



THE CORPORATION OF THE CITY OF COURTENAY

## STAFF REPORT

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**To:** Council

**File No.:** 2240-20 PSF

**From:** City Manager (CAO)

**Date:** February 22, 2023

**Subject:** Pacific Salmon Foundation Licence Agreement - McPhee Meadow Nature Park PIT Installation Request

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### PURPOSE:

The purpose of the report is to seek Council's approval for a licence agreement for 36 more or less square of land for the Pacific Salmon Foundation to install, operate and maintain a passive integrated transponder antenna system on the lands adjacent to the Puntledge River in McPhee Meadows.

### CITY MANAGER (CAO) RECOMMENDATIONS:

THAT Council approve the attached five-year Licence Agreement dated January 1, 2023 between the City and the Pacific Salmon Foundation for the licenced area on property having a legal description of:

PID: 028-419-910, Lot 1, Plan VIP88574, District Lot 118, Section 61

Respectfully submitted,

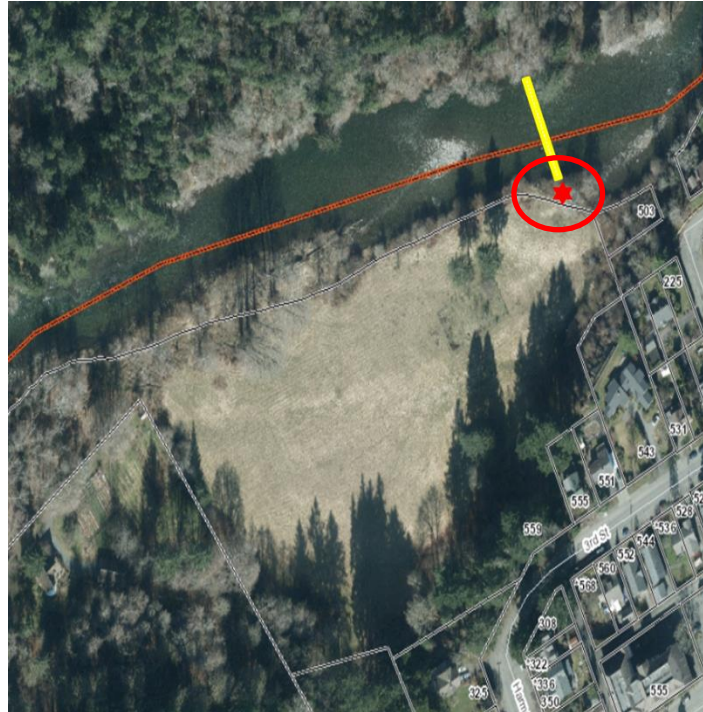
Kate O'Connell, M.P.P.

Acting City Manager (CAO)

### BACKGROUND:

In March 2022, a biologist from the BC Conservation Foundation (BCCF) contacted the City acting as an agent of Pacific Salmon Foundation (PSF) to discuss an outstanding request from 2020 (Attachment 1). The request was for permission to install a passive integrated transponder antenna system (PIT array system) in the Puntledge River, and, the associated monitoring equipment would be located on the adjacent land in McPhee Meadows.

### Proposed Licenced Area in McPhee Meadows



The original request had been delayed until there was staff capacity available to deal with the administration of the request.

More information on the study can be found in the PSF brochure Survival Bottlenecks Study Marine Science Program (Attachment 2) and is summarized below:

1. The study is a joint project between the Pacific Salmon Foundation and the British Columbia Conservation Foundation;
2. The study is in response to recent declines in abundance of Chinook and Coho salmon and Steelhead trout in the Salish Sea;
3. Declines in fish populations have resulted in numerous ecological, economic, and cultural impacts in BC including restrictions to commercial, recreational, and First Nations fisheries;
4. There is a growing consensus amongst the marine science community to study:
  - (a) the first year of marine life which plays a significant role the outcome of productivity of juvenile salmon;
  - (b) how predation, competition, and climate change all contribute to poor salmon and steelhead returns; and
  - (c) whether traditional fish hatchery activities are meeting conservation and recovery of wild stocks.

The research, monitoring and data collected will help guide mitigating activities to improve salmon and steelhead populations from hatcheries and wild stocks.

### DISCUSSION:

Earlier this year, Recreation, Culture and Community Service staff were in the process of seeking community engagement on the concept designs for McPhee Meadows Nature Park. With the unimproved park closed

to the public, City staff outlined the following requirements to BCCF and PSF before City staff could request Council's consideration of this agreement:

1. Lead consultation with K'ómoks First Nation and the McPhee family to ensure any concerns or feedback are captured in advance of the installation;
2. Ensure all required permits are obtained;
3. Execution of an agreement subject to approval by Council between the City and PSF outlining the terms and conditions in which the PSF could install, maintain and operate the PIT Array System and respective City and PSF rights and responsibilities;
4. Install interpretive signage and communication plan for the intended works as mutually agreed to by K'ómoks First Nation, BCCF, PSF, and the City; and
5. PSF agreeing to meet all Work Safe BC requirements, risk assessments and insurance coverage for the proposed installation.

City staff have been working in collaboration with BCCF and PSF in recognition of the importance of this study affecting the future survival of BC's salmon population. The need has been exasperated by the lack of rain this past fall and summer. The drought like conditions that continued into October resulted in salmon struggling to spawn in many areas across BC.

A key consideration is to whether the recreational use of the Puntledge River would be affected by the PIT array system. BCCF has confirmed that there is low risk to recreational users of the river such as tubers, or kayakers. A similar system has been installed south of the island on Cowichan River which has similar recreation uses and no conflicts have occurred.

