

LICENCE OF USE

THIS AGREEMENT made the ____ day of June 2022.

BETWEEN:

CITY OF COURTENAY
830 Cliffe Avenue
Courtenay, B.C. V9N 2J7

(the "City")

AND:

COMOX VALLEY REGIONAL DISTRICT
770 Harmston Avenue
Courtenay, B.C. V9J 0G8

(the "CVRD")

WHEREAS:

- A. Pursuant to section 35(1) of the *Community Charter*, but subject to the exceptions provided for in section 35(2), the soil and freehold of every highway within the boundaries of the City of Courtenay is vested in the City;
- B. The CVRD is constructing a fibre optic network to connect all of the Regional District's facilities, including water, recreation centres, waste and sewerage facilities, and in order to provide a fibre optic ducting system for the benefit of the local governments of the Comox Valley;
- C. The City has installed, within the highways identified in the plans and specifications attached to this Agreement as Schedule "A", a system of ducts, conduits and other works for the underground placement of fibre optic cables;
- D. The CVRD has requested that the City grant to the CVRD a licence to use the City's ducts, conduits and other City works for the placement and operation of the CVRD's fibre optic cables, and the City has agreed;
- E. The City and the CVRD wish to set out the terms and conditions under which the CVRD will have access to spaces within the City's ducts, conduits, and other City works, for the installation and maintenance of the CVRD's fibre optic cables;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the licence fee to be paid by the CVRD to the City and in consideration of the premises and covenants and agreements contained in this agreement (the "**Agreement**"), the City and the CVRD covenant and agree with each other as follows:

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words and phrases have the following meanings:

- (a) **“Applicable Laws”** means all applicable statutes, laws, regulations, bylaws, building codes, orders and requirements of any federal, provincial, municipal or other public authority (including the Workers’ Compensation Board) having jurisdiction at any time and from time to time in force;
- (b) **“City Conduit”** means the City’s ducts, conduits, and other works for the underground placement of fibre optic cables that are located with the portion of the City Highway shown highlighted on the Route Map attached to this Agreement as Schedule “A”;
- (c) **“City Highway”** means Cumberland Road, in the City of Courtenay, and any other City Highway shown highlighted on the Route Map attached to this Agreement as Schedule “A”;
- (d) **“City Land”** means the City Highway;
- (e) **“Contaminants”** means pollutants, contaminants, deleterious substances, underground or aboveground tanks, lead, asbestos, asbestos-containing materials, hazardous, corrosive, or toxic substances, hazardous waste, waste, polychlorinated biphenyls (“PCB”), PCB-containing equipment or materials, pesticides, defoliants, fungi (including mould and spores arising from fungi), or any other solid, liquid, gas, vapour, odour, heat, sound, vibration, radiation, or combination of any of them, which is now or hereafter prohibited, controlled, or regulated under Environmental Laws or may necessitate, invite or permit a government authority to require remedial or investigatory action under any Environmental Laws;
- (f) **“CVRD Facilities”** means the fibre optic cables, and other works and facilities which the CVRD wishes to install and maintain within the City Conduit, as depicted and described in the drawings, details and notes prepared by Wedler Engineering that are listed in Schedule “B” to this Agreement;
- (g) **“Environmental Laws”** means any statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, criteria, permits, codes of practice and other lawful requirements of any governmental authority, having jurisdiction now or hereafter in force relating in any way to the environment, environmental assessment, Contaminants (including the use, manufacture, handling, transportation, production, disposal, discharge, storage or emission of Contaminants), occupational health and safety, protection of any form of plant or animal life or transportation of dangerous goods, including the principles of common law and equity; and
- (h) **“Licence”** means the licence granted to the CVRD pursuant to section 2.1 of this Agreement.

