

## LICENCE OF OCCUPATION

THIS LICENCE OF OCCUPATION made this 1st day of May, 2024

BETWEEN:

**THE CORPORATION OF THE CITY OF COURTENAY**, a municipal corporation incorporated pursuant to the Community Charter and having an address of 830 Cliffe Avenue, Courtenay British Columbia V9N 2J7 (the "**City**")

AND:

**LUSH VALLEY FOOD ACTION SOCIETY (NO. S0041313.)**, a society duly incorporated under the laws of the Province of British Columbia, with a mailing address of 2342B Rosewall Crescent, Courtenay, BC, V9N 8R9 (the "**Licensee**")

**GIVEN THAT:**

- A. The City is the registered owner of those certain lands and Licensed Area in the City of Courtenay more particularly known and described as:

PID: 030-871-191, LOT 1, PLAN EPP84993, SECTION 61, COMOX LAND DISTRICT (the "**Land**");

- B. Subject to the compliance with the requirements within this License of Occupation (the "Licence"), the City has agreed that the Licensee may use and occupy a portion of the Land highlighted in blue in Schedule A for its non-exclusive use of (the "Licensed Area") for the purposes and on the terms and conditions set forth;
- C. The Society wishes to utilize a portion of the Land for the purpose of providing a Community Garden as a condition of this agreement in accordance with the Community Garden Management and Operating Grant Fee For Service Agreement dated May 1, 2024 attached as Schedule B, and the City wishes to grant to the Society a Licence for a portion of the Lands to support a Community Garden for community benefit.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the Licensed Area and covenants contained herein and sum of \$1.00 now paid by the Licensee to the City, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### **1. Grant of Licence of Occupation**

Subject to the terms of this Licence of Occupation (the "Licence"), and in consideration of the payment of the annual Licence Fee described in Section 3, the City grants to the Licensee (and its permitted assigns and their servants, agents and invitees) the right and license to: enter onto the Land and use the Licenced Area for the purposes of managing and operating a community garden and other related activities including garden demonstrations and educational events and community food and harvest gatherings, strictly in accordance with this Licence.

### **2. Term and Renewal**

The term of this Licence (the "**Term**") shall commence on May 1, 2024 (the "**Commencement Date**"), and shall terminate on the December 31, 2028 unless terminated earlier by the City or the Licensee pursuant to Section 6 herein (the "**Term End Date**"). If at the expiration of the Term, the Licensee shall hold over with the consent of the City, the Licence shall thereafter, in the absence of written Licence to the contrary, be from month to month, at the same licence fee as set out in this Licence and shall be subject to all other terms and conditions of this Licence.

### **3. Community Garden:**

The Licensee will use the Licensed Area for the sole purpose of operating a Community Garden to the City's standards (to be established by mutual agreement between the Society and the City's Director of Recreation, Culture and Community Services or designate as summarized in the Community Garden Management and Operation Grant Fee For Service Agreement (Schedule B), it being understood that:

- (a) The Licensee will be solely responsible for the operational cost, staffing and management of the Community Garden in accordance with Schedule C;
- (b) The Licensee will have an Occupational Health and Safety Program, policies and supporting procedures that comply with the Workers' Compensation Act and Occupational Health and Safety Regulations. In addition, the Licensee will ensure all Community Garden employees, supervisors, volunteers, and managers know their responsibilities, are trained and have access to the OHS Program policies and procedures;
- (c) **No Other Purposes** – The Licensee agrees that the Licensed Area must not be used for any other purposes unless the Licensee obtains the prior written approval of the City and the Licensee's use is in accordance with any applicable bylaws, policies and laws;

