

**THIS LICENCE** made the 1st day of July, 2016

**BETWEEN:**

**VANCOUVER FRASER PORT AUTHORITY**, a corporation established pursuant to the Canada Marine Act, with a place of business at 100 The Pointe, 999 Canada Place, Vancouver, British Columbia, V6C 3T4

(the "**Licensor**")

**AND:**

**CITY OF PORT MOODY**, a municipality continued pursuant to the Local Government Act, with a place of business at City Hall, 100 Newport Drive, Port Moody, British Columbia, V3H 3E1

(the "**Licensee**")

**WITNESS** that in consideration of the covenants and agreements reserved and contained herein, the parties hereto covenant and agree as follows:

The Licensor hereby grants the Licensee the licence to occupy the premises more particularly known and described as that waterlot area comprising 175,823 square metres, more or less, over a portion of the bed of Burrard Inlet lying southwest of District Lots 226 and 350, Group 1, New Westminster District, City of Port Moody, British Columbia, as shown on Plan No. 2012-318, dated December 19, 2012, a copy of which is attached as Schedule "A" and forms part of this Licence (the "**Licence Area**", "**Designated Anchorage Area**", or "**DAA**", as further described in Schedule "B").

The Licensor hereby designates the area on Plan No. 2012-318 that is outside of the Licence Area as an area where no anchorage is allowed (the "**No Anchorage Area**", or "**NAA**", as further described in Schedule "B").

## **1. Term**

1.1 The Licence shall be for a term of FIVE (5) years commencing on the 1<sup>st</sup> day of July, 2016 (the "**Commencement Date**") and terminating on the 30<sup>th</sup> day of June, 2021 (the "**Termination Date**") (collectively referred to as the "**Term**"), subject however, to cancellation by either party pursuant to Section 4.1 or by the Licensor pursuant to Section 4.2.

## **2. Licence Charges**

2.1 The Licensee shall pay to the Licensor, in lawful money of Canada, the sum of TWO DOLLARS (\$2.00), for the Term, plus Provincial Sales Tax ("**PST**") and Goods and Services Tax ("**GST**") as applicable, in advance on the first day of the Term.

### **3. Purpose**

3.1 Notwithstanding any other provision of this Licence, the Licensee shall only use the Licence Area for the purpose of providing recreational boat moorage as a municipal service, and for all purposes ancillary to and associated with boat moorage, in accordance with the attached Schedule "B" and for no other purpose or use whatsoever without the prior written consent of the Licensor.

3.2 In this Licence, "**Improvements**" means any buildings, structures, signs, works, equipment or other improvements constructed, erected, or placed on the Licence Area by or on behalf of the Licensee pursuant to this Licence.

### **4. Termination**

4.1 EITHER PARTY MAY TERMINATE THIS LICENCE AT ANY TIME AT WILL AND WITHOUT CAUSE BY GIVING WRITTEN NOTICE OF SUCH TERMINATION TO THE OTHER PARTY AT LEAST NINETY (90) DAYS PRIOR TO THE EFFECTIVE DATE OF SUCH TERMINATION.

4.2 Notwithstanding Section 4.1, in the event the Licensee fails to observe or perform any of the covenants, agreements, provisions or conditions contained herein, and if the Licensee fails, neglects or refuses to remedy or commence to remedy the default within thirty (30) days of receipt of notice of default, then the Licensor may, in addition to and without prejudice to any other remedy available to it, terminate this Licence and the rights herein granted.

### **5. Licensee Covenants**

5.1 The Licensee covenants and agrees with the Licensor:

- (a) to observe, abide by and comply with all applicable statutes, laws, by-laws, orders, directions, ordinances and regulations of any lawful governmental authority in any way affecting the Licence Area and Improvements situate thereon, or its use and occupation. More specifically, but without limitation, the Licensee shall at all times and in all respects comply with and abide by all applicable labour, environmental and safety laws, by-laws and regulations including the Canadian Environmental Protection Act, the Port Authorities Operations Regulations, the Canadian Environmental Assessment Act, 2012, the Navigable Waters Protection Act and the Fisheries Act;
- (b) to keep the Licence Area free of all hazardous or contaminated material or substance and not to cause or permit the Licence Area or any part thereof to be used for the storage, treatment, generation, transportation, processing, handling, production or disposal of any hazardous or contaminated material or substance. The Licensee further covenants not to cause or permit anything to be done on the Licence Area which results in contamination or environmental damage to the Licence Area. The Licensee warrants and represents, to the best of the Licensee's knowledge, that its use and occupation of or any undertaking on the Licence Area is in compliance with all applicable laws;

