



## ADMINISTRATIVE REPORT

Report Date: March 31, 2015  
Contact: Mary Clare Zak  
Contact No.: 604.871.6643  
RTS No.: 10901  
VanRIMS No.: 08-2000-20  
Meeting Date: April 14, 2015

TO: Vancouver City Council

FROM: General Manager of Community Services in consultation with Real Estate and Facilities Management

SUBJECT: Lease of 58 West Hastings Street to Portland Housing Society for Temporary Use for Gardens and Agriculture Programs

### **RECOMMENDATION**

THAT Council authorize the Director of Real Estate Services to enter into a license agreement at a nominal total rent of \$10 with PHS Community Services Society, for a term ending November 30, 2015, with an option to extend for one year, at the City-owned property at 58 West Hasting Street (legally described as: PID: 027-736-032, Lot 1 Block 29 District Lot 541 Group 1 New Westminster District Plan BCP39144) to continue to maintain the garden and agriculture programs on the terms and condition outlined in Appendix A and that are satisfactory to the Director of Legal Services and the Director of Real Estate Services, and that no legal rights or obligations will be created by Council's adoption of this Recommendation unless and until such agreement is executed.

The license agreement at nominal rent constitutes a grant and requires eight affirmative votes from members of Council.

### **REPORT SUMMARY**

This report seeks Council approval to enter into a license agreement for a term ending November 30, 2015, with an option for extension for one year, to allow PHS Community Services Society ("PHS") to continue maintaining the garden and deliver urban agriculture programs at 58 West Hastings Street. PHS has been operating the garden for the past three years under an agreement with the previous owner, Concord Pacific. On November 14, 2014, the City of Vancouver received title to the property from Concord Pacific as a community amenity contribution for the rezoning of 10 Terry Fox Way.

The license agreement contemplates the gardens as a temporary use until the site is redeveloped for housing purposes anticipated in 2016, and further contemplates a nominal total rent of \$10.00 for the term, including the potential extension of the license agreement for one more year.

### ***COUNCIL AUTHORITY/PREVIOUS DECISIONS***

- The City of Vancouver received title to 58 West Hastings Street property, November 14, 2014, from Concord Pacific as a community amenity contribution for the rezoning of 10 Terry Fox Way.
- The Healthy City Strategy (2014) set the goal of feeding ourselves well and making ends meet.
- The Downtown Eastside Local Area Plan (2013) identified local food assets in the neighbourhood and opportunities for community economic development.
- The Vancouver Food Strategy (2012) identified community gardens and urban agriculture as a key target and metric to achieve its goals.
- The Greenest City Action Plan (2011) set target to increase city-wide and neighbourhood food assets by a minimum of 50 percent over 2010 levels.
- Staff memo to Council on securing tenure for community gardens (RTS#9876) outlined a framework for supporting gardens on City and Park Board land that is not required imminently for development or civic use.

### ***CITY MANAGER'S/GENERAL MANAGER'S COMMENTS***

The City Manager and General Manager of Community Services recommend support for the terms and conditions in the licence agreement for the continued operation of the garden and urban agriculture programs by PHS at 58 West Hastings Street. The garden is an ideal use of the site until the site is redeveloped for housing purposes anticipated in 2016. The garden and urban agriculture programs add positive contributions to the neighbourhood, and contribute to many of Council priorities and goals outlined in the Vancouver Food Strategy, Greenest City Action Plan and the Healthy City Strategy.

### ***REPORT***

#### ***Background/Context***

The subject property at 58 West Hastings Street, as shown on Appendix A, is a mid-block half-acre site of which the City of Vancouver received title on November 14, 2014, from Concord Pacific as a community amenity contribution for the rezoning of 10 Terry Fox Way.

PHS has been operating a garden and agriculture-oriented programs at this location for three years with goals of being a neighbourhood gathering place focused on food growing, education and sharing together. The garden provides low income residents with training and skills development, and part time employment; including growing vegetables and fruits, keeping of honeybees, managing the site, maintenance of farm infrastructure and hosts weekly seasonal markets.

The garden is distinguishable from other urban agriculture projects in that they are growing primarily for the produce to be used in PHS's kitchen and food programs. During the growing season they also have a weekly small market stand where they sell produce to the neighbourhood that they grew onsite.

The site is also home to bee hives that are managed by Hives for Humanity, a non-profit organization that encourages community connections through beekeeping. The gardens also have a dual mandate to provide other cultural, recreational and outdoor activities to residents and the neighbourhood. In the past, it has had totem pole carving, gatherings of particular significance to the Aboriginal community such as healing circles and smudging ceremonies.