- (d) **Hours of Use.** Licensee will ensure the Community Garden has established and communicated public hours of use (“**Hours of Use**”). After the hours of use, the Community Garden will be closed to the public;
- (e) **Signage** – In addition to the Licence of the Facility, the Licensee will post clear and legible signs on the access points to the Licensed Areas detailing the Hours of Use and Community Garden Rules of Use provided the form, content and location of such signage complies with the City’s Sign Bylaw and is approved by the City in writing in advance;
- (f) **Repairs and Maintenance** – Throughout the Term the Licensee shall repair and maintain and keep the Improvements in the Licensed Area in a state of good repair as a prudent operator would do. The City will not be obliged to repair, maintain, replace or alter the Licensed Area during the Term or to supply any services or utilities thereto save and except for as set out in Schedule C, subject to operational budget availability. Subject to section 3(h), the Licensee hereby assumes the full and sole responsibility of the condition, operation, and management of the Licensed Areas during the Term. Should repair, maintenance, or replacement be required by the Licensee as direct result of the Community Garden, all work will be to a standard equal to the original work and material in the Improvements, and will meet the lawful requirement of all statutory authorities. Society will repair any damage, howsoever caused, including (without limitation) damage by acts of vandalism in addition to its responsibilities described in Schedule C;
- (g) **Waste** – The Licensee will not commit, suffer, or permit any willful or voluntary waste, spoil or destruction of the Licenced Area, Improvements and Lands, and will ensure that no garbage, waste, biohazardous materials or other debris accumulates in the Licenced Areas, Facility or within 3 metres of the exterior of the perimeter fence (the “Perimeter”) by ensuring that all garbage, waste, sharps, biohazardous materials or other debris are removed from the Licensed Area and the Perimeter a minimum of one time per day. The Licensee will dispose of all materials removed from the Licensed Area to the satisfaction of the City;
- (h) **Perimeter Cleanup According to Notice** - Licensee will be responsible for all clean up that it is obliged to do pursuant to section 3 (g) promptly upon notice from the City. If the Licensee does not perform all cleanup promptly upon notice from the City, the City reserves the right to enter into the Licensed Area to remove all waste from the Licensed Area and the Perimeter. The Licensee will pay to the City, on demand, the City’s cost of so doing plus an additional administrative fee of 15%;
- (i) **Program Participant Safety** – The Licensee shall take all reasonable precautions to ensure the safety of persons or invitees of the Licensed Area during scheduled workshops or programs.

- (j) **Security:** The City and Licensee agree to the general roles and responsibilities in regards to bylaw enforcement of the Licenced Area:
- i. The Licensee will keep the Community Garden closed to the public in the winter months between November 1s to March 31st.
  - ii. The City will support the Licensee in providing non-emergency bylaw enforcement services for the Community Garden subject to staff resource availability and City operational priorities and needs.
- (k) **Right to Inspect** – The Licensee shall permit the City to enter the Licensed Area at all reasonable times to determine if the Licensee is complying with all the requirements under this Licence.

#### **4. Non-Performance**

Provided, and it is expressly agreed, that if the Licensee breaches or does not perform any of its obligations or covenants set out herein, then the City may give the Licensee written notice of such breach of this Licence and if such breach is not remedied within thirty (30) days of such notice, it shall be lawful for the City, at any time, to enter upon the Licensed Area or any part thereof, and repossess the Licensed Area or any portion thereof for its sole use, anything hereinafter contained to the contrary notwithstanding.

#### **5. City May Take Action**

If the Licensee fails to do any matter required of them under this Licence, the City is entitled to take all such actions on the Licensee's behalf and at the Licensee's cost as are reasonably necessary to rectify the Licensee's failure, but the City is in no circumstance liable for not taking such action or its manner of doing so, provided that the City acts reasonably. The Licensee shall pay to the City the costs the City incurs pursuant to this provision net 30 days upon receipt of an invoice.

#### **6. Termination**

This Licence does not create any interest in the Land and is exclusively for the benefit of the Licensee. The Licence may be cancelled or terminated despite any rule of law or equity to the contrary in accordance with any of the following provisions:

- a) the Licensee will be entitled to terminate the Licence for any or no reason at any time upon giving sixty (60) days written notice to the City.
- b) the City will be entitled to terminate this Licence at its sole discretion, for any or no reason and at any time upon sixty (60) days written notice to the City.
- c) the Licence will be terminated if the City gives notice to the Licensee of a breach of this Licence in accordance with Section 4 and the Licensee fails to remedy the breach within 30 days.

- d) Either party terminates the Community Garden Management and Operating Grant Fee For Service Agreement (Schedule B).

All of the Licensee's obligations under this Licence that are outstanding on the date that this Licence is terminated will survive the termination of this Licence. For certainty, the Licensee's obligations to the Licence and indemnification of the City shall survive the termination of this Licence, but only in respect of events occurring before termination of this Licence.

