



THE CORPORATION OF THE CITY OF COURTENAY

## STAFF REPORT

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**To:** Council

**File No.:** 2980-20

**From:** Director of Corporate Services

**Date:** July 11, 2022

**Subject:** 685 Cliffe Avenue – Proposed Amendment and Renewal Consideration

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### PURPOSE:

To seek Council approval of a one-year lease renewal for the Connect Community Access Centre in accordance with the 2021 Lease Agreement for the property located at 685 Cliffe Avenue, and for Council to consider an expansion of the lease area and tenant proposed capital works.

### CAO RECOMMENDATIONS:

1. THAT Council approve a one-year lease extension between the City of Courtenay and the Comox Valley Transition Society for the continued use of the property located at 685 Cliffe Avenue, PID: 006-102-930, Lot 3, Section 61 Comox District Plan VIP3817, as authorized and in accordance with Section 2.1(e) of the November 1, 2021 Lease Agreement; and,
2. THAT Council approve an AMENDMENT to the November 1, 2021 Lease Agreement to extend the lease area to include the entire property located at 685 Cliffe Avenue, PID: 006-102-930, Lot 3, Section 61 Comox District Plan VIP3817, with the following additional amendments:
  - a. maintenance and cleaning responsibilities to be extended to the full frontage and rear of the building,
  - b. language regarding tenant led/initiated capital improvements - specify that any improvements made by the tenant do not constitute a partnership or other form of relationship other than landlord and tenant and that any tenant or landlord capital investment in the property does not create an obligation or expectation of future lease renewals; and,
  - c. identify September 1, 2022 or another date as approved by the CAO, as the occupancy date for the expanded lease area, and that Council waive the monthly rental costs during the construction period to a maximum of one month (\$1000); and,
  - d. increase the rental rate - inclusive of the entire building located at 685 Cliffe Avenue from \$1000 a month to \$2000 per month; and,
3. THAT Council approve the tenant proposed renovation/capital improvements subject to the tenant achieving all necessary permits and approvals; and,
4. THAT staff provide public notice to satisfy the statutory advertising requirements for the provision of assistance and disposition of City land per Section 24 of the *Community Charter*.



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Kate O’Connell, MPP  
Acting Chief Administrative Officer

**BACKGROUND:**

The Comox Valley Transition Society (CVTS) has operated the Connect Centre at 685 Cliffe Avenue since 2019 first via Occupancy Agreement and more recently via Lease Agreement. On October 18, 2021 Council entered into a Lease Agreement with the CVTS for a portion of the property located at 685 Cliffe Avenue. Since 2019, the property has been used to provide day centre services for individuals experiencing homelessness and at times as and extreme weather shelter or emergency shelter as authorized by Council.

CVTS has requested an amendment to the current Lease Agreement to expand the lease area to incorporate the entire building. CVTS is also requesting Council consider and approve proposed renovation plan that would facilitate the combination of the existing and expanded space (see Appendix A).

The November 1, 2021 Lease Agreement can be found in Appendix B. The Lease Agreement includes lease term renewal options in one year increments up to a total of five years – each renewal is subject to Council approval. The first year of the term will expire on October 31, 2022, therefore the renewal request is being advanced at this time along with the proposed lease amendment.

**DISCUSSION:**

The CVTS has experienced an increase in need for support services, and over time and in response, has expanded the services available at the centre. The consistency of location has provided an opportunity for complementary support and medical services to access individuals that do not have a fixed address. The Connect Warming Centre has evolved to become the Connect Access Centre and is currently providing a variety of critical services to the City’s most vulnerable.

The Connect Access Centre operates six (6) days a week and provides individuals experiencing homelessness with access to: survival gear (tents, meals, snack, tarps and clothing), washroom and shower services, hygiene supplies and PPE, primary health care and addiction medicine through the physician outreach team, connection to Integrated Case Management, social connections and decreased isolation, personal belonging storage, criminal justice system navigation support, and administrative support (e.g. housing applications, tax filings, income assistance etc.). Under the current terms of the Lease Agreement, the CVTS is also taking steps to address community concerns through anti-stigma outreach and planned events, creating a Community Advisory Committee, providing security patrols and employing individuals with lived experience to maintain the areas

around the Centre. In addition, the Executive Director of the Comox Valley Transition Society is a member of the Downtown Courtenay Business Improvement Association (DCBIA).

The CVTS has received temporary funding through the Strengthening Communities' Services Grant (SCS) that will fund the day centre services including the proposed expansion to meet existing and growing needs until July 2023. Funding has not been secured to support the Centre beyond the current funding term.

With support from the SCS Grant funding, the Comox Valley Transition Society has requested an amendment to the existing lease to permit the Connect Access Centre to operate out of the entire building, combining two spaces into one. Although funding has been secured to extend the day services, there is no current funding for an overnight shelter. However, the proposed capital plan will both expand the space and address code compliance issues that are currently preventing the provision of shelter services. Upon completion of the capital works, and in the event funding can be secured the centre would be permitted to operate an overnight shelter as per Section 4.3 of the current Agreement.

To provide access to the proposed expanded space, the Comox Valley Transition Society has submitted renovation plans to the City that will:

1. Create once facility
2. Provide access to a second bathroom
3. Add onsite laundry services
4. Create a staff lounge and office
5. Address code compliance issues

The provision of access to 685 Cliffe Avenue and the rent subsidy are intended as a temporary measure to bridge the day and shelter services (temporary provision in a time of need) until such time as a purpose-built facility is available. Council has consistently advocated for provincial support and funding to develop appropriate shelter and supportive housing options.

#### **FINANCIAL IMPLICATIONS:**

The tenant will bear the financial responsibilities as outlined in the November 1<sup>st</sup> 2022 Lease Agreement, and will also cover all tenant driven capital improvement costs.

Council has previously approved a subsidy for the current Centre and the proposed combined rent rate is based on the original subsidy. Based on past practice, the rent recommended for the total combined space is \$24,000 per year, less up to \$1000 for during the construction period. Should Council approve the expansion of the lease area and the new rental rate, the City would be required to advertise the provision of assistance acknowledging a \$48,000 per year rental rate subsidy as per the *Community Charter*.

#### **ADMINISTRATIVE IMPLICATIONS:**

Approximately 150 hours of staff time has been dedicated to engagement with the Comox Valley Transition Society on the previous lease agreements, fire inspections and training, capital improvement planning, and site requirements.

The half of the building not currently occupied by the Connect Access Centre is used by the City to house some City records. Should Council approve the expansion of the lease area staff would relocate the records to another facility, staff time to undergo this work is estimated at 40 hours. Casual staff will be required undertake the record relocation work.

**ASSET MANAGEMENT IMPLICATIONS:**

As the City continues to work with the Province and local non-profits to identify more permanent options, the use of the facility is temporary. As a temporary facility and based on the asset condition the City does not intend to invest in the asset.

