

File: _____

THE CORPORATION OF THE CITY OF COURTENAY

ENCROACHMENT AGREEMENT

Made and dated for reference this 1st day of March, 2026.

BETWEEN: **COASTAL COMMUNITY CREDIT UNION**
220-59 Wharft Street
Nanaimo, BC
V9R 2X3

(the "Owner")

OF THE FIRST PART,

AND: **THE CORPORATION OF THE CITY OF COURTENAY**
830 Cliffe Avenue
Courtenay, BC
V9N 2J7

(the "City")

OF THE SECOND PART.

WHEREAS:

A. The Owner is the owner of the properties located at:

- i. 280 3rd Street in the City of Courtenay, in the Province of British Columbia and legally described as:

PID: 007-734-590; LOT 119, SECTION 61, COMOX DISTRICT, PLAN 472-A, EXCEPT THE SOUTH EASTERLY 10 FEET THEREOF

("Lot 119")

- ii. 268 3rd Street in the City of Courtenay, in the Province of British Columbia and legally described as

PID: 007-734-638; LOT 122, SECTION 61, COMOX DISTRICT, PLAN 472-A, EXCEPT THE SOUTH EASTERLY 10 FEET THEREOF

("Lot 122")

- iii. 291 4th Street in the City of Courtenay, in the Province of British Columbia and legally described as

PID: 018-165-885; LOT 1, SECTION 61, COMOX DISTRICT, PLAN VIP56124

("Lot 1")

(collectively, the "Lands").

- B. The Owner intends on making parking lot improvements on the Lands (the "Improvements").
- C. Lot 119 and Lot 122 are on 3rd Street in the City of Courtenay ("3rd Street"). Lot 1 is on 4th Street in the City of Courtenay ("4th Street"). A public laneway (the "Laneway") separates the properties on 3rd Street from the properties on 4th Street.
- D. The Improvements will include certain electrical facilities (the "Works") some of which Works may be encroaching into the Laneway.
- E. The City under section 35 of the *Community Charter* has the right of possession of every highway in a municipality, subject to any rights in the soil reserved by the persons who laid out the highway and the right of possession of the City shall not be adversely affected or derogated from by prescription in favour of any other occupier.
- F. Under section 35(a) of the *Community Charter* the soil and freehold of every highway in the municipality is vested in the municipality.
- G. The Council of the City has authorized the City to enter into this Agreement, by Resolution.

WITNESS THAT in consideration of the premises and the covenants herein contained and for other valuable consideration, receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto covenant and agree each with the other as follows:

1. **Encroachment Area** – That, in consideration of the premises and the covenants contained herein and to be performed and observed by the Owner, the City (so far as it legally can, but not otherwise, and subject to the bylaws aforesaid, and subject always to the use of the encroachment area for highway purposes) grants unto the Owner permission to construct and maintain the Works within the Laneway (hereinafter called the "Encroachment Area").
2. **Acknowledgment of Highway** - The Owner acknowledges and agrees:
 - (a) that the Encroachment Area is a highway and that the City has limited power to authorize the private use of highways;
 - (b) that any rights granted by the City to the Owner by this Agreement are not exclusive and are subject to the placement of existing and future utilities and the public's right to pass and re-pass;
 - (c) that the City has full authority pursuant to this Agreement to require the removal of all improvements or structures from the Encroachment Area and the restoration of the Encroachment Area, at any time, without compensation to the owner as provided in this Agreement;
 - (d) to accept all costs and all risks associated with any requirement by the City to remove or relocate the Works; and