1.2 In this Agreement:

- (a) a reference to a “Part” of this Agreement means the provisions of this Agreement that are contained under a separate subject heading, and a reference to a “section” or “sub-section” together with a number means the provisions of this Agreement that are contained within the section or sub-section that has the corresponding number;
- (b) a reference to an enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time, unless otherwise expressly provided;
- (c) any act, decision, determination, consideration, consent or exercise of discretion by a party, or other person, as provided for under this Agreement, must be performed, made, or exercised reasonably.

1.3 The following Schedules are attached to and form part of this Agreement:

Schedule A – City Conduit (Route Map)

Schedule B – CVRD Facilities (List of Wedler Engineering Drawings)

2.0 GRANT OF LICENCE

- 2.1 Subject to the terms and conditions herein, the City grants to the CVRD a non-exclusive right by way of licence to use the City Conduit throughout the Term for the purpose of installing, operating, repairing, replacing, and maintaining the CVRD Facilities.
- 2.2 The CVRD shall not use the City Conduit for any purpose other than as expressly permitted under this Agreement, without the advance written consent of the City.
- 2.3 In exercising its rights under this Agreement, the CVRD may from time to time enter onto the City Highway for the purpose of installing, operating, repairing, replacing, and maintaining the CVRD Facilities.
- 2.4 For greater certainty, no rights of use or licence are granted to the CVRD under this Agreement with respect to any of the communications or fibre optic conduits and ducts of the City other than the City Conduit identified on Schedule “A”.

3.0 NON-EXCLUSIVE USE

- 3.1 Subject to the rights granted to the CVRD pursuant to this Agreement, the City reserves to itself, and its agents, employees, contractors, subcontractors, and licensees, all rights to have full and complete access to and use of the City Conduit.
- 3.2 The rights granted under this Agreement do not constitute an interest in land.

4.0 LICENCE FEE

- 4.1 In consideration of the grant of the Licence the CVRD agrees to pay to the City a licence fee in the amount of Ten Dollars (\$10.00), payable at the commencement of the Licence.

5.0 EFFECTIVE PERIOD

5.1 The Licence granted under this Agreement will commence the 1st day of June, 2022 and will remain in effect until terminated in accordance with section 9 of this Agreement.

6.0 INSTALLATION

6.1 The CVRD must not install or place any of the CVRD Facilities within the City Conduit, unless:

- (a) prior to installation, the CVRD obtains all permits and approvals that are required under Applicable Laws for carrying out such work within the City Highway;
- (b) during the course of such installation, the CVRD complies with the requirements of all Applicable Laws.
- (c) on completion of installation, the CVRD delivers final as-built drawings of the CVRD Facilities to the City.

7.0 INSURANCE

7.1 The CVRD must take out and maintain a policy of comprehensive general liability insurance against claims for bodily injury, death or property damage arising out CVRD's exercise of its rights under this Agreement in the amount of not less than \$5,000,000.00 per occurrence, naming the City as an additional insured party thereto, and must provide the City with a certificate evidencing such insurance at the request of the City.

8.0 INDEMNIFICATION

8.1 The CVRD shall indemnify and save harmless the City from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees whatsoever which anyone has or may have against the City or which the City incurs as a result of any loss or damage or injury arising from the negligence or wilful misconduct of the CVRD, or its officers and employees, in exercising the CVRD's rights or performing the CVRD's obligations under this Agreement, or resulting from a breach of this Agreement on the part of the CVRD.

8.2 The City shall indemnify and save harmless the CVRD from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees whatsoever which anyone has or may have against the CVRD or which the CVRD incurs as a result of any loss or damage or injury arising from the negligence or wilful misconduct of the City, or its officers and employees, in exercising the City's rights or performing the City's obligations under this Agreement, or resulting from a breach of this Agreement on the part of the City.

