

**AMENDMENT TO SUBLEASE AGREEMENT**

THIS AGREEMENT is dated for reference and made effective as of August 17, 2023 (the “**Effective Date**”)

BETWEEN:

**CITY OF KELOWNA**

1435 Water Street, Kelowna BC V1Y 1J4

(the “**City**”)

AND:

**CALLAHAN CONSTRUCTION COMPANY LTD. (Inc. No. BC0066876)**

700 – 401 West Georgia Street, Vancouver, BC V6B 5A1

(the “**Subtenant**”)

**WHEREAS:**

- A.** By a lease (#109806) dated December 19, 1979 (the “**Head Lease**”) between the City and Her Majesty the Queen in Right of Canada (the “**Head Landlord**”), as represented by the Minister of Transport (the “**Minister**”), the Head Landlord leased to the City the following lands, on the terms and conditions set out in the Head Lease:

Parcel Identifier: 009-459-014

Lot 3 District Lots 32 and 120 and of Section 14 Township 23 Osoyoos Division  
Yale District Plan 11796

Parcel Identifier: 013-949-101

Lot B District Lot 122 Osoyoos Division Yale District Plan 41159

Parcel identifier: 011-518-189

Lot 7 Section 14 Township 23 Osoyoos Division Yale District Plan 1502 Except  
Plan H16596

(collectively, the “**Lands**”);

- B.** The City and the Head Landlord amended the Head Lease on November 8, 1983, January 15, 1985, October 31, 1986, January 19, 1990, November 29, 1990, May 26, 1994, June 14, 1994, February 16, 1996, July 24, 2015, and March 25, 2021;
- C.** By a sublease between the City and the Subtenant dated for reference April 9, 2021 (the “**Sublease**”), the City subleased to the Subtenant certain premises (referred to in the

Sublease as the “**Premises**”) for the purpose of supporting the operation of an airport, on the terms and conditions contained therein; and

- D. The parties wish to amend Sublease in accordance with the terms and conditions of this Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that, in consideration of the rents, covenants, and agreements to be paid, observed, and performed by the Subtenant, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the City and the Subtenant covenant and agree as of the Effective Date as follows:

**Condition Precedent**

1. This Agreement is subject to the satisfaction of the following condition precedent, which is for the sole benefit of the Subtenant and may be waived by the Subtenant at its sole discretion:
  - (a) On or before August 31, 2023, the Subtenant shall have provided the City with executed copies of renewed sub-sublease agreements between the Subtenant and the existing sub-subtenants of the Premises.

In consideration of \$10.00 non-refundable paid by the Subtenant to the City and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the City, the City agrees not to revoke its acceptance of this Agreement while it remains subject to the condition precedent under this section. If the Subtenant does not give the City notice of its satisfaction or waiver of the condition precedent under this section within the applicable time provided herein, this Agreement will automatically terminate and the parties will have no further obligations to each other under this Agreement.

**Term**

2. The Sublease is hereby amended to extend the Term of the Subtenant’s subtenancy to create a fixed term of seven (7) years, commencing on December 31, 2021 and ending on December 30, 2028.
3. For clarity, section 3(a) of the Sublease is hereby amended as follows:
  - (a) by deleting the words “two years” and replacing them with the words “seven years”; and
  - (b) by deleting the words “December 30, 2023” and replacing them with the words “December 30, 2028”.

4. The five (5) year period from December 31, 2023 until December 30, 2028 is referred to in this Agreement and in the Sublease as (the “**Extended Term**”).

#### **Addition to Premises**

5. The Sublease is hereby amended by adding the 34,517 square foot parcel of land, shown outlined in red on the sketch plan attached as Schedule “A” to this Agreement (the “Added Premises”), to the area comprising the Premises, which shall form part of the Premises effective December 31, 2023.
6. The Subtenant shall use the Added Premises only for the purposes of parking its vehicles and storing its equipment.

#### **Rent**

7. The Sublease is amended by providing that the rent (pursuant to section 5 of the Sublease) and airport maintenance charges payable by the Subtenant for the Premises during the Extended Term shall be calculated in accordance with the square footage of the Premises, such that the Subtenant shall pay rent and airport maintenance charges for the Premises as follows, effective December 31, 2023:
  - (a) rent is calculated at the rate of \$2.27 per square foot of the Premises = 46,167 square feet x \$2.27 = \$104,799.09 per annum, payable in advance in monthly installments of \$8,733.25;
  - (b) an airport maintenance charge is calculated at the rate of \$.03405 per square foot of the Premises = 46,167 square feet x \$0.03405 = \$1,571.98 per annum, payable in advance in monthly instalments of \$130.99; and
  - (c) the rent and airport maintenance charge shall be subject to the annual fee increases under the Airport Fees Bylaw No. 7982, including any amendments thereto.

