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**SALT SPRING ISLAND PARKS AND RECREATION COMMISSION**  
Notice of Meeting on **Tuesday, February 22, 2022 at 2:30 PM**  
Rainbow Road Aquatic Centre, 262 Rainbow Rd, Salt Spring Island, BC

Gary Holman  
Sonja Collombin

Drew Bodaly  
Colin Walde

Drew Takahashi  
Randy Cunningham

Sean Norgard  
Andrea Little

(r) = Regrets

**AGENDA**

- 1. Territorial Acknowledgement / Call Meeting to Order
- 2. Approval of Agenda **1-2**
- 3. Adoption of Minutes of January 25, 2022 **3-6**
- 4. Delegation/Presentation – None
- 5. Director and Chair Reports
- 6. Nomination of Vice Chair
- 7. Outstanding Business
  - 7.1 PARC Final Budget Report **7-9**

That the Salt Spring Island Parks and Recreation Commission receive this report for information.
  - 7.2 Fulford Ball Park Lease **10-11**
  - 7.3 License of Occupation for Manson Road in Ganges **12-50**

That the Salt Spring Island Parks and Recreation Commission recommends the Capital Regional District:

Enter into a Licence of Occupation agreement with the Ministry of Transportation and Infrastructure at Manson Road in Ganges Village from March 1, 2022 – February 28, 2026.

AND

Enter into a Licence of Occupation agreement with Tree House Restaurant for the purpose of their business to operate on CRD tenured lands at Manson Road in Ganges Village from March 1, 2022 – February 28, 2026.

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*To ensure quorum, advise Shayla Burnham 250 537 4448 if you cannot attend.*

**7.4 Market Business Case**

**51-70**

That the Salt Spring Island Parks and Recreation Commission recommends that staff issue an expressions of interest for an independent entity to assume the operation and management of the Salt Spring Island Saturday Market for the 2023 market season for a five year term.

**7.5 Rotary Dinghy Dock Replacement Project Charter**

**71-77**

**8. New Business – None**

**9. Next Meeting – March 22, 2022 at 2:30 PM in the Salt Spring Island Library Meeting Room, 129 McPhillips Avenue, Salt Spring Island, BC**

**10. Adjournment**



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**Minutes of the Regular Meeting of the  
Salt Spring Island Parks and Recreation Commission  
Held January 25, 2021 at the SSI Public Library-121 McPhillips Ave, Salt Spring Island, BC**

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**Present:**       **Director:** Gary Holman  
                  **Commission Members:** Sonja Collombin, Colin Walde, Drew Bodaly, Sean Norgard (via Zoom), Drew Takahashi (via Zoom), Randy Cunningham (via Zoom), and Andrea Little  
                  **Staff:** Dan Ovington, Parks and Recreation Manager; Shayla Burnham  
                  Recording Secretary  
                  **Absent:** Brian Webster

These minutes follow the order of the agenda although the sequence may have varied.

**1. Territorial Acknowledgement / Call Meeting to Order**

The Territorial Acknowledgement was provided by Chair Collombin and the meeting was called to order at 2:35 pm.

**2. Limited Space Meeting Resolution**

**MOVED** by Commissioner Collombin, **SECONDED** by Commissioner Walde, that this resolution applies to the Salt Spring Island Parks and Recreation Commission for the meeting being held on January 25, 2022, and that the attendance of the public at the place of the meeting will be limited in accordance with the applicable requirements or recommendations under the Public Health Act, despite the best efforts of the Commission because:

- a. The available meeting facilities cannot accommodate more than (43) people in person, including members of the Commission and staff, and
- b. There are no other facilities presently available that will allow physical attendance of the Commission and the public in sufficient numbers; and

That the Commission is ensuring openness, transparency, accessibility and accountability in respect of the open meeting by the following means:

- a. By making the meeting agenda, as well as the other relevant documents, available on the CRD website, and directing interested persons to the website by means of the notices provided in respect of the meeting,
- b. By making the minutes of the meeting available on the CRD website following the meeting.

**CARRIED**

**3. Election of Chair and Vice Chair**

- Commissioner Collombin was nominated by Commissioner Bodaly for position of Chair. Calling three times for additional nominations and hearing none, Commissioner Collombin accepted the position of Chair.

- Commissioner Webster was nominated by Chair Collombin for position of Vice-Chair. Calling three times for additional nominations and hearing none, Commissioner Webster was appointed the position of Vice-Chair.

**4. Approval of Agenda**

**MOVED** by Commissioner Norgard, **SECONDED** by Commissioner Takahashi, that the Salt Spring Island Parks and Recreation Commission agenda of January 25, 2022 be approved as presented.

**CARRIED**

**5. Adoption of Minutes of November 16, 2021**

**MOVED** by Commissioner Bodaly, **SECONDED** by Commissioner Takahashi, that the Salt Spring Island Parks and Recreation Commission minutes of November 16, 2021 be approved as presented.

**CARRIED**

**6. Delegation/Presentation – None**

**7. Director and Chair Reports**

**7.1 Director Holman** briefly reported:

- BC Housing funding 28 units of affordable housing on Drake Road.

**7.2 Chair Collombin** briefly reported:

- Welcomed Commissioner Little and a roundtable of introductions occurred.

**8. Outstanding Business**

**8.1 Rainbow Road Recreation Centre Site Master Plan**

- Due to the continued growth in operational services, a concept plan included the Kanaka Road property as an option for a continued maintenance facility expansion.
- Staff confirmed the Kanaka Road property was a future community amenity that could potentially be used as a charging station following the electrification of buses on the island.
- Staff addressed the Commissions concerns regarding rezoning requirements noting a text amendment was required.
- The Commission expressed support for the maintenance facility on the Kanaka Road site.
- Staff confirmed the Kanaka Road property could be sold however, it would have to be purchased at market value and water concerns were discussed.
- Staff confirmed the Rainbow Road property is the only CRD property appropriately zoned for covered indoor recreation.

- The Commission expressed support in relocating the tennis courts from Portlock Park to the Rainbow Road property.
- The Commission suggested relocating the dog park to Moats Park below the parking area.
- The Commission suggested the dog park be included in the wooded area of the Centre Site Master Plan to allow more space for multi-purpose courts.
- The Commission suggested a future community gardens expansion be constructed at another CRD property.
- The Commission requested a concept plan for Portlock Park be created to assist the public with a general outline of the proposed plans.
- The Commission asked if additional parking was required and staff confirmed they would return to the Commission with an update.
- The Commission asked if additional washrooms were required and staff confirmed a sufficient number of washrooms were already on site.

**MOVED** by Commissioner Bodaly, **SECONDED** by Commissioner Takahashi, that the Salt Spring Island Parks and Recreation Commission recommends that the three Landscape Conceptual designs developed by LADR Landscape Architects, including an option showing the maintenance facility on Kanaka Road be used for further community consultation.

**CARRIED**

## **8.2 Salt Spring Island Multipurpose Space (SIMS) Update**

- Depending on the amount of expression of interests received following February 15, 2022 staff may go out for a request for proposal.
- The Commission acknowledged the excitement expressed by the community regarding the SIMS space.

## **8.3 Moats Park Horse Riding Ring License of Use**

**MOVED** Commissioner Norgard, **SECONDED** by Commissioner Bodaly, that the Salt Spring Island Parks and Recreation Commission recommends that a License of Use with the Gulf Island Horse Association for the purpose of operating a riding ring in the licensed area identified in (Appendix A; Schedule A) be drafted for consideration.

**CARRIED**

## **8.4 Salt Spring Island Administrative Project Tracker (PARC Projects)**

- The Commission expressed appreciation for the ongoing list of projects.

## **8.5 Baker Beach Stair Replacement Project Update**

- Staff updated the Commission that this project is now complete.

## **8.6 Drake to Cypress Trail Upgrade Project**

- Staff updated the Commission that this project was now complete.

- New seeding to be completed in spring 2022.
- Hay down to event erosion.

**8.7 Salt Spring Island Recreation Staffing Shortage and Further Reduction of Service Level**

- Staff confirmed that the Heron's Nest Preschool will likely stay closed until fall of 2022.

**9. New Business – None**

**10. Motion to Close the meeting in accordance with the Community Charter Part 4, Division 3, Section 90 (1):**

(k) negotiations and related discussions respecting the proposed provision of a municipal service that are at their preliminary stages and that, in the view of the council, could reasonably be expected to harm the interests of the municipality if they were held in public;

The regular meeting closed at 4:17 pm.

The Commission re-entered the regular meeting at 4:34 pm.

**11. Rise and Report**

**MOVED** by Commissioner Cunningham, **SECONDED** by Commissioner Takahashi, that the Salt Spring Island Parks and Recreation Commission recommends that staff issues on expressions of interest for interest for an independent entity to assume the operation and management of the Salt Spring Island Saturday Market for the 2023 market season for a five year term.

**CARRIED**

**11. Next Meeting – February 22, 2022 at 2:30 PM at the Rainbow Road Aquatic Centre, 262 Rainbow Road (Multi-purpose Room)**

**12. Adjournment**

**MOVED** By Commissioner Bodaly, **SECONDED** by Commissioner Walde, that the meeting adjourn at 4:38 pm.

**CARRIED**

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**CHAIR**

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**SENIOR MANAGER**



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**REPORT TO SALT SPRING ISLAND PARKS AND RECREATION COMMISSION  
MEETING OF TUESDAY, FEBRUARY 22, 2022**

**SUBJECT**     Salt Spring Island Parks and Recreation Year End Revenue and Expenses

**ISSUE**

To inform the Salt Spring Island Parks and Recreation Commission (PARC) of final year-end financial data for 2021.

**BACKGROUND**

The 2021 year-end operating revenues and expenses for the Pool, Park Land, Community Parks, Community Recreation and Fernwood Dock are now complete. The combined operating surplus for the year ending December 31, 2021 was \$38,307.

While there is a combined surplus for the year-end, the operating revenues of the three Salt Spring Island Parks and Recreation services were offset by COVID Relief Funding totalling \$87,200 to address 2021 revenue shortfalls. 2020 Deficits in Pool, Community Parks and Community Recreation that resulted from losses in revenue were also carried forward into 2021 and offset by \$120,000 of approved COVID Relief funding totalling \$207,200.

2021 surpluses have been balanced by increasing the transfers to reserves as approved by motion of the Commission at the October 19, 2021 meeting.

The table below details the surplus or deficit of each service and the adjustment to the transfers to reserves to balance.

<b>Operating Budget</b>	<b>Surplus</b>	<b>Deficit</b>	<b>To Balance</b>
Pool	\$1,819		Increase transfer to Pool CRF
Park Land	\$19,062		Increase transfer to Park Land CRF
Community Parks	\$0		
Community Recreation	\$8,222		New transfer to ORF
Fernwood Dock	\$9,204		Increase transfer to Fernwood CRF

The pool service is the most vulnerable to revenue fluctuations as pool expenses remain high even if use is down. This risk was mitigated in 2021 by allocating COVID relief funding and reducing operating hours due to staff shortages resulting in a small surplus.

Typically, this report would provide details on any large variances in the operating budget year end actuals. Due to the COVID-19 pandemic and Public Health Orders (PHO) almost every line item in the year end actuals had a large variance. For this reason, a high-level summary of the key budget impacts have been listed below.

**Much of the surplus is a result of the following:**

- Pool has been operating with reduced hours since November 2021.
- Park Land Recreation Technician position has been vacant since September 2021.
- Community Recreation preschool registrations and revenue was higher than anticipated
- Fernwood Dock repairs and maintenance costs were lower than budgeted.

**Much of the lower revenue is a result of the following:**

- Reduced pool operating hours and reduced attendance
- Lost market revenue due to reduced vendor participation
- Lost program and drop in revenue due to PHO

Lower revenues were offset by COVID relief funding preventing deficits at year end.

**Balance of reserves at December 31, 2021:**

Capital Reserve Fund (CRF)

101379	Parkland Acquisition	\$	912,498
102045	SSI Pool	\$	97,461
101792	Community Parks	\$	77,459
102030	Community Park Facilities	\$	11,953
101786	Community Rec Facilities	\$	134,698
101603	Park Land	\$	263,563
102111	Fernwood Dock	\$	192,539
		<b>\$</b>	<b>1,690,171</b>

Equipment Replacement Fund (ERF)

101444	Community Parks	\$	101,969
101412	SSI Pool	\$	34,842
101445	Community Rec Facilities	\$	10,273
		<b>\$</b>	<b>147,084</b>

\*Operating Reserve Fund (ORF)

105548	Community Parks	\$	0
105549	Community Rec Facilities	\$	8,223
105550	SSI Pool & Park Land	\$	35,689
		<b>\$</b>	<b>43,912</b>

*\*New operating reserves were established in 2020 for the parks services. Operating reserve funds enable CRD services to set aside operating funds to cover cyclical expenditures, unforeseen operating expenses, and special one-time operating projects, as well as to mitigate fluctuations in revenue.*

PARC received a total of \$366,260 of grant funding in 2021 for capital projects and new initiatives. (Appendix A). This funding has been allocated to specific project funds and is not reflected in the reserve balances above.



**CONCLUSION**

There is a combined surplus of \$38,307 for Pool, Park Land, Community Parks, Community Recreation and Fernwood Dock. This surplus has been balanced by increasing transfers to reserves. Operating budgets that had lower than budgeted revenues were supplemented by approved COVID relief funding.

**RECOMMENDATION**

That the Salt Spring Island Parks and Recreation Commission receive this report for information.

Submitted by:	Dan Ovington, Parks and Recreation Manager
Concurrence:	Karla Campbell, Senior Manager, Salt Spring Island Electoral Area
Concurrence:	Lia Xu, CRD Manager, Financial Services

DO/

**Appendix A**

<b>2021 Grant Funding</b>		
<u>Project</u>	<u>Funding Partner</u>	<u>Grant Amount</u>
Special Events Coordinator	SSI Foundation	\$11,483
Drake Road Trail Upgrade	UBCM	\$90,127
Family Day Grant	BCRPA	\$1,000
Summer Student Grants	Federal Government	\$6,080
Swim the Gulf Islands	Participation	\$400
Lifeguard School	SSI Foundation	\$400
Strengthening Communities - Bylaw	UBCM	\$49,570
Covid Relief Funding (Safer Restart)	Provincial	\$207,200
	<b>Total</b>	<b>\$366,260</b>

### AMENDMENT AGREEMENT

THIS AGREEMENT is dated for reference the 22 day of December, 2022

BETWEEN:

**JAMES FEDERICK AKERMAN**



**("GRANTOR")**

AND:

**CAPITAL REGIONAL DISTRICT**  
625 Fisgard Street  
Victoria, BC V8W 2S6

**("GRANTEE")**

**WHEREAS:**

- A. The Grantor and Grantee entered into a Lease dated the 1<sup>st</sup> day of January 2007 for a three (3) year term, the Premises described as the "Lease Area" situated on Salt Spring Island, BC, being part of Lot A, Section 11, Ranges 1 & 2, South Salt Spring Island, Cowichan District, Plan 2350, except part in Plan 18546, PID 006-499-724 (the "Lands");
- B. A Modification of Lease dated 1<sup>st</sup> day of January 2010 was entered to extend the term for a further three years;
- C. A further modification of Lease dated 1<sup>st</sup> day of January 2013 was entered by the Grantor and Grantee to extend the term for a further one (1) year and thereafter on a month to month basis;
- D. A further modification of Lease dated January 1, 2015 modified the lease from month to month to a two year term.
- E. A further modification of Lease dated January 1, 2017 was entered by the Grantor and Grantee to extend the term for a further two (2) year, ending on December 31, 2018, and subsequently a further modification extended the term to December 31, 2019
- F. Most recently a new lease agreement was entered with a term of one year, expiring on December 31, 2021 (the "New Lease Agreement"). The New Lease Agreement provides the Grantee with an option to renew for one additional term of one year.
- G. The Grantor and Grantee have agreed to renew the New Lease Agreement and modify the New Lease Agreement as set out in this Agreement.