- (c) to accept the Licence Area in its present condition and on an "as is" basis in all respects, including but not limited to, the environmental condition of the Licence Area, and, in the event that the Licence Area is not suitable for use by the Licensee for any reason whatsoever, not to advance a claim against or seek reimbursement or indemnity from the Licensor for any related costs or damages;
- (d) throughout the Term to keep the Licence Area in a safe, clean and sanitary condition to the satisfaction of the Licensor;
- (e) to permit the Licensor, its servants and agents to enter upon the Licence Area at any time to examine its condition or for any other purpose whatsoever;
- (f) not to construct, erect, or place any buildings, structures, signs or other improvements, or make any alterations or renovations thereto, on the Licence Area except in compliance with the Licensor's development permitting process and with the prior written consent of the Licensor and upon such terms and conditions as required by the Licensor;
- (g) on the termination of this Licence:
  - (i) to peaceably quit and deliver possession of the Licence Area to the Licensor and either:
    - (1) remove; or
    - (2) abandon,any or all Improvements from the Licence Area in accordance with the directions of the Licensor, acting reasonably, and exercised by the Licensor giving notice to the Licensee as described in Section 11 below;
  - (ii) to return the Licence Area as nearly as reasonably practicable to the same condition as existed immediately prior to the Licensee's entry onto the Licence Area, save and except for any changes to the condition of the Licence Area that were caused or contributed to by the Licensor or its servants, agents, contractors, subcontractors, employees, licensees, lessees or invitees.

The Parties hereto agree that, to the extent necessary, this covenant shall survive the expiration or termination of this Licence;

- (h) to obtain, maintain and pay for, throughout the Term of this Licence, the insurance described in Schedule "C" hereto;
- (i) to pay all premiums and monies necessary to maintain all policies of insurance required to be maintained by the Licensee as the same become due, provided that if the Licensee defaults in the payment of any of the premiums or sums of money,

the Licensor may (but will be under no obligation to) pay the same and the amount so paid will be added to the Licence Charge and will be payable to the Licensor immediately;

- (j) to deliver to the Licensor from time to time, on demand, copies of all current policies of insurance required to be maintained by the Licensee hereunder;
- (k) to obtain all consents and permits required; and
- (l) not to permit any charge or encumbrance including any Builder's Lien to be filed or registered against the Licence Area by reason of any work, services or materials supplied or claimed to have been supplied to the Licensee.

5.2 The Licensee shall indemnify and save the Licensor harmless in respect of all loss, damage, costs, claims and liabilities, including fees of solicitors and other professional advisors and including damage to property outside the Licence Area, arising out of or in any way connected with:

- (a) any breach, violation or non-performance of any covenant, condition or agreement in this Licence by the Licensee;
- (b) any personal injury, death or property damage occurring on the Licence Area or any loss or damage arising out of or in any way connected with the use and occupation of the Licence Area by the Licensee, or by any agent, employee, contractor, or any other party for whom the Licensee is responsible in law;
- (c) the Licence Area being or being found to be contaminated, where such contamination arose out of or is in any way connected with the use or occupation of the Licence Area by the Licensee, or by any agent, employee, contractor, or any other party for whom the Licensee is responsible in law;
- (d) the need to take any remedial action as a result of contamination on or of the Licence Area, where such contamination arose out of or is in any way connected with the use or occupation of the Licence Area by the Licensee, or by any agent, employee, contractor, or any other party for whom the Licensee is responsible in law; or
- (e) the storage, treatment, generation, transportation, processing, handling, production or disposal of any contaminated or hazardous material or substance on, of or from the Licence Area by the Licensee, or by any agent, employee, contractor, or any other party for whom the Licensee is responsible in law,

and the Licensor may add the amount of such loss, damage, costs and liability to the Licence Charge and the amount so added shall be payable to the Licensor immediately.