### *Strategic Analysis*

The garden and its agricultural programs support Council priorities and goals of the Vancouver Food Strategy, the Greenest City Action Plan and the Healthy City Strategy. In particular, urban agricultural programs, such as the one at 58 West Hastings Street, are an integral part of building sustainable food systems. Specifically, the Vancouver Food Strategy has a target to increase the number of community garden plots from 3,640 to 5,000 by the year 2020. While this is a temporary location, it will allow for this garden and its agricultural programs to continue pending PHS finding a possible longer-term location elsewhere.

When built, the garden received necessary development permits from the City of Vancouver for the uses, activities and infrastructure on the site. PHS has demonstrated success in managing these gardens. They deliver educational and cultural programs that support the health, social and economic development of residents in the neighbourhood.

### *Implications/Related Issues/Risk (if applicable)*

#### *Financial*

Consistent with the City's framework for supporting gardens on City and Park Board land that is not required imminently for development or civic use, the proposed license agreement contemplates a nominal total rent of \$10.00 for the term, including any extension. Based on the limited possibilities of short-term uses for the half-acre site, the estimated forgone total rent (including property taxes) is estimated to be ~\$102,500 per annum, or ~\$68,300 for 8 months ending November 30, 2015.

### *CONCLUSION*

The garden and urban agriculture programs operated by PHS at 58 West Hastings Street add positive contributions to the neighbourhood, and contribute to many of Council priorities and goals outlined in the Vancouver Food Strategy, Greenest City Action Plan and the Healthy City Strategy. The gardens have been in operation for

three years, and the General Manager of Community Services is seeking Council's authorization for Director of Real Estates Services to enter into a license agreement with the PHS to maintain garden and its agriculture programs at its present site. The gardens would only be considered temporary use until such time the site is redeveloped for housing purposes. The proposed term ends November 30, 2015, with a possibility of extension for one additional year at the City's discretion.

\* \* \* \* \*

LICENSE AGREEMENT

58 WEST HASTINGS STREET

THIS LICENSE AGREEMENT is effective as of the 1<sup>st</sup> day of January, 2015,

BETWEEN:

CITY OF VANCOUVER  
453 West 12<sup>th</sup> Avenue  
Vancouver, BC V5Y 1V4

(the "Licensor")

AND:

PHS COMMUNITY SERVICES SOCIETY (Soc. No. S-0030883)  
20 West Hastings Street  
Vancouver, BC V6B 1G6

(the "Licensee")

WHEREAS:

- A. The Licensor is the owner of the Lands;
- B. The Licensee operates urban agriculture programs on the License Area; and
- C. The Licensee wishes to acquire a license of the License Area for the Permitted Purposes and the Licensor has agreed to grant a license of the License Area to the Licensee for the Permitted Purposes on the terms and conditions contained in this Agreement,

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements hereinafter reserved and contained and the sum of Ten (\$10.00) Dollars and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the parties), the Licensor and the Licensee covenant and agree with each other as follows:

**1.0 DEFINITIONS**

1.1 The terms defined in this Section 1.1 shall, unless otherwise specifically provided for in this Agreement, have the following meanings:

- (a) "Agreement" means this agreement and all schedules attached hereto;
- (b) "Commencement Date" means January 1, 2015;

- (c) "Contaminants" means:
- (i) waste, hazardous waste or contamination, as those terms are defined in the EMA, including without limitation any vapour concentrations that exceed the standards provided for in the EMA or are otherwise deemed by the MOE to pose a risk to human health or which exceed MOE accepted concentrations;
  - (ii) toxic substances, as those terms are defined in the *Canadian Environmental Protection Act*, S.C. 1999, c. 33, as amended from time to time, or in any statute enacted in substitution therefor;
  - (iii) substances or toxic substances or waste, in quantities or concentrations exceeding prescribed criteria, standards or conditions, as defined in the EMA for the applicable land use; or
  - (iv) any matter which is not waste, hazardous waste, a substance, or a toxic substance, but which exceeds or fails to comply or meet MOE prescribed numerical standards or which, if present, in the opinion of the MOE, poses a risk of harm to the environment or to human health or to the Licensor's property;
- (d) "EMA" means the *Environmental Management Act*, S.B.C. 2003, c. 53, as amended from time to time, and any and all replacements thereof or any statute enacted in substitution thereof and all regulations applicable thereto, including the *Contaminated Sites Regulation*, B.C. Reg. 375/96, and any amendments, replacements and substitutions thereof;
- (f) "Improvements" means any and all improvements, infrastructure and property of any kind or nature related to the operation and security of the site and programs existing in the License Area as of the Commencement Date or for which the City Engineer provides written consent in accordance with Section 12.4 hereof;
- (g) "Lands" means those lands in Vancouver, British Columbia with a civic address at 58 West Hastings Street and legally described as: PID: 027-736-032, Lot 1 Block 29 District Lot 541 Group 1 New Westminster District Plan BCP39144;
- (l) "License Area" means that portion of the Lands shown outlined in Schedule "A";
- (h) "Licensee's Personnel" means the Licensee's officials, directors, officers, agents, employees, volunteers, contractors and subcontractors and anyone for whom the Licensee is responsible at law;
- (i) "Losses" means all damages, losses, costs, actions, causes of action, claims, demands, builders liens, liabilities and expenses;
- (j) "MOE" means British Columbia Ministry of Environment and any successor ministry responsible for administering the EMA; and