IN CONSIDERATION OF the mutual covenants and agreements in this Agreement, the parties covenant and agree as follows:

- 1. The New Lease Agreement dated January 1<sup>st</sup>, 2021 between the Grantor and Grantee is amended as follows:

1.1 By deleting Section 2.1 and replacing with the following:

**TERM**

This lease shall be for a term of one (1) year (the "Term"), and will commence on the 1<sup>st</sup> day of January, 2022 and expire on the 31<sup>st</sup> day of December 2022.

1.2 By deleting Section 3.1 and replacing with the following:

**RENT**

The Grantee shall pay as rent (the "Rent") to the Grantor the sum of \$22,050 for the Term plus applicable taxes.

Except as otherwise provided in this agreement the provisions in the Lease will continue in full force and effect and binding upon both Grantor and Grantee and their respective successors and assigns,

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first before written.

**SIGNED** on behalf of the **CAPITAL REGIONAL DISTRICT**  
by its authorized signatory this 20 day of DEC 7, 2021

Authorized Signatory  
Print name:



**SIGNED** by **James Frederick Akerman**  
by its authorized signatory(ies) this 20 day of DEC., 2021

Authorized Signatory  
Print name:





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**REPORT TO PARKS AND RECREATION COMMISSION  
MEETING OF TUESDAY, FEBRUARY 22, 2022**

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**SUBJECT** License of Occupation for Manson Road in Ganges

**ISSUE**

The current Licence of Occupation of Manson Road with the Ministry of Transportation and Infrastructure is set to expire January 31, 2022. The Licence of Occupation between the Capital Regional District and the Tree House Café for a portion of Manson Road is also set to expire January 31, 2022.

**BACKGROUND**

In 2017 adjacent property and business owners requested that the Capital Regional District (CRD) acquire control of Manson Road right of way and reclaimed land outside the terminus point north of the road from the Ministry of Transportation and Infrastructure (MoTI) and Ministry Forest, Lands and Natural Resource Operations (FLNR). The purpose was to maintain the lands for public use and a pedestrian corridor to the boardwalk and enter into leases, at fair market value, with the adjacent business owners to support continued use as outdoor restaurant seating on the lands.

The CRD Board authorized staff to acquire the unconstructed road right of way (Manson Road) and portion of filled in foreshore between the road and boardwalk through a LoC with MoTI and initiate the process to obtain tenure of the foreshore infill. Subsequently the CRD Salt Spring Island Parks and Recreation Commission (PARC) obtained a Licence of Occupation (LoC) with the Province for a five year term ending January 31, 2022 for the undeveloped portion of Manson Road.

PARC entered into a one year LoC with the Tree House Café in 2017 to utilize a portion of the area for outdoor restaurant seating with the provision that a pedestrian corridor to the boardwalk be upgraded and kept clear. In 2018 the CRD entered into a three year LoC with the Tree House Café that is set to expire February 28, 2021. The tenure that the CRD obtained with the Province for a five year term is ending January 31, 2022. A new LoC with the tree house was granted in 2021 and is set to expire January 31, 2022 as an LoC cannot be granted past that date until a new tenure term with MoTI is granted.

The attached tenure agreement has been prepared to lease 350 ft<sup>2</sup> at \$23.00/ft<sup>2</sup> + 2% annual which represents fair market value. The Tree House Café will be required to continue to keep a corridor for pedestrian access to the boardwalk and Purvis Lane; keep the area free and clear during non-use; and allow emergency access. Liquor sales will be permitted subject to applying for a Special Occasion License policy and meeting the conditions for the permit; and having proper insurance coverage as outlined in section 10 of the licence of occupation.

**ALTERNATIVES**

That the Salt Spring Island Parks and Recreation Commission recommends the Capital Regional District:

*Alternative 1*

Enter into a Licence of Occupation agreement with the Ministry of Transportation and Infrastructure at Manson Road in Ganges Village from March 1, 2022 – February 28, 2026.

AND

Enter into a Licence of Occupation agreement with Tree House Restaurant for the purpose of their business to operate on CRD tenured lands at Manson Road in Ganges Village from March 1, 2022 – February 28, 2026.

*Alternative 2*

Consider additional terms and conditions

*Alternative 3*

Refer the tenure agreement to staff for further review.

**IMPLICATIONS**

**Financial Implications**

License fees collected provide a source of revenue to PARC offsetting other operating expenses.

Year	Length	Revenue
2017	5 months	\$3,521
2018	6 months	\$4,226
2019	6 months	\$4,648
2020	4 months	\$2,817
2021	7 months	\$4,930

**Social and Economic Implications**

The unconstructed road right-of-way, known as 'Manson Road' is 20 feet wide and was originally created in 1952 and there are three subsequent plans dedicating the new road and defining new legal lots. This area is complicated in that this foreshore was created by infill and not properly defined in these plans; and the infill at the terminus point of Manson Road forms a part of the Crown water lots.

In 1985 as a community benefit and amenity, Mouat's Trading worked with both the federal and provincial governments to infill and landscape the area known as Manson Road that was once a former wooden walkway (see Attachment 2).

Mouat's continued with the development of proper boardwalk to connect both the federal dock to the Kanaka wharf in 1988 with the aim of making Ganges area an attractive seaside village

and a vision within the Community Plan. This waterfront boardwalk provides access east from Fulford Ganges Road west to Lower Ganges Road.

Both the Oyster Catcher and Tree House Café have been operating an outdoor restaurant seating area adjacent to Manson Road and reclaimed land outside the terminus point of Manson Road during the tourist season. Both businesses are significant employers on the island and due to their unique nature also are key attractions bringing tourists who in turn support other island employers.

The Tree House Café has been operating in a heritage cottage for about 25 years. This attraction has a long and diverse history since 1920 which includes being the site of the first electrical generating station on the island and later as a home for one of the Mouat family's favorite aunts. It's even been a smoke house, crystal shop and music school and now has built up a large clientele since 1996 as a full service restaurant and coffee bar/deli.

**CONCLUSION**

The CRD tenure agreement will provide assurance for the Tree House Café to continue with their operations while protecting this portion of Manson Road for pedestrian access and maintain the unconstructed road area as the gateway to the community harbour and public plaza. A new tenure that the CRD will need to obtain from the Province for a five year term will need to be approved prior to the CRD entering into a LoC with the Tree House Café.

**RECOMMENDATION**

Enter into a Licence of Occupation agreement with the Ministry of Transpiration and Infrastructure at Manson Road in Ganges Village from March 1, 2022 – February 28, 2026.

AND

Enter into a Licence of Occupation agreement with Tree House Restaurant for the purpose of their business to operate on CRD tenured lands at Manson Road in Ganges Village from March 1, 2022 – February 28, 2026.

Submitted by:	Dan Ovington, Manager, Parks and Recreation
Concurrence:	Karla Campbell, Senior Manager, SSI Electoral Area

DO:

Attachments: Appendix 1 - Draft Licence of Occupation of Provincial Public Way MoTI  
Appendix 2 – Draft Licence of Occupation Tree House Café (2007) Inc.



File: 103265

January 10, 2022

Capital Regional District  
 108 – 121 McPhillips Avenue  
 Salt Spring Island, BC V8K 2T6

**Attention: Karla Campbell****Re: Licence of Occupation over a portion of Manson Road, Salt Spring Island, BC**

Enclosed please find two copies of the above noted agreement for your review. If in agreement, please have both copies signed and return to this office for processing. A fully executed copy will be forwarded to you in due course. Please also forward a cheque in the amount of **\$1,050.00** inclusive of GST made payable to the **BC Transportation Financing Authority** to cover the first year of the term. Please forward to my attention at the following address:

**Ministry of Transportation & Infrastructure, 3<sup>rd</sup> Flr-2100 Labieux Rd, Nanaimo, BC V9T6E9**

As part of the agreement, please have the enclosed Certificate of Insurance filled out by your insurance company and return with the agreement.

Please contact me at (250) 734-4806 if you have any questions.

Yours truly,

Lorna Andreychuk  
 Property Administrator  
 for the Ministry of Transportation  
 & Infrastructure  
 South Coast Region

/lwa

Encs.



CERTIFICATE OF INSURANCE

Contracts/Leases/Agreements/Permits Number, Location and Description:	Brokers' Reference No.
	Award or Effective Date (yyyy/mm/dd)

**INSURED** Name \_\_\_\_\_  
Business Address \_\_\_\_\_

**BROKER** Name \_\_\_\_\_  
Business Address \_\_\_\_\_

Type of Insurance	Company and Policy Number	Policy Dates yyyy/mm/dd		Limits of Liability / Amounts
		Effective	Expiry	
Commercial General Liability (including Non-Owned Automobile Liability)				Bodily Injury and Property Damage \$ _____ Inclusive \$ _____ Aggregate \$ _____ Deductible \$ _____ SIR
Additional Insureds:				
Automobile Liability				Bodily Injury and Property Damage \$ _____ Inclusive
Umbrella/Excess Liability				\$ _____ Limits excess of \$ _____ General Liability excess of \$ _____ Automobile
<input type="checkbox"/> Builders Risk <input type="checkbox"/> Installation Floater <input type="checkbox"/> Other:				\$ _____ Site \$ _____ Other Location \$ _____ Transit
Equipment Insurance				\$ _____ Limit
Professional Liability Errors and Omissions				\$ _____ Each Claim \$ _____ Aggregate \$ _____ Deductible
<input type="checkbox"/> Protection & Indemnity <input type="checkbox"/> Hull & Machinery <input type="checkbox"/> Builders Risk (Vessels) <input type="checkbox"/> Ship Repairers' Liability				\$ _____ Limit \$ _____ Limit \$ _____ Limit \$ _____ Limit
Other:				\$ _____ Limit

The undersigned certifies the undersigned has reviewed the policies of insurance described above and Page 2 of this certificate and further certify that those policies have been issued to the insured named above and are in full force and effect and comply with the insurance requirements set out in the agreement / contract / lease / permit identified above, including the requirements set out on Page 2 of this certificate.

Signature of person authorized to sign on behalf of Insurers certifying Page 1 and Page 2 of this Certificate

Print or Type Name

Date (yyyy/mm/dd)

ADDITIONAL CONDITIONS ARE SHOWN ON PAGE 2 OF THIS CERTIFICATE OF INSURANCE



**Notwithstanding any other terms, conditions or exclusions elsewhere in the insurance policy(s), it is understood and agreed that the insurance policy(s) are extended to include insurance conditions as follows:**

**CONDITIONS APPLICABLE TO:  
COMMERCIAL GENERAL LIABILITY**

**1. Additional Named Insured Clause for Ministry Contracts**

Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure, together with the employees, agents, and servants of the Minister, hereinafter referred to as the Additional Named Insured, is added as an Additional Named Insured, in respect of liability arising from the work or operations of the Insured and the Additional Named Insured, in connection with contracts, entered into between the Insured and the Additional Named Insured.

**2. Extension of Coverage**

Such liability insurance shall also include all liability arising out of completed operations, blanket written contractual, contingent employers liability, non-owned automobile liability, and liability assumed by the Contractor in connection with and applicable to the contract.

**3. Cross Liability**

The insurance as is afforded by this policy shall apply in the same manner and to the same extent as though a separate policy had been issued to each Insured. Any breach of a condition of the policy by any Insured shall not affect the protection given by this policy to any other Insured. The inclusion herein of more than one Insured shall not operate to increase the limit of liability under this policy.

**4. Exclusions Not Permitted**

If hazardous operations such as excavation, pile driving, shoring, blasting, underpinning, or demolition work or any other operation or work is to be performed by the Ministry or the Contractor, then this type of work or operation shall not be excluded from insurance coverage where such type of work or operation is to be performed by either party under the contract, subject to prior notification to the insurer by the Contractor.

Claims arising out of the legal liability imposed upon the Insured at common law and extended by Statute for bodily injury or death to employees of the Insured. However, exclusions applicable to liability imposed upon or assumed by the Insured under any Workers' Compensation Statutes or for assessment by any Workers' Compensation Board will be allowed.

Liability assumed by the Insured under contract with railroad companies for the use and operation of railway sidings or crossings.

**5. Products and Completed Operations Hazard**

Products and Completed Operations Hazard coverage shall be provided and such coverage shall remain in full force and effect for a period of twelve (12) months after the contracted work has been completed (twenty four (24) months for Design Build Minor Contracts), irrespective of the expiry date of the policy.

**Issuance of this certificate shall not limit or restrict the right of the Ministry of Transportation and Infrastructure to request any time certified copies of any insurance policy(s).**

**CONDITIONS APPLICABLE TO:  
PROPERTY TYPE OF INSURANCE POLICIES  
(WHERE IT IS A REQUIREMENT OF THE CONTRACT,  
AGREEMENT, LEASE OR PERMIT)**

**1. Additional Named Insured Clause**

Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure, is added as an Additional Named Insured.

**2. Loss Payable Clause**

Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure.

**3. Waiver of Subrogation**

In the event of any physical loss or damage to the work or Contractor's equipment, the settlement or payment of the subsequent claim shall be made without the right of subrogation against Her Majesty the Queen in right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure or any of the employees, servants or agents of the Minister.

**CONDITIONS APPLICABLE TO:  
ALL POLICIES EXCEPT AUTOMOBILE LIABILITY INSURANCE  
ISSUED BY I.C.B.C. AND PROFESSIONAL LIABILITY (E&O)  
INSURANCE**

**1. Cancellation**

This policy shall not be cancelled, removed, reduced, materially changed or altered without thirty (30) days prior notice in writing by Registered Mail to:

**CORPORATE INSURANCE AND BONDS MANAGER  
MINISTRY OF TRANSPORTATION & INFRASTRUCTURE  
PO BOX 9850 STN PROV GOVT  
VICTORIA BC V8W 9T5**  
or  
Ministry Representative, as noted in the contract.

**CONDITION APPLICABLE TO:  
PROFESSIONAL LIABILITY / ERRORS AND OMISSIONS  
INSURANCE**

**1. Cancellation**

The required insurance shall not be cancelled, or endorsed to reduce limits of liability, without thirty (30) days notice in writing by Registered Mail to: The Corporate Insurance and Bonds Manager, Ministry of Transportation and Infrastructure, PO Box 9850, Stn Prov Govt, 940 Blanshard Street, Victoria, B.C. V8W 9T5. Notification of the policy being endorsed to restrict coverage mid-term, must be provided in writing by Registered Mail to the same address, no later than the effective date of such change.



THIS AGREEMENT is made under section 62 of the *Transportation Act* and is dated for reference January 10, 2022.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, as represented by the minister responsible for the *Transportation Act*

(the "Province")

AND

**CAPITAL REGIONAL DISTRICT**

(the "Licensee")

**WHEREAS:**

- A. The Land is a provincial public highway (as defined in the *Transportation Act*) and, in accordance with section 58 of the *Transportation Act*, the BCTFA holds all of the Province's right and title in and to the soil and freehold of the Land.
- B. The Province may, pursuant to subsections 58(3) and 62(1) of the *Transportation Act* authorize any person to use or occupy a provincial public highway.
- C. The Licensee wishes to use and occupy the Land and the Province has agreed to permit it to do so in accordance with the terms and conditions of this Agreement.

For valuable consideration, the parties agree as follows:

**ARTICLE 1 - DEFINITIONS**

1.1 In this Agreement,

"**Agreement**" means this licence of occupation;

"**BCTFA**" means BC Transportation Financing Authority, a corporation continued under the *Transportation Act*;

"**Commencement Date**" means February 1, 2022;

"**Fee**" means the fee set out in Article 3;

"**Improvements**" includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land;

"**Land**" means the road shown in red on the attached Schedule A and labeled Manson Road to this Agreement;

**"Realty Taxes"** means all taxes, rates, levies, duties, charges and assessments lawfully levied or charged, at any time, by any competent governmental authority which relate to the Land, the Improvements or both of them; and

**"Term"** means the period of time set out in section 2.2.

## ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, the Province grants the Licensee a licence of occupation over the Land for the purpose of maintaining lands for public use and a pedestrian corridor to the boardwalk and enter into leases, at fair market value, with the adjacent business owners to support continued use as an outdoor restaurant seating on the lands and the Licensee acknowledges that this Agreement does not grant it the exclusive use and occupancy of the Land.
- 2.2 The term of this Agreement commences on the Commencement Date and terminates on January 31, 2027, or such earlier date provided for in this Agreement.

