



ADMINISTRATIVE REPORT

Report Date: October 7, 2017
Contact: Mary Clare Zak
Contact No.: 604.871.6643
RTS No.: 12142
VanRIMS No.: 08-2000-20
Meeting Date: October 17, 2017

TO: Vancouver City Council

FROM: General Manager Community Services in conjunction with General Manager, Real Estate and Facilities Management

SUBJECT: Licence Agreement for Portions of City Owned Land at 215 West 1st Avenue and 1850 Spyglass Place to Cultivate Canada for Urban Agriculture

RECOMMENDATION

- A. THAT Council authorize the Director of Real Estate Services to prepare a Licence agreement with Cultivate Canada Society (dba Sole Food Street Farms), for portions of City owned properties located at:
- a. 215 West 1st Avenue, legally described as PID 026-979-772 Lot 327 False Creek Plan BCP28525 and PID: 026-979-781, Lot 328 False Creek Plan BCP28525; and
 - b. 1850 Spyglass Place, legally described as PID 026-498-502 Lot 308 except Part on Plan BCP20724 False Creek Plan BCP20723.
- B. THAT Council direct that the proposed Licence be for a term of 3 years at a nominal rental rent of \$10.00 for the term, and include an early termination provision in favour of the City upon 6 months notice. All terms and conditions to be to the satisfaction of the General Manager of Community Services, the General Manager of Real Estate and Facilities Management and the Director of Legal Services.

This represents an estimated annual rent subsidy for the portion of the property totalling \$125,000 per year (for interim surface land use).

- C. THAT no legal rights or obligations will arise or be created by Council's adoption of Recommendations A and B unless and until all legal documentation has been executed and delivered by the respective parties.

- D. THAT Council authorize a grant of \$34,000 to Cultivate Canada Society to support urban agriculture start up at the new location. Source of Funds to be the 2017 Social Innovation Project grants budget.

Recommendations B and D require 2/3 affirmative votes of all Council members per Vancouver Charter S. 206(1)

REPORT SUMMARY

The report seeks Council's approval for a licence of portions of city-owned property at 215 West 1st Avenue and 1850 Spyglass Place to Cultivate Canada (Sole Food Street Farms) for urban farm use and a grant of \$34,000 to support urban agricultural programming start up at the new location. Sole Food provides residents with limited resources with paid and volunteer training and jobs to grow fruits and vegetables for distribution to markets, restaurants, and non-profit organizations and promote healthy and green development in Vancouver. The licence will allow Sole Food to continue their urban farming activities and programs in Vancouver. Recommended length of term is for three years due to anticipated development of the site as set out in Council policy, namely the Southeast False Creek Official Development Plan. The licence is subject to early termination provision.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

- **Urban Farming Bylaw and Guidelines** - In 2016, Council adopted the urban farming guidelines, zoning and development bylaw, and licence bylaw that allow urban farming as a defined use on zoned lands
- **Healthy City Strategy** - In 2014, Council adopted the Healthy City Strategy that supports goals of Feeding Ourselves Well and Making Ends Meet and Working Well.
- **Downtown Eastside Local Area Plan** - In 2014, Council adopted the Downtown Eastside Local Area Plan that included goals to encourage inclusive local employment and retain local businesses.
- **Vancouver Food Strategy** - In 2013, Council adopted the Vancouver Food Strategy including goals and actions to support urban farming.
- **Sole Foods Lease Agreements** - In 2012, Council authorized two lease agreements for Cultivate Canada to develop and deliver urban farming programs. In December 2016, Council authorized the renewal of the lease agreements for an additional three years.
- **Greenest City Action Plan** - In 2010, Council adopted the Greenest City Action Plan that included the need for a food systems strategy and identified a target to increase food assets by a minimum of 50%.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The City Manager RECOMMENDS approval of the foregoing.

REPORT

Background/Context

Cultivate Canada (Sole Food Street Farms) has been operating in Vancouver since 2009, and is the largest urban farming organization in the city. Sole Food turns underutilized or vacant lots into vibrant and productive growing spaces, and in doing so, provides essential training and employment for people with barriers to traditional employment. Sole Food currently operates from two city-owned sites and two private sites in the city. They have spearheaded their unique growing techniques in movable raised garden beds which do not disrupt the ground cover of the often contaminated sites.

In February 2012, Council authorized lease agreements for Cultivate Canada at 1580 Vernon Drive and 1500 Main Street. In December 2016, Council authorised three year extensions of the two sites.

Sole Food's lease with the private land owner at Pacific and Carrall is coming to an end, and Sole Food will need to vacate by the end of November, 2017.

Over the past eight years, Sole Food has had a significant impact in the community through offering 75 low barrier jobs to local residents, many of whom struggle with mental health challenges or addictions. Recovery in terms of mental health and addictions includes having opportunities to contribute to society and to engage in meaningful work, and Sole Food enables these opportunities. Sole Food also donates roughly \$26,400 worth of fresh and healthy food annually to the community. A 2013 study from Queen's University found that there were \$1.70 in savings to the health care, legal, and social assistance systems for every dollar paid to Sole Food employees.