- (k) "Permitted Purposes" has the meaning set out in Section 3.1.

## 2.0 GRANT OF LICENSE

2.1 Subject always to the terms and conditions of this Agreement, the Licensor, to the extent it has legal authority to do so but not otherwise, hereby grants to the Licensee and the Licensee's Personnel a non-exclusive license to use the License Area for the Permitted Purposes, for a term commencing on the Commencement Date and ending on November 30, 2015 (the "Term"), unless sooner terminated or extended in accordance with the terms set out herein. The Term may be extended for one additional one-year period following November 30, 2015, at the sole discretion of the Licensor, upon written notice from the Licensor to the Licensee.

## 3.0 PERMITTED PURPOSES

3.1 Subject to the restrictions contained in this Agreement, the Licensee may use the License Area during the Term for the following purposes:

- (a) to operate urban agriculture programs;
- (b) for educational, cultural and community event activities related to the operation of garden or the outdoors; and
- (c) to provide such security measures as the Licensee deems appropriate or necessary, including, without limitation, maintaining security personnel at the License Area,

(collectively, the "Permitted Purposes"). The Licensee may not use the License Area for any purpose other than the Permitted Purposes without the express prior written consent of the Licensor.

## 4.0 LICENSE FEE

4.1 The Licensee will pay a fee for the license granted in Section 2.1 in the amount of \$10.00.

## 5.0 LICENSOR'S REPRESENTATION

5.1 The Licensor represents and warrants to the Licensee that it has the power and authority to enter into this Agreement and to grant the license herein, all of which have been duly and validly authorized by all requisite proceedings.

## 6.0 LICENSEE'S COVENANTS

6.1 The Licensee, at its cost, will:

- (a) comply with all applicable municipal, provincial and federal laws, bylaws, regulations and requirements pertaining to the Permitted Purposes or the use of the License Area by the Licensee and the Licensee's Personnel, including

without limitation, all applicable laws, bylaws, regulations and requirements relating to health, fire and safety;

- (b) to maintain and repair improvements in accordance with Section 12.3 of this Agreement for the duration of the Term;
- (c) not commit or permit any nuisance on the License Area or the Lands or any manner of use which causes or is likely to cause unreasonable annoyance or disturbance to the Licensor, any other licensee of the Lands, the general public or abutting land owners or their tenants, licensees or occupants;
- (d) not release or permit to be released any Contaminants onto the License Area or the Lands;
- (e) if the Licensee contravenes Section 6.1(d) above, clean up or cause to be cleaned up any Contaminants which the Licensee released or permitted to be released on the License Area or the Lands contrary to Section 6.1(d);
- (f) not commit or permit any damage, waste or injury to the License Area or the Lands;
- (g) not permit any builders or similar liens, charges or encumbrances to be registered on title to the Lands. If any such liens, charge or encumbrance are registered on title to the Lands in respect of the Licensee's use of the Lands, the Licensee will immediately take action to discharge same;
- (h) cause each of the Licensee's Personnel to comply with the terms and conditions of this Agreement;
- (i) permit the Licensor, at any time, to enter onto the License Area to inspect the condition thereof and the improvements and property thereon;
- (j) permit the Licensor, at any time upon 48 hours prior written notice to the Licensee, to carry out such inspections, tests, studies, appraisals, surveys and investigations of the License Area as the Licensor may reasonably require, including, without limitation, environmental tests;
- (k) keep all sidewalks adjacent to the License Area clear of snow and ice according to the requirements of the City's Street and Traffic Bylaw;
- (l) in the event of any graffiti or vandalism to any surfaces within the License Area, remove the graffiti and fully repair the vandalism within seventy-two (72) hours, excluding statutory holidays, of receiving notification (whether or not such notification is written or verbal and whether or not such notification is received from the Licensor or a member of the public; and
- (m) if this Agreement is terminated for any reason, to deliver vacant possession of the License Area free and clear of improvements to the Licensor.



