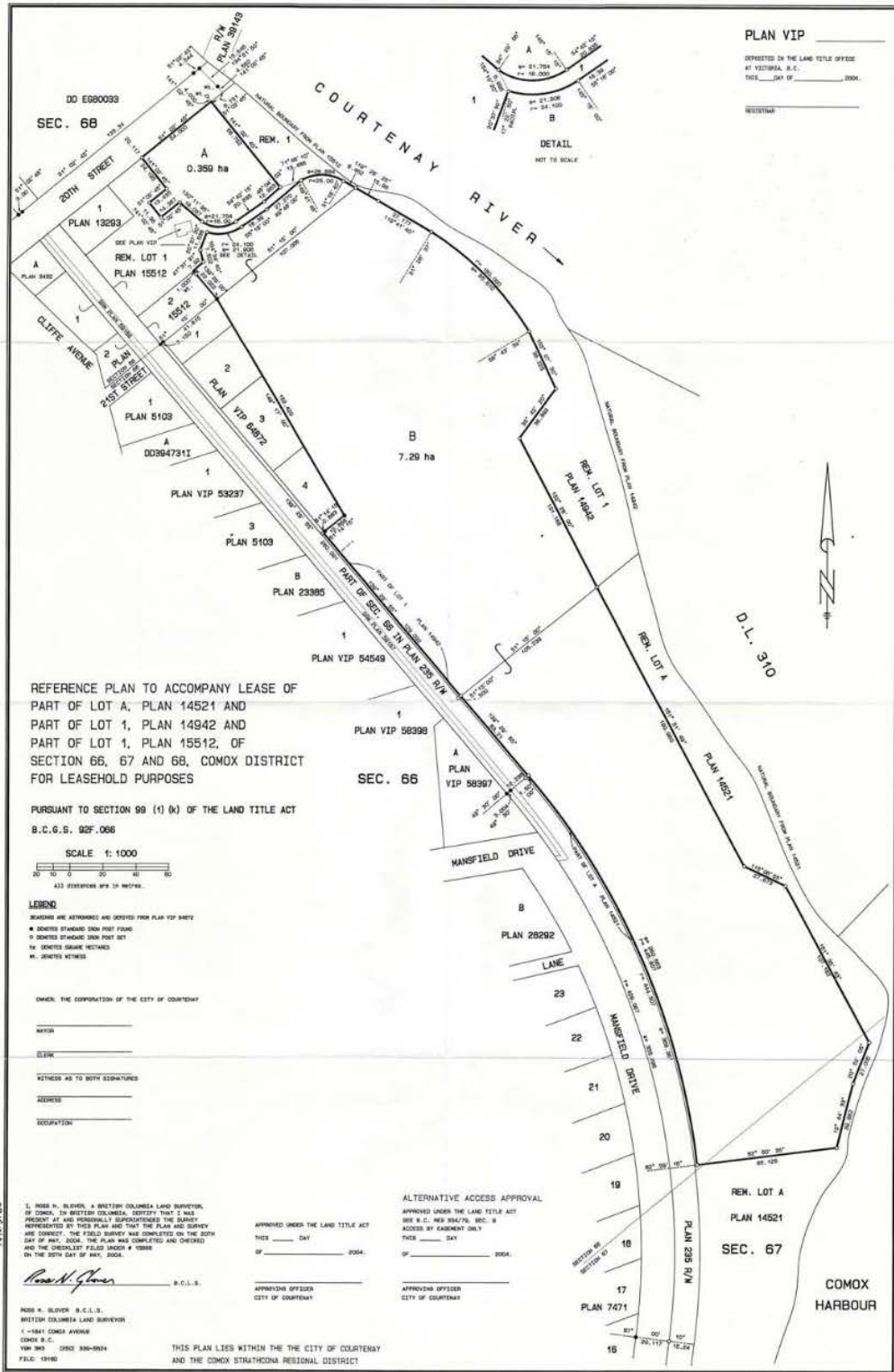
**AIRSPPEED HIGH ULTRALIGHTS** has executed this Agreement by its authorized signatories this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_:

\_\_\_\_\_  
Name: Andreas Walter Rutkiewicz

**SCHEDULE 'A'**  
**THE PREMISES - PLAN VIP64872**



## SCHEDULE 'B' THE LANDS - PLAN 14942



## **SCHEDULE 'C'**

### **RULES AND REGULATIONS**

1. The Tenant shall ensure that there is a proper run-up pad for aircraft and the run-up of aircraft does not cause a dust problem.
2. The Tenant shall take all reasonable steps to minimize the effect of dust blowing onto the Airpark.
3. The Tenant shall not block access to the City's buildings on the Lands.
4. The Tenant shall ensure that all aircraft are parked in a safe manner.
5. The Tenant shall ensure that no equipment is parked on the Lands except for aircraft and auxiliary equipment.
6. The Tenant shall ensure that all hazardous materials and liquids are stored in a safe manner compliant with regulations of agencies having jurisdiction.



## **SCHEDULE 'D'**

### **GENERAL CONDITIONS FOR MOTOR VEHICLE PARKING ON PREMISES**

1. All persons who park motor vehicles on the Premises must abide by all conditions of the City of Courtenay (e.g. No commercial use, aircraft storage only, area must be kept clean of garbage, etc.).
2. Long term parking of motor vehicles not permitted on the Premises.
3. All persons who park motor vehicles on the Premises need permission of the City of Courtenay to make alterations or improvements to the parking space.
4. All motor vehicles parked on Premises must have comprehensive/commercial general liability insurance for the benefit of the City of Courtenay providing coverage for death, bodily injury, property loss, property damage and other potential loss and damage arising out of the use and occupation of the Premises or the Lands.
5. All motor vehicles parked on Premises shall not idle, and engines must be turned off or not be refuelled inside hangars.

**SCHEDULE 'E'**

**SCHEDULE OF "NON-RENT" FEES PAYMENT RESPONSIBILITY**

**LOT 4**

<b>DESCRIPTION</b>	<b>CITY</b>	<b>TENANT</b>
ELECTRICITY		100%
PROPERTY TAX		100%
WATER		100%
GARBAGE REMOVAL		100%
SECURITY		100%
FIRE PREVENTION		100%
SHRUB, GRASS, TREE MAINTENANCE		100%
BUILDING MAINTENANCE		100%
COMMERCIAL GENERAL LIABILITY INSURANCE		100%
PROPERTY INSURANCE		100%





RECEIVED  
DEC 16 2020  
CITY OF COURTENAY

December 1, 2020

Mayor Bob Wells  
City of Courtenay  
830 Cliffe Avenue  
Courtenay, BC V9N 2J7

Dear Mayor Wells:

I am pleased to advise you that Trevor Kushner, Deputy Chief Administrative Officer and Interim CAO with the City of Courtenay, was awarded a Certificate in Local Government Statutory Administration at a recent meeting of the Provincial Board of Examiners.

Trevor's certificate is enclosed for presentation to him. At your discretion, you may wish to present this certificate either informally or formally, along with your Council. The British Columbia Board of Examiners greatly appreciates your cooperation in making this presentation at your earliest convenience.

You may know that the British Columbia Board of Examiners is established under Section 204 of the *Local Government Act*. A major function of the Board is the granting of certificates in local government to local government officials who qualify under the Regulations of the Board.

Trevor is to be commended on this achievement which recognizes both his academic qualifications and work experience in the local government field.

Yours truly,

Nicola Marotz, Chair  
Board of Examiners

Enclosure

pc: Trevor Kushner



Office of the Chair

770 Harmston Avenue, Courtenay, BC V9N 0G8  
Tel: 250-334-6000 Fax: 250-334-4358  
Toll free: 1-800-331-6007  
www.comoxvalleyrd.ca



File: 540.20/IRTSC

December 11, 2020

Sent via email only: dfrisch@courtenay.ca

Councillor David Frisch  
City of Courtenay

Dear Councillor Frisch:

**Re: Integrated Regional Transportation Select Committee**

At its December 8, 2020 meeting the Comox Valley Regional District (CVRD) Board of Directors approved the recommendation, put forward by the Integrated Transportation Select Committee (IRTSC), to disband the Committee.