Strategic Analysis

Sole Food is a leader in urban farming in Vancouver and North America with innovative business and operational models that directly align and advance the City's overarching sustainability objectives including:

- Supporting the Heathy City Strategy interests by helping to address food security, social and mental health and addictions needs of the low income community;
- Supporting the Vancouver Food Strategy and Greenest City Action Plan targets including increased food assets and increasing the number of green jobs; and
- Aligning with the Vancouver Economic Strategy by supporting sustainable employment within the food sector that is identified as an area for economic growth opportunity.

The site at 215 West 1st Avenue is ideal for the relocation of Sole Food's programming and activities from Pacific and Carrall. The site meets a number of requirements including available underutilized and vacant land, appropriate size, and proximity to the Downtown Eastside where employees reside. The site has been vacant for over two decades, but occasionally has been the location of large and temporary festivals and shows such as Cirque Du Soleil and Cavalia, and the Street Food Festival. The local neighbourhood has indicated that they are not in support of similar festivals continuing to take place on the site. Sole Food would temporarily activate the site until such time as development and/or further planning

work on the site takes place, which is not anticipated for another couple of years. The proposed term for Sole Food will not hinder the development of the site.

Because of the nature of the former uses of the site, Sole Food would continue using their growing technique that do not disturb the ground cover and grow in raised garden boxes; in affect, avoiding contaminated soil concerns.

Implications/Related Issues/Risk

Financial

Should Council approve the recommendation, the City will make arrangements for a licence with Cultivate Canada (Sole Food) at nominal value. This represents an estimated annual rent subsidy for the portion of the property totalling \$125,000 per year (for interim surface land use).

Currently, if market rental rates were charged, Cultivate Canada would not be able to sustain their current level of activity.

Should Council approve Recommendation D for \$34,000 to Cultivate Canada, \$162,087 will remain in Social Innovation Project (SIP) grants which are part of the Community Services Grants Budget. Further Community Services grants for this remaining balance will be brought forward to Council later in 2017.

CONCLUSION

The urban farming activities and programs operated by Cultivate Canada (Sole Food) add positive contributions to the neighbourhood in which they're situated and the lives of its employees, 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 General Manager of Community Services is seeking Council's authorization for Director of Real Estates Services to enter into licence agreement with the Cultivate Canada for a portion of 215 West 1st Avenue and 1850 Spyglass Place to allow for urban farming activities.

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Area of Cultivate Canada (Sole Food Street Farms)



LICENCE AGREEMENT

SOLE FOOD STREET FARM

AT

215 WEST 1ST AVENUE & 1850 SPYGLASS PLACE

THIS LICENCE AGREEMENT, dated for reference October ____, 2017,

BETWEEN:

CITY OF VANCOUVER
453 West 12th Avenue
Vancouver, BC V5Y 1V4

(the "Licensor")

AND:

CULTIVATE CANADA SOCIETY (Soc. No. S-0057863)
1800 - 510 West Georgia Street
Vancouver, BC V6B 0M3

(the "Licensee")

WITNESSES THAT WHEREAS:

- A. The Licensor is the registered owner of the Lands;
- B. The Licensee wishes to operate the Sole Food Street Farm on the Licence Area; and
- C. The Licensee wishes to acquire a licence of the Licence Area for the Permitted Purposes and the Licensor has agreed to grant a licence of the Licence 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 are hereby acknowledged and agreed to by the parties), the Licensor and the Licensee covenant and agree with each other as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATIONS

1.1 **Definitions.** 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 _____, 2017:

- (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) **“Development Permit”** means the development permit issued to the Licensee pursuant to development permit application No. DP-2017-00919;
- (e) **“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) **“Lands”** means those lands in Vancouver, British Columbia with a civic address of:
- (i) 215 West 1st Avenue and legally described as PID: 026-979-772, Lot 327 False Creek Plan BCP28525 and PID: 026-979-781, Lot 328 False Creek Plan BCP28525; and
 - (ii) 1850 Spyglass Place and legally described as PID: 026-498-502, LOT 308 Except: Part on Plan BCP20724 False Creek Plan BCP20723
- (g) **“Licence Area”** means that portion of the Lands shown outlined in Schedule A;
- (h) **“Licensee Equipment”** means the gardening equipment and supplies and other equipment required for the Permitted Use;
- (i) **“Licensee Improvements”** means raised planters, sheds and storage containers, lighting, signage and other improvements and property, including any temporary barricades or fencing permitted under the Development Permit,

that the Licensee deems necessary to facilitate the Licensee's operation of the Sole Food Street Farm;

- (j) **"Licensee Personnel"** means the Licensee's officials, directors, officers, agents, employees, volunteers, contractors, subcontractors, invitees and permittees and anyone for whom the Licensee is responsible at law;
- (k) **"Licensor Improvements"** means any and all improvements, infrastructure and property of any kind or nature that the Licensor has constructed, placed or installed in the Licence Area, including, without limitation, any surfacing of the Licence Area;
- (l) **"Licensor Personnel"** means the Licensor's elected and appointed officials, officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and invitees;
- (m) **"Losses"** means all damages, losses, costs, actions, causes of action, claims, demands, builders liens, liabilities and expenses;
- (n) **"MOE"** means British Columbia Ministry of Environment and any successor ministry responsible for administering the EMA;
- (o) **"Permitted Purposes"** means, during the Term and within the Licence Area, the purposes permitted pursuant to the Development Permit, including the operation and maintenance of the Sole Food Street Farm, and for no other purposes without the express prior written consent of the Licensor;
- (p) **"Sole Food Street Farm"** means the commercial planter-box organic vegetable garden operated by the Licensee in the Licence Area for urban agriculture purposes;
- (q) **"Prime Rate"** means the floating annual percentage rate of interest established from time to time by the Bank of Montreal, Head Office, 595 Burrard Street, Vancouver, British Columbia, as the base rate that will be used to determine 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 by reason of uncertainty, then the rate of interest payable on amounts overdue from time to time under this Agreement shall be 21% per annum calculated monthly, not in advance, from the date due until paid;
- (r) **"Term"** means the period commencing on the Commencement Date and ending on _____, 2020, unless terminated earlier in accordance with this Agreement;
- (s) **"Urban Farm Guidelines"** means the Urban Farm Guidelines adopted by the City of Vancouver and dated March 8, 2016 as they may be revised or replaced from time to time; and

