

COMMUNITY GARDEN MANAGEMENT AND OPERATING GRANT
FEE FOR SERVICE AGREEMENT

THIS AGREEMENT dated for reference May 1, 2024.

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:

LUSH VALLEY FOOD ACTION SOCIETY (NO. S0041313.), a society duly registered in accordance with the laws of British Columbia, having its mailing address at 2342B Rosewall Crescent, Courtenay, BC, V9N 8R9

(the "**Society**")

WHEREAS:

- A. It is the goal of the Society to manage and operate the Community Garden (the "Community Garden"), located at 721 Grant Avenue, Courtenay, BC;
- B. It is the City's objective to invest in key relationships and continue to engage and partner with service organizations to meet the City's strategic objectives:
 - (a) Identify roles for the City in the delivery of food security/social infrastructure as outlined in the Official Community Plan, 2022.
 - (b) Develop a policy for community gardens and other small food production spaces, identify community partners to support community garden projects.
 - (c) Consider effective ways to engage with and partner for health, safety and well-being of the community;
 - (d) Identify the City's role in encouraging and integrating opportunities for sustainable urban agriculture (including community gardens, small plot farming, edible landscaping, greenhouses, and gardening to support pollinators and foraging) on municipal lands, boulevards, park spaces and vacant lands, including temporary accessory retail sales;
 - (e) Develop a program for community gardens and other small scale food production spaces such as orchards or beehives across the City, prioritizing areas of higher

residential density and areas home to equity-priority groups. Engage land holders who may have space to provide such uses, including on a short- to mid-term basis before land is developed; and

- (f) Support educational programming on urban agriculture, traditional Indigenous foods practices, environmental stewardship, and food security.
- C. The City and the Society wish to enter into this Agreement for the Society to manage and operate a Community Garden for community benefit; and
- D. The City and the Society acknowledge that the Society will partner with other organizations to undertake fundraising for its activities, operations and special projects to meet the Society's mandate, and the Society acknowledges that the City's grant is subject to the Society providing core deliverables as outlined in Schedule A of this Agreement.

NOW THEREFORE in consideration of mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. TERM

- 1.1 This Agreement shall commence on the 1st day of May, 2024 and expires the 31th day of December, 2028 unless terminated or extended as herein provided (the “**Term**”).

2. SERVICE AGREEMENT

- 2.1 During the Term, the Society shall, subject to the conditions herein set forth, plan, deliver, supervise, operate and manage the Community Garden and provide the core deliverables listed in Schedule A.
- 2.2 Over the term of the Agreement the parties will consider whether any additional core deliverables will be delivered under Schedule A.

3. REPORTING

- 3.1 By March 31st of each year of this Agreement, the Society will provide the City with annual reporting including a financial plan for the upcoming fiscal year in a form acceptable to the City (the “**Financial Plan**”) covering each of the areas outlined in Schedule A for the next fiscal year.
- 3.2 By March 31st of each year of this Agreement, the Society will also present to Council a summary outlining the following information:
 - (a) Provide an annual five (5) page high level summary report. Include goals for the year, implementation activities to achieve those goals, and impact.

- (b) summary of the programs, workshops and initiatives held during the most recent fiscal year and estimated volumes of foods produced.
- (c) total number of volunteer hours delivered.
- (d) Supporting data at the end of each year that summarizes how the Society achieved its deliverables and goals for the year including alignment with the City's strategic priorities as identified in Section B of this agreement.
- (e) Qualitative:
 - i. 2-3 Quotes from participants working or learning in the garden - quotes that illuminate the impact of the garden
 - ii. 2-3 quotes from garden educators or staff illuminating the impact of the garden
 - iii. 2-3 photos of participants to accompany the quotes. If faces are showing in the photos they must be submitted with a consent form approved by the City, that permits the City to share the photo in a variety of mediums including, but not limited to, annual reports, promotional materials, distributed via website, social media site, and other promotional platforms.
- (f) Metrics
 - i. List of educational and promotional events, programs, exhibits.
 - ii. Total number of participants in the garden and at each events, programs, exhibits (in person or on-line). Average weekly number of participants in the garden.
 - iii. Engagement/Partnerships, list of community organizations engaged with/supporting the garden.
- (g) Other
 - i. Copies of any resources developed in the garden.
 - ii. Include City logo on signage and all garden promotional materials.
 - iii. Participate as a key interest holder in the development of a community garden policy and other food system planning initiatives.