## ARTICLE 3 - FEE

- 3.1 The Licensee will pay to the BCTFA **\$1,000.00** plus GST (equalling **\$50.00**) payable in advance on the Commencement Date and each anniversary of the Commencement Date together with the tax imposed under Part IX of the *Excise Tax Act* (Canada) which is payable on that amount.

## ARTICLE 4 - COVENANTS

- 4.1 The Licensee must
- (a) pay, when due,
    - (i) the Fee to the Province at the address set out in Article 10,
    - (ii) the Realty Taxes, and
    - (iii) all charges for electricity, gas, water and other utilities supplied to the Land;
  - (b) deliver to the Province, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by it under this Agreement;
  - (c) observe, abide by and comply with
    - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Land and the Improvements, or their use and occupation, and
    - (ii) the provisions of this Agreement;
  - (d) keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to the Province, and at its written request, make the Land and the Improvements safe, clean and sanitary;
  - (e) not commit any wilful or voluntary waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance or annoyance to an owner or occupier of land in the vicinity of the Land;

- (f) use and occupy the Land only in accordance with and for the purposes set out in section 2.1;
- (g) not construct, place or affix any Improvement on or to the Land except as necessary for the purposes set out in section 2.1;
- (h) cut or remove timber on or from the Land
  - (i) only to address an unsafe condition or for the purposes set out in section 2.1, and
  - (ii) in accordance with an agreement issued to it under the *Forest Act* to permit the harvest of Crown timber on the Land unless the minister responsible for the *Forest Act* permits the harvest of timber on the Land without the issuance of an agreement under the *Forest Act*;
- (i) permit the Province, or its authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements;
- (j) indemnify and save the Province and its servants, employees and agents (including the BCTFA and its officers, directors, employees, servants and agents) harmless against all claims, demands, actions, causes of action, losses, damages, fines, penalties, costs, expenses and liabilities, including fees of solicitors and other professional advisors, arising out of or in connection with
  - (i) the Licensee's breach, violation or nonperformance of a provision of this Agreement,
  - (ii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of its entry upon, use or occupation of the Land, and
  - (iii) without limiting paragraph (ii), any environmental liability on or off the Land related to its entry upon, use or occupation of the Land, including, without limitation, any contamination or any liability related to any toxic, hazardous, dangerous or potentially dangerous substances migrating from the Land,

and the amount of all such losses, damages, fines, penalties, costs, expenses and liabilities will be payable to the Province immediately upon demand;
- (k) release the Province and its servants, employees and agents (including the BCTFA and its officers, directors, employees, servants and agents) from and against all claims, demands, actions, causes of action, losses, damages, fines, penalties, costs, expenses and liabilities arising out of or in connection with any environmental liability on or off the Land related to its entry upon, use or occupation of the Land, including, without limitation, any contamination or any liability related to any toxic, hazardous, dangerous or potentially dangerous substances migrating from the Land; and
- (l) on the termination of this Agreement,
  - (i) peaceably quit and deliver to the Province possession of the Land and, subject to paragraphs (ii) and (iii), the Improvements in a safe, clean and sanitary condition (including, without limitation, free of any environmental contamination related to its entry upon, use or occupation of the Land),
  - (ii) within 60 days, remove from the Land any Improvement the Licensee wants to remove, if the Improvement was placed on or made to the Land by or for it, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building or part of the Land,
  - (iii) remove from the Land any Improvement that was placed on or made to the Land by or

for the Licensee, and that the Province, in writing, directs or permits it to remove; and

- (iv) restore the surface of the Land as nearly as may reasonably be possible to the same condition as it was on the Commencement Date, to the Province's satisfaction, but if the Licensee is not directed or permitted to remove an Improvement under paragraph (ii) or (iii), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and all of its right, interest and estate in the Land will be absolutely forfeited to the Province, and to the extent necessary, this covenant will survive the termination of this Agreement.

4.2 The Licensee will not permit any person to do anything it is restricted from doing under this Article.

## ARTICLE 5 - LIMITATIONS

5.1 The Licensee agrees with the Province that

- (a) the Province is under no obligation to provide access or services to the Land or to maintain or improve existing access roads;
- (b) the Province may, without the Licensee's consent, authorize other persons, including a Crown agency or ministry, to use and occupy the Land under section 62 of the *Transportation Act*;
- (c) the Licensee will make no claim for compensation, in damages or otherwise, in respect of an authorization granted by the Province under subsection (b),
- (d) all of the Licensee's costs and expenses, direct or indirect, that arise out of any interference with its rights under this Agreement as a result of an authorization granted by the Province under subsection (b) will be borne solely by the Licensee;
- (e) the Licensee releases and discharges the Province from all claims for loss or damage arising directly or indirectly out of any interference with its rights under this Agreement as a result of an authorization granted by the Province under subsection (b);
- (f) the Licensee releases and discharges the Province from all claims for losses or damages arising directly or indirectly out of any interference with its rights under this Agreement as a result of a disposition made by the Province under subsection (b);
- (g) the Licensee will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (h) any interest the Licensee may have in the Improvements ceases to exist and becomes the Province's property upon termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(l)(ii) or (iii) in which case any interest the Licensee may have in that Improvement ceases to exist and becomes the Province's property if the Improvement is not removed from the Land within the time period set out in paragraph 4.1(l)(ii) or the time period provided for in the direction or permission given under paragraph 4.1(l)(iii); and
- (i) if, after the termination of this Agreement, the Province permits the Licensee to remain in possession of the Land and the Province accepts money from it in respect of such possession, a tenancy from year to year will not be created by implication of law and the Licensee will be deemed to be a monthly tenant only subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

## ARTICLE 6 - INSURANCE

- 6.1 The Licensee must, without limiting its obligations or liabilities under this Agreement, at its expense, maintain during the Term
- (a) Commercial General Liability Insurance including non-owned automobile and contractual liability insurance with inclusive limits of not less than \$5,000,000.00 for bodily injury, death or property damage arising from any one accident or occurrence which insurance policy will indemnify the named insureds under the policy for all sums which the insured may become liable to pay or pays for bodily injury, death or property damage or for loss of use, arising out of or resulting from the work or operations of the parties under this Agreement which must be endorsed as follows:
- "It is understood and agreed that Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure (the "Province"), together with the employees, agents (including the BC Transportation Financing Authority and its officers, directors, employees, servants and agents), and servants of the Province (the "Additional Named Insureds"), are each added as an Additional Named Insured, in respect of liability arising from the work or operations of the insured and each Additional Named Insured, in connection with contracts entered into between the insured and the Additional Named Insured.
- The Insurance as is afforded by this policy will apply in the same manner and to the same extent as though a separate policy had been issued to each insured. Any breach of a condition of the policy by any insured will not affect the protection given by this policy to any other insured. The inclusion herein of more than one insured will not operate to increase the limit of liability under this policy.";
- (b) if vessels are owned, leased or rented or used in the performance of this Agreement by the Licensee and are not covered under the general liability policy, it will provide Protection and Indemnity insurance with limits of not less than \$N/A for such vessels and will include four-fourths collision liability insurance,
- (c) if any licensed vehicles are owned, leased, rented or used by the Licensee in the performance of this Agreement, Automobile Liability Coverage with inclusive limits of not less than \$1,000,000.00 providing third party liability and accident benefits insurance for all such vehicles, and
- (d) if aircraft (including helicopters) are owned, rented, leased or used by the Licensee in the performance of this Agreement, third party liability coverage with inclusive limits of not less than \$N/A;

which, in the case of the policies of insurance described in subsections (a), (b) and (d), must include endorsements or provisions that they may not be cancelled, reduced, altered or materially changed without the insurer or insurers giving not less than 30 days' prior written notice to the Province by registered mail, which endorsements must be in terms comparable to those normally obtainable from insurers in the Province of British Columbia or Canada issuing comparable policies.

- 6.2 All insurance required to be maintained by the Licensee under this Agreement must be placed with insurers licensed to transact business in British Columbia or Canada and, the Licensee must, under the insurance required to be maintained by it under this Agreement,
- (a) pay all deductibles;
- (b) not exclude hazardous operations such as excavation, pile driving, shoring, blasting, under-pinning

or demolition work or any other operation or work from insurance coverage;

- (c) deliver to the Province, on the Commencement Date, on the renewal of the insurance and at other times required by the Province,
  - (i) for all policies except Automobile Liability Insurance, a completed and executed certificate of insurance in a form acceptable to the Province (as of the Commencement Date, such form is entitled "Certificate of Insurance" and is numbered H-111), and
  - (ii) evidence of Automobile Liability Insurance in the form of a duly executed Insurance Corporation of British Columbia APV47 or APV250 form or a copy of the vehicle registration/insurance certificate;
- (d) on the Province's request, deliver to the Province evidence that the insurance remains in force and effect by way of the originals or certified copies of all current insurance policies and endorsements.

6.3 The Licensee acknowledges and agrees that, in the event of any third party loss or damage or any physical loss or damage to the Land (and its associated apparatus, improvements or fixtures), the settlement or payment by the insurer of the subsequent claim will be made without the right of subrogation against the Province or the BCTFA or those for whom the Province and the BCTFA are legally obligated to indemnify against such claims.

#### ARTICLE 7 - ASSIGNMENT

- 7.1 The Licensee must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without the Province's prior written consent, which consent the Province may withhold in its sole discretion.
- 7.2 For the purpose of section 7.1, if the Licensee is a corporation, a change in control (as that term is defined in subsection 2(3) of the *Business Corporations Act*) of the Licensee will be deemed to be a transfer of this Agreement.
- 7.3 Section 7.2 does not apply to a corporation if the shares of the corporation which carry votes for the election of the directors of the corporation trade on a stock exchange located in Canada.
- 7.4 Prior to considering a request for consent under section 7.1, the Province may require the Licensee to meet certain conditions, including without limitation, that it provides to the Province a "site profile", "preliminary site investigation" or "detailed site investigation" (as those terms are defined in the *Environmental Management Act*) for the Land and or other similar type of investigation of the Land.

#### ARTICLE 8 - CANCELLATION

- 8.1 The Licensee agrees with the Province that
  - (a) if it
    - (i) defaults in the payment of any money payable by it under this Agreement, or
    - (ii) fails to observe, abide by and comply with the provisions of this Agreement (other than the payment of any money payable by you under this Agreement),

and its default or failure continues for 60 days after the Province gives written notice of the default or failure to it,

- (b) if, in the Province's opinion, it fails to make diligent use of the Land for the purposes set out in this Agreement, and its failure continues for 60 days after the Province gives written notice of the failure to it;
- (c) if it
  - (i) becomes insolvent or makes an assignment for the general benefit of its creditors,
  - (ii) commits an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against it or it consents to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging it bankrupt under any law relating to bankruptcy or insolvency, or
  - (iii) voluntarily enters into an arrangement with its creditors;
- (d) if it is a corporation,
  - (i) a receiver or receiver-manager is appointed to administer or carry on its business, or
  - (ii) an order is made, a resolution passed or a petition filed for its liquidation or winding up;
- (e) if it is a society, it converts into a company in accordance with the *Society Act* without the Province's prior written consent; or
- (f) if this Agreement is taken in execution or attachment by any person;

this Agreement will, at the Province's option and with or without entry, terminate, and all of the Licensee's right, interest and estate in the Land will be absolutely forfeited to the Province.

- 8.2 If the condition complained of in subsection 8.1(a) or (b) (other than the payment of any money payable by the Licensee under this Agreement) reasonably requires more time to cure than 60 days, the Licensee will be deemed to have complied with the remedying of it if the Licensee commences remedying or curing the condition within 60 days and diligently complete the same.
- 8.3 The Licensee agrees with the Province that the Province may, on 60 days' written notice to it, terminate this Agreement if the Province or the BCTFA requires the Land for any purpose.
- 8.4 The Licensee agrees with the Province that it will make no claim for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1 or 8.3 or under subsection 62(5) of the *Transportation Act*.

#### **ARTICLE 9 - DISPUTE RESOLUTION**

- 9.1 If any dispute arises under this Agreement, the parties will attempt to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.
- 9.2 Subject to section 9.5, if a dispute under this Agreement cannot be resolved under section 9.1, the dispute will be resolved by arbitration conducted by a sole arbitrator appointed pursuant to the *Commercial Arbitration Act*.
- 9.3 The cost of the arbitration referred to in section 9.2 will be shared equally by the parties and the arbitration will be governed by the laws of the Province of British Columbia.



- 9.4 The arbitration will be conducted at the office of the Province in Nanaimo, British Columbia, and if the Province has no office in Nanaimo, British Columbia, then at the office of the Province that is closest to Nanaimo, British Columbia.
- 9.5 A dispute under this Agreement in respect of a matter within the Province's sole discretion cannot, unless it agrees, be referred to arbitration as set out in section 9.2.

#### ARTICLE 10 - NOTICE

- 10.1 Any notice or other document required or permitted to be given by either party to the other must be in writing and will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to the Province:

Property Services  
3<sup>rd</sup> Flr – 2100 Labieux Road  
Nanaimo, British Columbia  
V9T 6E9  
Attention: Lorna Andreychuk  
Telephone: (250) 734-4806

to the Licensee:

Capital Regional District  
108 – 121 McPhilips Road  
Salt Spring Island, BC V8K 2T6  
Attention: Karla Campbell  
Telephone: (250)537-4448

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

- 10.2 In order to expedite the delivery of any notice or other document required or permitted to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to the Province under this Agreement will be effected by hand, courier or prepaid regular mail to the Province's address specified in or otherwise established under section 10.1, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

#### ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to the Province under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in

this Agreement or then existing at law, in equity or by statute.

- 11.3 The grant of a sublicense, assignment or transfer of this Agreement does not release the Licensee from its obligation to observe and perform all the provisions of this Agreement on its part to be observed and performed unless the Province specifically releases the Licensee from such obligation in its consent to the sublicense, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond the Licensee's reasonable control, other than normal weather conditions, the Licensee is delayed in performing any of its obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as the Licensee
- (a) gives notice to the Province within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of its obligation; and
  - (b) diligently attempts to remove the delay.
- 11.6 The Licensee agrees with the Province that
- (a) the Province is under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and the Licensee is solely responsible for all costs and expenses associated with its use of the Land and the Improvements for the purposes set out in this Agreement;
  - (b) nothing in this Agreement constitutes the Licensee as an agent, joint venturer or partner of the Province or the BCTFA or gives its any authority or power to bind the Province or the BCTFA in any way; and
  - (c) any information regarding this Agreement or the Licensee may be disclosed or required to be disclosed under the *Freedom of Information and Protection of Privacy Act*, governmental policy or otherwise.
- 11.7 There are no warranties, representations, collateral agreements or conditions affecting this Agreement except as set out in this Agreement.

## ARTICLE 12 - INTERPRETATION

- 12.1 In this Agreement, "person" includes a corporation, firm or association and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 12.2 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 12.3 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 12.4 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.

- 12.5 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 12.6 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 12.7 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 12.8 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 12.9 All provisions of this Agreement in the Province's favour and all of its rights and remedies, either at law or in equity, will survive the termination of this Agreement.
- 12.10 Time is of the essence of this Agreement.

12.11 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made then each party will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that a party has sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.

The parties have executed this Agreement as of the date of reference of this Agreement.