**STRATEGIC PRIORITIES REFERENCE:**

**We focus on organizational and governance excellence**

- Responsibly provide services at levels which the people we serve are willing to pay
- ▲ Value community safety and support out protective services

**We proactively plan & invest in our natural and built environment**

- ▲ Support social, economic & environmental sustainability solutions

**We continually invest in our key relationships**

- Value and recognize the importance of our volunteers
- Consider effective ways to engage with and partner for the health and safety of the community
- ▲■ Advocate and cooperate with local and senior governments on regional issues affecting our 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:**

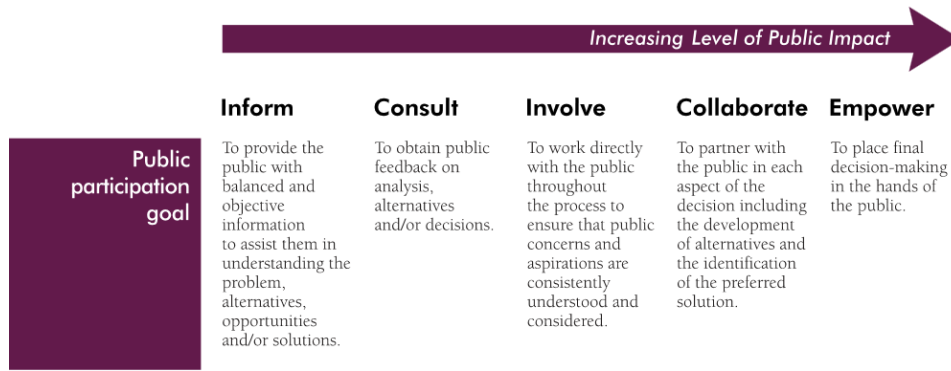
NA

**REGIONAL GROWTH STRATEGY REFERENCE:**

NA

**CITIZEN/PUBLIC ENGAGEMENT:**

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



**OPTIONS:**

Option 1:

1. THAT Council approve a one-year lease extension between the City of Courtenay and the Comox Valley Transition Society for the continued use of the property located at 685 Cliffe Avenue, PID: 006-102-930, Lot 3, Section 61 Comox District Plan VIP3817, as authorized and in accordance with Section 2.1(e) of the November 1, 2021 Lease Agreement; and,
2. THAT Council approve an AMENDMENT to the November 1, 2021 Lease Agreement to extend the lease area to include the entire property located at 685 Cliffe Avenue, PID: 006-102-930, Lot 3, Section 61 Comox District Plan VIP3817, with the following additional amendments:
  - a. maintenance and cleaning responsibilities to be extended to the full frontage and rear of the building,
  - b. language regarding tenant led/initiated capital improvements - specify that any improvements made by the tenant do not constitute a partnership or other form of relationship other than landlord and tenant and that any tenant or landlord capital investment in the property does not create an obligation or expectation of future lease renewals; and,
  - c. identify September 1, 2022 or another date as approved by the CAO, as the occupancy date for the expanded lease area, and that Council waive the monthly rental costs during the construction period to a maximum of one month (\$1000); and,
  - d. increase the rental rate - inclusive of the entire building located at 685 Cliffe Avenue from \$1000 a month to \$2000 per month; and,
3. THAT staff provide public notice to satisfy the statutory advertising requirements for the provision of assistance and disposition of City land per Section 24 of the *Community Charter*; and,
4. THAT Council approve the tenant proposed capital improvements subject to the tenant achieving all necessary permits and approvals.

Option 2:            1. THAT Council approve a one-year lease extension between the City of Courtenay and the Comox Valley Transition Society for the continued use of the property located at 685 Cliffe Avenue, PID: 006-102-930, Lot 3, Section 61 Comox District Plan VIP3817, as authorized and in accordance with Section 2.1(e) of the November 1, 2021 Lease Agreement;

Option 3:            THAT Council refer the item back to staff and provide further direction.

Option 4:            THAT Council give notice to the Comox Valley Transition Society of its intent to terminate the Lease Agreement in accordance with Section 2.1(a) “Demise and Term”.

Prepared by,



Kate O’Connell, MPP  
Director of Corporate Services

Concurrence by,



Geoff Garbutt, M.Pl., MCIP, RPP  
Chief Administrative Officer

Attachments:

- a) Lease Agreement
- b) 685 Cliffe Avenue – Renovation Plan



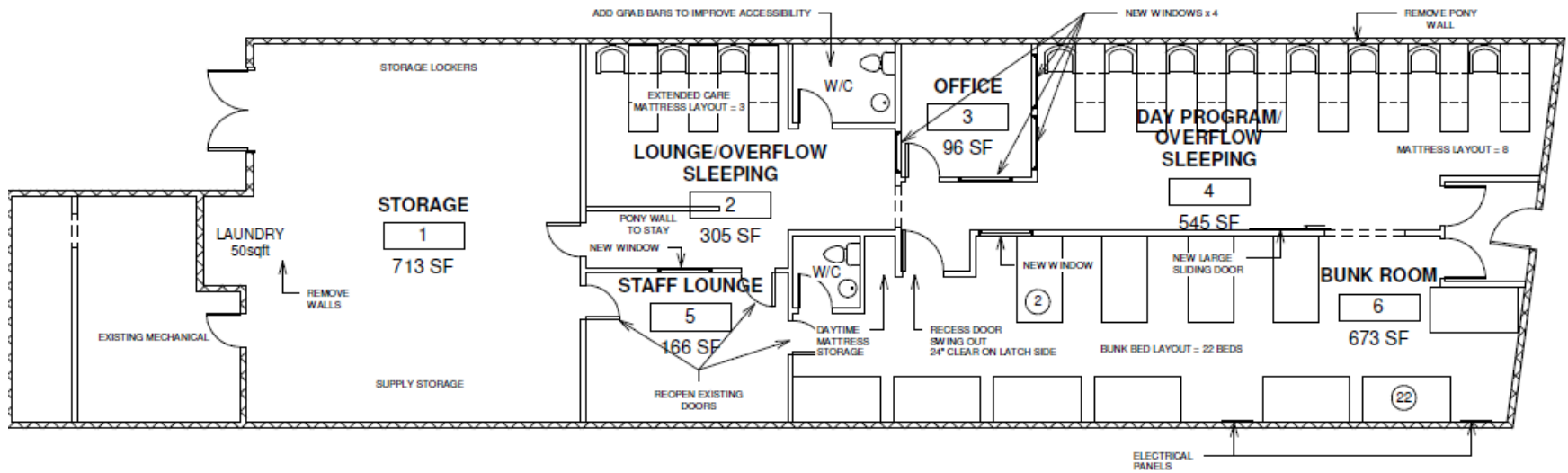
THE CORPORATION OF THE CITY OF COURTENAY

# STAFF REPORT

## Appendix A: 685 Cliffe Avenue - Renovation Plan

① Level 1 - PROPOSED  
1/8" = 1'-0"

NOTE: ALL NEW WINDOWS TO BE TEMPERED GLASS



**Appendix B –  
Lease Agreement**

**LEASE AGREEMENT**

THIS LEASE dated for reference the 1<sup>st</sup> day of November, 2021 is

BETWEEN

**CITY OF COURTENAY**, a municipal corporation incorporated under the *Local Government Act* (British Columbia) and having offices at 830 Cliff Avenue, Courtenay, BC, V9N 2J7

(the "**City**")