3. Use of Encroachment Area – In exercising any rights under this Agreement, the Owner agrees:

- (a) to use the Encroachment Area for the purpose of installing, operating and maintaining the Works and for no other purpose without the express written consent of the City;
- (b) to at all times keep and maintain the Encroachment Area in good and sufficient repair to the satisfaction of the City;
- (c) to obtain a 'Work in City Street Permit' from the City or express written permission from the City before any excavation, maintenance or repairs in the Encroachment Area commence;
- (d) to use all reasonable efforts to cause a minimum of obstruction and inconvenience during any construction, maintenance or repairs in the Encroachment Area, and place and maintain such warning signs, barricades, lights or flares at or near the site of any work in progress as will give reasonable warning and protection to members of the public; and
- (e) except as expressly authorized in writing by the City, do all work in such a manner as not to interfere with any existing utilities located in, on, under or around the highway. In the event that the Owner is authorized to interfere with existing utilities in or in the vicinity of the Encroachment Area, the Owner shall, upon written notice by the City, reimburse the City for all sums expended by the City in altering such municipal utilities, as requested, as determined in the sole discretion of the City.

4. Term – This Agreement shall be for a term commencing with the installation of the Works and ending when the Works are no longer required for the parking lot improvements unless terminated sooner pursuant to the terms of this Agreement (the "**Term**").

5. Environmental – The Owner covenants and agrees with the City that:

- (a) "**Contaminants**" means any materials or substances of any kind the storage, manufacture, disposal, treatment, generation, use, transportation, remediation or release into the environment (collectively, the "Use") of which is prohibited, controlled, regulated or licensed under environmental laws, except to the extent that the Use has been authorized or permitted by all applicable governmental or other regulatory authorities;
- (b) the Owner's right of use of the Encroachment Area herein is on an "as is" basis, and the Owner agrees that the City has not made any representations, warranties, covenants or agreements with respect to the condition of the Encroachment Area, the suitability of the Encroachment Area for the Owner's intended use or any use whatsoever, and in particular and without limiting the generality of the foregoing, as to the environmental condition of the Encroachment Area;
- (c) if the Owner shall bring or create upon the Encroachment Area any Contaminants then, notwithstanding any rule of law to the contrary, such Contaminants shall be and remain the sole and exclusive property of the Owner and shall not become the property of the City or Province, notwithstanding the degree of affixation of the

Contaminants or the goods containing the Contaminants to the Encroachment Area and notwithstanding the expiry or earlier termination of this Agreement;

- (d) the Owner shall indemnify and save harmless the City, its officers, employees, agents, successors and assigns from any and all liabilities, actions, damages, claims, losses, charges and expenses and the costs of removal, treatment, storage and disposal of Contaminants which are paid by and incurred by the City, its officers, employees, agents, successors or assigns as a direct result of the presence of any Contaminants caused by any act or omission of the Owner its employees, agent, contractors, invitees, owners, or permitted assignees.

6. Relocation

- (a) If, in the opinion of the City or the Province, any portion of the Encroachment Area is required for the installation of utilities or for any other purpose, the City may give the Owner notice and the Owner shall within 60 days after receipt of such notice either resolve the issue giving rise to the City's need to terminate this Agreement to the City's satisfaction, or, alternatively, remove or relocate any part or all of the Works and restore the Encroachment Area to a condition acceptable to the City, all at the sole expense of the Owner.
- (b) In the event of an emergency situation as determined in the sole discretion of the City, the 60 day notice requirement in subparagraph 9 below shall be abrogated and the City may undertake any work it deems necessary without notice to the Owner. If the City determines that it is necessary to remove or relocate any part or all of the Owner's Works for the purpose of effecting such emergency repairs, the Owner shall comply immediately with the request of the City to remove or relocate the Works at the sole expense of the Owner. If the Owner fails to comply with such request, the City may remove or relocate the Works and the cost of such removal or relocation shall become a debt due from the Owner to the City payable immediately upon invoice therefore.

7. Indemnification – The Owner shall indemnify and save harmless the City, its elected and appointed officers, employees, contractors and agents from and against all actions, proceedings, claims; costs, fees, fines and demands whatsoever by any person and shall reimburse the City for all damages and expenses caused or contributed to by:

- (j) the breach of this Agreement by the Owner, or
- (b) the excavation, use, development, maintenance, repair, renewal, replacement and servicing of the works in the Encroachment Area or both of them.