9.0 DEFAULT AND TERMINATION

9.1 This Agreement, and the Licence granted under section 5.1, may be terminated by written agreement of the parties.

9.2 The City may terminate this Agreement, and the Licence granted under section 5.1, by providing written notice of termination, if the CVRD breaches or fails to comply with any of its obligations under this Agreement and fails to remedy such breach or failure within sixty (60) days of receiving written notice of such breach or failure from the City or, if such breach or failure reasonably requires more than sixty (60) days to remedy, the CVRD has not commenced diligently remedying such breach or failure within sixty (60) days of receipt of such notice, or thereafter fails to continue to diligently and expeditiously remedy such breach or failure.

9.3 The City may terminate this Agreement, and the Licence granted under section 5.1, at any time by providing the CVRD with twenty-four (24) months written notice of termination.

9.4 When this Agreement terminates, the CVRD shall remove the CVRD Facilities from the City Conduit.

10.0 REPAIRS AND MAINTENANCE

10.1 The City, at its own expense, shall be responsible for the maintenance and repair of the City Conduit.

10.2 The CVRD, at its own expense, shall be responsible for the maintenance and repair of the CVRD Facilities.

11.0 REPLACEMENT OF CITY CONDUIT

11.1 If at any time the City wishes to relocate, replace, or modify any portion of the City Conduit in which the CVRD Facilities are located, the City shall provide sixty (60) days notice to the CVRD prior to commencing such relocation, replacement or modification. The City shall ensure that the relocated, replaced, or modified City Conduit can accommodate the CVRD Facilities, and the terms of this Agreement and the Licence granted under this Agreement shall apply to the City Conduit, as relocated, replaced, or modified. For certainty, the replaced, relocated, or modified City Conduit must remain generally within the location shown on Schedule "A" to this Agreement, unless the CVRD agrees otherwise.

11.2 The cost of relocating, replacing, or modifying the City Conduit shall be paid by the City. The City shall perform or cause to perform such relocation, replacement, or modification of the City Conduit so as to minimize any interference with the use of the CVRD Facilities.

11.3 If the City gives notice of its intention to relocate, replace, or modify any portion of the City Conduit pursuant to section 11.1 of this Agreement, the cost of any necessary relocation, modification, or replacement of the CVRD Facilities shall be paid by the CVRD.

11.4 In the event of an emergency affecting the City Conduit, the City may remove, and then replace and reinstall, the CVRD Facilities or any portion thereof without prior notice to the CVRD, if prior notice is not practicable. Notice will be provided at the earliest possible time and the City shall not incur any liability for service interruptions in connection with any such emergency removal and replacement. Any such emergency removal and replacement of the CVRD Facilities shall be at the sole cost of the City.

12.0 COVENANTS OF THE CVRD

12.1 The CVRD covenants with the City:

- (a) to pay to the City the Licence Fee required to be paid by the CVRD in accordance with the terms of this Agreement;
- (a) at the CVRD's sole cost and expense, to comply with all Applicable Laws pertaining to the use of the City Conduit by the CVRD and entry onto the City Land for the purpose of installing, inspecting, maintaining, repairing and replacing the CVRD Facilities;
- (b) not to suffer or permit any builders' lien or claim of builders' lien to be filed or claimed against City Land by reason of work, labour, services or material supplied or claimed to have been supplied to the CVRD in connection with the use of the City Conduit, and if any such lien or claim is any time filed or claimed against City Land, the CVRD will cause a discharge of the lien or claim to be registered within 30 days after the filing of the lien or claim has come to the notice of the CVRD;
- (c) when exercising its rights under this Agreement, not to do anything on City Land which may be or may become a nuisance or danger to the City or to any other users of the City Land or to any works or structures or installations of any of them on, under or in the City Land;
- (d) not to do anything on the City Land which, in the City's opinion, acting reasonably, interferes with or disrupts the City's use of or operations on the City Land; and
- (e) to comply, and to cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the CVRD's entry onto and use of the City Land.

12.2 MISCELLANEOUS

12.3 **Time.** Time will be of the essence herein.