With the above process completed, with the exception of the execution of the agreement, City staff are seeking Council's consideration of approval of a five-year licence agreement effective January 1, 2023 with an option to extend the term for an additional five year term (Attachment 3).

#### **FINANCIAL IMPLICATIONS:**

There is a nominal licence fee of \$1 for the licence.

Utilizing the 2020 fair market rent appraisal carried out by Jackson and Associates for unimproved lands, the current fair market rent is calculated as follows:

Square Foot	Fair Market Price Per sq.ft.*	Estimated Fair Market Lease Value
36 sq. ft. more or less	\$0.22 per sq. ft. per year	\$7.92 per year

\*Based on the 2020 fair market rent adjusted for annual C.P.I. increases (2020 to 2022) per Statistic Canada

## **Section 24 Community Charter - Provision of Certain Kinds of Assistance**

Since the licence agreement contemplates nominal rent less than market value, Council must provide notice pursuant to section 24 of the *Community Charter*:

### ***Publication of intention to provide certain kind of assistance***

**24** (1) A council must give notice in accordance with section 94 [public notice] of its intention to provide any of the following forms of assistance to a person or organization:

(a) disposing of land or improvements, or any interest or right in or with respect to them, for less than market value.

The assistance value would be \$7.92 per year.

### **ADMINISTRATIVE IMPLICATIONS:**

Approximately thirty (30) hours of City staff time has been dedicated to the preparation of the new agreement, discussions with the Nature Trust BC, McPhee family, BCCF, PSF, and preparation of the staff report.

The agreement will be administered by Corporate Services Department and the Recreation, Culture and Community Services Department will be the City liaison to BCCF and PSF.

### **ASSET MANAGEMENT IMPLICATIONS:**

No asset management implications. The condition of use is based on PSF accepting the current conditions and access to the park “as is.”

### **STRATEGIC PRIORITIES (2019-2022)**

#### **We proactively plan and invest in our natural and built environment**

▲■ Support actions to address Climate Change mitigation and adaptation

▲ Support social, economic and environmental sustainability solutions

#### **We continually invest in our key relationships**

●■ Build on our good relations with K’ómoks First Nation and practice Reconciliation

### **STRATEGIC PRIORITIES (2021-2022)**

Park Planning: McPhee Meadows

### **OFFICIAL COMMUNITY PLAN REFERENCE:**

<b>Four Cardinal Directions</b>							
Reconciliation	✓	Climate Action		Community Well-Being	✓	Equity	✓
<b>Thematic Policies</b>							
Streets and Transportation				Buildings and Landscapes			
Parks and Recreation	✓			Municipal Infrastructure			

Food Systems	✓		Local Economy			
Affordable Housing			Natural Environment	✓		
Social Infrastructure	✓		Arts, Culture, and Heritage			

**REGIONAL GROWTH STRATEGY REFERENCE:**

CVRD Regional Growth Strategy Goals:							
Housing		Ecosystems, Natural Areas and Parks	✓	Local economic development	✓	Transportation	
Infrastructure		Food Systems		Public Health & Safety		Climate Change	

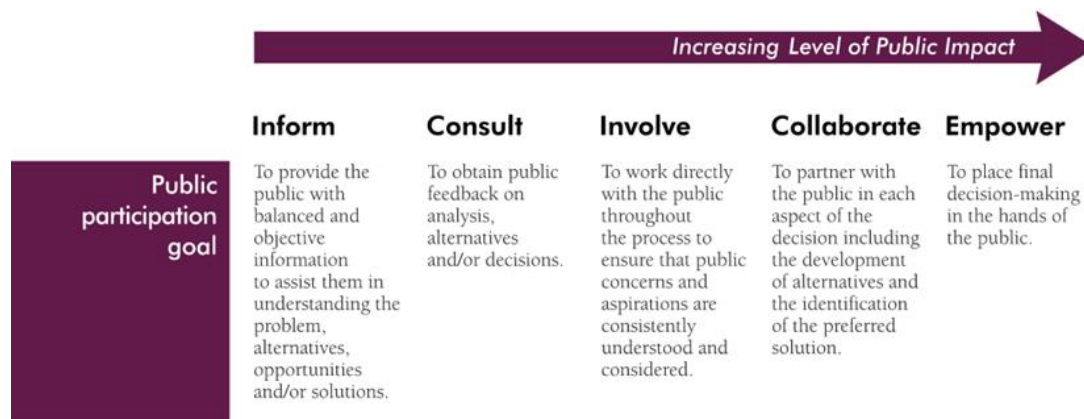
**CITIZEN/PUBLIC ENGAGEMENT:**

To satisfy the legislated requirements as set out in sections 24, 26 and 94 of the *Community Charter*.

Section 26 and 24 of the *Community Charter* for municipalities requires that notice be given prior to the disposition including the intention to provide certain kinds of assistance.

Furthermore, under section 94 of the *Community Charter*, the notice must also be published in a newspaper that is published at least weekly in the area affected by the subject matter of the notice.

Staff would inform the public based on the IAP2 Spectrum of Public Participation<sup>1</sup>:



<sup>1</sup> © International Association for Public Participation [www.iap2.org](http://www.iap2.org)

**OPTIONS:**

OPTION 1: THAT Council approve the attached five-year Licence Agreement dated January 1, 2023 between the City and the Pacific Salmon Foundation for the licenced area on property having a legal description of:

PID: 028-419-910, Lot 1, Plan VIP88574, District Lot 118, Section 61

**(Recommended)**

OPTION 2: THAT Council identify any concerns or questions and refer the matter back to staff for further consideration.