## 7.0 INSURANCE

7.1 The Licensee will obtain and maintain during the Term the following types of insurance:

- (a) Commercial General Liability (CGL) insurance with a limit of not less than \$5,000,000.00 for loss, damage, injury or death arising out of any one occurrence and a deductible not greater than \$5,000.00. The policy will indemnify and protect the Licensor and its servants and agents against all Losses including all claims for any loss, damage, injury or death to any person or persons and for damage to any public or private property occurring within or about the License Area arising by virtue of Licensee's use of the License Area;
- (b) Automobile Liability Insurance to be carried at all times for any and all licensed vehicles owned by or leased to the Licensee, protecting against damages arising from bodily injury (including death), and from claims for property damage arising from the operations of the Licensee, its agents or employees. This insurance shall be for a minimum amount of \$5,000,000.00, inclusive, per accident,

and the Licensee will provide the Licensor with satisfactory proof of such coverage prior to the Commencement Date.

7.2 The Licensee will ensure that the insurance set out above:

- (a) is endorsed so as to provide for thirty (30) calendar prior notice to the Licensor of cancellation, lapse or material change;
- (b) specifically names the Licensor as an additional insured;
- (c) is issued by a company or companies authorized to issue insurance policies in British Columbia; and
- (d) is issued on a policy form acceptable to the Licensor's Director of Risk Management and contain such other terms and conditions satisfactory to the Licensor's Director of Risk Management.

## 8.0 DEFAULT AND TERMINATION

8.1 If the Licensee is in breach of or fails to carry out its obligations under the terms of this agreement, within five (5) days of receipt of written notice of non-compliance from the Licensor, except in the event of an emergency or apprehended emergency as determined by the Licensor in which case no notice shall be required, the Licensor may, but will be under no obligation to, remedy the default; and the Licensee will, forthwith following receipt of any written request from the Licensor, pay to the Licensor the amount of any costs from time to time incurred by the Licensor in so doing. If the Licensee fails to pay to the Licensor such costs within twenty (20) days following delivery of such written request from the Licensor, such amounts will be construed in arrears and will bear interest at the rate of three percent (3%) per annum above the Prime Rate (hereinafter defined), calculated monthly not in advance, from the date due until paid. In this clause, "Prime Rate" means the floating

annual percentage rate of interest as established from time to time by the Bank of Montreal, 595 Burrard Street, Vancouver, British Columbia, as the base rate that will be used to determine the rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Bank of Montreal as the prime rate; provided that if a court declares or holds the Prime Rate to be void or unenforceable for any reason including uncertainty, then the rate of interest payable on amounts in arrears hereunder will be eighteen percent (18%) per annum calculated monthly not in advance, from the date due until paid. This covenant shall survive the expiry or termination of this Agreement.

8.2 The Licensor may terminate this Agreement, at any time, without further notice:

- (a) if the Licensee defaults in complying with any obligation under this Agreement and fails to cure the default within thirty (30) days after receipt of written notice from the Licensor or, provided the Licensee proceeds with due diligence to cure the default, within such further period as may be reasonably necessary given the nature of the default;
- (b) if the Licensee becomes insolvent or bankrupt;
- (c) if the Licensee fails to remain in good standing as a society duly incorporated under the laws of British Columbia or ceases to exist as a society;
- (d) if the Licensee vacates or abandons the License Area; or
- (e) for any or no reason, with twenty (20) days notice to the Licensee.

## 9.0 RELEASE AND INDEMNITY

9.1 The Licensee will release, indemnify and save harmless the Licensor and its officers, agents and employees from all Losses of any nature whatsoever relating to or arising from the Licensee's use of the License Area and from all Losses which arise or accrue against the Licensor and its officers, agents and employees on account of injury or death occurring in or about the License Area or the Lands and damage to or loss of property occurring in or about the License Area or the Lands relating to or arising from the Licensee's use of the License Area (including claims under the *Occupier's Liability Act*), except to the extent caused or contributed to by the negligence or wilful misconduct on the part of the Licensor and its officials, officers, agents and employees or anyone for whom the Licensor is responsible at law. This release and indemnity will survive the expiry or earlier termination of this Agreement.