8. Release and Indemnity – The City (so far as it legally can, but not otherwise) grants to the Owner the non-exclusive revocable right to use the Encroachment Area. In the event that the encroachment granted under this Agreement is found to be invalid or illegal, the Owner hereby agrees to release and indemnify the City, its elected and appointed officers, employees, contractors and agents from and against any and all actions, causes of action, expenses, costs or fees whatsoever which arise as a result of that finding. Without limiting the generality of the foregoing, the Owner hereby releases and discharges the City, its elected and appointed officers, employees, contractors and agents of and from any action or claim the Owner may have to recover fees paid under this Agreement as well as any action or claim that the Owner may have in relation to the required removal or relocation of any structures or improvements constructed within the Encroachment Area or the restoration of the Encroachment Area to its original state. This

provision shall survive and shall not be affected by the holding of any other portion of this Agreement as illegal or invalid.

9. Notice – Any notice required or allowed to be given under this Agreement shall be delivered by hand or by facsimile and shall be deemed to be received upon the day of delivery or transmission, respectively.

10. Survival of Terms – The indemnification, release and insurance obligations of the Owner under this Agreement shall survive any termination of this Agreement in relation to any event first arising or commencing on or before the date of termination of this Agreement.

11. Termination – The Owner understands and agrees that:

- (a) under the following circumstances the City may at any time, in its sole discretion, withdraw the rights it has granted herein to the Owner by giving sixty (60) days notice to the Owner in writing:
 - (i) breach of this Agreement;
 - (ii) Encroachment Area being required for City, Provincial or other public utility purposes incompatible with the Owner's use of the Encroachment Area;
 - (iii) requirement of a higher level of government.

The Owner may at any time, by written notice to the City, terminate this Agreement as of a date to be specified in such notice.

- (b) without restricting the generality of the foregoing, the City may at any time terminate this Agreement without notice and effective immediately if the Owner fails to construct, operate or maintain the Works to a standard acceptable to the City or if the City receives a claim or complaint from any person whose access over the Encroachment Area has been impeded by the Owner's use of the Encroachment Area or if the impediment was not approved by the City.

12. Removal by the Owner – In the event that this Agreement is terminated for any cause or reason whatsoever, the Owner shall promptly remove any Works within the Encroachment Area and restore the Encroachment Area to its original state and shall not be entitled to claim against the City for any costs or losses that it incurs or suffers, directly or indirectly, as a result of such termination.

13. Removal by City – If the Owner fails to remove all Works and clear and restore the Encroachment Area as required under this Agreement, the City and its agents may remove all fixtures, chattels, improvements, personal property and all other things within the Encroachment Area and restore the Encroachment Area to its original condition. The cost of such removal and restoration will be a debt due and owing to the City by the Owner upon receipt by the Owner of the City's invoice for the cost of the work.

14. Nuisance – The Owner covenants and agrees with the City that:

- (a) it will not carry on, or do or allow to be carried on or done within the Encroachment Area anything that:
 - (i) may be or become a nuisance to the City or the public;

- (ii) increases the hazard of fire or liability of any kind;
- (iii) increases the premium rate of insurance against loss by fire or liability upon the Encroachment Area; or
- (iv) invalidates any policy of insurance for the Encroachment Area;

15. Compliance with Other Laws – Nothing in this Agreement exempts the Owner from complying with all applicable laws, including all municipal bylaws, or from obtaining all required permits and licenses relating to the use of the Encroachment Area.

16. Compensation – Notwithstanding any provision of this Agreement, the Owner shall not be entitled to compensation of any type, including, but not limited to claims for injurious affection or disturbance resulting in any way from the removal or relocation of any part or all of the Works and, without limitation, shall not be entitled to any compensation for business losses, loss of profit, loss of market value, relocation costs or other consequential loss by reason of the removal or relocation of any part or all of the Works or by reason of the termination of this Agreement.

17. Builders' Liens – The Owner covenants and agrees with the City that it will indemnify the City from and against all claims for liens for wages or materials or for damage to persons or property caused during the making of or in connection with any excavation, construction, repairs, alterations, installations and additions which the Owner may make or cause to be made on, in or to the Encroachment Area or the Works located within the Encroachment Area.