5.3 If, in accordance with Section 5.1(g), the Licensor directs the Licensee to abandon any or all of the Improvements from the Licence Area, then the Licensor shall release the Licensee from further liability respecting those Improvements.

5.4 The Licensee and Licensor both acknowledge and agree to the specific terms set out in the attached Schedule "B".

## **6. Taxes**

6.1 The Licensee shall pay when due all taxes or payments in lieu of taxes, including property taxes, rates, levies, duties, fees, charges and assessments (including taxes assessed, charged or levied as local improvement or business taxes) that are at any time during the Term of this Licence Agreement assessed, charged or levied upon or in respect of, the Licence Area or any part of the Licence Area, or in respect of any Improvements within the Licence Area.

6.2 If any of the taxes, rates, duties, assessments or payments in lieu of taxes payable by the Licensee pursuant to Section 6.1 are not separately charged or levied against the Licence Area or the Licensee, the Licensor will allocate a pro rata portion of such taxes, rates, duties, assessments or payments in lieu of taxes to the Licence Area and invoice the Licensee and the Licensee will pay such taxes, rates, duties, assessments or payments in lieu of taxes forthwith after receipt of the invoice.

## **7. Licensor's Reservations**

7.1 The Licensor:

- (a) has reserved the right to occupy the Licence Area from time to time, in common with the Licensee; and
- (b) may grant other parties the right to occupy the Licence Area, from time to time, in common with the Licensee, subject to the written consent of the Licensee.

## **8. Environmental**

8.1 If at any time during the Term of this Licence, the Licensor obtains any evidence or information which gives the Licensor reasonable grounds to believe that potential environmental problems may exist on the Licence Area, the Licensor may require that an environmental audit of the Licence Area be conducted. If the Licensor has reasonable grounds to believe that the potential environmental problems result from the Licensee's use and occupation of or any undertaking on the Licence Area, then the audit shall be conducted, in form and substance satisfactory to the Licensor, at the Licensee's expense.

8.2. Subject to Section 8.3 and the attached Schedule "B", the Licensee shall be responsible for, undertake and bear the costs of all investigations, studies, sampling, testing, clean-up, remediation, removal and disposal of all hazardous and contaminated materials or substances, including soil and water, toxic or otherwise, and any other remedial actions which are, in the opinion of the Licensor, necessary to effect the restoration of any damaged environment or habitat, where the same arises, during or after the Term and results from the Licensee's use and occupation of, or any undertaking on the Licence Area.

8.3 The Licensee is not responsible for any hazardous or contaminated material or substances, including soil and water, toxic or otherwise, that were present within or outside the

Licence Area prior to the date of earliest occupation of the Licence Area, or any part thereof, by the Licensee or for any hazardous or contaminated material or substances brought onto the Licence Area or caused by the Licensor or its servants, agents, contractors, subcontractors, employees, licensees, lessees and invitees.

8.4 If the Licensee fails, within a reasonable period of time, to effect any investigations, studies, sampling, testing, clean-up, remediation, removal or disposal in accordance with Sections 8.1 and 8.2 herein, then the Licensor may do so without notice to the Licensee. In such a case the Licensee shall reimburse the Licensor, immediately upon demand, for all costs, charges and expenses in connection therewith.

## **9. Costs**

9.1 The Licensee must post, at its own cost, all signs and warnings required by the Licensor or any other regulatory authority.

## **10. Security Deposit [INTENTIONALLY DELETED]**

## **11. Notice**

11.1 Any notice or other communication required to be given under or pursuant to this Licence shall be in writing and signed and delivered by:

- (a) delivery in person;
- (b) mail;
- (c) facsimile transmission; or
- (d) email attaching an electronic copy,

to the representative of the party to whom such notice is to be given at the following locations respectively:

### **If to the Licensor:**

Vancouver Fraser Port Authority  
100 The Pointe  
999 Canada Place  
Vancouver, British Columbia V6C 3T4

Attention: Director, Real Estate  
Facsimile: 1-866-212-1686  
Email: DirectorRE@portmetrovanvancouver.com

### **If to the Licensee:**

City of Port Moody  
City Hall  
100 Newport Drive

Port Moody, British Columbia V3H 3E1

Attention: General Manager, Engineering & Parks  
Email: ncarley@portmoody.ca

or at such other location as either party shall advise by notice from time to time.