AND

**COMOX VALLEY TRANSITION SOCIETY (INC. NO. S0022797)**, a non-profit society under the *Society Act* (British Columbia) and having offices at 625 England Avenue, Courtenay, BC, V9N 2N5

(the "**Tenant**")

WHEREAS:

- A. The City is the registered owner in fee simple of the lands and premises located at 685 Cliffe Avenue in the City of Courtenay, British Columbia, and legally described as: PID:  
  
006-102-930, LOT 3, SECTION 61 COMOX DISTRICT PLAN VIP3817 (the "**Lands**");
- B. The City and the Tenant entered into a License of Occupation Agreement (the "**Licence**") on January 6, 2020 for the operation of a Warming Centre on the Lands, and this Licence has been extended through multiple addendums to the Licence;
- C. The Tenant now wishes to lease the Lands from the City for the continued operation of the Connect warming shelter;
- D. The City agrees to lease the Lands to the Tenant on the terms and subject to the conditions set out herein;

NOW THEREFORE THIS AGREEMENT is evidence that in consideration of the mutual promises contained in this Lease and other good and valuable consideration paid by each of the parties to the other (the receipt and sufficiency of which each party acknowledges), the parties covenant and agree as follows:

**ARTICLE 1 - DEFINITIONS AND INTERPRETATION**

**1.1** In this Lease, words and phrases shall be defined as follows:

- (a) "**Building**" means the building located on the Lease Area;



- (b) "*Building Code*" means the *British Columbia Building Code 2018*, as amended or re-enacted from time to time;
- (c) "Building Department" means the Building Services Division of the City of Courtenay;
- (d) "CAO" means the Chief Administrative Officer for the City of Courtenay;
- (e) "Commencement Date" has the meaning defined in section 2.1 of this Lease;
- (f) "Common Costs" means all costs for the maintenance, snow removal, cleaning, lighting, signs, liability insurance, property taxes, replacing light fixtures, repaving, restriping, public access ways and common areas of the Lands;
- (g) "*Community Charter*" means the *Community Charter*, SBC 2003, c 26, as amended or re-enacted from time to time;
- (h) "City" means the corporation of the City of Courtenay and where the context applies, includes its elected officials, employees, agents and contractors;
- (i) "Extreme Weather" includes sleet, freezing rain, snow accumulation, sustained high winds, temperatures at or below zero degrees Celsius, temperatures near zero degrees Celsius with rainfall that makes it difficult or impossible for homeless people to remain dry, or weather that poses a substantial threat to life or health of homeless persons;
- (j) "Extreme Weather Response Shelter" has the meaning defined in section 4.2 of this Lease;
- (k) "*Fire Code*" means the *British Columbia Fire Code 2018*, as amended or re-enacted from time to time;
- (l) "Fire Department" means the City of Courtenay Fire Department;
- (m) "Fire Safety Patrol" means a patrol of the Lands to ensure compliance with fire safety codes and regulations, including but not limited to the City's *Fire Protective Services Bylaw No. 2556, 2008* and the *Fire Code*;
- (n) "Force Majeure" means an event or significant threat of an event beyond a party's reasonable control, whether or not foreseeable, including, but not limited to, strikes, labour trouble, lock-outs, extreme weather, flooding, earthquakes, mud slides, riots, imposition of laws or governmental orders that prohibit or restrict the delivery of the Services, pandemics, epidemics, quarantines, fires, acts of war or terrorism, or acts of God;
- (o) "Lands" means the lands described in paragraph A above;

- (p) "Lease Area" means that part of the Lands used by the Tenant under this Lease, identified in Schedule A attached to and forming a part of this Lease;
  - (q) "Log Book" has the meaning defined in section 5.16 of this Lease;
  - (r) "Perimeter" means the perimeter area of the Building as identified in Schedule B attached to and forming part of this Lease;
  - (s) "Rent" has the meaning defined in section 3.1 of this Lease;
  - (t) "Renewal Term" has the meaning defined in section 2.1(b) of this Lease;
  - (u) "*Sign Bylaw*" means the City of Courtenay *Sign Bylaw*, No. 2760, 2013, as amended or re-enacted from time to time;
  - (v) "*Societies Act*" means the *Societies Act*, SBC 2015, c. 18, as amended or re-enacted from time to time;
  - (w) "Tenant" means the Comox Valley Transition Society (Inc. No. S0022797);
  - (x) "Term" means the period from the Commencement Date until the Termination Date as defined in section 2.1 of this Lease;
  - (y) "Termination Date" has the meaning defined in section 2.1 of this Lease; and
  - (z) "Warming Centre" means a centre providing shelter for those experiencing homelessness, mental health and addiction during inclement weather.
- 1.2 Interpretation – Wherever the singular or masculine or neuter is used in this Lease, the same shall be construed as meaning the plural, the feminine or body corporate where the context so requires.
- 1.3 References to Tenant-Any reference to the "Tenant" includes, where the context allows, subtenants and occupants of the Tenant and employees, agents, licensees and invitees of the Tenant and all others over whom the Tenant may reasonably be expected to exercise control and any default in observing or performing the Tenant's obligation by such person, will be deemed to be defaults of the Tenant.
- 1.4 Captions – The captions appearing in this Lease have been inserted for reference and as a matter of convenience and do not define, limit or enlarge the scope or meaning of this Lease.
- 1.5 Schedules -The following schedule is attached to and forms part of this Lease:
- (a) Schedule A- Lease Area.
  - (b) Schedule B – Perimeter Area
  - (c) Schedule C – Operation and Maintenance Cost Responsibility

- (d) Schedule **D**- Log Book

**ARTICLE 2- DEMISE AND TERM**

2.1 **Demise and Term-** The City hereby demises and leases to the Tenant the Lease Area for a one-year term commencing November 1st, 2021 (the "**Commencement Date**") until and including October 31st, 2022 or such earlier or later date as may be determined in accordance with this Lease (the "**Termination Date**"), to have and to hold for the Term as the Tenant, and the Tenant does hereby accept the demise and lease of the Lease Area, all subject to the covenants, conditions and agreements herein contained and subject to the following:

- (a) Subject to section 8.4, the parties acknowledge and agree that this Lease may be terminated prior to the end of the Term by:
- (i) Either party providing written notice to the other party of termination of this Lease with the date of termination to be not less than 60 days after the date that notice is provided; or
  - (ii) Alternatively, at any time by the mutual written agreement of the parties. (e)

**If** the Tenant is not in default under this Lease and subject to the approval of the City's municipal council, the Tenant shall have the option to renew this Lease on the same terms and conditions contained herein (except for the amount of Rent payable and except for this right of renewal, which is amended accordingly) for up to four additional one-year terms (the "**Renewal Term**"), such renewal effective on the day immediately following the Termination Date. This option must be exercised by the Tenant giving notice in writing to the City in the manner provided herein not less than 180 days and not more than 365 days prior to the expiry of the Term and

- (f) If this Lease is renewed under subsection 2.1**(b)**, the rental rate that will apply during the Renewal Term shall be that rent agreed to by the parties and failing agreement, shall be determined by application of the dispute resolution provisions under section 8.9.

2.2 **Quiet Enjoyment** – Subject to this Lease, the Tenant will and may peaceably hold and enjoy the Lease Area during the Term without interruption or disturbance by the City or any person lawfully claiming under the City.