#### **Subtenant’s Covenants**

8. Section 7(i) of the Sublease is hereby amended to provide as follows:
  - “(i) to pay all costs and expenses of any kind whatsoever associated with and payable in respect of the Premises, the Subtenant’s improvements and trade fixtures, and all equipment, furniture and other personal property brought onto the Premises by the Subtenant and any business or activity conducted on or from the Premises, including without limitation, all taxes (including property taxes), levies, charges and assessments, permits and license fees, strata fees and levies, repair and maintenance costs (subject to section 13(b)), all the City’s costs associated with

obtaining and maintaining all-risk property insurance for the Premises pursuant to section 20 (to a maximum cap of \$600.00 per year), administration and service fees, telephone, electrical, gas, garbage disposal, heating, water, sewage disposal and other utility charges and payments for work and materials;”.

### **Repair and Maintenance**

9. The Sublease is hereby amended by deleting section 13 in its entirety and replacing it with the following:

#### **“Repairs and Maintenance**

13.

(a) The Subtenant shall:

- i. by itself or by the use of agents, put and keep in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Building) the Premises, and the appurtenance and equipment of the Premises, both inside and outside, including but not limited to fixtures, walls, foundations, roofs, vaults, elevators (if any) and similar evidences, heating and air conditioning equipment, sidewalks, landscaping, yard and other like areas, water and sewer mains and connections, water, steam, gas, and electric pipes and conduits, and all other fixtures on the Premises and machinery and equipment used or required in the operation of it, whether or not enumerated in this Sublease.
- ii. in the same manner and to the same extent as a prudent owner, make any and all necessary repairs, replacement, alterations, additions, changes, substitutions, and improvements, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, and keep the Building and aforesaid fixtures, appurtenances, and equipment fully usable for all of the purposes for which the Building was erected and constructed and the specified fixtures, appurtenances, and equipment were supplied and installed. Such repairs will be performed in a workmanlike manner and in all respects to the standard at least substantially equal in quality or material and workmanship to the original work and material in the building and aforesaid fixtures, appurtenances, and equipment.

- (b) The City shall reimburse the Subtenant for costs incurred by the Subtenant to undertake the following repairs and maintenance to the Premises: repairs to the roof of the Building; repairs and maintenance to the paint on or in the Building; mechanical repairs to the Premises, including plumbing and replacements outside of a standard HVAC maintenance contract; and repairs to the asphalt on the Premises (the “**Reimbursable Repairs**”), to a maximum amount of twenty thousand dollars (\$20,000) per year, excluding taxes (the “**Repair Allowance**”), in accordance with the process set out in section 13(d) below. The Subtenant shall be responsible for all costs of repairs and maintenance to the Premises, including Reimbursable Repairs, over and above the Repair Allowance amount.
- (c) Notwithstanding the foregoing, the City shall not reimburse the costs of any Reimbursable Repairs incurred by the Subtenant that the Subtenant has or is entitled to recover from a sub-subtenant under a sublease of the Premises, including by way of the Common Area Maintenance recovery.
- (d) The parties agree that the Reimbursable Repairs will be reimbursed by the City in accordance with the following process:
- i. The Subtenant shall provide the City with written notice of any required Reimbursable Repairs.
  - ii. Upon receipt of written approval by the City, the Subtenant shall proceed with the Reimbursable Repairs. For clarity, except in the case of an emergency, including but not limited to roof leak and temporary repair, HVAC service call for a no heat or cooling request with repair below \$500, the Subtenant shall not proceed with any Reimbursable Repairs without prior written approval by the City. Such approval not to be unreasonably withheld and to be provided within two (2) business days of receipt of notification so the Subtenant can proceed with its obligation under 13(a) of the Sublease (as amended herein).
  - iii. On completion of any of the Reimbursable Repairs and anytime thereafter at the City’s request, the Subtenant shall provide all documentation, including invoices and receipts, relating to the Reimbursable Repairs to the City.

- iv. The City will reimburse the Subtenant for the Reimbursable Repairs within 30 days after receipt of such invoice and documentation.”

## **Insurance**

10. Section 20 of the Sublease is hereby amended as follows:

“The Subtenant shall obtain and maintain during the Term insurance in accordance with the requirements of Schedule C. For clarity, the insurance requirements set out in Schedule C are minimum requirements and are not to be interpreted in a manner that limits the Subtenant’s obligations under this Sublease and the Subtenant shall be responsible for obtaining and maintaining such additional insurance as would a prudent tenant having similar obligations and interests to those of the Subtenant under the terms of this Sublease.

The City shall obtain, and maintain during the Term, all-risk property insurance, in an amount equal to one hundred percent (100%) of the full replacement cost of the value of the Premises and of the Subtenant’s personal property and fixtures that are in the nature of trade fixtures. The City will recover all costs of obtaining and maintaining such insurance from the Subtenant, pursuant to section 7(i).”