18. Interest in Lands – This Agreement grants no interest in land in the Encroachment Area to the Owner.

19. Possession – The Owner covenants and agrees with the City that it will, at the expiration or sooner determination of the Term, peaceably vacate and discontinue its use of the Encroachment Area.

20. References – Every reference to each party is deemed to include the heirs, executors, administrators, permitted assigns, employees, servants, agents, contractors, officers, directors and invitees of such party, where the context so permits or requires.

21. Enurement – This Agreement shall enure to the benefit of and be binding on the parties and their respective successors and assigns.

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

23. Assignment – The Owner shall not sell, transfer, convey, or otherwise dispose of any legal or beneficial interest in the Lands, or any portion thereof, directly or indirectly, unless as a condition thereto and prior thereto, the proposed purchaser or transferee has first executed and delivered to the City an assignment and assumption agreement in a form satisfactory to the City, acting reasonably, whereby the purchaser or transferee agrees to be bound by all of the terms, covenants, and obligations of this Agreement, positive or negative, as if it were the original Owner, from and after the effective date of the sale, transfer, conveyance or other disposition.

24. Entire Agreement – The provisions herein contained constitute the entire agreement between the parties and supersede all previous communications, representations and agreements, whether verbal or written, between the parties with respect to the subject matter hereof.

- 25. Time of Essence** – Time is of the essence of the Agreement
- 26. Interpretation** – The parties to this Agreement covenant:
- (a) that when the singular or neuter are used in this Agreement, they include the plural or the feminine or the masculine or the body politic or corporate where the context or the parties require;
 - (b) that the headings to the clauses in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it;
 - (c) that all provisions of this Agreement are to be construed as covenants and agreements as though the words importing covenants and agreements were used in each separate paragraph;
- 27. Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.
- 28. City's Right to Alter Encroachment Area** –
- (a) This Agreement shall not in any way operate to restrict the right of the City, or any other public utility, at any time to alter the roadway, curb, gutter, sidewalk, boulevard or any municipal works constructed within the roadway or to construct or maintain any form of structure on, over or across the Works, notwithstanding that the effect of such alteration, construction or maintenance may be to render the Works useless or of less value for the purposes of the Owner or may require the partial or total removal or relocation of the Works.
 - (b) In the event the City, or any other public utility, in its sole discretion deems it necessary to alter the roadway, including the ditches, shoulders, drainage or other utilities located in the roadway or any sidewalk, curb, gutter or pavement in any manner whatsoever, the Owner shall relocate or reconstruct the Works at the sole cost of the Owner in accordance with plans and specifications first approved by the City and within a time period permitted by the City and to the satisfaction of the City.
 - (c) The right of encroachment hereby granted in no way grants to the Owner the right to any ownership, right or title in the roadway except as herein specified and the Owner does not hereby acquire any right to claim damages against the City that might arise out of the City causing damage to the Works.
- 29. Counterparts** - This Agreement may be executed in one or more counterparts, each of which will be an original, and all of which together will constitute a single instrument. Further, the parties agree that this Agreement may be signed by electronic signature (e.g., DocuSign or similar electronic signature technology) and/or transmitted by electronic means, and thereafter maintained in electronic form, and that such electronic record will be valid, and effective to bind the party so signing, as a paper copy bearing such party's handwritten signature. The parties further consent and agree that the electronic signatures appearing on this Agreement will be treated, for the purposes of validity, enforceability, and admissibility, the same as handwritten signatures.
- [Signatures on Next Page]

AS EVIDENCE of their agreement to be bound by the terms of this Agreement, the parties have executed this Agreement of the day and year first above written.

SIGNED AND DELIVERED by **THE CORPORATION**)
OF THE CITY OF COURTENAY by its authorized)
signatories)

_____)
Mayor:)

_____)
Corporate Officer)

SIGNED AND DELIVERED by **COASTAL**)
COMMUNITY CREDIT UNION by its authorized)
signatories)


_____)
Annette Christenson)


_____)
Mark Jones)