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WATER USE LICENCE AGREEMENT

THIS LICENCE AGREEMENT (this "**Agreement**") is dated for reference October 1st, 2022 (the "**Effective Date**"),

BETWEEN:

**THE BOARD OF EDUCATION OF
SCHOOL DISTRICT NO. 68 (NANAIMO-LADYSMITH)**
395 Wakesiah Avenue
Nanaimo, B.C.
V9R 3K6

(the "**Licensor**")

AND:

**NORTH OYSTER AND AREA HISTORICAL SOCIETY
(Inc. No. S0031150)**
13467 Cedar Road
Ladysmith, B.C.
V9G 1H6

(the "**Licensee**")

WHEREAS:

- A. The Licensee's building is located at 13467 Cedar Road, Ladysmith, British Columbia, V9G 1H6 (hereinafter referred to as the "**Centre**");
- B. The Licensor is the owner of North Oyster Elementary School located at 13470 Cedar Road, Ladysmith, British Columbia, V9G 1H6, legally described as Parcel Identifier: 000-104-922, Lot A, District Lots 39 and 45, Oyster District, Plan 32371 (the "**School**");
- C. The Licensor has obtained an easement (the "**Easement**") registered under number CA2589129 (see Reference Plan EPP16139) over a portion of lands adjacent to the School and legally described as Parcel Identifier: 004-505-816, Parcel A (DD 13030N) of Lot 1, District Lot 9, Oyster District, Plan 2169, Except the South 3 Chains, 40 Links of said Parcel A (the "**Servient Tenement**") in favor of the School for the purpose of building and maintaining a well (the "**Well**") and water distribution system (the "**Works**") on the Servient Tenement to provide water to the School;
- D. The Licensor has agreed to make available to the Licensee a non-exclusive conditional licence (the "**Licence**") to use untreated well water from the School's water source (the "**Water**") via a three way-valve system on the mainline from the Well and which system is more particularly described in Schedule A attached hereto (the "**System**"); and
- E. The Licensor and the Licensee (collectively, the "**Parties**" and individually, a "**Party**") have agreed to enter into this Agreement to record their respective rights and obligations.

- F. The Licensee has agreed to make available to the Licensor access to the parking lot as shown in Schedule B attached hereto, during school operating hours.
- G. The Licensor has agreed to consider providing snow removal, sanding, and salting as may be required for the Licensor's use on school days, as shown in Schedule B attached hereto.

WITNESSES THAT:

NOW THEREFORE in consideration of the premises, covenants and agreements hereinafter contained, the Licensor does hereby grant a licence to take and use the Water to the Licensee on and subject to the terms and conditions set out herein.

1. LICENCE TERM AND RENT

- 1.1 The term of the Licence created hereby (the "**Term**") shall commence on the Effective Date and shall be for an initial term of three (3) years less a day (the "**Initial Term**") unless terminated earlier pursuant to the terms of this Licence.
- 1.2 This Licence may be renewed for an unlimited number of successive three (3) year terms (any one to be referred to as a "**Renewal Term**"). In the Initial Term and in any Renewal Term, unless a Party has, not less than 90 days prior to the end of such term, given written notice to the other Party that the Term of this Licence shall not be renewed, this Licence shall automatically be renewed for a Renewal Term. Each Renewal Term shall contain this provision for automatic renewal.
- 1.3 The Licensee shall pay non-refundable annual licence fees in advance in the amount of \$1.00 per year plus any applicable GST, HST or similar sales, consumption or value added taxes, on the Effective Date and on each anniversary of the Effective Date thereafter until the termination of this Licence.

2. REPRESENTATIONS AND WARRANTIES

- 2.1. The Licensee covenants, represents and warrants to the Licensor that:
 - (a) The Licensee has the power and capacity to enter into this Licence and to comply with every term and condition of this Licence;
 - (b) All necessary proceedings have been taken to authorize the Licensee to enter into this Licence and to execute and deliver this Licence;
 - (c) This Licence has been properly executed by the Licensee and is enforceable against the Licensee in accordance with its terms;
 - (d) The Licensee has filed all tax, corporate information and other returns required to be filed by the laws of British Columbia and Canada, and has complied with all Workers Compensation legislation and other similar legislation to which it is

subject and has paid all taxes, fees and assessments due by the Licensee under those laws as of the reference date of this Licence;