- (t) "*Vancouver Charter*" means the *Vancouver Charter*, S.B.C. 1953, c. 55 and any amendments, replacements or re-enactments thereof from time to time.

**ARTICLE 2
GRANT OF LICENCE AND LICENCE FEE**

- 2.1 **Licence.** 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 Personnel a non-exclusive licence to use the Licence Area for the Permitted Purposes during the Term, unless sooner terminated in accordance with the terms set out herein.
- 2.2 **Licence Fee.** The Licensee will pay a fee for the licence granted in Section 2.1 in the amount of \$10.00 on or before the commencement of the Term.

**ARTICLE 3
PERMITTED PURPOSES**

- 3.1 **Permitted Purpose.** Subject to the terms, conditions, restrictions and reservations contained in this Agreement, the Licensee may use the Licence Area for the Permitted Purposes, and for no other uses whatsoever.

The Licensee may bring motor vehicles onto the Licence Area from time to time during the Term, but only for purposes directly related to its use of the Licence Area for the Permitted Use and in the performance of its obligations hereunder.

Notwithstanding any other applicable permit or law, the Licensee will not suffer or permit members of the general public to enter the Licence Area at any time during the Term for any purpose and, to the Licensor's satisfaction, will put in place and maintain, in the form of fully functional fencing, gates and/or other barriers, reasonable measures to prevent members of the general public from freely entering the Licence Area.

Notwithstanding the preceding paragraph, the Licensee may from time to time during the Term bring visitors onto the Licence Area to observe or view the Licensee's activities and operations thereon.

By agreeing to the Licensee using the Licence Area for the Permitted Use, the Licensor is agreeing as the owner of the Lands only and is not in any way (either in its capacity as licensor or as a regulatory public body) stating, warranting or representing that the Permitted Use is a permitted use under the City of Vancouver Zoning and Development By law No. 3575 and amendments thereto and other relevant by laws. Nothing in this Section 3.1 affects the Licensee's obligations to comply at its sole expense with all such by-laws pursuant to Section 5.1(a) of this Agreement.

- 3.2 **No Other Use.** The Licensee may not use (and will not suffer or permit the use of) the Licence Area for any purpose other than the Permitted Purposes without the express prior written consent of the Licensor.

- 3.3 **Urban Farm Guidelines.** The Licensee acknowledges and agrees that all uses of the Licence Area during the Term must be in compliance with the Urban Farm Guidelines.

**ARTICLE 4
LICENCE AREA LICENSOR IMPROVEMENTS AND LICENSEE IMPROVEMENTS**

- 4.1 **Condition of Licence Area.** The Licensee confirms and acknowledges 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 Licence Area, the Licensor Improvements or the Lands. The Licensee has inspected the Licence Area and the Licensor Improvements and the Licensee hereby accepts the Licence Area and the Licensor Improvements on an “as-is, where-is” basis.
- 4.2 **Alterations.** The Licensee shall not carry out or cause to be carried out any installations on or alterations to the Licence Area, except as provided for in the Development Permit or otherwise without the Licensor’s explicit prior written consent and in the giving of such consent the Licensor may attach whatever conditions, directions, stipulations, prohibitions or deadlines as it deems appropriate and the same shall be conditions of this Agreement. All such works shall be wholly at the Licensee’s expense.
- 4.3 **Licensor’s Property.** Any Licensor Improvements will be and will remain the absolute property of the Licensor.
- 4.4 **Licensee’s Property.** Any Licensee Improvements and Licensee Equipment will be and will remain the absolute property of the Licensee. At the end of the Term, the Licensee shall remove the Licensee Improvements and Licensee Equipment from the Licence Area.

**ARTICLE 5
LICENSEE’S COVENANTS**

- 5.1 **General Covenants.** 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 and occupation of the Licence Area by the Licensee and the Licensee Personnel, including without limitation, all applicable laws, bylaws, regulations and requirements relating to health, fire and safety and the Urban Farm Guidelines;
 - (b) not cause, suffer or permit in, upon or around the Licence Area any unlawful acts or events;
 - (c) not use, or suffer or permit the use of, any part of the Licence Area in such a manner as to cause, suffer or permit annoying noises or offensive odours to emanate from any part of the Licence Area;
 - (d) be responsible for obtaining any and all permits required for the Licensee to construct the Licensee's Improvements on the Licence Area and to carry on the

Permitted Purposes in the Licence Area, and the Licensee acknowledges and agrees that this Agreement is not a permit;