**SIGNED** on behalf of **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** by the minister responsible for the *Transportation Act* or the minister's authorized representative

\_\_\_\_\_  
Minister responsible for the *Transportation Act*  
or the minister's authorized representative

**SIGNED** on behalf of **CAPITAL REGIONAL DISTRICT** by its authorized signatories

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory

### SCHEDULE A

Licence shown in red.





THIS AGREEMENT is made under section 62 of the *Transportation Act* and is dated for reference January 10, 2022.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, as represented by the minister responsible for the *Transportation Act*

(the "Province")

AND

**CAPITAL REGIONAL DISTRICT**

(the "Licensee")

**WHEREAS:**

- A. The Land is a provincial public highway (as defined in the *Transportation Act*) and, in accordance with section 58 of the *Transportation Act*, the BCTFA holds all of the Province's right and title in and to the soil and freehold of the Land.
- B. The Province may, pursuant to subsections 58(3) and 62(1) of the *Transportation Act* authorize any person to use or occupy a provincial public highway.
- C. The Licensee wishes to use and occupy the Land and the Province has agreed to permit it to do so in accordance with the terms and conditions of this Agreement.

For valuable consideration, the parties agree as follows:

**ARTICLE 1 - DEFINITIONS**

1.1 In this Agreement,

"**Agreement**" means this licence of occupation;

"**BCTFA**" means BC Transportation Financing Authority, a corporation continued under the *Transportation Act*;

"**Commencement Date**" means February 1, 2022;

"**Fee**" means the fee set out in Article 3;

"**Improvements**" includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land;

"**Land**" means the road shown in red on the attached Schedule A and labeled Manson Road to this Agreement;

**"Realty Taxes"** means all taxes, rates, levies, duties, charges and assessments lawfully levied or charged, at any time, by any competent governmental authority which relate to the Land, the Improvements or both of them; and

**"Term"** means the period of time set out in section 2.2.

## ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, the Province grants the Licensee a licence of occupation over the Land for the purpose of maintaining lands for public use and a pedestrian corridor to the boardwalk and enter into leases, at fair market value, with the adjacent business owners to support continued use as an outdoor restaurant seating on the lands and the Licensee acknowledges that this Agreement does not grant it the exclusive use and occupancy of the Land.
- 2.2 The term of this Agreement commences on the Commencement Date and terminates on January 31, 2027, or such earlier date provided for in this Agreement.

## ARTICLE 3 - FEE

- 3.1 The Licensee will pay to the BCTFA **\$1,000.00** plus GST (equalling **\$50.00**) payable in advance on the Commencement Date and each anniversary of the Commencement Date together with the tax imposed under Part IX of the *Excise Tax Act* (Canada) which is payable on that amount.

## ARTICLE 4 - COVENANTS

- 4.1 The Licensee must
- (a) pay, when due,
    - (i) the Fee to the Province at the address set out in Article 10,
    - (ii) the Realty Taxes, and
    - (iii) all charges for electricity, gas, water and other utilities supplied to the Land;
  - (b) deliver to the Province, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by it under this Agreement;
  - (c) observe, abide by and comply with
    - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Land and the Improvements, or their use and occupation, and
    - (ii) the provisions of this Agreement;
  - (d) keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to the Province, and at its written request, make the Land and the Improvements safe, clean and sanitary;
  - (e) not commit any wilful or voluntary waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance or annoyance to an owner or occupier of land in the vicinity of the Land;

- (f) use and occupy the Land only in accordance with and for the purposes set out in section 2.1;
- (g) not construct, place or affix any Improvement on or to the Land except as necessary for the purposes set out in section 2.1;
- (h) cut or remove timber on or from the Land
  - (i) only to address an unsafe condition or for the purposes set out in section 2.1, and
  - (ii) in accordance with an agreement issued to it under the *Forest Act* to permit the harvest of Crown timber on the Land unless the minister responsible for the *Forest Act* permits the harvest of timber on the Land without the issuance of an agreement under the *Forest Act*;
- (i) permit the Province, or its authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements;
- (j) indemnify and save the Province and its servants, employees and agents (including the BCTFA and its officers, directors, employees, servants and agents) harmless against all claims, demands, actions, causes of action, losses, damages, fines, penalties, costs, expenses and liabilities, including fees of solicitors and other professional advisors, arising out of or in connection with
  - (i) the Licensee's breach, violation or nonperformance of a provision of this Agreement,
  - (ii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of its entry upon, use or occupation of the Land, and
  - (iii) without limiting paragraph (ii), any environmental liability on or off the Land related to its entry upon, use or occupation of the Land, including, without limitation, any contamination or any liability related to any toxic, hazardous, dangerous or potentially dangerous substances migrating from the Land,

and the amount of all such losses, damages, fines, penalties, costs, expenses and liabilities will be payable to the Province immediately upon demand;
- (k) release the Province and its servants, employees and agents (including the BCTFA and its officers, directors, employees, servants and agents) from and against all claims, demands, actions, causes of action, losses, damages, fines, penalties, costs, expenses and liabilities arising out of or in connection with any environmental liability on or off the Land related to its entry upon, use or occupation of the Land, including, without limitation, any contamination or any liability related to any toxic, hazardous, dangerous or potentially dangerous substances migrating from the Land; and
- (l) on the termination of this Agreement,
  - (i) peaceably quit and deliver to the Province possession of the Land and, subject to paragraphs (ii) and (iii), the Improvements in a safe, clean and sanitary condition (including, without limitation, free of any environmental contamination related to its entry upon, use or occupation of the Land),
  - (ii) within 60 days, remove from the Land any Improvement the Licensee wants to remove, if the Improvement was placed on or made to the Land by or for it, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building or part of the Land,
  - (iii) remove from the Land any Improvement that was placed on or made to the Land by or



for the Licensee, and that the Province, in writing, directs or permits it to remove; and

- (iv) restore the surface of the Land as nearly as may reasonably be possible to the same condition as it was on the Commencement Date, to the Province's satisfaction, but if the Licensee is not directed or permitted to remove an Improvement under paragraph (ii) or (iii), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and all of its right, interest and estate in the Land will be absolutely forfeited to the Province, and to the extent necessary, this covenant will survive the termination of this Agreement.

- 4.2 The Licensee will not permit any person to do anything it is restricted from doing under this Article.

#### ARTICLE 5 - LIMITATIONS

- 5.1 The Licensee agrees with the Province that

- (a) the Province is under no obligation to provide access or services to the Land or to maintain or improve existing access roads;
- (b) the Province may, without the Licensee's consent, authorize other persons, including a Crown agency or ministry, to use and occupy the Land under section 62 of the *Transportation Act*;
- (c) the Licensee will make no claim for compensation, in damages or otherwise, in respect of an authorization granted by the Province under subsection (b),
- (d) all of the Licensee's costs and expenses, direct or indirect, that arise out of any interference with its rights under this Agreement as a result of an authorization granted by the Province under subsection (b) will be borne solely by the Licensee;
- (e) the Licensee releases and discharges the Province from all claims for loss or damage arising directly or indirectly out of any interference with its rights under this Agreement as a result of an authorization granted by the Province under subsection (b);
- (f) the Licensee releases and discharges the Province from all claims for losses or damages arising directly or indirectly out of any interference with its rights under this Agreement as a result of a disposition made by the Province under subsection (b);
- (g) the Licensee will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (h) any interest the Licensee may have in the Improvements ceases to exist and becomes the Province's property upon termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(1)(ii) or (iii) in which case any interest the Licensee may have in that Improvement ceases to exist and becomes the Province's property if the Improvement is not removed from the Land within the time period set out in paragraph 4.1(1)(ii) or the time period provided for in the direction or permission given under paragraph 4.1(1)(iii); and
- (i) if, after the termination of this Agreement, the Province permits the Licensee to remain in possession of the Land and the Province accepts money from it in respect of such possession, a tenancy from year to year will not be created by implication of law and the Licensee will be deemed to be a monthly tenant only subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

## ARTICLE 6 - INSURANCE

6.1 The Licensee must, without limiting its obligations or liabilities under this Agreement, at its expense, maintain during the Term

- (a) Commercial General Liability Insurance including non-owned automobile and contractual liability insurance with inclusive limits of not less than \$5,000,000.00 for bodily injury, death or property damage arising from any one accident or occurrence which insurance policy will indemnify the named insureds under the policy for all sums which the insured may become liable to pay or pays for bodily injury, death or property damage or for loss of use, arising out of or resulting from the work or operations of the parties under this Agreement which must be endorsed as follows:

"It is understood and agreed that Her Majesty the Queen in Right of the Province of British Columbia as represented by the Minister of Transportation and Infrastructure (the "Province"), together with the employees, agents (including the BC Transportation Financing Authority and its officers, directors, employees, servants and agents), and servants of the Province (the "Additional Named Insureds"), are each added as an Additional Named Insured, in respect of liability arising from the work or operations of the insured and each Additional Named Insured, in connection with contracts entered into between the insured and the Additional Named Insured.

The Insurance as is afforded by this policy will apply in the same manner and to the same extent as though a separate policy had been issued to each insured. Any breach of a condition of the policy by any insured will not affect the protection given by this policy to any other insured. The inclusion herein of more than one insured will not operate to increase the limit of liability under this policy.";

- (b) if vessels are owned, leased or rented or used in the performance of this Agreement by the Licensee and are not covered under the general liability policy, it will provide Protection and Indemnity insurance with limits of not less than \$N/A for such vessels and will include four-fourths collision liability insurance,
- (c) if any licensed vehicles are owned, leased, rented or used by the Licensee in the performance of this Agreement, Automobile Liability Coverage with inclusive limits of not less than \$1,000,000.00 providing third party liability and accident benefits insurance for all such vehicles, and
- (d) if aircraft (including helicopters) are owned, rented, leased or used by the Licensee in the performance of this Agreement, third party liability coverage with inclusive limits of not less than \$N/A;

which, in the case of the policies of insurance described in subsections (a), (b) and (d), must include endorsements or provisions that they may not be cancelled, reduced, altered or materially changed without the insurer or insurers giving not less than 30 days' prior written notice to the Province by registered mail, which endorsements must be in terms comparable to those normally obtainable from insurers in the Province of British Columbia or Canada issuing comparable policies.

6.2 All insurance required to be maintained by the Licensee under this Agreement must be placed with insurers licensed to transact business in British Columbia or Canada and, the Licensee must, under the insurance required to be maintained by it under this Agreement,

- (a) pay all deductibles;
- (b) not exclude hazardous operations such as excavation, pile driving, shoring, blasting, under-pinning

or demolition work or any other operation or work from insurance coverage;

- (c) deliver to the Province, on the Commencement Date, on the renewal of the insurance and at other times required by the Province,
  - (i) for all policies except Automobile Liability Insurance, a completed and executed certificate of insurance in a form acceptable to the Province (as of the Commencement Date, such form is entitled "Certificate of Insurance" and is numbered H-111), and
  - (ii) evidence of Automobile Liability Insurance in the form of a duly executed Insurance Corporation of British Columbia APV47 or APV250 form or a copy of the vehicle registration/insurance certificate;
- (d) on the Province's request, deliver to the Province evidence that the insurance remains in force and effect by way of the originals or certified copies of all current insurance policies and endorsements.

- 6.3 The Licensee acknowledges and agrees that, in the event of any third party loss or damage or any physical loss or damage to the Land (and its associated apparatus, improvements or fixtures), the settlement or payment by the insurer of the subsequent claim will be made without the right of subrogation against the Province or the BCTFA or those for whom the Province and the BCTFA are legally obligated to indemnify against such claims.

#### ARTICLE 7 - ASSIGNMENT

- 7.1 The Licensee must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without the Province's prior written consent, which consent the Province may withhold in its sole discretion.
- 7.2 For the purpose of section 7.1, if the Licensee is a corporation, a change in control (as that term is defined in subsection 2(3) of the *Business Corporations Act*) of the Licensee will be deemed to be a transfer of this Agreement.
- 7.3 Section 7.2 does not apply to a corporation if the shares of the corporation which carry votes for the election of the directors of the corporation trade on a stock exchange located in Canada.
- 7.4 Prior to considering a request for consent under section 7.1, the Province may require the Licensee to meet certain conditions, including without limitation, that it provides to the Province a "site profile", "preliminary site investigation" or "detailed site investigation" (as those terms are defined in the *Environmental Management Act*) for the Land and or other similar type of investigation of the Land.

#### ARTICLE 8 - CANCELLATION

- 8.1 The Licensee agrees with the Province that
- (a) if it
    - (i) defaults in the payment of any money payable by it under this Agreement, or
    - (ii) fails to observe, abide by and comply with the provisions of this Agreement (other than the payment of any money payable by you under this Agreement),
- and its default or failure continues for 60 days after the Province gives written notice of the default or failure to it,

- (b) if, in the Province's opinion, it fails to make diligent use of the Land for the purposes set out in this Agreement, and its failure continues for 60 days after the Province gives written notice of the failure to it;
- (c) if it
  - (i) becomes insolvent or makes an assignment for the general benefit of its creditors,
  - (ii) commits an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against it or it consents to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging it bankrupt under any law relating to bankruptcy or insolvency, or
  - (iii) voluntarily enters into an arrangement with its creditors;
- (d) if it is a corporation,
  - (i) a receiver or receiver-manager is appointed to administer or carry on its business, or
  - (ii) an order is made, a resolution passed or a petition filed for its liquidation or winding up;
- (e) if it is a society, it converts into a company in accordance with the *Society Act* without the Province's prior written consent; or
- (f) if this Agreement is taken in execution or attachment by any person;

this Agreement will, at the Province's option and with or without entry, terminate, and all of the Licensee's right, interest and estate in the Land will be absolutely forfeited to the Province.

- 8.2 If the condition complained of in subsection 8.1(a) or (b) (other than the payment of any money payable by the Licensee under this Agreement) reasonably requires more time to cure than 60 days, the Licensee will be deemed to have complied with the remedying of it if the Licensee commences remedying or curing the condition within 60 days and diligently complete the same.
- 8.3 The Licensee agrees with the Province that the Province may, on 60 days' written notice to it, terminate this Agreement if the Province or the BCTFA requires the Land for any purpose.
- 8.4 The Licensee agrees with the Province that it will make no claim for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1 or 8.3 or under subsection 62(5) of the *Transportation Act*.

#### ARTICLE 9 - DISPUTE RESOLUTION

- 9.1 If any dispute arises under this Agreement, the parties will attempt to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.
- 9.2 Subject to section 9.5, if a dispute under this Agreement cannot be resolved under section 9.1, the dispute will be resolved by arbitration conducted by a sole arbitrator appointed pursuant to the *Commercial Arbitration Act*.
- 9.3 The cost of the arbitration referred to in section 9.2 will be shared equally by the parties and the arbitration will be governed by the laws of the Province of British Columbia.

- 9.4 The arbitration will be conducted at the office of the Province in Nanaimo, British Columbia, and if the Province has no office in Nanaimo, British Columbia, then at the office of the Province that is closest to Nanaimo, British Columbia.
- 9.5 A dispute under this Agreement in respect of a matter within the Province's sole discretion cannot, unless it agrees, be referred to arbitration as set out in section 9.2.

#### ARTICLE 10 - NOTICE

- 10.1 Any notice or other document required or permitted to be given by either party to the other must be in writing and will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to the Province:

Property Services  
3<sup>rd</sup> Flr – 2100 Labieux Road  
Nanaimo, British Columbia  
V9T 6E9  
Attention: Lorna Andreychuk  
Telephone: (250) 734-4806

to the Licensee:

Capital Regional District  
108 – 121 McPhilips Road  
Salt Spring Island, BC V8K 2T6  
Attention: Karla Campbell  
Telephone: (250)537-4448

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is required.