- (e) The Licensee has obtained and will maintain in good standing throughout the Term and any Renewal Term all permits, licenses, consents and authorities issued by any level of government, or any agency of any level of government, that are required by law with respect to the Licensee's use of the Water from the Licensor;
- (f) The Licensee has investigated and satisfied itself of every apparent condition affecting the quality, availability and use of the Water from the Licensor;
- (g) The Licensee accepts the risks assigned within this Licence identified as being borne by the Licensee;
- (h) The Licensee accepts, acknowledges and confirms that the Licensor has not offered and the Licensee hereby unconditionally and irrevocably waives any and all conditions, representations and warranties, whether express, implied, statutory or otherwise, regarding the suitability, fitness, condition, potability, flow, quality or availability of the Water and the Licensee hereby accepts and acknowledges that the Water will only be supplied to the Licensee untreated and on an "as is" basis, and the Licensee hereby accepts and acknowledges that if the Water is or becomes unavailable or unusable then the Licensee's only recourse will be to terminate this Agreement without compensation; and
- (i) The Licensee accepts, acknowledges and confirms that the Licensor has not offered and the Licensee hereby unconditionally and irrevocably waives any and all conditions, representations and warranties, whether express, implied, statutory or otherwise, regarding the construction, condition, maintenance or sustainability of the Well, the Works or the System, and that the Licensor has in no way guaranteed or represented that the Well, the Works or the System are or will be suitable or fit for the purpose of supplying the Water to the Licensee.

3. WATER CONDITION AND TESTING

- 3.1 The Licensee shall ensure that the Water conforms to all governmental regulations relating to the quality or use of the Water for its own purposes.
- 3.2 The Licensee shall be solely responsible for performing any testing of the Water as is required by any and all laws, regulations and prudent practice having regard for the use of the Centre and the Water used thereon and shall inform the Licensor of any and all negative test results arising from such testing.
- 3.3 The Licensor shall provide to the Licensee any and all negative test results arising from any testing of the Water undertaken by the Licensor. Without limitation, this may be done by fax at the fax number of the Licensee specified in paragraph 16.1.

4. **USE OF WATER**

- 4.1 Subject to paragraph 4.2 below, the Licensee shall only have the right to use the Water during the hours of 00:00 to 23:59 Monday to Friday and any time on Saturdays and Sundays ("**Water Use Hours**").
- 4.2 The Licensor may, for any reason, provide written notice to the Licensee restricting the Licensee from using the Water during Water Use Hours so long as such notice is provided to the Licensee at least 24 hours prior to such restriction and so long as such notice specifies the times that the Licensee shall be restricted from using the Water. Upon receipt of such notice, the Licensee agrees not to use the Water during the times specified in such notice.
- 4.3 The Parties agree that in the case of a shortage of Water for any reason, including but not limited to a fire, flood or earthquake, the Licensor shall have the right to shut down the supply of Water to the Licensee for whatever period of time the Licensor, in its sole discretion, determines to be required.
- 4.4 The controls for the System shall be located in the School and shall at all times be under the care and control of the Licensor.

5. **IMPROVEMENTS**

- 5.1 During the Term of this Licence, the Licensee may not renovate, partition or otherwise alter the Well, the Works or the System unless:
- (a) such work is done in accordance with the terms of the Easement;
 - (b) the Licensee has obtained the Licensor's prior written consent to such work, such consent not to be unreasonably withheld;
 - (c) the Licensee has obtained any and all required building permits;
 - (d) the Licensee has obtained any and all approvals, permits and licenses which may be required under any applicable laws, by-laws, regulations or orders of courts or government authorities having jurisdiction (collectively, "**Legal Requirements**"); and
 - (e) upon completion of any such renovations, the Licensee shall obtain all required inspections and deliver true copies of all relevant drawings, specifications, approvals, permits, licenses, orders, and inspection reports to the Licensor.
- 5.2 The Licensee shall be responsible for the costs of any and all renovation works which are carried out by it, and any resulting damage or injury, including death.

6. MAINTENANCE

- 6.1 The Licensee shall at its sole expense, keep, repair and maintain the System and any all pipes, water lines or other works or installations required for the supply of the Water to the Licensee in accordance with the terms of the Easement and any and all applicable Legal Requirements.
- 6.2 Without imposing any responsibility upon the Licensor to do so, the Licensee agrees that if the Licensor may at its discretion provide goods and services with respect to maintenance of the part of the System relevant to the Licensee, including but not limited to, supply of equipment, installation of equipment, supplies, capital improvements and capital project coordination services, the following terms and conditions shall apply to such goods and services:
- (a) Subject to sub-paragraph (b) below, the cost of such goods and services shall be invoiced to and paid by the Licensee at the Licensor's cost plus 10%.
 - (b) The Parties may agree on a cost formula different from that set out in sub-paragraph (a) above, dependent on the value, type or special circumstance of the goods and services to be supplied, provided that any such rate shall be agreed in writing prior to the supply of any such goods or services.