## **7. Powers**

For the purposes of the Licence herein, the Licensee and its servants, agents and invitees shall have the right to:

- a) use the Land only for the purposes set out in Section 1;
- b) have an unobstructed access to and from the Licensed Area at any and all times;  
and
- c) do all other things on the Licensed Area as may be reasonably necessary, desirable and incidental to the use of the Licensed Area.

## **8. No Other Improvements**

Except for the existing as-built fencing, raised garden beds, drip irrigation system and storage shed, the Licensee will not, without the prior written consent of the City, construct, install, affix, place or store or permit the construction, installation, affixing, placing or storage of any buildings, structures, works, improvements, fencing, material or chattels or anything of any nature or kind including, without limitation, the parking or storage of vehicles on any part of the Licensed Area. Should written approval be granted, the Licensee will be responsible for the full cost of any City approved improvements including the installation, repair, maintenance and replacement.

## **9. Risks**

The Licensee accepts the Licensed Area on an as-is basis and agrees that it will use the Licensed Area at its own risk, and that the City will not be liable in respect of any loss of life, personal injury, damage to the property or loss of property suffered by the Licensee, its servants, agents or invitees arising out of this Licence or its or their use and occupation of the Licensed Area.

## **10. Indemnity**

The Licensee hereby indemnifies and saves harmless the City, its officers, directors, elected officials, employers and agents from and against any and all losses, claims, costs, expenses, damages and liabilities, causes of action, suits and judgements including all costs of defending or denying the same, and all costs of investigation, monitoring, remedial response, removal, restoration or permit acquisition and including all solicitor's fees and disbursements in connection therewith which at any time may be paid or incurred by or claimed against the City, its officers, directors, elected officials, employees, agents and invitees arising, directly or indirectly, out of:

- a) the use of the Land and the other uses of the Licensee under this Licence;
- b) a breach by the Licensee of any of the covenants contained in this Licence;
- c) any wrongful act or neglect of the Licensee on or about the Land;
- d) any damage to property related to the Licensee's use and occupancy of the Land; and the death of or injury to any person arising out of or in any way connected with, directly or indirectly, the Licensee's use and occupancy of the Land.

This section does not apply to liabilities, damages, costs, claims, suits or actions arising out of the gross negligence or willful misconduct of the City, its agents, servants, employees or contractors.

## **11. Insurance**

The Licensee shall obtain and keep in force throughout the existence of the Licence insurance naming the City as an additional insured and protecting the City and the Licensee (without a rights of cross-claim or subrogation against the City) against claims by any person, including any member of the public using the Licensed Area, for personal injury, death, property loss or damage, and third party liability or public liability claims arising from any accident or occurrence on the Licensed Area or other loss relating to the Licensee's use of the Licensed Area to an amount not less than Two Million (\$2,000,000) Dollars per occurrence and on terms acceptable to the City (the "Insurance Policy").

- a) The Insurance Policy shall provide that it is not terminable or alterable without the insurer providing at least 30 days written notice to the City.
- b) At the time of execution of this Licence, the Licensee shall deliver to the City a copy of the Insurance Policy or an insurance certificate or binder or note evidencing that the Licensee has obtained the Insurance Policy on the terms set out herein.
- c) At any time during the Term of the Licence the City may require the Licensee to provide evidence to it that the Insurance Policy is valid and in full effect.

## **12. Right of Entry**

The Licensee covenants and agrees with the City that the use of the Licensed Area by the Licensee shall not interfere with the other uses of the Land or adjacent property by the City. The City shall have the right to enter upon the Licensed Area to install, maintain and repair improvements or any other installations required by the City for the City's use of the Land or adjacent property.

## **13. City's Right to Perform**

If the Licensee shall fail to perform or cause to be performed one of the covenants or obligations of the Licensee contained in this Licence, on the part of the Licensee to be observed and performed, the City shall have the right (but shall not be obliged) to perform or cause the same to be performed and to do or cause to be done such things as may be necessary or incidental thereto (including without limiting the foregoing, the right to make repairs, installations and expend monies) and all payments, expenses, charges, fees, (including all legal fees on solicitor and client basis) and disbursements incurred or paid by or on behalf of the City in respect thereof shall be paid by the Licensee to the City within 30 days from receipt of the invoice.