- (e) the Licensee shall not cause, suffer or permit to be done, anything which would cause the Licensor's insurance to be cancelled or the cost thereof to be increased, and without waiving the foregoing prohibition, the Licensor may demand, and the Licensee shall comply with such demand to cease or cause to be ceased any activity or condition which would cause the Licensor's insurance to be subject to cancellation and shall pay to the Licensor, on demand, the amount of any such increase in cost caused by any such act or omission. If the Licensee's default results in cancellation of any policy of insurance, the Licensee shall indemnify the Licensor for any losses resulting from such cancellation;
- (f) cause all Licensee Personnel to comply with the terms and conditions of this Agreement;
- (g) be solely responsible for the actions of any Licensee Personnel in or about the Licence Area;
- (h) not cause, suffer or permit any nuisance in the Licence Area 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, any other tenant, licensee, occupant or operator on abutting lands, the general public or abutting land owners or their tenants, licensees, occupants or operators;
- (i) not, for any reason, use, occupy or obstruct any area of the Lands outside of the Licence Area, including any street, sidewalk or pathway;
- (j) pay when due all costs, charges, rates and levies on account of the use and occupation of the Licence Area by the Licensee or the Licensee Personnel, including, without limitation, utilities and services, which shall include, without limitation, electricity, water, garbage collection and all other expenses and outgoings relating to the use and occupation of the Licence Area by the Licensee or the Licensee Personnel;
- (k) not permit any builders or similar liens, charges or encumbrances to be registered on title to the Lands, and if any such liens, charge or encumbrance are registered on title to the Lands in respect of the Permitted Purposes or the Licensee's or the Licensee's Personnel's use and occupation of the Licence Area, immediately take action to discharge same;
- (l) provide, at its cost, such security measures as the Licensee or Licensor deems appropriate or necessary in respect of the Licence Area and the Sole Food Street Farm, including, without limitation, maintaining security personnel at the Licence Area; and
- (m) not distribute any keys or other means of access to the Licence Area to any third party without first obtaining the written consent of the Licensor which consent may be withheld at the discretion of the Licensor and which consent

may be conditional upon the Licensee and any such third party entering into a joint release and indemnity agreement in favour of the Licensor.

5.2 Use of Licence Area. The Licensee, at its cost, will:

- (a) install any Licensee Improvements or Licensee Equipment such that there is absolutely no penetration of the paving or surfacing of the Licence Area and no excavation into the soil of the Licence Area;
- (b) be responsible for placing, dismantling, storing and removing any Licensee Improvements and Licensee Equipment in the Licence Area, which Licensee Improvements and Licensee Equipment shall be at the sole risk and expense of the Licensee;
- (c) obtain the Licensor's written consent prior to repairing, modifying or installing attachments to streets, sidewalks, pathways, poles, hydrants, or other property of the Licensor located on or in the vicinity of the Licence Area or on streets, sidewalks or pathways;
- (d) provide uninterrupted and unrestricted access to the Licence Area by fire, police, medical, ambulance and Licensor Personnel;
- (e) in addition to any other costs payable by the Licensee, pay all costs incurred by, or on behalf of the Licensor to accommodate the Permitted Purposes, including, without limitation, costs of signs, advertisements advising the public of the Sole Food Street Farm and any other measures that the Licensor deems necessary and in the interest of the public;
- (f) obtain, as required by the Licensor, a building permit and development permit for the Licence Area for the installation of any Licensee Improvements or the Licensee Equipment and any other related structures required to be placed in the Licence Area by the Licensee and the Licensee shall provide to the Licensor, prior to commencement of any use of the Licence Area, a plan indicating the location of all Licensee Improvements and Licensee Equipment which will be brought on to the Licence Area or provided for the operation of the Sole Food Street Farm and the Licensee shall revise such plans in accordance with any comments provided by the Licensor;
- (g) not use the Licence Area and will not suffer or permit the use of the Licence Area for any illegal or unlawful use;
- (h) ensure that priority for participation and employment in the Sole Food Street Farm is given to residents of the Downtown East Side and that an appropriate protocol is maintained for determining priority;
- (i) ensure that any food or products sold or distributed shall be sold or distributed in compliance with any applicable health and safety regulations;
- (j) take all steps to inform all Licensee's Personnel that illegal or unlawful activities must not be conducted at the Licence Area.

5.3 Maintenance and Repair. The Licensee, at its cost, will:

- (a) not commit, suffer or permit any damage, waste or injury to the Licence Area, the Licensor Improvements or the Lands;
- (b) ensure that the Licence Area is kept in a clean, sanitary, tidy and safe condition, free of waste, litter, debris and garbage to the satisfaction of the Licensor;
- (c) not suffer or permit any activity or use in the Licence Area that may cause any part of the Licence Area or the Lands to be unsanitary, untidy or unsafe and will not install or leave anything in the Licence Area or any part of the Lands without the Licensor's explicit consent;
- (d) cause to be maintained the Licence Area, the Licensor Improvements, the Licensee Improvements and the Licensee Equipment in a condition of good repair and free of defects and deficiencies to the satisfaction of the Licensor;
- (e) repair any damage to the Licence Area, the Licensor Improvements, the Licensee Improvements, the Licensee Equipment and the Lands caused by the Licensee or Licensee Personnel to the satisfaction of the Licensor; and
- (f) comply with any notices or directives from the Licensor requiring any change in maintenance practices or specific maintenance or repair work.