7. TAXES AND OTHER FEES

- 7.1 The Licensee shall pay any and all taxes, fees and other charge imposed upon the Licensee or the Licensor as a result of the Licensee's use of the Water.

8. APPROVALS

- 8.1 The Licensee shall ensure that any and all licenses, designations, permits and approvals required with respect to the Licensee's use of the Water have been obtained and are maintained in good standing during the Term of this Licence.

9. ASSIGNMENTS, SUBLETTING OR LICENSING

- 9.1 The Licensee shall not under any circumstances assign or sublicense this Licence to or permit the use of Water transported to the Centre over the System by any other party or parties whatsoever without the express prior written consent of the Licensor. This clause shall not prohibit the licensing of the Centre by the Licensee to other community groups on a single use, occasional use, or periodic temporary use basis, and any such licensing by the Licensee shall be deemed to be use by the Licensee and not an assignment or sublicense of this Licence.

10. ENVIRONMENTAL

- 10.1 The Licensee agrees to indemnify and save harmless the Licensor from any and all fines, claims, costs, damages, losses or liability incurred or suffered by the Licensor or any of the Licensor's officials, employees or agents whatsoever, including the cost of defending same on a lawyer and own client basis, and all related disbursements and taxes, resulting or arising from or in respect of any pollution, contamination or other breach of any applicable Legal Requirement relating to the environment or otherwise caused or contributed to by the Licensee's activities or neglect, or the activities or neglect of any other individual or organization to which the Licensee grants access to the Water.

11. COMPLIANCE WITH LAWS

- 11.1 Without limiting any other provision of this Agreement, the Licensee shall comply with any and all applicable Legal Requirements relating to the Licensee's use of the Water.

12. RELEASE AND INDEMNITY

- 12.1 The Licensee hereby releases and forever discharges and indemnifies and saves harmless the Licensor its elected and appointed officers, agents and employees against any and all manner of actions, causes of action, suits, claims, costs, losses, demands and liability whatsoever at law or in equity the Licensee or any other party may now or at any time hereafter have against the Licensor in connection with the Works, the System, the Well or the Water.
- 12.2 The Licensee covenants and agrees to indemnify and save harmless the Licensor, its elected and appointed officials, employees and agents from and against all costs and expenses caused to or incurred by the Licensor and from all claims, demands, liens, losses, damages, actions, suits and other proceedings whatsoever and by whomsoever made, brought or prosecuted caused by or resulting from the use of the Water by the Licensee or by any person permitted by the Licensee to use the Water.
- 12.3 The Licensee covenants and agrees to indemnify and save harmless the Licensor, its elected and appointed officials, employees and agents from and against any and all liability, actions, causes of actions, claims, damages, expenses, costs, debts, demands or losses suffered or incurred by the Licensor arising from any default of the Licensee under or in respect of this Licence.
- 12.4 The Licensee shall inform the Licensor promptly in writing of all claims for personal injury or death or loss of or damage to property arising out of the performance of the requirements of this Licence of which the Licensee has knowledge and on settling any such claims shall use best efforts to obtain a release in respect thereof jointly in the name of the Licensee and the Licensor.
- 12.5 The Licensee shall, on final completion or termination of this Licence, provide the Licensor with a statement containing the particulars of any and all claims for personal injury or death or loss of or damage to property arising out of the use of untreated well

water from which the Licensee has knowledge and which are still outstanding at such time.

13. INSURANCE

13.1 The Licensee covenants and agrees:

- (a) That the Licensee during the Term and any Renewal Term shall maintain general liability insurance insuring against bodily injury, personal injury and property damage arising out of or connected with the business and activities of the Licensee with respect to the Licensee receiving and using the Water in an amount of not less than Five Million (\$5,000,000.00) Dollars per occurrence or such greater amount as the Licensor may from time to time designate. The Licensor shall be added as an additional insured and such insurance shall be endorsed to provide the Licensor with 30 days advance written notice of cancellation or material change and be placed with insurers licensed in British Columbia.