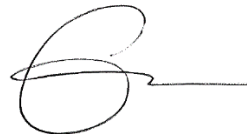
OPTION 3: THAT Council deny this licence agreement.

Prepared by,



Joy Chan  
Manager of Business Administration  
Services

Reviewed by,



Craig Rushton  
Director of Recreation, Culture and Community

Concurrence by,



Kate O'Connell, M.P.P.  
Acting City Manager (CAO)

**Attachments:**

1. BCCF/PSF Request for PIT Array System Installation – August 14, 2020
2. PSF Survival Bottlenecks Study Brochure
3. PSF Licence Agreement – McPhee Meadows January 1, 2023

**From:** Thomas Reid [<mailto:treid@naturetrust.bc.ca>]

**Sent:** Friday, August 14, 2020 9:08 AM

**To:** Snider, Dave <[dsnider@courtenay.ca](mailto:dsnider@courtenay.ca)>

**Subject:** RE: Request to use McPhee Meadows for salmon study conducted by BCCF and PSF

Hi Dave – just wanted to follow up on this.

Thanks,

Tom

**From:** Jamieson Atkinson [<mailto:jatkinson@bccf.com>]

**Sent:** July 27, 2020 10:55 AM

**To:** Thomas Reid; Steven Henstra

**Subject:** RE: BCSRIF BCCF and PSF

Good morning Tom and Steven,

The BCCF and PSF are developing a four-year ECVI salmon bottleneck survival study, and the Puntledge River is one of the primary rivers for this study. As this study is utilizing PIT tag technology, we are required to install PIT antennas and arrays across multiple systems. In the Puntledge River, we are targeting two potential sites for a full-stream PIT array. The first site for consideration is the McPhee Meadows property. As such, we would like to start the conversation and see if this site is suitable for our project and won't interfere with ongoing restoration or property management programs administered by the property owners.

The PIT array will be installed on the bottom of the river, each transect will span the entire width of the river and will be required to be dug down 30 cm, where the antenna will be situated. Photos of the antennas are attached. Antennas are either 20 or 30 ft in length and 3 ft wide. They will be anchored by duckbills driven into the substrate. Installation of the Puntledge array will occur next summer (2021). In order to make this site work for our project, the PIT array will require solar energy set up. Solar panels can either be installed high-up a tree or be ground-based. A fenced enclosure for the solar, and PIT equipment may need to be explored if vandalism is an issue.

We would like to formally express our interest in developing a plan and see if this type of infrastructure is something the landowners are interested in facilitating.

Please do not hesitate to contact me if any questions or concerns arise,

Thank you,

***Jamieson Atkinson, BSc.***

Senior Fisheries Biologist

British Columbia Conservation Foundation

P.O. Box 7

1-7217 Lantzville Road, Lantzville, BC.

V0R 2H0

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e. [jatkinson@bccf.com](mailto:jatkinson@bccf.com)





## SURVIVAL BOTTLENECKS STUDY

The Pacific Salmon Foundation, together with the British Columbia Conservation Foundation, are investigating survival bottlenecks for salmon and steelhead throughout the Salish Sea and Southern BC regions





## THE PROJECT

Recent declines in the abundance of Chinook and Coho salmon, and Steelhead trout in the Salish Sea have resulted in numerous ecological, economic, and cultural impacts in British Columbia. Indeed, unprecedented restrictions on commercial, recreational, and First Nations fisheries and even the poorer health of Southern Resident Killer Whales have all been linked to recent declines in these species. Now there is growing consensus that the first year of marine life plays a key role in regulating productivity for juvenile salmon, and that predation, competition, and climate change all contribute to poor salmon and steelhead returns in southern BC, particularly on Vancouver Island. Understanding the mechanisms and relative contributions of the factors that may be limiting Chinook, Coho, and steelhead productivity is a key cultural, economic, and ecological priority in the Province. Moreover, as wild salmon and steelhead abundance continues to decline or remain at historic lows, there is growing recognition that traditional hatchery mitigation is not meeting conservation and recovery objectives for wild stocks. For enhancement programs to effectively contribute to both harvest and conservation, the performance of hatchery fish must be similar to that of wild fish.

Recently, the Pacific Salmon Foundation's (PSF) Salish Sea Marine Survival Program utilized Passive Integrated Transponder (PIT) tags to examine the survival of juvenile Chinook salmon in the Cowichan River. Small, injectable PIT tags (12mm x 2mm) produce a unique identification code when a fish encounters an antenna — similar to the way the 'tap' feature works on a bank card — and can be used to track individual survival through various stages of their life-history. This research on juvenile Cowichan River Chinook highlighted the importance of critical mortality periods during both the early marine period and the first winter of marine life, and the much lower survival of hatchery-produced salmon relative to wild counterparts. In light of these observations and the need for a much broader assessment, PSF, together with the British Columbia Conservation Foundation (BCCF), applied for and received funding from the BC Salmon Restoration and Innovation Fund to investigate survival bottlenecks throughout freshwater and marine regions of the Salish Sea and parts of Southern BC. Our goals for this study are to: **(a)** develop the monitoring and evaluation framework and infrastructure to determine survival bottlenecks for wild and hatchery Chinook, Coho and steelhead, **(b)** implement infrastructure to allow for adaptive management of hatchery programs for harvest, conservation, and sustainability objectives, and **(c)** conduct research, monitoring, and evaluation that will help guide management to improve the performance of hatchery and wild stocks.



