



## Licence of Occupation

This AGREEMENT made this \_\_\_\_ day of January, 2023

### BETWEEN:

**The Corporation of the District of North Cowichan**  
7030 Trans-Canada Highway  
Duncan, BC V9L 6A1

### AND:

**The City of Duncan**  
200 Craig Street,  
Duncan, BC V9L 1W3

(collectively, "the Owners")

### AND:

**Cowichan Housing Association**  
102-225 Canada Avenue  
Duncan, BC V9L 1T6

("Licensee")

### Definitions

#### 1. In this licence:

- (a) **"land"** means 2687 James Street (west end of the Cowichan Community Centre parking lot adjacent to University Way), legally described as Lot 3, Plan VIP31554, (PID: 001-154-885);
- (b) **"licensed area"** means the part of the land outlined in heavy black on the attached Schedule A;

### Grant of Licence and Term

- 2. The Owners grant the Licensee, which includes its employees, members, customers, guests, contractors and agents, a licence of occupation (the **licence**) to occupy the licensed area, on the terms below, for a six month term, from January 18, 2023 through July 17, 2023 (the **licence term**).
- 2.1 A further six (6) month renewal of the licence term may be requested by the Licensee in accordance with section 40 of this Licence.

### Licence Fee

- 3. In consideration for granting the licence, the Licensee agrees to pay the Owners a licence fee of \$10.

4. This section intentionally omitted.

#### **Use of Licensed Area**

5. The Licensee may only use the licensed area for the purpose of a semi-permanent daytime shelter ("A place to be" project) to provide basic warming and cooling spaces for people experiencing homelessness, in accordance with the conditions of use set out in Schedule B.
6. The Licensee has inspected the licensed area and acknowledges that it is suitable for the stated use.

#### **Nature of Licence**

7. The Licensee acknowledges that this agreement grants a licence only. It does not give, and must not be deemed to give, any other interest in the licensed area.
8. This section intentionally omitted.

#### **Dealings with Licence**

9. The Licensee must not assign the licence, or sub-licence all or part of the licensed area, without the Owners's prior written consent. The Owners may withhold consent without reason.
10. Assigning the licence does not release the Licensee from its obligations under the licence.
11. The Licensee must not encumber its interest in the licence.
12. The Licensee must not allow another person except its (a) agents, employees, or guests, and (b) assignees and sub-licensees whom the Owners permits, to occupy all or part of the licensed area.
13. The Licensee must ensure that its assignees and sub-licensees, if any, comply with the terms of the licence.
14. The Licensee and its agents, employees, assignees, and sub-licensees are not, and must not be deemed to be, agents or employees of The Owners.

#### **Reentry into Licensed Area**

15. The Licensee must allow the Owners and persons whom The Owners authorizes to enter the licensed area at any time on reasonable notice and for any reason.

#### **Maintenance of Licensed Area**

16. The Licensee accepts responsibility for the licensed area's welfare and agrees to keep the licensed area clean, tidy, and in good repair.

#### **Repairs to Licensed Area**

17. The Licensee must repair, at its expense, damage to the licensed area that results from the use of the licensed area by the Licensee or a person whom the Licensee allows to enter it.

## Compliance with Enactments and Permits

18. The Licensee must, during the term, comply with applicable federal, provincial and local government enactments and permits, including laws, regulations, bylaws, orders, licences, and approvals. This also includes, but is not limited to, requirements set out in North Cowichan's Respectful Spaces Bylaw, 2020.
19. Without limitation, the Licensee must comply, during the term, with applicable enactments and permits relating to (a) building, (b) fire protection and control, (c) the environment.
20. The Licensee must show the Owners on demand that the Licensee's permits are valid.

## Taxes

21. The Licensee must pay, on time, all taxes imposed during the licence on the Licensee's activity, income, and property, and the Licensee must pay all WorkSafeBC assessments.

## Liens

22. The Licensee must promptly remove liens against all or part of the licensed area that arise from work done for, materials supplied to, and obligations incurred by the Licensee and comply at all times with the *Builders Lien Act* (British Columbia).