## **14. Distress**

If and whenever the Licensee is in default of the payment of any money, including rent, whether expressly reserved by this Licence or deemed as rent, the City may without notice or any form of legal process whatsoever, enter the Licensed Area and seize, remove and sell the Licensee's goods, chattels and equipment and seize, remove, and sell any goods, chattels and equipment at any place to which the Licensee or any other person may have removed them in the same manner as if they had remained and been distrained in the Licensed Area, notwithstanding any rule of law or equity to the contrary, and the Licensee hereby waives and renounces the benefit of any present or future statute or law limiting or eliminating the City's right of distress.

## **15. Waiver or Non-Action**

Waiver by the City of any breach of any term, covenant or condition of this Licence by the Licensee must not be deemed to be a waiver of any subsequent default by the Licensee. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Licence by the Licensee must not be deemed to be a waiver of such term, covenant or condition.

## **16. Injury**

The City shall not be responsible in any way for any injury to any person or for any loss or damage to any property belonging to the Licensee or to other occupants of the Licensed Area, invitees, licensees, agents, employees, or other persons from time to time attending at the Licensed Area, including without limiting the foregoing, any loss of or damage caused by theft or breakage or failure to maintain and keep the Licensed Area, the buildings, or the Land in good repair and free from refuse, obnoxious odours, vermin or other foreign matter, defective wiring, plumbing, gas, sprinkler, stream, running or clogging of the above pipes or fixtures, or otherwise, acts, or negligence of guest, invitees, or employees or the Licensee or any other occupants of the Licensed Area, or the acts or negligence of any of the City's or occupiers of adjacent or continuous

property or their guests, invitees, or employees, act of God, acts or negligence of any person not in the employment of the City, or for any other loss whatsoever with respect to the Licensed Area.

#### **17. Licensee's Representations and Warranties**

The Licensee represents and warrants that the Licensee:

- a) is a not-for-profit society validly incorporated and in good standing under the laws of British Columbia and does not conduct its activities with a view to obtaining, and does not distribute, profit or financial gain for its members;
- b) has the power and capacity to enter into and carry out the obligations under this Licence; and
- c) has completed all necessary resolutions and other preconditions for the validity of this Licence;
- d) shall not do, suffer or permit to be done, any act or thing upon or to the said Licensed Area, which would constitute a nuisance to the occupiers of any lands or Licensed Area adjoining or in the vicinity of said Licensed Area or to the public generally.
- e) will reimburse the City for any damage or loss which occurs to the Land in connection with its use under this Licence.
- f) will apply on an annual basis for a permissive property tax exemption for its use of the Licensed Area under this Licence.

#### **18. Environmental Clauses**

The Licensee will conduct its activities on the Land in compliance with all applicable enactments and permits necessary to protect the environment ("Environmental law").

The Licensee will forthwith notify the City of the occurrence of any of the following and will provide the City with copies of all relevant documentation in connection therewith:

- a) a release of a Hazardous Substance on the Land, except as is authorized under Environmental Law;
- b) the receipt by the Licensee of a notice from any governmental agency of non-compliance pursuant to any Environmental Law, including a notice of non-compliance respecting a Permit in connection with the Land.
- c) the receipt by the Licensee of a notice of a claim by a third party relating to environmental concerns in connection with the Land; or
- d) the receipt by the Licensee of information that indicates that Hazardous Substances are present in or on the Land.



The Licensee will not permit the storage, treatment or disposal of Hazardous Substances on the Land.

The Licensee will conduct such investigation, searches, testing, drilling and sampling ("**Investigations**") as may at any time be required by the City where any reasonable evidence exists that the Licensee's use or occupation of the Licensed Area pursuant to this Licence may be introducing or increasing the existence of any Hazardous Substances on the Licensed Area. If the Licensee does not complete the Investigation to the satisfaction of the City, the City may take any actions necessary to complete the Investigations, the cost of which actions will be borne by the Licensee.

If Hazardous Substances are present on or in the Licensed Area as a result of the Licensee's use or occupation of the Licensed Area pursuant to this Licence, the Licensee will take all necessary action, at the cost of the Licensee to remediate the Licensed Area to a level acceptable to the City and to government authorities having jurisdiction.