12.4 **Waiver.** No condoning, excusing or overlooking by either party of any default, breach or non-observance by the other of any covenant, proviso or condition herein contained will operate as a waiver of the non-defaulting party's rights hereunder in respect of any continuing or subsequent default, breach or non-observance, or so as to defeat or affect in any way the rights of the non-defaulting party herein in respect of any such continuing or subsequent default, breach or non-observance. No waiver will be inferred from or implied by anything done or omitted by the non-defaulting party save only expressed waiver in writing.

12.5 **Governing Law/Exclusive Jurisdiction.** This Agreement will be construed and governed in accordance with the laws of British Columbia, and the courts of British Columbia will have the exclusive jurisdiction to entertain and determine all claims and disputes arising out of or in any way connected with this Agreement.

- 12.6 **Notices.** Any notice, demand, request or other instrument (each herein called a “**Notice**”) which may be or is required to be given under this Agreement, will be in writing and delivered in person, by a reputable overnight courier which keeps receipts of delivery, or sent by electronic mail or mail (postage prepaid) and will be addressed:

if to the City:

830 Cliffe Avenue
Courtenay, B.C. V9N 2J7

Attention:

Email:

if to the CVRD:

770 Harmston Avenue
Courtenay, B.C. V9J 0G8

Attention:

Email:

Any such Notice will be conclusively deemed to have been given or made on the day upon which such Notice is delivered or transmitted by electronic mail or if mailed then on the fifth business day following the date of the mailing unless there is between the day of mailing and actual receipt a mail strike or other labour dispute which adversely affects mail service, in which case the party giving the Notice will deliver personally such Notice or transmit such Notice by electronic mail. Any notice given by electronic mail must also be given in any other manner permitted hereunder within three (3) days after the date of such electronic transmission.

Either party may at any time give Notice in writing to the other of any change of address of the party giving such Notice (or of any other person to receive a notice) and from and after the giving of such Notice, the address therein specified will be deemed to be the address of such party or person for the giving of Notices hereunder.

- 12.7 **Enurement and Assignment.** All rights and liabilities herein given to or imposed upon the respective parties hereto will extend to and bind the successors and permitted assigns of the parties. The CVRD will not be entitled to assign or sublicense its rights under this Agreement, nor part with or share occupation of the City Conduit or any part thereof without the prior written consent of the City, which consent will not be unreasonably withheld or delayed.
- 12.8 **No Partnership or Joint Venture.** Nothing herein contained will be construed or deemed to constitute or create a partnership or joint venture of or between the parties or to render one of them liable for the debts and obligations of the others.
- 12.9 **Counterparts.** This Agreement may be executed in any number of counterparts, with the same effect as if all the parties had signed the same document, and will become effective when one or more counterparts have been signed by all of the parties and delivered to each of the other parties. All counterparts will be construed together and

evidence only one agreement, which, notwithstanding the dates of execution of any counterparts, will be deemed to be dated the date first above written.

12.10 **Execution by Electronic Means.** This Agreement may be executed by the parties and transmitted by fax or other electronic means and if so executed and transmitted this Agreement will be as effective as if the parties had delivered an executed original Agreement.

12.11 **Severability.** If any provision of this Agreement or any part thereof is determined to be invalid for any reason it will be severable and severed from this Agreement and the remainder of this Agreement will be construed as if such invalid provision or part had been deleted from this Agreement.