2.3 **Holding Over** – If the Tenant should hold over after the expiration of the Term and the City should accept rent, the new tenancy thereby created shall be a tenancy from month to month and not a tenancy from year to year, and shall be subject to the covenants and conditions herein contained so far as the same are applicable to a tenancy from month to month.

**ARTICLE 3-RENT**

- 3.1 **Rent**-The Tenant shall pay to the City the following amounts (the "Rent"):
- (a) Equal monthly installments of \$1,000.00, with the first payment occurring on the Commencement Date, and subsequent payments occurring on the first day of every month of the Term;
  - (b) Such other amounts in accordance with the terms and conditions of this Lease.
- 3.2 **Interest on Amounts in Arrears**- The Tenant will pay to the City, interest at a rate of five percent (5%) at the start of each month, calculated and compounded monthly, upon all Rent or other expenses required to be paid under this Lease, from the due date for payment until paid. This stipulation for interest will not prejudice any other right or remedy of the City under this Lease or at law or at equity.
- 3.3 **Lease Area Accepted "As Is"** - The Tenant accepts the Lease Area "as is" and acknowledges that the City has made no representations or warranties respecting the Lease Area.
- 3.4 **Net Lease-Expenses**, costs and payments incurred in respect of the Lease Area and any other improvement to the Lease Area or anything affecting the Lease Area shall be borne solely by the Tenant, in addition to the Tenant's obligation to pay Rent and otherwise abide by the terms of this Lease.
- 3.5 **Taxes and Fees**-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 Lease.
- 3.6 **Utilities** -The Tenant and the City shall each assume responsibility for operations and maintenance and associated costs in respect of the Lease Area as detailed in Schedule B, attached to and forming a part of this Lease.

**ARTICLE 4-USE OF LEASE AREA**

- 4.1 **Use of Lease Area** - The Tenant will use the Lease Area for the sole purpose of operating a Warming Centre, overnight shelter and Extreme Weather Response Shelter, subject to the conditions set out in this Lease.
- 4.2 **Extreme Weather Response Shelter**- The Tenant may operate an Extreme Weather Response Shelter during an occurrence of Extreme Weather, but unless the conditions set out in section 5.3 of this Lease are fulfilled, the Tenant will only operate Extreme Weather Response Shelter in compliance with the following conditions:
- (a) No more than ten beds may be occupied in the Extreme Weather Response Shelter;
  - (b) The Tenant must designate at least one staff member to conduct Fire Safety Patrols for the duration of the operation of the Extreme Weather Response Shelter, and

ensure that staff conducting Fire Safety Patrols are not assigned any other duties or functions for the duration of their patrol; and

- (c) The Tenant will ensure that all staff working during the operation of an Emergency Weather Response Shelter have received training by the Fire Department on fire safety and appropriate emergency procedures.
- 4.3 Overnight Shelter – If the Building Department in its sole discretion deems that the Building satisfies *Building Code* requirements for the operation of an overnight shelter in accordance with section 5.3, then the Tenant may operate an overnight shelter with hours of operation between 7:00p.m. to 9:00a.m.
- 4.4 No Other Purposes – The Tenant agrees that the Lease Area must not be used for any other purposes unless the Tenant obtains the prior written approval of the City.
- 4.5 Signage- In addition to the lease of the Lease Area to the Tenant under this Lease, the Tenant shall be entitled to advertise the activities permitted under this Article 4 with signs on the Lands during the Term, provided the form, content and location of such signage complies with the Sign Bylaw.

#### ARTICLE 5 – TENANT'S REPRESENTATIONS AND UNDERTAKINGS

- 5.1 Legal Status- The Tenant warrants, represents and agrees that:
- (d) it is and shall remain throughout the Term a Society in good standing under the *Societies Act* and all other applicable laws other Province of British Columbia;
  - (e) it has taken all necessary or desirable actions, steps and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Lease;
  - (f) it is duly incorporated and validly existing under its jurisdiction of incorporation, is in good standing under the legislation governing it, and has made all filings required under such legislation; and
  - (g) it has the power and capacity to enter into and carry out the transaction provided for in this Lease.
- 5.2 Community Advisory Committee- Within 60 days of the execution of this Lease, the Tenant will establish a Community Advisory Committee that:
- (a) has a membership including:
    - (i) stakeholders and representatives from local and neighbouring businesses;
    - (ii) social services organizations;

- (iii) government staff representatives from BC Housing, Vancouver Island Health Authority, the City of Courtenay, and or the Royal Canadian Mounted Police;
  - (iv) where appropriate, residents of the community, including residents with personal experience using services such as warming shelters and overnight shelters;
- (b) meet on at least a bi-monthly basis, with the first meeting no later than 60 days from the execution of the lease; and
- (c) record written minutes from each meeting and share these minutes with the City within 30 days of the meeting; and

the parties agree to amend this provision as necessary to further define the Community Advisory Committee, including but not limited to amendment of the above terms.

- 5.3 *Building Code*- The Tenant acknowledges that the Building is not in compliance with the *Building Code* as set out in section 4.3 at the time of the execution of this Lease, the Tenant will take the necessary action to bring the Building into full compliance with the *Building Code*. For certainty, the Tenant acknowledges that compliance with the *Building Code* must occur before the operation of the overnight shelter contemplated in section 4.3 and the removal of conditions on the Extreme Weather Response Shelter contemplated in section 4.2. The Tenant agrees that all necessary actions taken by the Tenant under this section shall require the prior written approval by the City.
- 5.4 *Construction* – If the Tenant is not then in default under this Lease and has the prior written consent of the City, then the Tenant may undertake improvements, construction or renovations of the Lease Area at the Tenant's sole expense. In giving its consent, the City may impose any conditions, including, without limitation, location requirements, use restrictions, financial restrictions, insurance requirements and security obligations. The Tenant acknowledges that all leasehold improvements become the property of the City upon affixation to the Lease Area, without any obligation by the City to pay for the leasehold improvements. The Tenant acknowledges that all improvements to the Lease Area, past and present, are to remain affixed to the Land.
- 5.5 *Reverter*- The Tenant acknowledges that in the event the Lease is terminated subject to sections 2.1(a) or 8.4, all improvements to the Lease Area, past and present, shall become the property of the City.
- 5.6 *Permits Required* - The Tenant acknowledges that prior to undertaking any improvements, construction or renovations of the Lease Area, the Tenant must obtain the prior written approval of the City and a building permit and comply with all other bylaw requirements imposed by the City on construction and development within its boundaries.
- 5.7 *Compliance with Laws*- The Tenant will at all times during the Term and any Renewal Term use and occupy the Lease Area in compliance with all 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, including all the rules, regulations, policies, guidelines, criteria or the like made under or pursuant to any such laws.