- 10.2 In order to expedite the delivery of any notice or other document required or permitted to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to the Province under this Agreement will be effected by hand, courier or prepaid regular mail to the Province's address specified in or otherwise established under section 10.1, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

#### ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to the Province under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in

- this Agreement or then existing at law, in equity or by statute.
- 11.3 The grant of a sublicense, assignment or transfer of this Agreement does not release the Licensee from its obligation to observe and perform all the provisions of this Agreement on its part to be observed and performed unless the Province specifically releases the Licensee from such obligation in its consent to the sublicense, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond the Licensee's reasonable control, other than normal weather conditions, the Licensee is delayed in performing any of its obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as the Licensee
- (a) gives notice to the Province within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of its obligation; and
  - (b) diligently attempts to remove the delay.
- 11.6 The Licensee agrees with the Province that
- (a) the Province is under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and the Licensee is solely responsible for all costs and expenses associated with its use of the Land and the Improvements for the purposes set out in this Agreement;
  - (b) nothing in this Agreement constitutes the Licensee as an agent, joint venturer or partner of the Province or the BCTFA or gives its any authority or power to bind the Province or the BCTFA in any way; and
  - (c) any information regarding this Agreement or the Licensee may be disclosed or required to be disclosed under the *Freedom of Information and Protection of Privacy Act*, governmental policy or otherwise.
- 11.7 There are no warranties, representations, collateral agreements or conditions affecting this Agreement except as set out in this Agreement.

## ARTICLE 12 - INTERPRETATION

- 12.1 In this Agreement, "person" includes a corporation, firm or association and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 12.2 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.
- 12.3 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 12.4 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.

- 12.5 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 12.6 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 12.7 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 12.8 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 12.9 All provisions of this Agreement in the Province's favour and all of its rights and remedies, either at law or in equity, will survive the termination of this Agreement.
- 12.10 Time is of the essence of this Agreement.

12.11 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made then each party will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that a party has sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.

The parties have executed this Agreement as of the date of reference of this Agreement.

**SIGNED** on behalf of **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA** by the minister responsible for the *Transportation Act* or the minister's authorized representative

\_\_\_\_\_  
Minister responsible for the *Transportation Act*  
or the minister's authorized representative

**SIGNED** on behalf of **CAPITAL REGIONAL DISTRICT** by its authorized signatories

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory



### SCHEDULE A

Licence shown in red.



## LICENCE OF OCCUPATION

THIS AGREEMENT is dated for reference the \_\_\_\_\_, 2022,

BETWEEN:

**CAPITAL REGIONAL DISTRICT (CRD)**

625 Fisgard Street  
Victoria, BC V8W 2S6

("Licensor")

AND:

**TREE HOUSE CAFÉ (2007) INC.**

106 Purvis Lane  
Salt Spring Island, BC V8K 2S5

("Licensee")

**WHEREAS:**

- A. The CRD has a License of Occupation under File No. 103265 with the Province of British Columbia, commencing on February 1, 2022 for a term of 5 years, expiring on January 31, 2027, over a portion of the un-developed road known as Manson Road (the "Land"), located on Salt Spring Island, British Columbia.
- B. The Land is a provincial public highway (as defined in the *Transportation Act*) and, in accordance with Section 58 of the *Transportation Act*, the BC Transport and Financing Authority (BCTFA) holds all of the Province's right and title in and to the soil and freehold of the Land.
- C. Section 2.1 of the License of Occupation with the Province of British Columbia allows the CRD to "...enter into leases, at fair market value, with the adjacent business owners to support continued use as an outdoor restaurant seating..."
- D. Section 11.(1)(a) of the *Capital Regional District Bylaw No.3795* a person may with written authorization of the Community Parks Manager or General Manager or a valid Park Use Permit allowing the activity, sell, barter, donate, trade, busk or display for sale any goods, services or materials, including food or refreshments in a community park.
- E. The Licensee entered into a License with the Licensor dated for reference 20<sup>th</sup> day of July 2017 for a five month term expiring September 30, 2017. The Licensee subsequently entered into a three (3) year licence commencing on March 1, 2018 and expiring February 28<sup>th</sup>, 2021. The Licensee further entered into a one (1) year licence that expired on January 31, 2022.
- F. The Licensee would like to enter into a further licence to occupy and use a portion of the Land, and the Licensor has agreed to permit it do so in accordance with the terms and conditions of this Agreement.

IN CONSIDERATION OF the mutual covenants and agreements in this Agreement, the parties covenant and agree as follows:

## 1. DEFINITIONS

### 1.1 In this Agreement

"**Agreement**" means this License of occupation;

"**Commencement Date**" means March 1, 2022;

"**Fee**" means the fee set out in section 5;

"**Improvements**" includes anything made, constructed, erected, built, altered, repaired or added to, in or on the License Area, and attached to it or intended to become a part of it;

"**Land**" a portion of the un-developed road known as Manson Road, located on Salt Spring Island, British Columbia as per License of Occupation under File No. 103265 with the Province of British Columbia;

"**License Area**" means those parts of the Land shown outlined in red with cross-hatching on the sketch plans attached as Schedule "A", comprising of approximately 350 ft<sup>2</sup>;

"**Liquor**" means:

- (a) fermented, spirituous and malt liquors; or
- (b) combination of liquors; or
- (c) drinks and drinkable liquids that are intoxicating

and includes beer, or a substance that, by being dissolved or diluted is capable of being made a drinkable liquid that is intoxicating and that is declared to be liquor under the *Liquor Licensing and Control Act* (British Columbia);

"**Park Use Permit**" means a park use permit issued under CRD Bylaw No.3795;

"**Term**" means the period of time set out in section 3.

## 2. GRANT

The Licensor hereby grants to the Licensee, subject to the terms and conditions of this agreement, its employees, agents and contractors, a non-exclusive License to enter and be upon the License Area.

## 3. TERM AND EXPIRATION DATE

The Agreement becomes effective on the Commencement Date, notwithstanding the actual dates of execution by the parties, subject to the other terms and conditions set out in this Agreement, and unless terminated earlier in accordance with the other terms and conditions set

out in this Agreement, the Term will be for **four (4) years and eleven (11) months** and will **terminate on January 31, 2027**.

#### 4. PURPOSE

Subject to the terms and conditions of this Agreement, the License is granted for the non-exclusive use by the Licensee of the License Area for purpose of outdoor restaurant seating.

#### 5. FEES

The Licensee will pay to the Licensor the following Fee on the 1st day of each year of the Term.

Year 1 (March 1 2022 to Feb.28, 2023)	= \$4,105.45 +tax
Year 2 (March 1 2023 to Feb.28, 2024)	= \$4,187.56 +tax
Year 3 (March 1 2024 to Feb.28, 2025)	= \$4,271.31 +tax
Year 4 (March 1 2025 to Feb.28, 2026)	= \$4,356.74 +tax
Year 5 (March 1 2026 to Jan.31, 2027)	= \$4,073.55 +tax

and property taxes, should they become due, for the Term of this License.

#### 6. LIENS

4.1 The Licensee will not suffer or permit any lien under the *Builders' Lien Act* or like statute to be registered against title to the License Area by reason of labour, services or materials supplied or claimed to have been supplied to the Licensee. If any such lien is registered, the Licensee will procure registration of its discharge immediately after the lien has come to the notice of the Licensee. The Licensor may, but will not be obliged to, discharge any such lien at any time if, in the Licensor's judgment, the License Area becomes liable to any forfeiture or sale or its otherwise in jeopardy and any amount paid by the Licensor in so doing, together with all reasonable costs and expenses of the Licensor, will be reimbursed to the Licensor by the Licensee immediately on demand.

#### 7. ENVIRONMENTAL RESPONSIBILITY

- (a) The Licensee will comply with all applicable environmental laws and will assume any environmental liabilities and perform any environmental obligations that result from the contravention of any environmental laws from the Licensee, its employees, agents or contractors, including the cost of complying with any remediation order and any liability for clean-up of any pollutant on, under or emanating from the License Area resulting from any release of such pollutant arising from the Licensee's acts or omissions under this Agreement.
- (b) The Licensee will use the License Area in a manner to prevent the occurrence of any adverse events and minimize potential hazards that may affect the Licensor and its contractors, invitees, licensees, employees, agents and servants, the public and the environment; and in connection with any occurrence the Licensee will implement effective control measures and immediately notify the Licensor and all concerned parties.

- (c) Except as expressly authorized by the Licensor and in compliance with all applicable laws, the Licensee will not release, deposit, store or transport any pollutant, explosive or waste within the License Area and will not permit any person under its direction or control to do so.
- (d) The Licensee will immediately notify the Licensor of any potential contravention of environmental, health or safety laws relating to its operations within the License Area and upon inspection or investigation by governmental authority. The Licensee will, at its expense, comply with all reasonable directions of the Licensor with respect to environmental risks in its use and occupation of the License Area.

## 8. COMPLIANCE WITH LAWS AND REGULATIONS

The Licensee will comply with all laws, by-laws and regulations, Federal, Provincial, Municipal or otherwise, applicable to the License Area and any work on improvements carried out in the License Area.

## 9. ASSUMPTION OF RISK AND LIABILITY BY THE LICENSEE

- (a) The Licensor has made no representations or given any warranties, express or implied, with respect to the License Area and the Licensor disclaims any implied representations, warranties or conditions relating to the quality or condition of the License Area.
- (b) The Licensee shall release, indemnify and hold harmless the Licensor and its elected and appointed officers, servants, agents, employees, or contractors and Her Majesty the Queen in Right of the Province of British Columbia, as represented by the minister responsible for the *Transportation Act* from and against all losses, claims, demands, payments, suits, actions, damages, judgments and expenses, including legal fees, of every nature and description brought or recovered against or incurred by the Licensor and its elected and appointed officers, servants, agents and employees and Her Majesty the Queen in Right of the Province of British Columbia, arising out of or related to the Licensee's breach of this Agreement, or the granting of this License or the use of the License Area by the Licensee, its employees, agents, contractors, servants or invitees. Furthermore, the Licensee hereby releases and agrees to indemnify and hold the Licensor and its directors, officers, employees, agents and contractors and Her Majesty the Queen in Right of the Province of British Columbia, as represented by the minister responsible for the *Transportation Act* harmless from any costs, expenses, claims, responsibility and liability, whether arising in tort (including negligence), contract or otherwise in respect of loss, damage or personal injury or death arising from, attributable to, or caused by the:
  - (i) Condition of the buildings or any other part of the License Area, or
  - (ii) Activities on the License Area by the Licensee or its employees, agents, contractors or permitted assigns.
- (c) The Licensee assumes all risk of damage to the property of, or injury to the Licensee and the Licensee's contractors, invitees, licensees, employees, agents and servants in connection with the exercise of the privileges under this Agreement.

- (d) The Licensee will immediately pay for all damage resulting directly or indirectly from any act or omission of the Licensee, whether negligent or otherwise, and will immediately reimburse the Licensor for all expenses including, but not limited to, expenses incurred for fighting fires, resulting directly from the licensee's acts or omissions under this Agreement whether or not negligent.
- (e) The Licensee will indemnify and save harmless the Licensor and Her Majesty the Queen in Right against all claims or liabilities asserted by third persons resulting directly or indirectly from the Licensee's acts or omissions.
- (f) The Licensee will immediately comply with CRD's rules and directions relating to the use and occupation of the Licence Area.

The Licensee will not interfere with the Licensor's operations in the Licence Area.

## 10. INSURANCE

The Licensee shall, at its own expense, provide and maintain during the term of this Agreement the following insurance in a form acceptable to the Licensor with a company duly registered and authorized to conduct insurance business in the Province of British Columbia:

- (a) Commercial General Liability Insurance
  - i) The Licensee shall purchase Commercial General Liability Insurance covering losses to a third party for bodily injury or death, property damage, and unlicensed vehicle and attached equipment operations, **coverage not to exclude Host Liquor Liability or claims arising out of injury to participants**, and
  - ii) this insurance shall be in an amount not less than FIVE MILLION (\$5,000,000.00) on an occurrence basis, and
  - iii) the Licensor and Her Majesty the Queen in Right of the Province of British Columbia, as represented by the minister responsible for the *Transportation Act* shall be named as an additional insured, and
  - iv) this policy shall contain the separation of insureds, cross liability clause in the condition of the policy, and
  - v) all such policies shall provide that no cancellation or material alteration in the policy shall become effective until 30 days after written notice of such cancellation, or alteration has been given to the Licensor, and
  - vi) the Licensee shall provide the Licensor with a certificate or certificates of insurance as evidence that such insurance is in force including evidence of any insurance renewal. Every certificate, or certificates of insurance shall include, certification by the insurance agent or the insurer that the certificate of insurance specifically conforms to all of the provisions required herein.
- (b) The Licensee shall, at its own expense, provide and maintain during the term of this Agreement "all risks" insurance or financial responsibility, for replacement cost,

on all improvements made to the Licence Area from time to time making up part of the Licence Area and all of the Licensee's fixtures and personal property in the Licence Area.

The Licensee shall maintain Third Party Legal Liability Insurance in an amount not less than TWO MILLION ( \$2,000,000) per occurrence in respect of all vehicles owned and / or operated by The Licensee in connection with this agreement.

Maintenance of such insurance and the performance by the Licensee of its obligations shall not relieve the Licensee of liability under the indemnity provisions set forth in this Agreement.

#### **11. SALE OF LIQUOR**

The sale and distribution of liquor is prohibited within the License Area unless the Licensee has obtained the legally required permits, including written authorization of the Community Parks Manager or General Manager or a valid Park Use Permit allowing that activity.

#### **12. TERMINATION AND SUSPENSION.**

- (a) If the Licensee defaults on its obligations under this Agreement, all privileges terminate 30 days after Licensor gives notice of default to the Licensee, if the default is not remedied within such time. The Licensor's termination of this Agreement will not prejudice the Licensor's right to collect damages on account of the Licensee's breach.
- (b) Any failure to exercise the Licensor's right to terminate this Agreement in case of default does not constitute a waiver of the Licensee's obligations to perform strictly in accordance with the terms of this Agreement. Any such right to terminate remains in effect and may be exercised as long as the default continues.
- (c) Upon termination or earlier expiry of this Agreement, the Licensee will remove its equipment and supplies, and any improvements made by it which the Licensor requires it to remove or the parties have agreed the Licensee may remove on the termination or expiry of this Agreement, within 30 days following written notice from the Licensor to do so and if not removed within this period, the Licensor may, at its option and without liability to the Licensee for loss, damage or compensation, take, keep or use the Licensee's machinery, equipment, supplies or any buildings, structures or improvements as its own property.
- (d) Early termination of this licence can occur if 90 days' written notice is provided by either party.

#### **13. MAINTENANCE AND REPAIRS**

The Licensee shall keep the License Area in a neat and tidy condition and in a state of repair acceptable to the Licensor. On termination, the Licensee shall leave the License Area in as good, or better condition, as prior to the commencement of their occupation and acceptable to the Licensor.

**14. IMPROVEMENTS**

No improvements may be placed on, or physical changes made to, the Land without the prior written consent of the Licensor. On termination the Licensee shall forthwith remove any improvements placed on the Land if requested by the Licensor. If such improvements are not removed within thirty (30) days of termination, they shall belong to the Licensor, without cost, at the option of the Licensor.

**15. OTHER TERMS**

- (a) The Licensor shall not impede public access to and from the boardwalk and Purvis Lane.
- (b) The License Area must be kept clear when not in use.
- (c) In the case of emergency, the Licensee must allow emergency vehicle and personnel access through the License Area.

**16. NON-ASSIGNMENT**

Neither this Agreement nor the privileges in it may be assigned by the Licensee, in whole or in part by operation of law or otherwise, without the prior written consent of the Licensor, which consent may be arbitrarily withheld. The Licensee will not sub-License the License Area or permit any persons to enter the License Area unless they are authorized to do so.

**17. NO SPECIAL DAMAGES**

Neither party will be liable to the other for any consequential or indirect damages.

**18. NOTICES**

All notices required under this Agreement will be delivered by hand to the party for which it is intended, sent by email, fax or sent by prepaid courier directed to such party at its address or fax number set out in this Agreement, or at such other address or fax number as either party may stipulate by written notice to the other. Any notice delivered by hand or prepaid courier will be deemed to be received on the date of actual delivery thereof.