I would like to take this opportunity on behalf of the Board to thank you for your dedication and service, which has greatly assisted with advancing a holistic approach to transportation under the CVRD's Regional Growth Strategy (RGS) Service.

The IRTSC has made considerable progress in advancing each of the initiatives identified within its Terms of Reference. Although not entirely complete, these initiatives have reached important milestones for the CVRD Board to build upon under the RGS.

Thanks to the work of you and the other members of the IRTSC, a collaborative framework is taking root within the Comox Valley, creating a foundation for dialogue on our regional transportation system. The CVRD Board is focused on making meaningful progress towards the transportation related goals and objectives provided within the RGS. These targets represent our shared vision of creating a sustainable and affordable transportation network that connects our growing urban and rural communities.

Community engagement and participation will be considered with each project to help determine the role of the public in the planning and decision-making processes. Aligned with this and the recommendation of the IRTSC, the Board will also give consideration to re-establishing a select committee on transportation matters in the future, if warranted.

Once again, thank you for your service and contributions towards the advancements made by the IRTSC.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jesse Ketler', is written over a faint circular stamp.

Jesse Ketler  
Chair

cc Russell Dyson, Chief Administrative Officer  
Trevor Kushner, Chief Administrative Officer, City of Courtenay







December 16, 2020

Attn: Mayor & Council, City of Courtenay

On behalf of the Courtenay Airpark Association, the Board of Directors thanks Mayor, Council and all City staff who have helped us through a long and detailed process to get our lease renewed. We appreciate that this has been time consuming for all involved, especially given the pandemic restrictions.

We now look forward to a long and collaborative relationship with the City going forward.

As previously advised, we are the fortunate recipients of a BC Government grant that will enable us to carry out two very important infrastructure projects next year: the much needed repair of the float plane ramp, and runway remarking. These improvements will help the Airpark to continue to contribute to the community through jobs, tourism, emergency access and more.

Wishing you all safe holidays, and a more prosperous 2021.

Yours truly,

Board of Directors  
Courtenay Airpark Association



**THE CORPORATION OF THE CITY OF COURTENAY**

**BYLAW NO. 3023, 2020**

**A bylaw to amend City of Courtenay Fees and Charges Bylaw No. 1673, 1992**

The Council of the Corporation of the City of Courtenay in open meeting assembled enacts as follows:

1. This bylaw may be cited for all purposes as **“City of Courtenay Fees and Charges Amendment Bylaw No. 3023, 2020.”**
2. That “City of Courtenay Fees and Charges Bylaw No. 1673, 1992” be amended as follows:
  - (a) That Schedule of Fees and Charges, Section III, Appendix II “Sanitary Sewer System” be hereby repealed and substituted therefore by the following attached hereto and forming part of this bylaw:

Schedule of Fees and Charges Section III, Appendix II - Sanitary Sewer System

3. This bylaw shall come into effect upon final adoption hereof.

Read a first time this 9<sup>th</sup> day of December, 2020

Read a second time this 9<sup>th</sup> day of December, 2020

Read a third time this 9<sup>th</sup> day of December, 2020

Finally passed and adopted this    day of    , 2020

\_\_\_\_\_  
Mayor

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

**SCHEDULE OF FEES AND CHARGES  
CITY OF COURTENAY FEES AND CHARGES AMENDMENT  
BYLAW NO. 3023, 2020  
SECTION III, APPENDIX II  
SANITARY SEWER SYSTEM**

**1. CONNECTION FEES**

**(a) Connection Fees**

Connection from either side of road to property line

10.16 centimetres (4" inch) \$3,000.00

Where a larger connection than the one listed above is required, the connection will be installed at City cost plus 25%.

**(b) Abandonment Fee**

Fee for disconnecting an abandoned service connection at the sanitary sewer main irrespective of the size of the connection	Actual City cost plus 25%, min charge \$500.00
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**(c) Connection Charges for Annexed Areas**

For owners where commitment letters were issued between 1997 and 2006 quoting a sewer connection bylaw fee of \$1,500 (plus a capital contribution fee of \$5,000), this bylaw fee amount shall be in effect until October 31, 2007, after which the following schedule of connection fees will apply.