5.4 Environmental.

- (a) The Licensee acknowledges and agrees that the Licence Area is being licensed to the Licensee on an "as is, where is" basis, and the Licensor has not made and the Licensee has not relied upon any representations or warranties from the Licensor or Licensor Personnel as to:
 - (i) the state of repair of the License Area;
 - (ii) the suitability of the License Area for any business, activity or purpose whatever, including the Permitted Use; and
 - (iii) the environmental condition of the License Area, including the presence or absence of any Contaminants on the Licence Area or the need to take any remedial action in relation to any Contaminants which may or may not be present on the Licence Area;

and the Licensee acknowledges and agrees that it has been afforded all reasonable opportunity to independently inspect the License Area and to carry out such investigations as it considers reasonably necessary to ascertain the environmental condition of the Licence Area and the suitability of the License Area for the Permitted Use.

- (b) The Licensee further covenants and agrees that it will:
 - (i) not suffer or permit any Contaminants to be brought on the Licence Area and shall not release or permit to be released any Contaminants onto the Licence Area or the Lands; and
 - (ii) if the Licensee contravenes Section (b)5.4(b)(i) (whether accidentally or wilfully), it shall:
 - (A) immediately give the Licensor notice to that effect; and
 - (B) thereafter promptly remove the Contaminants from the Licence Area and the Lands in a manner which conforms with all applicable laws and regulations and the Licensee shall be solely responsible for and remediate any Contaminants released or permitted to be released in the Licence Area or the Lands to the satisfaction of the Licensor and any other applicable governmental authority.

5.5 Access by Licensor. The Licensee will:

- (a) permit the Licensor, at any time, to enter onto the Licence Area to inspect the condition thereof and to inspect the Licensor Works, the Licensee Improvements, the Licensee Equipment and any other property thereon; and
- (b) permit the Licensor, at any time upon 24 hours' prior written notice to the Licensee, to carry out such inspections, tests, studies, appraisals, surveys and investigations of the Licence Area as the Licensor may reasonably require, including, without limitation, environmental or development related tests.

5.6 Expiry of Term or Termination. Upon the expiry of the Term or if this Agreement is terminated for any reason, to deliver possession of the Licence Area to the Licensor in the state in which the Licence Area was in immediately prior to the commencement of the Term.

**ARTICLE 6
LICENSOR'S RIGHTS**

6.1 Use of Licence Area. Without diminishing any of the Licensee's obligations hereunder, and without any liability to the Licensee or the Licensee Personnel, the Licensor and the Licensor Personnel may bar entry to or eject from the Licence Area any Licensee Personnel or any other person who:

- (a) acts in a disorderly or offensive manner, interferes with or obstructs any other person, appears intoxicated or commits or appears to commit an unlawful act;
- (b) presents an apparent threat to the safety of others or to the security of the Licence Area, the Licensor Improvements or the Lands;

- (c) takes up abode or erects a tent, shelter or other type of structure or accommodation in the Licence Area; or
- (d) lights any fires or burns any materials in the Licence Area.

**ARTICLE 7
INTEREST ON ARREARS**

- 7.1 Interest on Arrears.** All invoices submitted to the Licensee by the Licensor pursuant to this Agreement are payable within 30 days from the date of the invoice. The Licensee agrees that whenever and so long as any monies payable by the Licensee to the City under this Agreement are in arrears, such arrears shall bear interest at the Prime Rate, plus 3% per annum, calculated monthly not in advance, from the date due until paid.

**ARTICLE 8
INSURANCE**

- 8.1 Insurance Requirements.** Prior to exercising any of the rights granted to it hereunder, the Licensee, at its expense, will obtain and throughout the Term will maintain the following insurance:
- (a) "All Risk" insurance on all of the Licensee's property (including, without limitation, the Licensee Improvements and the Licensee Equipment) and upon all other property on Licence Area for which the Licensee is responsible or legally liable, such insurance to contain a waiver of any rights of subrogation of the insurer against the Licensor; and
 - (b) Commercial General Liability Insurance with limits of not less than \$5,000,000 per occurrence or such higher limit of coverage as the Licensor's Director of Risk Management may require from time to time and the policy will:
 - (i) indemnify and protect the Licensee and Licensee Personnel 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 Licence Area arising by virtue of Licensee's or the Licensee's Personnel's use of the Licence Area including any activities conducted by, on behalf of, or in connection with the operation of the Sole Food Street Farm;
 - (ii) name the Licensor and Licensor Personnel as additional insured;
 - (iii) contain a cross liability clause insuring the Licensee and Licensee Personnel and the Licensor and Licensor Personnel in the same manner and to the same extent as if separate policies had been issued to each and apply with respect to any action brought against one party by the other or by any officer, employee or agent of one party and any breach of a condition of the policy by any party or by any officer, employee or agent of one party will not affect the protection given by the policy to any other party or to any officer, employee or agent of any party;

- (iv) include blanket contractual liability covering liability arising directly or indirectly out of the performance of this Agreement; and
- (v) provide for a limit of deductibility not greater than \$5,000 or such other limit as the Licensor's Director of Risk Management may sanction from time to time.