*PIT antenna in the Cowichan River*



*PIT tag implantation in a juvenile Coho salmon*

## COLLABORATIONS

This project is broad and highly collaborative in nature, with key project partners including DFO's Salmonid Enhancement (SEP) and Stock Assessment Division (StAD), the Provincial Ministry of Forests, Lands, and Natural Resource Operations (FLNRO), and the University of Victoria (UVic) — all of whom are partners in scientific study development and on the ground operations. We have also partnered with a number of community groups, non-profit stewardship organizations, and First Nations — whose traditional lands and rivers we are working in — to carry out field programs. Other academic institutions (SFU, UBC) are partners in mutual data collection and field sampling and are providing additional on the ground support. Lastly, the majority of our marine sampling is being carried out by a group of volunteers throughout the Salish Sea region, to whom we are very grateful for their continued efforts and dedication.

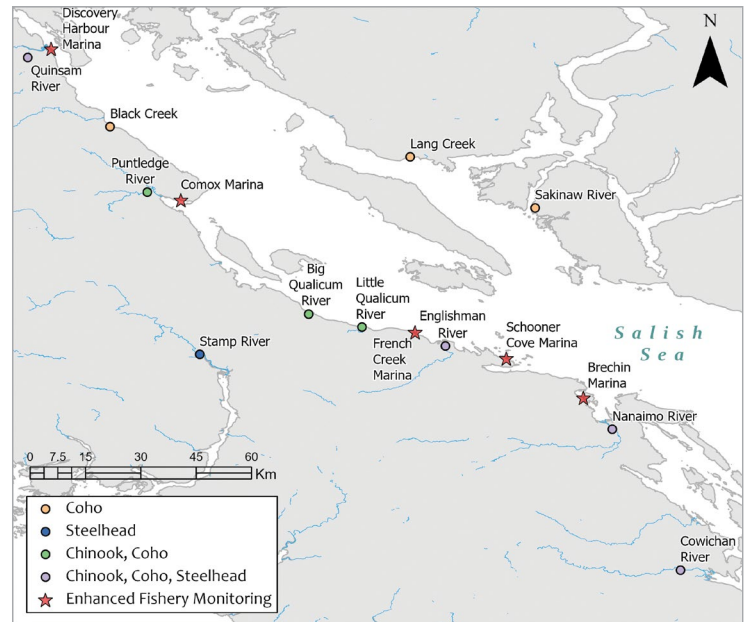
## APPROACH

The aim of this project is to provide new information on survival bottlenecks for Chinook, Coho, and steelhead in both freshwater and marine environments. The primary components are:

1. establishing PIT antenna arrays in a number of priority freshwater systems and hatchery facilities, and implementing an extensive juvenile salmon/steelhead PIT tagging program;
2. investigating the ecology of juvenile salmon during their first ocean winter;
3. utilizing PIT and video technology to electronically monitor recreational fishery catches and better understand predation mortality;
4. examining survival, dispersal, mortality mechanisms, and evaluating alternative hatchery strategies as conservation tools for juvenile and adult steelhead.

### 1. PIT Antennas and Tagging

Using a staged approach over the next three years, PSF, together with BCCF, will implement new PIT antenna arrays in key Vancouver Island, Sunshine Coast, and possibly Fraser River systems, as well as DFO-SEP hatchery facilities (Figure 1). Implementation of PIT infrastructure at hatcheries will also provide an innovative means of monitoring and evaluating experimental rearing and release strategies, hatchery-wild interactions, and future research opportunities at these enhancement facilities. To maximize this infrastructure investment, an ongoing PIT tagging program that aims to tag over 50,000 wild and hatchery juvenile Chinook, Coho, and steelhead throughout the Salish Sea region each year for the next four years has been implemented. Tagging will take place at hatchery facilities; in rivers and estuaries targeting wild fish; and in the marine environment for both hatchery and wild fish via capture by micro-trolling — a modified method of recreational fishing that utilizes miniature trolling gear (hooks, spoons, flashers) to target



*Figure 1. Map of the Bottlenecks study region showing the locations of river systems to be outfitted with PIT infrastructure and target species for tagging (color-coded circles), and recreational landing sites for enhanced fishery monitoring program (red stars).*

juvenile salmon. Data from this extensive PIT program will help elucidate key survival bottlenecks in both freshwater and early marine environments for Chinook, Coho, and steelhead, and will be used to develop strategies that may help improve survival.

### 2. Juvenile Winter Ecology

Despite a widely held belief that the first winter in the ocean plays a critical role in regulating salmon survival, there is a conspicuous lack of data on the winter habitat, diet, and health of these fish. A primary focus of the Bottlenecks project is to understand if, and how, the first winter at sea regulates survival of both hatchery and wild fish. To address this objective, a detailed study is being conducted in partnership with UVic to specifically examine the winter habitat use, diet, pathogen load, immune status, and bioenergetics of juvenile Chinook salmon. By sampling juvenile Chinook Salmon from October to March, researchers will develop the first complete picture of how these fish use their environment during the winter. The condition and energy content of individual fish will be related to their previous growth history (determined from scales) and their disease status (as indicated by cutting edge molecular genetic techniques). Integrating results will provide insight into how winter conditions may interact with pathogens and growing conditions during the previous summer to control survival. Results will be incorporated into models that will simulate the response of Chinook salmon to changes in winter ocean temperatures due to climate change.