**19. BINDING EFFECT**

This Agreement will enure to the benefit of, and will be binding upon, the respective successors and permitted assigns of the parties.

**20. GOVERNING LAW**

This Agreement will be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties will be governed by, the laws of the Province of British Columbia and the federal laws of Canada where applicable and the parties hereby attorn to the exclusive jurisdiction of the courts of the Province of British Columbia.

**21. COUNTERPARTS**



This Agreement may be executed in any number of counterparts and each counterpart, when executed and delivered (whether by email fax or otherwise), will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first before written.

**SIGNED** on behalf of the **CAPITAL REGIONAL DISTRICT**  
by its authorized signatory this \_\_\_\_ day of \_\_\_\_\_, 2022:

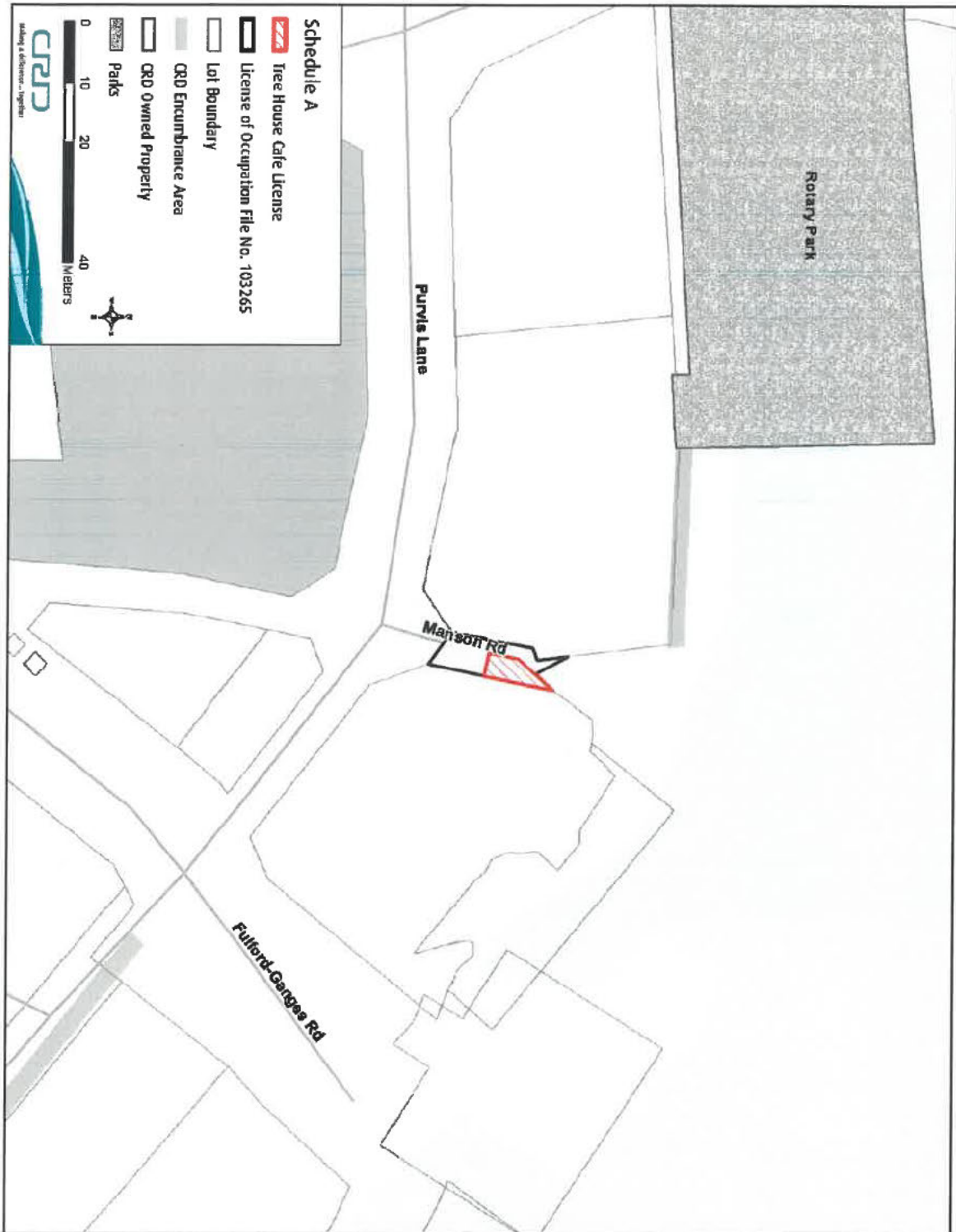
\_\_\_\_\_  
Authorized Signatory  
Print name:

**SIGNED** on behalf of **TREE HOUSE CAFÉ (2007) INC.**  
by its authorized signatory(ies) this \_\_\_\_ day of \_\_\_\_\_, 2022:

\_\_\_\_\_  
Authorized Signatory  
Print name:

\_\_\_\_\_  
Authorized Signatory  
Print name:

### SCHEDULE "A"





Making a difference...together

**REPORT TO SALT SPRING ISLAND PARKS AND RECREATION  
COMMISSION MEETING OF FEBRUARY 22, 2022**

# Saturday Market Operating & Management Business Case

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# EXECUTIVE SUMMARY

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## Background

The Salt Spring Island Saturday Market (the Market) has been operating in Centennial Park since the 1970's and as early as 1986 under the Capital Regional District (CRD) Community Parks Regulations Salt Spring Island Bylaw (Bylaw 1453) when the CRD was managing the Market by issuing permits to Market Vendors. The Market has been operating in its current inception since 1993. The Salt Spring Island Parks and Recreations Facilities Local Services Establishment Bylaw No. 1, 1996 ("Bylaw 2422") authorizes the CRD to establish a service on Salt Spring Island for the provision of parks and operation of recreation programs, equipment, and facilities, and acquisition of land for park purposes.

The Community Parks Regulation (Juan de Fuca and Salt Spring Island Electoral Areas) Bylaw No. 1, 2001 (Bylaw 3795") sets out the rules and regulations respecting the hours and operation of the Market, the parameters of the "Make It, Bake It, or Grow It" policy, the permissible items that may be sold at the Market, the rules respecting the use of the easement area, the establishment of the Market Advisory Group, and the process for vendor permit applications.

From the Markets current inception it has grown considerably and attracts visitors from all around the world as a key economic driver and crucial pillar of island life for the community on Salt Spring Island. Administrative oversight, including issuing permits, collecting fees and resolving vendor disputes requires a considerable amount of CRD staff time and competes with other parks and recreation programs and service under the mandate of the Salt Spring Island Parks and Recreation Commission (PARC).

The 2019 Salt Spring Island Parks and Recreation Strategic Plan identifies "review of the current operating and management of the Market with a goal to improve service delivery and the efficient and appropriate allocation of PARC resources" as a key strategy under our plan for resourcing, capacity and communication.

The Market is operated by the CRD under the auspices of PARC, an appointed Market Advisory Group and a Market Coordinator contracted by the CRD.

## Conclusion

The CRD has exclusive control over the Market and spends a considerable amount of time on administrative oversight, operation and management.

If the CRD adopts an independent entity model, it can shift oversight to the society that takes over the Market and reduce the amount of time, risk and resources need to devote to and administer the Market.

## Recommendation

### ***Alternative 1: Revert the operating and management of the Market to an independent entity***

That the Salt Spring Island Parks and Recreation Commission recommends that

Staff issue an expressions of interest for an independent entity to assume the operation and management of the Salt Spring Island Saturday Market for the 2023 market season for a five year term.



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# PHASE 1: The Strategic Context

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## Strategic Environment

### Organizational Overview

The purpose of the PARC is to advise the CRD on the planning of a broad range of parks and recreation services and programs within the electoral area of Salt Spring Island and to recommend specific budget for operation of community-based parks and recreation services for residents on the island.

The Market is operated by the CRD under the auspices of PARC and an appointed Market Advisory Group that typically meets twice a year, at the beginning and end of each market season to make recommendations to PARC. The Market Coordinator is contracted by the CRD to assist in the daily operation of the Market. The Coordinators role is to organize all of the activities of the day to day functioning of the Market and to enforce Market policies and guidelines. The CRD administers vendor permits, insurance, maintenance, vendor relations and dispute resolution, advisory consultation, staff supervision, budget development, and bylaw enforcement.

The Market operates as a local producer based market from 9am-4pm on Saturdays in Centennial Park from the first Saturday in April\* to the last Saturday in October. Off season vending permits can also be issued during the winter months.

*\*If Easter weekend occurs earlier than the first weekend in April then the Market Season starts on the Saturday of the Easter Weekend.*

### PARC Mission

The mission of the Salt Spring Island Parks and Recreation Commission is to: Provide access to quality, safe, diverse, year-round, and inclusive parks, recreation and sports facilities, trails and water access, and to deliver recreational programs that enhance quality of life, promote healthy lifestyles, strengthen the sense of community, and connect all residents and visitors with nature, while following environmental best practices.

### PARC Desired Outcomes

We believe that parks and recreation are a means to an end. They are purposeful tools used to address a variety of individual, social, ecological, and economic issues. By providing a quality parks and recreation system, we will work to achieve the following outcomes:

- Healthy active lifestyle for all
- Attract and retain families, skilled workers, and employees
- Strengthen relationships between family, friends, and the community
- Increase partnerships and volunteerism
- Strengthen and promote environmental stewardship
- Diversify and strengthen our economy through community-based tourism
- Affordable yet viable parks and recreation services

## Business Need

The 2019 Salt Spring Island Parks and Recreation Strategic Plan identifies “review of the current operating and management of the Market with a goal to improve service delivery and the efficient and appropriate allocation of PARC resources” as a key strategy under our plan for resourcing, capacity and communication. This strategy was originally listed as a priority three to be completed following strategies and actions listed as a priority one or two however challenges during recent market season have prompted PARC to complete the review ahead of other priority projects.

An opportunity exists to explore the current operating and management of the Market and enhance the service delivery of the Market with a goal to improve service delivery and the efficient and appropriate allocation of PARC resources:

(1) Shift the operation and management of the Market to an independent entity through a license of occupation and fee; or (2) review the current operation and management under local government to improve or innovate the service delivery

## Drivers for Change

The CRD operates and manages the Market through PARC. The CRD must amongst other things: coordinate “on the ground” activities on Market days, resolve vendor disputes, issue seasonal vending permits, assess whether vendors meet the Market’s “Make It, Bake It, or Grow It” policy, and hear appeals of decisions made by the Market Advisory Group and enforce Market policies and guidelines.

The CRD recognizes how important the Market is for the Salt Spring Island economy and does not want it to cease operations. The Market could be viewed as a catalyst for change and improving the vibrancy of the downtown core and tourism but given the resources that the CRD must devote to the Market both in terms of cost and staff resources, it would like to explore the responsibility of operating and managing the Market to the local community through an independent entity. The CRD would, ideally, enter into a licence agreement with an independent entity that would operate the Market in Centennial Park and the easement area on Saturdays.

The current operating model is outdated operational procedures and management structure is constraining growth, economic, and entrepreneurial potential. The Market will benefit from the expertise and business acumen to guide the long term future direction and creative marketing to adapt to changing market conditions.

## Other Driving Factors

### ***Market as a Source of Liability***

Operating and managing a busy market on CRD property exposes the CRD to the risk that it will be liable for damages suffered by Market patrons or vendors.

### ***Use of Centennial Park***

Because the Market is operated partially within a park, the common law rules respecting permissible use of park are important to consider before adopting to the independent entity model, as these rules will impact any agreements, including a licence of use that the CRD



enters into with an independent entity respecting the use of the park. Current zoning of park use for commercial activity is limited to 25% of the footprint

### ***Lost Opportunities under Current Model***

The current CRD operating model is not producing optimal results for improving vendor performance and business sustainability. The bureaucratic nature of the market operations means that it is neither able to move quickly enough to respond to day-to-day operations nor take advantage of opportunities for enhancement and improvement.

No sales or economic data to evaluate vendor performance:

- To determine return on investment for marketing programs or special events
- To assess vendor sustainability
  - Provide business education assistance to improve sales
  - Encourage vendor turnover for new entrepreneurial business ventures to enter the market from the waitlist and have non-performing vendors to exit
  - Maintain attractive market competition with other competitive farmer's markets on Vancouver island
  - Inspire entrepreneurial and fresh market activities to maintain unique market environment with superior products
  - Assess rental rates, allocation of space to more productive vendors, or determining prime selling areas and visibility

No business operating model for:

- Rental rates for prime spots and non-prime spots
- Vendor mix
- Budgeting
- Staffing
- Creative and sustainable business and marketing strategies (i.e. National or regional prepared brand i.e. Pike Street Market, Granville Market)
  - No action plan to maintain the character and image for the future
  - No marketing plan to address competition with other island regional farmers markets.

Benefits to changing the model to an independent entity model:

- Can focus on market issues, regional differentiation, image, achieving profits, and not political impacts
- Conduct consumer, visitors, and vendor surveys, data collection, demographic characteristics to offer important insights for market potential and business improvements
- Establish a branding identity for a "Made on Salt Spring Island"
- Establish an online presence for marketing and promotional material, link farmers and vendors to customers for further business transactions, and off-island sales. Currently there is no information on the types of products sold, nor is there a vendor directory
- Set long-term future direction (plan for growth)

- Creative marketing program with tourism initiatives, Chamber of Commerce, etc.
- CRD can focus on capital improvements to the park and community recreational programming

## Themes

Out of these contributing factors a number of themes emerge:

**Organization.** The goal in outsourcing is to minimize costs of delivering any given quantity and quality of services. The local government is striving to minimize their respective labour and resource expenditures to produce the service and cost associated with administrating and managing a commercial market so that these resources can be directed to other parks and recreation program and services.

**Centennial Park Use.** There are opportunities to review the layout, vendor placement, products and services offered at the Market. This type of review can be undertaken under the chosen service delivery model.

**Approaches and Methods.** Proactive and responsive marketing and meeting visitor and community needs require assessment, improvements, and action plans. Conducting a needs assessment; and creating a proactive and responsive marketing plan undertaken with the task of developing an overall strategic plan upon which to produce decisions and actions that shape and guide the Market operation in order achieve the most cost effective and economic model.

**Park Use Permits and Agreements.** CRD holds a great deal of control in improving the service levels and visitor experience based on park use agreements. Having a detailed agreement will assist an independent entity in how to carry out the responsibilities of the Market operations through contract specification and performance measures. The agreement should include the fee for using Centennial Park to cover CRD costs associated with repairs, maintenance, cleaning and garbage removal, as well as investments into future capital improvements in Centennial Park.

## Business Outcomes

The intention of this business case is to create a lens through which to consider the advantages and disadvantages of the current service delivery model to (1) solve the administrative overhead challenges to free up PARC resources for other parks and recreation programs and services (2) PARC needs to make a decision on which service delivery model is most appropriate for the Markets operating goals and objectives; (3) the chosen service model option will be required to address each contributing factor; and (4) present PARC with a business case to enhance the Market operation without creating a drastic loss in revenue typically generated by fees collected from vendors.

## Specific Objectives

The objectives of this business case is to demonstrate improving the operation and management of the market and increase capacity for parks and recreation service delivery in the following three ways:

1. Reduce staff time to process weekly vendor payment from 2 hours to 0 (including management oversight, market vendor administration, and dispute adjudication).
2. Increase recreation program offerings by 2% in the first year.
3. Enter into a License of Occupation for a five year term with an independent entity.

The desired outcome for the Market operation would be to (1) reduce CRD administrative oversight and resource allocation to oversee the Market; (2) increase recreation programs and services in the community by redirecting staff time and resources (3) outsource the commercial Market to An independent entity who serves the interest of the vendors and economic sustainability of the Markets interest to an experienced management entity.