The Licensee shall provide the Licensor with evidence of the required insurance prior to the commencement of the Initial Term and such evidence shall be in the form of a completed Certificate of Insurance.

- (b) That if the Licensee does not provide or maintain in force the insurance required in subparagraph (a) above, the Licensor may take out the necessary insurance and pay the premium for periods of one year at a time, and the Licensee shall pay to the Licensor the amount of the premium immediately on demand.
- (c) That if both the Licensor and the Licensee have claims to be indemnified under any insurance required by this Licence; the indemnity shall be applied first to the settlement of the claim of the Licensor and the balance, if any, to the settlement of the claim of the Licensee.

- 13.2 The Licensee hereby waives all rights of recourse against the Licensor with regard to damage to the Licensee's property.

14. WAIVER

- 14.1 Any failure of the Licensor at any time or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Licence, shall not constitute a waiver of such terms or conditions and shall not affect or impair any terms or conditions in any way or the right of the Licensor at any time to avail itself of such remedies as it may have for any breach of such terms or conditions.
- 14.2 No action or want of action on the part of the Licensor at any time to exercise any rights or remedies conferred upon it under this Licence shall be deemed to be a waiver on the part of the Licensor of any of its said rights or remedies.

15. NOTICE

- 15.1 Any notice, demand, request, consent, or objection required or contemplated to be given or made by any provision of this Licence shall be given or made in writing and may be either delivered personally or sent by fax or registered mail, postage prepaid, addressed to the Licensor at:

The Board of Education of School District 68 (Nanaimo-Ladysmith)
395 Wakesiah Avenue, Nanaimo, B.C., V9R 3K6

Attention: Secretary-Treasurer
Fax: 250-741-5309

or addressed to the Licensee at:

North Oyster and Area Historical Society
13467 Cedar Road, Ladysmith, B.C., V9G 1H6

Attention: Barbara Waters
Email: barbwaters@shaw.ca _____

Phone: 250-741-6005

or to such other address or fax number as such Party from time to time may specify by written notice to the other.

- 15.2 Any notice, if mailed, is to be considered to have been given on the fifth day after mailing and if delivered on the first day after it is dispatched for delivery. Any notice which is sent by fax transmission is to be considered to have been given on the first business day after it is sent. If a Party changes its address or facsimile number, or both, it shall promptly give notice of its new address, telephone number or facsimile number, or all, to the other Party as provided in this section.

16. TERMINATION

- 16.1 Subject to paragraphs 16.2, 16.3 and 16.4, either the Licensor or the Licensee may at any time without cause and without liability give written notice to the other Party of their intention to terminate the Licence. If such notice is given, then this Licence and any Renewal Terms shall terminate ninety (90) days from the date of such notice.
- 16.2 If the Licensor, for any reason, permanently closes the School, then this Licence shall terminate immediately upon the closing of the School without any compensation to the Licensee, unless otherwise agreed to in writing by the Parties in their respective absolute discretion.
- 16.3 In the event of any breach by the Licensee of any of the terms contained herein, the Licensor may terminate the Agreement effective immediately on notice in writing.

- 16.4 The Licensor makes no representation as to its authority or entitlement (the "**Authority**") to permit the use of the Water as provided for in this Licence. If the Authority is disputed by any of the owners from time to time of the Servient Tenement, then the Licensor may at its option without liability terminate this Licence effective immediately on notice in writing to the Licensee.

17. GENERAL PROVISIONS

- 17.1 Interpretation Not Affected by Headings: Grammatical variations of any terms defined herein have similar meanings. Words importing the singular number shall include the plural and vice versa. Words importing the masculine gender shall include the feminine and neuter genders. The division of this Licence into separate articles, sections, subsections and clauses, and the insertion of headings and marginal notes and references are for convenience only and shall not affect the construction or interpretation of this Licence.
- 17.2 Governing Law: This Licence shall be governed by and construed in accordance with the law of British Columbia and the laws of Canada applicable therein and shall be treated in all respects as a British Columbia contract.
- 17.3 Enurement: This Licence shall enure to the benefit of and be binding upon the Parties hereto and in the case of the Licensor, its successors and permitted assigns.
- 17.4 Amendments: This Licence may not be modified or amended except with the written consent of the Parties hereto.
- 17.5 Survival of Covenants: The covenants, waivers, releases and indemnities of the Licensee herein contained including, without limitation, the provisions of Articles 10, 12 and 13 herein, shall survive the expiry or termination of this Licence and shall continue in full force and effect for the benefit of the Licensor.
- 17.6 Entire Agreement: This Licence constitutes the entire agreement between the Parties and there are no representations or warranties, express or implied statutory or otherwise and no agreements collateral hereto other than as expressly set forth or referred to herein.
- 17.7 Time of the Essence: Time shall be of the essence of this Licence.
- 17.8 Agents: It is understood and agreed that the Licensee and all agents, servants and workmen of the Licensee are not and shall not be deemed to be agents or employees of the Licensor and, without limitation, the Licensee shall have no authority whatsoever to incur any obligation, liability or expense on behalf of the Licensor.
- 17.9 Force Majeure: If any performance of any term or provision of this Licence or part thereof is prevented, rendered impossible or unfeasible (the "**Inability**"), by any cause beyond the reasonable control of the Parties, including but not limited to any act or regulation or by any public authority or bureau, civil tumult, labour action, epidemic, interruption in or delay of transportation services, war conditions or emergencies,