*Microtrolling tackle — flasher and spoon*



### 3. Enhanced Fishery and Predation Monitoring

Another mainstay of the Bottlenecks project is an innovative and novel fishery and predation monitoring program being conducted in collaboration with DFO-StAD with support from the BC Sport Fishing Advisory Board and local marinas. This program will utilize PIT and video technology integrated into cleaning tables at a number of high-traffic recreational landing sites on Vancouver Island (Figure 1), and routinely scan known pinniped haulouts and heron rookeries for expelled PIT tags. Detection of tagged fish and video data collected at landing sites will provide valuable supplemental information to DFO's creel survey program and help quantify stock-specific exploitation rates, while scanning for expelled tags will help to better understand the proportional levels of mortality occurring from avian and pinniped predation. These two activities will provide valuable additional capture information that would be unavailable by any other means and further contribute new information on survival bottlenecks for salmon in the Salish Sea.

### 4. Understanding Steelhead Bottlenecks

Working with our partners at FLNRO, we will examine survival bottlenecks for Steelhead trout during both the juvenile and adult life history stages of this species. Juvenile PIT tagging programs on the Cowichan, Englishman, and Quinsam Rivers will provide information on timing, abundance, and both freshwater and marine survival, while an experimental program at Robertson Creek Hatchery will evaluate how alternative juvenile release and/or rearing strategies may be used to increase overall survival and adult returns. We will also evaluate the effectiveness of reconditioning wild kelts<sup>1</sup> as a tool to promote increased survival and repeat spawning, while satellite tags will be used to explore distribution and potential mortality mechanisms of reconditioned adult steelhead while at large in the Salish Sea and elsewhere. Data generated from this study will provide information on where survival bottlenecks could be occurring in freshwater and marine environments and evaluate strategies that may help facilitate population persistence and recovery for this species in the Province.

<sup>1</sup> Steelhead are iteroparous, a natural life history strategy whereby some individuals (2-15% of a population typically) will return to the ocean after spawning — a process known as kelting — and return to freshwater again to spawn in future years. Reconditioning is the process of culturing post-spawned steelhead (kelts) in a captive environment where they are fed and grown to a suitable healthy size before being released to continue their seaward migration.



Photo by Will Duguid

*Juvenile Chinook salmon caught by microtrolling*



Photo by Danny Swainson

*Microtrolling in Maple Bay, southern Vancouver Island*

**For further information, please contact Collin Middleton (PSF Project Manager) at [cmiddleton@psf.ca](mailto:cmiddleton@psf.ca) or Jamieson Atkinson (BCCF Project Manager) at [jatkinson@bccf.ca](mailto:jatkinson@bccf.ca)**

#### **The Pacific Salmon Foundation**

1682 West 7th Ave, Vancouver, BC, V6J 4S6  
Tel: 604-664-7664 | Email: [pearsalli@psf.ca](mailto:pearsalli@psf.ca)

Pêches et Océans  
Canada

Funding for this project is provided by the BC Salmon Restoration and Innovation Fund, a contribution program funded jointly between Fisheries and Oceans Canada and the Province of BC

## LICENCE AGREEMENT

This Agreement dated for reference this 1<sup>st</sup> day of January, 2023, is

BETWEEN:

**THE CORPORATION OF THE CITY OF COURTENAY**, a municipal corporation incorporated pursuant to the Community Charter and having its offices at 830 Cliffe Avenue, Courtenay, BC, V9N 2J7  
(the "**City**")

AND:

**THE PACIFIC SALMON FOUNDATION (REG. NO. XS0069845)**, a not-for-profit society with its principle offices located at 300-1682 W 7<sup>th</sup> Avenue, Vancouver, BC, V6J 4S6

(the "**Society**")

WHEREAS:

- A. The City owns the land located at 559 3rd Street, Courtenay, British Columbia, legally described as PID: 028-419-910, Lot 1, Plan VIP88574, District Lot 118, Section 61, Comox Land District (the "**Lands**");
- B. The Society wishes to use and occupy a 36-square-foot portion, more or less, of the Lands as highlighted in yellow and red in Schedule A attached hereto (the "**Licenced Area**") for the purposes of installing, operating and maintaining a Passive Integrated Transponder Antenna System which includes the master controller, battery box, and solar panel, as shown in Schedule B (the "**PIT Array System**") to investigate survival bottlenecks for salmon and steelhead in the Puntledge River; and
- C. The City has agreed that the Society may use and occupy the Licenced Area for the purposes and on the terms and conditions herein set forth.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the premises and covenants contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the City and the Society agree that:

### 1.0 GRANT OF LICENCE

- 1.1 Subject to the terms of this Agreement, the City hereby grants to the Society a right by way of licence to occupy and to use the Licenced Area ("**Licence**") for the purposes of installing, operating and maintaining the PIT Array System.

### 2.0 TERM AND NEW AGREEMENT

- 2.1 The parties agree the term of this Agreement shall be five (5) years, commencing on January 1<sup>st</sup>, 2023 and terminating on December 31<sup>st</sup>, 2027 unless terminated sooner or unless extended pursuant to the terms of this Agreement (the "**Term**").
- 2.2 The City and the Society may agree to extend this Agreement for a further five (5) year



term by mutual agreement in writing no later than six (6) months before the end of the Term under the same terms and conditions as outlined in this Agreement unless mutually amended in writing.

- 2.3 If the City and the Society have not negotiated a further term under section 2.2 and the Society should hold over after the expiration of the Term and the City should accept the Society's holding over, the new term created shall be on a month to month basis and the holding over shall be subject to the covenants and conditions herein contained so far as the same are applicable on a month to month basis.