## Assumptions

- That vendor and visitor attendance will continue to increase without CRD's management oversight.
- That the Market philosophy of "Make it, Bake it, Grow it" will continue to be enforced without the CRD's management oversight; and maintaining that farmer's priority placement.
- That CRD administrative oversight of the Market will decrease under an independent entity model.
- That an independent entity collect and process fees from seasonal and day vendors.
- That an independent entity proponent will be able to pay the CRD a fee for use of Centennial Park and the easement area equal or slightly lower to revenues currently collected to offset other operating costs in Centennial Park.

## SWOT Analysis

When assessing alternative options for operating and management of the Market we first need to assess the strengths, weaknesses, opportunities and threats (SWOT).

Operating and managing a busy market on CRD property exposes the CRD to the risk And potentially liable for damages suffered by Market patrons or vendors.

Strengths	Weaknesses
<ul style="list-style-type: none"> <li>♦ CRD has experience running the market and has established processes and procedures to optimize market administration.</li> <li>♦ CRD may be perceived as an objective market administrator rather than a non-profit that may be comprised of existing vendors.</li> <li>♦ CRD already has the software in place to manage the vendor attendance and payment process as well.</li> <li>♦ CRD is in a good position to ensure that government directives (such as the recent COVID health directives) are followed.</li> <li>♦ CRD has established local community partners and stakeholder groups.</li> <li>♦ CRD has the ability to generate revenue reinvest surplus funds towards park maintenance and improvements.</li> <li>♦ CRD website is used to post information about the Market.</li> </ul>	<ul style="list-style-type: none"> <li>♦ The regulations surrounding local government add an additional layer of administrative overhead to market operations, including reducing flexibility of modifying market fees and guidelines.</li> <li>♦ CRD is involved market disciplinary actions which can tie up management time as well as casting a negative shadow on the CRD within the community.</li> <li>♦ The CRD may not be perceived as an objective market administrator depending on political direction</li> <li>♦ The CRD is not, generally speaking, in the business of managing community markets and may lack expertise needed to enhance service delivery and bring the market to the next level.</li> <li>♦ Managing the market ties up CRD resources that could be used to support services better aligned with the PARC mandate.</li> <li>♦ CRD website and social media regulations restrict marketing opportunities using these channels.</li> </ul>

Opportunities	Threats
<ul style="list-style-type: none"> <li>♦ Establish new market guidelines to allow for greater diversity of vendors and make it easier for new vendors to become seasonal permit holders.</li> <li>♦ Self-regulation of 'make it, bake it, grow it philosophy by vendors.</li> <li>♦ Increase market attendance, service level, and customers through dedicated market management.</li> <li>♦ Create a marketing plan and social media campaign to target new customers.</li> <li>♦ Reduce potential liability by requiring vendor third party liability insurance.</li> <li>♦ Partner with local businesses and Chamber of Commerce to create marketing and promotional synergies.</li> <li>♦ Extension of the market season and official Christmas markets operated in the same manner as the summer market could provide additional revenue for vendors and the CRD or independent entity.</li> </ul>	<ul style="list-style-type: none"> <li>♦ CRD assumes all the financial risks. Typically this is not an issue but the market has run at a loss in 2020/2021 due to COVID.</li> <li>♦ Lack of a business strategy to drive innovation and change.</li> <li>♦ Operating and managing the busy market on CRD property exposes the CRD to risks that it could be liable for damages suffered by market customers or vendors.</li> <li>♦ Complaints from new and potential vendors that the existing model of seniority points makes it too difficult for them to become seasonal vendors. This in turn reduces the variety and novelty of the market.</li> <li>♦ The expansion of the Gasoline Alley Saturday market may lure vendors away from the CRD market.</li> </ul>

## Opportunity Statement

An opportunity exists to reduce CRD staff time to administer the Market, increase recreation program and services offered by PARC and improve the Market operation by providing improved operations and management by either (1) Shift the operation and management of the Market to an independent entity through a license of occupation and fee; or (2) review the current operation and management under local government to improve or innovating the service delivery.

### ***Vendor Fees and Linear Charges***

A commercial market should be operated under a policy of achieving fair market value in vendor fees and linear charges, therefore a change in management structure should have no impact on the potential gross revenue from vendor fees. Under the current model, a public sector operating the market involves challenges related to revenue:

- There can be a prevailing sense (among vendors, community at large, or Commissioners) that a CRD run initiative should be operated on a break-even basis, as though it were a community facility, not on a for-profit basis. This makes it difficult to achieve revenue to support the real cost of administering and operating a for profit commercial market.
- There is often political pressure on the elected officials and Commissioners (usually from vendors) to avoid increasing rates to off-set costs and making changes to market operations.
- Businesses downtown pay annual leases, and annual staffing costs; yet market vendors have access to prime location, time, and day of the week and operate at prime season.
- It is challenging to determine fair market lease rates from commercial properties in the downtown in order to evaluate annual fair market vendor fees and linear charges.
- The true cost to operate are not fully realized and subject to public rate-payer subsidization as the true cost of CRD management and administration expenses are not fully accounted in the funding formulas as it is difficult to capture.
- These challenges are greatest when the CRD directly operates the Market, as elected officials and Commissioners are typically involved in making commercial decisions about the Market and become targets of lobbying as we saw during recent COVID-19 restrictions. Considerable time is placed on CRD staff adjudicating vendor disputes and visitor complaints. Non-public sector operated markets that have a better history of non-involvement by public officials and commissioners (e.g., Granville Island, Lonsdale Quay, New Westminster Quay, and Richmond Public Market) work better by administering and marketing their commercial interests.

The private sector is immune to these kinds of pressures and political influence as there is the expectation that the private sector will maximize revenue to off-set operating costs and make strategic investments in market promotion and vendor sustainability. The situation of a private sector operator on a long-term licence of occupation may be swayed as there is still a connection between public officials, commissioners, and the market vendors. The solution is to have a clear policy and consistent application of that policy on the financial performance and permit fees.

Given the significant investment by PARC and the desire to not subsidize some commercial vendors so they have an unfair advantage over their competitors leasing space in the downtown Ganges, a policy on financial performance and permit fees should be as follows:

- To seek to operate at a profit
- To set rents at fair market value, subject to the need to offer favourable terms for food sustainability initiatives

As stated, this policy is only useful if it is applied consistently and if PARC does not seek to unduly influence the Market operations.

Under the current CRD operating model, the Market has not been able to:

- Achieve a quality tenant mix and business-management structure that is competitive. In addition, the social programming has not developed to its full potential.
- There is a need to increase the quality of the hands-on management at the Market. The Market needs to be guided by a strong Market Manager and a strong independent entity Board of Directors who can be creative, set long-term future direction, have an understanding of retail leasing, marketing, and operations, and can act quickly. An independent entity can provide the required expertise and autonomy to manage this retail and cultural asset.
- The Market will be in a better position to be competitive with other regional island farmer's markets and food shopping businesses by having the skills and autonomy to act quickly and efficiently to market forces (e.g., marketing programs, vendor compliance with lease regulations, etc.).
- An independent entity should be comprised of professionals who understand marketing, leasing, and operations of retail markets (e.g., business acumen) as well as social programming skills required to ensure this continues to be a valuable community asset and support sustainable business opportunities for Salt Spring Island entrepreneurs (e.g., food education, business training, marketing, branding, product mix, off and on island sales, etc.).

The CRD would retain control over capital investments, maintenance, and activities permissible within the park but an independent entity would be responsible for leasing, setting rents, annual budgeting, creative direction, and all other aspects of operating the Market. Most importantly, an independent entity would be responsible for operating the Market at no cost to the CRD.

### ***The Benefits of the Market to the Community***

- The Market brings life into the downtown and aids regeneration;
- The Market can attract business to retailers in the vicinity;
- The Market can stimulate local economic development by increasing employment, encouraging consumers to support local business, and thus keep money within the local community;

- The Market can stimulate more money being spent in the local economy, and ensure that it will circulate in the locality for longer; and
- The Market can provide an outlet for local produce, helping to start new local businesses and expand existing ones. One of the goals should be to grow entrepreneurial endeavours to move beyond the market and set up a business in the community e.g. Embe Bakery, Saltspring Soapworks Ltd.

### **The Vision for the Salt Spring Island Market should be Focused**

- A local farmer's food market (primarily) - highlight Ganges downtown market, experiential appeal
- A catalyst activity centre for Downtown Ganges—more than just a market which will include social activities in collaboration with the Chamber of Commerce
- An attitudinal/image enhancer for Downtown Ganges
- Creates a sense of “I want to go to the Market”—a destination
- Develops a branded identity – a “Made on Salt Spring Island”
- Creates a place of high standards in terms of service, unique product and produce offerings, etc.
- Creates a sense of freshness
- A unique community asset

### **Boundaries**

The boundaries considered for this business case are as follows:

**Operating budget.** In this business case a loss in revenue to the community parks operating budget are not to exceed reduced expenses. An independent entity would need to collect revenues to pay a monthly License of Occupation. PARC would need to recommend increasing the annual tax requisition to support any major budget deficits other than what is proposed in this business case.

**Implementation.** There is timeline sensitivity due to a number of PARC projects that have been put on hold due to limited staff resources. An independent entity would need to be identified to successfully take on the management and operation of the Market in 2023.

## Stakeholder Analysis

Stakeholders	Interested in the Project	Interest
<b>CRD Board</b>	- Amend the Salt Spring Island Farmers Market Bylaw No. 3795 to include the definition of an independent entity.	<b>A</b>
<b>PARC and SSI Director</b>	- Identified needs for a higher service levels that fall under the mandate of PARC and reallocate staff time and resources. - Makes a recommendation for the Market management and operations.	<b>PD</b>
<b>Residents and Tax Payers</b>	- Financial implication if costs go up or down - Sensitive to changes in service delivery	<b>I</b>
<b>Market Vendors</b>	- Sensitive to changes in service delivery - May be impacted if new operating model is adopted	<b>I</b>
<b>Market Coordinator</b>	- Will be impacted if new operating model is adopted.	<b>C</b>
<b>Harbour Authority &amp; Surrounding Neighbours</b>	- Long standing relationship between CRD and market impacts - May be impacted if new operating model is adopted	<b>C</b>
<b>Local Businesses</b>	- May be impacted if new operating model is adopted	<b>I</b>
<i>Legend: NI = no involvement I = information only C = consult PD = planning and decision making A = approval rights to say "yes" or "no" to decision</i>		



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# PHASE 2: Analysis and Recommendation

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## Evaluation Criteria

There is an opportunity to reduce CRD administrative and management oversight and resource allocation to oversee the Market by outsourcing these functions to an independent entity. Currently the CRD issues seasonal and daily permits, collects seasonal and daily fees, processes payments and is involved in resolving vendor disputes or organizing Market Advisory Group meeting to address vendor exemption requests.

An additional opportunity exists to reallocate resources and increase recreation programs and services in the community. Administrative and management oversight of the Market requires a considerable amount of CRD staff time and competes with other parks and recreation programs and service under the mandate PARC.

To improve the Market operation there needs to be a shift to the operation and management of the Market to an independent entity proponent or a review of the current operation and management under local government to improve or innovate the service delivery.

## Alternative Options

### ***Alternative 1: Revert the operating and management of the Market to an independent entity***

This alternative would require the CRD to put out a request for expressions of interest for an independent entity to assume the operation and management of the Market for the 2023 market season.

*AND*

Develop the terms and agreement for a License of Occupation in Centennial Park for the Market Season.

### ***Alternative 2: Review the current operation and management under local government to improve or innovating the service delivery***

This alternative would require additional capacity to complete the review and implement any recommendations.

### ***Alternative 3: Maintain the status quo by continuing with existing delivery model***

This alternative would have minimal impact to the operation and the users but does not meet the business case objectives to reduce CRD administrative oversight and resource allocation to oversee the Market; increase recreation programs and services in the community by redirecting staff time and resources; improve the Market operation by providing improved operations and management.

When assessing how each option meets the screening criteria Alternative 3 Status Quo, continuing with the existing service and operation should be discounted as a viable option as it does not meet the evaluation criteria: Reduce administrative oversight, increase recreation programs and services or improve the Market operation.

## Justification and Recommendation

### Revenue and Expense

The projected revenue and expenses for this business case cover three years with 2019 being a typical market year, 2022 being a transition year and 2023 a typical year under the new model. 2020 and 2021 have not been included as the market was operating under reduced capacity due to the COVID-19 pandemic.

### Alternative 1: Revert the operating and management to an independent entity

Projected revenue and expense to move operation of the Market in the Park to an independent entity.

Alternative 1	2019	2022	2023
<b>EXPENSES</b>			
Contract for Services	\$29,385	\$26,500	\$0
R & M - Parks/Grounds	\$112	\$320	\$326
Advertising/memberships	\$6,282	\$1,500	\$0
Security	\$487	\$500	\$510
Staff Admin & Management	\$12,290	\$17,012	\$4,235
Garbage & Electricity	\$2,794	\$3,000	\$3,060
Supplies - operating, janitorial	\$891	\$500	\$510
Bylaw Enforcement	\$4,090	\$4,876	\$4,971
Park Maintenance	\$12,290	\$9,088	\$9,270
<b>TOTAL EXPENSE</b>	<b>\$68,621</b>	<b>\$63,296</b>	<b>\$22,882</b>
<b>INCOME</b>			
Vendor Permits	\$105,990	\$112,200	\$0
License of Occupation			\$70,000
<b>INCOME less EXPENSE</b>	<b>(\$37,369)</b>	<b>(\$48,904)</b>	<b>(\$47,118)</b>

#### Alternative 1 Cost Notes:

- Assuming that an independent entity was able to pay \$70,000 for a Licence of Occupation for the Centennial Park Market, projected revenue and decreased expenses results in a 4.19% loss in revenue over 2022 in 2023. In addition, approximately \$12,777 of administrative staff time will no longer be allocated to market administration work and will need to be absorbed by other parks budgets.
- Licence fees for an independent entity will need to be set at a number that is sufficient to cover park operating expenses for the market as well as contributions to park betterment. A lease fee of \$70,000 (\$10,000/month) was assumed in this model to cover fixed costs and allow for future transfers to reserves for park improvements and repairs.
- It is assumed that the CRD administration and management costs will be 75% lower in 2023. Remaining CRD administration and management costs in 2023 and beyond will cover license of occupation administration and oversight.

## Alternative 2: Review the Current Operational Model to Improve Service Delivery

Projected costs to review and improve the current operational model of the market.

Alternative 2	2019	2022	2023
<b>EXPENSES</b>			
Contract for Services	\$29,385	\$26,500	\$42,030
R & M - Parks/Grounds	\$112	\$320	\$326
Advertising/memberships	\$6,282	\$1,500	\$1,530
Security	\$487	\$500	\$510
Staff Admin & Management	\$12,290	\$17,012	\$17,352
Garbage & Electricity	\$2,794	\$3,000	\$3,060
Supplies - operating, janitorial	\$891	\$500	\$510
Bylaw Enforcement	\$4,090	\$4,876	\$4,971
Park Maintenance	\$12,290	\$9,088	\$9,270
<b>TOTAL EXPENSE</b>	<b>\$68,621</b>	<b>\$63,296</b>	<b>\$79,559</b>
<b>INCOME</b>			
Vendor Permits	\$105,990	\$112,200	\$114,440
License of Occupation			
<b>INCOME less EXPENSE</b>	<b>(\$37,369)</b>	<b>(\$48,904)</b>	<b>(\$34,881)</b>

### Alternative 2 Cost Notes:

- Contract for services includes the market co-ordinator and, in 2023, a consultant to revenue and evaluate opportunities to improve market operation and management.
- Projected revenue and expenses results in 29% decrease in net revenue over 2022 in 2023. Market review would be a one-time expense with total expenses returning to normal in 2024.
- It is assumed that market improvements will result in increased market revenue in 2024.

### Alternative 3: Maintain the Status Quo Service Levels

Projected costs to continue the current operational model.