8.2 Requirements for Insurance. The Licensee will obtain and maintain during the Term the following types of insurance:

- (a) is endorsed so as to provide for 30 days' 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.

8.3 Evidence of Insurance. Prior to exercising any of the rights granted to it hereunder, and thereafter during the Term at any time the Licensee renews or repurchases any insurance required hereunder or at any other time within ten days after the Licensor may demand, the Licensee will deliver to the Licensor, to its satisfaction, a fully completed certificate of insurance in the form annexed hereto as Schedule B. If the Licensee fails to deliver to the Licensor any such certificate or policy of insurance within the stipulated time, the Licensor may obtain such insurance, and the Licensee will pay to the Licensor the cost of the premiums on demand by the Licensor from time to time.

8.4 *Workers Compensation Act.* The Licensee in its use of the Licence Area hereunder will comply at all times in all respects and will ensure that all its contractors and subcontractors in any way involved with the Licensee in its use of the Licence Area hereunder will comply fully at all times in all respects with all *Workers Compensation Act* (British Columbia) ("*WCA*") requirements applicable thereto.

If at any time and whenever during the Term the Licence Area, in whole or in part(s), are a multiple-employer workplace(s) under Section 118 of the *WCA*, the Licensee will be the "**Prime Contractor**" thereunder and as such will perform all the responsibilities of the Prime Contractor in accordance with the *WCA* for such multiple-employer workplace(s).

The Licensee will provide to the Licensor immediately, whenever the Licensor may request from time to time during the Term, proof to the Licensor's satisfaction that the Licensee's use of the Licence Area hereunder complies fully in all respects at all times with all applicable *WCA* requirements and this Section 8.4 and that the Licensee is fulfilling its Prime Contractor obligations hereunder as required.

The Licensor may terminate this Agreement immediately without prior notice to the Licensee if at any time during the Term the Licensee is in breach of this Section 8.4.

**ARTICLE 9
LIABILITY, RELEASE AND INDEMNITY**

- 9.1 Exclusion of Liability.** The Licensor and the Licensor Personnel will not, under any circumstances, be liable or responsible for:
- (a) any injury, death or consequential damage of any nature whatsoever, however caused, that may be suffered or sustained by the Licensee or the Licensee Personnel;
 - (b) any loss or damage of any nature whatsoever, however caused, to the Licence Area, the Licensor Improvements, the Licensee Improvements, the Licensee Equipment or any property of the Licensee or the Licensee Personnel;
 - (c) any business, economic or indirect loss or damage suffered or sustained by the Licensee or the Licensee Personnel of any nature whatsoever, however caused; or
 - (d) any loss which the Licensee is obligated to insure against hereunder or has insured against.
- 9.2 Release and Indemnity.** The Licensee will release, indemnify and save harmless the Licensor and the Licensor Personnel from all Losses of any nature whatsoever relating to or arising from the Licensee's or the Licensee's Personnel's use of the Licence Area and from all Losses which arise or accrue against the Licensor and the Licensor Personnel on account of injury or death occurring in or about the Licence Area or the Lands and damage to or loss of property occurring in or about the Licence Area or the Lands relating to or arising from this Agreement or the Licensee's or the Licensee's Personnel's use and occupation of the Licence Area (including claims under the *Occupier's Liability Act*), except to the extent caused or contributed to by the wilful misconduct on the part of the Licensor and the Licensor Personnel or anyone for whom the Licensor is responsible at law. This release and indemnity will survive the expiry or earlier termination of this Agreement.

**ARTICLE 10
DEFAULT AND TERMINATION**

- 10.1 Termination upon Default.** The Licensor may terminate this Agreement, at any time, without further notice:
- (a) if the Licensee defaults in promptly complying with any obligation or observing any covenant under this Agreement and fails to cure the default promptly after delivery of written notice from the Licensor or, provided the Licensee proceeds with due diligence to cure the default, within such period as may be deemed reasonable by the Licensor in its sole discretion;

- (b) if at any time the Term is seized or taken in execution by any creditor of the Licensee;
- (c) if the Licensee becomes insolvent or bankrupt;
- (d) 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;
- (e) if the Licensee vacates or abandons the Licence Area for a period of more than 30 days; or
- (f) if the Licensor is of the opinion, in its sole discretion, that the Licence Area or any portion there is being used for any illegal or unlawful activities.

10.2 Licensor's Right to Rectify Defaults. If the Licensee defaults in complying with any of its obligation under this Agreement, the Licensor, without limiting its other rights and remedies under this Agreement, may cure such default on the Licensee's behalf, and the Licensee will pay the Licensor forthwith on demand the amount of the costs to the Licensor for doing so.

ARTICLE 11 EARLY TERMINATION

11.1 Termination. The Licensee may terminate this Agreement at any time without prior notice to the Licensor, and the Licensor may terminate this Agreement at any time upon giving the Licensee not less than six (6) months prior written notice of such termination.

If for any reason at any time during the Term the Development Permit in any way expires or is discontinued or cancelled such that by City of Vancouver by-law the Permitted Use is or will no longer permitted, this Agreement will terminate automatically at such time as effectively the Development Permit is to so expire or be so discontinued or cancelled.