### **3.0 LICENCE FEE**

- 3.1 The Society shall pay to the City a license fee of ONE (\$1.00) DOLLAR which the City, by executing this Agreement, acknowledges receipt of.

### **4.0 SOCIETY'S RIGHTS**

- 4.1 For the purposes of the Licence herein, the Society and its employees, subcontractors and employees shall have the right to:
- (a) use the Licenced Area to install, operate and maintain the PIT Array System in and on the Licenced Area;
  - (b) have access to the Lands and Licenced Area between dawn and dusk to carry out activities related to the use as prescribed in section 4.1(a); and
  - (c) subject to the terms of this Agreement, do all other things in the Licenced Area as may be reasonably necessary, desirable and incidental to carry out the use prescribed in section 4.1(a) and the Society's responsibilities under section 5.1.

### **5.0 SOCIETY'S MANAGEMENT AND OPERATIONS RESPONSIBILITIES**

- 5.1 The Society represents and warrants that:
- (a) the PIT Array System shall consist of the components shown in Schedule B and shall be installed in the location shown in Schedule B and shall not be changed or modified in any significant way without the express written consent of the City;
  - (b) the Society will be responsible for all aspects of and all costs associated with the installation, operation, maintenance, repair, monitoring, provision of Internet connectivity for and decommissioning of the PIT Array System or any part thereof;
  - (c) the Society shall keep the PIT Array System and Licenced Area in a neat, tidy, safe, secure and sanitary condition at all times;
  - (d) the Society accepts the Licenced Area "as is, where is" and acknowledges that the City has made no warranty or representation as to the state of Lands, their fitness for the Licensee's purposes and the Licensee hereby declares that it relies solely on its own inspection of the Lands and Licenced Area;
  - (e) upon receipt of notice from the City that the PIT Array System interferes with,

restricts or in any way adversely affects the City's operations, productivity, necessary upgrades, capacity improvements, construction projects or anything related to the successful and efficient operation of the Lands or Licenced Area, the Society will alter or remove the PIT Array System at its own cost so that in the opinion of the City it does not cause such interference, restriction or adverse effect to the Lands or Licenced Area;

- (f) the Society, its employees, subcontractors and invitees shall observe and comply with any and all safety rules, regulations and requirements relating to installation, operation, maintenance and decommissioning and removal of the PIT Array System;
- (g) the Society, its employees, subcontractors and invitees shall carry on and conduct their activities on the Lands and Licenced Area in compliance with any and all laws, statutes, enactments, orders, bylaws, regulations and other requirements of governmental or other public authorities having jurisdiction, from time to time in force, and obtain all required approvals and permits thereunder and not to do or omit to do anything in or on the Lands or Licenced Area in contravention thereof;
- (h) the Society shall exercise the greatest care in the use and occupation of the Licence Area and access to the Lands and shall provide a competent and trustworthy adult who will personally undertake to be responsible for the due observance of the rules and regulations governing the said Lands and Licenced Area;
- (i) the Society, its employees, subcontractors and invitees will not cut, prune, plant, damage or remove vegetation;
- (j) the Society shall promptly provide notice of all deficiencies with respect to the Licenced Area or the Society's use thereof in writing to the City;
- (k) the Society shall install, at its own expense, if requested by the City, a secured fenced compound to protect the PIT Array System from theft or vandalism;
- (l) the Society shall not do, suffer or permit to be done any act or thing upon or to the Lands or Licenced Area, which would constitute a nuisance to the occupiers of any lands or premises adjoining or in the vicinity of the Lands or Licenced Area or to the public generally;
- (m) the Society shall, at its own expense, install interpretive informational signage in the Licenced Area, the content, sign design, size and location of which must be approved by the City in writing prior to installation;
- (n) the Society shall not install or permit to be installed any recorded video surveillance or collect any personal information as defined by the *Freedom of Information and Protection of Privacy Act* (BC) and regulations, as amended, as part of the installation, operation, maintenance and decommissioning and removal of the PIT Array System; and
- (o) the Society shall, at the expiration or earlier termination of this Agreement, unless

the parties enter into a new agreement, remove the PIT Array System at its own expense and repair any damage to the Licenced Area caused by its removal.

## **6.0 THE CITY'S RIGHTS**

- 6.1 The City hereby reserves from the grant of Licence to the Society under section 1.1 the right for the City, its agents, employees and contractors to access any part of the Licenced Area, with or without tools and equipment, for purposes of inspection, maintenance and installation without compensation to the Society.

## **7.0 SOCIETY'S PROPERTY**

- 7.1 The City and Society agree that
- (a) the PIT Array System will be paid for by the Society;
  - (b) the PIT Array System is the property of the Society; and
  - (c) upon affixation to the Licenced Area, the PIT Array System will remain the property of the Society.
- 7.2 The Society agrees that it has sole responsibility for the loss or damage to personal property of the Society, its employees, subcontractors and invitees located in or on the Lands or Licenced Area from time to time, including the PIT Array System.

## **8.0 INSURANCE**

- 8.1 The Society shall, at its own expense, provide and maintain in force during the Term the following insurance coverage with respect to the Licenced Area and the PIT Array System:
- (a) insurance against damage to the PIT Array System; and
  - (b) comprehensive all-risks general liability insurance policy of not less than \$2,000,000.00 inclusive per occurrence with a deductible not greater than \$500.00 for any one claim.
- 8.2 On the first day of the Term and thereafter immediately upon demand, the Society shall provide to the City certified true copies of all insurance policies required under this Agreement as evidence that such insurance is in force, including evidence of any insurance renewal policy or policies.
- 8.3 The Society shall neither cancel nor approve any material change to the insurance policies required under this Agreement without having first received written approval of the City.
- 8.4 All policies of insurance the Society is required to maintain under this Agreement shall include a provision naming the City as additional insured, a cross liability clause, a waiver of subrogation clause in favour of the City, and a provision requiring the insurer to give the City thirty (30) days written notice prior to cancellation or any material change in an insurance policy.