## Utilities

23. The Licensee must pay, on time, charges that the Licensee incurs during the licence for utilities supplied to the land.

## Changes and Improvements to Licensed Area

24. If a provincial or federal enactment or a change to a provincial or federal enactment requires changing the licensed area or part of the licensed area, then the Licensee must (a) notify the Owners, and (b) change the licensed area or part of the licensed area (as the case may be) at the Licensee's expense. Otherwise, the Licensee must not change or improve the licensed area, or part of the licensed area, without the Owners' prior written consent.

## Nuisances

25. The Licensee must not do or have done anything in the licensed area that is, in the Owners' opinion, a nuisance.

## Environmental Protection

26. The Licensee must not store or have stored, treat or have treated, or dispose or have disposed, hazardous substances in the licensed area. A **hazardous substance** means a contaminant, dangerous good, hazardous substance, pollutant, special waste, or toxic substance, or waste, as defined under the federal *Canadian Environmental Protection Act*, Provincial *Environmental Management Act*, or other applicable legislation pertaining to the environment (**environmental laws**).

27. The Licensee must notify the Owners immediately if (a) a hazardous substance is released in the licensed area, (b) a government agency notifies the Licensee that the Licensee is not complying with an environmental law, (c) the Licensee is notified of a third-party claim relating to the environment, or (d) the Licensee learns that a hazardous substance is present in the licensed area.
28. The Licensee must investigate, and report, as the Owners direct, if the Owners reasonably suspects that the Licensee's occupation and use of the licensed area might be introducing, or increasing the presence of, hazardous substances in the licensed area.
29. The Licensee shall take all reasonable care not to introduce any hazardous substance to the licensed area and areas adjacent to it. If the Licensee's use and occupation of the licensed area introduces, or increases the presence of, hazardous substances in the licensed area, then the Licensee must undertake remediation (as defined in the *Environmental Management Act*) at its expense.

### **Indemnity**

30. The Licensee agrees to indemnify and save harmless the Owners from and against any and all claims, losses, damages, demands, causes of action, costs and expenses arising out of or connected directly or indirectly with the Licensee's occupation and use of the licensed area, or breaking a term of the licence.

### **Insurance**

31. The Licensee must take out, and maintain during the licence, comprehensive general liability insurance of at least Five Million Dollars (\$5,000,000), on terms, and from an insurer, acceptable to The Owners.
32. The Licensee's comprehensive general liability insurance policy must (a) name the Owners as additional insureds, (b) state that it must not be cancelled, allowed to expire, or materially changed, unless the insurer notifies the Owners in writing at least 30 days in advance, and (c) state that the Owners' insurance claims must be paid before any other.
33. The Licensee must supply the Owners with proofs of insurance when this licence is signed, on renewal of the licence, and on demand.

### **Release**

34. The Licensee releases and forever discharges the Owners from any and all claims arising from (a) breach of any provisions of this licence by the Licensee, (b) the Licensee's occupation and use of the licensed area, and (c) the Owners exercising its rights under the licence, unless such claims are caused by the wilful misconduct or negligence of the Owners.

### **Curtailment or Temporary Suspension of Use**

35. If The Owners believes that circumstances beyond the Owners' control require curtailing or temporarily suspending the Licensee's use of the licensed area, then the Licensee must curtail or temporarily suspend (as the case may be) its use of the licensed area as the Owners directs.

## **Default**

- 36.** If the Licensee does not fulfill an obligation under the licence, then the Owners may fulfill the obligation for the Licensee. If the Owners incurs costs to fulfill an obligation under the licence that the Licensee does not fulfill, then the Owners may recover its costs of fulfilling the obligation from the Licensee on demand.

## **Cancellation or Forfeiture of Licence**

- 37.** The Owners or the Licensee may cancel the licence for any reason with at least 30 days written notice.
- 38.** If the Licensee does not fulfill an obligation under the licence, then the Owners may, rather than fulfill the obligation for the Licensee, cancel the licence in writing, effective 30 days after giving notice, unless the Licensee fulfills the obligation in that time.
- 39.** If a creditor of the Licensee's tries to seize the licence, or take the licence in execution or attachment, or (b) the Licensee becomes bankrupt or insolvent, then the Licensee forfeits the licence, and improvements to the licensed area, to the Owners.