Alternative 3	2019	2022	2023
<b>EXPENSES</b>			
Contract for Services	\$29,385	\$26,500	\$27,030
R & M - Parks/Grounds	\$112	\$320	\$326
Advertising/memberships	\$6,282	\$1,500	\$1,530
Security	\$487	\$500	\$510
Staff Admin & Management	\$12,290	\$17,012	\$17,352
Garbage & Electricity	\$2,794	\$3,000	\$3,060
Supplies - operating, janitorial	\$891	\$500	\$510
Bylaw Enforcement	\$4,090	\$4,876	\$4,971
Park Maintenance	\$12,290	\$9,088	\$9,270
<b>TOTAL EXPENSE</b>	<b>\$68,621</b>	<b>\$63,296</b>	<b>\$64,559</b>
<b>INCOME</b>			
Vendor Permits	\$105,990	\$112,200	\$114,440
License of Occupation			
<b>INCOME less EXPENSE</b>	<b>(\$37,369)</b>	<b>(\$48,904)</b>	<b>(\$49,881)</b>

#### Alternative 3 Cost Notes:

- Projected revenue and expenses results in 2% increase in revenue over 2022 in 2023 due to increased vendor permit fees.

### Cost Benefit Analysis

From the perspective of the CRD, both maintaining the status quo and seeking options to improve market operational capacity have a similar outcomes, however it is likely that there would be increased revenue beyond 2023 in addition to improvements for the vendors and market customers if operational capacity was improved.

The Market is, in general, a source of revenue for the CRD so outsourcing to a non-profit does not bring increased revenue, but does offer other opportunities such as reducing risk for the CRD and removing the local government from market administration duties to allow additional staff resources for parks and recreation programs and services.

## Project Risks and Assumptions

### **Market Controversy.**

In 1992, following controversy over (amongst other things) the types of goods that were being sold at the Market, the CRD and several community groups engaged in a lengthy mediation process to determine how to best approach the Market's operation and management. According to the mediation report, several different operation models were considered, but the parties were unable to come to a mutually satisfactory solution. Accordingly, because of the CRD's important role as steward/owner of Centennial Park and its responsibility for the activities that take place there, the CRD decided to continue operating and managing the Market on its own through its parks commission.

Reverting the Market to an independent entity model could result in similar controversy requiring the CRD to again step in.

### **Economic Implications**

The Market is a source of revenue for the CRD and offsets staffing and maintenance costs associated with Centennial Park. Outsourcing to a non-profit does not bring increased revenue and will likely result in a loss of revenue. This loss in revenue will need to be offset by new sources of revenue or an increase in the requisition.

### **Social Implications**

The CRD has been operating the Market in its current inception since 1993 and has been issuing vendor permits as early as 1986. Long term vendors are placed using a seniority points system and visitors experience a similar market experience year over year.

It is assumed that the market will return to its full capacity in 2023 following the pandemic.

	<b>Risk Event or Assumption</b>	<b>Likelihood to Occur (low, Medium, high)</b>	<b>Impact if Occurs (low, Medium, high)</b>	<b>Mitigation/Strategy Plan</b>
1.	Market Controversy	Medium	High	Involve market vendors in decision process.
2.	No suitable independent entity candidates	Medium	High	Prepare to maintain market management for future years.
3.	Independent entity does a poor job of market administration	Medium	High	Ensure that a strong contract and lease are developed with ability to measure and manage contract outcomes.
4.	Economic Implications	Medium	Medium	Evaluate other options to increase park revenues.
5.	Market never returns to full capacity following the pandemic	Medium	High	Reduced number of market vendors +/- or customers may impact both market revenues and market viability.

## Recommendation

### **Alternative 1: Revert the operating and management of the Market to an independent entity**

That the Salt Spring Island Parks and Recreation Commission recommends that

Staff issue an expressions of interest for an independent entity to assume the operation and management of the Salt Spring Island Saturday Market for the 2023 market season for a five year term.

### Deciding Factors

Alternative 1 is the option that gives CRD staff the ability to meet the main objectives of the business case: Reduce administrative oversight, increase recreation programs and services or improve the Market operation.

### Implementation Plan

	Jan - Feb	Mar – Apr	May – Jun	Jul – Aug	Sep – Oct	Nov - Dec
2022	Seek PARC recommendation (Dec 2021)	Post Expression on Interest. Prepare Scope and Draft LoC	Post RFP	Award RFP	Sign LoC	
2023		Independent entity takes over operation and management of Market				Financial Audit provided to PARC

## CONCLUSION

The CRD has exclusive control over the Market and spends a considerable amount of time on administrative oversight, operation and management.

If the CRD adopts the Society Model, it can shift oversight to the society that takes over the Market and reduce the amount of time and resources that PARC and CRD staff need to devote to the Market.

## RECOMMENDATION

That the Salt Spring Island Parks and Recreation Commission recommends that staff issue an expressions of interest for an independent entity to assume the operation and management of the Salt Spring Island Saturday Market for the 2023 market season for a five year term.



# PROJECT CHARTER

LAST UPDATED: Thursday, February 10, 2022

<b>Project Name:</b>	Rotary Dinghy Dock Replacement Project
<b>Department Name / Division Name:</b>	Executive Services / SSI Parks and Recreation
<b>Budget / Account Code:</b>	CX.164.2001.71
<b>SharePoint File No.:</b>	5220 Projects – Rotary Dinghy Dock
<b>Prepared By:</b>	Dan Ovington

## 1. PROJECT BACKGROUND

The Rotary Dinghy Dock is at or near its end of life and is need of replacement. The dock replacement has been in the Salt Spring Island Parks and Recreation Capital Plan since 2020 but was fully reliant on grant funding for the project to move ahead. The Salt Spring Island Parks and Recreation Commission (PARC) approved \$20,000 of funding in 2022 to provide matching funds for future grant or partnership opportunities. The updated project budget is estimated to be \$40,000 for the dock removal, disposal and replacement. The Salt Spring Island Rotary Club has submitted a letter of intent committing an additional \$20,000 for this project to proceed in 2022.

In 2020 PARC partnered with the Rotary Club to replace the walking surface of the access ramp to improve safety and useful life. During those upgrades it was realized that the state of the existing dock does not meet the current demand and that the wooden dock is at or near its end of life with rotting deck boards, broken railings and missing floats.

With funding secured for the replacement project to move ahead we would hope to complete the work in the early spring to minimize impact to users during the peak season and to have the new larger dinghy dock available for spring/summer use.

## 2. PROJECT PURPOSE

The purpose of this project is to replace the Rotary Dinghy Dock at Rotary Park with a slightly larger more durable floating structure.

## 3. CRITICAL SUCCESS FACTORS

(S.M.A.R.T. – Specific, Measureable, Agreed-upon, Realistic, Time-Sensitive)

The following criteria will be the major indicators of success to the project:

1. Delivered on-budget
2. Continue to meet or exceed recreation use and future demand requirements
3. Universal accessibility
4. Vandalism resistant
5. Delivered on-time

#### 4. PROJECT SCOPE

Steps	In Scope	Status
1	<b>Preliminary Consultation:</b> - Meet with key stakeholders and staff	
2	<b>Funding Partner</b> - Receive letter of intent and sign off on project charter	
3	<b>Permitting Requirements:</b> - Transport Canada - Department of Fisheries and Oceans - Ministry of Forests, Lands and Natural Resource Operations and Rural Development	
4	<b>Design:</b> - Develop conceptual design including dimensions	
5	<b>Request for Quote:</b> - Receive three quotes for removal and disposal of existing dock and installation of new dock	
6	<b>Notice of Award:</b> - Award contract - Works to be completed early spring 2022	
7	<b>Removal and Installation:</b> - Contractor to remove and dispose of old dock - Installation of new dock - Assess chain links securing dock	
8	<b>Grand Opening:</b> - Plan a ribbon cutting ceremony with Rotary Club and PARC	

There are three regulatory bodies that govern docks and their replacement and therefore may have certain permitting requirements pertaining to the Rotary Dinghy Dock project. These potential permitting requirements were researched and the results concluded below:

##### A) Transport Canada:

The criteria and requirements in Transport Canada's order have been reviewed and it has been concluded that the straight replacement of the dock would be classified as a "Minor Works" and therefore does not require approval.

##### B) Department of Fisheries and Oceans (DFO):

DFO's measures to protect fish and fish habitat were reviewed, and it was decided our project of replacing the dock would not result in the death of fish and/or the harmful alteration, disruption or destruction of fish habitat. Therefore, the project does not require a review.

##### C) Ministry of Forests, Lands and Natural Resource Operations and Rural Development:

The Rotary Dock replacement includes a slight increase in the size of the dock, so it was recommended by the Ministry that a new site drawing (noting all improvements within the tenure



boundary and showing the dimensions and construction of all improvements) be submitted. The Ministry would then update our file to keep the tenure current.

## 5. PROJECT DELIVERABLES

No.	List of Project Deliverables	Acceptance Criteria <i>(specific standards, written criteria, etc.)</i>
1	Removal and disposal of existing dinghy dock	Environmental
2	Installation of a new dinghy dock at Rotary Park	Size / material

## 6. TIMELINES

No.	Milestones, etc.	February	March	April	May	June
1	Project Charter Approval					
2	Preliminary Consultation					
3	Permitting					
4	Design					
5	Request for Quotes					
6	Notice of Award					
7	Removal and Installation					
8	Grand Opening					

## 7. BUDGET

Cost Explanation	Amount (\$)	Revision (1)	Funding Source	Proposed Level of Effort (hours)
Disposal of existing dock	\$3,500			4
Conceptual designs	\$50			2.5
Supply and installation of new dock	\$32,000			21
Consultation (update project website)	\$275			5
<b>SUB TOTAL</b>	<b>35,825\$</b>			<b>84</b>
Contingency (5%)	1,790\$			
Project Technician (5%)	1,790\$			32.5 (@55/hr)
<b>TOTAL</b>	<b>39,405\$</b>			

\* Class D estimate + or - 50%, a preliminary estimate which due to little or no site information indicates that the approximate magnitude of costs of the proposed project based on the clients broad requirements

## 8. ADDITIONAL ASSUMPTIONS / CONSTRAINTS

No.	Description
1	Adequate staff resources will be available to undertake the project
2	Initial discussion on permitting requirements have indicated no new permits will be required
3	All work will fit within the existing foreshore lease
4	Existing chains securing the dock have not been inspected but are assumed to be in good condition

## 9. PROJECT TEAM

The following is a description of the roles and responsibilities for the project team.

Role	Team Member	Responsibilities
Project Sponsor	Robert Lapham (CRD CAO)	<ul style="list-style-type: none"> <li>• Chief Spokespersons</li> <li>• Liaise with CRD Board</li> <li>• Attends Commission/Board meetings as required</li> <li>• Review and carry forward recommendations by the team</li> </ul>
Senior Manager	Karla Campbell (CRD Sr. Manager)	<ul style="list-style-type: none"> <li>• Liaise with Project Sponsor</li> <li>• Stakeholder management</li> <li>• Manage the project team</li> <li>• Manage the resolution of conflicts (with the team and consultants/contractors, etc.)</li> <li>• Approve scope and budget changes</li> </ul>
Project Administrator	Dan Ovington (CRD Manager)	<ul style="list-style-type: none"> <li>• Prepare staff and progress reports for Commission and Board meetings</li> <li>• Overall responsibility for project performance with respect to scope, schedule and budget</li> <li>• Manage all procurement</li> <li>• Oversee tender and contract administration</li> <li>• Conduct project status review meetings with the Project Team</li> <li>• Identify risks to the project and implement mitigation strategy actions</li> <li>• Coordinate resources to resolve issues affecting project progress</li> <li>• Ensure compliance with policies and procedures</li> </ul>
Project Manager	(Project Technician)	<ul style="list-style-type: none"> <li>• Assist with the preparation of staff and progress reports for Commission and Board meetings</li> <li>• Prepare all procurement, tender and contract administration</li> <li>• Manage all design services and compliance with contracts</li> <li>• Evaluate designs and make recommendations</li> <li>• Report to Project Administrator on design, project, and contract issues</li> <li>• Administer consultations and roll up feedback</li> <li>• Administer and implement communications strategy</li> </ul>
Communications Coordinator	Corporate Communications	<ul style="list-style-type: none"> <li>• Prepare/provide input into communication plans</li> <li>• Development/production of publications, displays and presentations</li> <li>• Support public/stakeholder engagement, liaison, etc.</li> </ul>

## 11. KEY STAKEHOLDERS

Stakeholder	How Stakeholder is Affected by/Interested in Project	Role or Involvement in Decision Making (see legend below)
CRD CAO	Needs to be kept informed of the project and political issues. Commitment and support for project is necessary.	A
SSI Electoral Area Director	Needs to be kept informed of the project and political issues. Commitment and support for project is necessary.	A, PD
Parks and Recreation Commission	Needs to be kept informed of the project. Commitment and support for project is necessary. Key decision maker who makes recommendations to CRD Board for final consideration.	A, PD
SSI Administrative Staff	Kept informed of the project and provides input on schedules. Receive public comments.	I, C
SSI Operations Maintenance Staff	Kept informed of the project and provides input on process selections, equipment selections, maintenance issues, daily operational impacts etc.	I, C
Rotary Club	Needs to be kept informed of the project and timelines and provide input on project plans and budget.	I, C
Island Trusts	Commitment and support for project is necessary. Group's level of concern can have a HIGH level of impact on the decision.	A, I
Boaters	Kept informed of the project and timelines and dock closures. Receive public comments to website updates.	I, C
Neighbourhood businesses, residents and adjacent property owners.	Ensure stakeholder requirements are represented on the project. Group's level of concern can have a HIGH level of impact on the decisions.	I, C

*Note: For projects that require more substantial stakeholder identification, please refer to the Supplemental section of the CRD Project Management Guide for methods / templates, etc. Please document any addendums in the Addendum Section of this*

Legend	
NI	= no involvement
I	= information only
C	= consulted
PD	= planning and decision making
A	= approval rights to say "Yes" or "No" to a decision

## 12. COMMUNICATIONS

Internal		Required (yes / no)
Should any of the following be informed / kept up to date about this project?  <i>If yes, ensure that they are documented in the "Key Stakeholders" section. These groups may want the information to be ready for questions from the public or to plan for future change management, etc.</i>	CRD Politicians	Y
	Management Teams (i.e. ELT, Corporate Team)	N
	Specific senior managers from departments not involved in the execution of the project.	N
External		Required (yes / no)
Does the project require any of the following:  <i>*If yes, please consult your department's communications expert for direction when preparing the project plan.</i>	Public Consultation	Y
	Advertising in print, radio, television, web, etc.	Y
	Politically sensitive updates to stakeholders	Y
	Development of print materials for public consumption	Y

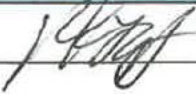

## 13. RISK IDENTIFICATION

No.	Risks Identification (Related to scope, schedule, budget, stakeholders, etc.)	Likelihood to Occur (low, medium, high)	Impact if Occurs (low, medium, high)	High Level Risk Response Strategy (if applicable)
1	Adequate staffing is available to manage and implement the project	Medium	High	Ensure staffing requirements are met through either employees, contract employees or consultants.
2	Project costs are greater than budgeted	Medium	High	Need to obtain cost estimates for design elements and key factors.
3	Public opposition	Low	High	Ensure effective community communication strategy throughout the process. Develop mitigation action strategies to address issues.

### Interrelationships with other projects/programs

The Recreation Project Technician will be taking the lead on this project and facilitating community consultation sessions that have previously been contracted out. Consideration will need to be given to scheduling consultation sessions while managing multiple projects.

**15. SIGN-OFF** (Signoff provides authorization for the project to proceed.)

Position/Title	Print Name	Signature	Date
Project Sponsors	Robert Lapham		Feb 3/22
	SSI Parks and Recreation Commission		
Senior Manager	Karla Campbell		February 2, 2022
Project Administrator	Dan Ovington		