4. GRANTING OF FUNDS

4.1 The City will grant to the Society:

- (a) a management and operating grant fee in return for completing the deliverables identified in Schedule A, to be paid according to the invoice schedule contained in Schedule B. The management and operating grant fee amount shall be subject to annual budget approval by City Council and may be considered for amendment subject to City Council approval;
- (b) One time financial grant for \$5,500 for community garden infrastructure, subject to the Society meeting grant requirements as determined by the City including a written report on how they propose to spend the funds. The Society will be responsible for the installation, repair, maintenance and future replacement of any community garden infrastructure funded through this one time financial grant.
- (c) an in-kind contribution:
 - i. will be up to a maximum of \$1,000 per year between 2024 to 2028 towards:
 - a. Perimetre fencing and gate repairs, water utility costs, water supply and water plumbing fixtures repair and maintenance; and
 - b. Monthly garbage and recycling dumpster rental tipping fees between the months of April 1st to October 31st.
 - ii. subject to amendment and annual budget approval by City Council;

4.2 The grant shall be paid by the City within forty-five (45) days of receipt of invoice from the Society, which invoices shall be submitted and paid separately due to BC Gaming Fund requirements according to the dates listed in the invoice schedule contained in Schedule B and subject to available BC Gaming Funding and City Council's approval.

4.3 All operational revenue obtained from the management and operation of the Community Garden will become the property of the Society. The Society covenants and agrees that all grant funds received by the Society from the City must be used exclusively towards the Community Garden.

4.4 Should there be a surplus in any year of operating revenues and the City contribution exceeding operation costs, the Society will be entitled to retain the surplus for Community Garden operations and reserves. The Society must not incur a deficit in excess of accumulated surpluses.

4.5 Any funding to be provided by the City shall be subject to the approval of the City, shall be reviewed annually, and may be revoked or reduced by the City at any time in the event of program priority changes, budget, grant, or other funding constraints. The City shall act in good faith and make all reasonable efforts to provide advance warning of funding reductions to the Society.

5. SOCIETY'S RESPONSIBILITY

- 5.1 The Society shall undertake fundraising projects and the proceeds of such projects will be directly related to the Society's responsibilities under this Agreement through operating, programming, staffing, maintenance and special projects associated with the Community Garden.
- 5.2 The Society may collaborate with the City in community garden capital improvement projects which activities may include:
- (a) the participation in project scope development;
 - (b) assist in grant writing proposals; and
 - (c) provide financial contributions to capital projects provided such projects are for the purpose directly related to the Society's core deliverables identified in Schedule A.
- 5.3 The Society covenants and warrants with the City that:
- (a) the Society is, and shall remain throughout the term of this Agreement, a valid and subsisting Society in good standing incorporated pursuant to the laws of the Province of British Columbia, and shall not change its corporate structure or status, without the prior written consent of the City;
 - (b) board members and staff people of the Society must be subject to the Society's "Conflict of Interest" policies. No Society board member or staff person may knowingly engage in any activity that, in the opinion of the City would constitute a conflict of interest, or potential conflict of interest between that board member or staff person and either the Society or the City;
 - (c) the Society will handle personal information provided by the City to the Society in accordance with the Personal Information Protection Act of British Columbia;
 - (d) the Society shall maintain proper accounting records with respect to income and expenditures in accordance with generally accepted accounting principles and upon reasonable notice, shall allow representatives of the City reasonable access to its books and records during normal business hours;
 - (e) the Society will prepare and deliver to the City a reviewed statement of expense and income including other secured funding with respect to all revenues from and expenses for its activities including the use and operation of the Licensed Area as well as a reviewed statement of all related assets and liabilities. The Society will cause such annual financial statements to be reviewed by its accountant and thereafter submitted to the City for consideration no later than October 1st of each year for the most recent fiscal year;
 - (f) the Society shall conduct each program and activity in an effective, efficient, safe and professional manner at all times; and

- (g) whenever appropriate, the Society shall publicly recognize the City of Courtenay as a major government funder for its contribution to the Society.

6. INSURANCE

- 6.1 The Society will obtain and keep in force throughout the existence of this Agreement comprehensive general liability insurance to protect and indemnify itself and the City against claims for bodily injury, death, property damage, property loss, economic loss, and broad form products and other loss or damage occurring with respect to third party liability claims arising from the provision of the agreed service in an amount not less than five million dollars (\$2,000,000.00) per claim and aggregate per year, with a cross liability clause and including the City as an additional named insured.
- 6.2 The insurance policies must list any major exclusions.
- 6.3 The Society will cause any insurance policy obtained by it pursuant to this Agreement to contain a waiver of subrogation clause in favour of the City.
- 6.4 The Society agrees to be responsible for any deductible amounts under the policies.

7. INDEMNIFICATION

- 7.1 The Society agrees to indemnify, defend and hold harmless the City, its agents, servants, employees, trustees, officers and representatives from any liability, loss or damage which the City may suffer as a result of any claims, demands, costs, actions, causes of actions, or judgments, including legal fees, asserted against or incurred by the City arising out of, during, or as a result of the provision of services outlined in this Agreement except such liability, loss, or damage which is the result of, or arising out of, the sole negligence of the City. The indemnities contained in this Agreement will survive the expiration or earlier termination of the Term.