## **Renewal and End of Licence**

- 40.** The Licensee may request a further six (6) month renewal of the Licence term by providing written notice to the Owners at least 30 days before the licence term. For renewal to be considered, Licensee must provide the Owners with a written assessment of its "A place to be" daytime shelter operations during the term, including use data, successes and challenges, and anticipated use, successes and challenge for the following six months should the licence be renewed. The Owners may withhold consent to renew for any reason, and renewal approval will be conditional on related funding and administrative agreements also being approved for extension.
- 41.** The Licensee must give up possession of the licensed area when the licence term ends, unless a renewal or extension has been granted.
- 42.** When the licence term ends, the Licensee must (a) remove, at its expense, its property from the licensed area, (b) leave the licensed area clean, tidy, and in good repair, and (c) remove, at its expense, improvements to the licensed area as the Owners directs.

## Notices

**43.** Any notice, request, consent or other instrument which may be required to be given under this Licence must be given in writing and must be delivered in person, mail or email addressed to the respective addresses set out below, or to such other address either of the parties may designate in writing:

(a) Owners: District of North Cowichan  
7030 Trans-Canada Highway, Duncan, BC V9L 6A1  
Email: [ted.swabey@northcowichan.ca](mailto:ted.swabey@northcowichan.ca); [agreements@northcowichan.ca](mailto:agreements@northcowichan.ca)

City of Duncan  
200 Craig Street, Duncan, BC V9L 1W3  
Email: [peter@duncan.ca](mailto:peter@duncan.ca); [paige@duncan.ca](mailto:paige@duncan.ca)

(b) Licensee: Cowichan Housing Association  
102-225 Canada Avenue, Duncan, BC V9L 1T6  
Attention: Shelley Cook, Executive Director  
Email: [shelley.cook@cowichanhousing.com](mailto:shelley.cook@cowichanhousing.com)

**44.** Any notice, request, consent or other instrument must be deemed to have been given on the day upon which it is delivered in person, the business day email is confirmed by the recipient has having been received, or if mailed then on the 5<sup>th</sup> business day following the date of mailing.

## Overholding

**45.** This section intentionally omitted.

## Dispute Resolution

**46.** The Owners and the Licensee agree to try to resolve disputes that arise from or in connection with this licence as efficiently and cost-effectively as possible.

**47.** The Owners and the Licensee agree to try to resolve disputes by negotiation. To aid negotiation, The Owners and the Licensee agree to fully and frankly disclose relevant information.

**48.** The Owners and the Licensee agree that if a dispute is unresolved 30 days after negotiation begins, then they must try to resolve the dispute by negotiation (a) mediated by a neutral person whom the British Columbia International Commercial Arbitration Centre (B.C.I.C.A.C.) appoints, and (b) administered under B.C.I.C.A.C.'s Mediation Rules.

**49.** The Owners and the Licensee agree that if a dispute is unresolved 30 days after B.C.I.C.A.C. appoints a mediator, then they must submit the dispute to arbitration administered by B.C.I.C.A.C. The place of arbitration must be The Owners.

**Freedom of Information**

50. The Licensee acknowledges that the *Freedom of Information and Protection of Privacy Act* might require disclosing this licence, and records relating to this licence that are in the Owners’ custody or control.

