



Governance and Priorities Committee Report For the Meeting of July 16, 2015

To: Governance and Priorities Committee **Date:** June 17, 2015
From: Paul Bruce, Fire Chief
Subject: Property Use Agreement with Department of National Defence for USAR Training

Executive Summary

In September 2013, the City of Victoria and the Minister of National Defence signed a facility use agreement that allows the City of Victoria to utilize the Urban Search and Rescue (USAR) training facilities at Canadian Forces Base Esquimalt. That agreement expires on August 31, 2015.

Council is being asked to enter into a further three-year agreement with the Minister of National Defence to allow the City of Victoria to continue to use the urban search and rescue training facilities at CFB Esquimalt. Council approval of this agreement is necessary because of the indemnity provision contained within the agreement.

Recommendation

That Council authorize the Mayor and the Corporate Administrator to execute the agreement, generally in accordance with *Appendix A – Agreement for Temporary Use of Federal Real Property* with the Minister of National Defence for the use of the CFB Esquimalt Urban Search and Rescue facilities by staff and volunteers of the City of Victoria.

Respectfully submitted,

Handwritten signature of Rob Johns.

Rob Johns
Emergency Coordinator

Handwritten signature of Paul Bruce.

Paul Bruce
Fire Chief

Report accepted and recommended by the City Manager:

Date:

Handwritten signature of the City Manager.
June 29, 2015

List of Attachments:

- Appendix A – Agreement for Temporary Use of Federal Real Property

Purpose

The purpose of this report is to seek Council support for a further three-year agreement between the City of Victoria and the Minister of National Defence that allows for the use of the CFB Esquimalt Urban Search and Rescue (USAR) training facility located at Work Point. This agreement indemnifies and saves harmless the Department of National Defence from liability arising from the use of the facilities by staff and volunteers of the City of Victoria.

Background

The City of Victoria has a one in three probability of a damaging earthquake occurring within the next fifty years. Many buildings within the City of Victoria are vulnerable to the effects of a moderate or large damaging earthquake. In order to better prepare for any required urban search and rescue the City of Victoria operates a volunteer-based urban search and rescue team.

CFB Esquimalt operates a unique urban search and rescue training facility. The City of Victoria does not have a similar facility within its properties.

Issues & Analysis

The primary purpose of this agreement is to indemnify the Department of National Defence if a City of Victoria employee or volunteer is hurt while using the urban search and rescue facility. This agreement stipulates that the City of Victoria provides proof of insurance for Public Liability coverage, with Her Majesty the Queen in the Right of Canada (Canada) as an Additional Insured.

Options & Impacts

The City of Victoria USAR team has used this facility for almost two years. In that time, this use has greatly assisted the team in its development. If Council should choose to not renew this agreement the City of Victoria urban search and rescue team will not have access to this training facility. Existing City of Victoria facilities do not currently provide the same opportunities for training. The USAR team will continue to conduct their training on City of Victoria property located at the Public Works yard, albeit with a reduced capability.

Recommendation

That Council authorize the Mayor and the Corporate Administrator to execute the agreement, generally in accordance with *Appendix A – Agreement for Temporary Use of Federal Real Property* with the Minister of National Defence for the use of the CFB Esquimalt Urban Search and Rescue facilities by staff and volunteers of the City of Victoria.

Appendix A

RES FILE No. 7825 V46 TD 12292

AGREEMENT FOR TEMPORARY USE OF FEDERAL REAL PROPERTY

THIS AGREEMENT, dated the _____ day of _____ 2015

BETWEEN:

HER MAJESTY THE QUEEN in right of Canada, represented herein by the Minister of National Defence, (hereinafter referred to as “the Minister”)
OF THE FIRST PART

AND:

THE CORPORATION OF THE CITY OF VICTORIA, 1 Centennial Square,
Victoria British Columbia V8W 1P6 as represented by Victoria Emergency Management Agency (hereinafter referred to as the “Applicant”)
OF THE SECOND PART.