ARTICLE 12 OBLIGATIONS ON TERMINATION

12.1 Obligations on Termination. By no later than the end of the Term or immediately on any earlier termination of this Agreement, the Licensee will:

- (a) remove from the Licence Area and the Lands all Licensee Improvements and Licensee Equipment and all of the Licensee's personal property and will repair any damage to the Licence Area or the Lands arising from their installation or removal provided that, if so permitted by the Licensor, the Licensee may leave such Licensee Improvements in the Licence Area as determined by the Licensor;
- (b) remove all waste, litter, debris and garbage from the Licence Area and any waste, debris or garbage of the Licensee from the Lands;

- (c) leave the Licence Area in the state of repair and maintenance satisfactory to the Licensor; and
- (d) vacate the Lands and deliver up to the Licensor vacant possession of the Licence Area.

**ARTICLE 13
ADJACENT USES AND SHARED USE OF LICENCE AREA**

13.1 Use of Licence Area.

- (a) The Licensee acknowledges that the Licensor intends to licence portions of the Lands to third parties, from time to time.
- (b) The Licensor acknowledges and understands that the other portions of the Lands may be used for various activities, including but not limited to, public events, parking, storage of construction materials and environmental or development related assessments, and the Licence Area is therefore subject to noises, smells and other disturbances that may accompany other such uses of the Lands.
- (c) The Licensee will comply with such reasonable rules and regulations as may be implemented by the Licensor in respect of the shared use of the Lands by the Licensee and a third party.
- (d) In addition to the Licensee's covenants herein, the Licensee will be responsible for securing all Licensee Improvements and Licensee Equipment and any other property of the Licensee and the Licensee Personnel, and the Licensor will have no responsibility or liability in respect of any damage or loss thereto.

**ARTICLE 14
ASSIGNMENT**

- 14.1 No Assignment.** The Licensee may not assign its interest in the Licence Area save and except upon the written consent of the Licensor, which consent the Licensor may not unreasonably withhold or delay but nevertheless if there are personal covenants herein on the part of the Licensee which, in the opinion of the Licensor's solicitors will not run with this licence agreement, then the Licensor may withhold its consent to assignment unless the prospective assignee covenants with the Licensor to be bound by such personal covenants as if such covenants had been made between the Licensor and the prospective assignee.

Any amalgamation of the Licensee with any other party, and any change of effective control of the Licensee, will constitute an assignment of the Licensee's interest under this Agreement and will be subject to all of the provisions of this Section 14.1. Change of effective control of the Licensee includes any transfer, voluntary or involuntary, direct or indirect, which results in a change in the person or persons exercising or who might exercise effective control of the Licensee or the business required to be carried on in the Licence Area. In the event that the shares of the Licensee are listed and traded publicly on a recognized stock exchange in Canada, the United States or

Europe, such trading of shares shall not constitute an assignment under this Section 14.1.

Despite any assigning, sub-letting or parting with possession the Licensee shall remain liable for the Licensee's obligations under this Agreement.

- 14.2 No Sublicensing.** The Licensee may not sublicense, license, set over or otherwise part with possession of the Licence Area or let any third party into possession of the Licence Area save and except upon explicit written consent of the Licensor.
- 14.3 Assignment of Sublease Rent.** Notwithstanding Section 14.2 hereof, the Licensee hereby assigns to the Licensor all rents and fees payable to the Licensee under any sublicense, license or occupation agreement with any third party, which assignment shall supersede any provisions regarding the Licensee in bankruptcy and any claims of the creditors of the Licensee whether by execution, attachment, garnishing order or otherwise PROVIDED HOWEVER the Licensor agrees to refrain from enforcing the said assignment so long as the Licensee shall not be in default in the payment of rent or the performance or observance of its covenants hereunder. Upon the Licensee falling into default in the payment of its rent or the performance or observance of its other covenants hereunder, the Licensor may forthwith direct the sub-licensee, licensee or such other third party to pay to the Licensor the sublicense rent, license fees or other monies as would otherwise be owing to the Licensee from time to time and the payment of such monies to the Licensor shall pro tanto discharge the sub-lessee's, licensee's or other third party's obligations to the Licensee and the Licensor shall apply such monies to the rent and the performance and observance of the Licensee's covenants hereunder notwithstanding any claims on the part of the Licensee's trustee in bankruptcy or the Licensee's creditors, whether by execution, attachment, garnishing order or otherwise. If the sub-licensee, licensee or other third party fails to abide by the Licensor's directions in this behalf then, at the Licensor's election, the sublicense, license or other third party agreement shall cease and determine and the Licensor may forthwith re-enter the sublicense, licensed or occupied portion of the Licence Area and arrange for new occupants thereof whose occupation shall be subject to the provisions of this paragraph.

ARTICLE 15 GENERAL PROVISIONS

- 15.1 Delivery of Notices.** Any notice required to be given hereunder may be delivered by hand as follows:

(a) to the Licensor:

City of Vancouver
453 West 12th Avenue
Vancouver, BC V5Y 1V4

Attention: Director of Real Estate

(b) to Licensee:

Cultivate Canada Society
1800 - 510 West Georgia Street
Vancouver, BC V6B 0M3

Attention: _____

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

- 15.2 Captions and Headings.** The recitals and headings to sections, schedules and appendices are for convenience and reference only and will not affect the interpretation of this Agreement.
- 15.3 City Status.** 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.
- 15.4 Enurement.** This Agreement will enure to the benefit of and be binding upon the Licensor and the Licensee and their respective successors and permitted assigns.
- 15.5 Interpretation.** 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".
- 15.6 Joint and Several.** If the Licensee is comprised of more than one person or entity, the Licensee's representations and agreements will be joint and several.
- 15.7 Jurisdiction.** 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.
- 15.8 No Interest in Land.** The sublicense granted in this Agreement will not be construed as creating any interest in land whatsoever.
- 15.9 No Waiver.** 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.
- 15.10 Schedules.** 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.