8. NOTICE

- 8.1 Notice, when and if required to be given to either party by this Agreement, shall be deemed effectively given and received if given in writing to the other party by registered mail or personal service addressed as follows:

CITY OF COURTENAY
ATTN: Director of Recreation, Culture, and Community Services
830 Cliffe Avenue
Courtenay, BC
V9N 2J7

LUSH VALLEY FOOD ACTION SOCIETY
ATTN: Executive Director
at 2342B Rosewall Crescent,
Courtenay, BC,
V9N 8R9

Either party may change its address for notice by providing notice to the other in accordance with this Agreement.

9. TERMINATION

9.1 This Agreement may be terminated under the following circumstances:

- (a) in the event that the Society fails to honour any of the provisions, covenants or warranties of the Agreement contemplated hereby or at any time in effect between the parties, the Society shall have thirty (30) working days to rectify the situation or the City may, at its option, terminate this Agreement by giving the defaulting party thirty (30) days written notice;
- (b) in the event the Society goes bankrupt, is placed into receivership, takes advantage of any law for the protection of insolvent debtors, allows any judgement to be entered against it, or allows any of its assets to become the subject of seizure or distress; this Agreement shall immediately terminate;
- (c) in the event the Society ceases to occupy and operate an Art Gallery at the current location, this Agreement shall immediately terminate;
- (d) in the event this Agreement is terminated prior to the expiration of its Term, the City shall be released of its obligations under this Agreement to further fund the Society. The Society shall, if required by the City, refund to the City such monies as may have been advanced by the City as are in excess of amounts contributed or otherwise irrevocably committed by the Society in respect of the Financial Plan being provided by the Society; and
- (e) either party may terminate this Agreement at any time by giving the other party 60 (2) months advance notice of its intention to terminate, such notice to be given in writing on the last day of any month.

10. GENERAL TERMS

10.1 This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors and permitted assigns.

10.2 Except as specifically provided, nothing in this Agreement affects the rights and powers of the City in the exercise of its functions, rights, power or authority under any enactments, which may be fully and effectively exercised as if this Agreement had not been made.

10.3 Each party will execute, or cause to be executed, such further and other documents and instruments, and do, or cause to be done, such further and other things as they are authorized to do and as may be necessary to implement and carry out the intent of this Agreement.

10.4 This Agreement contains the entire agreement between the parties and supersedes all prior

written and oral communication with respect to the subject matter of this Agreement.

- 10.5 This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia, or, to the extent that matters of paramount federal jurisdiction are involved, the laws of Canada.
- 10.6 This Agreement may not be assigned by the Society without the consent of the City.
- 10.7 No amendment or variation of the terms, conditions, warranties, covenants, agreements or undertakings set out in this Agreement will be of any force or effect unless the same is reduced to writing, and duly executed by each party.
- 10.8 No consent or waiver, express or implied, by any part of any breach or default by another under this Agreement will:
 - (a) be valid unless it is in writing and stated to be a consent or waiver pursuant to this section;
 - (b) be relied on as a consent to or waiver of any other breach or default of the same or any other nature;
 - (c) constitute a general waiver under this Agreement; or
 - (d) eliminate or modify the need for a specific consent or waiver under this section in any other or subsequent instance.
- 10.9 Time is of the essence in the performance of each obligation under this Agreement.
- 10.10 Each provision of this Agreement is intended to be severable, and the unenforceability or invalidity of any particular provision under any applicable law will not affect the validity of any other provision, except that if, on the reasonable construction of this Agreement as a whole, the other provision is expressly stated, or is by reasonable implication intended by the parties, to be dependent on the validity and enforceability of the particular provision, the other provision will be deemed also to be invalid or unenforceable.
- 10.11 This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed an original, but all such counterparts shall together constitute one and the same document. This Agreement may be executed and transmitted by electronic means and if so executed and transmitted this Agreement will be for all purposes as effective as if the parties had delivered an executed original Agreement.

SCHEDULE A
SERVICES AND DELIVERABLES

Share the Harvest Community Garden Plan

[SHCG 2024 Vision and Plan_Redacted.pdf](#)

SCHEDULE B
INVOICE SCHEDULE

Date of Invoice	Date of Invoice	Grant Fee (BC Gaming Funded)*
May 1 st , 2024	May 1st	\$12,000
April 1 st , 2025	April 1st	\$12,000
April 1 st , 2026	April 1st	\$13,000
April 1 st , 2027	April 1st	\$13,000
April 1 st , 2028	April 1st	\$13,000
	TOTAL	\$63,000