## 10.0 CONDITION OF LICENSE AREA

10.1 The Licensee covenants and agrees that the Licensor has made no representation or warranties as to the fitness for any particular use, safety, condition or state of repair of the License Area or the Lands and the Licensee hereby accepts the License Area "as is".

**11.0 OWNERSHIP OF IMPROVEMENTS**

11.1 Any and all improvements will be and will remain the absolute property of the Licensee.

**12.0 MAINTENANCE AND REPAIR**

12.1 The Licensee covenants that any and all improvements are of good workmanship and free of defects and deficiencies, including defects and deficiencies arising from or related to design, construction, installation or materials used.

12.2 During the Term, the Licensee will, at all times, ensure that the License Area is kept in a clean and safe condition, free of litter and debris.

12.3 The Licensee will cause to be maintained improvements in a condition of good repair and free of defects and deficiencies for the duration of the Term.

12.4 The Licensee will not construct or install or otherwise put in place in the License Area any improvement, structure, fixture or thing without first obtaining from the City Engineer its explicit prior written consent therefor, which may be conditioned. The City acknowledges and agrees that the Licensee has the consent of the City for improvements existing in the License Area as of the Commencement Date as set out in Schedule "B".

**14.0 DELIVERY OF NOTICES**

14.1 Any notice required to be given hereunder may be delivered by hand as follows:

(a) to the Licensor:

City of Vancouver  
453 West 12<sup>th</sup> Avenue  
Vancouver, BC V5Y 1V4

Attention:                     

(b) to Licensee:

PHS Community Services Society  
20 West Hastings Street  
Vancouver, BC V6B 1G6

Attention:                     

and will be deemed to have been received on the date of delivery of such notice.

**15.0 CITY STATUS**

15.1 Nothing expressed or implied herein will be deemed to derogate from or prejudice or affect the Licensor's rights, powers, duties, or obligations in the exercise of its

functions pursuant to the *Vancouver Charter*, other public or private statutes, bylaws, or statutory orders or regulations, and the Licensor may exercise such rights, powers, duties, and obligations as fully and effectively as if the Licensee and Licensor had not executed and delivered this Agreement to one another.

**16.0 NO WAIVER**

16.1 No action or failure to act by a party to this Agreement will constitute a waiver of any right or duty under this Agreement, or constitute an approval or acquiescence in any breach thereunder, except as may be specifically agreed to in writing by such party.

**17.0 TIME OF ESSENCE**

17.1 Time is of the essence in this Agreement.

**18.0 NO INTEREST IN LAND**

18.1 The license granted in this Agreement will not be construed as creating any interest in land whatsoever.

**19.0 JURISDICTION**

19.1 This Agreement will be governed by the laws of the Province of British Columbia and the parties agree to submit to the jurisdiction of the courts of British Columbia.

**20.0 SEVERABILITY**

20.1 The parties agree that if it is held by any court of competent jurisdiction that any part of this Agreement is void, voidable, illegal or unenforceable, that part of the Agreement will be deemed to be deleted from the Agreement, and all other provisions of the Agreement will remain in full force and effect and will be binding in all respects upon the parties to this Agreement.

**21.0 CAPTIONS AND HEADINGS**

21.1 The recitals and headings to sections, schedules and appendices are for convenience and reference only and will not affect the interpretation of this Agreement.

**22.0 INTERPRETATION**

22.1 Words importing the singular include the plural and vice versa and words importing gender include all genders. The words "include" and "including" are to be construed as meaning "including without limitation".

**23.0 SCHEDULES**

23.1 The Schedules attached to this Agreement form a part of this Agreement and any obligation imposed on the Licensee in a Schedule will be deemed to be a covenant of the Licensee in this Agreement. To the extent that there is an inconsistency between the terms

and conditions of this Agreement and anything in the Schedules, the terms and conditions of this Agreement will prevail only to the extent of the conflict.

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**24.0 ENUREMENT**

24.1 This Agreement will enure to the benefit of and be binding upon the Licensor and the Licensee and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

**CITY OF VANCOUVER**  
Per:

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

**PHS COMMUNITY SERVICES SOCIETY**  
Per:

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

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

SCHEDULE "A"  
LICENSE AREA



SCHEDULE "B"  
EXISTING IMPROVEMENTS

Items	
Greenhouse	
36 Long garden beds	
Planters and Pots	
Portable Toilet	
9 bins for composting	
Apiary	
Two shipping containers with awnings	