earthquake, storm, flood, fire or other act of God, then, to the extent and for the duration of the Inability, the respective obligations agreed to herein shall be suspended.

- 17.10 Interest: If the Licensee defaults in making any payment due to the Licenser under this Licence, the Licensee shall pay the Licenser from the date the payment was due until the date payment is actually made to the Licenser, interest on the amount due at the rate which is the aggregate of 2% per annum plus the Prime Rate posted by the Royal Bank of Canada on the payment due date, calculated monthly, not in advance. If the Prime Rate changes, and so often as the same occurs at any time, the rate of interest charged under this Lease shall change on the same day and in the same amount as the Prime Rate changed. Acceptance of any late payment without interest shall not constitute a waiver of the Licenser's right to require interest on the amount due.
- 17.11 Severability: If any provision or provisions of this Licence shall be held to be invalid, illegal, or otherwise unenforceable, then the entire Licence shall not fail on account thereof, and that or those provisions shall be severed from the balance of the Licence, and the balance of the Licence shall continue in full force and effect.

IN WITNESS WHEREOF the Parties hereto have hereunto set their hands and seals the day and year first above written.

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Elke Wohleben
Witness

**THE BOARD OF EDUCATION OF
SCHOOL DISTRICT NO. 68
(NANAIMO-LADYSMITH)**
by its Authorized Signatory(ies)

Mark Wahl Mark Walsh
Authorized Signatory

)
)
)
)
Jane McAbb
Witness

**NORTH OYSTER AND AREA
HISTORICAL SOCIETY**
by its Authorized Signatory(ies)

Gary B. Wyndley
Authorized Signatory

SCHEDULE A

North Oyster Untreated Well Water Operating Parameters

1. Untreated well water is supplied to both North Oyster Elementary School (referred to as the "School") and North Oyster and Area Historical Society (referred to as the "Licensee") via a three-way valve on the mainline from the well. The valve positioning is computer controlled with three positions available: closed, open to the School or open to the Licensee.
2. Valve position is determined by low and high water level sensors in School and Licensee's reservoirs. A low level signal turns on the well pump and opens the three-way valve. A high level signal shuts down the well pump and closes the three-way valve.
3. The School has priority over the untreated well water source with the Licensee only able to receive untreated well water when there is no School demand.
4. Untreated well water is diverted from the three-way valve by the following logic:
 - i) A low level sensor at the School reservoir calls for the untreated well water:
 - If off, valve opens to begin filling the School's reservoir and continues to fill until water level reaches reservoir high level sensor. The well pump then shuts off and the three-way valve closes.
 - If open to the Licensee, the valve diverts untreated well water to the School and shuts off the Licensee's untreated well water. The School's reservoir continues to fill until the high level sensor is reached. When the School's reservoir is full, untreated well water is diverted back to the Licensee. The untreated well water continues until high level sensors at the Licensee's reservoir shut down the pump and close the three-way valve or School calls for untreated well water.
 - ii) A low level sensor at the Licensee calls for untreated well water:
 - If valve is open to the School, water continues to flow to the School. Once the School's demand stops, the untreated well water is then diverted to the Licensee.
 - If off, valve opens to begin filling the Licensee's reservoir until high level sensor is reached.
 - If low water level sensor is reached in the School's reservoir, untreated well water is diverted from Licensee until high level sensor is reached in School's reservoir and the valve then diverts back to the Licensee.

Water supplied to the Licensee is untreated well water. It is the responsibility of the Licensee to conform to all Health standards.

SCHEDULE B