- 5.8 **Zoning-** Without limiting section 5.7, the Tenant acknowledges that the Tenant must not use the Lease Area or permit a use in breach of the City's applicable zoning bylaws.
- 5.9 **No Nuisance-** The Tenant will not, at any time during the Term or any Renewal Term, use, exercise or carry on or permit or suffer to be used, exercised or carried on, in or upon the Lease Area or any part thereof any noisy, noxious or offensive art, trade, business, occupation, or event and, the Tenant will not carry on, or suffer or permit to be carried on, any act, matter or thing which will or may constitute a nuisance or an unreasonable annoyance to the City, to any occupant of Lease Area and premises in the vicinity of the Lease Area or to the public generally.
- 5.10 **Liens and Judgments-** The Tenant will not permit any liens, judgments or other charges to be registered against the Lands except those charges permitted in writing by the City. Unless otherwise agreed in writing, if any lien, judgment or other charge is registered, the Tenant will obtain its discharge within 30 days of the said registration.
- 5.11 **Filing Notice of Interest-** Throughout the Term, the City is entitled to file a Notice of Interest pursuant to the *Builders Lien Act, SBC 1997, c. 45* as amended or re-enacted, in the appropriate Land Title Office against title to the Lands.
- 5.12 **Repairs and Maintenance-** Throughout the Term at its own expense, the Tenant shall repair and maintain and keep the Lease Area 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 Lease Area during the Term or to supply any services or utilities thereto save and except for as set out in Schedule A, and 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. Subject to section 5.13, the Tenant hereby assumes the full and sole responsibility of the condition, operation, maintenance, repair, replacement and management of the Lease Area during the Term. All repairs will be in all respects to a standard equal to or greater the original work and material in the improvements, and will meet the lawful requirement of all statutory authorities. Without limiting the foregoing, the Tenant shall carry out the responsibilities described in Schedule B.
- 5.13 **Repair According to Notice -** Without restricting the generality of section 5.12, the Tenant will do all repairs and maintenance that it is obliged to do pursuant to section 5.12 promptly upon notice from the City, and will not do any structural repairs or system maintenance without prior written consent from the City. If the Tenant does not perform all repairs and maintenance promptly upon notice from the City, the City reserves the right to enter the Lease Area to restore the Lease Area back to the state of good repair. The Tenant will pay to the City, on demand, the City's cost of so doing.
- 5.14 **Public Safety-** The Tenant shall take all reasonable precautions to ensure that safety of persons using the Lease Area.
- 5.15 **Waste –** the Tenant will not commit, suffer, or permit any wilful or voluntary waste, spoil or



destruction of the Lease Area, and will ensure that no garbage, waste, biohazardous materials or other debris accumulates on the Lease Area or the Perimeter by ensuring that all garbage, waste, biohazardous materials or other debris are removed from the Lease Area and the Perimeter at a minimum of two times per day with one of these checks occurring by 11:00 am each day. The Tenant will dispose of all materials removed from the Lease Area and Perimeter under this section.

- 5.16 Log Book – The Tenant shall record each time it removes and disposes of garbage, waste, biohazardous materials or other debris under section 5.15 by completing the Log Book as identified in Schedule D attached to and forming part of this Lease. The Tenant shall submit the Log Book to the City on the first day of each month for the duration of the Term in the manner required herein for giving notices. If the City, in its sole discretion and acting reasonably, deems that the Tenant has not accurately maintained the Log Book or has not complied with its duties under section 5.15, then the City may assume the Tenant's responsibilities under this Lease until the Tenant complies with the requirements of this section. These remedies will not prejudice any other right or remedy of the City under this Lease or at law or at equity.
- 5.17 Perimeter Cleanup According to Notice - Without restricting the generality of section 5.15 and 5.16, the Tenant will do all clean up that it is obliged to do pursuant to section 5.15 promptly upon notice from the City. If the Tenant does not perform all cleanup promptly upon notice from the City, the City reserves the right to enter the Lease Area to remove all waste from the Lease Area and the Perimeter. The Tenant will pay to the City, on demand, the City's cost of so doing plus an additional administrative fee of 15%.
- 5.18 Right to Inspect – The Tenant shall permit the City to enter the Lease Area at all reasonable times to determine if the Tenant is complying with all its promises under this Lease.
- 5.19 Workers Compensation- If required by law, the Tenant will, at its cost, carry and pay for full workers' compensation coverage in respect of all workers, employees and other persons engaged in any work or service, non-payment of which would create a lien claim on the Lease Area or the leasehold interest.
- 5.2 Environmental Contamination- The Tenant will at all times and in all respects comply with and abide by the requirements of all applicable Federal, Provincial or Municipal statutes, bylaws, regulations, orders and guidelines, which deal with environmental protection and safety and any contaminant, pollutant, dangerous substance, liquid waste, industrial waste, hauled liquid waste, and hazardous material or hazardous substance. Without limiting the foregoing, the Tenant will comply with the following provisions:
- (a) the Tenant will comply with any and all duties, obligations or liabilities under any relevant law in respect of the Lease Area, including but not limited to any costs, expenses or liabilities for any remedial action for any pollution of the Lease Area caused by the Tenant during the Term.



Lease Area or that may result in any fines, penalties, orders, proceedings, investigations, litigation or enforcement proceedings, made or threatened by any third parties or governmental agencies upon becoming aware of such condition; and

- (c) the Tenant must provide the City with immediate notice in writing, upon the Tenant becoming aware of any contamination of the Lease Area.

#### **ARTICLE 6- CITY REPRESENTATIONS AND UNDERTAKINGS**

- 6.1 **City Conditions-** On or before March 1st, 2022 the City will have complied with all of its statutory obligations under the Community Charter, or other applicable enactments in connection with leasing the Lands in accordance with this Lease. This condition precedent is for the sole benefit of the City and may be waived at any time by the City through April Pt, 2022.
- 6.2 **CAO-** The City will authorize the CAO to make decisions about the Lease or the Lease Area on behalf of the City concerning the Lease, including any future amendments of the Lease.

#### **ARTICLE 7- INSURANCE AND INDEMNITY**

##### **7.1 Insurance**

- (a) The Tenant is responsible for insuring the Lease Area and the contents of them and all other improvements, including fixtures, appurtenances, contents, equipment, installations and electrical distribution system, based upon full insurable values, with "all risks" coverage on the replacement cost basis, flood and earthquake endorsements, and a maximum deductible of \$1,000 for any one loss;
- (b) Without limiting the Tenant's obligations and liabilities under this lease, the Tenant shall obtain, at its own expense, and keep in force a policy of comprehensive/commercial general liability insurance providing coverage against claims for personal injury, death, or property damage or loss upon, in, or about the Lease Area, and arising out of or connected with the activities of the Tenant and of subtenants, or the use and occupancy of the Lease Area or any part thereof by the Tenant or by any subtenants, in an amount of not less than \$5,000,000, or such other amount as the City may reasonably request, per occurrence for bodily injury (including death) and property damage.
- (c) On or before the Commencement Date 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 Lease.
- (d) The City may, from time to time, notify the Tenant of the City's desire to change the amount of insurance required by this Lease and upon receiving such notification from the City, the Tenant will:

- (i) within 30 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; or
  - (ii) alternatively, within 30 days of receiving such notice, advise the City in writing that it objects to a change in the insurance required and the reasons for its objection and upon such objection, the parties shall use their best efforts to resolve the issue(s) underlying the objection, and if best efforts are insufficient to resolve the dispute, then the dispute shall be resolved by application of the dispute resolution provisions under section 8.9.
- (e) The Tenant shall ensure that all policies of insurance pursuant to this Lease are:
  - (i) placed with insurers licensed in British Columbia;
  - (ii) are written in the name of the Tenant and the City as an additional insured with loss payable to them as their respective interests may appear;
  - (iii) contain a cross liability clause and a waiver of subrogation clause in favour of the City;
  - (iv) primary and does not require the sharing of any loss by any insurer that insures the City;
  - (v) 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 Tenant or the City to recover; and
  - (vi) endorsed to provide the City with 30 days advance notice in writing of cancellation or material change.
- (f) All policies may provide that the amount payable in the event of any loss will be reduced by a deductible, in an amount to which the City consents. Consent, non-consent, and/or authorized consent of the City will not constitute an agreement by the City to participate in the financial undertaking of the Tenant to satisfy any deductible payable. The Tenant will be solely responsible for any and all insurance deductible.
- (g) If the Tenant at any time fails to maintain any insurance it is required to maintain, then the City may obtain and maintain such insurance in such amounts and with such deductible amounts and for such periods of time as the City reasonably deems advisable. The Tenant will pay to the City, on demand, the City's cost of so doing.
- (h) Any disputes between the parties with respect to insurance under this section 7.1 shall be resolved by application of the dispute resolution provisions under section 8.9.

- 7.2 **Release** – Save and except for the negligence of the City, its employees and contractors, the tenant will and hereby releases the City and its elected officials, officers, employees, agents and others of the City, from and against any claim, cause of action, suit, demand, expenses, costs and legal fees which the Tenant may have, now or in the future, in relation to this Lease, the Lease Area or the Tenant's use or occupancy of the Lease Area.
- 7.3 **Indemnity**- Save and except for the negligence of the City, its employees and contractors, the Tenant will and hereby does indemnify and save harmless the City and its elected officials, officers, employees, agents and others of the City from any and all liabilities, damages, costs, claims, suits or actions whatsoever in connection with or arising from:
- (a) any breach of any obligation set forth in this Lease to be observed or performed by the Tenant;
  - (b) any of the perils against which the Tenant shall have insured or pursuant to the terms of this Lease is obligated to insure;
  - (c) any act, omission, or negligence of the Tenant, its members, officers, directors, employees, agents, contractors, subtenants, licensees, invitees or others for whom it is responsible;
  - (d) any damage to property occasioned by the Tenant's use and occupation of the Lease Area or any injury to person or persons, including death, resulting at any time from the Tenant's use and occupation of the Lease Area; or
  - (e) the granting of the Lease herein and the Tenant's exercise of its rights under the Lease.
- 7.4 **Survival of Indemnity and Release**- The indemnities and release contained in this Lease will survive the expiration or earlier termination of the Term.

## **ARTICLE 8- DEFAULT AND DISPUTE RESOLUTION**

- 8.1 **Notice of Default**- If the Tenant defaults in the payment of any money payable under this Lease or fails to observe, comply with or perform any of its covenants, conditions, agreements or obligation under this Lease, 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 60 days of the notice, 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 Lease Area insured or where the Lease Area remains vacant or unoccupied or not used for the purposes herein permitted for 30 consecutive days or more.
- 8.2 **City's Right to Perform** – If the Tenant fails to rectify or cure a default within the time and *in* the manner specified in section 8.1 and if the default is one that can be rectified or cured by the City, the City may, without further notice to the Tenant, take all steps considered in its sole discretion necessary to rectify or cure the default and all costs of doing so, including the cost of retaining professional advisors, shall be payable

immediately by the Tenant as additional Rent. Nothing in this Lease obligates the City to rectify or cure any default of the Tenant but should the City choose to do so, the City shall not be liable to the Tenant for any act or omission in the course of rectifying or curing or attempting to rectify or cure any default.

- 8.3 Distress – If the Rent payable by the Tenant under this Lease is in arrears, the City or a person authorized in writing by the City may enter upon the Lease Area and seize and goods or chattels and may sell the same.
- 8.4 Provisos-Provided always and it is hereby agreed that the City may, without further notice to the Tenant, terminate this Lease and re-enter and take possession of the Lease Area if:
- (a) the Rent or any other amount due to the City hereunder is unpaid for 30 days after notice pursuant to section 8.1; or
  - (b) the Tenant fails to observe, comply with or perform any of its covenants, agreements or obligations herein and the failure is not rectified or cured by the Tenant within the time specified in section 8.1.

The Tenant will make no claim for compensation, in damages or otherwise, upon the lawful termination of this Lease under this section. If the City terminates this Lease, the City retains the right to proceed at law against the Tenant for all of the Rent and other loss or damage and costs.

- 8.5 Costs- If the Tenant defaults on this Lease, the Tenant will pay to the City the City's full costs including legal costs arising from the default, whether before action or otherwise and, at the option of the City, upon a solicitor and client basis.
- 8.6 Remedies Cumulative – The City's remedies in this Lease are cumulative and are in addition to any remedies of the City at law or in equity.
- 8.7 Dissolution- If an order is made, a resolution passed or a petition filed for the liquidation or winding up of the Tenant or of a receiver or receiver-manager is appointed to administer or carry on the Tenant's business or if the Tenant fails to maintain itself as a society under the *Societies Act*, then at the option of the City, the Rent and all outstanding levies and charges shall become immediately due and payable and this Lease shall immediately become forfeited and void and the City may re-enter and take possession of the Lease Area.
- 8.8 Bankruptcy- If this Lease is at any time seized or taken in execution or in attachment by any creditor of the Tenant, or if the Tenant should become insolvent or make any assignment for the benefit of creditors, or commit an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against the Tenant or the Tenant consents to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging the Tenant to be bankrupt under any law relating to bankruptcy and insolvency, then at the option of the City, the Rent and all outstanding levies and charges shall become immediately due and payable and this Lease shall immediately become forfeited and void and the City may re-enter and take possession of the Tenant.

- 8.9 Dispute Resolution – If the parties to this Lease are unable to agree on the interpretation or application of any provision in the Agreement, or are unable to resolve any other issue relating to this Lease, the parties agree to the following process in the order it is set out:
- (a) the party initiating the process will send written notice to the other party;
  - (b) the parties will promptly, diligently and in good faith take all reasonable measures to negotiate an acceptable resolution to the disagreement or dispute;
  - (c) if the parties are unable to negotiate a resolution within 30 days of the date the written notice was sent advising of the dispute, the parties may request the assistance of a skilled mediator agreed to by the parties within 30 days written notice of a request to appoint a mediator by any party, failing which the mediator will be appointed by the B.C. International Commercial Arbitration Centre ("BCICAC"), and unless the parties agree otherwise, this mediation will follow BCICAC rules and will terminate 30 days after the appointment of the mediator.
- 8.10 Cost Sharing for Mediator Process – Unless otherwise agreed by the parties or ordered by an arbitrator, each party will pay an equal share of the costs for the mediator process.