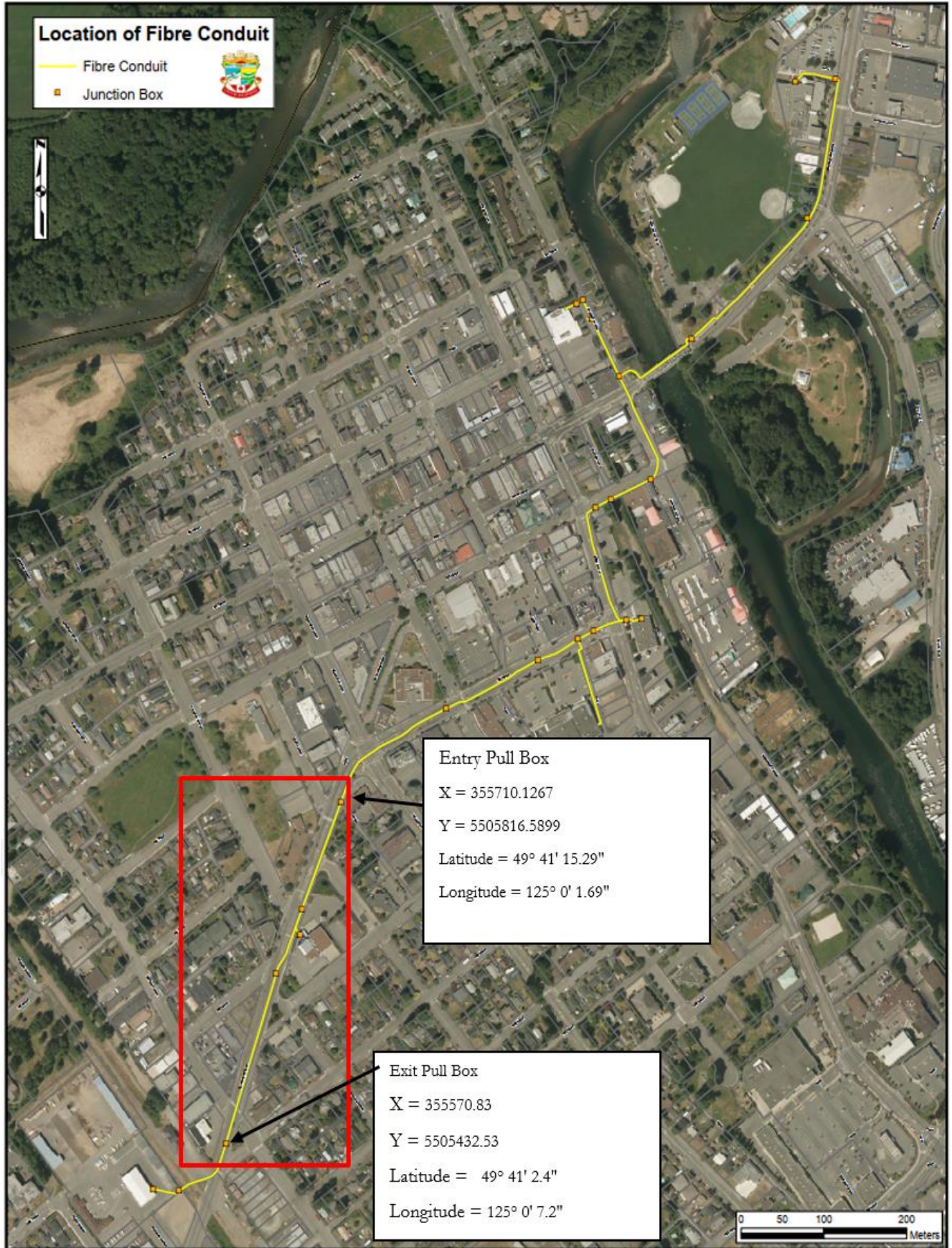
IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year first above written.

COMOX VALLEY REGIONAL DISTRICT)
 by its authorized signatory(ies):)
)
)
 _____)
 Chief:)
)
 _____)
 Corporate Secretary)

CITY OF COURTENAY)
 by its authorized signatory(ies):)
)
)
 _____)
 Director of Corporate Services)
)
)
)

SCHEDULE "A"

City Conduit (Route Map)



SCHEDULE "B"

CVRD Facilities (List of Wedler Engineering Drawings)

UNDER DEVELOPMENT - TO BE PROVIDED BY THE CVRD FOR INCLUSION IN
THE FINAL CONTRACT