



Memo

TO: Mayor and Council

SUBJECT: License of Use Agreement with BC Transit

DATE: November 17, 2022

FROM: Chief Administrative Officer

BACKGROUND

The Fire Department proposed the construction of a fire truck display building at the southeast corner of the fire hall lot on North Shore Road in early 2020. The building had to be constructed on the front and side property lines and which included a proposed sheltered bus stop causing the existing bus shelter to be relocated to another site. Council issued a Development Variance Permit on October 13th, 2020, and work on the building commenced soon after.

In the meantime, the Fire Chief made direct contact with BC Transit to ascertain if it could contribute to the building particularly as it was to contain a sheltered area for BC Transit passengers. An email response was received from Levi Timmermans on February 7th, 2021, which stated: *“Doug, looks like we found a way in which BC Transit would be able to partner with Lake Cowichan on this project for the transit related improvements. For a contribution we would need to have a (e.g. 10 year) licence established for the area used for transit purposes (overhang/bench - area) so that we can book the asset.”*

This began an email correspondence chain between Sarah Hill, Project Coordinator with BC Transit and me and questions were later raised as to whether BC Transit could contract directly with the Town without the involvement of the CVRD.

On November 2nd, 2022, a virtual meeting was held between representatives of BC Transit and the CVRD and Doug Knott and I to review a tripartite agreement that would see the transfer of \$28,537.50 from BC Transit to the Town of Lake Cowichan on receipt of an invoice from the Town. And further “that BC Transit shall invoice CVRD, for the local government partner’s share of eligible construction costs – equal to 20% of the total value of Shelter Improvements. CVRD shall deliver to BC Transit payment in full within thirty (30) days of receipt of such invoice. CVRD will then invoice Lake Cowichan for the same amount, which is to be paid by Lake Cowichan to CVRD within thirty (30 days) or receipt of such invoice.” The net contribution to the Town would therefore be \$28,537.50 less 20%. In return the Town will be responsible for maintaining the shelter improvements for 15 years.

CURRENT STATUS

The transit related improvements at the newly constructed and completed building at the fire hall location meets BC Transit shelter requirements.

Recommended Resolution

that the License of Use agreement with BC Transit and the Cowichan Valley Regional District be approved for signature by the Town's authorized signatories.



Joseph A. Fernandez

Attach.

LICENSE OF USE AGREEMENT

THIS AGREEMENT made the day of November 8, 2022.

BETWEEN:

COWICHAN VALLEY REGIONAL DISTRICT
175 Ingram Street
Duncan, BC V9L 1N8

(hereinafter referred to as "CVRD")

AND:

THE TOWN OF LAKE COWICHAN
39 South Shore Road, PO Box 860
Lake Cowichan, BC V0R 2G0

(hereinafter referred to as "Lake Cowichan")

AND:

BRITISH COLUMBIA TRANSIT
520 Gorge Road East
Victoria, BC V8W 2P3

(hereinafter referred to as "BC Transit")

GIVEN THAT:

- A. Lake Cowichan is the registered owner of Lot 1 Plan VIP77349 Section 6 Land District 47 (SITUATED IN COWICHAN LAKE DISTRICT) within the Town of Lake Cowichan, shown in Schedule "A" and known as #3 North Shore Road Lake Cowichan, BC, V0R 2G0 and hereafter named the "Lands".
- B. Lake Cowichan is located within the CVRD, and BC Transit provides transit services to all regions within the CVRD.
- C. Lake Cowichan has agreed to build a bus shelter for BC Transit bus passengers as shown on the photograph and sketch plan attached to this Agreement as Schedule "A" ("the License Area");
- D. The parties wish to enter into this Agreement setting out the rights and responsibilities of the parties for the use and maintenance of the Lands.

THIS AGREEMENT IS EVIDENCE that CVRD, Lake Cowichan and BC Transit agree with each other as follows:

- i. Lake Cowichan hereby grants a License to BC Transit ("License") of the License Area, for transit users and to provide a bus shelter.
- ii. Lake Cowichan agrees that this License is only a non-exclusive

contractual License on the terms of this Agreement, and that the License and this Agreement do not create any property rights or interest in the License Area.