## **9.0 INSURANCE RECOVERIES**

- 9.1 The parties agree that any recovery of insurance proceeds by the Society in respect of damage to or destruction of the Licenced Area and fixtures and assets installed by the Society shall be applied to replace or repair the same unless the parties agree otherwise.

## **10.0 INDEMNIFICATION AND RELEASE**

- 10.1 The Society hereby indemnifies and saves harmless the City, the City's elected officials, and the appointed officers, employees and agents of both parties from and against any and all costs, claims, losses, damages, liens, causes of action, suits, compensation, liability and expenses whatsoever (including legal fees on a solicitor and own client basis) which the Society or anyone else may suffer or incur as a result of the Society's occupation, control or use of the Licenced Area, or by execution of this Agreement.
- 10.2 The Society releases the City from all claims and demands which the Society may at any time have against it or its elected officials, officers, employees, agents or others, in respect of any matter arising from or related to this License.

## **11.0 LICENCED AREA ACCEPTED AS IS**

- 11.1 The Society accepts the Licenced Area on an as-is basis and agrees that the City has made no warranty or representation as to the state of Lands and Licenced Area or their fitness for the Society's purposes, and the Society hereby declares that it relies solely on its own inspection of the Lands and Licenced Area.

## **12.0 ALTERATIONS TO THE LICENCED PREMISES AND SURROUNDING GROUNDS**

- 12.1 The Society shall not make or allow to be made any alterations to the structure or mechanical service systems of the Licenced Area and its surrounding grounds without the prior written consent of the City. Any alterations to which the City gives its consent shall be at the expense of the Society.

## **13.0 AMENDMENT OF AGREEMENT**

- 13.1 This Agreement may only be amended by a subsequent written agreement signed by the parties.

## **14.0 ASSIGNMENT AND SUBLICENCING**

- 14.1 The Society shall not assign the benefit of this Agreement in whole or in part without the prior written consent of the City, and, except as specifically and expressly provided in this Agreement, the Society shall not sub-licence, grant any right of occupation or part with possession of the Licenced Area or any portion of it without the prior written consent of the City.

## **15.0 TERMINATION OF THE AGREEMENT**

- 15.1 Either party may terminate this Agreement by giving the other party sixty (60) days advance notice of its intention to terminate, such notice to be given in writing on the last day of any month.



- 15.2 The City may immediately terminate this Agreement if any of the following events arise:
- (a) the Society is in breach of any term or condition of this Agreement and fails to correct such breach to the reasonable satisfaction of the City within thirty (30) days after notice of the breach is given by the City;
  - (b) the Society becomes bankrupt or insolvent or takes the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors; and
  - (c) any order is made for the winding up of the Society.

## **16.0 SURRENDER OF CONTROL**

- 16.1 The Society shall, at the expiration or earlier termination of the Agreement, unless the parties enter into a new agreement, peaceably surrender and yield the Licenced Area to the City in good and substantial repair in all aspects, reasonable wear and tear and damage by force majeure only accepted. The Society is not entitled to any compensation for any loss, including economic loss, or injurious affection or disturbance resulting in any way from the termination of the licence in this Agreement.

## **17.0 DEFAULT**

- 17.1 Should the Society default in the observance or performance of any of the terms and conditions of this Agreement the City may, in addition to their right to terminate this Agreement pursuant to section 15.0 herein, pursue such other remedies as are provided to them in law.

## **18.0 STRICT PERFORMANCE**

- 18.1 The failure of the City to insist upon strict performance of any covenant or condition contained in the Agreement or to exercise any right or option hereunder shall not be construed or operate as a waiver or relinquishment for the future of any such covenant, condition, right or option and no waiver shall be inferred from or implied by anything done or omitted by the City save only express written waiver in writing.

## **19.0 NOTICE**

- 19.1 Any notice or instrument required to be given or made by this Agreement shall be in writing and either delivered in person, faxed or sent by registered mail to the other party at the address set out below, or at such other address as each party may designate by notice in writing to the other parties:

**For the City:**

Director of Recreation, Culture and  
Community Services  
City of Courtenay  
830 Cliffe Avenue  
Courtenay, BC V9N 2J7  
Phone: (250) 334-4441

**For the Society:**

Chief Financial Officer  
The Pacific Salmon Foundation  
1682 West 7th Avenue  
Vancouver, BC V6J 4S6  
Phone: (604) 664-7664

- 19.2 The address for notice may be changed by the parties from time-to-time by providing written notice of such change as herein contained.

- 19.3 If any question arises as to when notice was given, it shall be deemed to have been received by the intended recipient on the earlier of the day it was received, or on the fifth (5th) day after it was mailed, faxed or otherwise given to the intended recipient.

## **20.0 NO INTEREST IN LAND**

- 20.1 This Agreement grants no estate or interest in the Lands or the Licenced Area to the Society.