15.11 Severability. 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.

15.12 Time of the Essence. Time is of the essence in this Agreement.

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

CULTIVATE CANADA SOCIETY

Per:

Authorized Signatory

Authorized Signatory

SCHEDULE A
LICENCE AREA



SCHEDULE B

CERTIFICATE OF INSURANCE



Appendix A

LIABILITY INSURANCE CERTIFICATE

Section 7 b) – City staff to select the required # of days Written Notice before sending out for completion
Section 2 through 7 – to be completed and executed by the Insurer or its Authorized Representative

1. THIS CERTIFICATE IS ISSUED TO: City of Vancouver, 453 W 12th Avenue, Vancouver, BC, V6Y 1V4
and certifies that the insurance policy (policies) as listed herein has/have been issued to the Named Insured and is/are in full force and effect as of the effective date of the agreement described below.
2. NAMED INSURED [must be the same name as the Permittee/Licensee or Party(ies) to Contract and is/are either an individual(s) or a legally incorporated company(ies)]

PHS Community Services Society
BUSINESS TRADE NAME OR DOING BUSINESS AS

BUSINESS ADDRESS

20 West Hastings Street, Vancouver, BC V6B 1G6
DESCRIPTION OF OPERATION, CONTRACT, AGREEMENT, LEASE, PERMIT OR LICENSE

PHS Urban Farm at 523 – 533 Powell Street, Vancouver, BC V6A 1G8

3. COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form)

Including the following coverage:

- Personal Injury
- Cross Liability or Severability of Interest
- Employees as Additional Insureds
- Blanket Contractual Liability
- Broad Form Products and Completed Operations
- Broad Form Property Damage including Loss of Use
- Non-Owned Auto Liability

Check Additional Extensions where applicable and included:

- Work below ground level over 3 metres
- Excavation, shoring, underpinning, pile driving or caisson
- Demolition, removal or weakening of support of property
- Blasting
- Operation of hoist or attached machinery
- 24 months Completed Operations

INSURER: Aviva Insurance Company of Canada POLICY NUMBER: HCI 2008 – Declaration No. HSCS00016

POLICY PERIOD: FROM: April 1, 2015 To: April 1, 2016

LIMITS OF LIABILITY (Bodily Injury and Property Damage Inclusive):

Per Occurrence \$5,000,000 Aggregate \$ _____

Deductible Per Occurrence \$5,000 All Risk Tenants' Legal Liability \$5,000,000

4. AUTOMOBILE LIABILITY INSURANCE for operation of owned and/or leased vehicles

INSURER: _____ LIMITS OF LIABILITY:
POLICY NUMBER: _____ Combined Single Limit: \$ _____
POLICY PERIOD: From _____ to _____ *if vehicles are insured by ICBC, complete and provide Form APV-47.*

5. UMBRELLA OR EXCESS LIABILITY INSURANCE

INSURER: _____ Limits of Liability (Bodily Injury and Property Damage Inclusive) -
Per Occurrence \$ _____
POLICY NUMBER: _____ Aggregate \$ _____
POLICY PERIOD: From _____ to _____ Self-Insured Retention \$ _____

6. OTHER INSURANCE (e.g. Contractors Equipment, Crime, etc.) – Please specify Name of Insurer(s), Policy Number, Policy Period, and Limit

Lead Insurer: Royal & Sun Alliance Insurance Company of Canada, MP15-0005 – Declaration No. HSCS00016, Effective Oct 1, 2015, Property of Every Description \$2,500; Deductibles: - \$2,500 each and every loss. Except: Earthquake: 5%/ min. \$50,000, Flood: \$25,000, Water Damage: \$2,500.

7. POLICY PROVISIONS

Where required by the governing contract, agreement, lease, permit or license, it is understood and agreed that:

- a) The City of Vancouver, its officials, officers, employees, servants and agents have been added as Additional Insureds with respect to liability arising out of the operation of the Named Insured pursuant to the governing contract, agreement, lease, permit or license.
- b) The required insurance shall not be cancelled or endorsed to reduce Limits of Liability without thirty (30) days notice in writing by Registered Mail to the City of Vancouver. Should the policy be endorsed to restrict coverage midterm, notice of such restriction will be provided in writing by registered Mail to the City of Vancouver no later than the effective date of such change.
- c) The insurance policy (policies) listed herein shall be primary with respect to liability arising out of the operation of the Named Insured. Any insurance or self-insurance maintained by the City of Vancouver shall be in excess of this insurance and shall not contribute to it.

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

Marsh Canada Limited

Date October 2, 2015

PRINT NAME OF THE INSURER OR ITS AUTHORIZED REPRESENTATIVE, ADDRESS AND PHONE NUMBER

Kingsley Chow 800 – 550 Burrard Street, Vancouver, BC V6C 2K1 (604) 443-3565

COI - City of Vancouver - Revised CGL 30 Days Notice.docx