Prior to the termination of this Licence, the Licensee will conduct all Investigations required by the City where reasonable evidence exists that the Licensee's use or occupation of the Licensed Area pursuant to this Licence has introduced or increased the existence of any Hazardous Substance on or in the Licensed Area. The Licensee will provide the result of the Investigations to the City. Where any Hazardous Substance is found on or in the Licensed Area as a result of the Licensee's use or occupation of the Licensed Area pursuant to this Licence, the Licensee will take all necessary action, at the cost of the Licensee, to remediate the Licensed Area to a level acceptable to the City and to government authorities having jurisdiction.

#### **19. Compliance with Laws**

The Licensee will at all times during the term of this Licence use the Licensed Area in compliance with all enactments and orders of any authority having jurisdiction and, without limiting the generality of the foregoing, all federal, provincial, or local government relating to environmental matters, including all the rules, regulations, policies, guidelines, criteria or the like made under or pursuant to any such laws.

This Licence shall be construed by the laws of the Province of British Columbia.

#### **20. No Effect on Laws or Powers**

Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions pursuant to the *Community Charter* (British Columbia) or its rights and powers under any enactment to the extent the same are applicable to the Licensed Area, all of which may be fully and effectively exercised in relation to the Licensed Area as if this Licence had not been fully executed and delivered.

## 21. General

- a) This Licence will ensure to the benefit of and be binding upon the Licensee and its successors, administrators and approved assigns and upon the City and its successors, administrators and assigns.
- b) Every reference to each party is deemed to include the heirs, executors, administrators, corporate successors, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires or permits.
- c) Wherever the singular or masculine or neuter is used in this Licence, the same shall be construed as meaning the plural, the feminine or body corporate where the context or the parties thereto so require.
- d) This Licence constitutes the entire Licence between the parties and no understanding or Licence, oral or otherwise, exists between the parties with respect to the subject matter of this Licence except as expressly set out in this Licence, and this Licence may not be modified except by subsequent Licence in writing between the parties.
- e) Time is of the essence of this Licence.
- f) The section headings have been inserted for reference only and do not define, limit, alter or enlarge the meaning of any provision of this Licence.
- g) If any section, subsection, sentence, clause or phrase in this Licence is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion is to be severed and the decision that it is invalid does not affect the validity of the remainder of this Licence, the parties hereby agreeing that they would have entered into the Licence without the severed portion.
- h) The parties hereto shall execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this Licence.
- i) This Licence shall be governed by and construed in accordance with the laws of the Province of British Columbia.
- j) This Licence may be executed in counterpart and delivered by electronic mail.

IN WITNESS WHEREOF the parties have executed this Licence as of the date first above written.

THE CORPORATION OF THE )  
CITY OF COURTENAY, )  
by its authorized signatories: )  
 )  
 )  
 )  
 )  
\_\_\_\_\_)  
Corporate Officer

LUSH VALLEY FOOD ACTION )  
SOCIETY )  
 )  
by its authorized signatories: )  
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\_\_\_\_\_)  
Maurita Prato, Executive Director )  
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Name )  
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# SCHEDULE A

**THE LICENSED AREA**  
(outlined area shaded in blue)



**SCHEDULE B**

**Community Garden Management Grant Fee for Service Agreement**

**SCHEDULE C**

**OPERATION & MAINTENANCE COST RESPONSIBILITY**

	ITEM	CITY	LICENSEE
1	Water utility cost, water supply and water supply plumbing fixtures.	100%	Irrigation – 100%
2	Garbage removal from Licensed Area		100%
3	Garbage and recycling dumpster rental and tipping fees (April to October)	100%	
4	Community Garden Infrastructure Improvements, installation, repair, maintenance, and replacement – E.G. allotment garden fencing, replacing deteriorating garden boxes, or accessibility improvements.		100%
5	Community Garden Supplies and equipment		100%
6	Licensed Area and Perimeter waste cleanup for any biohazardous waste, disposed and abandoned materials.		100%
7	Perimeter Fencing and Gates Repair and Maintenance	100%	
8	Gate Locks		100%
9	Community Garden staffing, volunteer management, safety training, participant safety and safety policies.		100%