## **21.0 GENERAL**

- 21.1 Headings are provided for convenience only and do not form part of the terms of this Agreement. Wherever the singular or masculine is used herein, the same shall include, the feminine, plural and body corporate or politic where the context or the parties so require.
- 21.2 If any section of this Agreement shall be found to be illegal or unenforceable, then such section shall be considered to be separate and severable from this Agreement and the remaining sections of this Agreement shall be unaffected thereby and shall remain and be enforceable to the fullest extent permitted by law as though the illegal or unenforceable section had never been included in this Agreement.
- 21.3 There are no promises or obligations by or on behalf of the City other than the express covenants and provisions contained in this Agreement upon which any rights against the City may be founded. This Agreement constitutes the entire agreement between the parties hereto, and shall supersede all negotiations, representations, documents, and previous agreements made by either party in respect to the management, operations and maintenance of the Licenced Area.
- 21.4 This Agreement shall enure to the benefit of and be binding upon the parties hereto and upon the parties' respective successors and assigns.
- 21.5 Time shall be of the essence in this Agreement.
- 21.6 Each party hereto shall execute and deliver all such further assurances, documents and instruments and do all such further acts as may be reasonably required to carry out the full intent and meaning of this Agreement.

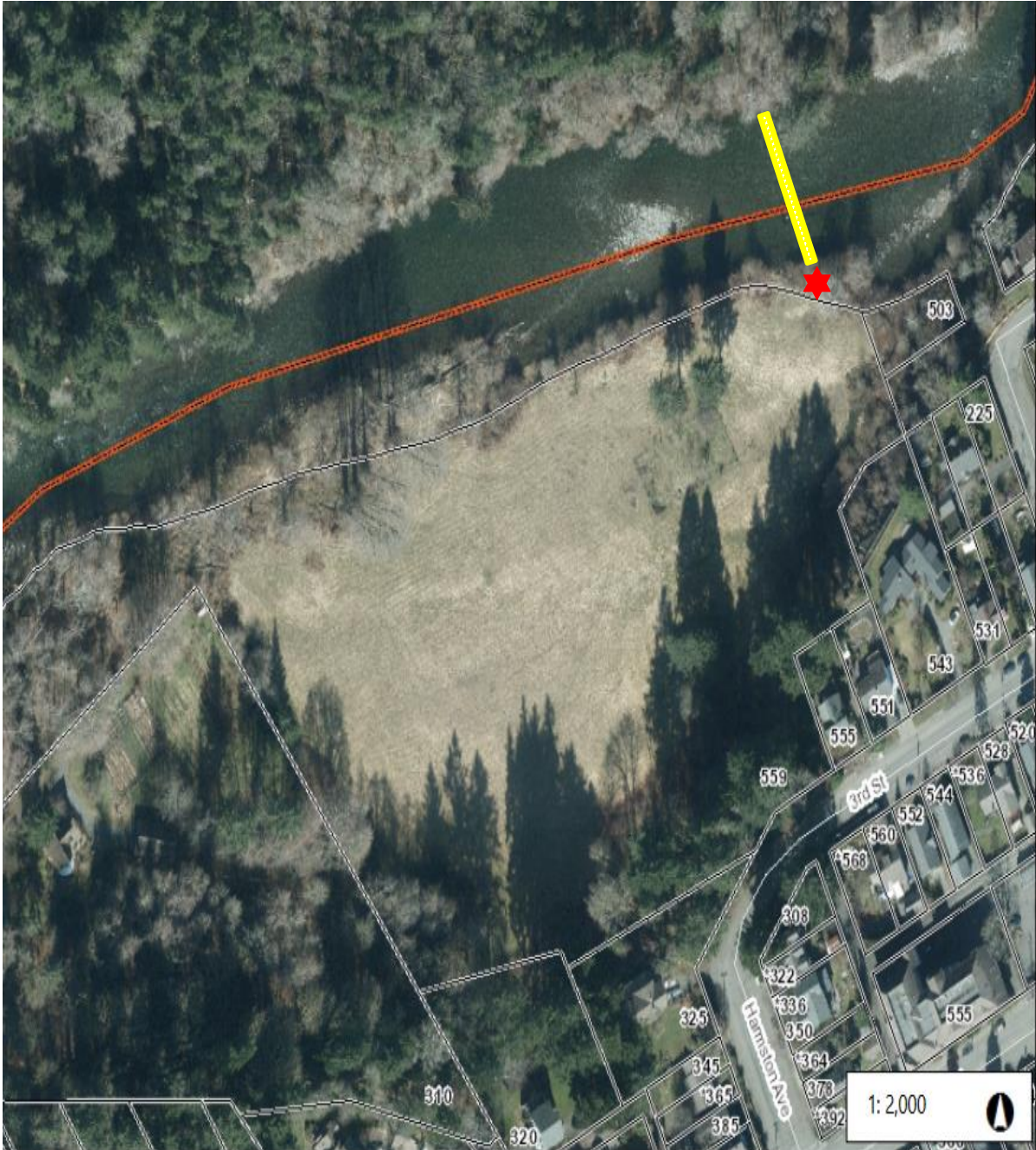
IN WITNESS WHEREOF the parties hereto have affixed their respective corporate seals duly attested by their authorized officers on the reference date above.

**THE CITY OF COURTENARY,** )  
by its authorized signatories: )  
 )  
\_\_\_\_\_)  
Name: )  
 )  
 )  
\_\_\_\_\_)  
Name: )

**THE PACIFIC SALMON FOUNDATION** )  
by its authorized signatories: )  
 )  
\_\_\_\_\_)  
Name: )  
 )  
 )  
\_\_\_\_\_)  
Name: )

SCHEDULE A

Licensed Area ★





## SCHEDULE B

### Pit Array System Controller and Batter Box





## Passive Integrated Transponder Antenna