WHEREAS the Minister is the owner of a Defence establishment known as Workpoint, Canadian Forces Base Esquimalt, located in the Township of Esquimalt, in the Province of British Columbia.

WHEREAS the Applicant has requested that the Minister provide access to and use of the following property:

Permission to access Workpoint site on a “non-exclusive” basis for the purpose of training the Applicant’s staff and volunteers, including in particular permission to use land and the Urban Search and Rescue (USAR) training facility and props. The Workpoint site is hereinafter referred to as “the Property”.

NOW THEREFORE the parties mutually covenant and agree with each other as follows:

1.0 THE MINISTER’S COVENANTS

- 1.1 The Minister hereby agrees to provide the Applicant with the access to and use of the Property by means of a Licence only; this Agreement does not create an exclusive use or interest in land.
- 1.2 The Minister does not assume any responsibility for, nor guarantee the quality of the Property provided or the results thereof.
- 1.3 The Minister provides the Property “AS-IS”.

2.0 TERM

- 2.1 The Agreement shall be for a term of 3 years commencing on 1 September 2015 and ending on 31 August 2018.
- 2.2 The Applicant may use the Property on an “as needed basis” but will provide the Minister with 2 weeks written notice to request the dates the Applicant requires.

3.0 GENERAL TERMS

- 3.1 The Applicant acknowledges that the aforesaid permission exists only by agreement of the Minister and not by any other right or title whatsoever.
- 3.2 The Applicant accepts the property “AS FOUND”.
- 3.3 The Applicant will not assign this Agreement to third party without the written consent of the Minister.
- 3.4 The Applicant shall provide their own materials, tools, and equipment for their training purposes.

4.0 CONDITION OF THE PROPERTY

- 4.1 The Applicant hereby agrees to use the Property for the purpose of conducting search and rescue training and for no other purpose whatsoever.
- 4.2 The Applicant will ensure that any material brought into the Property is removed, the garbage has been picked up, and that Property is left in a condition satisfactory to the Minister, provided the Applicant will not be required to leave the Property in a condition that is better than that found by the Applicant immediately prior to the Applicant’s use of the Property.
- 4.3 The Applicant understands that all military training/activities takes precedence over the use of the Property and that other activities may take place in and around the Property while the Applicant is using the Property.
- 4.4 The Applicant understands that if Canadian Forces Base Esquimalt is required to heighten the level of security for Defence purposes, access to the Property may be restricted indefinitely.
- 4.5 The Applicant shall abide by all military regulations, orders and instructions, including those issued by the Minister or DND site representative placed in charge of the Property.
- 4.6 The Applicant shall comply with all Federal, Provincial and Municipal laws, instructions and or regulations applicable to the use of the Property by the Applicant.

4.7 The Applicant is responsible for the safe care and custody of the Property while being used by the Applicant, reasonable wear and tear excepted. The Applicant will replace any property, which is broken, damaged or lost by the Applicant by replacements of a similar nature and of equal value that are acceptable to the Minister, or at the option of the Minister, pay compensation in respect of such loss, breakage or damage.

5.0 LIABILITY

5.1 The Applicant shall indemnify and save harmless Her Majesty, Her Officers, servants and employees, and members of Her Armed Forces, Her and their heirs, executors, administrators, successors and assigns, of and from all injury, damage, actions, causes of action, claims and demands of whatsoever nature which may result or be brought by reason of any act of default of the Applicant, the Applicant's agents or employees, or on account of any damage to the property or equipment of the Applicant, or in connection with any loss, damage or injury in any manner based upon, arising out of, or incidental to the enjoyment by the Applicant of the use of the Property.

5.2 The Applicant agrees that the Minister shall not be liable for any injury or damage to persons or property resulting from any act of God, acts of the Queen's enemies, strikes, lockouts, earthquakes, fire, explosion, gas, electricity, water, rain, snow or leaks from the street or subsurface or from any other place or by reason of the interruption of any public utility or service or for injury or damage by any cause of whatsoever nature, provided such injury or damage is not caused by the negligence of the Minister, its servant or agents.