As evidence of their agreement to be bound by this Licence, the parties have signed this Licence below:

**Cowichan Housing Association:**

\_\_\_\_\_  
Signature of Authorized Signatory

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

**The Corporation of the District of  
The Owners:**

\_\_\_\_\_  
Rob Douglas, Mayor

\_\_\_\_\_  
Michelle Martineau, Corporate  
Officer

\_\_\_\_\_  
Date

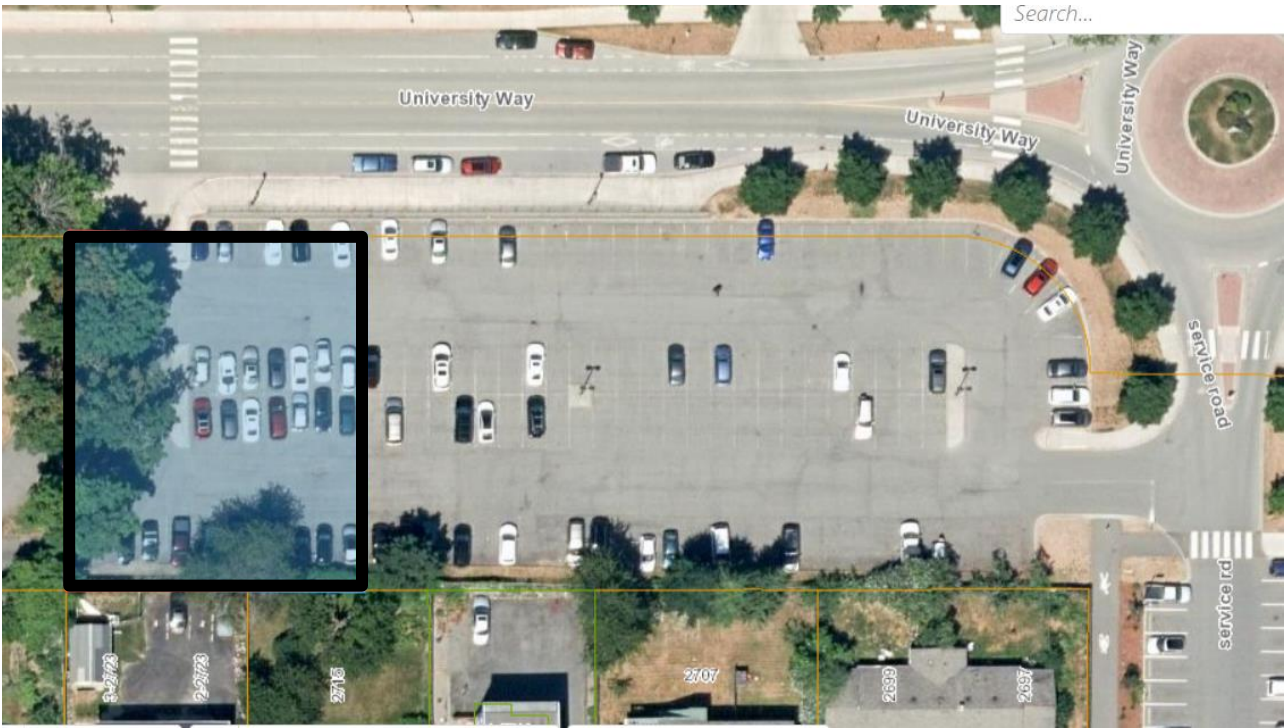
**The City of Duncan:**

\_\_\_\_\_  
Michelle Staples, Mayor

\_\_\_\_\_  
Paige MacWilliam, Corporate Officer

\_\_\_\_\_  
Date

**Schedule A**  
Licensed Area





## **Schedule B**

### **Conditions of Use**

The Licensee agrees that its use of the Licensed Area must include, at its sole cost, the following:

1. procurement, installation, maintenance, operation & end of term removal of
  - a) outdoor shelter structures;
  - b) fencing;
  - c) picnic tables;
  - d) two (2) porta potties;
  - e) wash station, including water delivery, as needed;
  - f) heaters during cold weather, including fuel;
  - g) fans or air conditioners during warm weather, including power;
  - h) lighting; and
  - i) other site amenities as agreed to by the parties
2. three (3) on-site workers (between 8:30 am – 4:30 pm, seven days per week);
3. security personnel (seven days per week, minimum 8 hours per day);
4. snow and ice removal;
5. garbage, recycling and compost removal;
6. 24 hour security services for the Licensed Area, if required by the Owners
7. payment to independent contractors hired to complete installation, maintenance, repair and decommissioning work for the Licensee, as required.