- iii. Lake Cowichan is responsible for any work required to prepare the license area for shelter installation. This includes removal of existing shelters, movement of posts or garbage cans, shelter over-hang, construction of any civil infrastructure such as, but not limited to, bus pads or engineered foundations, pullouts, sidewalk construction, and/or electrical grid connections, permits, where required, herein as "Shelter Improvements".

TERM OF LICENSE

1. The License is valid beginning on July 16, 2021 and terminating at midnight on July 16, 2035 ("Term"). Upon the close of the Term, BC Transit will sell the Shelter Improvements in the License Area to Lake Cowichan for \$1.00.

RESPONSIBILITY FOR AND COST OF SHELTER IMPROVEMENTS AND MAINTENANCE OF WORKS

2. Lake Cowichan agrees that it is responsible for Shelter Improvements. Lake Cowichan is to invoice BC Transit the cost of Shelter Improvements for \$28,537.50. BC Transit will pay Lake Cowichan this amount within thirty (30 days) of receipt of such invoice.
3. Lake Cowichan agrees that it is responsible for the care, cleaning, operation and maintenance of the License Area, and provide these services in a good and workmanlike manner.

BC TRANSIT TO INVOICE

4. BC Transit shall invoice CVRD, for the local government partner's share of eligible construction costs – equal to 20% of the total value of Shelter Improvements. CVRD shall deliver to BC Transit payment in full within thirty (30) days of receipt of such invoice. CVRD will then invoice Lake Cowichan for the same amount, which is to be paid by Lake Cowichan to CVRD within thirty (30 days) or receipt of such invoice.

RESPONSIBILITY FOR WORKS AND PERSONAL PROPERTY

5. Lake Cowichan agrees that it has sole responsibility for loss or damage to any improvements to the License Area.

RESPONSIBILITY FOR PERSONAL INJURY AND DEATH

6. Lake Cowichan agrees that it bears the sole risk and responsibility for, and releases and indemnifies and holds harmless BC Transit and CVRD (including their directors, officers, employees, agents and contractors) from and against any actions, causes of actions, claims, liability, loss, damages, costs (including legal costs) or expenses arising out of use and occupancy of the property and other loss or damage, for personal injury or death suffered by anyone on the License Area, arising out of or in any way connected with the use or occupation of the

License Area by BC Transit and CVRD or the public or to exercise by BC Transit of its rights under this Agreement. This indemnity does not apply to the extent of any negligence or other wrong doing by BC Transit and CVRD, including their directors, officers, employees, agents and contractors. This section and the indemnity it creates survive any termination of this agreement.

REMOVAL OF WORKS

7. Lake Cowichan may upon any termination of this Agreement remove improvements or fixtures, including any additional improvements, from the License Area and restore the License Area to its original condition prior to the installation of the improvements, at the sole cost of the Lake Cowichan.

NOTICE

8. Where any notice, request, direction, or other communication (each, a "notice") is required to be given or made by a party under this Agreement, it shall be in writing and is effective if delivered in person, sent by registered mail, addressed to the party for whom it is intended at the address set forth above in this Agreement. Any notice shall be deemed to have been given if delivered in person, when delivered; by registered mail, when the postal receipt is acknowledged by the other party; and by facsimile, when transmitted. The address of a party may be changed by notice in the manner set out in this provision.

ASSIGNMENT

9. BC Transit may not assign this Agreement or sub-license any rights under it without the prior written consent of Lake Cowichan.

SEVERANCE

10. If any term of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that term is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that term.

ENTIRE AGREEMENT

11. This is the entire Agreement between BC Transit, Lake Cowichan and CVRD concerning its subject and it may be changed or otherwise affected by an instrument executed by BC Transit, Lake Cowichan and CVRD.

AUTHORITY

12. BC Transit, CVRD, and Lake Cowichan represents and warrants that it has the authority and capacity to enter into this Agreement and perform the obligations it creates.

EXECUTION

13. As evidence of their agreement to be bound by the above terms, the parties have caused this Agreement to be executed and delivered under seal by their

authorized signatories on the dates set out above.

TOWN OF LAKE COWICHAN

by its authorized signatory:

Print name/title:

Print name/title:

COWICHAN VALLEY REGIONAL DISTRICT

by its authorized signatory:

Print name/title:

Print name/title:

BC TRANSIT

by its authorized signatories:

Print name/title:

Print name/title:

SCHEDULE "A"