5.3 Prior to execution of this agreement, the Applicant will show proof of insurance from their insurers for Public Liability coverage in the amount of \$5,000,000.00 (Five Million Dollars) showing that Her Majesty the Queen in the Right of Canada (Canada) is named as an additional ~~Named~~-Insured under any liability insurance policies for Canada's respective rights and interests under this Agreement.

6.0 ENVIRONMENTAL

6.1 The Applicant is required to immediately notify the Minister of any accident or circumstance on the Property giving rise to a claim either personal and/or environmental by calling the Joint Operations Centre at (250) 363-2425 (manned 24 hours per day).

6.2 All environmental spills on the Property must be reported to the Minister, regardless of size and shall immediately be reported by calling the Joint Operations Centre at (250) 363-2425 (manned 24 hours per day).

6.3 The Applicant shall abide by and comply with applicable Federal, Provincial and Municipal environmental legislation, regulations, rules or guidelines and take all steps necessary to ensure that there are no environmental concerns arising from the use of the Property advising the Minister immediately of any such concern; hazardous materials, liquids or solid waste, shall be the disposal responsibility of the Applicant; the Applicant agrees to clean up, at its expense, any part of the Property contaminated as a result of activities by the Applicant immediately upon becoming aware of the contamination; if the Applicant fails to clean up the Property within three days, the Minister may proceed with the clean up at the Applicant's expense.

7.0 FINANCIAL

7.1 Due consideration is deemed to be provided for the use of the property, therefore no charge is applied.

8.0 SECURITY

8.1 The Applicant understands that the Minister is not responsible for the security of the Applicants personnel, students, equipment or material on the Property.

9.0 TERMINATION

9.1 Either the Minister or the Applicant may at any time terminate this Agreement upon giving to the other parties 60 days written notice of intention to terminate.

9.2 This Agreement shall in the Ministers discretion, be terminated and withdrawn forthwith and without advance notice in the event of these public lands or facilities being required for public purposes or by reason of circumstances that, in the opinion of the Minister, constitute an unforeseen emergency or the property is required for Department of National Defence operational requirements, or it becomes apparent that the continuation of this Agreement may be contrary to the interest of the Canadian Forces.

9.3 This Agreement shall remain in effect until 31 August 2018 or until either withdrawn from or terminated pursuant to either paragraph 10.1 or 10.2.

9.4 This Agreement takes precedence over any oral discussions or exchange of letters between the parties prior to the date of its execution. No variation of the terms herein made subsequent to the date of execution of this Agreement shall be valid, unless set out in writing and signed by both parties.

10.0 NOTICE

10.1 Any notice given in connection with this Licence Agreement shall be delivered to the respective addresses set out below or to such other address as either of the parties may designate in writing.

- (a) The Applicant The Corporation of the City of Victoria
Victoria Emergency Management Agency
1 Centennial Square
Victoria, BC V8W 1P6
Attention: Office of the Emergency Coordinator
- (b) The Minister Canadian Forces Base Esquimalt
Building SH575
PO Box 17000, Stn Forces
Victoria BC V9A 7N2
Attention: A/Properties Officer
Real Property Operations Section (ESQ)

Environmental and Safety Screening

1. **Location of request:** Workpoint
2. **File number:** 7825 V46 TD 12292
3. **Request date:** 3 years commencing on 1 September 2015 and ending on 31 August 2018.
4. **Request by:** City of Victoria
5. **Request for:** Permission to use Workpoint Urban Search and Rescue facility and props for the purpose of conducting search and rescue training.
6. **List of work involved:** na
7. **Requirement of Applicant:** Ensure terms of the agreement are adhered to. That there is a spill kit on site at all times and no fuelling of motorcycles takes place on the Property.

- Code 1 Benign
- Code 2 Insignificant adverse effects
- Code 3 Environmental Assessment required

Discussion and recommendations:
Environmental issues discussed.

Environmental Screening understood and accepted by Applicant:

_____ **Date:** _____
Print name and sign

Environmental Screening Approved by:

_____ **Date:** _____
Print name, Title and sign