11.2 Any notice, demand or other communication shall be effective upon actual receipt and if sent by email to the Licensor, when acknowledgement is received from the Licensor. Notice by mail shall be deemed to have been delivered on the FIFTH (5th) business day after the day of mailing. In the event of disruption of mail services, all such notices and other communications shall be delivered with written acknowledgement of receipt rather than by mail.

11.3 The parties agree to provide each other with notification of a change of address, including email address, within THIRTY (30) days of any changes.

## **12. Assignment**

12.1 The Licensee shall not transfer, assign, mortgage or otherwise charge the Licence Area, this Licence Agreement or any of the rights herein.

## **13. Waiver**

13.1 The failure of the Licensor to insist upon the strict performance of any covenant or condition contained in this Licence Agreement or to exercise any right under this Licence Agreement will not be construed or operate as a waiver of the covenant or condition, and no waiver shall be inferred from or implied by anything done or omitted to be done by the Licensor.

## **14. Miscellaneous**

14.1 Sections 5.1(a), 5.1(b), 8.1, 8.2 and 8.3 survive the expiration of this Licence and any bankruptcy or insolvency on the part of the Licensee. Any other provisions which by their nature should survive termination or expiration of this Licence, shall so survive.

14.2 The Licensee acknowledges that there have been no representations, warranties or covenants made by the Licensor in any manner whatsoever other than as provided herein and there is no obligation on the Licensor to improve the Licence Area or ready it in any manner for use and occupation by the Licensee and its employees.

14.3 [Intentionally Deleted.]

14.4 Nothing in this Licence shall be interpreted as giving the Licensee exclusive possession of the Licence Area or a legal demise of any interest therein.

14.5 Time is of the essence in this Licence Agreement.

14.6 This Licence Agreement may not be amended or modified except in writing signed by the parties.

14.7 All headings and captions appearing in this Licence Agreement have been inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Licence or any provision thereof.

14.9 This Licence Agreement shall be governed in all respects, including validity, interpretation and effect, by the laws of the Province of British Columbia and the laws of Canada applicable therein, and in cases where federal and provincial laws conflict, the federal law shall prevail. The parties shall attorn only and exclusively to the jurisdiction of the courts of the Province of British Columbia save and except in the circumstance where the Federal Court has exclusive jurisdiction.


14.10 This Licence Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by email delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

[Signature Pages Follow.]



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

VANCOUVER FRASER PORT AUTHORITY,  
by its duly authorized signatories:

  
Print Title: VICE PRESIDENT, PLANNING & OPERATIONS.

\_\_\_\_\_  
Print Title: \_\_\_\_\_

CITY OF PORT MOODY,  
by its duly authorized signatories:

  
Print Title: MAYOR M.E. CLAY

  
Print Title: CORPORATE OFFICER

**SCHEDULE "A"**

**(Plan No. 2012-318, dated December 19, 2012)**

## **SCHEDULE "B"**

With respect to the Improvements, the Licensor will install four cardinal buoys on behalf of the Licensee at each of the four corners that define the Licence Area. The area within the cardinal buoys will be the "**Designated Anchorage Area**", or "**DAA**". The Licensor will inspect and maintain the cardinal buoys, as required.

The Licensee may sublicense all or parts of the DAA to persons who wish to moor their recreational boats on a temporary basis (a "**Sublicence Agreement**"). No "live aboards" will be permitted within the DAA.

Subject to the terms of the Licence Agreement with the Licensor, the Licensee will have discretion with respect to the terms of any Sublicence Agreement including the following:

1. access to and within the DAA;
2. duration of anchorage/moorage;
3. fees and charges;
4. maintenance standards for any recreational vehicles within the DAA; and
5. removal of any boats (derelict, in trespass or otherwise) from the DAA.