Property Use	Connection Charge		
	Capital Contribution		Connection Fee
	Existing Building	New Development	
Single Family Home OR Duplex	\$5,000.00	\$5,000.00	Either side of road from main - \$3,000.00

Multifamily, Strata OR Apartment OR Mobile Homes	\$5,000.00	\$5,000.00 for first unit, \$2,500.00 per unit for the next five units, \$2,000.00 per unit for the next five units, \$1,500.00 per unit for the next five units and \$1,000.00 per unit for all units thereafter	For a 100 mm diameter connection or the Bylaw rate for larger pipe sizes:  Either side of road from main \$3,000.00
Industrial OR Commercial OR Public Assembly	\$5,000.00	\$5,000.00 minimum or the greater amount calculated based on the design sewage flows from the development.	For a 100 mm diameter connection or the Bylaw rate for larger pipe sizes:  Either side of road from main \$3,000.00

Note: Under the heading of ‘Capital Contribution’ an ‘Existing Building’ is defined as a building that existed or a property that had a building permit application in place on or before April 14, 2004. ‘New Development’ is defined as a property on which a building permit application was made on or after April 15, 2004.

**1. SANITARY SEWER USER RATES – APPLIED ON A PER-UNIT/SPACE BASIS**

- The minimum user rate per year or portion thereof shall be as follows:

		<b>Bylaw Rates (per annum) Effective Date January 1, 2021</b>
<b>Part 1 - Residential Users</b>		
1	Single Family Dwelling	351.60
2	Multiple Family Dwelling -per unit	351.60
3	Mobile Home Park -per space	351.60
4	Kiwanis Village -per unit	351.60

		<b>Bylaw Rates</b> (per annum) <b>Effective Date</b> <b>January 1, 2021</b>
<b>Part 2 - Commercial Users</b>		
1	Hotels and Motels -per unit	141.58
2	Trailer Park and Campsite -per serviced site	73.05
3	Wholesale and Retail Stores	351.60
4	Car Wash	351.60
5	Bus Depot	351.60
6	Funeral Parlour	351.60
7	Garage	351.60
8	Machine Shop and Repair Shop	351.60
9	Bakery	351.60
10	Photographer	351.60
11	Business Office - per office	351.60
12	Professional Office -per office	351.60
13	Barber and Hairdresser	351.60
14	Pool Room and Recreation Facility	351.60
15	Theatre	703.19
16	Department Store	703.19
17	Supermarket	703.19
18	Bowling Alley	703.19
19	Bank	703.19
20	Nursing Home	703.19
21	Cafe and Restaurant (including drive-in or take-out)	703.19
22	Dry Cleaner	703.19
23	Beverage Room	703.19
24	Laundry and Coin Laundry	2,810.43
25	Sawmill	3,502.78
26	Dairy Product Processing Plant	26,085.25
27	Other Commercial Users not enumerated in this schedule	703.19
28	Cheese Processing Plant	5,828.35
<b>Part 3 - Institutional Users</b>		
1	Church	351.60
2	Public Hall	351.60
3	Utility Office	703.19
4	School -per classroom	630.17
5	Regional Recreation Complex	27,980.11
6	Regional District Administrative Office	7,517.48

## **2. UTILITY BILLING ADJUSTMENTS AND COLLECTION**

- a) Where a billing error is suspected by the consumer, notification in writing must be made to the City of Courtenay Finance Department within one year of the original billing date for review and consideration. Upon investigation, if it is determined by the City that an error occurred and the consumer has been overcharged, an adjustment will be made to the utility bill in question in an amount to be determined by the City. The City will not provide refunds or adjustments to billing errors made more than two years prior to the date of the notification being received by the City.
  
- b) The rates and charges, enumerated in this Bylaw, are hereby imposed and levied for sewer utility services supplied or ready to be supplied by the City. All such rates and charges which are imposed for work done or services provided to lands or improvements shall form a charge on those lands which may be recovered from the Owner of the lands in the same manner and by the same means as unpaid taxes.