## **No Assignment**

11. The Sublease is hereby amended by deleting section 32 in its entirety and replacing it with the following:

### **“No Assignment or Sub-sublease**

32. The Subtenant may not assign this Sublease or the benefit of this Sublease, or sublet the Premises or any part of the Premises beyond the date of expiry of this Agreement, without the prior written consent of the City, nor may the Subtenant charge, mortgage, or encumber, or purport to charge, mortgage, or encumber the Subtenant’s interest in the Premises or this Sublease without the prior written consent of the City. The City may withhold such consents at its sole discretion and without reason. The Subtenant shall be responsible for all costs associated with any assignment or sub-sublease of the Premises, including the City’s associated legal and administrative costs. Any assigning, sub-subletting, or sharing of possession permitted under this section must be in accordance with the Head Lease and in particular section 4.02.01 of the amendment to the Head Lease dated March 25, 2021.”

## Notices

12. The Sublease is hereby amended by deleting section 49 in its entirety and replacing it with the following:

### **“Notices**

49. Where any notice, request, opinion, direction or other communication (any of which is a **“Notice”**) is to be given or made by a party under this Sublease, it shall be in writing and shall be effective if delivered by hand or sent by registered mail or electronic transmission to the applicable addresses below:

#### **To the City:**

#1 – 5533 Airport Way  
Kelowna, BC, V1V 1S1  
Attention: Airport Corporate Services Manager  
E-mail: [ylwadmin@kelowna.ca](mailto:ylwadmin@kelowna.ca)  
Fax: 250-765-0213

#### **To the Subtenant:**

208 – 1626 Richter Street  
Kelowna, BC, V1Y 2M3  
Attention: Bob Callahan  
E-mail: [bob@callahanpg.ca](mailto:bob@callahanpg.ca)  
Fax: 250-717-3400

Any Notice will be deemed to have been delivered:

- (a) if delivered by hand, upon receipt;
- (b) if sent by fax or e-mail, twenty-four (24) hours after the time of confirmed transmission;
- (c) if sent by registered mail, five (5) days after the mailing thereof, provided that if there is a postal strike or other disruption, such notice shall be delivered by hand or e-mail.

Either party may change their respective addresses for delivery by delivering notice of change as provided under this Section 49.”

### **Representation of City**

13. The City represents and warrants to the Subtenant that the Sublease, as modified by this Agreement, constitutes a "Sub-lease in the Ordinary Course of Operations" under the Head Lease and the Amendment to Lease thereto made March 25, 2021, and that this Agreement does not require the consent of the Head Landlord.

### **Entire Agreement**

14. The City has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Subtenant other than those contained in this Agreement.

### **Interpretation**

15. This Agreement as and from the Effective Date will be read and construed along with the Sublease and treated as a part thereof, and the Sublease, as hereby modified, will continue to be of full force and effect.

16. All terms, conditions, covenants and agreements of the Sublease not specifically modified by this Agreement shall remain unchanged and in full force and effect.

17. Each party will at all times execute and deliver at the request of the other such further documents, deeds, instruments and things, and do and perform such other acts, as may be reasonably necessary to give full effect to the intent and meaning of this Agreement.

18. Wherever the singular or masculine is used herein, the same shall be construed as meaning the plural, feminine or the body corporate or politic where the context or the parties so require and, where the Subtenant consists of more than one person, the term "Subtenant" shall mean all such persons jointly and severally.

### **Severability**

19. If any section of this Agreement or any part of a section is found by a court to be unlawful or unenforceable, that part or section, as the case may be, shall be considered separate and severable and the remaining parts or sections, as the case may be, shall not be affected thereby and shall be enforceable to the fullest extent permitted by law.



**Enurement**

20. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**Time is of the Essence**

21. The parties agree that time is of the essence in this Agreement.

**Counterparts and Electronic Delivery**

22. This Agreement may be executed in one or more counterparts, each of which will be an original, and all of which together will constitute a single instrument. Further, this Agreement or a counterpart thereof may be executed by a party and transmitted by electronic transmission and if so executed and transmitted this Agreement will be for all purposes as effective and binding upon the party as if the party had delivered an originally executed document.

IN WITNESS whereof the parties have executed this Agreement on the dates written below.

**CITY OF KELOWNA** by its authorized signatories:

\_\_\_\_\_  
Real Estate Manager

**CALLAHAN CONSTRUCTION COMPANY LTD. (Inc. No. BC0066876)**, by its authorized signatories:

DocuSigned by:  
*Bob Callahan*  
095ED757C55241E  
\_\_\_\_\_  
Name: Bob Callahan

\_\_\_\_\_  
Name:

**Schedule A - Added Premises**