The Licensee will manage the daily operation of the DAA itself or through a contractor. The Licensee will use any fees or charges it collects pursuant to any Sublicence Agreements to support the Licensee's recreational boat moorage service.

With respect to the "**No Anchorage Area**", or "**NAA**", the Licensor will, in its discretion, regulate unauthorized boats pursuant to the Canada Marine Act, including:

1. patrolling and monitoring the NAA for compliance;
2. removing boats or vessels that anchor within any part of the NAA;
3. removing derelict boats, derelict vessels, debris and items that may affect navigation;
4. raising awareness with boaters that they are not allowed to anchor in the area; and
5. making information about the NAA widely available by reasonable means.

## **SCHEDULE "C"**

### **INSURANCE:**

#### **Section I**

Marine General Liability Insurance in an amount not less than FIVE MILLION DOLLARS (\$5,000,000) for any one occurrence to cover all operations of the Licensee at or about the Licence Area. Such insurance shall include the following endorsements:

- (a) Non-owned Automobiles;
- (b) Products and Completed Operations;
- (c) Broad Form Property Damage;
- (d) Cross Liability;
- (e) Employees as Additional Insureds;
- (f) Contingent Employer's Liability; and
- (g) Personal Injury.

#### **Section II**

Pollution Liability (on a "Sudden and Accidental" basis) in an amount not less than FIVE MILLION DOLLARS (\$5,000,000) for any one occurrence and in the aggregate for the period of insurance to cover the release of pollutants resulting from the Licensee's use and occupancy of the Licence Area.

#### **Section III**

[INTENTIONALLY DELETED]

#### **Section IV**

Property Insurance on an "all risk" basis (including coverage for the perils of flood and earthquake) in an amount not less than the full replacement cost of such property, which shall include, but not be limited to the following:

- (a) Licensee Improvements, buildings, fixtures and appurtenances, installations, electrical distribution systems, docks, wharves, subsurface facilities and petroleum facilities situated on the Licence Area; and
- (b) Licensor's Property, as designated by the Licensor. The value of such property shall be determined by independent valuation, at the Licensee's sole cost and expense.

Section V	[INTENTIONALLY DELETED]
Section VI	[INTENTIONALLY DELETED]
Section VII	[INTENTIONALLY DELETED]
Section VIII	Workers' compensation coverage in respect of all Licensee's employees, workers and servants engaged in any work in or upon the Licence Area or in the event workers' compensation coverage is not available under the applicable legislation, employer's liability insurance in lieu thereof.

General (Applicable to Sections I through VIII)

- (a) The insurance specified in Sections I, II, and IV hereunder shall name the Licensor and Her Majesty the Queen in Right of Canada as Additional Insureds;
- (b) The insurance specified in Section IV hereunder shall include a Waiver of Subrogation in favour of the Licensor;
- (c) The insurance specified in Section IV hereunder shall not contain any co-insurance provisions without the permission of the Licensor;
- (d) Evidence of the insurance specified hereunder (and subsequent renewals thereof) shall be delivered to the Licensor prior to the Commencement Date and subsequent insurance policy renewals shall be delivered forthwith following receipt of renewal documents by the Licensee;
- (e) Deductibles, if any, which are applicable to the insurance specified hereunder, shall be borne by the Licensee;
- (f) All insurance policies shall be in a form and with insurers acceptable to the Licensor. All insurance policies shall be issued by insurers licensed to do business in the Province of British Columbia;
- (g) Every policy of insurance shall contain a provision that the insurer shall provide the Licensor with THIRTY (30) days written notice of cancellation of or material change to the policy;
- (h) Additional insurance and/or increased coverage minimums, if deemed necessary by the Licensor, shall be provided by the Licensee, at the sole cost of the Licensee. If requested by the

Licensee, the Licensor shall provide an explanation as to the reasons for such additional insurance;

- (i) The Licensee may meet any of the insurance obligations hereunder through a program of "Self-Insurance", subject to the approval of the Licensor. The Licensor reserves the right to request any additional information it deems necessary to evaluate the adequacy of such "Self-Insurance"; and
- (j) The limits of insurance specified in this Schedule "A" in no way define or limit the obligation of the Licensee to indemnify the Licensor in the event of a loss.