#### ARTICLE 9-GENERAL

- 9.1 Notice – Any notice, document or communication required or permitted to be given hereunder shall be in writing and shall be deemed to be satisfactory if and deemed to have occurred when:
- (a) sent by facsimile transmission or when delivered by hand, on the date of receipt; or
  - (b) mailed by prepaid registered mail, on the date received or on the fifth day after receipt of mailing by any Canada post office, whichever is earlier,
- PROVIDED the notice is sent to the party at the address and facsimile number provided herein or to whatever other address or facsimile number the City and Tenant may from time to time advise by written notice. If normal mail service is interrupted by strike, slowdown, Force majeure or other cause, then the party sending the notice, document or communication shall fax or deliver such notice, document or communication in order to ensure its prompt receipt.
- 9.2 Legal Costs -Each of the City and the Tenant is responsible for its own legal costs in relation to the preparation and negotiation of this Lease.
- 9.3 Own Cost- The Tenant shall perform all of its obligations, covenants and agreements under this Lease solely at its own cost.
- 9.4 Law to the Contrary -This Lease shall enure to the benefit of and be binding on the parties notwithstanding any rule of law or equity to the contrary.

- 9.5 Severance – If a court of competent jurisdiction holds any portion of this Lease invalid, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Lease.
- 9.6 Governing Law- This Lease shall be governed by and construed in accordance with the laws of the Province of British Columbia.
- 9.7 No Waiver- Waiver by the City of any default by the Tenant shall not be deemed to be a waiver of any subsequent default. A waiver is effective only if it is in writing.
- 9.8 References – 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,
- 9.9 Amendment- The Lease may not be modified or amended except by an instrument in writing signed by the City and the Tenant.
- 9.10 Remedies Not Exclusive- No remedy conferred upon or reserved to the City is exclusive of any other remedy herein or provided by law, but all such remedies shall be cumulative and may be exercised in any order or concurrently.
- 9.11 No Joint Venture- Nothing in this Lease shall constitute the Tenant as the agent, joint venture or partner of the City or give the Tenant any authority or power to bind the City in any way.
- 9.12 Charges on Title- The Tenant shall abide and observe all requirements and restrictions on the title to the Lease Area registered prior to the Commencement Date.
- 9.13 Assigning and Subletting- Except as expressly permitted in this Lease, the Tenant shall not assign this Lease in whole or in part and shall not sublet all or any part of the Lease Area without the Tenant obtaining the prior written consent of the City in each instance. In requesting the City's consent to an assignment, sublease, or license of the Lease Area, 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 licenses of the Lease Area on terms required by the City, including requirements for insurance and indemnities. No assignment by the Tenant will release the Tenant from its obligation to observe or perform the Tenant's obligations under this Lease.
- 9.14 Other Disposition – The City reserves the right to grant rights of way, easements, covenants and other dispositions of the Lease Area or any part of it in a manner consistent with this Lease and the Tenant shall execute any such document if requested by the City. The City shall make reasonable efforts to ensure that the activities of the Tenant are not impeded as a result of any grant under this section 9.14. For greater certainty, but without limiting the generality of the foregoing, a right of way, easement, covenant or other disposition is not inconsistent with this Lease if it does not charge the Lease Area.
- 9.15 Powers Preserved- Nothing in this Lease affects the right of the City to exercise its power within its jurisdiction.



- 9.16 Authority – The Tenant represents and warrants to the City that it has full authority to enter into this Lease 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 Lease on its behalf are authorized to bind the Tenant by their signatures.
- 9.17 Entire Lease- 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.
- 9.18 Time of Essence – Time is of the essence of this Lease.
- 9.19 Further Assurances – The parties shall execute and do all such further deeds, acts, things and assurances as may be reasonably required to carry out the intent of this Lease.
- 9.20 Covenants and Conditions- All of the provisions of this Lease 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.
- 9.21 No Abatement-The Tenant is not entitled to any abatement, reduction, or deduction from the Rent.
- 9.22 Estoppel Certificate – The Tenant will, upon request, execute and deliver a certificate certifying the current status of this Lease.
- 9.23 Registration- This Lease is not in registerable form and the Tenant may request that this be delivered in registerable form and registered against the Lands at the expense of the Tenant.
- 9.24 Enurement – This Lease shall enure to the benefit of and be binding upon the parties hereto and their respective successors.
- 9.25 No Derogation-Nothing contained or implied in this Lease will impair or affect the City's rights and powers in the exercise of its functions pursuant to the *Community Charter* or any other enactment, and all such powers and right may be fully exercised in relation to the Lease Area as if this Lease had not been entered into between the Tenant and the City. The Tenant acknowledges that fulfillment of the condition precedent set out in this Lease may require that the Council of the City adopt bylaws or issue permits and that the passage of said resolutions or adoption of said bylaws or issuance of said permits by the Council of the City are within its sole absolute discretion which is not any manner subject to the provisions hereof.
- 9.26 City's Conditions- This Lease and the City's obligations hereunder shall be subject to the approval of the City's municipal council and the City's compliance with all requirements under the *Community Charter* or any other enactment.
- 9.27 Counterparts - This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall together

constitute one and the same document. This Agreement may be executed and transmitted by electronic means and if so executed and transmitted this Agreement will be for all purposes as effective as if the parties had delivered an executed original Agreement.

AS EVIDENCE OF THEIR AGREEMENT TO BE BOUND BY THE ABOVE TERMS, THE CITY AND THE TENANT EACH HAVE EXECUTED THIS LEASE ON THE RESPECTIVE DATES WRITTEN BELOW:

**CITY OF COURTENAY**

by its authorized signatory:

Name:

Date:

**COMOX VALLEY TRANSITION SOCIETY**

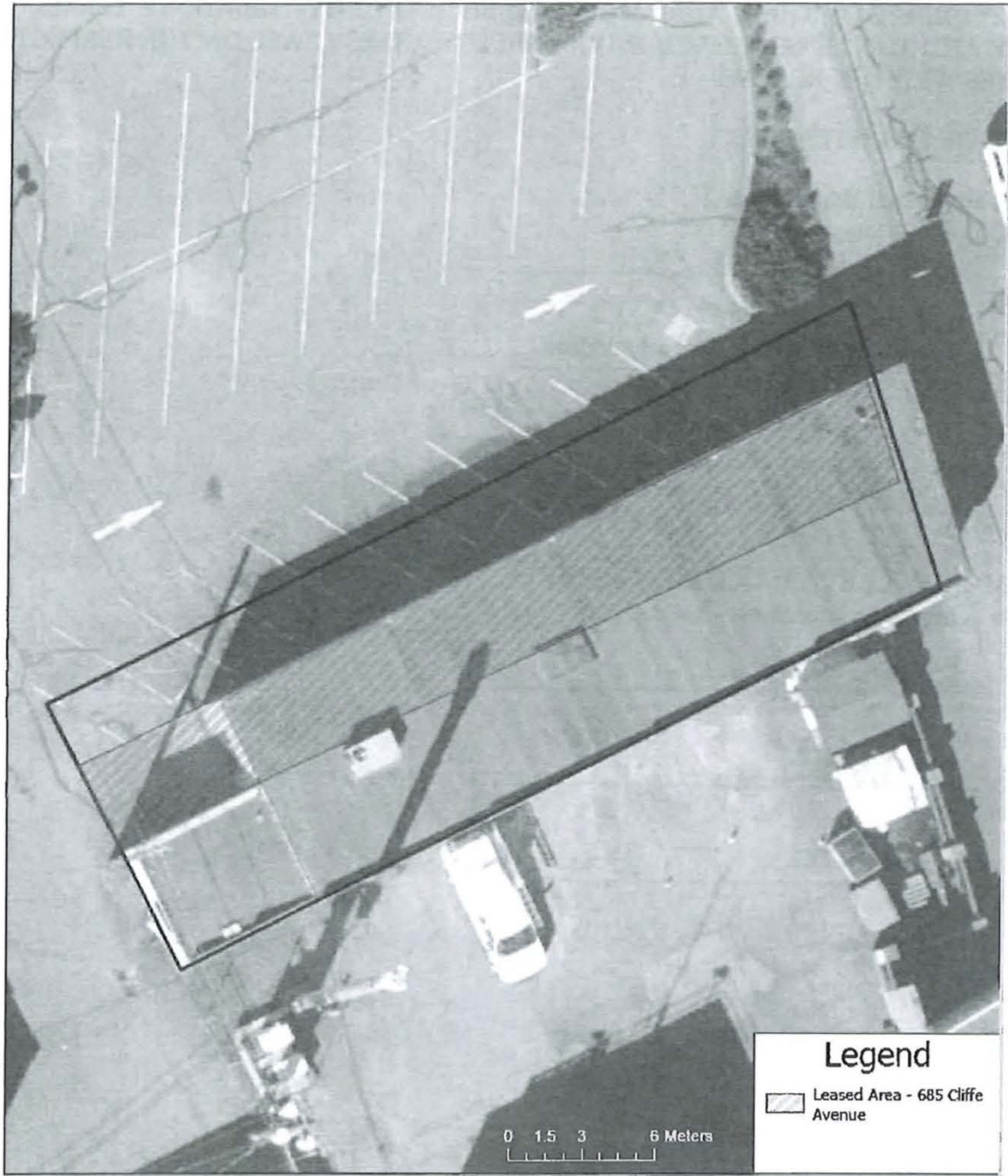
By its authorized signatory:

Name:

Date:



**SCHEDULE A**  
**LEASE AREA**

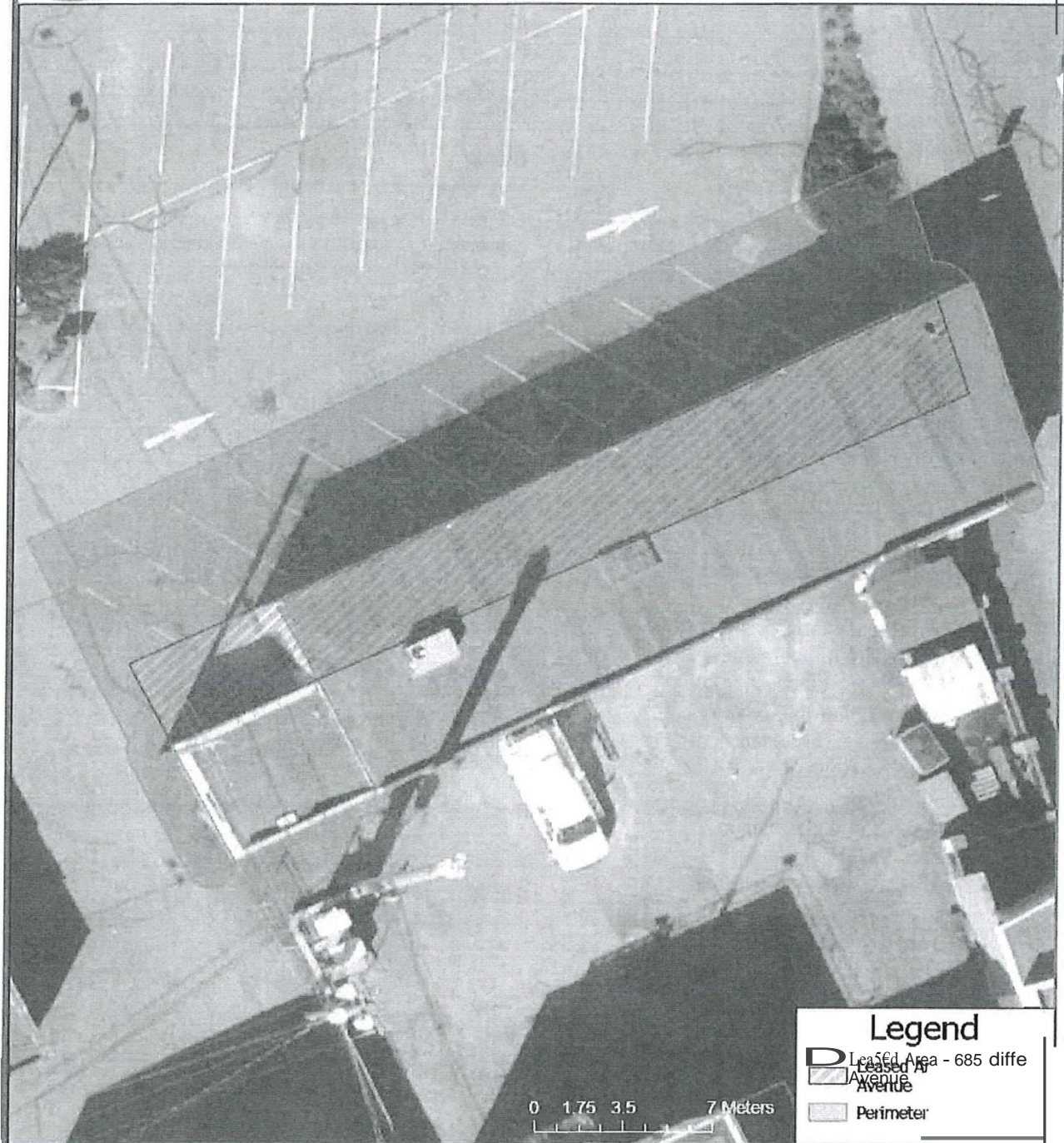


**SCHEDULED  
PERIMETER**



**PERIMETER**

N  
A



**SCHEDULE C**  
**OPERATION & MAINTENANCE COST RESPONSIBILITY**

	ITEM	CITY	TENANT (CVTS)
1	Heating	100%	
2	Water	100%	
3	Electricity	100%	
	Sewer	100%	
4	Preventative maintenance and repairs of HVAC	100%	
5	Garbage removal		100%
7	Sidewalk snow removal		100%
8	Window cleaning-interior		100%
9	Window cleaning-exterior		100%
10	Janitorial services & supplies		100%
11	Lamp & Tube replacement		100%
13	Security-system, monthly monitoring, and exterior patrol services	100%	
14	Furnishings and equipment replacement and repair		100%
15	Operational expenses: telephone, internet, cable TV, etc.		100%
16	Structural, building envelope, plumbing, gas and electrical system repairs and maintenance.	100%	100% if caused by tenant
17	Repairs and maintenance costs.		100%
18	Fire prevention systems and inspections	100%	
19	Perimeter waste cleanup for any waste disposed and abandoned materials generated by Tenant or its agents or invitees.		100%
20	Property taxes	100%	

